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

National Report for

FINLAND

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1 Housing situation

1.1 General features

A century ago tenants formed 'incomparably the greater part' of town populations, and '[a]lso in the countryside ... the number of tenants is not small.'[1] Starting with the 1950s, the case has been the reverse: homeownership predominates, also in urbanised areas. The causes, the total quantity, and the various available types of tenure for owning, renting, and intermediary positions between owning and renting are the themes of this chapter. The dominant tenure statistically, ownership, is in more than half of its instances – in particular when it comes to apartment buildings and suburban small-house areas – organised in a peculiar way: as limited-liability housing company, which differs from condominium, co-ownership, and cooperative. For this reason, quite a few words will be devoted to corporate legal arrangements when tracking the growth of the tenure system up to the present condition, which is shown in Table 4and, in the end of the chapter, Summary table 1.

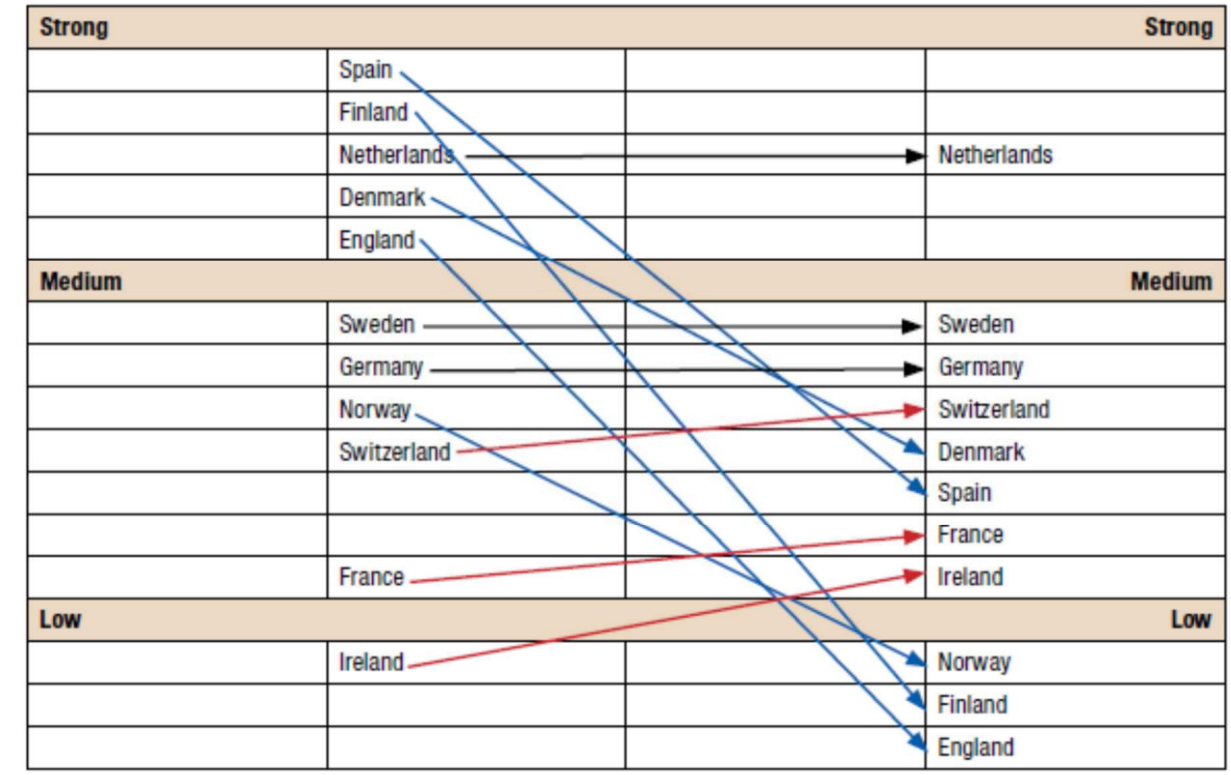
The roots of the special ownership institution, as well as the legal background against which tenancy legislation developed during the twentieth century, go back to the nineteenth century. Indeed, when our focus will be on the evolution of tenancy legislation, **two historical 'paradigms'** which have originally been abstracted from German private law by scholars looking back to the nineteenth century from within the welfare state of the twentieth century, '**liberal**' private law and more '**socially**' oriented legal regulation, are particularly precisely to be seen in the broadly perceived waves of tenancy-law development. As we shall see, when probing the history of tenancy regulation,[2] the first tenancy act of the newly independent state was prepared during rent controls that survived from World War One and as a countermeasure to the wholly dispositive tenancy law in a codification that was in force from 1734. About the inaugural special tenancy statute enacted in 1925, it has been said that the thinking was already changed: the parties were no longer perceived as economically equal contractual partners. The later strengthening protection of the tenant, especially in the late 1960s and lasting until the 1980s, coincided with the introduction of social aspects in the national housing policy, which grew variably and as a patchwork beginning with the reconstruction period following World War Two.[3]

The ensuing liberal change in tenancy regulation was the largest in western Europe. The relative shift from the early 1980s to the state of the law after 1995 is shown in Figure 1. During this same period, private rental sector contracted, at least because financial markets were deregulated in the 1980s and, as a consequence, owner occupancy expanded, being halted only by the extraordinarily severe recession of the early 1990s,

[1] The proposal of 1921, 'Ehdotus huoneenvuokralaiksi ynnä perustelut,' 4 *Lainvalmistelukunnan julkaisuja* 1921, 1. All translations of governmental preparatory material, cases, and literature in Finnish are the author's own.
[2] Chapter 5.
[3] See the next section 1.2.

after which growth in ownership picked up again. The combined trends, the increased freedom of contract in tenancy law and the decreasing size of the private rental sector over the same space of more than twenty years, make Finland the extreme case in the comparison of Figure 2.

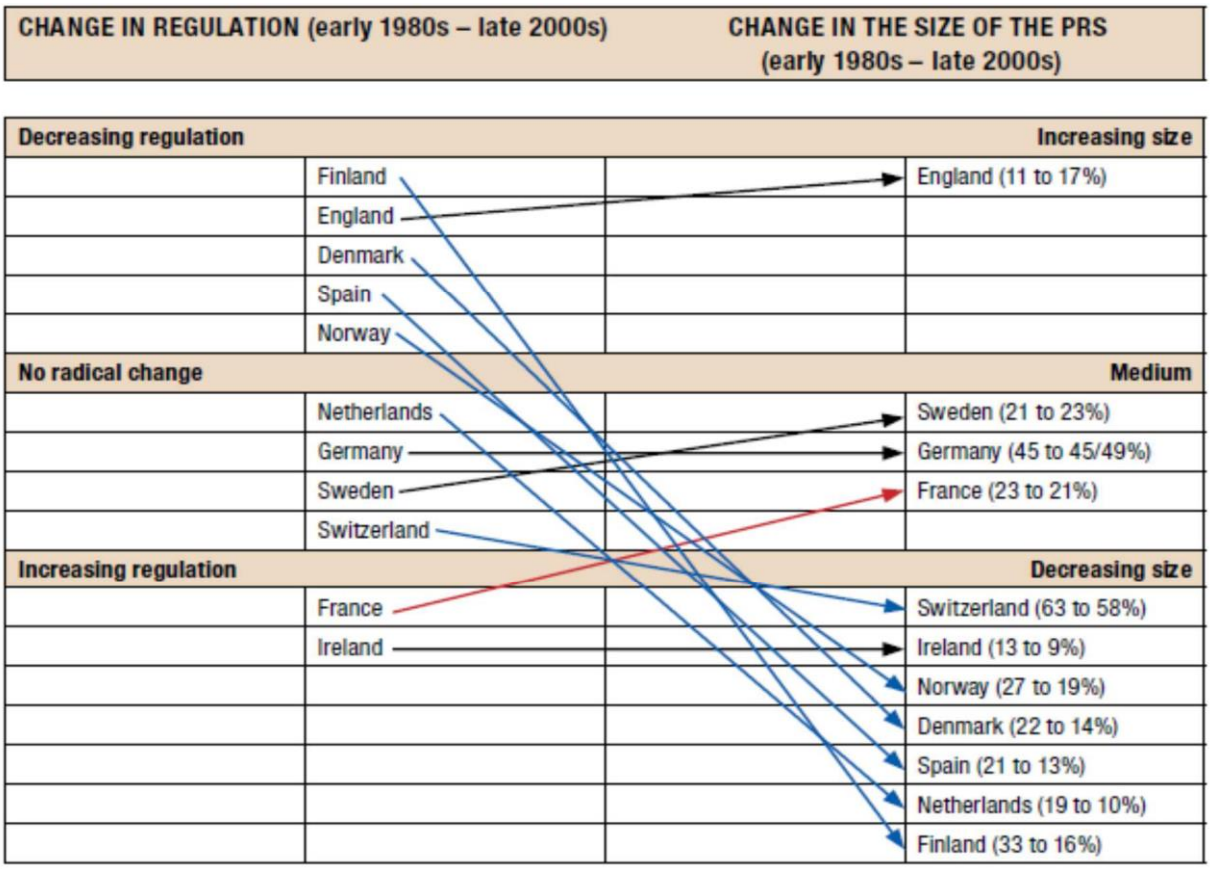
Figure 1. Change in regulation, 1980s–2000s.



Source: Whitehead et al (2012).[4]

[4] Whitehead et al, *The Private Rented Sector in the New Century – A Comparative Approach*, University of Cambridge, September 2012.

Figure 2. Changes in regulation and size of private rental sector.



Source: Whitehead et al (2012).[5]

Thus, the story line of increasing statutory protection of the tenant was confined, in Finland, exactly within the 'short twentieth century' (from World War One to 1991). Since then, new legal features have emerged, and they can conveniently, on the basis of the empirical material collected in the present work, be assembled into the following three developments.

First, there are examples of **constitutionalisation**, although constitutional rights have always had an influence at the 'higher echelons of the political system,' because it has been possible to legislate exceptions to the Constitution using the procedure for constitutional enactment, and the choice between legislative procedures has been made by the Constitutional Law Committee of Parliament interpreting the constitutional rights and liberties. For example, tenancy legislation has, on most occasions, been passed using the constitutional enactment procedure for reasons of protection of property. But in 1995, the bill of rights in the Constitution was revised, and, at the same time, both the Parliamentary Ombudsman and the Chancellor of Justice (who oversees the lawfulness of governmental acts) were given the constitutional mandate of 'monitor[ing] the

[5] Whitehead et al, *The Private Rented Sector in the New Century – A Comparative Approach*, University of Cambridge, September 2012.

implementation of basic rights and liberties and human rights.'[6] These two offices, safeguarding good administration, are important in the law of housing, because marginalised groups will not take their cases to courts.[7] The courts are the fourth institution interpreting basic rights, and both an aim and the consequence of the fundamental-rights reform was to increase the direct applicability of these rights. The rights are visible to some extent, normally as an argument together with another ground in the occasional case. Lastly, a mark of constitutionalisation in the social housing sector has been the impetus to take the purposes of, and the general criteria for, tenant selection into legislation, instead of having them in decrees, in order to fulfil constitutional requirements.[8]

The second development is the conspicuity of **'soft law'** also in the housing sector. One example is the tenant selection guideline that is issued by the Housing Finance and Development Centre of Finland, which monitors the social housing production system; its guideline is not legally binding, but the guideline is meticulously followed.[9] Other examples of guidelines provided by practice are the indoor health guideline published by Ministry of Social Affairs and Health; a data protection guideline, drafted by major associations in the field of rental housing; and the code of good practice for the residential rental sector, 'Good Leasing Practice,' adopted by both landlords' and tenants' associations in 2003.[10] In addition, one can mention the hybrid issuing, in decrees, of both regulations and instructions as part of the Building Code of Finland, which was recently corrected on constitutional grounds;[11] and finally, there is a standard for area calculation, the use of which is, in limited-liability housing companies, ordained.[12]

A third, broad perspectival feature, which is worth paying attention to, is the below emerging evidence of **time-consistent strategies and commitments** in the legislative process. For example, the gradual way in which rent regulation was abandoned in the early nineties can be seen as one strategy, which was in that case punctuated, near the beginning, by the government programme of April 1991, according to which rent regulation would, in a controlled manner, be pulled down in order to promote the supply of private rental dwellings.[13] A current example of an in fact linearly gradual strategy is the reduction of the tax deductibility of mortgage interest during the election period of 2011–2015 in order to unify the tax treatment of rental and owner-occupied housing.[14] While these strategies within the domestic democratic setting are characteristically limited by the extent of the election period, the possibility of transnational commitments solves the need for consistency over longer periods when coalitions may change. Presently, climate policy commitments are a prime example of this, and in the third

[6] The Constitution of Finland (731/1999), 108 and 109.
[7] For examples of cases referred to the Ombudsman and the Chancellor of Justice, see 4.3 below.
[8] See 4.3.
[9] See 4.3.
[10] Additionally, for the development of recommendations following the liberalisation of tenancy legislation in the nineties, see 6.5, 'Rent regulation.'
[11] Government proposal 81/2012, referring to a statement by the Chancellor of Justice in 2011 (at 5).
[12] For the latter, see 6.4, 'Description of dwelling.'
[13] *Pääministeri Esko Ahon hallituksen ohjelma*, 26.4.1991.
[14] *Pääministeri Jyrki Kataisen hallituksen ohjelma*, 22.6.2011.

chapter the implementation of European energy-efficiency objectives in the case of energy certificates for buildings will be addressed.

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).

Anneli Juntto, who studied the history of the Finnish housing question from 'philanthropy to corporatism' in 1990, referred to two domestic reasons for starting her investigation from the mid-nineteenth century. First, individual construction activity, where a tradition of self support lives on, has always been important; this characteristic of housing provision, as well as the peculiar tenure type, limited-liability housing company, both have their roots in the nineteenth century.[15] Second, besides the long history of institutions, the problems in housing policy seem to be recurring. Juntto said at the time: 'The housing crisis of Helsinki, caused by the Crimean war and described by Topelius in 1858, resembled the current one. The problem was also then the high price of housing and excess demand in the capital city and how to increase construction and to arrange housing financing. … The text could as well be from the newspapers of 1989.'[16]

She periodised the development of national housing policy into three phases.[17] What Juntto called 'philanthropy' (1850–1918) provided an introduction to the Finnish housing question: in the 1880s, the forerunner of limited-liability housing company took form, and while speculative development and cyclical fluctuations became common in towns prior to World War One, Finland was very slow to urbanise, and individual construction and rural life endured. During this period, a model of housing policy that includes limited public spending and is 'philanthropic,' marginal, was established; and because of it, together with low standard of living, an internationally modest level of housing.

In the period of 'functionalism' (1919–1939), architects created the modern dwelling for a minimum level of subsistence. 'The development of the physical solution of a dwelling thus preceded the development of economic housing policy,' Juntto says.[18] The interwar politics were concerned with the housing of landless population in the countryside, but also institutional foundations were laid in the 1920s, when the first tenancy act and the first limited-liability housing companies act were passed.

The economic, quantitative housing policy of 'welfare state' (1945–) resulted from a piecemeal development which began when the government first directly subsidised

[15] Anneli Juntto, *Asuntokysymys Suomessa Topeliuksesta tulopolitiikkaan* ['The Social History of Finnish Housing Policy from Philanthrophy to Corporatism'], Helsinki: Valtion painatuskeskus 1990, 18.
[16] Anneli Juntto, *Asuntokysymys Suomessa Topeliuksesta tulopolitiikkaan*, 19.
[17] Anneli Juntto, *Asuntokysymys Suomessa Topeliuksesta tulopolitiikkaan*, 23–25.
[18] Anneli Juntto, *Asuntokysymys Suomessa Topeliuksesta tulopolitiikkaan*, 25.

production in the postwar housing shortage. Let us follow the development in more detail. Initially, the so-called '*arava'* system (the name was modelled after '*Soteva*,' '*sotakorvausteollisuuden valtuuskunta*,' 'commission of war-reparation industry,' applied now to the administration of '*asuntorakentaminen*,' 'housing development') was temporary. The state granted loans with the aim of housing displaced people and of coming to the aid of the demand for labour in urban areas.[19] The tenure type for which loans were granted was not specified, and in practice *arava* loans were granted mostly for owner-occupied housing (123,600 owner-occupied dwellings and 58,800 rental dwellings between 1949 and 1968). The direct state-subsidisation of ownership has been called a 'decisive and far-reaching decision' in national housing provision, although to what extent the decision was intentional is hard to distinguish.[20] The causes have been adumbrated: for instance, the loans were allocated according to applications, and so the existing administrative and organisational preparedness and willingness to produce owner-occupied rather than rental housing prevailed; the policy was aimed at production, and considerations of positive rights and equality were absent; and the thought behind the aims of the first legislation was in principle that better-off people would move to the fresh houses, while vacating their old homes to lower-income classes.[21] When the need for housing persisted and the system was continued in the fifties,[22] the means invented to reduce housing costs, thus targeting better the middle class rather than high-income class, was 'considered by many to be absurd': the average floor area in subsidised dwellings was lowered, with average floor area in apartments in multi-story buildings regulated at maximum 50 square metres and the maximum floor area at 87 square metres.[23]

Late among industrialised countries, Finland began to urbanise in the late sixties. It was a time of exodus from the countryside to work in cities and towns (and in Sweden). Small farms were not enough to live by; there was a need to build suburbs and rental dwellings: industry took *arava* loans to develop large rental buildings for employees. Rental housing was constructed in the service of worker mobility. Party politics was involved in terms of regional policy: paper mills had to be around the country. On the other hand, a social aspect was grafted onto the earlier pure housing-policy edifice. Income thresholds had been proposed in tenant selection in 1965, and starting from 1968 income thresholds were applied to both rental and owner-occupied state-subsidised housing. Labour-market union were active, and rent control was an element of incomes policy: wages and rents were one whole. Rent control throughout the country started again in 1968. It made way for rent regulation in 1974 (see history of tenancy regulation, chapter 5). Finally, the essential point during those years leading to and including the seventies, when most suburbs were built, was that a state loan was the only housing loan that people could get. Financial markets were regulated, and kept on being regulated until 1983–1987.

[19] *Laki asuntolainoista, -takuista ja avustuksista* ['Act on housing loans, guarantees and subsidies'] (224/1949); *laki asutuskeskusten asuntorakennustuotannon tukemisesta valtion varoilla* ['Act on state-financed subsidisation of housing development in urban areas'] (226/1949).
[20] Anneli Juntto, *Asuntokysymys Suomessa Topeliuksesta tulopolitiikkaan*, 208.
[21] Anneli Juntto, *Asuntokysymys Suomessa Topeliuksesta tulopolitiikkaan*, 207–211.
[22] *Asuntotuotantolaki* ['Housing production act'] (488/1953).
[23] Anneli Juntto, *Asuntokysymys Suomessa Topeliuksesta tulopolitiikkaan*, 214.

The consecution in state financing for ordinary rental dwellings is shown in Table 1: the slow initiation, the growing need, a descent when financial markets were deregulated in the eighties, and a final phasing out at the turn of the century. In the 2007 budget, there was no space for direct state-loans any more.

Table 1. State lending to finance rental dwellings (excluding dwellings for special groups) 1949–2006, number of dwellings.

Taulukko 1. Vuokra-aravalainoilla tuotetut yhteensä 326 357 tavallista vuokra-asuntoa jaksotettuna aikavälille 1949–2006.

Vuokra-aravalainoilla lainoitetut tavalliset vuokra-asunnot vuosina 1949–2006					
Ajanjakso	1949–1970	1971–1980	1981–1990	1991–2000	2001–2006
Asunnot /kpl	66 205	113 960	80 854	55 608	9 730

Mukailtu lähteestä: Sosiaalinen asuntotuotanto 2006… taulukko 3a.

Source: Mäki-Fränti and Laukkanen (2010).[24]

One reason for the phasing out was the substitute institution of an interest-rate subsidy. In 1980, a possibility of interest subsidies was introduced to supplement the system of state loans. Instead of being the lender, the state would guarantee a loan granted by another institution – a bank, an insurance company, a pension institution or a municipality. In these loans, the state would pay out some portion of the interest to the financing institution, provided that the unit-specific *arava* restrictions on regulated rent, tenant selection, and the use and transfer of the apartments were observed for a number of years. At the very beginning of the nineties, this scheme was revamped so as to pursue not only the ends of housing policy, but also those of labour policy and the goal of activating construction, which had entered a slump.[25] From 1994 to 2001, 36,000 interest-rate-subsidised rental dwellings were built, subject to twenty-year restrictions; from 1992 to 1998, ten thousand more apartments were subject to lighter restrictions, to keep the apartment in rental use for ten years, but not having to apply the selection criteria.[26] The social aspect was lessened: under the twenty-year restrictions, rents were in fact not regulated; in the ten-year loans, the only obligation was to keep the apartments in rental use.[27]

The next addition to the system came in 2000. The developer receiving the subsidy and owning the subsidised apartments was required to be a 'general-interest' association accredited by the Housing Finance and Development Centre of Finland (ARA),[28] which

[24] Petri Mäki-Fränti and Tuula Laukkanen, *ARA-vuokratalokanta murroksessa: Rajoituksista vapautuneiden talojen käyttö ja omistajien vapautuville taloille*, Ministry of the Environment, Helsinki 2010.
[25] Government proposal 181/2000.
[26] The preceding figures in the text are from Government proposal 24/2010, 12.
[27] In 1992 to 1993, 7,500 partial-ownership apartments were built subject to the ten-year restrictions; in the end of the nineties, 1,000–2,000 more partial-ownership apartments were subject to twenty-year, full restrictions.
[28] *Asumisen rahoitus- ja kehittämiskeskus*, Lahti, http://www.ara.fi/default.asp?node=679&lan=en.

had been founded, when the national housing board was shut down, to manage and to monitor the system of state subsidies. A general-interest association may record a reasonable profit on its own investment, but otherwise the fund accumulated in the corporation must be used in its operations of maintaining and renovating state-subsidised units. Without a formal basis in legislation and an accreditation of general-interest associations, such a system of management had operated conventionally until the nineties, when the subsidised entities' operations and ethos began to change, and state subsidies were in danger of distorting free markets instead of benefiting the residents. Thus the old unit-specific (now) '*ara*' restrictions needed to be complemented by legislation on the recipient institutions. The Union regulation of 'services of general economic interest' is a new feature; see 7.2.

Since the late-eighties 'housing bubble,' which preceded the recession, housing has been influenced by three major economic policy factors. In 1993, mortgage debt deduction was transferred from a progressive tax to a basis equal for all; from 1991 to 1995, tenancy law was liberalised; and during the new currency euro, interest rates have been kept low by the European Central Bank. The last factor is a key reason for the continued, even increasing, attractiveness of homeownership in the new century. At the same time, state-subsidised development has been moderate, though it was promoted counter-cyclically in 1992–1993 and again in 2009–2010, targeting both rental housing and the 'intermediate' tenures between ownership and renting characterised in 1.4 below. Once the latest counter-cyclical economic policy ended, state-subsidised production of especially ordinary rental apartments – as opposed to rental apartments for special groups, such as students, the elderly, and the disabled – has reportedly been in a downward spiral (in 2011) and far behind objectives (in 2013).

- In particular: What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU

The population of the country is 5.4 million in 2014,[29] and it is growing primarily through immigration (by around 25,000 annually)[30]. The latest figures on immigration are available on the website of Statistics Finland,[31] but the long term trends are well displayed in Figure 3, which is from a report on Finland in a comparative research project on Nordic welfare states and the dynamics and effects of ethnic residential segregation (NODES). It shows that Finland was a country of emigration after World War Two, with a particular peak in 1969 and 1970 at the height of labour migration to Sweden. The disintegration of the Soviet Union had a major impact on foreign and migration policy, and one notable individual policy concerned the invitation of Ingrian

[29] 5,453,784 at the end of February 2014. Population and Cause of Death Statistics, Statistics Finland at http://www.stat.fi/til/vamuu/2014/02/vamuu_2014_02_2014-03-27_tie_001_en.html.
[30] In 2013, population grew by 24,596. Population Structure 2013, Statistics Finland http://www.stat.fi/til/vaerak/2013/vaerak_2013_2014-03-21_tie_001_en.html.
[31] Population and Cause of Death Statistics, Statistics Finland at http://www.stat.fi/til/muutl/2012/muutl_2012_2013-04-26_kuv_001_en.html.

Finns to migrate from the former Soviet Union by granting them returnee status in 1990. The first group of asylum seekers arrived in Finland from Somalia in the same year, and during the nineties more groups arrived from the former Yugoslavia, Somalia, and the former Soviet Union, and some hundreds from Iraq, Turkey, and Iran.[32] From the late 1980s until 2009, the largest proportion of immigrants came from Sweden, Russia, and Estonia, while the net migration figures show that permanent foreign residents had come from Russia, Turkey, and Somalia and residents from other countries, including western Europeans, were only passing through (Table 2).[33] The net immigration is presently 17,430 persons (2013), with a migration gain of 7,630 persons from within the European Union, clearly up on the previous year.[34]

The regional distribution of immigrants has followed the same pattern as the general urbanisation process: the main regional centres, particularly university towns, and the greater Helsinki and the larger region of Uusimaa, of which it is part, grow most rapidly[35] (Figure 4). The internal migration flows from the countryside to a select few towns, from the east to the west, and from the north to the south. 51 per cent of foreign nationals live in the southern region of Uusimaa.[36]

Figure 3. The migration balance.

[32] Mari Vaattovaara, Katja Vilkama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen, Contextualising ethnic residential segregation in Finland: migration flows, policies and settlement patterns' in Andersson, Dhalmann, Holmqvist, Kauppinen, Magnusson Turner, Skifter Andersen, Soeholt, Vaattovaara, Vilkama, Wessel, and Yousfi, *Immigration, Housing and Segregation in the Nordic Welfare States*, Helsinki: Department of Geosciences and Geography 2010, 195–262, 225.
[33] Mari Vaattovaara, Katja Vilkama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen, Contextualising ethnic residential segregation in Finland,' 227.
[34] Population and Cause of Death Statistics, Statistics Finland at http://www.stat.fi/til/muutl/2012/muutl_2012_2013-04-26_tie_001_en.html.
[35] Mari Vaattovaara, Katja Vilkama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen, Contextualising ethnic residential segregation in Finland,' 240.
[36] Mari Vaattovaara, Katja Vilkama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen, Contextualising ethnic residential segregation in Finland,' 240.

Source: Vaattovaara et al. (2010)[37] and Statistics Finland.

Table 2. Received immigrants and net migration during 1987–2009 from the main countries of origin.

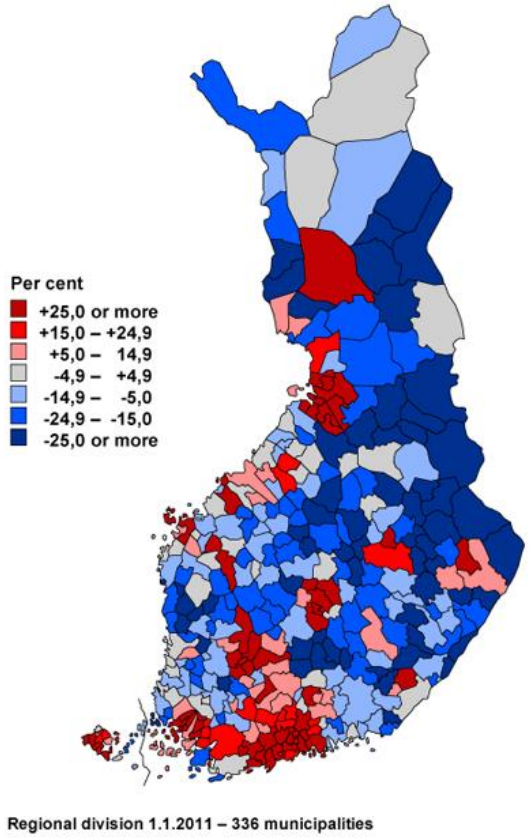
[37] Mari Vaattovaara, Katja Vilkama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen, Contextualising ethnic residential segregation in Finland,' 223.

Top 20 immigration countries		Top 20 net migration countries	
Sweden	87710	Russia	36194
Russia	40362	Estonia	25928
Estonia	34140	form. Soviet Union	8725
Germany	14293	Sweden	7564
USA	13762	Turkey	7047
Norway	13731	Thailand	6920
Britain	13468	China	5765
form. Soviet Union	9557	Somalia	4731
Spain	8568	Iraq	3857
China	8421	India	3397
Thailand	8034	Ethiopia	2837
Turkey	7785	Vietnam	2664
Denmark	7161	form. Serbia, Montenegro	2563
Somalia	5479	Iran	2528
France	5055	form. Yugoslavia	2258
India	4556	Ukraine	2195
Iraq	4011	Poland	1833
Italy	3851	Bosnia and Hertsegovina	1787
Holland	3586	Pakistan	1693
Canada	3180	Philippines	1506

Source: Vaattovaara et al. (2010)[38] and Statistics Finland.

Figure 4. Population change by municipality 1980–2010, per cent.

[38] Mari Vaattovaara, Katja Vilkama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen, Contextualising ethnic residential segregation in Finland,' 228.



Source: Statistics Finland.[39]

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

The number of dwellings is 2.8 million, about 2.5 million of which are permanently occupied.[40] 270,000, or close to 10 per cent, are vacant;[41] the problem of vacant dwellings affects municipalities in the northern and eastern Finland, with internal

[39] Population Structure 2010, Statistics Finland at http://www.stat.fi/til/vaerak/2010/vaerak_2010_2011-03-18_kuv_005_en.html.
[40] 2,517,000 at the end of 2009. Dwellings and Housing Conditions, Statistics Finland at http://www.stat.fi/til/asas/2009/01/asas_2009_01_2010-11-12_tie_002_en.html.
[41]

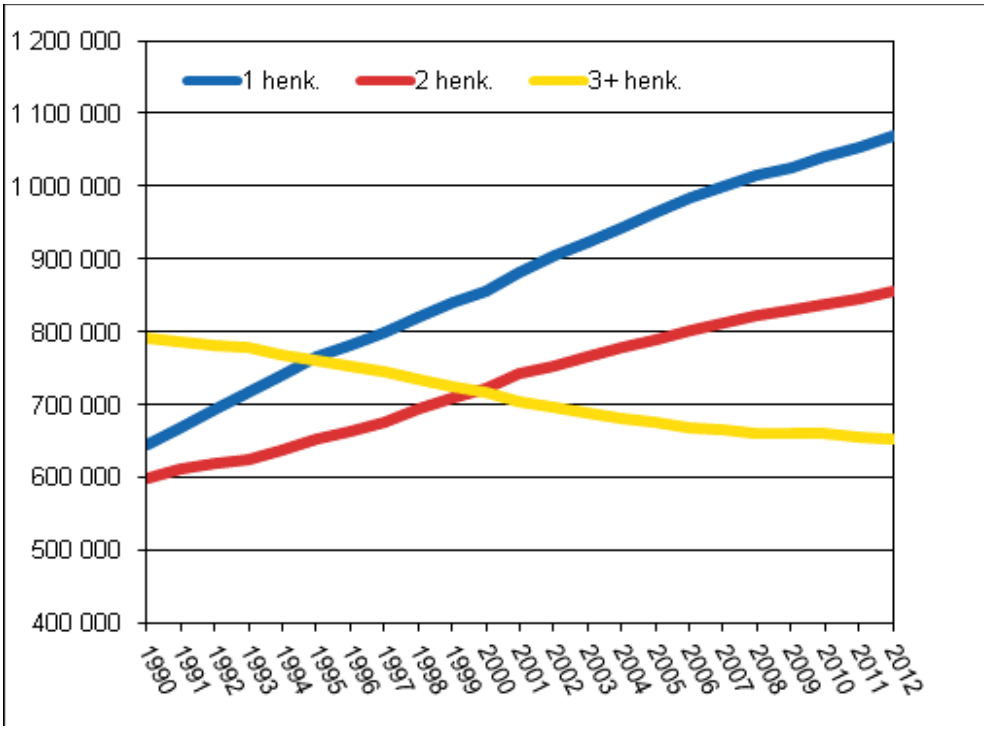
migration flowing into towns in the south and in the west. But also in the city of Helsinki, around 24,000 apartments or between 7 and 8 per cent are vacant, much more than the 3 per cent typical in the nineteen-seventies and 5 in the eighties. (Any apartment without a recorded resident according to the Population Information System is counted as vacant, which means that secondary homes and holiday homes enhance the vacancy rate.) As an anecdote, the number of saunas in the country – this is an eminent part of Finnish culture – exceeds two million.[42]

23,000 dwellings are being built annually (on average 28,000 since 1990).[43] While new construction in the greater Helsinki region has slightly surpassed the increase of household-dwelling units in 2003–2009, in the city of Helsinki new construction has fallen below that rate, intensifying demand there.[44] (A 'household-dwelling unit' means all persons residing permanently in the same dwelling.) The shortage of housing for middle-and-low-income classes in Helsinki has not constrained the desire to migrate there.

Larger apartments, especially those with three rooms and a kitchen, may sometimes be vacant even in cities. This is because, by and large, more and more people live alone, not only in Helsinki.[45] The average size of a Finnish household has decreased constantly, and is now 2.07 persons. 44 per cent of households are now single-person units; another 33 per cent are two-person households. The development of the size of household-dwelling units in 1990–2012 is shown in Figure 5.

Figure 5. Household-dwelling units per number of person 1990–2012.

[42] 2011. Dwellings and Housing Conditions, Statistics Finland at http://www.stat.fi/tup/suoluk/suoluk_asuminen_en.html. In most new multi-storey buildings, each apartment has an electric sauna, so the number of saunas is increasing rapidly.
[43] 2011. Dwellings and Housing Conditions, Statistics Finland at http://tilastokeskus.fi/til/asas/2011/01/asas_2011_01_2012-10-24_kat_002_en.html.
[44] Kivistö, pp. 10–11.
[45] Dwellings and Housing Conditions, Statistics Finland, 'Nearly one-quarter of the population lived in rented dwellings in 2011,' 24 October 2012, at http://www.stat.fi/til/asas/2011/01/asas_2011_01_2012-10-24_tie_002_en.html.

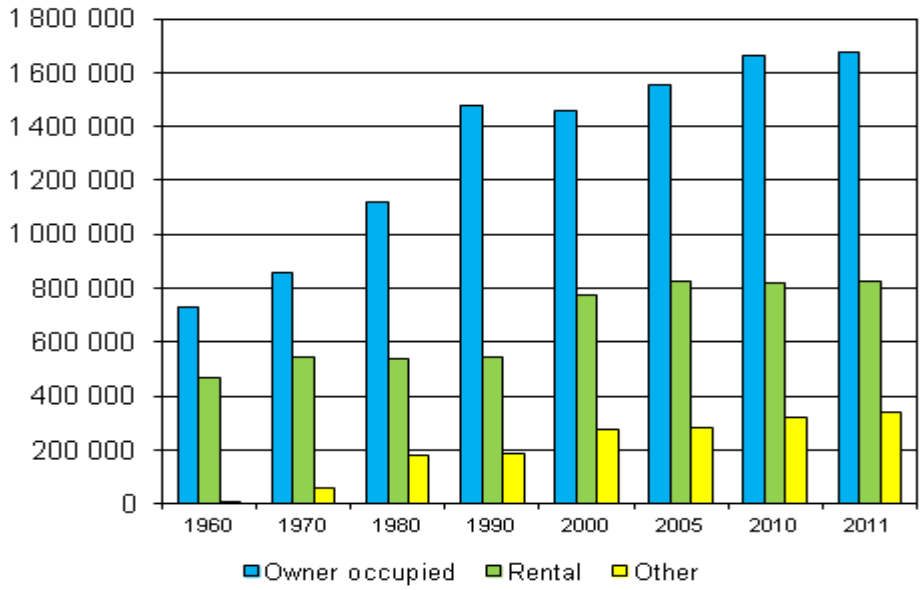


Source: Statistics Finland.[46]

About one third of permanently occupied dwellings are rented (see Figure 6, where the category 'other' consists of mainly right-of-occupancy housing). At the same time, only a quarter of the population lives in a rented dwelling: in 2012, 3,817,670 people lived in an owner-occupied home, 1,289,969 in a rented one, and 200,846 in a right-of-occupancy dwelling.[47] The discrepancy rises because the size of renter households (on average 1.65 persons in 2011)[48] is smaller than the size of owner-occupier households. In the nineties, half of those who live single rented; since then, renting has diminished even among single dwellers (42 per cent renting, 54 owning in 2009). Among other households than single dwellers, ownership is paramount (households without children, 77 per cent own, 21 per cent rent; households with children, 82 per cent own, 17 per cent rent). Single parents are the exception: almost as many single parents rent as own (46 and 48 per cent, respectively). In short, singles and single parents rent.

Figure 6. Dwellings by tenure type 1960–2011.

[46] Dwellings and Housing Conditions, Statistics Finland at https://www.stat.fi/til/asas/2012/01/asas_2012_01_2013-10-18_kat_002_en.html.
[47] Dwellings and Housing Conditions, Statistics Finland at http://www.stat.fi/til/asas/2012/01/asas_2012_01_2013-10-18_fi.pdf.
[48] Dwellings and Housing Conditions, Statistics Finland at http://www.stat.fi/til/asas/2012/asas_2012_2013-05-22_fi.pdf.



Source: Statistics Finland.[49]

The breakdown of the type of houses that are either owner-occupied or rented, which is presented in Table 3, starts as is to be expected in many countries: single-family detached houses are seldom rented. In fact, up to 95 per cent of these houses are owner-occupied (see Table 3). This fact may lend support to the economic theory according to which, in densely populated residential areas and multi-unit buildings, landlord-provided housing can solve problems – such as free-riding in the maintenance of common facilities and high bargaining costs in disputes among residents – and so it may counteract otherwise prevailing incentives for vertical integration, that is, for homeownership, inherent in the long-term rental contract.[50] But as a significant proportion of apartments in row houses and multi-storey blocks are also owner-occupied, other factors appear to be involved as well, including tax subsidies to homeowners.[51]

Table 3. Housing stock according to tenure and structure type in 2004.

	Percentage of overall housing stock	Percentage owner-occupied
Single family detached house	38.3 %	94.7 %
Two-family detached house	3.4 %	69.5 %
Row house	15.7 %	63.4 %
Multi-storey block	41.7 %	41.6 %

Source: Author's calculations from the 2004 Wealth Survey produced by Statistics Finland. Sampling weights are used in the calculations in order to make them representative of the whole population

[49] Dwellings and Housing Conditions, Statistics Finland at https://www.stat.fi/til/asas/2012/01/asas_2012_01_2013-10-18_kat_002_en.html.
[50] Peter Linneman, 'An Economic Analysis of the Homeownership Decision,' *Journal of Urban Economics* 17, 1985, 230–246, 233.
[51] Tuukka Saarimaa, *Studies on Owner-Occupied Housing, Taxation and Portfolio Choice*, Dissertation, University of Joensuu 2009, 20.

Source: Saarimaa (2009).[52]

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)
    - 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 basic form of direct property ownership is owning the land and the buildings on it, but tenure structure features prominently a legal entity, inserted between the owner-occupant and the property. Nearly all residential multi-storey buildings and many row and semi-detached houses are company-owned, usually through a specific limited-liability company called, here for short, 'housing company' (limited-liability housing company, *asunto-osakeyhtiö*: literally 'dwelling limited company,' although the word *taloyhtiö*, 'house company,' is in wide colloquial use).[53] In the properties of housing companies, the common parts such as external walls, roofs, staircases, and elevators are owned by the company, while the shares are divided in such a way that they provide an exclusive right to the possession of a specific apartment unit. The growth of this institution, halted only by the exceptional economic depression in the nineties, is shown on the third row of Table 4.

[52] Saarimaa, *Studies on Owner-Occupied Housing, Taxation and Portfolio Choice*, 20.

[53] An alternative arrangement for mainly semi-detached houses is an 'agreement of joint possession,' which can be registered, under the Land Code (*maakaari* 540/1995, unofficial translation at http://www.finlex.fi/fi/laki/kaannokset/1995/en19950540.pdf, section 14:3.), in the Land Register (*kiinteistörekisteri*, 'real estate register'). Parties who agree on joint ownership to an estate and a house, or to either one separately, may define, for instance, the parts of the estate and building that each owns. Two parties may prefer this arrangement to setting up a housing company. The benefits include the possibility of using as security the real estate rather than shares, the fact that a housing company can be costly to operate, and the eventuality that a fifty-fifty deadlock can cripple the use of property in a housing company. On the other hand, a housing company has the advantage of a 'standard contract' called the Housing Companies Act and the by-laws drafted in accordance with it. In the absence of these, distributing the costs of water, waste disposal, energy and possible repairs may create additional transaction costs.

Table 4. Households by tenure 1950–2002 (%).

Tenure	1950	1960	1970	1980	1990	2000	2002	2012
Owner-occupiers	56	60	60	63	72	64	63	67
-House owners	53	51	44	37	38	34	33	
-Housing company owners	3	9	16	26	34	30	30	
Co-operative owners	—	—	—	—	—	1	1	1.4
Tenants	43	39	38	30	25	32	33	30
-Private**	42	37	34	19	13	16	17	16
-Public**	0	2	4	11	12	16	16	14
Other or unknown	1	1	2	7	3	2	4	1.6

*Subtenants and other households without a dwelling of their own (homeless, inmates, elderly in old-age homes, etc.) are not included in these household figures.
**Percentages for privately and publicly financed rental housing for the years 1950–1970 are estimates based on production statistics for state-financed rental housing.
Source: Ruonavaara (2006, Table 5.1).

Source: Andersson, Naumanen, Ruonavaara, and Turner (2007).[54]

The evolution of limited-liability housing companies

The origins of the corporate form date back to the nineteenth century, when Finland was an autonomous Grand Duchy under tsarist Russia. At first, in mid-century, businesses and industrialists in larger towns set up limited companies in order to arrange rental housing for workers. The philanthropy behind these purely rental corporations was quickly mixed with business concerns, and dividends for shareholders were raised.[55] Another species of workers' housing company followed late in the century. The founders were again businesses, but this time municipalities were also involved. The tenants in these second type of companies would save money to buy the apartment – comprising usually a room and a kitchen – for themselves later.

A third, eventually successful, species of housing company emerged in the late eighteen-eighties. Now shareholding gave the owner a right to an apartment owned by the company. These companies were set up by skilled workers and craftspeople, often along craft lines. The founders tended to work in the public sector; railway workers were active in establishing housing companies. As the founders frequently knew each other beforehand, they shared not only the characteristic of occupational class: for instance, some companies were Finnish-speaking, others Swedish-speaking. While these

[54] Eva Andersson, Päivi Naumanen, Hannu Ruonavaara, & Bengt Turner, 'Housing, Socio-Economic Security and Risks: A Qualitative Comparison of Household Attitudes in Finland and Sweden,' *European Journal of Housing Policy* 7(2), 2007, 151–172, 158. – An undated 2013 table will be available from Hannu Ruonavaara (interviewed 23 August 2013). The current right-hand column: Dwellings and Housing Conditions, Statistics Finland at https://www.stat.fi/til/asas/2012/01/asas_2012_01_2013-10-18_tau_003_en.html and calculations by author.
[55] Hannu Ruonavaara, 'How Divergent Housing Institutions Evolve: A Comparison of Swedish Tenant Co-operatives and Finnish Shareholders' Housing Companies,' *Housing, Theory and Society* 22(4) 2005 , 213–236.

companies already multiplied rapidly before Finland gained independence (1917) particularly in Helsinki (where about four per cent of dwellings were housing-company-owned by 1900, and twelve per cent of households lived in a housing-company flat in 1910), their continued expansion in cities between world wars did not make housing company a significant form of tenure across the country. In 1950, only three per cent of households lived in a housing-company flat (Table 2 above). That all changed with the system of state-subsidised loans, inaugurated in 1949, as Table 2 illustrates. Between 1950 and 1990, a hefty one third of state-subsidised dwellings were apartments in housing companies.

The mushrooming of housing companies in the late twentieth century has invited the question as to why Finland, originally, produced the housing company. There are explanations, both internal to Finland and comparative. In her history of the Finnish housing question 'from philanthropy to income policy' published in 1990, Anneli Juntto says that the Limited Liability Companies Act of 1895 and the first Housing Companies Act in 1926 – which was aimed at alleviating problems caused by varying practices in existing companies while sanctioning practices formed in many of them – gave legal certainty to people who tried to organise their housing in this way, whereas the first act on cooperatives followed only in 1954.[56] The sociologist Hannu Ruonavaara has also inspected the early history of the arrangement, but he sees in Juntto's 'evolutionary explanation' – people employing whatever institutions are available to them to solve a problem (housing blight) and remaining with the institution that more or less adequately serves their aims (providing a route to housing that is more secure than tenancy is) – the problem that strong cooperative movements did surface in other areas, such as retail trade, in the beginning of the twentieth century, yet not in housing.[57] Ruonavaara concentrates instead on the specific differences between Finland and Sweden ('here the "strange case of co-operative success" is perhaps what is to be explained, not the lack of such success'[58]) and points out that, between world wars when the cooperative movement gained ground in Sweden, civil society in Finland was deeply divided. As a consequence of the bloody Civil War between the Whites and the Reds in 1918, the bourgeois and worker halves organised their own institutions, ranging from sports clubs to cooperatives in retail trade, and this cleavage – persisting long after World War Two – pre-empted, in Finland, any large reformist coalition movement such as the one in Sweden.[59]

The regulation and organisation of limited-liability housing companies

The housing company is founded for the purpose of managing the property; it neither makes nor has the purpose of making profit, but it sets aside any extra income for future repairs and renovation, that is, it does not pay out dividends to shareholders. Nevertheless, the company is set up like an ordinary limited-liability company and comes

[56] Juntto, *Asuntokysymys Suomessa*.
[57] Ruonavaara, 'How Divergent Housing Institutions Evolve.'
[58] Ruonavaara, 'How Divergent Housing Institutions Evolve'
[59] Ruonavaara, 'How Divergent Housing Institutions Evolve,' 233–234.

into existence through registration in the Trade Register[60]. The Limited Liability Housing Companies Act always applies, if at least half of the combined floor area of any company-owned building is designated for residential use. A second identifying characteristic of limited-liability housing company is that its shares are connected to the possession of a specific apartment or specific other premises.[61]

If these last two characteristics are not met, the shareholders may choose to apply either the Limited Liability Housing Companies Act or the general limited-liability-companies legislation as the legal framework for their enterprise. An ordinary limited-liability company which is founded for the purpose of owning a property or properties is called 'real estate company' ('*kiinteistöosakeyhtiö*').

Houses, particularly the common parts of real estate rather than the individual apartments, are in need of constant maintenance and periodic renovation that go beyond the reach of individuals' personal incentives. The limited-liability housing company is responsible for the upkeep of the common parts, and it collects for these expenses a maintenance charge ('*hoitovastike*') from its shareholders.[62] The company may also take out loans the payment of which is covered by the maintenance charge ('maintenance loan,' '*hoitolaina*') or else loans for larger projects, such as renovation, in either case using the building and land it owns as collateral.[63] In the case of a larger project, the company can then internally, once the final costs of the entire project are known, convert all loans it has incurred for the purpose of the project into one finance loan ('*rahoituslaina*'), decide which portions of the finance loan belong to each apartment, and collect from the shareholders an apartment-specific finance charge ('*rahoitusvastike*'[64]). But the essential point is that the company may always, deciding in the shareholders' meeting by a simple majority, use the real estate as collateral for its loans towards the bank, while the bank attains a lien to the amount and rank shown in the mortgage instruments supplied by the company. There is no need for individual homeowners to pledge their dwellings for this purpose (as in condominium), nor does the mortgaging of the company property require the consent of all owners (as in co-ownership).[65]

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[60] Operated by the National Board of Patents and Registration.

[61] Limited Liability Housing Companies Act (*asunto-osakeyhtiölaki*) 1599/2009, chapter 1, section 2(1–2).

[62] The criteria for the maintenance charge are given in the articles of association (typically floor area, number of shares, or floor area allocated so that, for instance, the charge is 0.5 times lesser for storage room and 1.5 times larger for business premises than for residential apartments). The articles of association may also specify the division of maintenance responsibilities between the company and the shareholders.

63 In addition, a limited-liability housing company can take out a subordinated loan ('*pääomalaina*,' 'capital loan'), which is regulated in Limited Liability Housing Companies Act 1599/2009, chapter 16. This is an unsecured loan and has a lower ranking priority than other debts. A subordinated debt is not covered by a finance charge and is likely to be rare in housing companies. Thus according to guideline by the Accounting Board which operates under the auspices of the Ministry of Employment and the Economy, *Yleisohje asunto-osakeyhtiöiden ja muiden keskinäisten kiinteistöyhtiöiden kirjanpidosta, tilinpäätöksestä ja toimintakertomuksesta*, Ministry of Employment and the Economy, Accounting Board, 7 December 2010, 12 and 32, available at http://ktm.elinar.fi/ktm/fin/kirjanpi.nsf/all/074334A2C020B394C22577FB003AE682?openDocument.

[64] Also known as '*pääomavastike*' ('capital charge').

[65] Martti Lujanen, 'Legal challenges in ensuring regular maintenance and repairs of owner-occupied apartment blocks,' *International Journal of Law in the Built Environment* 2(2) (2010), 178–197, 182 and 187–188.

If a shareholder neglects to pay maintenance or finance charges, the shareholders' meeting may, after the board of directors has issued a written warning, decide to take possession of the apartment for at most three years, during which the company has the obligation to rent out the dwelling. Through these means, the company obtains revenue to cover the unpaid amount. No court process is involved, unless the shareholder disputes the matter. The action of taking over the apartment (which does not mean that the shareholder loses ownership) is drastic, despite its temporariness, and seldom used, but it is also reasonable enough so that shareholders know that it may be resorted to and, consequently, do pay any delayed payments. This enforcement method remedies the free-rider problem in the maintenance of common facilities.[66] (For the full list of grounds on which the company may take over the apartment, see 'Change of landlord' in 6.4 below).

The shares can be used as collateral by shareholders, who may take out loans for the purpose of purchasing an apartment or renovating the interiors. The shares enjoy, according to European Union capital-requirements regulation, the same status as do mortgages on residential property in the risk weighing carried out by credit institutions.[67] Moreover, an individual shareholder may pay out to the company the portion of a finance loan that pertains to her, his, or its apartment, taking out a personal loan for this purpose if need be. After that, the company no longer collects from the shareholder a finance charge based on that finance loan.

The shareholders decide the company affairs in essentially the same way as in ordinary business companies. The general meeting decides by a simple majority, but a qualified majority is required for changing the articles of association and sometimes the consent of all the shareholders who are affected is also necessary. The decision procedures, specified in the articles of association, must meet requirements set by law. An individual owner's degree of control depends on the share of ownership and the articles of association (the apartments can have a different number of shares, for example, one share representing one square metre of an apartment). The company is managed by a board of directors and an auditor and typically a property manager ('*isännöitsijä*,' 'superintendent'), who is not unlike a managing director. The last function is often performed by specialised management companies, although there are small housing companies where the manager is not a real-estate expert. The property manager

[66] The evaluative and explanatory remarks in the last four sentences in the text are from Anna-Liisa Pekkarinen, 'Suomalainen asunto-osakeyhtiö on ainutlaatuinen,' *Kiinteistölehti* 17 April 2013 (interviewing Martti Lujanen) and Lujanen, 'Legal challenges in ensuring regular maintenance and repairs of owner-occupied apartment blocks,' 189 and 191.

[67] Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) OJEU 30.6.2006 L 177/1, Annex VI, Part I, 9.1 'Exposures secured by mortgages on residential property,' point 46 ('Exposures fully and completely secured, to the satisfaction of the competent authorities, by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of residential property which is or shall be occupied or let by the owner …') and Proposal for a Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms, COM 2011 0452, Article 120 ('Exposures fully and completely secured by residential property') (1)(b) ('exposures fully and completely secured by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of residential property which is or shall be occupied or let by the owner …').

supplies, for instance, the manager's certificate,[68] which discloses information about the individual apartment and the maintenance and the financial state of the company. The housing company purchases also the building-specific energy certificates, introduced throughout the Union in recent years.

The shares for one apartment are transferable as one block, but the freedom may be limited by redemption clauses. There is no obligation for an owner to live in the apartment, and indeed shareholding is a common form of investment. In landlord and tenant relations, the landlord is often a shareholder in a housing company. Then the tenancy act applies between the shareholder-landlord and the tenant. But the housing company can also own flats, and if it rents a flat owned directly by it, then, and only then, the tenancy act will apply to the relationship between the housing company (as landlord) and the tenant.

Any comparison between limited-liability housing company and housing cooperative sounds foreign to a Finnish ear. Such is the self-evidence of shareholding as a form of owning homes. Classifying the (non-profit) housing company as a species of cooperative, as is done on the Wikipedia page on 'Housing cooperative,'[69] seems plain wrong to a Finn. This is not to say that Finland has not, through its emigrants, contributed to the development of housing cooperatives more globally. The first housing cooperative established in the United States under the Rochdale principles was created by Finnish immigrants. As told by Siegler and Levy in 'Brief history of cooperative housing': 'The first true cooperative development in the United States was started in 1918 by a group of Finnish artisans – the Finnish Home Building Association, in Brooklyn, New York.'[70]

Financing the purchase and development of dwellings

House loans in Finland are not assumable mortgages, but personal loans. Nevertheless, most Finnish house loans are secured by a home. The indebtedness of households is at an historical high, 119 per cent in relation to annual disposable income.

The financing of new homes in housing companies (the portion of new houses among home sales is considerable[71] although the housing stock is renewed slowly) is arranged as follows. New apartments are sold in the construction phase.[72] In one arrangement, the construction firm sets up a housing company, with which it enters into a construction contract – in effect making the contract with itself, as it administers and owns the housing company. Alternatively, the housing company may be established by another developer – a municipality, a nonprofit, or another firm. In any case, the housing company pays the construction firm, by taking a bank loan, for instance, and then repays

[68] Limited Liability Housing Companies Act 1599/2009, 7:27.
[69] http://en.wikipedia.org/wiki/Housing_cooperative.
[70] Richard Siegler and Herbert J. Levy, 'Brief history of cooperative housing,' *Cooperative Housing Journal*, 1986, the National Association of Housing Cooperatives, Alexandria, VA, 12–19, 14.
[71] Mäki-Fränti et al 2011, 2.
[72] For the summary in this paragraph, see Government proposal 14/1994 for Housing Transactions Act, general grounds 1.2.

the bank with payments from homebuyers, who purchase the shares.[73] The shares are paid in instalments as the work progresses.[74] The founding shareholder of the housing company normally retains ownership to the shares until their price is fully paid, while the buyer holds a lien on the shares as security for repayment of the advance instalments (thus the importance of a proportionality requirement, legislated in the mid-nineties, to protect the buyer against the insolvency of the founding shareholder: the instalments may not be so large as to be clearly or continuously disproportionate to the value of the seller's performance, and no less than ten per cent of the price may only be due once possession is transferred)[75]. By reserving title, the developer maintains authority over the company during construction. On completion of the work, the administration is transferred to the buyers.

Intermediate tenures between ownership and renting

Topmost on the list of intermediate tenures are right-of-occupancy dwellings and also partial-ownership (rent-to-buy) arrangements, which are in contemporary debates sometimes treated as a separate tenure.

Modelled on the Swedish *bostadsrätt* (a 'right of accommodation' in a housing cooperative) as it stood in the nineteen-seventies, the Finnish 'right of occupancy' (*asumisoikeus*, literally 'housing right') was introduced by legislation in 1990.[76] The buyer of a right of occupancy disburses an up-front payment – fifteen per cent of the value of the dwelling – and a monthly residence charge – calculated based on the costs of maintenance and financing renovations in the buildings of the same owner. The holder of the right may not be served notice. The right is transferable, on a price no higher than the original, indexed, price. The departing resident notifies the owner and, if a new occupant cannot be found, the owner has the duty to redeem the right, within three months of notification, at the indexed price. While the responsibility for upkeep belongs in the owner, the right-holder may make improvements on the owner's permission and claim reasonable compensation when moving out.

The share of right-of-occupancy housing stood at one per cent of the housing stock for more than a decade. At the turn of the century, there were even some reports of difficulties to find occupants; but for some time now, the occupancy rate has been very good, almost 99 per cent[77]. The legislation has been revised a number of times, with the aim of improving the competitiveness of the tenure, enhancing the residents' participatory opportunities, and keeping the costs of housing low.[78] Right-of-occupancy dwellings have been state-subsidised, and they are all under permanent restrictions within the social housing production system. Half of the right-of-occupancy homes are in

[73] The case Supreme Administrative Court 2002:57 describes this arrangement.
[74] Government proposal 14/1994 detailed grounds 4:29.
[75] Housing Transactions Act 4:29 (2–3) and Government proposal 14/1994 detailed grounds 4:29.
[76] Right-of-Occupancy Housing Act 650/1990; Act on Right-of-Occupancy Associations 1072/1994.
[77] Riitta Tainio, 'Valtion tukemien asuntojen, erityisesti asumisoikeusasuntojen omistajuus, asukkaiden aseman turvaaminen ja heille tarkoitetun tuen ohjautuminen,' Ministry of the Environment, 31 March 2011, 9.
[78] Ibid., 8.

the Helsinki region. Following the financial crisis of 2008, this form of tenure was among the supported by the counter-cyclical economic policies of the government and, for instance, 2,897 dwellings were started in 2009 and 2,123 dwellings in 2010, bringing the number of right-of-occupancy apartments close to 44,000.[79]

Another intermediate tenure was initiated by banks and construction companies during the recession of the early nineties, when developers were left with unsold flats. In these 'partial-ownership' arrangements, the buyer invests a portion – lower than the normal upfront payment for a housing loan, say, ten per cent – of the purchase price, receives a corresponding minority of the shares, and becomes a joint-owner with the seller. The apartment is rented through a fixed-term tenancy contract, the lease conferring to the tenant the right to the possession of the apartment. During the time of the tenancy, the seller (or some institutional landlord to whom the shares have been transferred) remains the majority shareholder, while the tenant has the right to redeem up to 49 per cent of the shares. At the end of the fixed term, or during a further agreed period, the tenant may redeem the rest of the shares and can become the owner. The tenure was regulated in the Partial Ownership Act of 2004.

The number of cooperatives is limited, but a few exist in the neighbourhood of cities, the best known being *Puu-Käpylä*, formed in 1920, which has 33 wooden buildings in the northern part of Helsinki.

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?

(Please be brief here as the questionnaire returns to this question under 3)

Residential renting divides into two segments, which are roughly equal in size – as shown in the bottom half of Table 4 above. Besides private markets, there is a state-subsidised, social rental housing sector, distinct when it comes to the owners of the dwellings (municipalities and general-interest organisations), regulated rent, and an administrative tenant-selection procedure. The social rental housing system is grounded on temporary '*ara* restrictions,' which are conditions placed upon state subsidies and which last only for a number of years following the grant of a subsidy for production or renovation. Afterwards, the apartments can be rented normally in the market, and nothing protects the tenant beyond the ground rules of private law. Nevertheless, it should be emphasised that when the owner of a state-subsidised apartment is a municipality, the apartment will naturally continue to be in the social sector even after the expiry of a condition; that the *ara* restrictions accompany also subsidies for renovation and, thus, the same apartment can be covered continuously by successive periods of different temporary restrictions; that a general-interest organisation remains under

[79] Ibid., 9.

statutory general-interest-association regulation so long as it owns any single building belonging within unit-specific *ara* restrictions, even though other units in its ownership have been released; and finally, the regulation concerning state-subsidised apartments has been changed periodically, resulting in extensions of restrictions which were otherwise about to expire.

Rents in social rental dwellings are regulated to cover the financing costs of constructing the building and the maintenance costs of the real estate (cost recovery rent). The same unitary tenancy contract regime applies to all other aspects of the landlord-tenant relationship.

Today, half of all rental apartments in Finland have been developed, purchased, and sometimes already renovated using state subsidies.[80] Even in Helsinki, where rentals account for nearly half of the housing stock, the two sectors are of equal size (private, 23 per cent, social, 22 per cent, of stock). The development of new private rentals has been small; a decade ago, an external evaluation noted that 'subsidized housing has been accounting for ... probably over 95% of new purpose-built rental housing production. There are no statistics on free-market rental housing production, but it is estimated that a few hundred dwellings per year are being developed by insurance companies (and non-profits) mainly in the Helsinki Metropolitan area.'[81] In 2012, when 7,000 new rental apartments were built in blocks of flats, somewhat over 3,000 of these were interest-rate subsidised by the state.[82]

- What can be said in general on the quality of housing provided, comparing each type of tenure?
  Please consider the following criteria: [type of building (single family versus multifamily versus high-rise; plus definition)][83]; 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.)

Apartments in the multi-storey buildings of previous generations, where most rented flats are found, tend to be small. The average useful floor area per dwelling has grown by 20 square meters since the early seventies, but it is still relatively small (79.9 square metres per dwelling and 39.6 square metres per person). Development per type of dwelling is shown in Table 5. Rental apartments are almost uniformly located in blocks of flats.[84] The progressively more equal availability of amenities is shown in Table 6.

[80] Suomen ympäristö 24, 7.
[81] *Evaluation of Finnish housing finance and support systems*, Ministry of the Environment, Helsinki 2002, 15 (footnotes omitted, except note 6 included in the text).
[82] http://www.stat.fi/til/asas/2012/01/asas_2012_01_2013-10-18_tie_002_en.html.
[83] Table 1 in B above.
[84] See Table 3 above

Table 5. Average floor area of dwellings in the dwelling stock in 1970–2012.

	Buildings total	Detached houses	Attached houses	Blocks of flats	Other buildings	Floor area m2 per person
1970	60,0	66,0	73,0	51,0	54,0	18,9
1980	69,3	83,6	71,7	54,8	55,5	26,3
1990	74,4	95,3	70,2	55,8	59,7	31,4
2000	76,5	101,9	70,0	56,1	59,8	35,3
2010	79,5	108,4	71,2	56,5	60,7	39,1
2012	79,9	109,5	71,3	56,5	61,1	39,6

Source: Statistics Finland.[85]

Table 6. Dwellings by amenities in 1960–2008

		1960	1970	1980	1990	2000	2008
%	Dwellings total	100,0	100,0	100,0	100,0	100,0	100,0
	Sewer	51,5	74,4	90,3	96,5	98,5	98,1
	Piped water	47,1	72,1	89,3	95,3	98,1	98,3
	Flush toilet	35,4	61,4	83,9	92,9	95,3	96,5
	Warm water	23,2	52,0	79,7	89,8	95,6	96,8
	Bathing facilities	15,7	39,1	68,4	87,7	99,0	99,1
	Central heating	31,1	56,0	80,2	88,9	91,6	93,4
	Sauna in dwelling	..	..	29,8	42,2	48,3	52,9

Source: Statistics Finland.[86]

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

One third of all rental dwellings are owned by private individuals (28 per cent, or 220,000 apartments, in 2008,[87] down from 32 per cent, 240,000 apartments in 2002)[88]; housing companies also own 1.4 per cent (or 11,000 apartments, in 2008, down from 3 per cent,

[85] http://tilastokeskus.fi/til/asas/2012/01/asas_2012_01_2013-10-18_tau_004_en.html.
[86] http://www.stat.fi/til/asas/2008/asas_2008_2009-12-15_tau_001_en.html.
[87] The source of the 2008 figures in this and the following two paragraphs in the text is Statistics Finland as quoted at http://www.vuokranantajat.fi/vuokraus/Indeksit/vuokraasuntojenomistus/.
[88] The source of the 2002 figures in this and the following two paragraphs in the text is *Vakaat vuokramarkkinat työryhmän mietintö*, Ministry of the Environment 2002, Appendix 1.

20,000 apartments, in 2002). No state-subsidised (interest-rate subsidies included) dwellings, or right-of-occupancy dwellings, are found in this group.

Municipalities own another third (31.6 per cent, or 248,000 apartments, in 2008, down from 34 per cent, 262,000 apartments, in 2002). The great majority of these dwellings are state-subsidised. In 2008, municipalities owned around 200,000 'old' state-subsidised rental dwellings and 32,000 'new' state-subsidised, either interest-rate-subsidised rental or right-of-occupancy dwellings (down from 210,000 and 32,000, respectively, in 2002). In addition, municipalities own non-state-subsidised rental apartments, which are not under the nationwide '*ara* restrictions,' but allocated by the municipalities themselves. The number of these non-state-subsidised rentals was 16,000 in 2008 (down from 20,000 in 2002). In other words, about 232,000 out of the total 248,000 rental apartments owned by municipalities are state-subsidised and under *ara* restrictions.

General-interest corporations[89] own 15.9 per cent (or 125,000 apartments, in 2008, up from 9 per cent, 70,000 apartments, in 2002). Of these, 70,000 are 'old' state-subsidised rentals and 34,000 'new' state-subsidised, either interest-rate-subsidised rental or right-of-occupancy dwellings (up from 45,000 and 20,000, respectively, in 2002). Besides these 104,000 apartments, general-interest corporations owned 21,000 other than state-subsidised rental dwellings (up from 7,000 in 2002), which are not under the unit-specific '*ara* restrictions.' (The general-interest owner can be under *ara* restrictions while some of its rented units have been released: see 1.2 above and, for the regulation of 'services of general economic interest' in the European Union, 7.1). Finally, corporations in industry and insurance and banks own 5.7 per cent or 45,000 apartments (down from 10 per cent, 76,000 apartments, in 2002), including 8,500 'old' and 4,500 'new' state-subsidised dwellings (21,000 and 10,000 in 2002); the group 'others (parishes, foundations, …, unknown)' made up 17.4 per cent, 136,500 apartments, in 2008 (12 per cent, 94,000 apartments, in 2002), including 62,000 'old' and 12,500 'new' state-subsidised rentals (44,000 and 10,000 in 2002).

The three major general-interest organisations owning state-subsidised residential rental dwellings are VVO, which is the largest landlord nationwide (with altogether over 40,000 rental apartments),[90] SATO (23,000 rental apartments),[91] and Avara (8,000 rental apartments).[92] The shares of these companies are, today, owned largely by pension insurance companies. This was a key change in the 1990s, as the expectations of pension insurance companies relate to market return on assets. The largest pension insurance companies include Varma, Ilmarinen, and Pension Fennia. Also many pension funds own residential rental dwellings, and companies such as Varma, Ilmarinen, Keva, and Tapiola all have some 3,000–4,000 rental dwellings in their portfolios.[93] Among non-listed property funds, there are funds managed by Icecapital and Tapiola Real Estate. For instance, Icecapital has two older housing funds, one for Finland, the other for St Petersburg, each fund owning 2,000 rental dwellings, and a new third housing fund, aiming at 2,000 rental dwellings in Finland, newly built and offered to

[89] For the definition, see 1.2 above.
[90] http://www.vvo.fi/en/.
[91] http://www.sato.fi/forinvestors.
[92] http://www.avara.fi/fi/avara-oy/.
[93] *The Finnish Property Market 2012*, 43.

the fund by construction companies.[94] Both Varma and Pension Fennia own shares in the housing funds of Icecapital.

Transfers after the expiry of the *ara* restriction periods and other state-approved transfers 'seem, to some extent, to have centralised the owner base' of state-subsidised rental dwellings. In particular, employers significantly gave up owning rental apartments in 1994–2009, and in 2010 it was reported that '[m]any pension and other insurance companies and parishes have given up or are giving up their [direct] ownership of dwellings.'[95] In 2003, for example, the insurance company Suomi sold its 3,000 rental apartments largely to VVO and Sato; in 2009, it was announced that the Central Church Fund of Finland had sold all its real-estate companies to Sato, a transfer justified on the ground that 'the church is not an expert on rental housing.'[96]

The most important owners of right-of-occupancy dwellings are again Sato and VVO. Their joint company *Suomen Asumisoikeus Oy*, or *Asokodit* ('Aso-homes'), is the single largest owner.[97]. The biggest municipalities, operating through their municipal and regional right-of-occupancy associations, are among the major owners. As right-of-occupancy dwellings are under permanent restrictions, transfers of the shares of these owner corporations are permanently limited by the requirement that the owner must be a general-interest organisation.

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.?

The national association for renters is Finnish Tenants (formerly The Central Union of Tenants).[98] There are a number of local associations, whose members are entitled to use the services of Finnish Tenants. Owners, housing and real-estate companies, can join one of twenty-three regional associations of the Finnish Real Estate Federation, the leading association in the real-estate sector.[99] For private individuals as landlords, membership in the Finnish Association of Landlords, founded at the end of the nineties, entitles to services regarding contracting, credit information, debt collection, and others.[100] Lastly, an important lobbying and support organisation in the field of housing, commercial property, and urban development and infrastructure is RAKLI – The Finnish

[94] 'Maan suurin vuokra-asuntojen rakennuttaja on yllätysnimi,' *Arvopaperi* 23 June 2012.
[95] Quotations and data in the last two sentences in the text, Mäki-Fränti & Laukkanen (2010), 36.
[96] Petri Mäki-Fränti and Tuula Laukkanen, *ARA-vuokratalokanta murroksessa: Rajoituksista vapautuneiden talojen käyttö ja omistajien vapautuville taloille*, Ministry of the Environment, Helsinki 2010, 36 n. 34.
[97] Besides Asokodit, the largest owner corporations designated as 'general-interest' associations by the state include AVAIN Asumisoikeus Oy, TA-Asumisoikeus Oy and Asuntosäätiön Asumisoikeus Oy – all major operators specialised in housing development and supply.
[98] http://www.vuokralaiset.fi/index.asp?main=1.
[99] http://www.kiinteistoliitto.fi/en/.
[100] http://www.vuokranantajat.fi/.

Association of Building Owners and Construction Clients.[101] A twelve-page guideline 'Fair Rental Practices' has been produced jointly by these four main associations; it is widely available, in Finnish, Swedish, and English.[102] The Consumers' Association of Finland is also active, and has published a 'Tenancy Guideline,' a brochure explaining tenancy legislation for both tenants and landlords; it is available in Finnish, Swedish, Russian, and Somali.[103]

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

Please see 1.3 above.

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

Some 'black-market' phenomena have existed or exist in the surroundings of housing markets. One widespread practice has been the direct payment for repair and other household services, and to combat the tax evasion the government created a tax credit for domestic help. Among other cases, there are question marks over the number of vacant dwellings in the city of Helsinki (1.3 above) and sometimes students living in apartments owned by their parents have received subject-based housing allowance by merely moving their home address to their friend's house (on housing allowances, see 3.6 below).

Summary table 1. Tenure structure in Finland, 2012

Home ownership	Renting			Interme-diate tenure [right of occupancy]	Other	Total
		Renting with a public task	Renting without a public task			
67 %	**30 %**	14 %	16 %	**1.4 %**	**1.6 %**	100%

[101] http://www.rakli.fi/en/.
[102] http://www.vuokralaiset.fi/vuokratapa_engl.pdf.
[103] At http://www.kuluttajaliitto.fi/asuminen.

2 Economic, urban and social factors

2.1 Current situation of the housing market

Until the mid-eighties, the market for owner-occupied housing was regulated, indirectly through financial-market rules: the regulation of interest rates led to negative real rates of interest; banks rationed credit; borrowing for the purpose of purchasing a home required heavy up-front saving (such as half of the price of the dwelling) and maturities on the loans were short, less than ten years. After the deregulation, credit became better available, shares of capital contributed by the borrower smaller, and repayment periods longer. This, together with general economic growth, created a boom in house prices. (Very schematically, with many bidders, we can reason that the price of a home rises, and the house is sold for the highest price. As people are willing to sell, and the price of a home is determined by the latest sales in the area, the process continues.)[104] When the bubble burst, in 1989, the economy entered a deep recession.

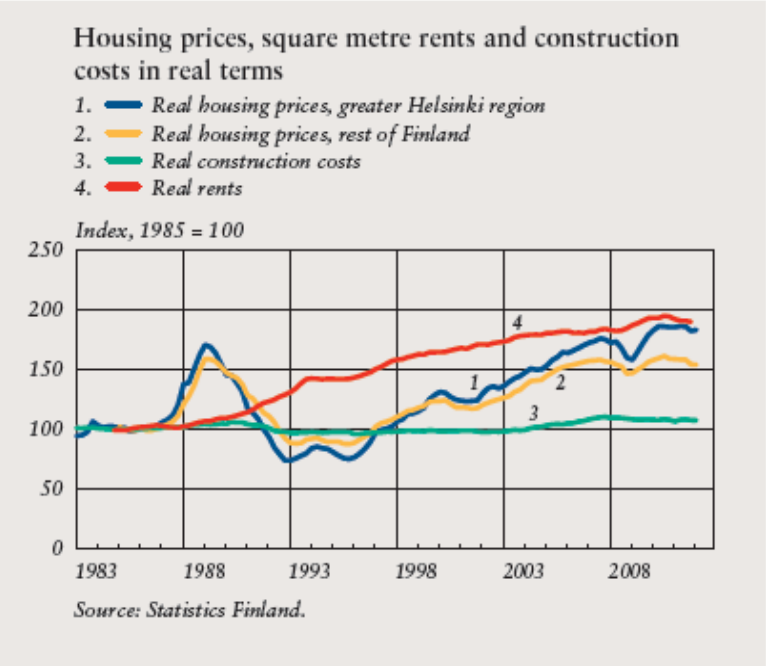
- What have been the effects of the current crisis since 2007?

The housing bubble of 1987–1989 is still the foremost feature of housing prices over the past thirty years.[105] Subsequently, prices declined without intermission for four years, and they did not take on a sustained increase for three more years. Only in 1996, a rapid rise began. In 2008, the economic down-swing – caused by the international financial crisis – did lead to a fall in prices, but only for less than a year. In all, since the mid-eighties, the real housing prices have risen approximately seventy per cent.[106]

Nonetheless, prices have doubled in the Helsinki region in less than two decades. Only in the second half of 2012 was the relative trend that house prices rise more rapidly in the Helsinki region than elsewhere reversed.[107] The development of house prices in the Helsinki region and the rest of the country is illustrated in Figure 7.

[104] The brackets contain one general model, not a description of the Finnish crisis in the 1980s and 1990s.
[105] Jarkko Kivistö, 'Suomen asuntohintakehitys ja siihen vaikuttavat tekijät,' *BoF Online* 4, 2012, Bank of Finland 28.2.2012, at http://www.suomenpankki.fi/fi/julkaisut/selvitykset_ja_raportit/bof_online/Pages/BOF_ONL_04_2012.aspx.
[106] Jarkko Kivistö, 'Suomen asuntohintakehitys ja siihen vaikuttavat tekijät,' 4–5.
[107] The prices of homes in old multi-storey buildings and row houses declined in the Helsinki area while remaining constant or only slightly decreasing in the rest of the country. *Talouselämä*, 31 August 2012 and 28 December 2012.

Figure 7. Housing prices, square metre rents and construction costs in real terms (1985 = 100).



Source: Kivistö (2012) and Statistics Finland.

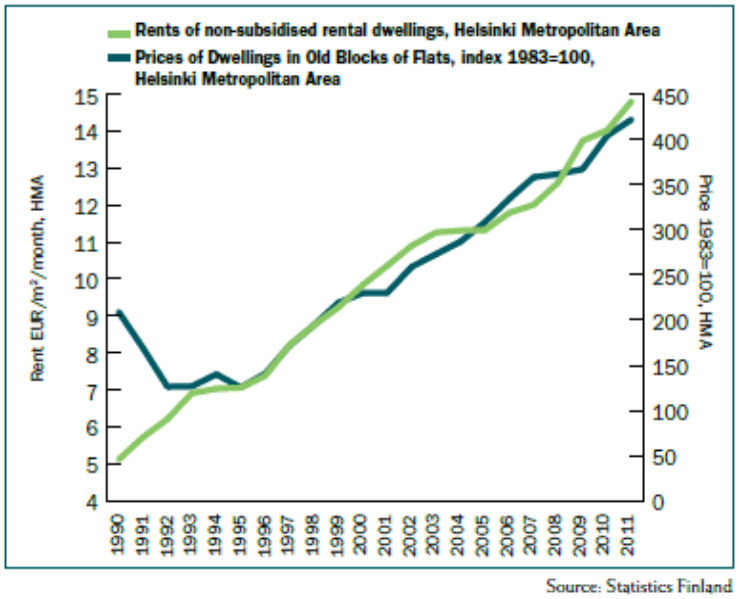
- What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)?

Rents have risen in step with house prices (Figure 8). The rise has been markedly most rapid in Helsinki, where rents in new rental agreements rose 30 per cent between 2008 and 1012.[108] The markets have also seemed to differentiate so that the rate at which the maximum price for which a small apartment can reasonably easily be rented has risen more rapidly in the capital region and some growth centres (Lahti, Oulu, Turku) compared to other growth centres (Jyväskylä, Kuopio, Tampere). The maximum price for which an apartment with two rooms and a kitchen could reasonably easily be rented in Helsinki rose from 900 to 980 euros in 2010–2011.[109]

Thus, markets have differentiated not only between the capital region and the rest of Finland, but also between some growth centres and others. Outside the growth centres, there are vacant dwellings.

[108] Bank of Finland, BoF Online, 26 August 2013, 37.
[109] STT 23 November 2011.

Figure 8. Prices and rents of dwellings, Helsinki metropolitan area.



Source: *The Finnish Property Market* 2012 and Statistics Finland.

- 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?
- 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?

Demand has a strong impact on prices because new construction is small, only one per cent of the total dwelling stock annually.[110] Nor is supply very sensitive to price changes because of delays in the development process and because of the counter-cyclical economic policies of the government. Moreover, the direction of change in the number of sales has tended to match the direction of change in prices, which suggests that the rise of prices (1997–2010) has been demand-led.[111]

The factors that have affected demand are summarised in the report 'Development of Housing Prices in Finland and Factors Impacting It' (2012) as follows:

> Besides financial-market factors [falling interest rates and lengthening maturities on housing loans in the first decade of the twenty-first century], demand for housing has, in Finland, been spurred by rising incomes, tax subsidies on homeownership,

[110] See 1.1 above.
[111] Jarkko Kivistö, 'Suomen asuntohintakehitys ja siihen vaikuttavat tekijät,' *BoF Online* 4, 2012, 9–10.

> population growth, migration to growth centres, and the growing number of household-dwelling units.[112]

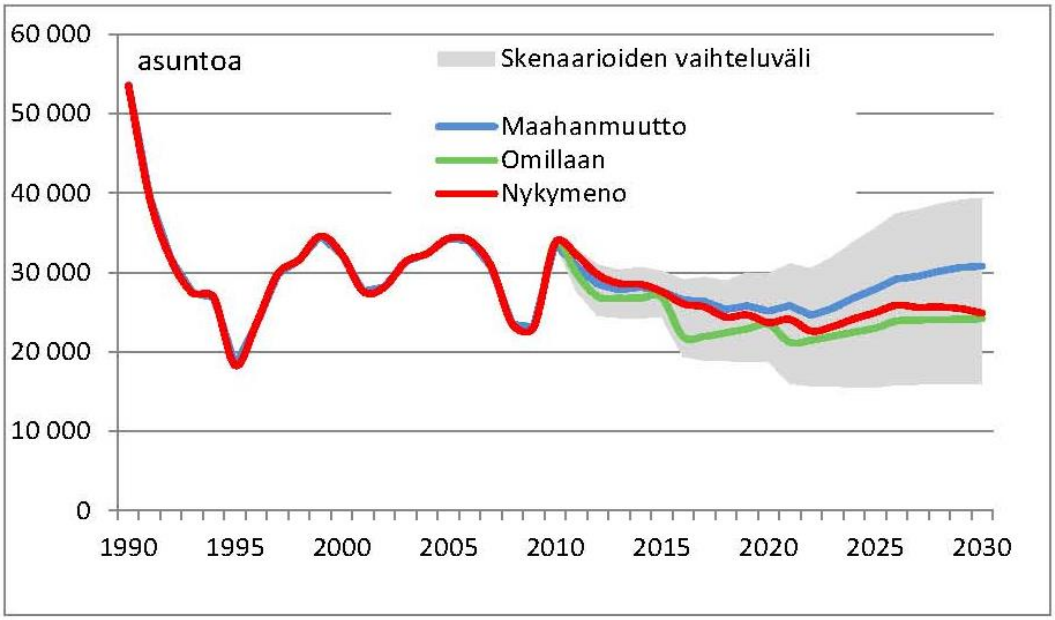
Tax subsidies and rising incomes will be addressed shortly. (For subsidies, see also 3.6.) In the above, population growth, internal migration to a select few cities, and the declining size of household-dwelling units were already mentioned as engines of demand.

Expectations as to the number of household-dwelling units are based on different estimates of the causes underlying population growth. With a total fertility rate of 1.85 (2008) kept at constant, if average life expectancy would rise at a declining rate, from 76.3 to 83.3 for men and from 83.0 to 88.2 for women up to 2060, while net immigration remained at 10,000 per year, the population of the country would be 5.66 million in 2030 and reach its peak, 5.72 million, at the end of the 2030s (scenario A, by the Social Insurance Institution *Kela*). If average life expectancy would continue to rise linearly, from 76.3 to 87.9 for men and from 83.0 to 91.5 for women up to 2060, while net immigration was 15,000 per year, population would be 5.82 million in 2030 and continue to grow past 6 million during the 2040s (scenario B, by Statistics Finland). And if scenario B was modified so that net immigration would continue to grow linearly until 2030, the population of the country would be 5.89 million in 2030 (scenario C, 'MAX').[113]

When these scenarios are combined with predictions as to the loss of dwellings, analysts have been able to construct three estimates of the annual need for housing production until 2030. These estimates are presented in Figure 8. Because higher net immigration (scenario C above) implies less than maximum loss of rental dwellings (assuming that old rental dwellings are rather more likely to be demolished than renovated), the highest curve, '*Maahanmuutto*,' 'immigration,' in Figure 8 remains still below the top of the grey area in the figure, where loss of dwellings would be at maximum. (The grey area is the range of all possible scenarios.) Both small population growth (scenario A above), the curve '*Omillaan*,' 'on one's own,' in Figure 8, and moderate population growth (scenario B above), grafted on to the historical housing production in the curve '*Nykymeno*,' 'current path,' in Figure 8, lead to approximately similar need for housing production. The reason for the similarity is that lower population growth is assumed to imply higher standard of housing and, thus, larger loss of dwellings.[114]

[112] Jarkko Kivistö, 'Suomen asuntohintakehitys ja siihen vaikuttavat tekijät,' 23.
[113] Vainio, Terttu, Kaisa Belloni and Liisa Jaakkonen, *Asuntotuotanto 2030: Asuntotuotannon tarpeeseen vaikuttavia tekijöitä*, VTT 2012, 15–16, available at http://www.vtt.fi/inf/pdf/technology/2012/T2.pdf.
[114] Vainio, Terttu, Kaisa Belloni and Liisa Jaakkonen, *Asuntotuotanto 2030*, 11–12.

Figure 8: Need for housing production (number of dwellings produced on the vertical axis) in 2011–2030.



Source: Vainio et al. (2012).[115]

2.2 Issues of price and affordability

According to a common assumption, an increased supply of rental apartments should lower rents in the long run. In Finland, this expectation is relevant, for instance, when subsidised apartments are released from *arava* restrictions. But the determinants of market rents have been less investigated than those of house prices. In one study, Mäki-Fränti and others sought to explain the rent level in new tenancy contracts in fifteen largest cities between 1998 and 2008. As explanatory variables their model used household incomes, interest rates, number of sales, and the stock of rental dwellings.

Contrary to expectations, an increased supply of rental dwellings *raised* monthly rents in the model. Because regression analysis does not reveal causal relationships between the variables, the result can also be interpreted so that a higher rent level during the period induced landlords to offer more apartments for rent.[116]

- What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)?

[115] Vainio, Terttu, Kaisa Belloni and Liisa Jaakkonen, *Asuntotuotanto 2030*, 12
[116] Mäki-Fränti et al. 2010.

(Explanation: If rent is 300€ per month and disposable household income 1000€ per month, the rent-to-income ratio is 30%).

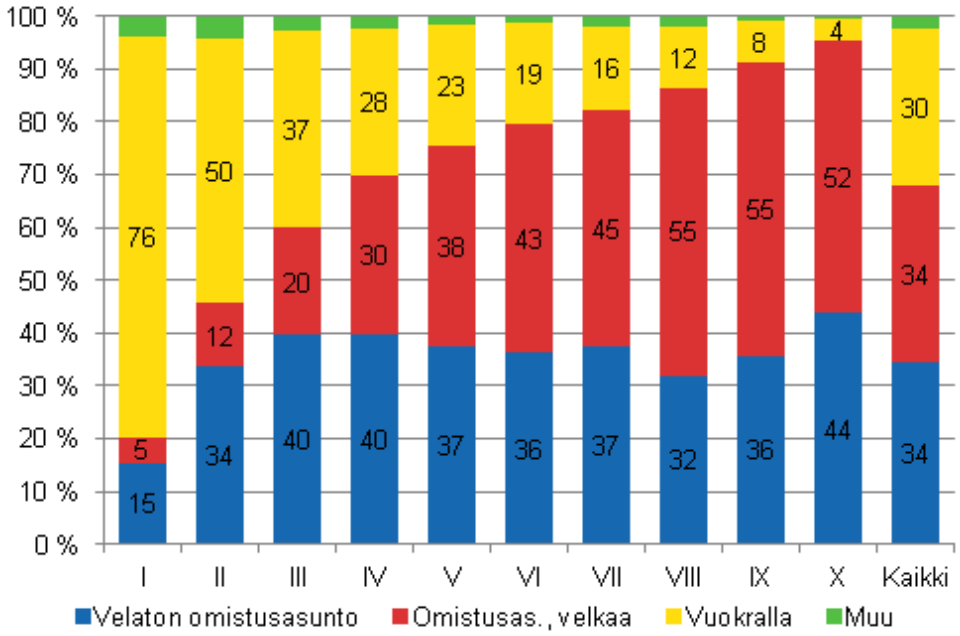
- To what extent is home ownership attractive as an alternative to rental housing
- What were the effects of the crisis since 2007?

After the recession of the early nineties was over, disposable incomes grew by 33 per cent between 1995 and 2009.[117] At the same time, inequality widened. The incomes of owner-occupier households rose 45 per cent, while those of renter households, 26 per cent. In 1995, the median income of renter households had been 71 per cent of that of owner-occupier households. In 2009, it was 61 per cent.[118] The incomes of renter households dropped generally during the fifteen years; their median income declined, from 79 per cent to 70 per cent of average median household income.[119]

It is low-income households that rent. (For the national data, see Figure 9.) Accordingly, they have got poorer. In 2009, the latest year for which figures are available, the ratio of housing costs[120] to disposable income averaged 14 per cent; for renter households, it was 27 per cent.[121] In comparison, the ratio was 13 per cent for homeowners with mortgage (9 per cent for those out of debt), while rising to 24 per cent when instalments of the loan are taken into account. If the transfers of housing benefits from the state are factored in, the ratio falls to 24 per cent for renter households, and 13 per cent for all.[122]

[117] Statistics Finland, Income distribution statistics, 2009.
[118] Ibid.
[119] Ibid.
[120] Housing costs (*asumiskustannukset*) are distinct from housing expenditure (*asumismenot*), which includes, for homeowners, instalments of the housing loan and finance charge.
[121] Statistics Finland, Income distribution statistics, 2009.
[122] Ibid.

Figure 9. Tenure status by income decile in 2009.



Source: Statistics Finland.

The question whether it is more viable to own than to rent a home has been considered in some calculations, bearing mainly on the Helsinki region. The method is to compare the net present value (NPV, the discounted stream of future benefits plus the discounted future selling price, minus the current price) of buying a home to the net present value of renting a flat and investing in long-term government bonds instead. In a feature in the magazine *Arvopaperi* ('security') in 2001, it was shown that a homebuyer with twenty per cent of the purchase price – the minimum that banks require up front – would be plainly better off, a homebuyer with fifty per cent of the purchase price slightly better off, yet a homebuyer with all of the purchase price slightly worse off, than a renter with similar initial wealth. The projection was over fifteen years.

The reason for the last result is that homeownership loses its attractiveness as the portion of the purchase price financed by taking a loan decreases, because tax relief diminishes along with the size of the mortgage. On the tax deductibility of mortgage interest, see 3.7 below. Other NPV calculations have demonstrated similar results, with the right of occupancy, when included in the comparison, the second most attractive option. Such computations are sensitive to changes of parameters: The lengthier one's stay, the more viable ownership becomes, because of the lower monthly running costs. Higher interest rates have the opposite effect, because the discounted future selling price of the property dwindles.

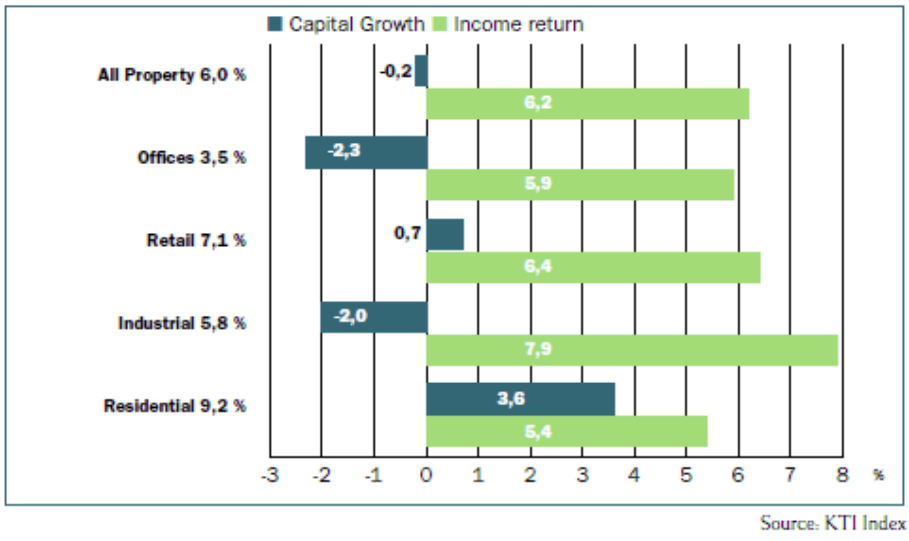
In sum, various NPV calculations – which ignore, of course, the benefits of renting in unpredictably changing life situations – support ownership over renting, some at all levels of wealth, others excepting the highest level. The most important cause would seem to be taxation by the state.

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?

The attractiveness of the rental residential sector has increased because of turbulence in the commercial property sectors.[123] State subsidies and, for instance, the growing demand for senior housing also attract investors. Residential has been the best performing sector for four consecutive years in the KTI Index, which measures the total return of directly held property investments in Finland.[124] In 2011, residential investments produced a total return of 9.2 per cent, consisting of capital growth of 3.6 per cent and net income of 5.4 per cent (Figures 10 and 11).

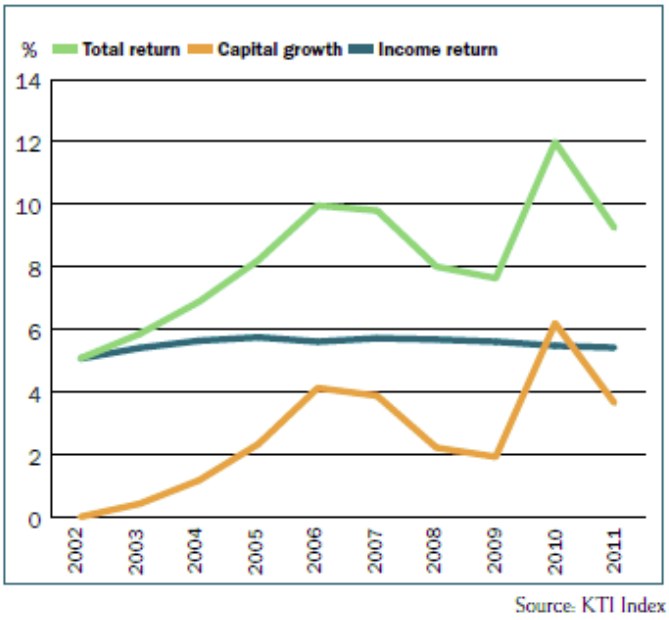
Figure 10. Total returns by property sector 2011.



Source: *The Finnish Property Market 2012*.

[123] *The Finnish Property Market 2012*, 37 and 45–46.
[124] http://www.kti.fi/index?PHPSESSID=dede44df44ccd6c84ee2027d708e5227.

Figure 11. Total return on residential property investments, 2001–2011.



Source: *The Finnish Property Market 2012*.

- 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?

The possibility for tax-exempt listed property companies has been granted for companies investing in residential properties. The company needs to be listed within three years of its foundation. The first company applying for this status, *Orava Asuntorahasto*, was founded in late 2010, and it has 240 apartments in its portfolio.[125]

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?)?

[125] *The Finnish Property Market 2012*, 22.

As the maintenance of the common areas of a property and the shafts and wires mounted in the dwellings belongs in the responsibility of the housing company, its property insurance covers damage to these parts. The interiors of the apartment, including fixtures and surfacing, are within the responsibility of the individual owner or tenant; home insurance is the same for either one. The landlord and tenant may agree that the tenant takes home insurance, and tenancy contracts are said to include more and more frequently a clause, requiring that the tenant must have home insurance.[126] Nevertheless, furniture and fixtures such as wooden flooring may be insured by the landlord's home insurance too.

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

For the role of estate agents in the residential rental market, see 6.2 below. Frequently, special legislation is adopted where problems receive public attention, and one such area has been the activity of the estate agent. After an initial act on consumer protection in the real estate agency sector in 1988, comprehensive special legislation, extending to the residential rental market for the first time, was passed in 2000.[127] The essential reform, which thoroughly changed the practice in the residential rental market, was to legislate that the only person who pays the agent's fee is the principal, typically the landlord; the difficulties with adopting this principle in the residential rental market are in 6.2.

2.5 Effects of the current crisis

- Has mortgage credit been restricted? What are the effects for renting?
- Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?
- Has new housing or housing-related legislation been introduced in response to the crisis?

In the spring of 2010, as a response to the crisis and the unremitting tendency of households getting into debt, the Financial Supervisory Authority[128] released a recommendation, according to which a housing loan should be at maximum 90 per cent of the purchase price ('loan ceiling'). At the time, loan to value exceeded that limit in 28

[126] According to the insurance company *Tapiola*, http://www.lahitapiola.fi/www/Yksityisasiakkaat/Asiakkaana+Tapiolassa/Elamantilanteet/Asuminen/Asunnon+ostaminen+tai+vuokraaminen/Vuokra-asunnon+vakuuttaminen.htm

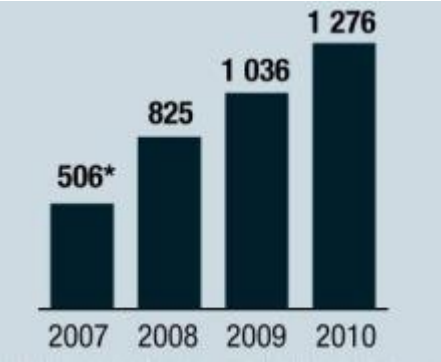
[127] Act on Real Estate Agents and Rental Agencies 1075/2000; *Laki kiinteistöjen ja vuokrahuoneistojen välityksestä* ['Real Estate and Rental Agency Act'] 1074/2000.

[128] http://www.finanssivalvonta.fi/en/Pages/Default.aspx.

per cent of new housing loans.[129] The banks opposed restrictions, and the Ministry of Employment and the Economy declined, against the background of the opposition, from proposing legislation demanded by the Bank of Finland and the Financial Supervisory Authority in early 2013; but the opinion of banks was reportedly swayed, among other things, by the International Monetary Fund, which in the summer of 2013 recommended loan ceiling, and new proposal for legislation is now being deliberated between the government and the financial sector.[130]

Simultaneously with the crisis, the number of compulsory auctions rose. The nationwide figure climbed to 1,276 compulsory auctions of housing-company shares or real estate in 2010, up 55 per cent from 2008 (Figure 12). This still pales in comparison with the hardest years of recession in the 1990s, when almost 3,000 dwellings were sold in public auctions annually.[131]

Figure 12. Compulsory auctions of housing-company shares and real estate 2007–2010.



*The figure dates to the time of the old Enforcement Code and is not entirely comparable.

Source: Turun Sanomat.[132]

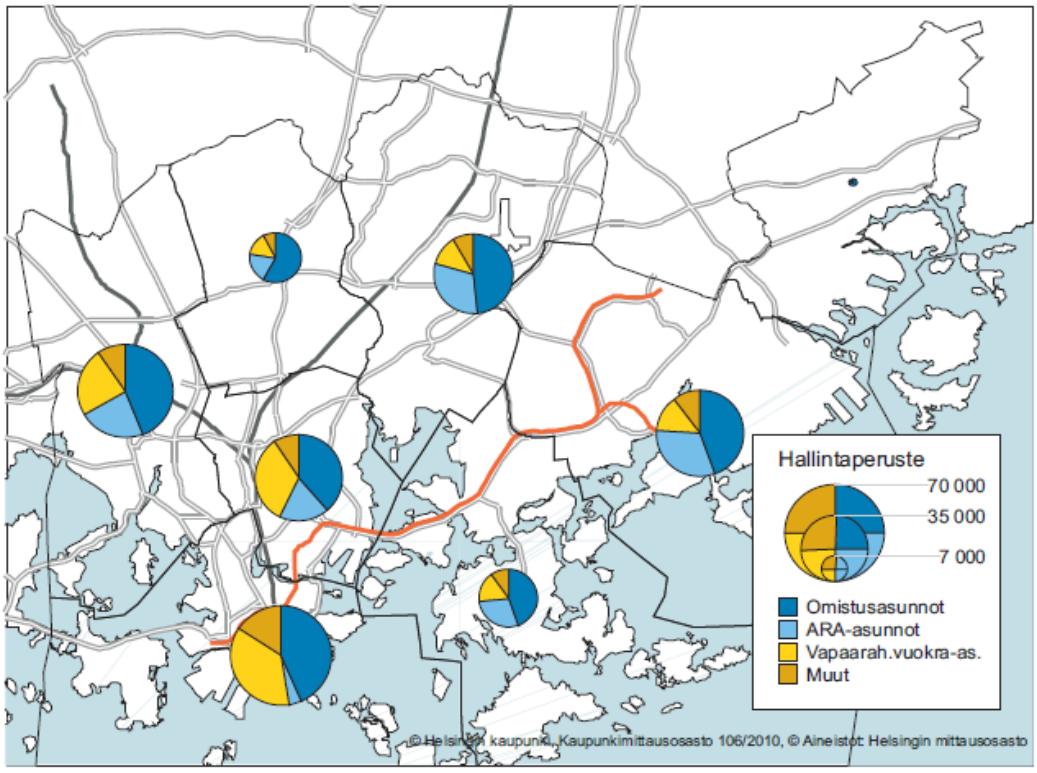
2.6 Urban aspects of the housing situation

- 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?)

[129] Tiia Kyynäräinen, 'Valvoja pettyi: Asuntolainat ovat yhä ylisuuria,' *Taloussanomat*, 22 September 2010.
[130] Anni Lassila, 'Pankit pyörsivät kantansa: Asuntolainojen katto lähellä toteutumista,' *Helsingin Sanomat*, 17 January 2014.
[131] 'Pakkohuutokauppojen määrä kasvanut yhä tuntuvasti,' *Turun Sanomat*, 8 Novermber 2011.
[132] 'Pakkohuutokauppojen määrä kasvanut yhä tuntuvasti,' *Turun Sanomat*, 8 Novermber 2011.

In urban areas, both larger and smaller towns, rental housing is concentrated in the centre and in suburban blocks of flats. When we look more closely at the metropolitan area, the commuter belt of Helsinki has a population of some 1.5 million people, with 606 380 in the city of Helsinki. Sitting on a peninsula, downtown Helsinki is a compact centre for suburbs sprinkling towards the north and northeast, and for two cities – Espoo across a bay to the west and Vantaa to the north. The demographics of the city of Helsinki contrast sharply with those of the country as a whole: there are more young adults, fewer schoolchildren (they are in Espoo and Vantaa), and the largest age groups are 23 to 33 year-olds, while in the whole country the largest groups are 52 to 62 year-olds.[133] Rental dwellings make up almost half of the housing stock. But the portions of private and social rentals vary greatly between districts (Figure 13). Eighty per cent of subsidised rental dwellings are in the suburbs, in northern and especially eastern Helsinki. Hardly any social rentals are located in downtown Helsinki.

Figure 13. Tenure status of dwellings by major district on 31 Dec. 2009.



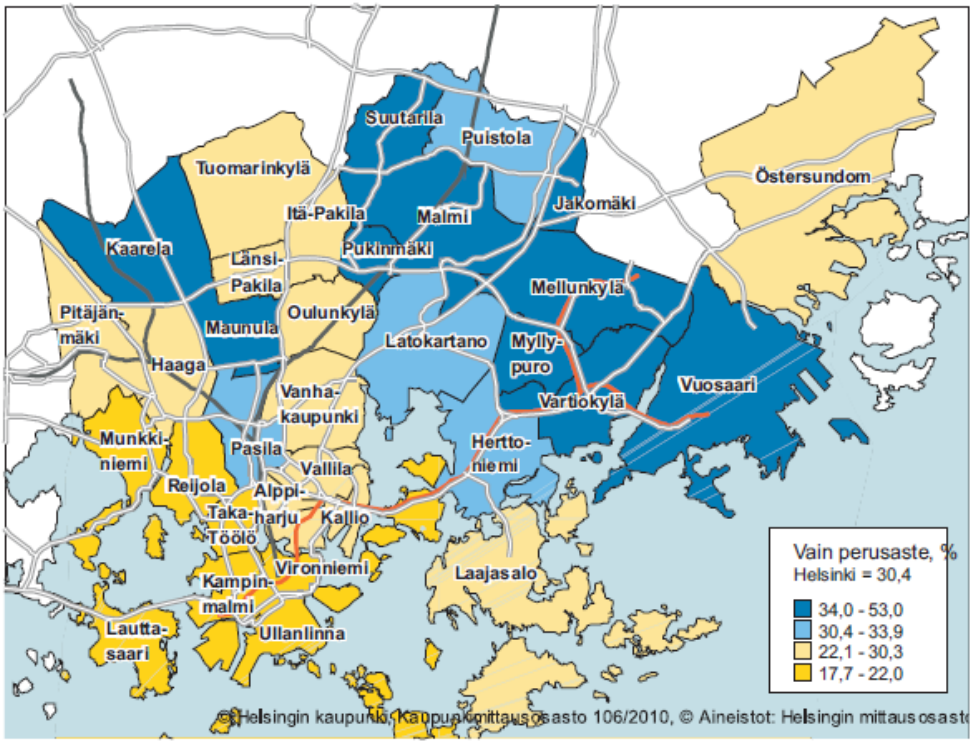
Source: Helsinki by District 2012.

'The social structure of population within a district is largely bound to the tenure structure in the area.'[134] Thus says the web publication *Helsinki by District*, which backs the statement with figures. These show that higher than average levels of education and income are found in areas dominated by detached houses and homeownership. People with low income and least education live in public rental dwellings (Figure 14).

[133] *Helsinki by District 2012*, at http://www.hel.fi/wps/portal/Tietokeskus/Artikkeli?urile=hki:path:/tieke/fi/Julkaisut/Tilastot/Helsinki+alueittain&current=true.
[134] *Helsinki by District*, 14.

Unemployment, in turn, is most common where the least educated people live (Figure 15). Those eastern districts closest to the centre are, moreover, home to young people on fixed-term employment contracts. Long-term unemployment affects the ageing population in the farther eastern districts.[135]

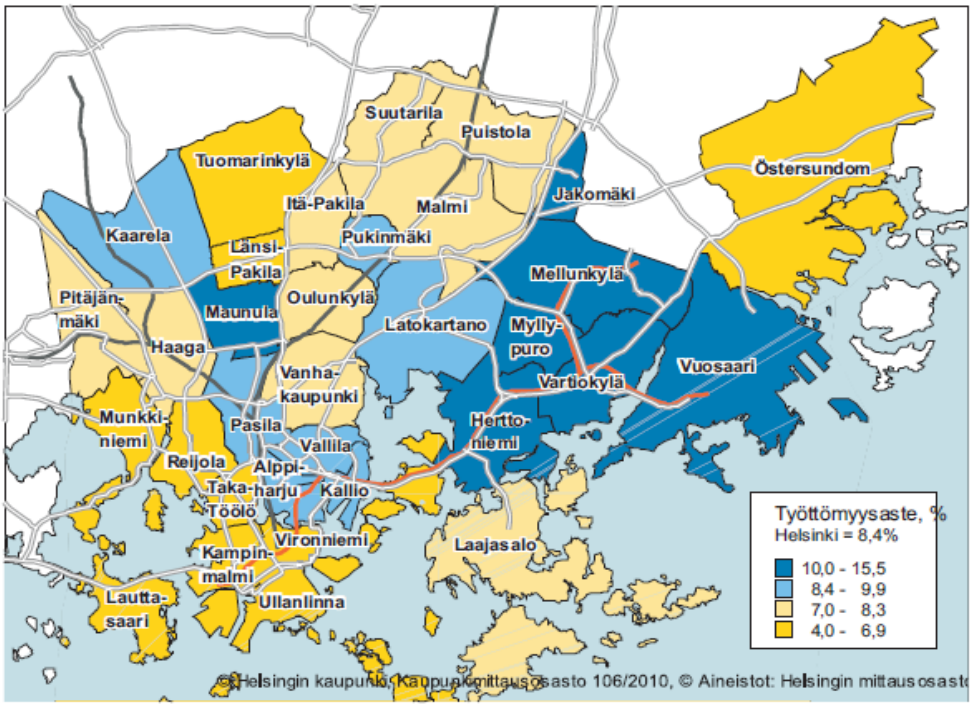
Figure 14. Education level of population: proportion of 15 year old or older having no post-compulsory education on 31 Dec. 2008.



Source: Helsinki by District 2012.

[135] *Helsinki by District*, 14.

Figure 15. Unemployment rate by district on 31 Dec. 2009.



Source: Helsinki by District 2012.

Like many capital cities, Helsinki has a stripe of long-standing suburbs round its centre, hosting much of social rental housing, beyond which owner-occupancy becomes more and more prevalent. For instance, beyond the old eastern city border, like on the coasts of Helsinki and Espoo as well, homeownership is rampant. In the newly acceded parts that are farthest to the east and used to belong to the neighbouring municipality Sipoo until 2010, the owner-occupancy rate is more than 90 per cent.

- Are the different types of housing regarded as contributing to specific, mostly critical, “socio-urban” phenomena, e.g. ghettoization and gentrification

The term 'ghetto' is too strong in reference to the level of segregation in Finland. There are some pockets, where unemployment has compounded problems after economic depression. The type of tenure which has been linked to social segregation is evident: the social rental dwellings of municipalities. And some groups of immigrants are, in fact, only able to get municipal rental dwellings.

Social problems can have accumulated in some buildings, which have become clusters of immigrants and disadvantaged Finns. One case study from 2009 analysed the reasons for the concentration of as much as half of the 9,000 Somali-speaking people (in 2006) in fifteen of the more than 350 neighbourhoods of Helsinki, mainly in eastern

Helsinki.[136] Initiating their concentration had been dependence on social housing. 70 per cent of all Somalis live in social rental apartments. 54 per cent of Somalis aged over fifteen were outside the workforce (for instance, students or stay-at-home mothers), and of those who are part of the workforce 54 per cent were unemployed. The next factor was concentration in neighbourhoods where there were large social rental dwellings available, as Somali households of the first generation have been large, many having six, some even ten or more members. The last fact further reduces income available for housing, and the share of single parents is, moreover, high (43 per cent of Somali mothers in 2005). Finally, low interest rates that have made homeownership attractive to those who can choose between tenures had, to some extent, contributed to a rise in downturns in social housing in the early new century, and as a consequence social workers were sometimes forced, under pressure to keep apartments occupied, to distribute the least-desired dwellings to the 'less-desired' households, even though this compromised with the idea of social mixing.[137] In all, as stated by one social worker interviewed by the researchers:

> In many housing estates, where our customers [Somali families] live, there aren't many normal Finnish families: working, nice kids, mum and dad. There are multi-problem Finnish families, whose aggressions and bad feelings are directed at immigrant families.[138]

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

The phenomenon of squatting does not, in any degree relevant to housing, exist. Squatting bestows no legal rights according to ordinary legislation, but the legal situation may be more complex from the point of view of constitutional interpretation and in the light of the case law under the European Social Charter (a broad definition of 'forced evictions). In the past few cases of squatting, the object has typically been an estate of the municipality, and then negotiations may be undertaken with the municipality; but if the negotiations do not lead to an outcome, the police removes the squatters.

2.7 Social aspects

- 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?

[136] Hanna Dhalmann and Katja Vilkama, 'Housing policy and the ethnic mix in Helsinki, Finland: perceptions of city officials and Somali immigrants,' *Journal of Housing and the Built Environment* 24, 2009, 423–439.
[137] Hanna Dhalmann and Katja Vilkama, 'Housing policy and the ethnic mix in Helsinki'
[138] Hanna Dhalmann and Katja Vilkama, 'Housing policy and the ethnic mix in Helsinki,' 436 ('Social worker, Helsinki').

- 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)

Between 2004 and 2006, the European Commission financed a study on 'Origins of security and insecurity: the interplay of housing systems with jobs, household structures, finance and social security.' Around thirty owner occupiers or tenants were interviewed in each of the participating eight states (Belgium, Finland, Germany, Hungary, the Netherlands, Portugal, Sweden, the United Kingdom). As indicated by the Finnish researchers, the twenty-eight respondents from round the city of Turku – twenty homeowners and four private-sector and four public-sector tenants – are too small a sample to conclude whether contemporary economic and institutional changes had affected Finns' views generally. Broadly speaking, the interviewees preferred, as would be expected, homeownership to renting: first, because it is more affordable in the long run; second, because a mortgage accumulates wealth for oneself and not for someone else; third, because of ownership-specific values: besides the common values of privacy and security, homeownership embodies independence, freedom to do what one wants, pride and a sense of achievement.[139]

The first of these grounds shows that people know the bottom line, which the NPV calculations cited in 2.2 above try to establish. Among the Finnish interviewees, there was a strong conviction that homeownership will naturally pay off.[140]

The second ground, that of 'paying to oneself,' is most vividly expressed by a Swedish interviewee – the two countries' respondents did not reason differently in this respect: 'If you buy a house then you save to yourself but if you rent, then you don't have the money to buy a house.'[141]

Where the answers by Finns and Swedes differed, though, is the third ground. Here, a comparative paper, following up the Commission-funded research and based on the same data, establishes 'tenure-specific differences between Finland and Sweden.'[142] To be sure, privacy and security against the outside world, as common meanings attached to the distributed good, housing, do not vary significantly between homeowners and tenants in either country. As a homeowner from Finland characterises the two attributes, which might together be termed 'exclusivity': 'nobody is coming in unless I am letting him/her in.'[143] But the authors of the comparative paper detect more detailed variation between the countries:

> Home owners in Finland, especially those living in detached housing, tend to associate housing not only with privacy but also with being independent and free of external control;

[139] Hannu Ruonavaara and Päivi Naumanen, Report on Finland in *Origins of Security and Insecurity: the interplay of housing systems with jobs, household structures, finance and social security (OSIS)* (2004–2006), 93–94.
[140] Ibid., 94.
[141] Eva Andersson, Päivi Naumanen, Hannu Ruonavaara, & Bengt Turner, 'Housing, Socio-Economic Security and Risks: A Qualitative Comparison of Household Attitudes in Finland and Sweden,' *European Journal of Housing Policy* 7(2), 2007, 151–172, 163.
[142] Ibid., 151.
[143] Ibid., 159 ('Homeowner FIN, female, 56').

> especially important is the possibility to do as one wishes with the property without a landlord saying what to do. For detached house owners, housing is associated with the various activities made possible by having a house of one's own and a garden around it – some of which are virtually impossible for tenants and many home owners in blocks of flats. The only freedom tenants associate with their housing is freedom from debt load and responsibility of maintenance. Moreover, while some owner-occupiers attach feelings of pride and a sense of achievement to their home, tenants speak of their homes more sparsely and much less emotionally, as only a roof over one's head. This is not so in Sweden; also some interviewees living as tenants in the municipal housing company's (MHC) apartments experience the kind of control over their housing space that home owners in Finland thought to be exclusive of their tenure.[144]

Considering this passage, the divergence in Finnish respondents' views might derive from the physical attributes of detached houses versus blocks of flats, rather than from forms of tenure per se, with the physical contrast being merely reflected in the mode of tenure typical to each kind of house.

The Finns who were interviewed held more diverse opinions about the security of tenures than did the Swedes, who – quite exceptionally – did not differentiate between owning and renting (if not behaving, including paying in time, one would get evicted). Surprisingly, those Finns living in social rental apartments had 'neutral' views similar to the opinions of Swedish tenants. For these Finns, their tenure was safe, even compared with ownership:

> They experience their tenure as secure because they know they cannot be evicted without having misbehaved or committed a crime. They feel pretty secure also financially, because the housing company is obliged to do all the maintenance and, furthermore, they know that they will be eligible for receiving municipal housing allowance and/or social assistance in case of economic hardship. Some tenants reflect on the security by contrasting their present situation with the potential situation of home owner. They feel secure, because they know that there is not a big mortgage falling on their heads in case of unemployment or in case they became badly injured or sick.[145]

Both their apartment is subsidised and they can receive housing allowance: this combination of 'object-based' and 'subject-based' benefits will be considered in chapter 3. Among the four interviewed private renters, two individualised situations mark the ends of a spectrum: at one end, a middle-aged couple who have a trusting relationship with their landlord; at the other, an unemployed woman with a husband and a child, feeling insecure over her tenure because the flat was recently sold to a new owner without informing the family. The other two cases were called 'more vague' than these 'contradictory' ones.[146]

The authors of the comparison turned to institutional arrangements surrounding housing to explain the attitudinal differences between the Finns and the Swedes. The Swedish institutions, which are absent in Finland, include the unique degree to which Swedish tenants are organised in a union; the strong position their union has in the corporatist negotiations that determine rent levels in the country; and the 'market leadership' of

[144] Ibid., 159–160.
[145] Ibid., 163.
[146] Ibid.

municipal housing companies, whose rent levels largely settle the rents that private landlords charge. Unsurprisingly, because of these factors, renting appears more secure, affordable, and inviting in Sweden. The researchers' description of, and comments upon, the Finnish rental market deserve to be quoted in full. As they say, here lie part of the explanation for the Finnish interviewees' reverse perceptions of the securities of homeownership and renting:

> On one hand, there is a private rental market that, after the last reforms, is a rather free one, on the other, there is a social rental (quasi-) market, where access is governed by needs and means testing. A majority of landlords in the private rental market is made up of petty owners of rental housing, not necessarily committed to their business. The sector has an old image of low tenure security, landlord control and high rents, and the mid-1990s liberalization of the rental market did not help to change that image. The public sector rental housing is experienced as a secure one, but it tends to carry a negative image of "welfare housing" – due to the Finnish housing policy's nature as social policy for the less well off. Therefore, it is home ownership that acquires an aura of successful normality, something that everyone in her/his right mind should strive for, and therefore home ownership is something that one has to cling to as long as possible.[147]

Further, the Finnish homeowners' belief that by paying for their house they have built up for themselves a nest egg they can collect one day has survived the memories of the early-nineties depression.[148] Swedish homeowners are more aware of the importance of timing for the investment decision, and Swedish long-term owners express also compassion for the younger generation and renters, for whom the housing market has become more risky and unfair than it had been for the generation born in the nineteen forties and fifties. Not so the Finns; according to the study, 'the Finnish owners are not concerned about the equalities' and 'think almost solely of their own life or prospects of their children.'[149] There was more insecurity among those owners who had experienced economic hardship, but even for them homeownership provided security, which the authors of the study interpret in terms of ownership operating as insurance against insecurities.[150] As one, unemployed, owner says of her dwelling: 'I've got there a couple of ten grand, [but] in no other particular way [does home ownership contribute to security]. (Home owner FIN, female, 39)'[151]

One question not touched upon in these studies concerns the relative significance of home and work as sources of security. Only the country report on Finland in the Commission study observes in a different context that homeowners' financial coping tends to revolve round mortgage payments and maintenance of the home, while tenants 'plan their finances largely according to their employment situation and disposable income.'[152]

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[147] Ibid., 169.
[148] Ibid., 164.
[149] Ibid., 165.
[150] Ibid.
[151] Ibid.
[152] Hannu Ruonavaara and Päivi Naumanen, Report on Finland in *Origins of Security and Insecurity: the interplay of housing systems with jobs, household structures, finance and social security (OSIS)* (2004–2006), 96.

The Finnish reporters extract a fairly typical ethos from their interviews. They call it a 'mixed model of responsibility': 'individuals bear the main responsibility of their housing problems, but if the individuals are not themselves the cause of the financial troubles they are suffering from, "society" should offer some sort of publicly funded aid'[153]. This is what about half of the homeowners and most tenants subscribe to. The following answer encapsulates the pattern of thought:

> "People are responsible for their own affairs. That's how it should be in the first place. If they end up [in trouble] because of illness or something, then society should – – help them, and the banks should also come forward so that – – they can get over the difficult times, so that their lives will not fall apart because of a single incident. But I still think that people are responsible for their own lives" (homeowner, female, 50 years old).

A minority of the tenants believe that the state should bear the main responsibility for helping households who have housing-related economic problems. The other half of the homeowners divide equally into those for whom the individual, without qualification, and those for whom the state has the responsibility. As the researchers surmise in the end: 'Perhaps the view of individual responsibility coupled with collective responsibility for the deserving poor is the typical Finnish approach to housing.'[154]

[153] Ibid., 92.
[154] Ibid., 96.

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?

Ninety per cent of housing in Finland has been built since World War Two.[155] The government has been a strong presence during this period, granting subsidies for production and later also for renovation. Municipalities are an increasingly important group of owners receiving the state subsidies – in today's rental sector, they are the only group besides general-interest organisations – but it bears emphasising that the buildings and dwellings they own are, as a recent report on the release of subsidised houses from temporary state-imposed conditions says, 'each municipality's decision-makers' own value choice and political decision, thus not a mandate prescribed for the municipality by the state.'[156]

Achieving the current structure of the state-subsidisation policy has been the result of a piecemeal development over more than six decades, not of rational design. The postwar subsidies for new owner-occupied housing (with recipients leaving their old dwellings to lower-income people), the subsequent grant of loans for rental housing (induced by internal migration and the labour needs of industry); production for the common good, solidarity, but also the inner-circle culture of the regime prior to the recession; and the transformation in the 1990s, when new investors expected market return on their investment, were depicted in chapter 1. This history of the institutions provides a starting point for considering the nature of the system and also contemporary problems, such as the lack of moderately priced housing in some growth centres, particularly Helsinki (described as the 'most serious problem in the Finnish housing market'[157]).

Two broad trends challenging the present welfare model are widely discussed today, also in relation to housing. The first is ageing. The decline of the working-age population affects public finances in two adverse ways: through the contraction of labour, and growth of the elderly population. The second tendency is immigration, which has, since the nineties, influenced the social and spatial differentiation processes in the largest towns and which is expected to continue, affecting significantly the population composition of the largest towns.[158]

Prior to the elections of 2011, the ministries responsible for housing and housing allowances, respectively, Ministry of the Environment and Ministry of Social Affairs and Health, published the following policy guidelines for the future. 'The role of the government in housing markets in the 2010s' is the report of a working group set up by Ministry of the Environment with a view to examining ways in which the state can secure housing production. As points of departure, the document cites the housing-policy aim of the Centre-Party-led government still in power – to integrate people's hopes and needs

[155] Vaattovaara et al, Contextualising ethnic residential segregation, 207.
[156] Mäki-Fränti and Laukkanen, ARA-vuokratalokanta murroksessa, 11.
[157] *The Finnish Property Market 2012*, 44.
[158] Vaattovaara et al, Contextualising ethnic residential segregation, 206.

related to housing, needs of society, and sustainable development – and also states, somewhat tautologically, that the 'operation of housing markets is, as a starting point, market based.'[159] The organisation of housing for special groups, business cycles, and the chronic shortage of especially reasonably priced rental apartments in certain growing urbanised areas, particularly the Helsinki region, are mentioned as market imperfections. The growing number of aged people and the social integration of immigrants are cited as additional challenges. The working group highlights the shortage of reasonably priced apartments in the Helsinki region and says that this threatens growth. It calls for more cooperation between authorities which are responsible for spatial planning, housing, and transport. It defends flexible selection criteria in social housing as the means to combat segregation. It demands more competition and innovation in the construction industry, and it makes pleas for promoting infill development and improving housing for aged people.[160]

Strategic planning by Ministry of Social Affairs and Health is included in the document 'Socially Sustainable Finland 2020: Strategy for social and health policy.' It cites common international themes: the equal treatment of all members of society; opportunities for participation; and the support of health and 'functional capacity.' Besides these three desiderata, the socially sustainable society canvassed by the ministry provides the 'security and services required by its members.' The first strategic choice stated in the document, '*A strong foundation for welfare*,' builds on wellbeing at work, especially as the ageing population will increase public expenditure.[161] Next, with the second strategic choice, '*Access to welfare for all*,' which incorporates the goal of reducing welfare and health differentials, there come the first references to housing: housing costs down to a level manageable by benefit recipients – by developing the housing support system – and opportunities for the homeless and other special-needs groups to gain an own home pushed forward – through cooperation between various sectors.[162] Finally, in connection with the third and last strategic choice, '*A healthy and safe living environment*,' it is observed: 'Sustainable housing design and community planning contribute to safety and independent coping, reduce the incidence of many social problems and prevent segregation of housing districts.'[163] In putting its policies into practice, Finland is profiling itself as a 'promoter of gender equality and health.'[164] One notes in the strategy the injunction that, for instance, '[s]tudies and social welfare and health care services for immigrant women in particular must be supported.'[165]

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

[159] *Valtiovallan rooli 2010-luvun asuntomarkkinoilla*, Ministry of the Environment 8, 2011, 7.
[160] Valtiovallan rooli 2010-luvun asuntomarkkinoilla.
[161] The strategic choices include 'Health and welfare in all policies' – so that, for instance, promoting physical health, mental health, and social wellbeing will be incorporated into social welfare and health care services at every stage in life (p. 7) – and 'Longer working careers through wellbeing at work.' *Socially Sustainable Finland 2020*, 6–9.
[162] Ibid., 11.
[163] Ibid., 15.
[164] Ibid., 17.
[165] Ibid., 13.

For the origin of the national constitutional framework for housing, one must go back to the fundamental-rights reform that took effect on August 1, 1995.[166] In this reform, which had been in preparation since the early 1970s,[167] the catalogue of basic rights and liberties got new members, including what is currently Article 19, 'The right to social security.' According to its first paragraph:

> Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care.[168]

This paragraph comprises the subjective right to 'arranged housing': namely, according to the government proposal of 1993, 'indispensable subsistence and care' includes 'the arrangement of nutrition and housing which are necessary to sustain health and life.' [169] Under ordinary legislation, subjective rights to housing are entailed by the duties of municipalities to arrange housing for severely disabled people[170] and in certain situations involving child protection[171]. Beyond these sources of subjective rights, there is the goal-type fourth paragraph of the right to social security:

> The public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing.[172]

The revised fundamental rights were transferred, as such, to the new Constitution, which entered into force on March 1, 2000.[173] It capped off a constitutionally busy decade, during which Finland had ratified the European Convention on Human Rights, on May 10, 1990, and joined the European Economic Area, on January 1, 1994, and then the European Union on January 1, 1995. The European Social Charter had entered into force domestically on May 29, 1991, and the Revised European Social Charter came into force in Finland on August 1, 2002.

Constitutional rights have always had an influence on the choice between legislative procedures, which has been made by the Constitutional Law Committee of Parliament interpreting the constitutional rights and liberties. Martin Scheinin has described the history of the procedure of exceptive enactments as follows:

> One of the specific features of Finnish constitutional law is the institution of exceptive enactments, developed when the country was an autonomous Grand-Duchy within the Russian Empire (1809–1917). Finland had its own legislative body which applied the old Swedish constitutional documents but had, of course, no possibility to amend them. As nationhood and a modern market economy emerged during the 19th century, the old Swedish constitutional documents, including the privileges of the Estates, in many ways stood in the way of building an appropriate legislative framework. The solution to the dilemma was found in the institution of exceptive enactments, which are laws that in substance are in

[166] 969/1995.
[167] Constitutional Law Committee 25/1994.
[168] The Constitution of Finland (731/1999), 19(1).
[169] Government proposal 309/1993, 69–70.
[170] *Laki vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista* 380/1987, 8.
[171] *Lastensuojelulaki* (417/2007) 35.
[172] The Constitution of Finland (731/1999), 19(4).
[173] The Constitution of Finland (731/1999).

> contradiction with the Constitution and are therefore adopted in the same procedure as is required for amending the text of the Constitution.[174]

For example, tenancy legislation has, on most occasions, been passed using the constitutional enactment procedure for reasons of protection of property.[175]

Both the Chancelor of Justice and the Parliamentary Ombudsman have the duty to 'ensure that the courts of law, the other authorities and the civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations.' Both these authorities have, in the performance of their duties, the task of 'monitor[ing] the implementation of basic rights and liberties and human rights.'[176]

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?

Housing is within the remit of Ministry of the Environment[177]. Under its supervision, the Housing Finance and Development Centre of Finland (ARA),[178] located in Lahti, implements and monitors social housing policy, authorising the subsidies, grants, and guarantees relating to housing and development, which are described in section 3.6 below and which result in the unit-specific *ara* restrictions. The agency is also responsible for monitoring homelessness and has other duties with respect to urban policies and within energy policy (3.5 below).

Housing allowances are planned and monitored by the Ministry of Social Affairs and Health.[179] An independent institution, the Social Insurance Institution of Finland, '*Kela*,'[180] grants the benefits. (The organisation was founded in 1937 as the National Pension Institution, in Finnish, '*kansaneläkelaitos*,' abbreviated '*Kela*,' still its Finnish names.) As the welfare state expanded, the institution began administering the national health insurance scheme (1964), the freshly introduced direct reimbursement for medicine purchases in pharmacies (1970), and the new disability allowances (1989). In the early nineties, the administration of not only child benefits and allowances (1993)

[174] Martin Scheinin, 'Constitutional Law and Human Rights,' in Juha Pöyhönen (ed.), *An Introduction to Finnish Law*, Second, revised edition, Kauppakaari 2002, 31–57, at 55–6.
[175] See chapter 5.
[176] The Constitution of Finland (731/1999), 108 and 109.
[177] http://www.ym.fi/en-US.
[178] *Asumisen rahoitus- ja kehittämiskeskus*, http://www.ara.fi/en-US.
[179] Excepting the students' housing allowance, which is governed by the Ministry of Education and Culture.
[180] http://www.kela.fi/in/internet/english.nsf.

and maternity grants (1994) but also housing allowances (1994) and students' housing supplements (together with student financial aid) (1994) was reassigned to *Kela*. *Kela* is supervised by Parliament, to whom a board of trustees reports annually.

Briefly, there are three levels of appeal against the housing-benefit decisions of *Kela*: as the first instance, the Social Security Appeal Board,[181] in Helsinki;[182] as the second instance, a special court (one of four in Finland), the Insurance Court,[183] Helsinki; and as a final instance, an extraordinary appeal for review, grounded on a procedural error, may be filed in the Supreme Administrative Court.[184]

Municipalities control land use and planning in their territories. Furthermore, many of the real-estate companies supplying state-subsidised housing are owned by municipalities. Also, building supervision authorities are municipal. Finally, municipalities set real-estate tax rates within state-given limits (see 3.7 below). Considering the three phases of land use planning (regional, master, and detailed plan), the detailed plan is compulsory in urban areas before any construction may take place. Legislation does not provide municipal governments with a standard planning process, and so the particulars of the process vary widely, even within individual cities. In a typical process in the Helsinki area, once objectives have been defined, a draft plan is made for comments, followed by a plan proposal. The proposal is approved by the city planning committee, then the city board, and finally the city council. It has been observed that: 'Planning and building permit practices have recently been discussed actively, and they have been criticised for their lack of holistic approach to sustainability and urban structure issues, among other things.'[185]

Regional policy is only surfacing, in the Helsinki metropolitan area, under a new government programme on the Helsinki metropolitan region (2012–).

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

[181] Finnish abbreviation '*Somla*,' *sosiaaliturvan muutoksenhakulautakunta*, *besvärsnämnden för social trygghet*, http://www.sosiaaliturvanmuutoksenhakulautakunta.fi/index.php.
[182] Excepting cases of students' allowances, in which the first-instance appeal is made to the Student Financial Aid Appeal Board, *opintotuen muutoksenhakulautakunta*, *besvärsnämnden för studiestöd*, Helsinki, http://www.opintotuenmuutoksenhakulautakunta.fi/index.php.
[183] A special court for social security, http://www.oikeus.fi/vakuutusoikeus/7010.htm. It is one of two special courts in the area of administrative adjudication, the other being the Market Court, in Helsinki, http://www.oikeus.fi/markkinaoikeus/15578.htm.
[184] http://www.kho.fi/en/index.htm.
[185] *The Finnish Property Market 2012*, 18.

Realising housing at a reasonable price for all households is one, perhaps the first, aim of housing policy. It is pursued through the system of production support, which includes interest subsidies and up-front grants for production and renovation. This system has also served the aims of counter-cyclical economic policies of the government.

Based inductively on the policies enacted, another aim of housing policy has seemed to be the promotion of owner occupancy. A final report of the Working Group for Developing the Finnish Tax System (2010) listed this aim in the second place, right after the realisation of housing at a reasonable price for all households: 'A second typical aim of housing policy seems to be to encourage homeownership. This is manifested, among others, in the fact that owner occupancy is treated more lightly in taxation than rental housing is, and that first-home buyers, in particular, are allocated targeted tax subsidies.'[186]

Ensuring possibilities of housing for low-income households is one policy aim on the ground that a dwelling is a necessity. In urban areas, the prevention of differentiation processes in residential neighbourhoods is another aim of housing policy. These aims are integrated in the purpose of tenant selection in the rent-regulated state-subsidised social rental dwellings:

> The purpose of tenant selection is that interest-subsidy rental apartments are assigned to households having the most acute need for a rental dwelling, whilst striving for a varied community structure in the building and a socially balanced neighbourhood.[187]

A lately emerging aim of housing policy has been the prevention of urban sprawl. This aim is related to the environmental impact of housing and transportation.[188]

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

The dispersal of immigrants is pursued through municipal housing policies and urban planning. The government advises the municipalities on the policy goals, for instance, through such guidelines as a framework policy in 1997 and migration policy programme in 2006, but the municipalities independently decide on policy implementation.[189] Refugees and asylum seekers are the two groups most strongly targeted by the state and the municipalities regarding accommodation.[190]

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[186] *Verotuksen kehittämistyöryhmän loppuraportti* (Final Report of the Working Group for Developing the Finnish Tax System), Valtionvarainministeriön julkaisuja 51/2010, Helsinki: Ministry of Finance 2010, 160.
[187] Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans, June 29, 2001/604, 11a ['The purposes of resident selection'] (August 18, 2006/717); correspondingly, *aravarajoituslaki* 17.12.1993/1190, 4a ['The purposes of resident selection'] (August 18, 2006/716). See 4.3 below.
[188] The list of housing policy aims is based on *Verotuksen kehittämistyöryhmän loppuraportti* (Final Report of the Working Group for Developing the Finnish Tax System), Valtionvarainministeriön julkaisuja 51/2010, Helsinki: Ministry of Finance 2010, 159–161.
[189] Mari Vaattovaara, Katja Vilkama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen, Contextualising ethnic residential segregation in Finland,' 233.
[190] Mari Vaattovaara, Katja Vilkama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen, Contextualising ethnic residential segregation in Finland,'234.

In addition, the state gives housing renovation grants, subsidising renovations of the apartments of elderly and disabled people[191] and the construction of lifts[192] and other improvements enabling elderly or disabled people to access and move in the building,[193]

3.4 Urban policies

- Are there any measures/ incentives to prevent ghettoisation, in particular
- mixed tenure type estates[194]
- "pepper potting"[195]
- "tenure blind"[196]
- 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.

Immigrants are free to choose their place of residence, but it is observed that the state and many municipalities are quite explicit in wishing to avoid ethnic residential segregation and to promote spatial assimilation.[197] The current criteria for selection in state-subsidised dwellings realise the aim of diversified resident structure. For a detailed account, see 4 below. The housing-allocation policies are considered the 'strongest direct measure' influencing immigrant residential patterns, whereas spatial planning measures are more indirect.[198]

A recent committee proposal aimed at steering people who depend on housing allowance to live in state-subsidised dwellings – in other words, increasing the overlap of 'subject-based' and 'object-based' subsidisation. The proposal was met with a worry

[191] *Laki asuntojen korjaus-, energia- ja terveyshaitta-avustuksista* 1184/2005, sections 5(1), 6(1.1 and 2), and 8(1).
[192] *Laki asuntojen korjaus-, energia- ja terveyshaitta-avustuksista*, section 6(1.4).
[193] *Ibid*.
[194] 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.
[195] 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.
[196] This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable from outside. It is used to avoid/minimize stigmatization and social exclusion which could be caused by living in a (openly identifiable) social stock.
[197] Mari Vaattovaara, Katja Vilkama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen, Contextualising ethnic residential segregation in Finland,' 233–234.
[198] Mari Vaattovaara, Katja Vilkama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen, Contextualising ethnic residential segregation in Finland,' 234.

about the adverse effect such an alignment would have on the resident structure of state-subsidised rental buildings. In response to the committee proposal, it was noted that difficult spirals of segregation had thus far been avoided in Finnish cities, but tightening the selection criteria for tenants would endanger the balanced resident structure in individual areas and individual buildings. That is to say, flexibility of income and wealth criteria was, in this response, considered important to prevent segregation.

- Are there policies to counteract gentrification?

The phenomenon of gentrification exists, but not to any large extent. Examples have included an area of old wooden houses in Turku and the old workers' area Kallio in Helsinki, but no specific policies have been involved.

- 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 infrastructure 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?)

The parties' freedom of contract in private rental markets is limited by the basic requirements for the apartment set in health-protection, land use and building and environmental legislation. For example, health protection regulation includes the Health Protection Act and a decree issued under it,[199] which are supplemented by the indoor health guideline[200] (formerly indoor air quality guideline) issued by the Ministry of Social Affairs and Health. Land use and building regulation comprises the Land Use and Building Act and a decree issued under it,[201] which are supplemented by the Finnish Building Code[202] – formerly published in the form of municipal ordinances and decisions of a ministry[203] (under the building decree of 1959) and later, after the new Constitution, in the form of decrees of a ministry[204] (under the Land Use and Building Act) that included both regulations and instructions. Since 2012, following a complaint to the Chancellor of Justice and his response in 2011, the Land Use and Building Act provides

[199] *Terveydensuojelulaki* 19.8.1994/763; *terveydensuojeluasetus* 16.12.1994/1280.
[200] *Asumisterveysohje*, Helsinki: Ministry of Social Affairs and Health 2003, at http://www.stm.fi/julkaisut/nayta/-/_julkaisu/1056561.
[201] Land Use and Building Act (*maankäyttö- ja rakennuslaki*) 5.2.1999/132 (at http://www.finlex.fi/en/laki/kaannokset/1999/en19990132); *maankäyttö- ja rakennusasetus* 10.9.1999/895.
[202] http://www.ym.fi/fi-FI/Maankaytto_ja_rakentaminen/Lainsaadanto_ja_ohjeet/Rakentamismaarayskokoelma.
[203] Ministry of the Interior and later Ministry of the Environment.
[204] Ministry of the Environment.

now, in accordance with current constitutional requirements, only a mandate for issuing decrees, which today can solely 'specify' and not add to legislation, and a duty for the Ministry of the Environment to maintain the Finnish Building Code where rules, regulations, and guidelines are collected and also regulations by the authorities of other states can be collected.

- 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?)

Regional policy is only surfacing, in the Greater Helsinki area, under a new government programme since 2012.

3.5 Energy policies

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

Until very recently, the national energy policy has been closely related to industry. Also some parties, such as the Social Democratic Party and the Centre Party in the 1980s, the Social Democratic Party and the National Coalition Party in the 1990s, and the Centre Party and the National Coalition Party in our century, have had significant influence, and traditionally the field is a territory of experts: as an example, one can mention the VTT Technical Research Centre of Finland in Otaniemi, Espoo[205]. Based on the experiences of the energy crises of the seventies, a system of municipal energy advisers was established with state-granted funds, and these advisers did not have industry as their main target group but the housing sector, where they promoted energy saving and energy efficiency generally. This system was closed down during the severe rescission of the 1990s.

During the period from 1984 to 1991, the time of regulation and state enterprises ended, as price regulations in the distribution of petrol and diesel and on refined oil, and import monopolies for petroleum products and electricity, were removed. Once the electricity markets were liberalised for competition between firms in 1995, and households were included in 1998, the period of market-oriented steering in energy policy lasted for about a decade (during which the former state monopolies Fortum, in production of electricity and heat, and Neste, in refined oil, were listed in stock exchange in 2005). Most recently, there has been care for self-sufficiency (as much as 70 per cent of energy is imported,[206] mainly oil and electricity from Russia), while the climate policy and the

[205] http://www.vtt.fi/index.jsp.

[206] Esa Ylitalo, 'Energia – Energy' in *Metsätilastollinen vuosikirja 2010 – Finnish Statistical Yearbook of Forestry 2010*, Finnish Forest Research Institute, Sastamala: Vammalan Kirjapaino Oy 2010, 289–311, 289 ('on average 70 per cent' in the first decade of the century); Esa Ylitalo, 'Energia – Energy' in *Metsätilastollinen vuosikirja 2013 – Finnish Statistical Yearbook of Forestry 2013*, Finnish Forest

energy-efficiency instruments of the European Union have brought about new regulation. Among public-sector actors in energy policy domestically, the main responsible ministry is Ministry of Employment and the Economy,[207] but a host of other actors are involved, at various levels: Ministry of the Environment; Ministry of Agriculture and Forestry;[208] the fifteen regional Centres for Economic Development, Transport and the Environment (ELY Centres);[209] municipal building supervision authorities; and the state-owned Motiva Group,[210] which started as the Energy Information Centre in 1993–2000.

While the implementation of the Energy Efficiency Directive of 2012 is organised by Ministry of Employment and the Economy, the prior implementation of directives on the energy performance of buildings, from 2002 and 2010, to which I now turn, was organised by Ministry of the Environment. Energy certificates were introduced on the basis of these directives. The certificate aims at conveying information to buyers and renters, so that they can themselves compare the energy efficiency of buildings. Normally, the certificate is purchased and displayed by the owner of the building, typically the housing company (see 1.4 above). Exceptionally, if the responsibility for the upkeep of a building has been transferred, in an agreement, from the owner to the party in possession of the premises, the certificate must be purchased by the party in possession;[211] such occasions are described in the government proposal of 2012 as follows:

> These situations may include cases of long-term renting, where the tenant is responsible also for upkeep; other contracting situations, where upkeep has been left to, for instance, the constructor of the space for a long time; the allocation of upkeep responsibility to shareholders in limited-liability housing companies; and life annuities and corresponding grounds of possession. The responsibility must have been transferred on the part of the entire building, if the energy certificate is made for the whole building.[212]

Originally, under the first Act on Energy Certificates for Buildings[213] passed in 2007 and implementing the 2002 directive[214], buildings put up in or after 2008, and, starting from January 1, 2009, also old buildings, but notably only those with more than six apartments, were included within the obligation. Further, the national law transposed the list of allowed exceptions in the directive,[215] exempting from the obligation the following categories of building:

Research Institute, Sastamala: Vammalan Kirjapaino Oy 2013, 273–294, 273 ('nearly two thirds' in 2012). Available at http://www.metla.fi/metinfo/tilasto/julkaisut/vsk/2013/index.html.

[207] http://www.tem.fi/en.

[208] http://www.mmm.fi/en/index/frontpage.html.

[209] http://www.ely-keskus.fi/en/web/ely-en/.

[210] http://www.motiva.fi/en.

[211] *Laki rakennuksen energiatodistuksesta* (18.1.2013/50), 2(1).

[212] Government proposal 161/2012, 19.

[213] *Laki rakennuksen energiatodistuksesta* 487/2007.

[214] DIRECTIVE 2002/91/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2002 on the energy performance of buildings OJ 4.1.2003 L 1/65

[215] 'Member States may decide not to set or apply the requirements referred to in paragraph 1 for the following categories of buildings:

1) buildings with a surface area of no more than 50 m^2;
2) residential buildings which are intended to be used at most four months in a year;
3) temporary buildings with a planned time of use of two years or less;
4) industrial sites or workshops or non-residential agricultural buildings with low energy demand or non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance;
5) buildings protected in a plan made in accordance with the Land Use and Building Act (132/1999) or by a decision given in accordance with the Building Protection Act (60/1985) or the Decree on Protection of State-Owned Buildings (480/1985), or designated, in an inventory by the National Board of Antiquities, as significant in a cultural-historical sense; or
6) churches or other buildings owned by a religious organisation, with space that is solely intended for gatherings or devotional practices or activities in the service of these.[216]

At the time, four kinds of certificates were issued: first, the senior designer was qualified to certify new buildings; second, a special accredited author of energy certificates could give a separate energy certificate; third, an energy inspector could supply a certificate in conjunction with an energy inspection; and fourth, the manager of a housing company was qualified to provide a smaller energy certificate annexed in the manager's certificate and valid for the same limited number of years as the manager's certificate itself.

In 2012, the energy efficiency of new buildings became indicated by their annual calculated consumption of purchased energy, weighted by different multipliers depending on the form of energy, as a governmental decree and building regulations began implementing the 'recast' energy-performance directive[217] from 2010. The new rules and regulations demanded an on-average 20 per cent improvement over the previously required level of energy efficiency. This was followed, in 2013, by a regulatory package,[218] which included a new Act on Energy Certificates for Buildings,[219] creating a

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— buildings and monuments officially protected as part of a designated environment or because of their special architectural or historic merit, where compliance with the requirements would unacceptably alter their character or appearance,
— buildings used as places of worship and for religious activities,
— temporary buildings with a planned time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand and nonresidential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance,
— residential buildings which are intended to be used less than four months of the year,
— stand-alone buildings with a total useful floor area of less than 50 m^2.' Article 4(3).

[216] *Laki rakennuksen energiatodistuksesta* 487/2007, 5(2).

[217] DIRECTIVE 2010/31/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 May 2010 on the energy performance of buildings (recast) OJEU 18.6.2010 L 153/13

[218] Besides the new Act on Energy Certificates for Buildings, also Government Decree on the competence of the party preparing a building's energy certificate and on the requirements for a more lenient energy certification process 170/2013, Ministry of the Environment Decree on the energy certificates of buildings 176/2013, Act on Changing Section 1 of the Act on the Housing Finance and Development Centre of Finland 51/2013, Government Decree on changing the Government Decree on information provided in the marketing of housing units 175/2013, and Government Decree on changing the Government Decree on the area measurement of owner-occupied flats and the property manager's certificate 174/2013. Finland opted for the provision of advice to users of heating systems in accordance with DIRECTIVE 2010/31/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 May 2010 on the energy performance of buildings (recast), Article 14(4), under an agreement between Ministry of Employment and the

uniform certificate. Now the previously excluded buildings with less than six apartments, which in fact consume 27 per cent of energy and produce 26 per cent of emissions in the country, were included, as the obligations are becoming applicable gradually to multi-storey buildings and detached houses built in or after 1980 on July 1, 2013, to row houses and commercial and office space on July 1, 2014, to health-care facilities, forums for gatherings, and suchlike on July 1, 2015, and to detached houses built before 1980 on July 1, 2017. The list of exempted buildings has been extended: point 2 written anew (according to the government proposal, the old and new limitations are close to each other, as most of these buildings are summer cottages, out of which less than one third are suitable for year-round use)[220], point 4 expanded and point 8 added (similarly to the 2012 building regulations for new construction)[221], and point 9 added (because these buildings have special use, comprise special structures, and are subject to special security requirements)[222]:

1) buildings with a surface area of no more than 50 m^2;
2) buildings which are intended for vacational housing and not used in commercial accommodation activity;
3) temporary or periodic buildings;
4) industrial sites and workshops, swimming halls, ice stadiums, warehouses, transportation-related buildings, and motor-vehicle sheds that are attached to a building or detached;
5) non-residential agricultural buildings with low energy demand or non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance;
6) buildings protected in a plan made in accordance with the Land Use and Building Act (132/1999) or by a decision given in accordance with the Decree on Protection of State-Owned Buildings (480/1985), the Building Protection Act (498/2010) or acts preceding it, or buildings that are located in a place which is accepted on the list of World Heritage Sites in accordance with the Convention concerning the Protection of the World Cultural and Natural Heritage, or that are the object of an agreement between authorities concerning the protection of the buildings;
7) churches or other buildings owned by a religious organisation, with space that is solely intended for gatherings or devotional practices or activities in the service of these;
8) greenhouses, bomb shelters, or other buildings, whose use for their purpose would become difficult to an unreasonable degree, if the rules and regulations concerning energy efficiency were applied to them; nor
9) buildings used by the administration of defence.[223]

Authors of the uniform certificate are accredited by a company or foundation selected by Ministry of the Environment; this organisation tests qualifications and sends the names

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Economy, Ministry of the Environment, and main associations and companies in the field of oil and gas products ('HÖYLÄ III,' 2007–2016).

[219] *Laki rakennuksen energiatodistuksesta* (18.1.2013/50).

[220] Government proposal 161/2012, 20.

[221] Government proposal 161/2012, 20–21.

[222] Government proposal 161/2012, 21.

[223] *Laki rakennuksen energiatodistuksesta* (18.1.2013/50), 3.

of the qualified persons to the Housing Finance and Development Centre (ARA), which keeps a record of competent authors and of the certificates themselves, monitoring their use, and deciding on the consequences of non-compliance. ARA inspects housing companies and the acts of individual owners, whether a certificate exists or not, and in the absence of a certificate or its display may recommend or order one to be made or displayed, set a conditional fine (demanding a certificate by a certain date, or else the fine has to be paid), have the certificate made at the owner's expense, or even suspend activities in a building; no criminal sanctions are included among the possible legal consequences.

The first economic consequence of the new certificate on owners is price: the government proposal of 2012 estimated that the direct cost of the certificate would be on average 1,000–2,000 euros per building for firms, in the case of an existing small house on average 500–700 euros for households, and in the case of new small houses, which are certified when obtaining a building permit, on average 150 euros for households. While the comparison enabled by these certificates will have consequences on demand and prices in housing markets, the quantity of this impact in different markets is difficult to ascertain and will depend on the current market situation in the area, the specific location of the object, and numerous other things, among which energy efficiency is a factor.[224] Such estimations are also required to establish how much of the cost can be passed on in higher rents to renter households in the private sector. Tenancy law in the Act on Residential Leases (1995) leaves price formation entirely to the market. The only exception is the cost-recovery rent of state-subsidised apartments. These cost-based rents have been on the rise.

Summary table 2

	National level	Municipality
Policy aims		
1) Realising housing at a reasonable price for all households	X	X
2) Ensuring possibilities of housing for low-income households	X	X
3) Preventing differentiation processes in residential areas	O	X
Laws		
1) Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans (June 29, 2001/604);	X	O

[224] Government proposal 161/2012, 10–11.

aravarajoituslaki (17.12.1993/1190) 2) Acts on housing allowances;[225] *laki toimeentulotuesta* [act on basic income support] 1412/1997 3) Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans (June 29, 2001/604); *aravarajoituslaki* (17.12.1993/1190)	X X	O O
Instruments 1) Production support 1a) interest subsidies 1b) allocation of housing 2) Consumption support 2a) housing allowance 2b) income support 3a) allocation of housing 3b) spatial planning	 X X X O X O	 O X O X X X

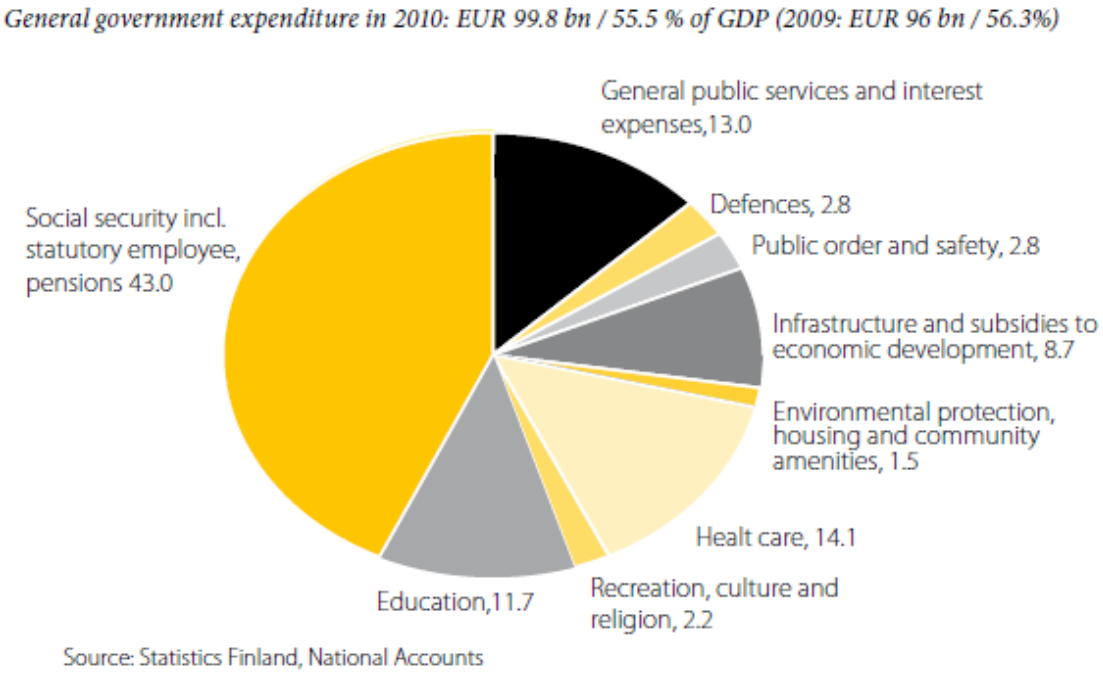
3.6 Subsidization

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

The total revenue of the general government – central government, local government (municipalities), and social-security funds, including, among others, employment pension funds that manage statutory earnings-related pension insurance – is 94.7 billion euros and the expenditure of the general government is 99.8 billion, divided as shown in Figure 16.

[225] *Asumistukilaki* 4.6.1975/408; *laki eläkkeensaajan asumistuesta* 571/2007; *opintotukilaki* 65/1994, and *sotilasavustuslaki* 781/1993.

Figure 16. Where are tax euros spent on?



Source: *Budget review 2013*.

Housing subsidies can be divided into three kinds: 'object-based' financial subsidies; 'subject-based' direct subsidies; and tax subsidies.

Among financial subsidies for housing production carried out by municipalities and general-interest organisations, where ARA has the discretion, interest-subsidy loan authorisations have since 2012 been granted over 1 billion per year (975 million in 2011, 1,025 million in 2012, 1,040 million in 2013).[226] Guarantee-loan appropriations are granted 285 million,[227] bringing the total social-housing-production subsidisation in the latest 2013 budget to 1,325 million.

The state also gives housing renovation and energy grants, subsidising (1) renovations of the apartments of elderly and disabled people,[228] (2) building-condition surveys in cases where the municipal health-protection authority has verified a health risk,[229] (3) the construction of lifts[230] and other improvements enabling elderly or disabled people to access and move in the building,[231] (4) the eradication of a health risk in exceptional cases,[232] and (5) measures to save energy and to adopt renewable energy sources in small houses (of no more than two apartments) on means basis (and covering only other

[226] *Budget review 2013*, 31; *Budget review 2012*, 30.
[227] *Budget review 2013*, 31.
[228] *Laki asuntojen korjaus-, energia- ja terveyshaitta-avustuksista* 1184/2005, 5(1), 6(1.1 and 2), and 8(1).
[229] *Laki asuntojen korjaus-, energia- ja terveyshaitta-avustuksista*, 6(1.5).
[230] *Laki asuntojen korjaus-, energia- ja terveyshaitta-avustuksista*, 6(1.4).
[231] *Ibid*.
[232] *Laki asuntojen korjaus-, energia- ja terveyshaitta-avustuksista*, 2(1.3) and 5(2).

than cost of labour, which may be included in the tax credit for domestic help).[233] The applicant must have the repair and maintenance responsibility of the object; the grants in cases (1), (2) and (5) are applied from the municipality, after which ARA distributes the state grants to the municipalities, while ARA has the discretion in cases (3) and (4).[234] 2013 budget allocation to these renovation grants is 50.5 million.[235]

Besides the above financial subsidies by the state, many municipalities, especially large cities and towns, subsidise social rental housing through lower price terms in land sales and land leases. Municipalities also subsidise rental housing through loan guarantees and loans and through lighter real-estate taxes paid by general-interest owners.

The 'subject-based' direct subsidies comprise three categories of allowance, which are for low-income households: the benefits are granted independent of tenure, but most recipients occupy a rental dwelling. General housing allowance covers 80 per cent of the reasonable housing costs of the household, beyond a deductible based on the number of people and their income and wealth. Student housing supplement is 80 per cent of established housing costs, but not granted for the monthly cost exceeding 252 euros: 201.60 euros monthly. Pensioners' housing allowance is 85 per cent of reasonable housing costs, minus 50,62 euros a month and minus 40 per cent of the amount that exceeds certain family income limits. The annual sum paid out through these allowances is 1.1 billion.

The housing costs of low-income households are subsidised through both the general housing allowance – expenditure 512 million euros among the above 1.1 billion – and basic income support. There are no national statistics on the proportion of housing costs in basic income support. Estimates from the local level vary between 21 and 63 per cent and are on average 52 per cent. Considering that the expenditure on income support was 626 million euros in 2010, the mentioned average percentage would mean that housing is subsidised, through basic income support, an additional approximately 300 million.

On the overlap with 'object-based' subsidies, it is to be noted that, in 1990, 70 per cent of residents in state-subsidised apartments received housing allowance, but in 2009 this proportion had decreased to less than 50 per cent. In other words, people with increasingly higher incomes live in state-subsidised dwellings.

One approximation of the quantity of housing subsidies between ownership and renting (not including municipal subsidies) is shown in Figure 17. According to this illustration, the relative size of subsidies for rental or right-of-occupancy housing and for owner-occupancy would be 58 per cent against 42 per cent.

[233] *Laki asuntojen korjaus-, energia- ja terveyshaitta-avustuksista*, 2(1.6), 5(3), 6(1.7) and 7.
[234] *Laki asuntojen korjaus-, energia- ja terveyshaitta-avustuksista*, 9(1).
[235] *Budget review 2013*, 31.

Figure 17. Housing subsidies (million euros), without municipal, mainly rental-housing subsidies.

Source: Real Estate Federation (2012).

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

No challenges of this kind have so far been identified by the author.

Summary table 3

Subsidization of landlord	Rental	Right of occupancy
Subsidy before start of contract (e.g. savings scheme)	Interest-subsidy loan authorisations; guarantee-loan appropriations	Similar approach
Subsidy at start of contract (e.g. grant)	Housing renovation and energy grants	Similar approach
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)	Housing renovation and energy grants	Similar approach

Summary table 4

Subsidization of tenant	Rental	Right of occupancy
Subsidy before start of contract (e.g. voucher allocated before find a rental dwelling)	None	None
Subsidy at start of contract (e.g. subsidy to move)	Economic assistance a seriously disabled person; income support	Similar approach

Subsidy during tenancy (in e.g. housing allowances, rent regulation)	Housing allowance; income support	Similar approach

Summary table 5

Subsidization of owner-occupier	
Subsidy before start of contract (e.g. savings scheme)	'ASP' savings and loan scheme: targets first-home buyers between eighteen and thirty years of age
Subsidy at start of contract (e.g. grant)	Housing renovation and energy grants
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing allowances)	Housing renovation and energy grants

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?

Owners of apartments may deduct interest payable on their housing loan, in the first place, from capital income and, in the second place, absent capital income, a percentage corresponding to the capital-income-tax rate – until 2011, 28 per cent, since 2012, 30 per cent – from the amount that they pay as personal income tax. (First-home buyers can deduct two per cent more than others from personal income tax, that is, since 2012, 32 per cent, during the year when they start using their dwelling and for nine years afterwards.) The government is phasing out tax deductibility of mortgage interest, so that owners who have taken a loan to purchase a permanent home for their family (or residents who have taken a loan to finance an up-front payment for a right-of-occupancy dwelling, or people who have taken a loan to finance the renovation of their permanent home[236]) could still deduct interest payments in full up till 2011, but after that only 85 per cent of interest payments were deductible in 2012, 80 per cent in 2013, 75 per cent in 2014, and 70 per cent in 2015.

[236] If the improvement is financed by a loan taken out by the limited-liability housing company, then interest payments that are part of charges by the company are not deductible.

The gain to the taxpayer when mortgage interest is deducted from capital income, on the one hand, and when it is deducted from personal income tax, on the other, is equal,[237] but starting from 2012 the tax on investment income – interests, net rental income, and capital gains – was not only increased from 28 to 30 per cent, but also made partly progressive, so that capital income exceeding 50,000 euros is now taxed at 32 per cent. This progressive capital-income tax causes an 'upside down' effect, because the tax subject benefits more from mortgage-interest deduction the higher is her or his capital income.

Financial costs, such as interest expenses directly related to the investment income, are deductible from capital income, so those owners who have taken a loan to finance an apartment as investment can deduct interest payments in full.

Capital gain from the sale of one's home is exempted, if the dwelling was used as the subject's or the family's permanent home for at least two years.

Real-estate tax was introduced in 1993 – when a tax on imputed rental income was abolished. The real-estate tax is collected by municipalities and imposed on the owner, landlord or owner-occupant, never a tenant, not even under a long fixed-term contract.

Tax rates are decided municipally within limits set by Parliament. The rates are currently between 0.6 and 1.35 per cent of the taxable values of the building and the land, and between 0.32 and 0.75 per cent of the value of permanent residences. Given that the tax is based on the value of the property, and not on income derived from it, this is a partial substitute to the wealth tax that was abolished in 2006. Land used in forestry or agriculture is exempt from the tax.

A specific tax of 1–3 per cent is levied for non-built construction sites. Special rates apply in the Helsinki region.

Transfer tax is generally paid by the purchaser. It amounts to 1.6 per cent of the price of housing-company shares and 4 per cent of the real estate price. First-home buyers are exempt from the tax on three conditions: if they buy at least fifty per cent of their dwelling, they acquire it to be their permanent home, and they are between 18 and 39 years of age.

- 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)

There are three concessions to owner-occupiers when compared with landlords. These concessions are the non-taxation of capital gains, the non-taxation of imputed rental income, and the deductibility of interest on home purchase or improvement (renovation) loan.

[237] Nevertheless, concerning the second case, income tax deductibility is limited to a maximum of 1,400 euros a year per taxpayer, that is, for two partners, 2,800 euros a year. A child under eighteen raises the maximum deduction by 400 euros, two or more children by 800 euros; so the maximum that a family can deduct from income tax is 3,600 euros a year. If interest payments exceed that amount, the remaining sum is still deductible from taxable capital income during the next ten years.

In one estimation by the Government Institute for Economic Research[238] in 2006, the forgone tax revenue from the non-taxation of capital gains was 0.9 billion, the forgone revenue from the non-taxation of imputed rental income was 1.8 billion, and the forgone revenue through mortgage-interest deductibility around 0.5 billion.[239]

Because the tax system treats rental income in the same way as other capital income, the taxation of homeownership continues to be lighter than that of other investments.

In addition to these three cases, the non-taxation of housing allowances is a tax subsidy.

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

There is no data available on the influence of tax subsidies on the performance of rental markets.

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

One widespread practice surrounding housing has been the direct payment for repair and other household services. To combat the tax evasion, the government created a tax credit for domestic help (household, nursing and care work, repair and renovation work, and services in installing and advising on information technology). The tax credit covers only the cost of labour, not that of, say, materials. It is personal, so spouses may each utilise the maximum, which has been 2,400 euros (in 2014), 2,000 (in 2012 and 2013), and 3,000 (in 2011); a personal deductible of 100 euros applies. The credit comprises 15 per cent of salary and 45 per cent of compensation for work (in 2012–2014) (30 per cent and 60 per cent, respectively, in 2011). Thus the maximum credit is available if, during 2014, an individual has purchased services where the portion of labour cost amounts to approximately 5,555 euros [(5,555 × 45 %) – 100) = 2,399.75].[240]

Summary table 6

	Home-owner		Landlord	Tenant
Taxation at point of acquisition	Transfer tax		Transfer tax	-
Taxation during tenancy	Real-estate tax		Income tax on rental income; real-estate tax	-
Taxation at the end of tenancy	Capital gain exemption from income tax	Homeownership		-

[238] http://www.vatt.fi/en/.
[239] Quoted in Saarimaa, *Studies on Owner-Occupied Housing, Taxation and Portfolio Choice*.
[240] http://www.veronmaksajat.fi/Asunto-ja-auto/Kotitalousvahennys/.

4. Regulatory types of rental and intermediate tenures[241]

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)?

There is one type of residential tenancy contract only. Among intermediate tenures, partial-ownership schemes are made of a bundle of contracts, which include a tenancy contract, and right of occupancy is a substantially different legal form, even though the few statistics that exist on the ownership structure of rental apartments tend to group it together with interest-rate-subsidised rental apartments.

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.[242]
  - Different types of private regulatory rental types and equivalents:
    - Rental contracts

Beside the standard tenancy contract, the leasing of business premises was separated into the Act on Commercial Leases in 1995;[243] this separate act applies depending on the principal purpose of use of the apartment.[244] The leasing of land has been regulated separately from the Land Code in successive land lease acts since the nineteenth century. The current Land Lease Act is from 1966.[245]

- Are there different intertemporal schemes of rent regulations?

The remnants of rent regulation in the private sector were erased with the Act on Residential Leases in 1995. The change will be related in detail in chapter five.

- Are there regulatory differences between professional/commercial and private landlords?

[241] **I.e. all types of tenure apart from full and unconditional ownership.**
[242] 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.
[243] *Laki liikehuoneiston vuokrauksesta* (31.3.1995/482).
[244] See 6.4.
[245] *Maanvuokralaki* (29.4.1966/258)

The main difference between commercial or professional landlords and private individual landlords is that the former must comply with consumer law. The Consumer Protection Act determines its own scope and applies to tenancy if its criteria are met.

- Apartments made available by employer at special conditions

Employment-related apartments may be benefits for the employee or else rented, the renter-employee either paying full rent or paying part of rent and receiving the rest as benefit. When the apartment is rented on grounds of employment or civil service and the employer, as landlord or through an association, has control over the apartment, certain special rules apply (such as the tenant's notice period of 14 days at any event and right to terminate without notice when the employment ends). These rules are contained in a chapter of the Act on Residential Leases that is mandatory for the benefit of the tenant.[246]

- Mix of private and commercial renting (e.g. the flat above the shop)

The rule for demarcating whether the Act on Residential Leases or the Act on Commercial Leases applies – the principal purpose of use of the apartment – governs such mixed commercial and residential renting as the flat above the shop.

- Cooperatives
- Company law schemes

The two cooperative-like structures in the system are the right of occupancy, which emulates the Swedish housing cooperative as it stood in the 1970s, and the rare, real general-corporate-law form of cooperative. The highly prominent limited-liability housing company is a form of apartment ownership; see discussion in 1.4.

- Real rights of habitation
- Any other relevant type of tenure

Among the special rights that may be registered in the Land Information System under the Land Code is life annuity ('*kiinteistöeläke*,' 'real estate pension'). When a seller retains possession of an apartment based on such a clause in a contract of sale, the buyer will not receive the relevant ownership entitlement and does not transfer the apartment to the seller's use; hence, tenancy legislation does not apply.

Lastly, the supply of time-share apartments from business to consumer is regulated in a chapter of the Consumer Protection Act, which implements the European directive.

[246] Act on Residential Leases (*laki asuinhuoneiston vuokrauksesta*) (31.3.1995/481), 86–95.

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.

In effect, the nationwide system of social rental housing is superimposed on the forms of tenure by attaching conditions to state subsidies for construction and renovation. The conditions, so-called '*ara* restrictions,' require cost-recovery rent and, concomitantly, regulated resident selection and expire within a number of years after the grant of the subsidy. That number of years has been between five and forty depending on the type of subsidy and the form of tenure. The recipients have been municipalities and other general-interest entities;[247] the granting authority is ARA.[248]

Apart from the state-based system, municipalities undertake their own independent development, which is considerably smaller. This includes new production; also, in land sales, redundant buildings may be left in the hands of municipalities; or a municipality may buy, say, an old magazine to house substance abusers: all sorts of public tenancies – especially if a municipal limited-liability company already exists for housing – have been arranged, even acquisitions of dwellings to be managed by the municipal companies (although the last has not happened, at least in Helsinki, for years).

- 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)

The owner of the dwelling, a municipality or a general-interest organisation, has the right to choose the tenant. Often, a municipal real-estate company as owner will let municipal housing authorities carry out the selection, and municipalities may have similar

[247] See 1.2 above and 7.1 below
[248] See 3.2 above

agreements with other owners as well. The municipality has the statutory duty to monitor compliance with the state-wide resident-selection criteria,[249] which will be reviewed next. Municipalities are allowed to have their own resident-selection guidelines, but these must not contradict the statutory tenant-selection criteria – laid down in legislation since 2006, as reviewed below – or the supplementary resident-selection guideline issued and periodically updated by ARA ('resident-selection guideline')[250]. For example, the three large municipalities of the capital city region, Helsinki, Espoo, and Vantaa, have their own joint instructions, which cater for their special features.[251]

When we investigate the criteria for resident selection, it will be necessary to consider not only purposes and rules, but also administrative guidelines and, here as ever, the first step of comparative law, practice implementing the policy. The description of the system in what follows here would be impossible unless the resident-selection guideline issued by ARA, which in its legal nature is a recommendation, was surveyed, because the specifics of selection have not, unlike in, say, England, been regulated in an act. For instance, detailed questions concerning homelessness or the urgency of housing need, not to mention the entire topic of legal pluralism, only emerge at the level of the guideline and in practice. The fact that the statal, binding legal norms are flexible and have not been made more detailed is, indeed, an explicit policy choice, justified by the need of adapting to regionally varying market conditions and by the importance of tenant selection in preventing segregation. Such reasons were invoked by a government proposal which, in 2006, responded to the constitutional requirement of stating the grounds of individual rights and duties in legislation when a governmental decree is mandated, and to the practice of the Constitutional Law Committee that the grounds must be sufficiently precise and clear-cut.[252] The government proposal, which, at the same time, legitimised the use of membership in a municipality as a criterion between applicants of equal priority, said:

> Municipal rental-housing markets vary considerably among each other, ranging from the problem of vacant dwellings to long lines of applicants. That is why the aim of, among others, resident-selection instructions and more effective control of municipalities has been to avoid the need to make resident-selection norms more detailed. The set of provisions concerning resident selection should be sufficiently flexible to respond to different conditions

[249] Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans (*laki vuokra-asuntolainojen ja asumisoikeustalolainojen korkotuesta*), June 29, 2001/604, 11d(1) (August 18, 2006/717): 'The local authority supervises compliance with the tenant selection criteria. The local authority is empowered to request the borrower to provide any information necessary to carry out such supervision.' Correspondingly, *aravarajoituslaki* 17.12.1993/1190, 4d(1) (18.8.2006/716).

[250] *Opas arava- ja korkotukivuokra-asuntojen asukasvalintoihin*, Asumisen rahoitus- ja kehittämiskeskus (ARA), February 12, 2014, available at http://www.ara.fi/asukasvalinta.

[251] *ARA-vuokra-asuntojen asukkaiden valinnan valvontaa koskevat Helsingin, Espoon ja Vantaan kaupunkien ohjeet*, at http://www.hel.fi/wps/wcm/connect/3ca734804a14deb6bd69fdb546fc4d01/KVAS_Asval_valvontaohje.pdf?MOD=AJPERES&CACHEID=3ca734804a14deb6bd69fdb546fc4d01.

[252] Additionally, the proposal referred to paragraph 19(4) of the Constitution (see 3.1 above), explaining that the 'necessity of precise and sufficiently comprehensive basic provisions at the level of legislation is also linked to the position of state-subsidised housing production as the means to carry out the constitutionally prescribed task of public power, although the provision does not guarantee right to housing as a subjective right.' Government proposal 47/2006, 4.

> of demand, and, in addition to considerations of housing need, it must also prevent differentiation process in residential areas and buildings.[253]

When, in the same proposal, a provision was also suggested that ARA 'may issue guidelines concerning the selection of residents and the monitoring of resident selection,' the Constitutional Law Committee disallowed the provision. The Committee drew on its standing practice that provisions on the issuing of guidelines are unnecessary, because a public authority may, in any case, issue guidelines within its mandate, without any specific authorisation, and such provisions are, in addition, 'apt to blur the line between binding legal rules laid down under the law and guidelines which have the nature of a recommendation.'[254]

The purpose of resident selection, moved up from a decree to legislation in the changes of 2006, comprises the following:

> The purpose of tenant selection is that interest-subsidy rental apartments are assigned to households having the most acute need for a rental dwelling, whilst striving for a varied community structure in the building and a socially balanced neighbourhood.[255]

The three criteria for selection – housing need, wealth, and income – are likewise now in legislation.[256] According to the law, priority is given to homeless applicants and other households in most urgent need of housing, households with the least means and households with the lowest income.[257] By a decree from 2008, it is specified that the applicant with the most urgent need for housing has priority in the overall assessment, and incomes and wealth are compared between applicants who are in equally great need.[258] In assessing housing need, the decree says, 'in particular, the current housing conditions of the applicant household and the urgency of their improvement are taken into account. In addition, the size of the household and its age structure are taken into account. The dwelling offered must be reasonable, in proportion to the size and age structure of the household. In determining the reasonable size of the dwelling, the local demand and supply of different types of dwellings are taken into consideration.'[259]

In addition to these criteria, further specifics are supplied in the resident-selection guideline. Based on the guideline, the following order of priority may be used flexibly as an aid in deciding the most urgent housing need:[260]

1) In the most urgent need of housing is, for instance, an applicant who is homeless or in a similar situation.

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[253] Government proposal 47/2006, 6.
[254] Constitutional Law Committee 14/2006.
[255] Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans, June 29, 2001/604, 11a ['The purposes of resident selection'] (August 18, 2006/717); correspondingly, *aravarajoituslaki* 17.12.1993/1190, 4a ['The purposes of resident selection'] (August 18, 2006/716).
[256] Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans, June 29, 2001/604, 11b(1) (August 18, 2006/717); *aravarajoituslaki* 17.12.1993/1190, 4b(1) (August 18, 2006/716).
[257] Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans, June 29, 2001/604, 11b(2) (August 18, 2006/717), first sentence; *aravarajoituslaki* 17.12.1993/1190, 4b(2) (August 18, 2006/716), first sentence.
[258] *Valtioneuvoston asetus asukkaiden valinnasta arava- ja korkotukivuokraasuntoihin* 20.3.2008/2008, 5.
[259] *Valtioneuvoston asetus asukkaiden valinnasta arava- ja korkotukivuokraasuntoihin* 20.3.2008/2008, 2.
[260] *Opas arava- ja korkotukivuokra-asuntojen asukasvalintoihin*, 19–20.

As homeless shall be regarded a person who
- lives outdoors;
- lives in a place unsuitable for being a dwelling;
- lives in a night shelter or other comparable lodging;
- lives in an institution because of a lack of dwelling or cannot be released from an institution because of a lack of dwelling; or
- is in terms of housing conditions in a situation comparable to the above.

As homeless shall also be regarded a family whose members either live separately or live in a boarding house or hotel, with friends or acquaintances, in a refuge [a shelter meant for people confronted by domestic violence or the threat of it], or in other impermanent accommodations.

In a specially urgent need of housing may, additionally, be considered, among others, a person
- who has been obliged to move, by a decision of an official, from an apartment with no fault of his or her own
- who becomes homeless because a dwelling will be torn down
- whose dwelling is particularly crowded, more than three persons per room (excluding kitchen) or at most 10 square metres per person
- who is moving to a new locality where he has a job.

2) In urgent need of housing may be considered, among others, an applicant household

- who has been given notice from the current housing
- whose family member's permanent illness or injury calls for a healthier or more appropriate dwelling according to a medical certificate
- for whom allocating a dwelling will free up space in a social-service support home
- who is with a family lodging as a subtenant or on the basis of tenancy in a collective residential home or collective economy
- whose current dwelling is too crowded: more than two persons per room (excluding kitchen) or at most 15 square metres per person
- who has been granted a divorce or by court order end of cohabitation, and whose separation is prevented by a lack of dwelling
- who is without a family and without an independent dwelling
- who has a reason comparable to these for the need of housing.

3) In addition, in need of housing may be considered, among others, an applicant household

- whose dwelling is insufficiently equipped
- whose need of a dwelling is caused by conflict in the family circle
- whose current housing costs are evidently excessive relative to family income and wealth
- whose commute is long and difficult
- who is founding a family and without a common dwelling
- whose current dwelling is crowded: more than one person per room (excluding kitchen)
- whose dwelling is inappropriate on grounds of shift work
- whose current dwelling is for other reason unsatisfactory.

> Cumulating factors should be taken into account. So should be the duration, for which the inadequate housing conditions have lasted.

Furthermore, according to the degree from 2008, a household cannot be selected if it has sufficient wealth to obtain a dwelling, which meets its housing need, without state support. Otherwise, wealth is a factor to be taken into consideration.[261] Income limits were removed from decree in 2008. Previously, they had been raised rather high (at one point, seventy per cent of Finns were reckoned eligible for social housing). But income[262] remains a criterion side by side with need and wealth for placing households in an order of priority, and today municipalities have, in practice, the power to determine income standard.

Exceptions to the selection criteria and the order of priority are provided for in the revised 2006 legislation. An exception to the selection criteria is allowed for social or health reasons or to promote appropriate use of the subsidised dwellings; such an exception has to be, taking into consideration the aims of tenant selection, well-grounded in terms of social reasons, the position of applicants, or the upkeep of the house. The exception must not substantially hinder the prioritised applicants from obtaining a dwelling, and specifying regulation of the exception can be issued by decree.[263]

An exception to the established order of priority may be made in an individual case, if this is well-grounded in view of the special conditions of the applicant household, the rental-housing situation in the locality, or the resident structure in the rental building or in the residential area.[264]

The guideline reveals that credit information has in practice affected selection decisions. The Parliamentary Ombudsman had, in 2004 and 2007, decided that an exception to the statutory criteria, which do not mention credit information, could not be made on the ground of credit defaults. Only if even after such methods as a higher security deposit (for instance, two month's rent, the legal maximum being three month's rent[265]), a promissory note given by municipal social authorities, housing allowance or general income support (part of which can be directed straight to the landlord's account), or an initial fixed-term agreement there is still a real and grounded risk that the tenant will neglect to pay the rent, a resort to an exception from the order of priority is possible in the presence of credit defaults.[266]

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[261] *Valtioneuvoston asetus asukkaiden valinnasta arava- ja korkotukivuokra-asuntoihin* 20.3.2008/2008, 3(3). Until 2013, the resident-selection guideline recommended maximum wealth limits for households of different sizes, but since 2014 municipalities are recommended to determine maximum wealth limits and to communicate these to the owners of state-subsidised buildings. *Opas arava- ja korkotukivuokra-asuntojen asukasvalintoihin*, 13.

[262] Permanent monthly income or, if it varies considerably, average income within last twelve months.

[263] Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans, June 29, 2001/604, 11c(1) (August 18, 2006/717); *aravarajoituslaki* 17.12.1993/1190, 4c(1) (August 18, 2006/716).

[264] Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans, June 29, 2001/604, 11c(2) (August 18, 2006/717); *aravarajoituslaki* 17.12.1993/1190, 4c(2) (August 18, 2006/716).

[265] Act on Residential Leases, March 31, 1995/481, 8. See 6.4 below.

[266] Parliamentary Ombudsman April 26, 2007, eoak Nr. 1429/2005 *Maksuhäiriöiden huomioiminen aravavuokra-asuntojen asukasvalinnoissa*/*Beaktande av betalnigsstörningar vid val av hyresgäster till arava-bostäder*.

It is counselled in the guideline that default in credit information should not hinder the allocation of a dwelling if the criteria of need, income and wealth are filled – at least if the default is insignificant or it can be estimated, based on the credit-information history of the applicant, that the neglect will not be repeated.[267] Problematically, it is also mentioned that it is not reasonable to expect that an agreement will be entered into with such an applicant who owes arrears of rent to the very same landlord to whom an application is made. The guideline suggests, in these cases, making a sublease about the apartment, giving a promissory note on behalf of the municipality, directing the applicant to apply for preventive income support, or in some cases resorting to a fixed-term tenancy contract.[268]

In the context of resident selection, the mixing policies against segregation have left authorities plenty of discretion. In Helsinki, it has not been defined what level of concentration is excessive or how to effect the goals of spatial dispersal.[269] In the following, I quote a study on city officials' perceptions in housing Somalis, as the officials make the case-specific decisions where, as the researchers say, assumptions and reasoning behind the practice are crucial.[270] Or, as we might also put it, what remains in the intuitive dimension matters greatly.

The city officials choose new residents to vacancies based on the applicants' requests and the resident composition of a building. If a building already has many immigrants and several large families, the officials try to direct an applying immigrant household into another building, using common sense as the logic behind the practice. As explained by two officials interviewed by Dhalmann and Vilkama:

> A: There are no specific rules... you just think with...
> B: ... a normal common sense. [...] If there are lots of children, it will get really noisy. It's for sure. We try to pay attention to that.
> A: [...] you aim for a viable resident composition, so that everyone would feel good about living there, so that it would work well. (Two housing officials, Helsinki)

Thus, the housing officials and, in some cases, managers of municipal real-estate companies, informing the officials of a desired profile for residents, have 'considerable power to decide on who will be housed and where.'[271]

One special group with particular customs are Roma, who have, since 1995, a constitutional right to maintain and develop their own language and culture. There is no Roma-specific legislation, and the housing of Roma is handled through the general rules above and the anti-discrimination legislation, which covers ethnic origin. As a matter of fact, the 10,000 Roma in Finland are mostly housed in state-subsidised dwellings. According to the already-mentioned guideline, Roma customs should, when possible, be taken into account in allocating apartments, but the customs do not override constitutional and statutory individual rights of the citizen. In a directive issued by

[267] *Opas arava- ja korkotukivuokra-asuntojen asukasvalintoihin*.
[268] *Opas arava- ja korkotukivuokra-asuntojen asukasvalintoihin*, 29–30.
[269] Hanna Dhalmann and Katja Vilkama, 'Housing policy and the ethnic mix in Helsinki, Finland: perceptions of city officials and Somali immigrants,' *Journal of Housing and the Built Environment* 24, 2009, 431.
[270] Ibid.
[271] Ibid.

Ministry of the Environment and ARA, it is said that Roma customs concerning permission to move and duty to yield have come up in recent selection practice. A publication by Maija Pirttilahti, 'Special Features of Roma Culture in Housing,' is cited for the following description of the issues:

> Migration: According to a custom of Roma culture, an in-moving family contacts families who have lived longer in the region and asks for a permission to move. In many municipalities, the housing authorities have agreed with the Roma liaison of the municipality or an older Roma who has lived long in the area about how to deal with the matter of the new family moving in. The liaison discusses the matter with Roma and brings the matter to the municipal housing secretary.
> Duty to yield: If a dispute or a wider conflict has taken place between two Roma families, both the person causing the conflict and his or her family have an obligation to move away from the region. ...

The cited publication has, the guideline says, in some cases been mistaken for an actual guideline concerning tenant selection in the hands of municipal authorities.

- from the perspective of prospective tenants: how do I proceed in order to get "housing with a public task"?

The applicant sends the form YM34/02[272] with annexes to the owner or, if agreed, to the municipality. While some owners have delegated selection decisions to private firms or estate agents,[273] the responsibility for the selection process, the grounds for selection, and the storage of data lies with the owner.[274] It is illegal to pass on the costs of selection to the applicant.

The tenancy contract itself is entered into with the owner. The standard tenancy act regulates the duration of the contract and guarantee deposits. But a public-sector tenant enjoys, in fact, a heightened protection against notice, because both the landlord and rent level are stable, and the tenant's housing costs may be funded through housing allowance or general income support, if need be. Thus, eviction may not really be expected on grounds of unpaid rents. The upshot was documented in the study on perceptions of tenure security reviewed at the end of chapter 2.

- Summary table 7

Rental housing **without a public task** (market rental housing for which the ability to pay determines whether the tenant will rent the dwelling); for example different intertemporal schemes of different landlord types with different tenancy rights and duties	Main characteristics • Types of landlords • Public task • Estimated size of market share within rental market • Etc.

[272] Ministry of the Environment Decree 904/2006.
[273] *Opas arava- ja korkotukivuokra-asuntojen asukasvalintoihin*.
[274] For the data-storing responsibilities, see 6.2 below.

1) Private tenancy	All types of landlord, private owners, enterprises, parishes, communities are involved. The share of private rentals is 16 per cent of the housing stock.
Rental housing for which a **public task** has been defined (Housing for which government has defined a task; often non-profit or social housing that is allocated according to need, but not always)	
2) Social rental housing	State subsidised production; municipalities and general-interest organisations as landlords. Cost-recovery rent and regulated tenant selection apply while under '*ara* restrictions.' The share of social rental housing is 14 per cent of the housing stock.

- For which of these types will you answer the questions in Part 2; which regulatory types are important in your country?

The answers in the following chapters concern private tenancy and, where different, state-subsidised rental dwellings under *ara* restrictions.

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)?
- What were the principal reforms of tenancy law and their guiding ideas up to the present date?

For most of the twentieth century, the development of tenancy legislation was 'a story about the increase of mandatory provisions.'[275] At the beginning of the century, landlord and tenant relations were governed by dispositive law transferred from the early Swedish town codes to the Codification of 1734, which was followed when Finland was an autonomous Grand Duchy within the Russian Empire during 1809–1917. The dispositive provisions were supplanted by standard forms tilted in favour of the landlord. As the draft committee for the first tenancy statute put it in 1921, landlord and tenant relations were 'mostly' arranged otherwise than according to the dispositive code. According to the committee: 'The generally employed printed tenancy-contract forms include a host of provisions in favour of the house-owner.'[276]

Housing shortage caused by World War One necessitated adopting acts which allowed rent control in 1917. Municipal boards were set up to regulate rent, investigate terminations, and mediate apartments in 1919. The controls were gradually phased out, and they ended completely in 1924. The first tenancy statute was prepared during the rent-control period. The act,[277] which did not include rent control, was passed in 1925 (after parliamentary debates on one government proposal could not be finished in time in 1923, and a second proposal was rejected in 1924)[278]. The act of 1925 made the tenancy contract prevail in voluntary transfers of title, and gave the tenant certain remedies regarding the condition of the apartment. It also supplied an exhaustive list of grounds on which the landlord could rescind the contract, such as the tenant's neglect to pay the rent and nuisance with her way of life. The provisions were not significant compared to the regulation during rent control, but they show that the mentality had changed, and 'the parties were no longer regarded as (economically) equal contractual partners.'[279]

During World War Two, rent control was re-introduced under enabling acts, which were passed in accordance with the procedure for amending the Constitution, but as an exception. (For the practice of exceptive enactments, see 3.1 above.) The procedure for constitutional enactment came to be employed later in passing also solely tenancy-

[275] Ari Saarnilehto, *Huoneenvuokran sääntelystä*, Suomalainen lakimiesyhdistys 1981, 49. The opening five paragraphs of this historical outline are based largely on ibid., 40–50, and the first pages of the commentary to the Act on Residential Leases of 1995, Ari Kanerva and Petteri Kuhanen, *Laki asuinhuoneiston vuokrauksesta*, Third, revised edition, Kiinteistöalan kustannus 2011, 25–29.
[276] 'Ehdotus huoneenvuokralaiksi ynnä perustelut,' 4 *Lainvalmistelukunnan julkaisuja* 1921, 16.
[277] *Huoneenvuokralaki* 12.5.1925/166.
[278] Ari Saarnilehto, *Huoneenvuokran sääntelystä*, 42.
[279] Ari Saarnilehto, *Huoneenvuokran sääntelystä*, 42.

related laws, when these laws were thought to prevent the owner's freedom of use, contrary to protection of property. The second period of rent control lasted from 1940 in regionally diverging ways until February 1961, when a new tenancy act was passed, and in several cities until the end of 1961 (Helsinki and Tampere) and in part until 1963 (in Helsinki).

In 1957, a government committee proposed protecting the tenant against notice as in Swedish law; the report was rejected, and in 1961 a new act was passed without the direct protection. The 1961 tenancy act[280] included the possibility of damages after a notice and the first-ever provision under which the unreasonableness ('*kohtuuttomuus*') or 'unconscionability' of the tenancy contract, including the rent, could be investigated. The act did not (otherwise) regulate the amount of rent.

Nevertheless, rent control was implemented throughout the country in the dire economic conditions of the late sixties, when interim regulation supporting economic growth 'froze' rents at the level of February 29, 1968 in buildings put up before that date. Landlords increasingly gave notice, selling off much of the rented stock and evicting sitting tenants, for security of tenure was poorly regulated in the tenancy act. In response by the government, the interim regulation of 1969 protected the tenant against notice (based on the model proposed in 1957). This protection was transferred to the tenancy act proper through the constitutional enactment procedure in 1970 and entered into force on January 1, 1971. The unions, especially on the employees' side, played a key part in these 'corporatist' developments, through which tenancy agreements became as a rule unlimited in time, and grounds for notice were limited by law to such reasons as the landlord's need for the apartment for her own or family member's, near relative's, or employee's use.

In 1974, a system of rent regulation succeeded rent control. (Rent control still reappeared twice, for two less-than-a-year-long intervals, during 1976–1978, as part of the economic stabilisation regulation of that period.) Under the new rent-regulation system, which was incorporated in the tenancy act,[281] the landlord could unilaterally increase rent according to annual guidelines issued by the Council of Ministers, which followed the recommendation of a subcommittee that included representatives from the landlords', tenants', and labour-market unions. In hindsight, one shortcoming of the system was that the subcommittee frequently decided by voting, and the recommended annual rent increases did not always reflect increases in costs, as was originally planned. Among other shortcomings, the landlord could only increase rent beyond the guidelines through court approval, which was costly in many ways. The tenant could in turn claim rent reduction at any time on the ground that the rent should not exceed the general level of market rents. Reduction or increase, the level of market rents was difficult to determine. The government did publish rent statistics to aid the courts and the parties, but initially a problem was that the system had taken off from a condition with no market but a half-decade history of rent control. Also later, the statistics were only collected for those ten cities where the district court had a special division called the

[280] *Huoneenvuokralaki* 10.2.1961/82.
[281] *L huoneenvuokralain muuttamisesta* 25.1.1974/72

housing court; in other district courts, the evidence put forward appeared to be even more random.[282]

In preparation since 1975, a new tenancy act was proposed for Parliament in 1984, and eventually passed, in accordance with the constitutional-enactment procedure, in 1987.[283] The act of 1987 sustained the rent-regulation system, modified only slightly to include a reasonable profit (the percentage of which, four, was mentioned in the government proposal of 1984)[284] in the annual rent increase. Among other changes, the provisions on the leasing of business premises were grouped into a separate chapter.

In the early nineties, two consecutive reductions in the scope of the rent-regulation system were justified by the need to bring more rental apartments on the market.[285] First, buildings put up on January 1, 1991 or later in the northern and central Finland (but even there excluding university towns) were exempted from the system. In the growing urban areas, it was still considered unnecessary to remove rent regulation, as all housing capacity was already in use and new private construction is very small. While this change out of rent regulation – which made reference to the chapter on commercial leases in the 1987 tenancy act – differentiated the protection of the tenant across the country, the Constitutional Law Committee of Parliament allowed it to be passed without the constitutional-enactment procedure. In the spring of 1991, the programme of the first conservative government in twenty-five years included the dismantling of the rent-regulation system. In the fall of the same year, a new set of changes was passed, which significantly extended the not-rent-regulated regime to cover any contract entered into on February 1, 1992 or later in any part of the country, regardless of the age of the building.

Although leaving out data on the consequences of the 1987 act,[286] a government proposal for a new tenancy act in 1994 affirmed that tens of thousands of private rental apartments had entered the market in 1992–1994. According to the Constitutional Law Committee, the new act did not require the constitutional-enactment procedure, because the fact that old contracts could be renegotiated under the proposed law in conditions of greater contractual freedom was a 'purely formal and in the light of protection of property a constitutionally insignificant factor.'[287] In the act that was passed prior to the elections in the spring of 1995, the not-rent-regulated regime became the sole system for all apartments throughout the country. The new 'Act on Residential Leases' entered into force on May 1, 1995.[288] The leasing of business premises became regulated in a separate 'Act on Commercial Leases.'[289]

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[282] The problems of the system are discussed in Ari Saarnilehto, 'Eräitä havaintoja heikomman suojan sääntelyn ongelmista ja soveltamisesta oikeuskäytännössä,' in Saarnilehto (ed.), *Heikomman suojasta. Yksityisoikeudellisia kirjoituksia*, Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja B, 4 Muut kokoomateokset, Turku 1995, 201–239, at 213–225.
[283] *Huoneenvuokralaki* 653/1987.
[284] Government proposal 127/84.
[285] The account of the 1990–1992 changes in the text is based on Ari Saarnilehto, *Huoneenvuokralain uudet säännökset*, Kiinteistöalan kustannus 1992, 9–16.
[286] Criticised in Saarnilehto, 'Eräitä havaintoja,' 223–225.
[287] Constitutional Law Committee 28/1994.
[288] Act on Residential Leases (*laki asuinhuoneiston vuokrauksesta*) (31.3.1995/481). An unofficial translation is available at http://www.finlex.fi/en/laki/kaannokset/1995/en19950481.
[289] *Laki liikehuoneiston vuokrauksesta* (31.3.1995/482).

- 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)

The whole trajectory of tenancy legislation all through the twentieth century cannot be said to have been influenced by a particular ideology. Nevertheless, the input by labour-market unions in the transfer of provisions protecting the tenant against notice into the tenancy act proper in 1970 was mentioned above. It is instructive to look back and see how the impact of unions was discussed in a dissertation on tenancy law in 1981: 'The influence of tenants' own associations on changes to [the act of 1961] is perhaps not very significant. The position of the tenant has, however, been improved by the fact that labour movement has made a point of the tenant's case. Tenants are, after all, generally regarded as being among workers. The housing question was indeed originally seen as a problem of housing workers. Active operation was left at first to left-wing parties. Interference by trade organisations in the matter has speeded up reforms. The significance of the labour union was brought out particularly clearly when the protection of the tenant against notice was legislated [in 1970]. The founding of the housing courts [at the beginning of 1974] and the creation of a system of rent regulation [which entered into force on February 1, 1974] were linked to incomes policy agreements.'[290]

The gradual abolition of rent regulation was undoubtedly the outcome of a change in ethos, at a time when neoliberalism had come ashore and Thatcher's model was influential, while the country had simultaneously entered a deep recession. Looking more narrowly at the leading parties in government around the early 1990s, after the Social Democratic Party and the Centre Party had together governed more or less continuously from 1966 until 1987, we observe the National Coalition Party and the Social Democratic Party being the main parties in the government of 1987–1991 and the Centre Party and the National Coalition Party the main parties in the government of 1991–1995. After this, the Social Democratic Party and the Centre Party led the governments of 1995–1999 and 1999–2003. Yet, since early 1995, the Act on Residential Leases has remained (almost entirely) as it is.

- What were the principal reforms of tenancy law and their guiding ideas up to the present date?

Please see the answer above.

- Human Rights:
    - To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in

[290] Saarnilehto, *Huoneenvuokran sääntelystä*, 59–60 (footnotes removed).

- the national constitution
- international instruments, in particular the ECHR

- Is there a constitutional (or similar) right to housing (droit au logement)?

To summarise briefly the impact of fundamental rights on tenancy regulation, protection of property has historically been the pre-eminent constitutionally guarded right. In 1994, the fundamental-rights provisions in the Constitution were revised, and today, certain rights, including equality and non-discrimination, freedom of movement, and the right to privacy, are occasionally found in practice as grounds of legal claims together with other grounds. Thus, basic rights and liberties, enshrined in the Constitution and limited in their contours by international human rights, are not only goals directed at the legislature. In the absence of a constitutional court or other limits on the applicability of the Constitution, any ordinary court is competent to assess a constitutional-right claim. But the most important agents applying the Constitution are the Constitutional Law Committee of Parliament and the Parliamentary Ombudsman (see 3.1).

In the constitutional right to social security, its first paragraph ('Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care'), there is contained a subjective right to 'arranged housing': according to the government proposal of 1993, 'indispensable subsistence and care' includes 'the arrangement of nutrition and housing which are necessary to sustain health and life.'[291] In its fourth paragraph, the right to social security lays down the goal-type responsibility of the public sector to promote housing ('The public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing'). International human-rights instruments have not been mentioned in any of the government proposals for legislation currently in force on state-subsidised housing (from 1993), interest-rate subsidies (from 2000), and housing for special groups (from 2006).[292]

[291] Government proposal 309/1993, 69–70.
[292] Jan-Erik Helenelund, 'Asuminen ihmisoikeutena Suomessa – oikeuden kohdentuminen,' 1.

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))

As before the passing of the Act on Residential Leases in 1995,

- the conclusion and the interpretation of a tenancy contract are governed by general contract law: three main chapters – formation, authorisation, and invalidity – in the brief Contracts Act,[293] which is common to the Nordic countries after having entered into force between 1915 and 1929,[294] general principles of law, and the case law of the Supreme Court.
- Tenancy legislation is concerned with the content of the contract and with remedies. Mandatory provisions in the tenancy statute (see list below) generally protect the tenant.
- Regulated rents characterise state-subsidised dwellings, which are otherwise subject to the same unitary contract regime.

Today, everywhere in the country,

- parties may freely agree on the rent and on rent increases except in state-subsidised dwellings which are under limitations. The only constraint on the parties' power to agree in common on rent increases is contained in the Act on Indexing Restrictions.[295] Nevertheless, courts can always examine the reasonableness of the rent and other contract terms.

Under the Act on Residential Leases, the contract may be terminated also in order to increase the rent:

- when the landlord gives notice, termination will only be illegal if the landlord does not state a justifiable reason – and increasing the rent to a reasonable level, which the tenant refuses to pay, is one. The notice period is either three or six months for the landlord (minimum) and one month for the tenant (maximum) (see 6.6 below). On the other hand, the time when the notice period starts to run may be agreed upon ('Duration of contract,' 6.4 below).

[293] *Laki varallisuusoikeudellisista oikeustoimista* 13.6.1929/228.
[294] Sweden in 1915, Denmark in 1917, Norway in 1918, and Finland in 1929.
[295] See 6.4 below.

- A fixed-term agreement expires at the end of the term, and is very difficult to terminate earlier.

The main rule on maintenance – dispositive since 1995 – is that the landlord has the duty to keep the apartment 'in such condition as the tenant may reasonably require, taking the age of the apartment, the local housing stock and other local conditions into consideration....'[296] The dispositive character of the rule has been commented upon:

> Up to the most recent revision of the Finnish Landlord and Tenant Act, the content of the mandatory rules on the condition of the flat was equivalent to the rules in Chapter 12 of the Swedish Land Law Code. When the Finnish Act on Residential Leases was passed, the object was, however, to allow the parties greater freedom of contract regarding the condition of the flat as well as regarding many other aspects. In order to "protect" the tenant, it was, indeed, still stipulated that the tenant's right to rely on the rule on the condition of the flat could not be limited by agreement. In practice, this has the effect that the parties may agree that the flat is rented in an inferior condition, but that a contractual term which solely takes away the tenant's right to make a claim about the bad repair and defective state of the flat is not permitted. However, the tenant is always entitled to terminate the lease agreement if the use of the flat entails an obvious health risk (Section 63).[297]

Besides the tenant's right of rescission in the case of a manifest health risk, there are criteria for the quality of habitable dwellings; these are laid down in health-protection, land use and building and environmental regulation.

- Are there regulatory law requirements influencing tenancy contracts
  - 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.

The regulatory law requirements in question have been set in health-protection legislation,[298] which is supplemented by indoor health guideline,[299] in land use and building regulation[300] and in environmental legislation, as shown in 3.4 above. This regulation functions, in effect, like expert testimony in tenancy disputes: the provisions of the tenancy act must be applied according to their wording and the criteria for, let us say, extraordinary termination (rescission) must be fulfilled – not only criteria derived from, for instance, minimum health standards in the indoor health guideline.

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[296] In Act on Residential Leases 20(1). See 'Repairs,' 6.4 below and, for the remedies, 'Defects of the dwelling,' 6.5 below.

[297] Ari Saarnilehto (assisted by Seija Heiskanen-Frösén), sections on Finland in Kare Lilleholt (ed.), *Housing law in the Nordic countries: A report commissioned by the Nordic Council of Ministers*, TemaNord 1998:571, Copenhagen: Nordic Council of Ministers, 349–350.

[298] *Terveydensuojelulaki* 19.8.1994/763.

[299] *Asumisterveysohje*, Helsinki: Ministry of Social Affairs and Health 2003, at http://www.stm.fi/julkaisut/nayta/-/_julkaisu/1056561.

[300] Among others, Land Use and Building Act (*maankäyttö- ja rakennuslaki*) 5.2.1999/132 (at http://www.finlex.fi/en/laki/kaannokset/1999/en19990132) and *maankäyttö- ja rakennusasetus* 10.9.1999/895.

Another perspective on the question of public and private law relation regarding habitability would be to ask, in the opposite way, as to what part private law has had in the development of the regulatory standards of habitability. This question is too broad to be broached here, but the perspective can be recognised, for example, when thinking about the kind of a dwelling that is acceptable with respect to living in overcrowded conditions. When contracting has been free according to private law (when, for instance, nine people could live in a hut), intervention in public law has been necessary (the habitable space in a residential apartment must, according to a building decree, be suited to its purpose).

- Regulation on energy saving

Such a requirement as, for instance, an energy certificate, conveying the energy rating of a building, influences tenancy agreements mainly indirectly – to the extent that the costs of certificates can be passed on in rents. By contrast, what has directly influenced private contracting is the development of measurement systems, such as apartment-specific measurement of electricity consumption.

- E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)

No duties to register contracts or tenants are present. But a mortgage to secure the permanence of lease rights may be registered in the Land Information System, although this is rare: see 'registration requirements' in 6.3.

- 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 tenant's position is dealt with in contract law. Some questions, such as the tenant's right or duty to detach installed equipment and the like, may encroach over into property law.

- 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)

The existing tenancy legislation is state law.[301]

[301] See, however, for the wide discretion of municipalities in allocating state-subsidised dwellings, 4.3 above.

- 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?

In the general Contracts Act of 1929, only the third main chapter is mandatory (sections 28–38); the chapter comprises grounds of annulment and the later section 36 on (un)reasonableness enacted in 1982. In contrast, the greater part of the Consumer Protection Act of 1978 is mandatory to protect the weaker party. The special tenancy legislation consists of the two acts of 1995. While the Act on Commercial Leases is primarily dispositive, in the Act on Residential Leases the protection of the weaker party (that is, the tenant) is relatively more significant. The mandatory provisions of this last act render null and void any stipulation that:

- requires security in excess of three months' rent;[302]
- gives the landlord a unilateral power to increase the rent, unless the parties have also agreed on the grounds on which the rent can be increased;[303]
- orders the tenant to pay rent in advance while the lease is in force,[304] or at the beginning of the lease collects rent in advance for a period longer than three months (or, if the rent payment period is longer, for more than one rent payment period);[305]
- removes the tenant's right to off-set a counterclaim against the rent;[306]
- prevents the tenant from applying for a mortgage as security for the permanence of the leasehold;[307]
- confines the tenant's rights in connection with transfers of title;[308]
- limits the tenant's rights to share the apartment or to transfer the leasehold;[309]
- curbs the tenant's rights or remedies concerning the condition of the apartment;[310]
- broadens the grounds on which the landlord may rescind the contract;[311]
- makes the tenant liable to pay rent for any period following rescission of the lease;[312]
- shortens the landlord's notice period or extends the tenant's notice period;[313]
- diminishes the tenant's protection against illegal notice;[314]

[302] Act on Residential Leases 8(2).
[303] Act on Residential Leases 27(2).
[304] Act on Residential Leases 36(1).
[305] Act on Residential Leases 36(2).
[306] Act on Residential Leases 9.
[307] Act on Residential Leases 9.
[308] Act on Residential Leases 9.
[309] Act on Residential Leases 9.
[310] Act on Residential Leases 26.
[311] Act on Residential Leases 65(1).
[312] Act on Residential Leases 65(3).
[313] Act on Residential Leases 52(4).
[314] Act on Residential Leases 60.

- decreases the tenant's rights to compensation at termination;[315]
- denies the tenant's right to pay monetary rent through bank or other payment service provider;[316] or
- restricts the tenant's right to request the deferral of the removal date.[317]

Overall, the relationship between general legislation and tenancy legislation functions properly without causing problems for legal certainty.

- 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?

There are twenty-seven district courts across the country, six courts of appeal, and the Supreme Court,[318] appeals to which are governed by certiorari. Next to the hierarchy of general courts, administrative decisions can be contested in the nine regional administrative courts, after which an appeal to the Supreme Administrative Court[319] is, in most cases, governed by certiorari. Certain questions arising under consumer law are adjudicated in the Market Court,[320] which is a special court where either civil or administrative procedure is followed depending on the case, and whose decisions may be reviewed corresponding to the procedure either by the Supreme Court, if certiorari is granted, or by the Supreme Administrative Court, where no certiorari is needed.

It is worth noting that the Consumer Disputes Board has, since 2007, also handled disputes concerning rental housing and right-of-occupancy housing (see 'Alternative dispute resolution' in 6.8 below).

Previously, ten general lower courts[321] used to have a special housing court division, where a lay person could bring her case and the composition of the court included the tenants' and the landlords' representative beside a professional judge. These housing courts were wound up at the end of 2002. Three reasons were given for their abolition: diminished differences between legal procedures, the dismantling of rent regulation, and the continuing decrease in the number of legal disputes in the housing courts.[322] The decisive factor in their demise was probably the lack of cases following the elimination of both rent regulation and the tenant's protection against notice. Procedural convergence was caused by the lower court reform of 1993, when the composition of the district court in residential-lease disputes came to include lay members (three, alongside a professional judge as in criminal cases) with or without the housing court. In undisputed civil cases, the composition of the court is one judge in tenancy cases as in others.

[315] Act on Residential Leases 60.
[316] Act on Residential Leases 35(1) (18.1.2013/35).
[317] Act on Residential Leases 69(4).
[318] http://korkeinoikeus.fi/en/index.html.
[319] http://www.kho.fi/en/index.htm.
[320] http://www.markkinaoikeus.fi/en/index.html.
[321] Espoo, Helsinki, Jyväskylä, Kuopio, Lahti, Oulu, Pori, Tampere, Turku, Vantaa.
[322] Government proposal 31/2001, 1 and 6–7.

6.2 Preparation and negotiation of tenancy contracts

Table for 6.2 Preparation and negotiation of tenancy contracts

	Private rental	Social rental
Choice of tenant	Freedom of contract	Regulated tenant selection

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

A landlord has no duty to enter into a contract (freedom of contract).

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

From the landlord's point of view, the most convenient way of finding a tenant is to use an estate agent. But landlords also place advertisements on the Internet and in papers.

In contrast to private rental markets, the application procedure for state-subsidised dwellings under *ara* restrictions is regulated by decrees[323] and, furthermore, standardised in the selection guideline published by ARA that was discussed in section 4.3. At least once a year (though this can be done more often depending on markets) the owner of state-subsidised dwellings and the municipality must advertise publicly[324] – in the local paper and on the Internet[325] – the apartments for which applications may be filed with the operator in question. This advertising may not, as a rule, be restricted to any specific group[326] (*general application procedure*). In addition, newly constructed apartments are often advertised separately. As the procedures are normally 'continuous,' a prospective tenant may apply for a dwelling at any time of the year (or the day, through the Internet).

State-subsidised dwellings may also be made available to specific groups, when the group represents a 'sufficiently large group of people in need of an apartment in the region' and when the procedure is justified regarding the ownership and the purpose of use of the offered dwellings[327] (*targeted application procedure*). The resident-selection

[323] Ministry of the Environment, Decree Nr. 182/2003; Ministry of the Environment, Decree Nr. 904/2006; Government Decree Nr. 166/2008.
[324] Decree Nr. 182/2003, 2.1.
[325] Resident selection guideline, 10.
[326] Decree Nr. 182/2003, 2.1.
[327] Decree Nr. 182/2003, 2.2.

guideline stresses public supervisory duty, and as examples of targets the guideline mentions job-related apartments and young people and students.[328]

- What checks on the personal and financial status [of the tenant] 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?
- 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?

When it comes to checks on personal data, any private individual processing the data for purely personal purposes or for comparable ordinary and private purposes is outside the scope of application of the Personal Data Act of 1999.[329] Accordingly, landlords renting only a few dwellings may ask virtually any documentation from a prospective tenant, including identifying data, credit information, and information about a workplace or study place. As no ground needs to be stated for looking into documentation, a landlord may even query about a domestic credit card or a domestic driving licence in order to differentiate among the candidates.

Landlords are especially advised to enquire about who will be moving into the apartment along with the tenant.[330] For additional information about a possible tenant, a conscientious landlord will contact the tenant's previous landlord, or at least inquire about the previous landlord's contact details.

Providing for the concrete rules under the right to privacy, which became a constitutional right in 1995, and implementing the directive of the same year, the Personal Data Act applies, as general legislation, to other than the processing of data 'by a private individual for purely personal purposes or for comparable ordinary and private purposes.'[331] The act covers all automatic processing, and all other processing that is intended to create a data file, of personal data[332] – any entries describing a private individual, his or her personal characteristics, or his or her personal circumstances[333]. To iterate, the personal data need not be stored electronically; a 'personal data file'

[328] Resident selection guideline, 11.
[329] 'This Act does not apply to the processing of personal data by a private individual for purely personal purposes or for comparable ordinary and private purposes.' Personal Data Act 523/1999, 2(3).
[330] For instance, the Finnish Association of Landlords (*Suomen Vuokranantajat*) at http://www.vuokranantajat.fi/asuntosijoittaminen/vuokralaisenvalinta/.
[331] Personal Data Act 523/1999, 2(3).
[332] 'The provisions of this Act apply to the processing of personal data, unless otherwise provided elsewhere in the law. / This Act applies to the automatic processing of personal data. It applies also to other processing of personal data where the data constitute or are intended to constitute a personal data file or a part thereof.' Personal Data Act 523/1999, 2(1–2).
[333] 'In this Act, (1) *personal data* means any information on a private individual and any information on his/her personal characteristics or personal circumstances, where these are identifiable as concerning him/her or the members of his/her family or household … .' Personal Data Act, section 3.

> means a set of personal data, connected by a common use and processed fully or partially automatically or sorted into a card index, directory or other manually accessible form so that the data pertaining to a given person can be retrieved easily and at reasonable cost[.][334]

Among the prerequisites for processing personal data are a 'connection requirement' and a 'necessity requirement.' There has to be a relevant connection between the data subject and the operations of the controller, on the basis that the subject is a client or member of, or in the service of, the controller or in another comparable relationship (connection requirement).[335] And only those data that are necessary for the purpose of processing may be processed (necessity requirement).[336]

Unions from the landlords' and tenants' sides, the Association of Building Owners and Construction Clients (RAKLI), the Real Estate Management Federation, the Real Estate Agent Union, and the estate agent *Vuokraturva* have jointly drawn up a guideline on the collection, storage, and transfer of personal data in rental activity ('data protection guideline').[337] The guideline handles all rental activity which belongs within the scope of application of the Personal Data Act. Consequently, the recommendations of the guideline are addressed to other than small-scale rental activity by a private person:

> Small-scale rental activity refers to a situation where provisions on business activity are not applied to the landlord. Generally, the renting of at most three apartments is considered to be this kind of activity. Even in these tenancies, the privacy protection of the tenant has to be taken into account.[338]

According to the guideline, an apartment seeker has, in line with the connection requirement of the Personal Data Act, a relevant connection with potential landlords. Likewise, it is said in the guideline that an agent may collect the personal and family data of an apartment seeker and a tenant, because the required client relationship exists between the agent and an apartment seeker or tenant. Additionally, the guideline says, a client relationship arises with the married or non-married partner of a tenant, if the partner will be moving into the apartment, because the partner has rights grounded on the tenancy act. Yet, if the partner moves into the apartment after the beginning of the tenancy, no client relationship will arise between the agent and the partner.[339]

In the absence of any regulation on what data can be collected in private markets, the guideline recommends that the collection of the following information is necessary and consistent with the Personal Data Act:

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[334] Personal Data Act, 3 (definition of 'personal data file').
[335] 'Personal data shall be processed only if: … (5) there is a relevant connection between the data subject and the operations of the controller, based on the data subject being a client or member of, or in the service of, the controller or on a comparable relationship between the two (*connection requirement*)[.]' Personal Data Act, 8(1).
[336] 'The personal data processed must be necessary for the declared purpose of the processing (*necessity requirement*).' Personal Data Act, 9(1).
[337] *Henkilötietolain ja erityislakien vaikutus tietojen keräämiseen, säilyttämiseen ja niiden luovuttamiseen vuokraustoiminnassa* (data protection guideline), at http://www.rakli.fi/attachements/2011-06-08T09-29-5686.pdf.
[338] Data protection guideline, 1–2.
[339] Data protection guideline, 4–5.

- Identifying data on people who will be moving into the apartment (the person identity code of a married or non-married partner and the year of birth of a child);
- Income data on those responsible for the tenancy;
- Credit information;
- Salary statement, statement on the amount of pension, or other statement, such as statement on the amount of earnings-related unemployment benefit or other comparable statement to ascertain the tenant's ability to pay.[340]

As stated by the guideline,

> On the basis of the necessity requirement relating to personal data, salary statements may be requested from a tenant only as support for the final decision-making concerning the handover of the apartment. At the same time it is ensured that the tenant has truthfully reported his or her salary information at the application stage. Thus, when showing the apartment, it is not necessary to request these statements from the lookers.[341]

The guideline continues that also the agent has the right to require that salary statement will be presented before the actual tenancy contract is made.[342]

On the other hand, applications for state-subsidised rental dwellings must, according to a decree by Ministry of the Environment, include the following information:

- Identifying data on people who will be moving into the apartment (the person identity code of a married or non-married partner and the year of birth of a child);
- Applicant's housing need;
- Income and wealth data on the members of the applicant household;
- Data on the dwelling applied for;
- Data on the current dwelling.[343]

Before the rental agreement is made, the following data must be annexed in the application:

- Salary statements of all employed persons moving into the apartment;
- Statement on the amount of pension;
- Tax certificates of all persons over 18 years of age moving into the apart;
- Statement on the fair value of property;

[340] Data protection guideline, 8–9.
[341] Data protection guideline, 9.
[342] Data protection guideline, 9.
[343] Ministry of the Environment Decree 904/2006.

- Other statements that the applicant wishes to rely on, e.g.: an eviction order of the court, certificate of pregnancy.[344]

The disclosure of personal data is, according to the Personal Data Act of 1999, one form of processing. When the connection requirement has given the ground for processing the data, their further processing is only permitted under three conditions:

> [I]f such disclosure is a regular feature of the operations concerned and if the purpose for which the data is disclosed is not incompatible with the purposes of the processing and if it can be assumed that the data subject is aware of such disclosure. (Personal Data Act, section 8[2])

According to special legislation on estate agents, the agent has the duty to disclose to the principal any such information that could affect a decision.[345] Thus, the guideline says, the agent may disclose data collected in applications to the landlord.[346] Salary statements are again mentioned in the recommendations of the guideline, which do not consider that the agent has any necessity of giving salary statements over to the landlord. Instead, it suffices that the agent tells the landlord of essential information verified from these documents; if the landlord wishes to obtain the statements, the applicant-tenant's consent is necessary.[347] The guideline concludes that any other disclosures than those from an agent to a landlord require either the tenant's specific permission or a statutory obligation (for example, where owners of state-subsidised dwellings must disclose data in an annual report or, say, by request from the State Treasury, or where estate agents are requested to disclose data by the supervising authority, the Regional State Administration Agency).[348]

Beyond the connection requirement of the statute, two large real-estate companies were allowed to share, by setting up a common register, data about tenants whose leases had been rescinded in court and applicants who still owed arrears of rent to the other company.[349] The permission, in 1999, was given by the Data Protection Board, which may grant permissions, among other things, in order to realise a legitimate interest.[350]

Under the Personal Data Act, the controller has a duty of care – framed so that the data subject's fundamental right to privacy may not be restricted without a basis provided in an act[351] – and must carry out measures that secure personal data against unauthorised

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[344] Ministry of the Environment Decree 904/2006.
[345] *Laki kiinteistöjen ja vuokrahuoneistojen välityksestä* [Real Estate and Rental Agency Act] 15.12.2000/1074, 8(1).
[346] Data protection guideline, 11.
[347] Data protection guideline, 11.
[348] Data protection guideline, 11.
[349] Data Protection Board 21/08.11.1999.
[350] 'The Data Protection Board may grant a permission for the processing of personal data, as referred to in section 8(1)(9), if the processing is necessary, otherwise than in an individual case, in order to protect the vital interests of the data subject, or in order to use the public authority of the controller or a third person to whom the data is to be disclosed. The permission may be granted also in order to realise a legitimate interest of the controller or the recipient of the data, provided that such processing does not compromise the protection of the privacy of the individual or his/her rights.' Personal Data Act 523/1999, 43(1).
[351] 'The controller shall process personal data lawfully and carefully, in compliance with good processing practice, and also otherwise so that the protection of the data subject's private life and the other basic rights which safeguard his/her right to privacy are not restricted without a basis provided by an Act.

access, accidental or unlawful manipulation or disclosure, and other unlawful processing.[352] Being the controller, the landlord or the agent must, accordingly, take care of data security: in practice, granting only named persons access to the documents or files, and making sure that the internet connection is secured when applications are filled in electronically.[353]

According to the data protection guideline, the landlord has justified reason to store up the actual tenant's application and contract with annexes until five years have passed since the end of the tenancy, because claims may be made based on the tenancy for three years, and by the tax authority for five years, after the end of tenancy.[354] The necessity requirement, the guideline continues, qualifies for how long the landlord is justified in storing the other applications with annexes: 'The need for storing may be justified, for example, because the landlord must be capable of proving innocence in case of possible claims of discrimination.'[355] The regulation of agents obliges them to store the relevant documentation for five years after the end of the assignment.[356]

Credit data. Nationwide, private persons' credit information is controlled by one firm, *Suomen Asiakastieto Oy*[357] (*asiakastieto*, 'customer data'). In 2013, over 356,000 Finns – 8.2 per cent of the adult population – had defaults listed in the credit information company. (The record number of persons with credit defaults is still from 1997, 368,000 people.) Of people aged between 20 and 29, the proportion with credit defaults was 11.5 per cent.[358] Altogether 51,000 individuals had defaults based on arrears of rent.[359]

The rule in the Credit Information Act of 2007 allows credit data to be disclosed and used only for the granting and monitoring of credit, but among ten exceptions credit data may also be disclosed and used for the purpose of making a tenancy agreement (item number five in the list).[360]

Although checking a potential tenant's credit data is widely encouraged, it is also considered that credit information should not be relied on indiscriminately – precisely as landlords may be satisfied with eviction rather than trying to collect through suing and, thus, arrears of rent may not show up in the register. On the other hand, this advice given by a representative of a rental agent continues, an entrepreneur may have contracted debt long ago while having impeccable ability to pay rent now.[361]

Anyone operating on the behalf of the controller, in the form of an independent trade or business, is subject to the same duty of care.' Personal Data Act, 5.

[352] 'The controller shall carry out the technical and organisational measures necessary for securing personal data against unauthorised access, against accidental or unlawful destruction, manipulation, disclosure and transfer and against other unlawful processing.' Personal Data Act, 32(1) first sentence.

[353] Data protection guideline, 3.

[354] Data protection guideline, 10–11.

[355] Data protection guideline, 11.

[356] *Laki kiinteistöjen ja vuokrahuoneistojen välityksestä* [Real Estate and Rental Agency Act] 15.12.2000/1074, 10(3).

[357] http://www.asiakastieto.fi/en/web/guest.

[358] https://www.sttinfo.fi/release?0&releaseId=4457790.

[359] Suomen Asiakastieto Oy (http://www.asiakastieto.fi/en/web/guest) at https://www.omatieto.fi/luottotiedot/actValitseRaportti3.do (retrieved on 27 October 2013).

[360] *Luottotietolaki* 11.5.2007/527, 19(1–2).

[361] Soili Semkina, 'Vältä nämä virheet vuokralaista valitessa,' *Taloussanomat* 29 July 2010.

The ARA guideline for tenant selection in state-subsidised dwellings testifies that, in practice, credit information does also affect tenant selection in the public sector and the general-interest organisations.[362] It is against this state of affairs that the tenant-selection guideline recommends that credit defaults should not hinder the assignment of a dwelling to an applicant, if the criteria of need, income and wealth are fulfilled – at least if the default is insignificant or if it can be estimated, based on the credit-information history of the applicant, that the neglect will not be repeated. Nevertheless, in the tenant-selection guideline it is considered unreasonable that an agreement would be entered into with an applicant who owes arrears of rent to the very same landlord, to whom the application has been made. This topic and other recommendations in the tenant-selection guideline were discussed in 4.3 above.

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

A possible tenant may inquire from the landlord about the previous tenant's contact details, just as the landlord may inquire about the tenant's previous landlord. As the landlord must store documentation, especially the tenancy contact, for years after the end of a lease, information is available.

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

A real estate agent's services include sales of real estate, home sales, and land leases, along with residential and commercial leases. On the other hand, a rental agent may only perform rental service (residential and commercial leases). In residential leases, the services of either type of agent may include some or all of the following: making estimates of correct rent, marketing and showing the apartment, checking the backgrounds and credit rating of the applicants, contacting employers and former landlords, interviewing applicants, writing the tenancy agreement, taking care of banking matters, security deposit, and receiving and handing over the keys.[363]

  - 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?

The registration of both real estate agents and rental agents is mandatory, and is made in one of the six Regional State Administration Agencies[364]. The Agencies supervise

[362] Resident selection guideline, 21.
[363] The full list on the webpage of the estate agent *Vuokraturva*, at http://www.vuokraturva.fi/english/service-for-lessors/our-renting-services/.
[364] https://www.avi.fi/en/web/avi-en/.

compliance with the pieces of legislation in the field: the Act on Real Estate Agents and Rental Agencies, regulating the profession, and the Real Estate and Rental Agency Act, applying to the listing agreement.

After the latest changes in the regulation of the profession in 2013, no less than half of the specialised staff in each office – either real estate agent or rental agency – must have a licence, as opposed to the previous requirement of one responsible licensed agent. The constitutionally protected freedom to engage in commercial activity[365] is considered to prevent the wholesale imposition of an examination – the passing of which is necessary to obtain the licence – on every practising agent and as a barrier to market entry.[366]

In addition, compliance with the Real Estate and Rental Agency Act is supervised by the Consumer Ombudsman[367] in so far as an encroachment of this special act constitutes automatically a violation of the Consumer Protection Act in business-consumer relations.

A detailed decree on information to be provided in the marketing of dwellings, passed in accordance with the Consumer Protection Act, applies to all marketing from business to consumer, including the marketing of rental, right-of-occupancy, and partial-ownership dwellings (but excluding time-share agreements).[368]

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

In the act applying to the listing agreement, it was regulated, in 2000, that the agent's fee must be reasonable, taking into account the character of the assignment, the amount of work carried out, the economically appropriate way of carrying out the assignment, and other circumstances.[369] The standard practice in residential leases is for the agent to charge one month's rent plus VAT.

In a major reform of the then-prevailing practice, the act of 2000 provided that the only person who should pay the agent's fee is the principal, who purchases the service.[370] Before the legislation entered into force on March 1, 2001, a widespread problem in the rental market was that the tenant paid the agent's fee even though the landlord was the principal. This practice, where another person than the party to the contract paid the agent's fee, was deemed 'strange,'[371] not transparent, and even contributing to low price

[365] The Constitution of Finland 731/1999, 18(1).
[366] Government proposal 196/2012, 8–9 (referring to the content of the principle of proportionality at 9).
[367] http://www.kkv.fi/en-GB/.
[368] *Valtioneuvoston asetus asuntojen markkinoinnissa annettavista tiedoista elinkeinonharjoittajilta kuluttajille*, February 15, 2001/130 (http://www.finlex.fi/fi/laki/ajantasa/2001/20010130).
[369] *Laki kiinteistöjen ja vuokrahuoneistojen välityksestä* [Real Estate and Rental Agency Act] 15.12.2000/1074, 20(3).
[370] *Laki kiinteistöjen ja vuokrahuoneistojen välityksestä* [Real Estate and Rental Agency Act] 15.12.2000/1074, 20(2).
[371] Ari Saarnilehto (assisted by Seija Heiskanen-Frösén), sections on Finland in Kare Lilleholt (ed.), *Housing law in the Nordic countries: A report commissioned by the Nordic Council of Ministers*, TemaNord 1998:571, Copenhagen: Nordic Council of Ministers, 272.

competition among agents[372]. It was expected that the new act would increase competition and bring down the agents' fees, while landlords would pass on the fees in higher rents which would have only a small effect on the general rent level.[373]

Once the new act was in force, the fee came generally to be added to the first two to six month's rents, which became higher than the normal rent by an amount that totalled the agent's fee. On July 31, 2003, the Court of Appeal of Helsinki – in an action brought with assistance from the Consumer Ombudsman – held this arrangement illegal on the ground that the landlord was evading the mandatory rule that the only person to pay the agent's fee is the principal.[374] In August 2003, many agents had given up the practice, although one third of agreements in the largest estate agents in Helsinki were still including a clause that required the tenant to pay a higher rent during the first few months. By September, this practice had virtually ended, but fixed-term agreements now accounted for two thirds of all agreements made, as compared to a previous 10 to 13 per cent. Fixed-term agreements had become popular, because it is difficult to give notice during the term and this ensures that the landlord will not have to pay the agent's fee over again after a short period.[375]

In a subsequent development, the Court of Appeal of Helsinki allowed, in 2007, that the landlord charges a higher rent during the first months with a view to covering the cost of the agent's fee. The Court justified its decision by noting that the act concerning the listing agreement does not apply to the relationship between the landlord and the tenant; the parties are free to agree on the amount of rent, so long as the rent is not unreasonably high (including during the first months) – which it was not in the case.[376]

In the same act of 2000, it was provided that, when both sides are principals, only one fee may be collected per target of assignment.[377] Also, the agent is only entitled to a fee when a final agreement is created.[378] The last rule prohibited the use of customer service numbers that are liable to a charge.[379]

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

Negotiations do not normally bind the parties. While a party can usually withdraw from negotiations without any legal obligation, in some cases a negotiator may have to pay compensation to the other party to restore the other's position to what it would have been, had the negotiations not been undertaken. The ground for liability involves, for

[372] Government proposal 58/2000 general grounds 2.3 and 3.2.
[373] Ibid.
[374] The Court of Appeal of Helsinki 31.7.2003 Nr. 2254.
[375] A survey of agreements entered into in the biggest estate agents in the Helsinki region in August and September 2003, conducted by the Regional State Administration Agency of Southern Finland.
[376] The Court of Appeal of Helsinki 9.1.2007 Nr. 24.
[377] *Laki kiinteistöjen ja vuokrahuoneistojen välityksestä* [Real Estate and Rental Agency Act] 15.12.2000/1074, 20(2).
[378] *Laki kiinteistöjen ja vuokrahuoneistojen välityksestä* [Real Estate and Rental Agency Act] 15.12.2000/1074, 20(1).
[379] *Talousvaliokunnan mietintö* 28/2000 vp.

instance, negotiating in bad faith or being negligent, and, in longer negotiations, the creation – and, as a corroborating factor, maintenance – of reasonable expectations in the other party, although the conditions of liability are said to be 'unclear.'[380] Negotiations for a tenancy contract have not been specifically regulated.

In a leading Supreme Court case decided in 2009, a party had broken off negotiations for the lease of commercial premises after the better part of a year. The Court stated, concerning the basis of liability when no contract is concluded, as follows:

> It is not, however, permitted to negotiate unfairly or so that the other party is misled and has, as a consequence, to put up with needless costs or damage. In particular, when the other party has wilfully or carelessly generated reasonable reliance upon conclusion of a contract in the negotiating partner and this has already resulted in preparatory or other actions, an unjustified withdrawal from negotiations may lead to liability in damages in accordance with the principles relating to breach in conclusion of a contract.[381]

Although the case was concerned with the leasing of commercial premises, the points emerging in it regarding 'culpa in contrahendo' apply to residential leases as well.

In the circumstances of the case, a property owner had agreed, in a telephone conversation with a prospective tenant in March 2006, both the amount of rent and that the lease would begin at the start of September. Between February and April, the prospective tenant gave instructions on the renovation of the premises. The owner sent the tenant a written contract, to which no changes were requested. The owner then declined a contract for two and a half years with the current tenant. Next, in June, the prospective tenant received information about poor indoor air quality detected in the property four to six years earlier. The owner provided her with two expert opinions, one, in August, indicating no health risk, and another, in September, postponing final certainty until a test would be carried out in a dry frosty season. In November, the tenant informed the owner that no contract will be concluded. The owner claimed compensation for renovation costs and forgone rents from the rejected contract. The Supreme Court decided in favour of the owner. The reasons were that the owner had, in the spring, been justified in relying on the fact that a contract would be concluded, and the tenant, until November, maintained, in an unjustified way, the trust that she had generated. The tenant had also no cause for withdrawal that would have been due to the owner's action.[382]

[380] Vesa Annola, 'Sopimisprosessin vaiheet,' in Ari Saarnilehto (ed.), *Varallisuusoikeus*, Second, revised edition, Sanoma Pro 2012, 387–393, 389.
[381] Supreme Court 2009:45, in ground 2.
[382] Supreme Court 2009:45, grounds 5 and 6.

6.3 Conclusion of tenancy contracts

Table for 6.3 Conclusion of tenancy contracts

	Private rental	Social rental
Requirements for valid conclusion	A fixed-term tenancy agreement must be made in writing	
Regulations limiting freedom of contract	Anti-discrimination legislation and judicial control of reasonableness	

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

There is no difference between the conclusion of tenancy contracts and that of other types of contract, as the Contracts Act applies to both.

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

Traditionally, tenancy legislation has only been concerned with the content of the parties' contract, leaving conclusion to general contract law, mainly case law. In general, a valid contract may be written, oral, or tacit, unless otherwise provided in special acts. For instance, in the above-cited case that turned on breach in conclusion of a contract, the primary claim of the plaintiff had been that the parties had concluded an oral tenancy agreement.[383]

Nevertheless, an exception pertains to a fixed term in a residential tenancy contract. According to the Act on Residential Leases, a fixed-term tenancy agreement must be made in writing, when it concerns other than a holiday home. If not made in writing, a tenancy agreement may only be valid for an unlimited term.[384] Prior to the current act, it had been required that a tenancy agreement must be put into written form should either party request this, but in 1995 the wording was changed:

> Lease agreements and amendments thereto shall be made in writing. If a lease agreement has not been made in writing, it is considered to endure for a non-fixed-

[383] Supreme Court 2009:45.
[384] Act on Residential Leases 5(1).

term. As an exception, an oral contract is valid even for a~~n un~~specified period, when the apartment is leased for leisure use. (Section 5[1])

The earlier requirement was probably dropped and replaced by another provision, which likewise emphasises the importance of a written agreement, because the prior wording could mislead as the contract was not null and void if the formality was disregarded.

If the rule in the second sentence of the quoted provision was aimed at improving the status of the tenant, it was likely drafted with an eye to short fixed-term contracts, because the advantage of the rule is questionable from the tenant's perspective if the orally agreed fixed term were say ten years.

A holiday home is often rented orally. In defence of the exception applying to holiday homes, it is simply argued that the requirement of a written form would, in these short-term agreements, lead to unnecessary difficulties.[385]

As in the previous tenancy acts, the formal requirement concerns only the validity of a fixed term, and ignoring the formality has no effect on whether a tenancy contract is created.[386]

- is there a fee for the conclusion and how does it have to be paid? (e.g. "fee stamp" on the contract etc)
- registration requirements; legal consequences in the absence of registration

No registration or fee payment is needed. It is possible to have a mortgage registered as security for the permanence of lease rights[387] in the title and mortgage register, which is part of the Land Information System of Finland. But this option is not much used. The reason is that the registration under the Code of Real Estate requires the real-estate owner's consent, and the owner usually is, in other cases than the lease of an entire real estate, the housing company rather than the landlord, and the housing company cannot give the consent – put its property up for another person's debt – under the Housing Companies Act.

- Restrictions on choice of tenant - antidiscrimination issues
  - EU directives (see enclosed list) and national law on antidiscrimination

In accordance with traditional contract law, the landlord is free to choose the tenant. The prospective tenant has no right to get her or his offer accepted, nor does the offeree

[385] Kanerva and Kuhanen, 58.
[386] Saarnilehto, *Huoneenvuokran sääntelystä*, 5.
[387] 'Any stipulation in the lease agreement stating that no mortgage can be applied for as security for the permanence of the leasehold … shall be null and void.' Act on Residential Leases 9.

have any duty to give reasons for the acceptance or rejection of the offer.[388] Although detailed regulatory criteria outlined in chapter 4 apply to the selection of tenants to state-subsidised rental dwellings, the landlord can, also there, choose within limits.

Developments in European, constitutional, and human-rights law may recast the traditional starting-point. But to date, such impact remains uncertain. The Non-Discrimination Act of 2004 implemented the European Union Equality Directive from 2000.[389] The implementing act was eventually corrected to apply also to the 'horizontal' relation between a private landlord and a tenant. In the original Government proposal of 2003, the scope of the act was limited to the professional and business supply of services concerning all forms of housing, but the supply and availability of housing in relationships between private persons was excluded on the following reasoning:

> [The provision on discrimination in connection to housing] would not be applicable to actions between private persons, because the Directive does not require this, either. The scope of the act would not, therefore, include sales or leases of apartments between individuals. Likewise, any arrangement between individuals in, for example, the operation of a housing company, such as the redemption of shares entitling a party to the possession of an apartment, would remain outside the scope of application.[390]

In 2007, the Commission gave a reasoned opinion, arguing that the exceptions in the Directive must be interpreted restrictively and that persons who make goods or services, such as housing, available to the public must be prepared to let the protection of their privacy be limited in some way. The scope of application amended in 2008 reads as follows:

> The Act also applies to discrimination based on ethnic origin concerning … the supply of or access to housing and movable and immovable property and services on offer or available to the general public other than in respect of legal acts falling within the scope of private affairs and family life.[391]

This limitation is based on the preamble of the Directive, which mentions respect for private and family life, and is meant to exclude property in one's own use and supply which is occasional, not primarily for the purpose of obtaining income or other economic benefit. Examples of exclusions in the government proposal are subletting, transfers of a dwelling or holiday home in one's own use, and transfers of right of occupancy.[392]

- 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

[388] The conclusion of the contract through an offer and an acceptance is regulated in the dispositive Chapter 1 of the Contracts Act 228/1929.
[389] 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
[390] Government proposal 44/2003, 36–37; *yhdenvertaisuuslaki* (20.1.2004/21), 2(2)(4).
[391] Y*hdenvertaisuuslaki* (20.1.2004/21), 2(2)(4) (20.2.2009/84).
[392] Government proposal 82/2008, 3.

In tenancy legislation, besides the various content-related mandatory rules enacted in the course of the twentieth century, no requirements have been laid down as to what at least needs to be stipulated in a contract.

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

If a term in a contract appears unfair, the parties may only renegotiate or resort to dispute resolution, for instance under the general reasonableness provision in the tenancy act. The original intention of the reasonableness provision, as it had been proposed in the committee report of 1957, was to protect the tenant as the weaker party. Today, the provision applies to whichever party is weaker depending on the particular contractual relationship: for example, a private tenant against an institutional landlord, or a private landlord against a business firm renting apartments to its employees.[393]

Below is the general reasonableness provision in the Act on Residential Leases, together with a reference to the Consumer Protection Act in the second paragraph:

> If application of a stipulation in the lease agreement would be contrary to sound leasing practice or otherwise unreasonable, the stipulation can be adjusted or ignored. If the stipulation is such that the agreement cannot reasonably remain in force otherwise unchanged after it has been adjusted, other parts of the agreement can be adjusted or the agreement can be declared to have lapsed.
>
> The provisions of the Consumer Protection Act (38/78) shall apply to adjustment of a lease agreement between a consumer and a supplier. Notwithstanding, this Act's provisions on adjustment of the amount of the rent shall apply. (Section 6[1–2])

The European Unfair Contract Terms Directive from 1993 was implemented through the Consumer Protection Act.[394]

The Consumer Ombudsman – who, since the merger of two agencies in 2013, is the Director of Consumer Division at the new Competition and Consumer Authority[395] – may likewise bring action in the Market Court against business actors or their associations in order to prevent the continuing future use of an unfair term. But this injunction does not alter individual contracts. Although not limited to standard terms, this 'collectivistic'[396] control is nevertheless inclined towards them, as the terms are intended for future use.

If the Consumer Ombudsman refuses to bring an action in the Market Court, then an association operating in the interest of consumers or wage earners may do so. This secondary right has not often been used.

[393] Kanerva and Kuhanen.
[394] *Kuluttajansuojalaki* (20.1.1978/38), chapter 4 (16.12.1994/1259).
[395] http://www.kkv.fi/en-GB/.
[396] A useful term taken from Thomas Wilhelmsson, *Vakiosopimus*, Second edition, Lakimiesliiton kustannus 1995, 10 and 12–3.

The act implementing the Injunctions Directive of 1998 grants the Consumer Ombudsman a similar right to bring actions in another member state of the European Union, but the secondary right is given to consumer associations only.[397] The Market Court deals with the corresponding actions by the authorities and associations of other member states.

- statutory pre-emption rights of the tenant

A residential lease does not give rise to any statutory pre-emption rights.

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

The renting of a mortgaged dwelling is restricted only under the conditions of the interest subsidies that the state grants for private citizens. One such arrangement is the 'ASP' savings and loan scheme: another is an interest subsidy for a housing loan to build a low energy house. In addition to these, also renovation grants include a five-year condition to keep the dwelling in own use.

For example, the 'ASP' scheme targets first-home buyers between eighteen and thirty years of age, who are eligible for a cheap private loan and an interest subsidy from the state. The conditions for receiving the 'ASP' benefits restrict utilising the scheme to acquire investment property. The debtor must use the apartment as her or his permanent home and can only rent the apartment later on and for a maximum two years, if moving elsewhere for reasons of employment or study.

6.4 Contents of tenancy contracts

Table for 6.4 Contents of tenancy contracts

	Main characteristic(s) of tenancy type 1	Main characteristic(s) of tenancy type 2, etc.
Description of dwelling	General contract law	
Parties to the tenancy contract	Any natural or legal persons	Municipality or general-interest organisations as landlord; natural person as tenant
Duration	For an unlimited period or fixed term	

[397] *Laki rajat ylittävästä kieltomenettelystä* (21.12.2000/1189).

Rent	Freedom of contract; reasonableness	Cost recovery rent; reasonableness
Deposit	Maximum three month's rent	
Utilities	If paid to the landlord, then part of the rent	
Repairs	such condition as the tenant may reasonably require, unless otherwise agreed	

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

First of all, the parties are advised to annex in the tenancy agreement a statement on the condition of the apartment, complete with photographs and signed by both parties. Where area calculation is concerned, there is a national standard,[398] and, since 1992, a decree on limited-liability housing companies has ordained to use it[399]. The floor area is indicated in the articles of association and often reproduced, as such, in tenancy agreements.[400] If the landlord is in doubt about the accurate number of square metres, it is recommended in the literature that the rent should be agreed as the total rent for the unit, rather than on a square-metre basis: the total rent is considered the easiest figure in view of an inaccurately declared or agreed floor area.[401] If the apartment is significantly smaller than agreed, the tenant may always have a right to a rent reduction, but there is an appellate-court decision from the 1970s where the rent was not reduced when the apartment was three square metres smaller than agreed and the rent was not calculated per square metre[402] – so a minor deviation was accepted in that particular case.

- 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)

When applying the Act on Residential Leases, the subject of the agreement is configured in the opening provision of the statute as follows:

> This Act shall apply to any agreement (*residential lease agreement*) by which a building or any part thereof (*apartment*) is leased to another person for residential purposes. The use of an apartment is determined on the basis of the principal use agreed for the apartment. (Section 1[1])

[398] SFS 5139, published by Finnish Standards Association SFS: http://www.sfs.fi/en.
[399] Currently, *Valtioneuvoston asetus osakehuoneistojen pinta-alan mittaustavasta ja isännöitsijäntodistuksesta* 12.5.2010/365, 1.
[400] Kanerva and Kuhanen, 147.
[401] Kanerva and Kuhanen, 146.
[402] The Court of Appeals of Rovaniemi 59/79.

While the part of the building called 'apartment' in the text of the statute need not be a separate apartment, as also a part of an apartment can be the subject of a tenancy agreement,[403] the purpose of use of the unit must be a residential purpose. Units rented 'for other than residential purposes' belong within the scope of the Act on Commercial Leases.[404] Thus, the Act on Commercial Leases applies, for example, to any separate agreement about a garage or storage space.[405] If several units are rented in one and the same agreement, some for residential, some for other purposes, each unit is governed by the appropriate act: those for residential purposes by the Act on Residential Leases, those for other purposes, the Act on Commercial Leases.[406]

The principal purpose of use as the decisive criterion for choosing the applicable law permits 'mixed' tenancies. What is the principal use of an apartment can, for instance, be determined on a square-metre basis, and then the Act on Residential Leases applies if the apartment is big and the commercial premises in it small. The verification of the prevalence of various mixed tenancies would require an empirical study on the use of parts of apartments in housing companies as offices. In recent times, doctor's consulting rooms have become rarer, but there are other practices where less equipment is needed, such as accountant's and lawyer's offices.

- Parties to a tenancy contract

  - Landlord: who can lawfully be a landlord?

The landlord can be the owner of the building or the apartment, but often she, he, or it (any natural or legal person) is a shareholder in a limited-liability housing company. The shareholders of the company can be natural or legal persons or groups of these. The companies can also own flats themselves and, in special cases outlined below, they may, moreover, take possession of an owner apartment for a limited period (and rent it out).

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

When the ownership to the apartment is voluntarily transferred (by sale, gift, etc.), the tenancy agreement is binding on the new owner if any one of the following three conditions is met: the tenant has taken possession of the apartment before the transfer takes place; the agreement transferring ownership includes a provision on the continuance of the lease agreement; or a mortgage has been taken out to secure the permanence of the lease.[407] Starting from the act of 1987, transfers by bequest or inheritance, by virtue of marital property rights, and by virtue of the cessation of joint

[403] Government proposal 304/94, 46.
[404] *Laki liikehuoneiston vuokrauksesta* 481/1995, 1(1).
[405] Kanerva and Kuhanen, 45.
[406] Government proposal 127/84, 37; Government proposal 304/94, 47.
[407] Act on Residential Leases 38(1).

ownership have been equalled to voluntary transfers in tenancy legislation.[408] These rules are mandatory to the benefit of the tenant. The new landlord has only the normal rights to terminate the contract.[409]

A concern over the value of property in bankruptcy proceedings bears on an exception to the above-described rule, according to which a sale does not break a lease.

As an exception to the rule, the buyer of a property sold in a compulsory auction has the right to give notice on any tenancy agreement within a month of having taken possession of the property, unless the property is sold subject to a stipulation guaranteeing the continuance of the lease.[410] The earliest date at which the buyer may take possession is upon making payment. The tenant will have the benefit of the landlord's notice period.

The exception concerning compulsory auctions has been justified on the ground that debtors could otherwise make – perhaps long-term – lease agreements in the face of bankruptcy, which might diminish the value of the property considerably. On the other hand, although real estate and shares are often sold in voluntary auctions, which the exception did not cover according to a Supreme Court decision in 1992,[411] these auctions were not included within the exception after debates during the preparation of the 1995 act, chiefly because these auctions are not controlled by authorities in the same way as compulsory auctions are.[412] While evading the law may be possible through compulsory auctions as well, an exception concerning voluntary auctions would make it really simple.

The exception does not apply to dwellings sold under *ara* restrictions.[413]

Takeover by the company. Another kind of scenario arises in tens of cases each year, as the housing company, in the shareholders' meeting, decides to take possession of a shareholder's apartment. The company may take over an apartment for at most three years.[414] The tenant's right of possession lapses for this period.[415] The company may act thus after the board has issued a written warning to the shareholder and notified the tenant of it.[416] The grounds for taking over are exhaustively enumerated in the Limited Liability Housing Companies Act:

> (1) the shareholder does not pay the charge for common expenses due or the costs [of issuing the written warning and convening the shareholders' meeting];
> (2) the owner apartment is cared for so badly as to cause loss to the housing company or another shareholder;
> (3) the owner apartment is essentially used in contravention of its purpose of use as provided in the Articles of Association or in contravention of other provisions of

[408] Act on Residential Leases 38(1).
[409] See 6.6 below
[410] Act on Residential Leases 39(1). If the buyer was unaware of the existence of the lease, she may give notice within a month of the later date on which she received notification of the existence of the lease. Ibid.
[411] Supreme Court 1992:121.
[412] Kanerva and Kuhanen, 183–184.
[413] Act on Residential Leases 41.
[414] Limited Liability Housing Companies Act 1599/2009.
[415] Act on Residential Leases 38(2).
[416] The warning must state the grounds for concern and point out the potentiality that the company may take possession. Limited Liability Housing Companies Act 1599/2009, 8:3(1).

> the Articles of Association, or, if the purpose of use of the owner apartment is not defined in the Articles of Association, in contravention of the purpose of use approved by the housing company or otherwise established;
> (4) the way of life of those living in the owner apartment creates a disturbance; or
> (5) the shareholder or other person living in the owner apartment violates rules necessary to maintain order in the housing company's facilities.[417]

As a minimum condition in all cases, the violation must not be of minor significance.[418] When the company has decided on the taking over, it has the duty to rent the apartment. The apartment must be rented primarily to the tenant already living in it, if the tenant's behaviour did not cause the taking over.[419]

Notification and compensation. Whenever the landlord's right of possession to the apartment lapses, the landlord is under the duty to notify the tenant without delay. If notification is not given, the tenant is entitled to reasonable compensation for removal costs and – if the tenant can provide evidence of actual damage – any loss caused by the landlord's failure to notify.[420] To avoid paying the compensation, the landlord has to prove that the tenant was otherwise aware that the landlord's right of possession had lapsed,[421] such as on the basis of a notice served by the new buyer in a compulsory auction[422].

- Tenant:
- Who can lawfully be a tenant?
- Is it possible, and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?

The landlord may conclude a tenancy contract with one person or with more than one person.[423] If, for instance, a group of students wishes to rent an apartment, the party to the agreement may be freely agreed. Leaseholds may also be transferred, for example, in the case of a breakup or divorce, from two persons to one person alone, and these situations are considered below.

[417] In Limited Liability Housing Companies Act 1599/2009, 8:2(1).
[418] Limited Liability Housing Companies Act 1599/2009, 8:2(2).
[419] 'When an owner apartment has been taken into the housing company's possession, the Board of Directors shall without delay lease it to a suitable leaseholder at a fair market price for such time as it remains in the housing company's possession. If the taking into possession was not due to the behaviour of the leaseholder, other tenant, or other party with the right of use living in the owner apartment, the housing company must primarily conclude a lease agreement with this party for such time as it remains in the housing company's possession.' Limited Liability Housing Companies Act 1599/2009, 8:6(1), first and second sentence.
[420] Act on Residential Leases 37, second sentence.
[421] Act on Residential Leases 37, third sentence.
[422] Kanerva and Kuhanen, 179.
[423] Government proposal 304/94, 46.

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

As a rule, the tenant may not assign the apartment, or any part of it, to another person's use without obtaining the landlord's consent.[424] There are exceptions, where the landlord's consent is not needed. These exceptions are mandatory, so the tenant's position cannot be weakened by a contractual stipulation.[425]

First, the tenant has the right to use the apartment as a joint home with her or his 'spouse' (*puoliso*) and a child of their family.[426] The tenancy act uses the word *puoliso*, which is a broad term covering both a married partner (*aviopuoliso*) and a non-married partner (*avopuoliso*). Since the 2002 Act on Registered Partnerships, the same provisions that apply to marriage or a 'spouse' (*aviopuoliso*) must apply equally to a registered same-sex partnership or a partner in such a union[427] (exceptions deal with the Adoption Act, the Names Act, the Paternity Act and provisions applicable to a spouse exclusively by virtue of her or his sex)[428]. The legal position of a same-sex partner outside a registered partnership remains dependent on the interpretation of the term *puoliso* in the provisions of the tenancy act.

Second, the tenant may use the apartment as a joint home with her or his own, or her or his spouse's, near relative, if this does not cause significant inconvenience or disturbance to the landlord.[429] The term 'spouse' covers, again, a non-married partner (*avopuoliso*). As near relatives are included, according to the government proposal of 1994, both spouses' parents, sisters, adoption parents and foster parents, and other relatives may be allowed for if they are particularly close.[430] The landlord's remedies are not stated in the act; but in advance, she might bring a declaratory action in court, showing that significant inconvenience will be created, whereas later on she may have a ground for rescission.[431]

Third, provided again that this does not cause significant inconvenience or disturbance to the landlord, the tenant may assign no more than half of the apartment to another person's residential use[432] (not, for instance, office use)[433]; when this occurs for a consideration, the chapter on subletting[434] in the tenancy act applies to the relation between the tenant and the subtenant. The landlord's remedies are as stated in the second exception above.

[424] Act on Residential Leases 17(2).
[425] Act on Residential Leases 26.
[426] Act on Residential Leases 17(1), first sentence.
[427] *Laki rekisteröidystä parisuhteesta* 950/2001, 8.
[428] *Laki rekisteröidystä parisuhteesta* 950/2001, 9.
[429] In Act on Residential Leases 17(1).
[430] Government proposal 304/94, 56.
[431] Kanerva and Kuhanen, 94–95.
[432] In Act on Residential Leases 17(1).
[433] Kanerva and Kuhanen, 96.
[434] Act on Residential Leases 80–85.

- 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 purpose of the provisions on subletting is to regulate a situation where the tenant and the subtenant share the possession of the apartment.[435] There are appellate-court decisions illustrating that the sublessor's use does not have to amount to physically living in the apartment: the sublessor may merely store up things in the place.[436] Subleases relating to a larger part of the apartment than the above-mentioned half of the apartment – and also for other than residential purposes – are possible with the landlord's consent.

The regulation of subletting is different from that of tenancy in several respects: the subtenant may not assign the rented space to another person's use (though the transfer of the sublease to a family member is allowed according to the normal rules described next below);[437] the mandatory minimum notice period of the sublessor is either one or three months, and the mandatory maximum notice period of the subtenant is fourteen days;[438] the subtenant must always move out of the apartment when notice has been served, and can only claim damages afterwards;[439] and the sublease is terminated without notice at the same time as the sublessor's leasehold or other right of use.[440]

- 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

The tenant may not, as a rule, transfer the leasehold without the landlord's consent. The landlord has one month to refuse a transfer after being notified of it or requested consent. The landlord needs no ground for refusal – unlike previously under the 1987 act where a reason was required and the sufficiency of the reason caused problems of interpretation[441]. Even though the parties may agree that the lease is transferable, such clauses are rare.[442]

As an exception, the tenant may transfer the lease to her or his spouse (*puoliso*), a child of the family, or the parent of either spouse, provided that the transferee is already living in the apartment. (Among these enumerated transferees, the landlord may oppose the moving into the apartment of either spouse's parent, as delineated above under the

[435] Government proposal 304/94, 91.
[436] The Court of Appeals of Helsinki 3.1.1975 Nr. 112 and the Court of Appeals of Turku 26.11.2002 Nr. 3060, cited at Kanerva and Kuhanen, 310–311.
[437] Kanerva and Kuhanen, 312.
[438] Act on Residential Leases 83.
[439] Act on Residential Leases 84; Kanerva and Kuhanen, 312 and 317.
[440] Act on Residential Leases 85.
[441] Kanerva and Kuhanen, 196 note 333.
[442] Kanerva and Kuhanen, 196.

second exception as to who can move in.) For a justified cause, the landlord may contest the transfer.[443] The landlord must submit the grounds for contestation to a court for review within one month of having been informed of the transfer.[444]

The exception allows, in fact, changes of generation in residential tenancies.[445]

If the contract has been concluded with one person among a group of students, the other students might be considered subtenants, with the rights and duties between the landlord and the tenant, and the sublessor and the subtenant, as described above. If the contract has been made with the group, an individual tenant may give notice on her own behalf, while a new tenant who wishes to be a party must conclude a new contract.

If the tenant dies, the surviving spouse (*puoliso*), a child of the family, or the tenant's or the spouse's parent has the right to continue the lease if he or she was living in the apartment.[446] At death, the deceased person's lease remains in effect on the previous terms and the estate of the deceased is responsible for fulfilling the terms.[447] The enumerated persons have three months' time to notify the landlord of an intention to continue the lease, and after this notification the responsibility of the estate ends.[448] If the landlord wishes to contest the continuation of the lease, she may submit grounds for doing so to a court for review within one month of receiving the notification of continuation.[449]

Although the transfer of leaseholds in state-subsidised dwellings is limited, these restrictions do not override the tenancy act.

- Duration of contract
  - Open-ended vs. limited in time contracts
    - for limited in time contracts: is there a mandatory minimum or maximum duration?

[443] 'The tenant may transfer a leasehold to his or her spouse or a child of their family or the parent of either spouse if the transferee is living in the apartment, unless the lessor has justifiable cause for contesting such transfer.' Act on Residential Leases 45(1).
[444] 'If the lessor wishes to contest the transfer of a leasehold, the lessor shall submit the grounds for contestation to a court for consideration within one month of having received notification of the transfer. The lease shall remain in effect on the previous terms for the duration of the court proceedings considering the right to its transfer. If the court sustains the lessor's grounds, it must prohibit transfer of the leasehold.' Act on Residential Leases 45(3).
[445] Kanerva and Kuhanen, 200.
[446] Act on Residential Leases 46(2), first and second sentence.
[447] In Act on Residential Leases 46(1).
[448] 'The person wishing to extend the lease shall notify the lessor thereof within three months of the time of the tenant's death. The estate's responsibility for fulfilling the terms of the lease shall lapse and be transferred to the notifier once such notification has been made.' Act on Residential Leases 46(2), third and fourth sentence.
[449] 'If the lessor wishes to contest continuation of the lease, he, she or it shall submit the grounds for doing so to a court for consideration within one month of receiving the notification of continuation. The lease shall remain in effect on the previous terms during the court proceedings. If the court sustains the lessor's suit, its decision must state the date on which the lease will be terminated and require the respondent to move out thereupon.' Act on Residential Leases 46(3).

Tenancy agreements are unlimited in time, unless otherwise agreed or legally provided. An agreement for an unlimited period is terminated by giving notice (section 6.6 below). A fixed-term agreement terminates at the end of the term, when its validity expires.[450] Tenancy law prescribes no minimum or maximum duration. The maximum validity of twenty-five years according to the first tenancy acts was repealed in 1971.

- 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 options; contracts for life etc.

Prior to 1991, fixed-term agreements were only legal under exceptional circumstances, such as when a ground for notice existed already on entering the agreement. Once their use was liberated, it became possible to make many short fixed-term agreements successively instead of a stable one. In early 1992, when Parliament passed changes as part of the ongoing dismantling of rent regulation, it at the same time required that the recent practice of periodic contracting should be prevented. Accordingly, in late 1992, a new rule in the tenancy act entered into force:

> If a fixed-term lease of no more than three months is agreed on with the same tenant more than twice consecutively, the lease shall be considered a non-fixed-term lease notwithstanding the fixed-term provision.[451]

When a fixed term – or at least every third fixed term – exceeds three months, this provision does not apply. Decisions in appellate courts offer examples where the provision has been interpreted to the letter: 6.5, 5, 6, 6, 3, and 2 months consecutively (the Court of Appeal of Rovaniemi in 2001), or 3.5, 3, and 7 months consecutively (the Court of Appeal of Vaasa in 2009), did not give rise to a non-fixed-term contract.[452]

Even so, a periodic contract or 'chain contract' might be considered unlimited in time on several grounds, which were mentioned in a commentary to the legal changes of late 1992.[453] First, the intention of the parties should govern the contract, and if they have intended that the lease should continue for an unspecified period, then a contrary stipulation is inapplicable. Second, terms formulated for the purpose of evading the law are customarily considered illegal. Finally, terms contrary to good leasing practice may be ignored under the unreasonableness provision of the tenancy act (cited in 6.3 above).

Regarding the calculation of the notice period in contracts for an unlimited period, the Act on Residential Leases provides as follows:

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[450] 'A fixed-term lease is terminated when its validity expires.' Act on Residential Leases 4(2), first sentence.
[451] Act on Residential Leases 4(1), third sentence.
[452] The Court of Appeal of Rovaniemi 3.7.2001 Nr. 398 and the Court of Appeal of Vaasa 7.9.2009 Nr. 1047 cited in Kanerva and Kuhanen, 54.
[453] Ari Saarnilehto, *Huoneenvuokralain muutokset 1.11.1992*, Kiinteistöalan kustannus 1992, 6–7.

> The notice period for a lease agreement shall be calculated from the last day of the calendar month in which notice was given unless otherwise agreed or otherwise provided in this or some other Act. (Section 52[1])

In the code of good practice 'Fair Rental Practices', it is noted that:

> According to the law, the period of notice is calculated from the last day of the calendar month during which the notice was received. However, the parties may also agree in the lease agreement as to the date on which the period of notice begins.[454]

The parties may, according to a commentary on the Act on Residential Leases, agree freely when the notice period begins. [455] They may, for example, agree that the period starts to run on the date when notice is received rather than at the end of that month. Or they may agree that the notice period starts to run only once or twice a year, so that, for instance, if it is agreed that the notice period begins on the last day of June and of December, a notice served between January 1st and June 30th means that the notice period begins on June 30th.[456]

In the 2011 edition of the commentary it is observed that:

> Lately, it has become increasingly common that the parties agree that the first notice period starts, for example, eleven months after the beginning of the contract. The purpose of this kind of a stipulation is to prevent very short tenancies.[457]

By contrast, the length of the notice periods is mandatory law: the minimum notice period for the landlord is three or six months and the maximum for the tenant one month (6.6 below).

As to the already mentioned unreasonableness provision, one illustration of a situation, where unreasonableness was not found to be present, is a Helsinki Court of Appeal judgment for the landlord, when the tenant had given notice in a letter dated February 27, 2006 on a contract that had been entered into on January 16, 2006 and that stipulated that the first notice period starts to run on February 1, 2007 and the penalty for an earlier termination is 800 Euros.[458]

Problems have also been posed by the functionally similar alternative arrangement, where the parties enter into a fixed-term agreement with stipulations to prolong the agreement beyond the date at which it expires. As an example, we can imagine a contract concluded for one year, which will be renewed automatically for another year, if no party gives notice three months before the annual deadline. One possible construction is that the described contract is a non-fixed-term agreement, where the notice period starts to run only once a year. This construction is justifiable, because the contract cannot be a fixed-term agreement in the sense that a fixed-term agreement ought to terminate without notice at the annual deadline.[459]

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[454] Fair Rental Practices, 8.
[455] Kanerva and Kuhanen, 222.
[456] Kanerva and Kuhanen, 222.
[457] Kanerva and Kuhanen, 222.
[458] The Court of Appeal of Helsinki 17.8.2007 Nr. 2510 cited in Kanerva and Kuhanen, 63–64.
[459] 'A fixed-term lease is terminated when its validity expires.' Act on Residential Leases 4(2), first sentence.

Another possible construction is that the parties have agreed to two contracts in the same document, both a fixed-term agreement and a non-fixed-term one. But a problem with this other construction is that the parties cannot have known to be doing so.

As a remedy to the legal uncertainty, it has been suggested that the parties should avoid using the lexicon of 'giving notice' in an agreement intended for a fixed term. Instead, they could, for instance, agree to the following kind of arrangement: 'after a fixed term, a new fixed-term tenancy contract may follow, if either party inquires it from the other party and the other party does not oppose it within an agreed period.'[460] Such a clause can, in turn, be criticised. One ground of criticism is that the party agrees to give an answer within a certain time, while the inquiry might be made in a letter sent, for example, on the weekend when summer vacation starts. Another base of criticism is that private law recognises no duty to give an answer.

Lifespan can, according to a commentary on the Act on Residential Leases,[461] be a valid – what is elsewhere called 'relative' – fixed term.

- Rent payment
  - In general: freedom of contract vs. rent control
  - 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

No provision in tenancy legislation lays down the precondition that a lease incorporates a consideration called rent. Traditionally, tenancy laws have included provisions on the payment of rent, with changes brought about through changes in technology, etc. And another set of provisions has dealt with the amount of rent, today its reasonableness. Formerly, the amount of rent was also regulated outside the tenancy act, in rent-control regulations. But nowadays the only regulation comes from the Act on Indexing Restrictions, on which see 'Clauses on rent increase' below.

After the changes of early 1990s, rent is, in the private sector, determined on the basis of what is agreed (section 27[1] of the Act on Residential Leases). This freedom of contract is only limited by the legal power of courts to examine whether the rent, or a stipulation on determining it, is reasonable. The Act on Residential Leases offers three partially overlapping grounds, in addition to which the general unreasonableness or 'unconscionability' provision in the Contracts Act is the fourth possible basis (see 6.1 above).

First of all, the tenant may claim that the rent significantly exceeds the current market rate charged in the area, and the court may at its discretion reduce the rent. The provision enabling this, introduced in the tenancy act of 1987, gives courts wide discretion to approve or reject the tenant's claim, or to reduce the rent as is seen fit:

[460] Kanerva and Kuhanen, 56.
[461] Kanerva and Kuhanen, 55

> The court may, at the tenant's request, reduce the rent or alter a stipulation on determining the rent at its discretion if, without grounds considered acceptable under tenancy, the rent significantly exceeds the current market rate charged in the area for apartments of similar rental value and used for the same purpose. (Section 30[1])

Secondly, the landlord may bring an action to increase the rent. In this case, the threshold to alter the rent is meant to be higher than in the tenant's action.[462] So according to the government proposal of 1994, where this provision was introduced as a clarification to a possibility, which was not explicitly stated in the 1987 act; the provision is the following:

> The court may, at the lessor's request, increase the rent or alter a stipulation on determining the rent at its discretion if the rent or the stipulation on determining it must be considered unreasonable under section 6. (Section 30[2])

Finally, the unreasonableness provision of section 6 – which was cited in section 6.3 above – is the third and last option in the Act on Residential Leases.

In state-subsidised dwellings under *ara* restrictions, rent is determined on the basis of capital expenditure and maintenance costs ('cost recovery rent'). The tenant-initiated check on the reasonableness of the rent (section 30[1] above) and the unreasonableness provision of section 6 apply also here.

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

Unless otherwise agreed, rent must be paid no later than on the second day of the rent payment period (one month, unless agreed otherwise).[463] If that day is a Saturday, a religious holiday, Independence Day, May Day, Christmas Eve or Midsummer Eve, the payment can always be made on the first following working day.[464] There is no legal obligation on the landlord to send reminders.

- 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);

The tenant has the right to off-set a counterclaim against the rent. The right is mandatory.[465] In the case of suspected defects such as humidity damage, the tenant

[462] Government proposal 304/94, 66.
[463] Act on Residential Leases 34(1).
[464] Act on Residential Leases 12(1).
[465] 'Any stipulation in the lease agreement stating that no mortgage can be applied for as security for the permanence of the leasehold or that the tenant shall not have the right to set off a counterclaim against the rent shall be null and void.' Act on Residential Leases 9.

should pay the rent during the time the matter is inspected (by, for instance, health officer), thus avoiding the risk of being given notification for unpaid rent, as there is no procedure for depositing the rent temporarily with an impartial third party such as a municipal board. Afterwards, the remedies of rescission, termination, rent reduction, and damages are in the tenant's disposal.

- 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)

It is not unlawful to replace rent payment, wholly or partly, by performance in kind. But the tenant has no statutory right to this effect (so the situation falls to be treated in line with private-law principles which do not impose an obligation to accept work performance any more than they do an obligation to accept an offer). Conceivably, the parties' agreement may be a 'mixed' contract, in effect, consisting of two contracts, a tenancy agreement and a contract of employment, but a contract of employment requires other elements, such as the employer's direction and supervision. Dwellings provided by the employer are again separately regulated in the Employment Contracts Act ('accommodation benefit').[466] Overall, replacing rent payment by payment in kind is not very common today. Experiences of tenant's improvement have been mixed.

- 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?

The landlord's lien on the tenant's property, which was already known in the 1734 Codification, was repealed in 1993 on the ground that it was not much used. Instead, the landlord can now only apply for seizure under the Code of Judicial Procedure.

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

[466] *Työsopimuslaki* 55/2001 (an unofficial translation available at http://finlex.fi/en/laki/kaannokset/2001/en20010055).

The use of index clauses and other comparable stipulations is regulated in a special Act on Indexing Restrictions[467]. The act has been renewed periodically since the regulation supporting economic growth in 1968–1969. The main rule of the act prohibits these stipulations in contracts (but not in wills, articles of association or court judgments) and is followed by a list of exceptions (like pension and alimony agreements, which are exempt on the ground that it would be unjust to let the varying real value of money upset the original balance of actions). Among the exceptions, those tenancy agreements that were exempted from rent regulation also became exempted first in 1992.

In 1995, the permissive exception was extended to cover all residential-lease agreements concluded for an unlimited period or – if fixed-term – for no less than three years. In fixed-term agreements of less than three years, index clauses are null and void to the effect that the landlord will lose the entire rent increase.[468]

In 1993–1994, already twenty per cent of the not-rent-regulated tenancy contracts included an index clause.[469] Today, the most commonly used indices are the cost of living -index and the consumer price index.[470] The consumer price index was employed in the Act on Residential Leases as the index for the transition period, and the cost of living -index was widely used during the dismantling of the rent-regulation system.

Combinations of various indices are also lawful.[471] Similarly, other comparable arrangements are lawful, such as percentual or monetary increases and variations of these (three per cent annually in the first two years, two per cent after that). Index clauses may also lawfully be combined with other increases (an index point change plus one per cent). For instance, rent could be linked to an index, with an additional clause stipulating a minimum adjustment to ensure that the rent will increase annually.[472]

In principle, the ground of increase must simply be agreed in the contract, precluding any blanket right for a private landlord to increase rent unilaterally.[473]

- 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
  - Responsibility of and distribution among the parties:
    - 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?

[467] *Laki indeksiehdon käytön rajoittamisesta* (21.12.2000/1195).
[468] *Laki indeksiehdon käytön rajoittamisesta* (21.12.2000/1195).
[469] Government proposal 304/1994, general grounds 2.3.
[470] Kanerva and Kuhanen, 150.
[471] Government proposal 304/1994, 64.
[472] Government proposal 304/1994, general grounds 2.2.3.3; examples in brackets in the text, Kanerva and Kuhanen, 151.
[473] Act on Residential Leases 27(2); Kanerva and Kuhanen, 34 and 151.

The parties may agree on charges such as electricity, water, and heating. The general advice – in this sense rule – is that the parties should agree on all charges whether based on the quantity consumed, the number of persons living in the apartment, or another measure,[474] including lump sum. All charges paid to the landlord are regarded as part of the rent, no matter how they are called,[475] and the provisions on rent payment and the reasonableness of rent apply.

Beyond the basic provision on the required condition of the apartment (quoted below under 'Repairs') and the already cited decree on information to be supplied in marketing dwellings from business to consumer (6.2 above), it is difficult to find any authority from which one could deduce a presumption as to who should pay for utilities in the absence of a specific contractual stipulation. The standard tenancy-agreement forms have merely separate areas for rent and other charges. Discussions on the Web tend to show that the tenant is assumed to pay for electricity, unless there is a clause to the contrary.[476]

Essentially, three alternatives are available in the supply of electricity. Some housing companies subscribe electricity and charge it from the shareholder or the tenant, depending on what has been agreed. In some other companies, the resident concludes the contract herself. In still others, though ever more rarely, electricity is incorporated in the maintenance charge paid by the shareholders.

When the apartment has its own electricity meter and an individual contract with the provider is possible, tenancy agreements usually stipulate that the tenant shall pay for her own electricity.[477] If the landlord concludes the electricity contract herself, the tenant may be charged either an inclusive rent or a separately identified item besides the rent, but legally the charge is part of the rent.[478]

Water is typically charged by the housing company, which concludes the contract with the supplier. Heating will likely be charged as a separate item only when the house has oil heating or district heating. With electric heating, other equipment function also: charging of electricity was discussed above.

The parties may agree in the tenancy contract on any charges. While the use of a parking lot, sauna, and so on, can be agreed to, one charge too distant from the use of the apartment to be agreed on in the same contract is (this is the example given in the government proposal[479]) that for the use of a car, even if it were agreed upon in the same document.

- How may the increase of prices for utilities be carried out lawfully?

[474] Kanerva and Kuhanen, 146.
[475] Essi Rikalainen, *Asunnon vuokraus – Laki ja käytännöt*, Kiinteistöalan kustannus 2009, 34.
[476] Internet search on 21 October 2013.
[477] Essi Rikalainen, *Asunnon vuokraus – Laki ja käytännöt*, Kiinteistöalan kustannus 2009, 34.
[478] Essi Rikalainen, *Asunnon vuokraus – Laki ja käytännöt*, Kiinteistöalan kustannus 2009, 34.
[479] 304/1994 detailed grounds 1.1 ('Scope of application of the Act').

Increases in the price of utilities, when charged by the landlord, must comply with the regulation on rent increases.

- Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?

During the lease, the apartment must always be in such a condition as the tenant may reasonably require, taking the age of the apartment, the local housing stock and other local conditions into consideration, except when the parties have expressly agreed otherwise.[480] For this reason, the landlord may not cut off the supply of the amenities. See, on the basic rule on the condition of the apartment, 'Repairs' and 'Defects of the dwelling' below.

- 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)?

An advance rent payment and a security deposit are distinct categories. The tenant will have no duty to pay the rent during those months for which she has paid rent in advance. In 1995, the legal maximum period of an advance rent payment was increased from one to three months (or, if the rent payment period is longer, one rent payment period).[481] The justification for the change was the abolishment of the landlord's lien on the tenant's property in 1993, as an advance rent payment might be used instead to secure payment of rent. An advance payment may cover any period, including the tenant's last period in the apartment, which means that the tenant may pay rent frontloaded throughout the lease. An advance rent payment can be agreed only when the tenancy contract is made, and only for a special cause[482] (such as the financing of future repairs[483] or, evidently, use as security[484]).

The following remarks are concerned with the deposit (usually managed on a separate account) that is put up as security against losses resulting from a failure to fulfil a party's obligations.

[480] Act on Residential Leases 20(1). See 'Repairs' below.
[481] 'Any stipulation under which the tenant is liable for advance payment for a period longer than three months or, if the rent payment period is longer, for more than one rent payment period shall be null and void.' Act on Residential Leases 36(2).
[482] 'When the lease agreement is made, advance payment of rent for more than one rent payment period may be agreed on if special cause exists. Any stipulation under which the tenant is required to pay rent in advance while the lease is in force shall be null and void. The tenant shall, however, be entitled at any time to pay rent in advance for rent payment periods not yet falling due.' Act on Residential Leases 36(1).
[483] Government proposal 127/94, 44.
[484] Kanerva and Kuhanen, 174.

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

The tenancy act of 1987 introduced a provision on the reasonableness of the security, which the tenant may agree to put up. On the basis of the government proposal of 1994, the wording of the provision was modified so that either party could put up reasonable security.[485] The government proposal also mentioned that the parties had more and more commonly agreed that the tenant should put up security of two months' rent, and that security of two to six months' rent would be reasonable (because rescission and eviction can at maximum take six months). Parliament then added a new provision to the 1995 act, according to which any contractual stipulation requiring either party to put up security larger than three months' rent is null and void.[486]

The tenant typically agrees to deposit security of one or two months' rent on a separate bank account. At the end of the tenancy, she should get the sum back – with interests, in line with case law on returns from property – if she has fulfilled her obligations. Disputes concerning the landlord's refusal to give back the deposit on grounds of the condition of the apartment are perhaps *the* most problematic area in Finnish tenancy law (see also 6.8 below).

A security may be put up to cover all obligations arising from the contract or, as is less often done, only some obligations, such as rent payment.

Regarding the wide social problem of defaults in credit information, the extent of which was outlined in 6.2, one practical suggestion that has been given for people with difficulties to obtain a dwelling is to try and offer the landlord a higher security, namely two or (the maximum) three months' rent.[487]

The practice of requiring a security is now established also in state-subsidised dwellings after a period of uncertainty.[488]

- 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)

[485] 'The parties to a lease agreement can agree that reasonable security will be put up against any loss incurred as a result of either party's failure to fullfil his, her or its obligations. If the security is not provided within the agreed time, the party in favour of whom it was agreed that security should be provided shall have the right to rescind the agreement. The right to rescind the agreement shall not exist, however, if the other party had put up the security before receiving notice of rescission.' Act on Residential Leases 8(1). Besides money, the security may consist of, for example, movable or immovable property, a liability insurance taken out for the benefit of the landlord, or suretyship. Government proposal 304/94, 52.
[486] 'Any stipulation requiring either party to put up security larger than three months' rent shall be null and void.' Act on Residential Leases 8(2).
[487] An observation of discussions on the Web.
[488] Kanerva and Kuhanen , 75.

The landlord has the duty to ensure that:

> At the commencement of the lease and throughout its duration, the apartment shall be in such condition as the tenant may reasonably require, taking the age of the apartment, the local housing stock and other local conditions into consideration, unless otherwise agreed regarding the condition of the apartment. (Section 20[1], first sentence)

Since 1995, the provision imposing this duty on the landlord has been dispositive, and so the parties may agree on an inferior condition of the apartment. The change was justified in the government proposal of 1994 as follows:

> A significant part of our building stock is such that it is, more economically compared to new construction, capable of being restored into, or being altered to suit, residential use, or its service areas, by means of repair and renovation measures. Already because of this, it would be necessary that the condition and upkeep of the apartment could be agreed upon more widely than is now possible.[489]

The larger freedom of contract is, the government proposal said, limited by the 'basic requirements' for the apartment set in health-protection, land use and building and environmental legislation.[490] Thus, the parties may not agree that the apartment is in a worse condition, during habitation, than required in these laws, but they may agree that the tenant shall renovate, for residential use, a dwelling that is in a worse than requisite condition.[491]

Ordinary wear and tear. If the parties agree that the tenant is responsible for the condition of the apartment and that the apartment should be in the exact same condition at the end of the lease, then the tenant may be responsible for ordinary wear and tear.[492]

Maintenance related to the real estate. The parties may also agree that the tenant is responsible for the upkeep of any facilities or equipment available to her, or the parties may divide the responsibility in the desired manner:

> It may also be agreed that the tenant shall be responsible for the upkeep of facilities and equipment available to him, her or it under the lease or for obligations associated with the property. (Section 20[1], second sentence)

The rule was justified in the government proposal as follows:

> Detached-house or row-house type of housing is in Finland a quite ordinary form of housing. Similarly, most of the multi-storey building stock consists of relatively small houses with less than ten apartments. In this kind of housing it is usual that the residents themselves each in their turn perform the maintenance and care of the facilities and equipment of the real estate. The same applies to obligations

[489] Government proposal 304/1994, 58.
[490] Government proposal 304/1994. In the tenancy statute, 'it would then be the case of a kind of condition that is better than the basic condition and possibly also determined by the parties themselves.' Ibid.
[491] Kanerva and Kuhanen, 103.
[492] Kanerva and Kuhanen, 102 and 134.

associated with the property such as snow clearing or other upkeep. There is no reason any longer to prevent by law the tenant and the landlord from agreeing that also the tenant may take charge of these tasks.[493]

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

The buyer of a property sold in a compulsory auction has the right to give notice on any tenancy agreement within a month of having taken possession of the property, unless the property is sold subject to a stipulation guaranteeing the continuance of the lease. The tenant will have the benefit of the landlord's notice period. If the housing company has taken over the apartment, the buyer in the public auction does not have the right to terminate the tenancy agreement,[494] and in this case not the exception related to public auctions, but the main rule related to sales applies

6.5 Implementation of tenancy contracts

Table for 6.5 Implementation of tenancy contracts

	Private rental	Social rental
Breaches prior to handover	Rescission	
Breaches after handover	Rescission; rent reduction; damages	
Rent increases	Agreed	Unilateral
Changes to the dwelling	Permission by the landlord	
Use of the dwelling	Remedies of termination and rescission	

- **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
    - Refusal of clearing and handover by previous tenant

[493] Government proposal 304/94, 58.
[494] Act on Residential Leases 39(3).

The landlord has the duty to make the apartment available to the tenant on the date that has been agreed upon.[495] If the tenant is prevented from exercising her rights, she may be entitled to executive assistance from the police.[496] In tenancy law, the following remedies are at hand.

If the apartment is not ready or vacant, the tenant has the right of rescission:

> If the apartment is not ready or vacant at the time that the tenant is entitled to take possession and the delay causes the tenant significant inconvenience, he, she or it shall have the right to rescind the lease agreement. The tenant shall also have the right to rescind the lease agreement even before scheduled to take possession if it is obvious that taking possession will be delayed as referred to above. (Section 16[2])

The tenant has the right if the delay causes her 'significant inconvenience' – and also before the scheduled possession if this kind of delay appears obvious. The right is not conditioned on the duration of the delay, but on the significance of the inconvenience,[497] which should be assessed from the tenant's point of view based on the situation as a whole. One example when significant inconvenience is caused is the case where the tenant has no other dwelling.[498] The landlord may, of course, offer the tenant an alternative apartment where to stay during the delay, and then the inconvenience may no longer be significant. But the tenant has no duty to accept a substitute apartment.[499]

If the tenant decides to wait until the landlord provides her with the apartment, the tenant has the right to be exempted from paying the rent as long as the apartment cannot be used, or the right to a rent reduction if only part of the apartment cannot be used.[500]

Whether the tenant decides to wait or to rescind the agreement, she may in any case be entitled to damages from the landlord. But the landlord may show that the delay was not caused by her negligence.[501] This defence is applicable, for instance, when the previous tenant refuses to hand over the apartment.

> - 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 over the same house)

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[495] 'The lessor shall make the apartment available to the tenant on the date on which the tenant is entitled to take possession.' Act on Residential Leases 16(1).

[496] 'The tenant shall be entitled to executive assistance from the police if the lessor, in a manifestly unlawful manner, prevents the tenant from exercising the tenant's legal rights under the lease agreement or this Act.' Act on Residential Leases 14(2).

[497] Ari Saarnilehto, *Vuoden 1987 huoneenvuokralaki*, Suomen talokeskus 1987, 27.

[498] Government proposal 127/84, 29.

[499] Kanerva and Kuhanen, 92.

[500] 'The tenant shall be entitled to be exempted from paying rent or to have the rent reasonably reduced during any period when the apartment could not be used or was not in the condition required or agreed on.' Act on Residential Leases 23(2), first sentence.

[501] 'The tenant shall also be entitled to compensation for any inconvenience or loss caused to the tenant by the lessor's action or negligence referred to in this chapter above, unless the lessor can prove that the delay in making the apartment available or its deficient condition was not due to the lessor's action, negligence or other carelessness or that the repairs or alterations were made to repair damage for which the tenant was liable.' Act on Residential Leases 23(3).

When the landlord concludes two valid contracts, the traditional rule in the first two tenancy acts up to 1987 gave priority to the earlier agreement. The losing tenant was entitled to compensation from the landlord, provided that she had entered into the contract in good faith. Since 1987, protection of possession has been the rule, and a competing agreement is ineffective in respect of a tenant who in good faith takes first possession of the apartment.[502] While the first possessor has no duty to hand the apartment over to another tenant, the other tenant, if she had entered into the contract in good faith, may claim compensation from the landlord for any (concrete) loss.[503]

As an exception to the rule of first possession, if a mortgage as security for the permanence of another person's lease rights has been registered in the Land Information System, the holder of the mortgage has priority.[504] But this option is not much used, for the reasons given in 6.3 ('registration requirements').

In any other event, the earlier agreement shall have priority.[505]

- Public law impediments to handover to the tenant

The right to rescind the agreement and the claims to a rent reduction apply also if the delay is caused by an administrative-law impediment, such as a delayed permit.

- In the sphere of the tenant:
  - refusal of the new tenant to take possession of the house

Whether the new tenant takes possession of the apartment on the agreed time or not, the obligation to pay the rent applies until either party terminates the agreement. The renting of the apartment for residential use implies that someone must live in the apartment, and the landlord is entitled to rescind the contract 'if the apartment is used for any other purpose … than that provided when the lease agreement was made'[506].

[502] 'If the tenant has taken possession of an apartment in good faith on the basis of a lease agreement, any other agreement by which the same apartment is leased or by which the right to use it is accorded to another person shall be ineffective in respect of the tenant.' Act on Residential Leases 7(1), first sentence.
[503] 'In the event of rival agreements, the person whose lease agreement is ineffective shall be entitled to compensation for his, her or its loss from the lessor provided that he entered into the agreement in good faith.' Act on Residential Leases 7(2).
[504] 'If the tenant has taken possession of an apartment in good faith on the basis of a lease agreement, any other agreement by which the same apartment is leased or by which the right to use it is accorded to another person shall be ineffective in respect of the tenant. If, however, a valid mortgage exists as security for some other person's lease rights or other rights of use, the holder of the mortgage shall have priority.' Act on Residential Leases 7(1), first and second sentence.
[505] The third sentence of Act on Residential Leases 7(1).
[506] In Act on Residential Leases 61(1), ground number three.

- **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?

The general, dispositive rule (cited under 'Repairs' in 6.4) provides that the apartment must be, throughout the duration of the lease, in such condition as the tenant may reasonably require, taking into account the age of the apartment, the local housing stock, and other local conditions. In this rule, the phrase 'other local conditions' was given meaning in the Government proposal for the 1987 act through examples including the location of the apartment, the quality of the surroundings, transport connections, and services.[507] The wording '*reasonably* require' was, in a commentary on the 1987 act, understood to refer to an objective evaluation of the condition of the apartment. In other words, the personal views of the parties are not decisive.[508]

- Examples: Is the exposure of the house to noise from a building site in front of the house or are noisy neighbours a defect?

It is possible that the deficient condition of the apartment is caused by, for example, noise from outside the apartment. In support of this conclusion, literature has pointed to an analogy between noise and sewage water – on which there is a Supreme Court precedent[509] – entering the apartment. Similarly, there are appellate court decisions deeming incoming noise a defect.[510]

- What about damages caused by a party or third persons?
- Discuss the possible legal consequences: rent reduction; damages; "right to cure" (to repair the defect by the landlord); reparation of damages by tenant; what are the relationships between different remedies

On the whole, the tenant has the following remedies against the landlord:

(i) the right to rescind the contract immediately if the use of the apartment manifestly endangers the tenant's own or her household member's health (section 63[1]);

(ii) the right to rescind the contract on the ground that the condition of the apartment becomes deficient, provided that the defect is not due to the tenant's own negligence or other carelessness and the landlord is responsible for the condition

[507] Government proposal 127/84, 29.
[508] Ari Saarnilehto, *Vuoden 1987 huoneenvuokralaki*, 1987, 25.
[509] Supreme Court 1969-II-54.
[510] Ari Saarnilehto, 'Huoneenvuokralain 3 luvussa tarkoitettu huoneisto,' *Lakimies* 1994, 1006–1020, 1014–1016.

of the apartment, if the defect is of major significance and the landlord does not remedy the defect without delay, or within agreed time, after the tenant has requested this, or alternatively,

(iii) if the landlord does not remedy the defect, the right to remedy the defect at the landlord's expense, at reasonable cost;[511]

(iv) the right to be exempted from paying the rent or to have the rent reasonably reduced, as long as the apartment cannot be used or is not in the required or agreed condition;[512] and

(v) the right to compensation for inconvenience or loss caused by the landlord's negligence or other carelessness, with the landlord having the burden of showing that she did not act carelessly.[513]

In addition, the tenant has the already mentioned right of rescission, if the apartment is not ready or vacant;[514] and the agreement will simply lapse, if the apartment is destroyed or if the authorities prohibit its use for the purpose specified in the lease.[515]

So, for example, if the tenant requests the landlord to repair a defective water supply pipe and the landlord does not reply, the tenant may remedy the defect at the landlord's expense if the following conditions for rescinding the contract are present: the defect is not due to the tenant's negligence; the landlord is responsible for the condition of the apartment; the defect is of major significance; and the landlord has been given enough

[511] 'If the apartment is not in the required or agreed condition when the lease comes into force or its condition becomes deficient while the lease is in force for any reason other than the tenant's negligence or carelessness and the lessor is responsible for its condition, the tenant shall be entitled to rescind the lease agreement if the deficiency is of major significance and the lessor, having been requested to remedy the deficiency, has not done so without delay or within the agreed time, or if the deficiency cannot be remedied. If the lessor fails to remedy the deficiency, the tenant may, instead of rescinding the agreement, remedy the deficiency at the lessor's expense, unless the deficiency is due to the unfinished state of the building or the authorities have prohibited use of the apartment. The tenant shall see to it that the cost incurred by the lessor in remedying the deficiency is reasonable.' Act on Residential Leases 20(2).

[512] 'The tenant shall be entitled to be exempted from paying rent or to have the rent reasonably reduced during any period when the apartment could not be used or was not in the condition required or agreed on. The tenant shall not, however, have such a right if the apartment's deficient condition is due to his negligence or other carelessness, or if the repairs or alterations were performed to repair damage for which the tenant was liable. The right referred to in this paragraph shall not exist for the time preceding the date on which the lessor received notice of the apartment's deficient condition detected during the lease period.' Act on Residential Leases 23(2).

[513] 'The tenant shall also be entitled to compensation for any inconvenience or loss caused to the tenant by the lessor's action or negligence referred to in this chapter above, unless the lessor can prove that the delay in making the apartment available or its deficient condition was not due to the lessor's action, negligence or other carelessness or that the repairs or alterations were made to repair damage for which the tenant was liable.' Act on Residential Leases 23(3).

[514] Act on Residential Leases 16(2). Or the tenant may rescind the contract on the ground that the apartment is not in the required or agreed condition when the lease comes into force. Act on Residential Leases 20(2).

[515] 'If an apartment is destroyed or the authorities prohibit its use for the purpose specified in the lease, the agreement shall lapse. If this is due to reasons which must be considered the lessor's fault, negligence or other carelessness, the tenant shall be entitled to compensation for the tenant's loss.' Act on Residential Leases 67(1).

time to act.[516] The tenant should see to it that the cost is reasonable:[517] she must pay the excess herself.

Rent reduction, the fourth remedy on the above list, is independent of the landlord's negligence. But the defective condition must not be due to the tenant's own negligence.[518] The period from which a rent reduction may be claimed is limited to the time after the landlord was informed of the defect (by the tenant or otherwise).[519] Courts have found facts giving rise to the right to a rent reduction in many disputes related to water or humidity damage and 'mildew houses.' In the case of noise problem, the source of the noise would probably make no difference in a claim for a rent reduction, but the tenant's awareness of the noise on entering the agreement may have significance. In one case that reached the appellate level in 2004, the district court had considered that the tenant could not have conceived, when renting the apartment, that sleeping in night time might be impossible because of restaurant music. The district court had also reasoned that the tenant's fundamental rights include having a sufficient night sleep in the dwelling, regardless of the fact that the nuisance were made known beforehand. The appellate court accepted the reasons and reduced rent from 503 euros to 328 euros per month.[520]

Claims for damages, the fifth remedy on the above list, are likewise typical as a consequence of humidity damage, and in these cases delay by the landlord, in determining and repairing the damage, is also often invoked.[521]

Looking from the external point of view, strategic advice on the choice between legal remedies can be derived from appellate-court practice. As noted in a commentary on the Act on Residential Leases,[522] claims for a rent reduction, which are independent of the landlord's negligence, are noticeably more easily successful than claims for damages. Already because of legal costs, the commentary continues, it is 'often more advisable to agree voluntarily on a rent reduction starting from the point when the damage is noted. This point may be, for example, the day when the landlord is informed of the report of the municipal environmental inspector. Instead, when it comes to damages it is decisive whether the landlord has acted carefully in the matter or not.'[523]

A successful claim for damages requires, along with negligence, the showing of causation, for example between habitation and a health condition. Because of various disputed questions of proof, in which experts disagree, fairly little case law exists where causation has been proved.[524] And having decided negligence and adequate causation, the court must determine the quantum of damages. According to the [aforesaid]

[516] In Act on Residential Leases 20(2).
[517] In Act on Residential Leases 20(2).
[518] 'The tenant shall not, however, have such a right if the apartment's deficient condition is due to his negligence or other carelessness, or if the repairs or alterations were performed to repair damage for which the tenant was liable.' Act on Residential Leases 23(2) second sentence.
[519] 'The right referred to in this paragraph shall not exist for the time preceding the date on which the lessor received notice of the apartment's deficient condition detected during the lease period.' Act on Residential Leases 23(2) third sentence.
[520] Turku Court of Appeal 9.11.2004 Nr. 3048.
[521] Kanerva and Kuhanen, 125.
[522] Kanerva and Kuhanen, 126.
[523] Kanerva and Kuhanen, 126.
[524] Kanerva and Kuhanen, 127.

commentary, in medical compensation, 'the amounts of compensation have very much been left in the discretion of the court.'[525]

As to the landlord['s remedies], the right to rescind the agreement may arise, if the tenant fails to take good care of the apartment.[526] At the other end of the spectrum the tenant is not, unless otherwise agreed, responsible for ordinary wear and tear.[527] For that, the rent is considered a compensation. But the tenant has liability for any damage to the apartment that she causes wilfully or through negligence[528] – and likewise for any damage caused in such a way by others who are staying in the apartment with the tenant's consent[529]. The burden of showing that negligence was absent lies with the tenant, on the ground that she has the property in her possession[530]. Others in the apartment may include guests, family members, employees, or subtenants. The tenant's responsibility starts at the moment of the other's entry into the apartment. The tenant is not necessarily liable for damage caused when she tries to prevent the other from entering the apartment.[531]

The tenant's liability in damages is excluded for any damage caused by a person doing work at the landlord's request, or by a person doing work on behalf of the owner of the building, the apartment, or the shares conferring possession of the apartment.[532]

Finally, if, let us say, construction work is undertaken at the neighbouring property and this causes repairs or even the tenant's inability to use the apartment for some time, then, to begin with, the contractual freedom of the parties should be recalled: the tenant may assume responsibility for the condition of the apartment and she may thus need to turn to third parties for compensation. But presumptively, the landlord has responsibility, and the tenant may be exempted from paying the rent or have the rent reasonably reduced during the time that the apartment cannot be used.[533] Yet, her claims may relate to damage to property, such as chattels in the apartment, or to the additional cost of substitute accommodation: the landlord is not responsible for these losses, because the damage was not caused by the landlord's carelessness.[534] In the absence of a stricter ground in either legislation or case law, liability in tort requires negligence[535]. The tenant may state her claim against a negligent construction worker or the worker's

[525] Kanerva and Kuhanen, 128.
[526] Act on Residential Leases 61(1), ground number five. See 'Notice by the landlord' in 6.6 below.
[527] 'The tenant shall look after the apartment with all due care. The tenant shall not, however, be liable for ordinary wear and tear caused by use of the apartment for the purpose specified in the lease agreement, provided that the lessor is responsible for the apartment's upkeep and maintenance.' Act on Residential Leases 25(1). See also 6.4 under 'Repairs.'
[528] 'The tenant shall be liable for compensation to the lessor for any damage to the apartment caused by the tenant willfully or through negligence or other carelessness.' Act on Residential Leases 25(2).
[529] 'The tenant shall further be liable for compensation to the lessor for any damage to the apartment caused willfully or through negligence or other carelessness by a person staying in the apartment with the tenant's consent.' Act on Residential Leases 25(3), first sentence.
[530] Government proposal 304/94, 61.
[531] Kanerva and Kuhanen, 139.
[532] 'The tenant shall not, however, be liable for any damage caused by a person performing work at the lessor's request or on behalf of the owner of the building or apartment or of the shares conferring possession of the apartment.' Act on Residential Leases 25(3), second sentence.
[533] Act on Residential Leases 23(2).
[534] Act on Residential Leases 23(3).
[535] Tort Liability Act 31.5.1974/412, 2:1(1).

employer[536] or, most likely, both. Vicarious liability applies also to a person who assigns work to an independent entrepreneur,[537] and so the tenant might be able to state a claim against the neighbour who had commissioned the building company, although this depends on the contractual relationship between the neighbour and the company. Mainly, the company as employer is liable for the damage to the apartment and the chattels and, if necessary, for the additional cost associated with a temporary accommodation[538].

- Is the occupation of the house by third parties such as squatters considered as a defect in the legal terms?

Squatting bestows no legal rights according to ordinary legislation, although the legal situation may be more complex from the point of view of constitutional interpretation and in the light of the case law under the European Social Charter (a broad definition of 'forced evictions). In the past few cases of squatting, the object has typically been an estate of the municipality, and then negotiations may be undertaken with the municipality; but if the negotiations do not lead to an outcome, the police removes the squatters.

- what are the prescription periods for these remedies

Any debt will become extinguished three years after it arose.[539] In a debt the due date of which has been agreed upon, the period starts to run on the expiration day,[540] so each monthly rent payment will become extinguished after three years of its due date. In claims for contract damages, the period of three years starts to run from the moment when the claimant has noticed the defect or when the claimant should have noticed the defect,[541] which, for instance, in the landlord's case can be the time when the tenant hands over the possession of the dwelling. Claims for a rent reduction, unlike claims to lower the rent to a reasonable level, may be brought also after the end of the tenancy: namely, within three years.[542]

After the prescription period has elapsed, a claim may still be used to off-set another claim[543] and the realisation of the debt is also possible using a security,[544] such as the security deposit[545].

[536] Tort Liability Act, 3:1(1) first sentence.
[537] Tort Liability Act, 3:1(1) second sentence.
[538] A loss connected to damage to property. Tort Liability Act, 5:1.
[539] *Laki velan vanhentumisesta* [Prescription of Debt Act] 15.8.2003/728, 4.
[540] *Laki velan vanhentumisesta*, 5(1).
[541] *Laki velan vanhentumisesta*, 7(1)(1). For non-contractual liability: from the moment when the claimant has become aware or should have become aware of the damage and the responsible party. *Laki velan vanhentumisesta*, 7(1)(3).
[542] Kanerva and Kuhanen, 123.
[543] *Laki velan vanhentumisesta*, 15(1).
[544] *Laki velan vanhentumisesta*, 16(1).
[545] Kanerva and Kuhanen, 78.

- **Entering the premises and related issues**
  - Under what conditions may the landlord enter the premises?

The landlord is generally not at liberty to enter the premises. According to the Criminal Code, an invasion of domestic premises is an offence against privacy,[546] and a person bypassing an obstacle such as a locked door enters unlawfully, if she lacks a right of entry granted under the tenancy act.

Tenancy acts have traditionally laid down dispositive[547] conditions under which the landlord may enter the apartment. The landlord has the right to enter (i) whenever necessary for supervision of the condition and upkeep of the apartment and (ii) in order to show the apartment to interested parties, if it is to be sold, or leased again. In the first case, the tenant 'shall immediately provide the landlord with access to the apartment at a suitable time,'[548] so even in this case the landlord may not enter without permission, but must arrange her visit at a suitable time, although a letter indicating the time might suffice if the tenant could not be reached[549]. In the second case, the parties must agree on the time, for the landlord has only 'the right to show the apartment at a time suitable to the landlord and the tenant.'[550]

- Is the landlord allowed to keep a set of keys to the rented apartment?

Instead of addressing the right of the landlord to keep a set of keys, tenancy acts have regulated the conditions of entry and visits to the apartment. If the parties have agreed that the landlord keeps extra keys, the landlord may nevertheless only enter the premises in the above-mentioned situations.[551]

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

The landlord may never legally lock the tenant out; the tenant is entitled to executive assistance from the police whenever the landlord in a manifestly unlawful manner

[546] Criminal Code 19.12.1889/39, 24:1 (13.12.2013/879).
[547] Act on Residential Leases 3 and 26.
[548] Act on Residential Leases 22(1).
[549] Kanerva and Kuhanen, 115.
[550] Act on Residential Leases 22(2).
[551] The Fair Rental Practices do include a comment on the arranged visits of the landlord: 'the tenant must leave the security lock open at the time of the visit so that the lessor can enter the apartment with the master key.' Fair Rental Practices, 8.

prevents the exercise of legal rights.[552]

- **Rent regulation (in particular implementation of rent increases by the landlord)**
- Ordinary rent increases to compensate inflation/ increase gains

The landlord may not unilaterally increase the rent unless the grounds for rent increase have been agreed in the contract. (See 'Clauses on rent increase' above.) Before an amendment enters into force, the landlord must notify the tenant in writing of the new rent and the date on which it will take effect.[553]

- 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?
- Possible objections of the tenant against the rent increase

During the lease, the parties may freely agree to a new rent. They may also agree to a higher rent only for a few months, for instance, to cover the costs of renovation.[554]

Overall, the landlord's ways and means for seeking rent increase in private tenancies are agreement, notice for termination (increasing the rent to a reasonable level is a justifiable reason), and action in court under section 30(2) (cited above in the context of rent payment).

After the rent-regulation system was abolished in the nineties, some institutional landlords put into effect perverse rent increases – such as a one-time increase of seventy per cent with less than the notice period given for the tenant[555]. To tackle these problems, the government and the Real Estate Federation, representing landlords, began to define the 'good rental practice' mentioned in the general provision on unreasonableness (section 6) and the provision on post-notice compensation [6.6, under 'Objections by the tenant' below] in the Act on Residential Leases. In 1998, both the government and the federation issued a recommendation; while the recommendation of the Ministry of the Environment did not become very well-known, many institutional

[552] 'The tenant shall be entitled to executive assistance from the police if the lessor, in a manifestly unlawful manner, prevents the tenant from exercising the tenant's legal rights under the lease agreement or this Act.' Act on Residential Leases 14(2).
[553] 'Changes in rent can be agreed on with due consideration to the provisions of the Act on Indexing Restrictions …. If it has been agreed that the lessor may unilaterally decide the date or amount of the rent increase while the lease is in force, such stipulation shall be null and void unless the grounds on which the rent can be increased during the lease agreement's validity have also been agreed. Before the rent increase can take effect, the lessor shall notify the tenant in writing of the new rent and the date on which it will take effect.' Act on Residential Leases 27.
[554] Kanerva and Kuhanen, 145.
[555] The Court of Appeals of Turku 30.7.1999 Nr. 1805.

landlords agreed to follow the more specific recommendation of the federation. The federation recommendation submitted that in rent revisions that take place beside a stipulated annual increase, one-time increases should not exceed fifteen per cent a year and negotiations with the tenant should be started at least six months prior to a planned increase. In 2003, co-operation between the associations of landlords and tenants produced a common guideline, 'Fair Rental Practices' (see the list of associations in 1.5 above). Along with the recommendations that negotiations must be initiated no later than six months prior to an intended increase and the increase must be reasonable, the code of good practice says: 'Increases may not exceed 15% per year, except in situations where extensive renovations are being made to improve the property and the rental value of the apartment.'[556]

- Rent increases in "housing with public task"

In state-subsidised dwellings under *ara* restrictions, the landlord may unilaterally increase rent and decide on the date of increase. The landlord must notify the tenant in writing of the new rent and the ground of the increase at least two full months prior to the rent payment period when the new rent will first apply.[557] The tenant-initiated check on the reasonableness of the rent (section 30[1]) and the general unreasonableness provision apply also here.

- 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 [= rent statistics for a certain area])?

If the reasonableness of the rent is disputed in court, evidence of reasonable market-level rent should be presented, but statistics are often available only for larger areas than those arguably meant by 'the current market rate charged *in the area*' in section 30(1) of the Act on Residential Leases.[558]

- **Alterations and improvements by the tenant**
- Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?

[556] Fair Rental Practices, 3.
[557] 'During the period that the provisions on determining rent in the Act on the Use, Assignment and Redemption of State-subsidized (ARAVA) Rental Dwellings and Buildings apply, the lessor shall, if he desires to increase the rent, notify the tenant in writing of the increase, its grounds, and the new rent. The new rent shall take effect no sooner than two months after the beginning of the rent payment period immediately following the notification date.' Act on Residential Leases 32(1).
[558] Kanerva and Kuhanen, 159 n. 263.

First of all, the parties may agree, both during tenancy and beforehand, that the tenant does renovation work in the apartment, including remodelling, resurfacing, and instalments.[559] The dispositive section 20(1) in the Act on Residential Leases – cited in 6.4, 'Repairs' above – gives the parties wide discretion in agreeing on the condition of the apartment and tenant's improvement.

On the other hand, the tenant has no right to perform any repairs or alterations in the apartment without the landlord's permission. There are only two exceptions to the rule: the tenant's right to remedy a defect at the landlord's expense – discussed in connection with the numbered list of remedies above – and the right always to take action to prevent or restrict immediate damage to the apartment.[560] The last kind of emergency action can be necessary in the case of water damage and the like.

- Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?

As said, any work – changes to structures, painting, wallpapering[561] – must be agreed to. The Fair Rental Practices recommends that the parties should agree on the compensation to be paid for work and materials; on opportunity for the landlord to inspect completed work at an agreed date; on the date when compensation will be paid; and on the way in which the work will be performed (schedule, materials, workers, supervisors, and quality).[562]

When discussing the government proposal for the Act on Residential Leases, the Environment Committee of Parliament considered that the tenant's position might be unreasonable, if responsibility for the condition of the apartment was assigned to her and the landlord gave notice. The landlord might, in these cases, be unjustly enriched, and so the Committee added the following rule:

> If it has been agreed that the tenant shall be responsible for the upkeep or maintenance of the apartment, the tenant shall be entitled to compensation from the lessor, after the lessor has given notice on the agreement, for any repairs or alterations carried out by the tenant that have increased the rental value of the apartment. In determining said compensation, the current value of the repairs or alterations at the time of termination of the lease and any separate compensation or rent reduction already received by the tenant shall be taken into account. (Section 57[2])

[559] See Act on Residential Leases 20(1), cited in the text under 'Repairs' at the end of 'Contents of tenancy contracts'; Act on Residential Leases 21(1) first sentence: 'The lessor and the tenant can agree on any repairs, alterations or upkeep measures to be performed in the apartment.'
[560] 'The tenant shall not have the right to perform any repairs or alterations in the apartment without the lessor's permission, except in order to remedy a deficiency as referred to in section 20, paragraph 2. The tenant shall, however, always have the right to take action to prevent or restrict immediate damage to the apartment.' Act on Residential Leases 21(1), second and third sentence.
[561] Kanerva and Kuhanen, 110.
[562] Fair Rental Practices, 7.

Under a fixed-term agreement, the tenant is also entitled to compensation for any lawful, uncompensated improvement according to the value of the improvement at the time of termination, if the tenant has notified the landlord three months prior to termination that she wishes to extend the lease and the landlord has refused this without a reason that is considered acceptable in a tenancy relationship.[563]

- 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)?

A landlord who enters into a contract with a tenant with physical disability must be aware that some changes will be made in the dwelling. Before the tenant takes possession, the parties should agree about payments and removals.

If the tenant encounters physical disability while the tenancy is in force, the instalment of necessary devices for coping may not be a ground for termination, because otherwise a person with disability would be discriminated against. According to the tenancy act, the notice must not be unreasonable and the landlord must have justifiable reason,[564] and at least intuitively, even if constitutional rights, for instance, would not be included in an explicit analysis, opposition to discrimination prevents regarding the instalment of the devices as a justified reason for termination.

The financing of the installation and removal of these kind of devices is part of the municipalities' legal duties towards seriously disabled people – persons who, because of a disability or disorder, have long-term special difficulties to cope with the activities of normal life. The statutory ground which entitles a seriously disabled person to economic assistance from the municipal social authority is the Act on Services and Assistance for the Disabled from 1987.[565] The reasonable costs of necessary changes to the apartment, appliances, and devices associated with the apartment must be compensated.[566] If wider changes in the housing-company-owned property are needed, it is doubtful whether the municipality will compensate those. The provisions of the Act on Services and Assistance for the Disabled can, after the fundamental-rights reform of 1995, be seen as realising the basic right to social security.

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[563] 'If the tenant notifies the lessor no less than three months before termination of a fixed-term agreement that the tenant wishes to extend the lease, but the lessor refuses without grounds considered acceptable under tenancy, the tenant shall be entitled to compensation for any repairs or alterations carried out by the tenant that have increased the value of the apartment, said compensation being based on the current value of the repairs or alterations at the time of termination of the lease, provided that under this Act the tenant had the right to perform said work and has not previously received compensation for it.' Act on Residential Leases 58.

[564] See 6.6, 'Objections by the tenant' below.

[565] *Laki vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista* 380/1987. The duties of the municipalities under this act concern individuals for whom non-institutional social care is deemed sufficient. Ibid., 8(2) second sentence and 9(2) second sentence.

[566] *Laki vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista* 380/1987, 9(2) first sentence.

- fixing antennas, including parabolic antennas

The mounting of an antenna may give rise to a ground for rescission, if the fixing of antennae is forbidden by the housing company or in building-façade regulations (violation of 'provisions or regulations for the maintenance of public ... order'[567]). But the company may not have prohibited antennae. If it has, there will arise the question whether an exception should be allowed on grounds of the tenant's fundamental freedom of expression and right of access to information. While no precedent exists on the point, the freedom of expression 'entails the right to … receive information, opinions and other communications without prior prevention by *anyone*,'[568] and the last term would seem to cover private parties. The significance of the right of groups to develop their own language and culture[569] and the significance of the internet are likewise unexplored in the practice of the higher courts.

- **Maintenance measures and improvements, in particular upgrading the energy performance of the house by the landlord**
  - What kinds of maintenance measures and improvements 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)?

The landlord has, to begin with, the right to carry out in the apartment any repair that cannot be postponed without causing damage.[570] This right may be used, for instance, in the case of water damage. The right exists no matter what the parties have agreed about upkeep.

Secondly, the landlord may also perform measures that do not cause significant inconvenience or disturbance in the exercise of leasehold rights, provided that she notifies the tenant of the measure at least fourteen days before work begins.[571] Measures like annual repair, caused by ordinary wear and tear, are here meant.[572]

[567] Act on Residential Leases 61(1), ground number six; see 6.6 below.
[568] The Constitution of Finland 731/1999, 12(1) 'Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. …'
[569] The Constitution of Finland 731/1999, 17(3) 'The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. …'
[570] 'The lessor shall be entitled to carry out an upkeep measure, repair or alteration immediately if it cannot be postponed without causing damage.' Act on Residential Leases 21(2) first sentence.
[571] Act on Residential Leases 21(2) second sentence.
[572] Government proposal 304/94, 33.

These repairs may be carried out also after the landlord has served notice of termination.[573] The tenant's normal remedies of rent reduction and damages apply.

In the above two situations, the tenant has no right to rescind the contract.[574]

Thirdly, when the landlord wishes to undertake renovation or any other than the previous two kinds of repairs, the landlord must notify the tenant at least six months before work begins. The tenant has the right, within fourteen days of receiving notification, to rescind the agreement as of the earliest date when the repairs or alterations may begin. Any stipulation restricting the tenant's right of rescission is null and void.[575] If notice has been served, this type of work cannot be carried out without the tenant's consent.[576] The six-month deadline equals the landlord's minimum notice period.

Finally, when a housing company or real-estate company decides to have renovation made in the apartment and the company is not the landlord, the company must notify both the shareholder and the holder of the right of use 'in good time' of any maintenance work that will affect the use of the apartment. The company has, like the landlord in the first situation, the right to perform immediately any maintenance work which cannot be delayed without causing damage or harm.[577]

- **Uses of the dwelling**
    - Keeping animals; producing smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.

The tenant may not, of course, remove an internal wall without the landlord's permission ('Alterations and improvements by the tenant' above). But the landlord may herself have limited discretion. Depending on the extent of the alteration – for instance, whether primary structures are tampered with or only a doorway is removed to create an alcove – the articles of association in the housing company may need changing. This change requires two thirds of the vote and shares in the shareholders' meeting and the consent of those shareholders who are affected.

Neither the tenant nor the owner is likely to have the right to use external walls (for example, to exhibit a poster) as these belong to the company. No aesthetic annoyance may be created for other residents. If the tenant continues to use the property against a prohibition by the board, the landlord may have the right to rescind the agreement.

[573] Government proposal 304/94, 59.
[574] Act on Residential Leases 21(2) last sentence.
[575] Act on Residential Leases 26.
[576] Act on Residential Leases 21(3), last sentence.
[577] ''In good time, the housing company shall notify the shareholder and the holder of the right of use for the owner apartment of any maintenance work that will affect the use of the apartment. The notice shall be delivered to the apartment and the address provided by the shareholder to the housing company. However, the housing company is entitled to perform any maintenance or repair work immediately that cannot be delayed without causing damage or harm.' Limited Liability Housing Companies Act 1599/2009, section 4:6(1).

The same applies to the construction of enclosures around the balcony and to all coverings – such as those preventing light from coming in – outside the windows and in the staircase.

If the apartment is used for an essentially[578] different purpose than what was agreed to, the landlord may rescind the contract.[579] Similarly, the housing company may take possession of the apartment, if the apartment is used for an essentially different purpose from the one it was intended for or otherwise against the articles of association (see 6.4, 'change of landlord,' ground number three above). The grounds are parallel. If the tenant arranges for herself an office in one room, this use is not essentially different. But opening a shop would be directly in contravention of the articles of association. Converting a room into a medical clinic raises the question of where to draw the line: a few clients on evenings might not signify any essentially different purpose of use, but long reception hours, or hiring an employee, might.

Disturbance with the way of life is likewise both a ground for rescission[580] and a ground for take-over. The grounds are interpreted in the same way. For example, although keeping a pet may not be prohibited in the articles of association, animals – like also guests – can be noisy. On this basis, disturbance may be created or the house rules may be violated (the board may define 'rules necessary to maintain order in the company's facilities,' for example, that noise may not be caused between ten p.m. and six a.m.). Or, pets may also cause smell nuisance exceeding certain limits.

For a justified reason, the landlord may, in addition, include in the tenancy agreement limitations which would generally be regarded as intervening with normal habitation. A landlord might, for example, rent an apartment for the time being and, because of allergy, prohibit pets.[581] Then the agreement could be rescinded, if the apartment is used in a manner violating the stipulation (the words 'in any other manner' in ground number three, 'Grounds of rescission' below).

While the housing company may not take over the apartment of someone simply living in one's home, practising prostitution can still lead to legal action being taken against the tenant, or the owner, on several grounds. If strangers beat the door as they are not let in the apartment, disturbance may be created, and the contract may be rescinded or the apartment taken over. Constant traffic in the staircase might, at worst, give rise to a ground for rescission, while in lesser cases it may be a justifiable reason for termination. If the practice of prostitution is not otherwise noticed, the use of the apartment for purely commercial purposes supplies a ground for terminating the agreement (or for taking over by the company). But the reasonableness of the termination must be solved in the circumstances of the case (see 'Objections by the tenant' below). When interpreting the legislation, one may see relevant similarities or analogies between the disturbance under consideration and cases concerning disturbance created by alcohol selling, which

[578] Government proposal 304/94, 82.
[579] See Act on Residential Leases 61(1), ground number three, cited in 6.6 below.
[580] 'The lessor shall have the right to rescind the lease agreement … 4) if the tenant creates a disturbance with his or her way of life or allows others to do so in the apartment; … or 6) if the tenant violates provisions or regulations for the maintenance of public health and order in the apartment.' Section 61(1); see 6.6 below.
[581] Kanerva and Kuhanen, 257.

do exist from the lower court instances (under the old tenancy or housing companies acts).

- Is there an obligation of the tenant to live in the dwelling? Are there specificities for holiday homes?

The residential use of the apartment implies that someone must live in the apartment. That person need not be the tenant herself. As long as the tenant takes care of the dwelling, the landlord has no legitimate reason to terminate the contract based on the tenant's failure to occupy the dwelling. But the tenant selected to a state-subsidised dwelling must live in the apartment.

A prohibition to reside around the year in a dwelling which has been designated as vacation home in the building permit applies to holiday homes. The Supreme Administrative Court made this decision in 2013 following land use and building legislation, but the municipality as the respondent had in addition argued about the equal treatment of all holiday homes in the area, which would then need to be granted a similar permission to reside around the year.[582] On the other hand, in real-estate taxation (as noted by the applicants in the case), tax is determined, in accordance with a prior decision of the Supreme Administrative Court, on the basis of the actual use of the dwelling.[583]

- **Video surveillance of the building**

  Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?

Video surveillance of the building falls on the responsibility of the housing company. An individual shareholder may not install cameras in the corridors or at the outer doors. While corporate law supplies no legal obstacle to surveillance, any person storing surveillance video footage for other than purely personal purposes and fulfilling the following conditions, is a controller in the meaning of the Personal Data Act:

> *controller* means a person, corporation, institution or foundation, or a number of them, for the use of whom a personal data file is set up and who is entitled to determine the use of the file, or who has been designated as a controller by an Act[.][584]

All the requirements of the Personal Data Act, including the duty to define the purpose of processing personal data,[585] the exclusivity of this purpose,[586] and the duty of providing

[582] Supreme Administrative Court 3013/2013.
[583] Supreme Administrative Court 2007:55.
[584] Personal Data Act 523/1999, 3(1)(4).
[585] 'It must be appropriate and justified to process personal data in the operations of the controller. The purpose of the processing of personal data, the regular sources of personal data and the regular recipients of recorded personal data shall be defined before the collection of the personal data intended to

information[587] (already at the door of a building, with a sufficiently informative description of where the footage is transmitted to and to whom it is available)[588], apply. Any recording must be necessary for the defined purpose (for example, security, protection of property).[589] A controller may outsource tasks to another company, but that company operates on the assignment of the controller, not as controller.[590] The fact that the legal responsibility resides with the controller has to be considered in the contract of assignment;[591] the assignment must be notified to the Data Protection Ombudsman.[592]

Surveillance may also constitute an offence against privacy. Since 2000, the Criminal Code has provided:

> A person who unlawfully watches or monitors with a technical device
> (1) a person in domestic premises, a toilet, a dressing room or another comparable place, or
> (2) a person in a building, apartment or fenced yard that is closed to the public, as referred to in section 3 [concerning public premises where movement is restricted by the decision of the competent authority], where this violates the person's privacy,
> shall be sentenced for *illicit observation* to a fine or to imprisonment for at most one year.[593]

As domestic premises are defined 'homes, holiday homes and other premises intended for residential use, such as hotel rooms, tents, mobile homes and vessels with sleeping capacity, as well as the stairwells and corridors of residential buildings and the private yards of the residents and their immediate outbuildings.'[594]

Questions about the video surveillance of the common areas in housing companies and the premises of associations have come up in the practice of the Data Protection Ombudsman, and so the subject is not unfamiliar.

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be recorded in the file or their organisation into a personal data file. The purpose of the processing shall be defined so that those operations of the controller in which the personal data are being processed are made clear.' Personal Data Act 7.

[586] 'Personal data must not be used or otherwise processed in a manner incompatible with the purposes referred to in section 6. Later processing for purposes of historical, scientific or statistical research is not deemed incompatible with the original purposes.' Personal Data Act 7.

[587] 'When collecting personal data, the controller shall see to that the data subject can have information on the controller and, where necessary, the representative of the controller, on the purpose of the processing of the personal data, on the regular destinations of disclosed data, as well as on how to proceed in order to make use of the rights of the data subject in respect to the processing operation in question. This information shall be provided at the time of collection and recording of the data or, if the data are obtained from elsewhere than the data subject and intended for disclosure, at the latest at the time of first disclosure of the data.' Personal Data Act 24(1).

[588] Data Protection Ombudsman 11.7.2005, Nr. 964/41/2005, quoted in *Kameravalvonnan yksityisyyden suoja ja henkilötietojen käsittely*, Office of the Data Protection Ombudsman, 27 July 2010, 14–15, available at http://www.tietosuoja.fi/uploads/9i8lz9zxs75h.pdf.

[589] *Kameravalvonnan yksityisyyden suoja ja henkilötietojen käsittely*, 5.

[590] Personal Data Act 8(1)(7); *Kameravalvonnan yksityisyyden suoja ja henkilötietojen käsittely*, 4.

[591] *Kameravalvonnan yksityisyyden suoja ja henkilötietojen käsittely*, 5 and 7.

[592] *Kameravalvonnan yksityisyyden suoja ja henkilötietojen käsittely*, 7.

[593] The Criminal Code of Finland 39/1889, 24:6 (531/2000).

[594] The Criminal Code of Finland 39/1889, 24:11 (531/2000).

Inside the apartment: Video surveillance has been mentioned as one option in the case of a person suffering from dementia. But in such a situation, both the need for care and the patient's and others' privacy and autonomy must be taken into account ('balancing' as a technical format of reasoning fits this) and the patient's or residents' consent is recommended.[595]

6.6 Termination of tenancy contracts

Table for 6.6 Termination of tenancy contracts

	Private rental	Social rental
Notice by tenant	Maximum notice period is 1 month, no matter for how long the lease has lasted	
Notice by landlord	Minimum notice period is 6 months, if the lease has lasted uninterruptedly for at least one year immediately prior to the giving of notice, or otherwise 3 months	
Other reasons for termination	Rescission	

- **Mutual termination agreements**

Mutual termination agreements are lawful with the consent of both parties.

- **Notice by the tenant**
  - Periods and deadlines to be respected

In a non-fixed-term contract, the tenant's notice period is one month,[596] no matter for how long the lease has lasted, and the period cannot be extended in the contract[597]. Unless otherwise agreed, the period is calculated from the end of the month when the notice is given according to section 52(1) of the Act on Residential Leases:

> The notice period for a lease agreement shall be calculated from the last day of the calendar month in which notice was given unless otherwise agreed or otherwise provided in this or some other Act.

[595] Anna Mäki-Petäjä-Leinonen, *Dementoituvan henkilön oikeudellinen asema*, 2003, 81–82 and a recommendation by an association of Alzheimer patients quoted there.
[596] Act on Residential Leases 52(3).
[597] 'Any stipulation reducing the lessor's notice period or extending the tenant's notice period shall be null and void.' Act on Residential Leases 52(4).

As discussed earlier under 'Duration of contract,' the provision means that the parties may agree on the date from which the notice period is calculated within a larger range than one month, and so the notice period can start to run for example once a year.

- May the tenant terminate the agreement before the agreed date of termination (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)?

Until the end of a fixed term, the parties are bound to the terms of the contract and cannot give notice unless otherwise agreed. Exceptionally, a court may, after providing the other party an opportunity to be heard,[598] permit the tenant or the landlord to give notice on special grounds. The tenant may be allowed to give notice if:

> 1) the tenant's need for an apartment comes to an end or is essentially altered by his or her illness or disability or the illness or disability of a member of his or her family living in the apartment; or
> 2) the tenant moves to another locality for reasons of study, employment, or his or her spouse's employment; or
> 3) if, for some comparable reason, the agreement's remaining in force until the agreed date would be patently unreasonable from the tenant's point of view. (Section 55[2])

The patent unreasonableness might emerge, for instance, because of unemployment which makes it economically impossible to pay the rent.[599]

If the court permits one party to give notice on a fixed-term agreement, the other party is entitled to reasonable compensation for any loss incurred as a result of the premature termination of the contract.[600]

- Are there preconditions such as proposing another tenant to the landlord?

Such preconditions as proposing another tenant to the landlord do not exist.

- **Notice by the landlord**
  - Ordinary vs. extraordinary notice in open-ended or time-limited contracts; if such a distinction exists: definition of ordinary vs. extraordinary (= normally related to fundamental breaches of the

[598] Act on Residential Leases 55(5).
[599] Kanerva and Kuhanen 234.
[600] 'The party that did not give notice on the lease agreement shall be entitled to reasonable compensation for any loss incurred by said party as a result of premature termination of the agreement.' Act on Residential Leases 55(4).

contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)

- Requirement of giving valid reasons for notice: admissible reasons

Ordinarily, landlord may give notice in (i) no less than six months' time, if the lease has lasted uninterruptedly for at least one year immediately prior to the giving of notice (not prior to the end of the notice period), or otherwise in (ii) no less than three months' time.[601] The notice period cannot be reduced in the contract.[602] The period is calculated according to section 52(1), as explained above under 'Notice by the tenant.'

The provisions on the detailed grounds for legal notice were abolished along with rent regulation in the early nineties. Today, the landlord may give notice even for the singular purpose of increasing the rent. On giving notice to the tenant, the landlord must deliver a written notification 'stating … the grounds for' the termination, otherwise the notice will be ineffective.[603] Consequently, the landlord should give at least some reason(s) for the notice to have effect. Although, as the grounds for legal notice are no longer laid down in legislation, any ground will do as long as it is not contrary to good rental practice.

Prior to the end of a fixed term, a court may permit the landlord to give notice if:

> 1) the lessor needs the apartment for his or her own use or for the use of a member of his or her family for reasons of which he or she could not have been aware at the time when the agreement was made; or
>
> 2) if, for some comparable reason, the agreement's remaining in force until the agreed date would be patently unreasonable from the lessor's point of view. (Section 55[3])

The rules on hearing the other side and the other party's right to reasonable compensation are as stated under 'Notice by the tenant.'

Grounds of rescission: Every tenancy act has included an exhaustive[604] list of grounds on which the landlord may rescind any tenancy contract. The most commonly used grounds are the tenant's neglect to pay the rent and nuisance created by the tenant. These make up ground number one and the parallel grounds number four and six in the following enumeration in the Act on Residential Leases:

> The lessor shall have the right to rescind the lease agreement:
> 1) if the tenant neglects to pay the rent within the time prescribed by law or agreed on;
> 2) if the leasehold is transferred or the apartment or part of it is otherwise assigned for another person's use, contrary to the provisions of this Act;

[601] Act on Residential Leases 52(2).
[602] 'Any stipulation reducing the lessor's notice period or extending the tenant's notice period shall be null and void.' Act on Residential Leases 52(4).
[603] 'The lessor shall give notice on a lease agreement by delivering to the tenant a written notification stating the date of the lease termination and the grounds for it. A summons for eviction requesting termination of the lease shall also qualify as a notice notification.' 'Any notice not given as provided in this section shall be ineffective.' Act on Residential Leases 54(1) and 54(5), respectively.
[604] 'Any stipulation under which the lessor can rescind the lease agreement on any grounds other than those laid down in this Act shall be null and void.' Act on Residential Leases 65(1).

> 3) if the apartment is used for any other purpose or in any other manner than that provided when the lease agreement was made;
> 4) if the tenant creates a disturbance with his or her way of life or allows others to do so in the apartment;
> 5) if the tenant fails to take good care of the apartment; or
> 6) if the tenant violates provisions or regulations for the maintenance of public health and order in the apartment. (Section 61[1])

The necessary reasonableness (or equity or rule of reason) is expressed in the third paragraph of the same provision as follows:

> If the actions giving rise to the grounds for rescission are of minor significance, however, the right to rescind the lease agreement shall not exist. (Section 61[3])

The landlord is only entitled to rescind the contract in cases number three to six after issuing the tenant with a prior written warning (in accordance with the rules on serving a notification for notice).[605] Exceptionally, this warning is unnecessary in the fourth or sixth case if the tenant has acted 'in a particularly reprehensive manner.'[606] Appellate courts have allowed rescission without a prior written warning, when the tenant stockpiled explosives in the apartment[607] or told the landlord of an intention to harm an unspecified resident's car because that resident's behavior irritated him and then went on to damage fifty-eight cars in the park with an axe[608].

Under the first ground of rescission, the landlord may terminate the lease if the tenant neglects to pay the rent within the legally required or agreed time, unless the tenant's action has only minor significance. Courts have interpreted what has minor significance and what has not. Leaving rent unpaid for four consecutive months is rather unlikely to be of minor significance,[609] and also rent unpaid for two to three successive months often gives the landlord the right[610]. But the past behaviour of the tenant may also be taken into consideration, for instance, if the tenant has been repeatedly late in paying the rent[611]. In addition, appellate courts have sometimes factored in the distinction whether the landlord is a private individual or a corporation, and applied a higher standard to the latter. Against this distinction, the counter-argument is of course that the corporation – especially a corporation applying cost recovery rent – might then pass on the unpaid rent to the rents of other tenants.[612]

Whether, for example, two unpaid last monthly rents will give the landlord the right cannot, as a consequence, be stated as a rule.

Grounds number four and, in particular, number six can be relevant if the tenant repeatedly insults neighbours or, for instance, allows the creation of noise which

[605] Act on Residential Leases 62(1).
[606] Act on Residential Leases 62(3). Examples of situations where ground number three may come into question are given in 6.5 ('uses of the dwelling').
[607] Court of Appeal of Helsinki 3.2.1993 Nr. 430.
[608] Court of Appeal of Helsinki 31.5.2000 Nr. 1367.
[609] Supreme Court 1978 II 16.
[610] Court of Appeal of Turku 18.10.2000 Nr. 2120; Court of Appeal of Helsinki 4.7.2002 Nr. 2179.
[611] This would seem to have been decisive in Supreme Court 2003:71.
[612] Kanerva and Kuhanen, 249.

interferes with the lives of others, especially at nights[613] (other examples are in 6.5, 'Uses of the dwelling'). Unlike neglect to pay the rent, these grounds require that the landlord issue the tenant with a written warning. Moreover, as the landlord has the burden of showing that the disturbance went beyond normal, she may need to interview several neighbours in order to obtain sufficient evidence, for courts try to make sure that the tenant will not have to move out because of harassment between individuals.[614]

- Statutory restrictions on notice:
  - for specific types of dwellings, e.g. public dwellings; rental dwellings recently converted into condominiums (if there exists a special form of protection in this case as in German law) etc.
  - in favour of certain tenants (old, ill, in risk of homelessness)
  - for certain periods
  - after sale including public auction ("emptio non tollit locatum"), or inheritance of the dwelling

The exceptional rules on notice after a compulsory auction and after the tenant's death are explained in 6.4: see change of the landlord and changes of parties, death of tenant ('Parties to a tenancy contract').

The tenant's bankruptcy and the restructuring of private debts affect in different ways the termination of the contract. In the case of bankruptcy, the landlord is entitled to set a period of at least one month within which the bankruptcy estate must decide to take over – or, alternatively, the tenant must put up a guarantee to cover – obligations arising from the contract, otherwise the landlord has the right to rescind the contract.[615] Arrears of rent from the period prior to the tenant's bankruptcy require proof of debt in bankruptcy, and no right of rescission exists on the ground of these rents.[616]

The Act on the Adjustment of the Debts of a Private Individual entered into force on February 8, 1993, when a year of the recession was still left. During the rehabilitation, payment obligations belonging within the restructuring cannot be enforced. Even if a court judgment were given, which is possible, the landlord may not enforce the right of rescission on the basis of the earlier unpaid rents, if the restructuring proceeds as planned.[617] While the restructuring lasts, the tenant must pay rent normally, but she has the right to terminate any tenancy agreement in accordance with a two-month notice period (which has an influence on fixed-term agreements and on those non-fixed-term

[613] 'The fact that disturbances have occurred in the night has often been given attention to in the courts.' Kanerva and Kuhanen, 258.
[614] Kanerva and Kuhanen, 262.
[615] Act on Residential Leases 49(1).
[616] Act on Residential Leases 49(2).
[617] Kanerva and Kuhanen, 216.

agreements where the beginning of the tenant's notice period has been agreed otherwise)[618] – with no compensation due to the landlord.

Beyond statutory restrictions, the question whether social causes for unpaid rents – unemployment or illness – should have a significance for the existence of the landlord's right of rescission has been debated in case law. According to one argument used in a Supreme Court decision in 2003, as the rent must normally be paid at the beginning of the rent payment period, the landlord should not bear the risk of the tenant's ability or willingness to pay.[619]

- Requirement of giving valid reasons for notice: admissible reasons

Please see the answer above.

- Objections by the tenant

If the tenant disagrees with the landlord's notice, she may be protected against it (direct protection against notice) under the following conditions and procedure:

> The court shall, at the tenant's request, declare notice given by the lessor ineffective if:
> 1) the grounds for giving notice consist of revision of the rent or of a stipulation on determining the rent and the requested rent or stipulation on determining the rent would be considered unreasonable under section 30; or
> 2) the notice must be considered otherwise unreasonable in view of the tenant's circumstances and there is no justifiable reason for termination.
>
> A suit for declaring notice ineffective shall be brought while the lease is in effect and no later than three months after the notice notification was received. During the court proceedings, the lease shall continue in force on its previous terms. (Section 56[1–2])

In other words, the tenant may bring an action in court to show that the landlord's demand is unreasonable as explained in the section on 'Rent payment' in 6.4. Or the notice might be deemed unreasonable on the basis of consequences, because the tenant has, for instance, difficulty in finding a comparable dwelling in the region,[620] while the landlord does not have a justifiable reason for termination. Any of the grounds contained in the repealed provisions in force before the mid-1990s should be expected to be considered a justifiable reason by the court, including grounds such as the landlord's need for the apartment for her or his own or family member's use.

Alternatively, the tenant may waive her direct protection against notice, vacate the flat and claim damages – including the items mentioned in the next provision, where the

[618] Kanerva and Kuhanen, 216.
[619] Supreme Court 2003:71.
[620] Government proposal 127/1984, 76–77.

fourth item has a punitive nature compensating for termination that had no objective ground[621]:

> If a lease agreement is terminated by the lessor by giving notice which cannot be considered to conform with acceptable tenancy practice, the tenant shall be entitled to compensation from the lessor for the [1] cost of removal and [2] of acquiring a new apartment and for [3] any repairs and alterations carried out by the tenant which have increased the rental value of the apartment, the compensation for said repairs or alterations being based on their current value at the time of termination of the lease, provided that under this Act the tenant had the right to perform said work and has not previously received compensation for it. Furthermore, the tenant shall be entitled to a [4] sum equivalent to no more than three months' rent as compensation for the inconvenience caused by removal. (Section 57[1])

The choice between the remedies depends on the circumstances, but the damages option is out of the question if the tenant stays in the apartment after the removal date.

- Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?

The deferral of the removal date is a special action, which the tenant may bring no less than one month prior to the removal date.[622] The tenant may also attach this claim to another claim, which has already been brought before the court.

If the tenant has substantial difficulty in obtaining another dwelling, the district court may defer (once) the removal date by up to one year.[623] The deferral must not cause the landlord or some other person (a new tenant) substantial inconvenience or loss, and it is precluded to defer the removal date after (i) a buyer in a compulsory auction has given notice, (ii) the landlord has the right to rescind the contract, or (iii) the tenant has herself given notice of termination or rescinded the agreement.[624] On making the decision, the court simultaneously announces a new removal date and includes in its decision the

[621] Ari Saarnilehto (assisted by Seija Heiskanen-Frösén), sections on Finland in Kare Lilleholt (ed.), *Housing law in the Nordic countries: A report commissioned by the Nordic Council of Ministers*, TemaNord 1998:571, Copenhagen: Nordic Council of Ministers, 376

[622] Act on Residential Leases 70(1).

[623] 'If a tenant with a non-fixed-term lease encounters substantial difficulty in obtaining another dwelling by the removal date, the court can, at the tenant's request, defer the removal date by up to one year. Deferral of the removal date can be restricted to apply to only part of the apartment.' Act on Residential Leases 69(1–2).

[624] 'The removal date shall not be deferred if this causes the lessor or some other person substantial inconvenience or loss. Nor shall the removal date be deferred if the lessor has given notice pursuant to section 39, or if the lessor has the right to rescind the lease agreement under paragraph 1 or 2 of section 61, or if the tenant himself, herself or itself has given notice or rescinded the agreement.' Act on Residential Leases 69(3).

duty that the tenant move out when the lease is terminated.[625] The decision cannot be appealed to a higher court.[626]

- 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

This question was dealt with in the preceding two answers.

- **Termination for other reasons**

  - Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)

When property is sold in a public auction, the buyer of the real estate or building or the shares entitling to the possession of the apartment has the right to give notice on the tenancy contract within one month of taking possession, or of a later date when she became aware of the contract, unless a stipulation on the continuance of the lease has been agreed upon in the public auction (see 6.4, 'Change of landlord' above). Sales in voluntary auctions such as those executed by banks are not considered equal to public compulsory auctions, as established by the Supreme Court in 1992, and were not made equal in the Act on Residential Leases because of considerations regarding control by the authorities. If the housing company has taken over the apartment, the buyer in the public auction does not have the right to terminate the tenancy agreement,[627] and in this case not the exception related to public auctions, but the main rule related to sales applies (see 6.4).

After the buyer in a public auction gives notice, the removal date cannot be deferred.[628]

6.7 Enforcing tenancy contracts

Table for 6.7 Enforcing tenancy contracts

	Private rental	Social rental
Eviction procedure	Decisions by the bailiff	
Protection from eviction	Children; people in need of direct care	

[625] Act on Residential Leases 71.
[626] Act on Residential Leases 70a (599/2002).
[627] Act on Residential Leases 39(3).
[628] Act on Residential Leases 69(3).

- Eviction procedure: conditions, competent courts, main procedural steps and objections

First, the bailiff will send an exhortation to move to the address of the premises covered by the ground for enforcement and to other possible known addresses. The exhortation to move can also be left as a sealed or unsealed notice on the premises.[629]

The exhortation to move includes the exact date on which the evictee(s) must move[630] – no earlier than one week, and no later than two weeks from the receipt of the exhortation to move.[631] The move day may come to pass more than a day earlier than the actual eviction: the bailiff has discretion to carry out the eviction at any time after the move day.

Conventionally, the exhortation to move is delivered to the tenant together with the notice of the commencement of enforcement proceedings. In the notice of the commencement of proceedings, the tenant is given an opportunity to be heard. At that stage, the tenant may ask for a postponement of the move day.[632]

If the postponement does not cause considerable inconvenience to the applicant, the bailiff may postpone the move day (once or several times) by up to altogether two months from the start of the proceedings. With the consent of the applicant, the eviction may be postponed for a longer period, at most six months from the start of the proceedings, if there is an especially important reason for a longer postponement.[633]

The bailiff will consider the need for postponement and the inconvenience to the applicant on a case-by-case basis. The bailiff's decision on a postponement is not subject to appeal.[634] The tenant shall, if the landlord-applicant demands this, pay rent to the landlord for the period of postponement under the earlier terms.[635]

- Rules on protection ("social defences") from eviction

[629] Enforcement Code 705/2007 (an unofficial translation available at http://www.finlex.fi/en/laki/kaannokset/2007/en20070705), 7:2.
[630] Enforcement Code 7:2.
[631] 'The bailiff shall not without an important reason set the move day earlier than one week nor later than two weeks from the receipt of the exhortation to move.' Enforcement Code 7:4(1) first sentence.
[632] Kanerva and Kuhanen, 351.
[633] 'The move day may be postponed, unless this would cause considerable inconvenience to the applicant. However, the eviction shall be carried out within two months of the pendency of the matter, unless there is an especially important reason for a longer postponement. With the consent of the applicant, the eviction may be postponed for at most six months from the pendency of the matter without that pendency lapsing as a result. The bailiff's decision on a postponement shall not be subject to appeal.' Enforcement Code 7:4(1) second until last sentence.
[634] Enforcement Code 7:4(1) last sentence.
[635] 'On the demand of the applicant, the evictee shall pay rent to the applicant for the period of postponement, beginning from the move day, under the earlier terms. Advance payment of the rent may be set as a condition for postponement, if this can be deemed reasonable from the point of view of the evictee.' Enforcement Code 7:4(2).

If the bailiff is aware that in the apartment reside children, whose living circumstances are unclear, or people in need of direct care[636] (such as the elderly or mentally ill or intoxicated persons), the Enforcement Code requires that 'the local housing and social welfare authorities shall be notified as soon as possible.'[637]

This obligation arises if the bailiff discovers, during the proceedings or while carrying out the eviction, that said persons reside on the premises, but the bailiff has no active duty to determine the situation.[638] The bailiff may fulfil the obligation by informing either the housing authorities or the social authorities or both.[639]

Lastly, if, at the time when the eviction is carried out, there are still said people in the apartment, 'the eviction shall not be carried out before the housing and social welfare authorities have been reserved the opportunity to arrange for housing or to determine the need for social welfare services.'[640]

- May rules on the bankruptcy of consumers influence the enforcement of tenancy contracts?

As mentioned above, during the restructuring of the tenant's private debts, the landlord may not enforce the right of rescission even if a court judgment were given ('Statutory restrictions on notice' in 6.6).

6.8 Tenancy law and procedure "in action"

The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in this field ("tenancy law in action") is taken into account:

- What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?

Although understood to be the land of thousands of associations, Finland has no such strong, broad, organised tenants' and landlords' sides as in Sweden. Tenancy legislation does not confer any task to an organisation of either side. The role of associations unfolds when one considers tenants' problems, such as rent arrears or a prospective tenant's search for a dwelling, or landlords' problems, such as credit checks and debt collection. A tenant may turn not only to the manager of the housing company or housing counselling which is offered by municipal housing companies and authorities and general-interest organisations, but also to the counselling services of Finnish Tenants[641] and the housing counselling of the Consumers' Association of Finland[642].

[636] Enforcement Code 7:3.
[637] Enforcement Code 7:3.
[638] Kanerva and Kuhanen, 351.
[639] Government proposal.
[640] Enforcement Code 7:5(2).
[641] http://www.vuokralaiset.fi/.
[642] http://www.kuluttajaliitto.fi/briefly_in_english.

Young people seeking an apartment or having questions about renting can contact the Finnish Youth Housing Association[643]. The legal counselling and other services of the Finnish Association of Landlords and the advisory services of the Real Estate Federation are available for the landlord.[644]

- What is the role of standard contracts prepared by associations or other actors?

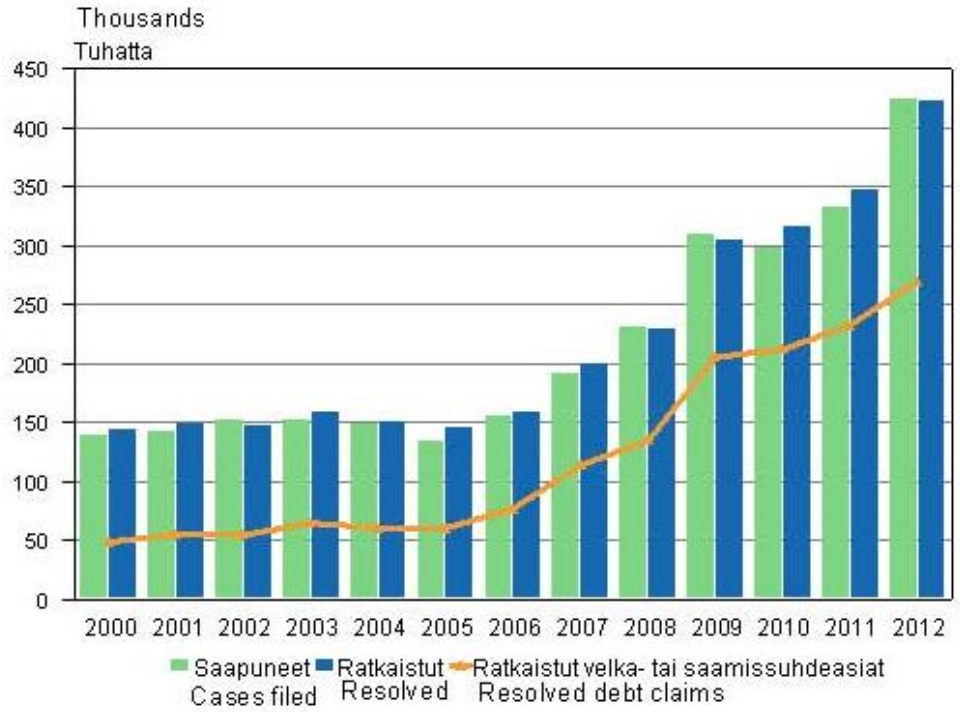
Standard forms are used widely, at least as checklists. They are available in the internet and bookstores. There are forms for residential tenancy, subletting, employment-related apartments, for giving notice and so forth: forms drawn up by Ministry of the Environment, associations, leading landlords, and agents and other business firms.

- 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?

In legal disputes, the alternative of settling out of court – either to begin with or at some later time after suing – is endorsed, for instance, when the interest in the case is small, when questions of proof are perceived as giving rise to uncertainty about the outcome, or when maintaining a good client relationship is important. It has been observed that, in district courts, per judge only one civil case in two months is decided as an outcome of a main hearing (about 3,000 cases nationwide annually), but this steadily low number does not mean that parties do not resort to courts: in fact, the number of civil cases has been on the rise (Figure 18), but an overwhelming 99.3 per cent, 419,300 matters in 2012, are resolved in the preliminary stages (Table 7). Tenancy disputes account for 6 per cent of all civil matters (see Table 8).

[643] https://www.nal.fi/fi/etusivu/.
[644] See 1.5.

Figure 18. Civil cases in district courts 2000–2012.



Source: Statistics Finland.[645]

Table 7. Number and average duration of cases adjudicated to a final decision in district courts (2011and 2012).

Stages of adjudication in civil cases	2012		2011	
	Number of cases adjudicated to a final decision	Average duration in months	Number of cases adjudicated to a final decision	Average duration in months
All stages of adjudication combined	422,727	2.3	347,997	2.5
Written submissions	417,256	2.2	342,131	2.4
Oral submissions	2,386	9.1	2,469	9.4
Main hearing	3,085	11.4	3,397	10.8

Source: Statistics Finland.[646]

[645] http://www.tilastokeskus.fi/til/koikrs/2012/koikrs_2012_2013-04-02_tie_001_fi.html.
[646] http://www.tilastokeskus.fi/til/koikrs/2012/koikrs_2012_2013-04-02_tie_001_fi.html.

Table 8. Civil matters and tenancy cases in district courts (2007–2012).

	2012	2011	2010	2009	2008	2007
Civil matters (cases and administrative applications)	468,976	393,511	360,658	350,541	273,748	242,756
Tenancy cases	24,475	24,363	24,811	25,918	24,916	25,734

Source: Statistics Finland.[647]

Alternative dispute resolution: The Consumer Disputes Board[648] – until 2007 the Consumer Complaints Board – has, since 2007, given recommendations also to resolve disputes concerning rental housing and right-of-occupancy housing in a variety of constellations: when the parties are private individuals, or when the claimant is a private individual against a business landlord, a consumer purchasing a right of occupancy, or a private individual selling a right of occupancy. The ever-increasing caseload of the Board was 5,352 complaints, 5,010 resolutions in 2013 (4,810 complaints and 4,710 resolutions in 2012); 324 complaints were in the field of tenancy and right-of-occupancy (299 in 2012). Apart from the consumer institutions, which include the Consumer Ombudsman[649] (an example of whose influence was mentioned in 6.2), and the mediation service of the Finnish Bar Association, there are few alternatives to general courts in tenancy disputes.

- 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)?

The sparseness of civil litigation has been caused, first of all, by the duration of the proceedings. The average length of the different stages of adjudication in district courts, from a few months to a year, was shown in Table 7. The appellate-court procedure takes, typically, between one and two years and, if certiorari is granted, the Supreme Court takes from six months to two years in addition.[650]

- 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?

Another reason for the small quantity of litigated cases has to do with legal costs. For instance, disputes about the responsibility for maintenance or about work are said to be

[647] http://www.tilastokeskus.fi/til/koikrs/2012/koikrs_2012_2013-04-02_tau_001_fi.html.
[648] http://www.kuluttajariita.fi/en/index.html.
[649] http://www.kkv.fi/en-GB/.
[650] Kanerva and Kuhanen, 363.

typical for housing companies, and the typical legal costs in the district court are said to be 20,000–35,000 euros.[651] Generally, the costs of civil litigation must be borne by the losing party, but an exception to the rule applies in residential tenancy cases:

> If a case concerning the collection of a debt or the eviction of a tenant is decided ... by a judgment by default without continuing the preparations, the court shall on its own initiative assess the legal costs to be compensated by the party in default, taking into account the amount of necessary work put into the application for a summons, the amount of the debt and the unavoidable expenses.
>
> The Ministry of Justice shall issue more detailed instructions on the bases for the assessment of legal costs under this section. (Code of Judicial Procedure 4/1734, 21:8c [19.3.1999/368])

The charges set by the Ministry of Justice have recently been lowered, and they are 110 euros (plus the trial charge collected from the plaintiff, which varies from 60 to 182 euros depending on the stage at which the case is resolved, if this is claimed) and in more difficult cases 160 euros (plus the trial charge if claimed).[652] Higher expenses require justification. The rule that the loser pays all may nevertheless apply, if there are weighty reasons and the case is not decided by default judgment:

> In a case concerning the renting of accommodation, legal costs shall be ordered in accordance with section 8c of this chapter. If there are particular reasons for this and the case is not decided ... by a judgment by default without continuing the preparations, a party may be ordered to pay the legal costs of the opposing party in an amount greater than that provided in section 8c. (Code of Judicial Procedure 4/1734, 21:8d [12.7.2002/601], second sentence)

When the amount that the loser pays is adjusted, the winner will have to foot the bill for the difference.

A third and final reason, affecting specially the middle class, is the restricted coverage of legal cost insurance. While the deductibles, the maximum amounts of compensation, and other terms, such as the time when the compensation is paid, need not detain us here, a mention can be made of an observation that tenancy cases are quite often excluded from the insurance[653]. Approximately 70 to 75 per cent of households have legal cost insurance as part of their home insurance; it is also part of property insurance.

Legal aid may be granted to a person whose case is, for one reason or another, not covered by legal cost insurance. Legal aid is available from the State Legal Aid Offices[654] on the basis of the applicant's disposable income.

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[651] 'Käräjöinnin kannattavuus puntariin' *Kiinteistölehti*.

[652] Decree 445/2012. The trial charge collected from the plaintiff in civil cases is, if hearing is concluded (i) in written preparation, 80 euros, (ii) in oral preparation, 113 euros, (iii) in a main hearing with a single judge, 147 euros, (iv) in a main hearing with the full court, 182 euros, or (v) by a default judgment, the particulars of which have been entered directly in the data system, 60 euros. http://www.oikeus.fi/17308.htm.

[653] Kanerva and Kuhanen, 363.

[654] http://www.oikeus.fi/20631.htm.

- How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)

Legal certainty is not a problem in terms of contradicting statutes, and also legal literature on each case decided by the Supreme Court is listed on the relevant page of the national database[655].

- 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)?

- Are the areas of "non-enforcement" of tenancy law (such as legal provisions having become obsolete in practice)?

Generally, no areas of 'non-enforcement' can be identified in the normative basis of tenancy regulation.

- What are the 10-20 most serious problems in tenancy law and its enforcement?

1) The amount of the deposit is often two months' rent, and if the tenant cannot reclaim it at the end of the lease this amounts to a significant loss. Disputes concerning the landlord's refusal to give back the deposit on grounds of the condition of the apartment are perhaps the most problematic area in Finnish tenancy law.[656] This problem is related to two others:

2) Generally, legal costs can become high compared with the interest in the case (for example, a deposit of 600 euros, and the legal costs can be 6,400 euros for the opponent and 3,800 euros for oneself).

3) A consistent custom is absent about how the condition of the apartment in the beginning of the lease is compared with its condition at the end of the lease.

4) Security is not always deposited on a separate bank account.

5) From the point of view of the case law under the European Social Charter, the fact that the bailiff decides whether there is an especially weighty reason to postpone an eviction (6.7 above), rather than having criteria in legislation, can be problematic.

6) Concerning housing policy and markets generally: the high costs of certain energy-efficiency measures.

7) There are lengthy queues to obtain state-subsidised rental dwellings in Helsinki. For example, for each apartment freed in the stock of VVO, there are said to be seventy applicants.

[655] http://www.finlex.fi/fi/oikeus/.
[656] See 6.4, 'Deposit' above.

8) After pension funds became major investors in the organisations that own state-subsidised dwellings, it is uncertain how sustainable the social housing production system is. Will general-interest organisations produce social rental housing in the long run?

- What kind of tenancy-related issues are currently debated in public and/or in politics?

Most above problems, but especially the first, the fifth and the sixth, have been debated. But the most debated legal question in real estate governance generally has been the imposition of penalties by private parking control firms (the Supreme Court held that a parking charge inflicted by a private firm must be paid; Constitutional Law Committee needed a year to make a negative stand on a proposed legislation). The business opportunity arises from the meager funding of municipal parking control.

7. Analysing the effects of EU law and policies on national tenancy policies and law

7.1 EU policies and legislation affecting national housing policies

- fundamental freedoms

Foreign nationals have been able to buy and possess real estate and apartments since the turn of the 1990s. Limitations on foreigners' landownership, which had been introduced in an act in 1939, were mostly repealed as of January 1, 1993, in anticipation to Finland's accession to the European Economic Area. After that, the sale of free-time estates to persons domiciled abroad was made subject to permission, but this restriction persisted only for a five-year transition period after Finland joined the European Union on January 1, 1995.

- EU social policy against poverty and social exclusion

The Aliens Act of 2004 was prepared with a view to what was known beforehand about two European directives of 2003, concerning, first, the approximation of the legal status of third-country nationals[657] who are long-term residents to that of member-state citizens,[658] and, second, their right to family reunification.[659] The rest of the first Directive was transposed into the Aliens Act in 2007.[660] The number of long-term resident statuses granted has been 62 in 2011 and 100 in 2012, while statistics on the use of the right to move from another member state to Finland do not exist (the Finnish Immigration Service estimates that the number is small, around one hundred cases a year, yet growing).[661]

According to the first Directive, the equal treatment of long-term residents and member-state citizens includes the supply of goods and services made available to the public, such as housing.[662] This article in the Directive was not deemed to require any changes to existing legislation in 2006.[663]

The family reunification Directive allows that the member state may require evidence of the following means from the third-country national whose family members apply to be joined with him or her ('sponsor')[664]:

[657] 'Third-country national' means any person who is not a citizen of the European Union. Directives 2003/103/EC and 2003/86/EC, Article 2(a).
[658] Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents OJ 23.1.2004L 16/44
[659] Directive 2003/86/EC of 22 September 2003 on the right to family reunification OJ 3.10.2003 L 251/12
[660] *Ulkomaalaislaki* (30.4.2004/301).
[661] Government proposal 29/2013, 6.
[662] Directive 2003/103/EC Article 11 1(f).
[663] Government proposal 94/2006, 19.
[664] Directive 2003/86/EC Article 2(c).

> accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned [and]
>
> stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. …[665]

As the article does not oblige the state to act contrariwise than these requirements, no changes were proposed to the Aliens Act on this basis.[666] The national regulation requires the sponsor to have a certain level of net income, while any requirement of sufficient accommodation is considered to fit poorly with the Finnish system, where state-subsidised apartments can be obtained only when the size of the family is known.

- competition and state aid law

European Union law has an influence on the system of social housing through the regulation of 'services of general economic interest' (SGEI) in the competition rules on state aid. The question is whether the member state is free to refrain from notifying to the European Commission public-sector compensation paid to undertakings. After the *Altmark Trans* (2000) decision by the European Court of Justice, which laid down criteria under which a compensation paid for discharging a public service obligation does not constitute state aid, the Commission drew together the interpretation practices of the Court of Justice, those of its own, and the primary law of the Treaty and published a regulation package (the so-called 'Monti package') consisting of a Decision, a Framework document, and a Directive.

A central substantive consideration in the regulation is that public service compensation should not benefit the recipient undertaking outside the scope of the service of general economic interest, because this would amount to unfair advantage towards competitors in the other field. Thus, the subsidies for housing production should not benefit the operations of the recipient corporations in free markets. For this reason, the recipients must not record higher than reasonable profit in the subsidised activity. A memorandum of the national Working Group on the Development of General-Interest Provisions (2010) notes, as a challenge, the fact that social housing is financed by state subsidies and rents collected from residents, while the investments made by the general-interest corporations themselves are actually very small. The domestic solution has been to allow the owner a reasonable profit on the portion of investment that is its own, but not on the portion of state subsidy.[667]

When the Decision of the Commission entered into force in 2005, the national legislation already met its requirements. The memorandum of the Working Group from 2010

[665] Directive 2003/86/EC Article 7 1 (a) and (c).
[666] Government proposal 198/2005, 14.
[667] *Yleishyödyllisyyssäännösten kehittäminen: Työryhmäraportti 20.1.2010*, Helsinki: Ministry of the Environment 2000, 15.

observes that Union law imposes no form in which these matters are to be legislated, and, thus, no specific, Finnish 'general interest' legislation of the current type is required: there is room for change, if the central conditions of the acceptability of subsidies are not jeopardised. According to the Working Group: 'All needs for change coming from national points of departure must, nevertheless, be nowadays considered in relation to the Decision of the Monti package, so that the legislation will also remain an SGEI subsidy and fulfil the criteria of the Decision. Then, legislative changes relating to housing-policy subsidies need not be notified to the Commission and the changes can be implemented significantly faster than otherwise would be possible.'[668]

Overall, the memorandum makes clear that the compatibility of the national system with the internal market requires more than only those unit-specific restrictions that existed before 2000, while reminding that Union law takes directly no stand on the duration of housing-production-related limitations and no precedent exists yet on this point.[669] It welcomes, finally, the obligation of member states to report to the Commission every three years on the implementation of the Decision, because previously information about the legislation of different member states had been available only from the states themselves and usually in the national language, or, variously, from lobbies, whose focus is not centred on the detailed housing-related restrictions or on considerations of state aid law. In the memorandum itself, the Working Group takes a look at the legislative developments in three member states: Sweden (where state-subsidised housing production is not a service of general economic interest and each individual project is notified to the Commission), Denmark (where state-subsidised production is such a service and the Decision of the Commission is applied as in Finland), and the Netherlands.[670]

- energy saving rules

The role of the European Union has increased in energy policy steering. Currently, the implementation of the Energy Efficiency Directive of 2012 is organised by Ministry of Employment and the Economy, together with Ministry of the Environment and Ministry of Finance. The prior implementation of the two directives on the energy performance of buildings, examined in 3.5 above, was organised by Ministry of the Environment. The targets to reduce greenhouse gas emissions by 20 per cent from the level of 1990 by 2020 are the main framework of European climate and energy policy, and they suggest that further impact of European legislation on national policies is to be expected.

7.2 EU policies and legislation affecting national tenancy laws

First of all, most of the European consumer law directives have been transposed by making amendments and additions to the Consumer Protection Act, which is from 1978.

[668] Ibid.
[669] Ibid.
[670] Ibid., 16–18.

This is illustrated in the following table of transposition of EU legislation (7.3). For example, the directive on unfair terms in consumer contracts and the time-share directives have been incorporated into the Consumer Protection Act. The injunctions directive, by contrast, was transposed by a separate act.[671]

The Equality Act (*yhdenvertaisuuslaki*) entered into force on 1 February 2004. It implemented the directive on equal treatment of persons irrespective of racial or ethnic origin (2000/43/EC) and the directive on a general framework for equal treatment in employment and occupation (2000/78/EC). The Act signified the arrival, for the first time in ordinary legislation, of provisions establishing the application of fundamental equality rights also between private parties in the field of housing. The way that the scope of application of the Act was cleared up regarding the sphere of private and family life was presented above.[672]

Finally, it is worth noting that the regulation of the specific Finnish form of tenure, limited-liability housing company, has so far not been affected by EU legislation.

7.3 Table of transposition of EU legislation

DIRECTIVES	TRANSPOSITION FINLAND	RELATED SUBJECT	PART QUESTION-NAIRE
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 and public service contracts (OJEC L 134/114).	*Laki julkisista hankinnoista* (30.3.2007/348)	A special allocation procedure is envisioned for contractors when the target is the design or construction of social housing (Article 34).	
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 (OJEEC L 40/12); **repealed by the Regulation (EU) 305/2011** of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for		About construction products: free movement and the certificates required.	

[671] *Laki rajat ylittävästä kieltomenettelystä* (21.12.2000/1189).
[672] See 6.3.

the marketing of construction products and repealing Council Directive 89/106/EEC (OJEU L 88/5).			
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 L 315/1).	Transposition period: June 2014	Energy savings targets imposed to the State. It also deals with public bodies' buildings and others that require greater energy savings.	3.5 Energy policies
Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU L 153/13).	*Laki rakennuksen energiatodistuksesta* (18.1.2013/50)	Improvement of the energy performance of new and existing buildings.	3.5 Energy policies
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 L 153/1).	*Laki tuotteiden ekologiselle suunnittelulle ja energiamerkinnälle asetettavista vaatimuksista annetun lain muuttamisesta* (26.11.2010/ 1009)	Labelling and basic information for users of household electric appliances.	
Commission Delegated Regulation (EU) 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 luminaries (OJEU L 258/1).			
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 L 140/16).	*Laki biopolttoaineista ja bionesteistä* (7.6.2013/393)	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	*Sähkömarkkinalaki* (9.8.2013/588)	Basic standards for electricity	

internal market in electricity and repealing Directive 2003/54/EC (OJEU L 211/55).		sector.	
Heating, hot water and refrigeration			
Commission Delegated Regulation (EU) 626/2011 of 4 May 2011 supplementing **Directive 2010/30/EU** of the European Parliament and of the Council with regard to energy labelling for air conditioners (OJEU L 178/1).		Labelling and information to provide about air conditioners.	
Commission Delegated Regulation (EU) 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 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 L 211/94).	*Laki maakaasumarkkinalain muuttamisesta* (9.8.2013/89)	Basic legislation about natural gas in buildings and dwellings.	
Council Directive 82/885/EEC 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 (OJEEC L 378/19); **repealed by Directive 2005/32/EC** of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products **(OJEC L 191/29)**.	*Laki tuotteiden ekologiselle suunnittelulle ja energiamerkinnälle asetettavista vaatimuksista* (19.12.2008/1005)	Legislation about heating and hot water in dwellings and buildings.	
Household Appliances			
Commission Delegated Regulation (EU) 392/2012 of 1 March 2012 supplementing **Directive 2010/30/EU** of the European		Labelling and information to provide about	

Parliament and of the Council with regard to energy labelling of household tumble driers (OJEU L 123/1).		tumble driers.	
Commission Delegated Regulation (EU) 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 L 314/1).		Labelling and information to provide about dishwashers.	
Commission Delegated Regulation (EU) 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 L 314/47).		Labelling and information to provide about washing machines.	
Commission Delegated Regulation (EU) 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 L 314/67).		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 L 170/10).	*Laki tuotteiden ekologiselle suunnittelulle ja energiamerkinnälle asetettavista vaatimuksista* (19.12.2008/1005)	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 L 128/45).	*Kauppa- ja teollisuusministeriön asetus kotitalouksien sähköuunien energiamerkinnässä annettavista tiedoista* (5.12.2002/1052)	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 L 266/1).	*Kauppa- ja teollisuusministeriön päätös kotitalouksien kuivaavien pyykinpesukoneiden energiankulutusmerkinnäs sä annettavista tiedoista*	Labelling and information to provide about household combined washer-driers.	

	(9.9.1997/895)		
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 L 213); Directive 2006/42/EC	*Valtioneuvoston asetus koneiden turvallisuudesta* (12.6.2008/400)	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, amended by Council Directive 93/68/EEC of 22 July 1993 (OJEEC L 73).	*Laki tiettyjen tuotteiden varustamisesta CE-merkinnällä* (22.12.1994/1376) repealed by *laki CE-merkintärikkomuksesta* (19.3.2010/187)	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 L 174/88).	*Laki vaarallisten aineiden käytön rajoittamisesta sähkö- ja elektroniikkalaitteissa* (7.6.2013/387)	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 99/44/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 L 304/64).	*Laki kuluttajansuojalain muuttamisesta* (31.12.2013/1211), amending the Consumer Protection Act	Information and consumer rights; Legislation referred to procurement of services, car park; Immovables are excluded: lease of housing, but not of premises.	6.2. 'Ancillary duties of both parties in the phase of contract preparation and negotiation'
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	*Laki viestintämarkkinalain muuttamsiesta* (8.4.2011/363), *laki radiotaajuuksista ja telelaitteista annetun lain muuttamisesta* (8.4.2011/364), *laki sähköisen viestinnän tietosuojalain muuttamisesta* (8.4.2011/365)	Consumer protection in the procurement of communications services.	

Regulation (EC) 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJEU L 337/11).			
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 L 110/30).	*Laki kuluttajansuojalain muuttamisesta* (27.8.2010/746), amending chapter 7 of the Consumer Protection Act	Action for an injunction of Directives (Annex I) aimed at the protection of the collective interests of consumers.	
Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of time-share, long-term holiday product, resale and exchange products (OJEU L 33/10).	*Laki kuluttajansuojalain muuttamisesta* (11.3.2011/227), amending the Consumer Protection Act	Contracts relating to the purchase of the right to use immovable properties on a timeshare basis.	4.2 Regulatory types of tenure without a public task
Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJEU L 376/21).	*Laki sopimattomasta menettelystä elinkeinotoiminnassa annetun lain muuttamisesta* (29.8.2008/562)	Misleading advertising and unfair business-to-consumer practices; Immovables are products in terms of Directive 2005/29/EC (Article 2 (c)).	7.2
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) 2006/2004 of the European Parliament and of the Council (OJEU L 149/22).	*Laki kuluttajansuojalain 2 luvun muuttamisesta* (29.8.2008/561), amending chapter 2 of the Consumer Protection Act		7.2
Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJEU L 178/1).	*Laki tietoyhteiskunnan palvelujen tarjoamisesta* (5.6.2002/458)	Contracting by electronic means; Rental contracts are included (Article 9 (2a)).	6.2
Directive 97/7/EC of the European	*Laki kuluttajansuojalain*	Contracts	

Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJEC L 144/19) **repealed by Directive 2011/83/EU** of the European Parliament and of the Council of 25 October 2011 on consumer rights **(OJEU L 304/64)** with effect from 13 June 2014.	*muuttamisesta* (31.12.2013/1211), amending the Consumer Protection Act	relating to immovables are excluded, except from lease (Article 3 (1)).	
Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEEC L 95/29).	*Kuluttajansuojalaki* (20.1.1978/38), chapter 4 (16.12.1994/1259)	Unfair terms.	6.3 Conclusion of tenancy contracts
Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJEEC L 371/31) **repealed by Directive 2011/83/EU** of the European Parliament and of the Council of 25 October 2011 on consumer rights **(OJEU L 304/64)** with effect from 13 June 2014.	*Laki kuluttajansuojalain muuttamisesta* (31.12.2013/1211), amending the Consumer Protection Act	Information and consumer rights. Legislation referred to procurement of services. Tenancy contracts are excluded from its scope (Article 3 (2 a)).	6.2
HOUSING LEASE			
Regulation (EC) 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations - **Rome I** (OJEU L 177/6 corr. L 309/87).		Law applicable (Article 4 (1c, d), Article 11 (5)).	7.2
Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (OJEC L 12/1) - **Brussels I / EuGVVO**		Law applicable International jurisdiction in proceedings which have tenancies of immovable property as their object (Article 22 (no. 1)).	7.2
Council Regulation (EC) 1346/2000 of 29 May 2000 on insolvency proceedings (OJEC L 160/1) - **EUInsVO**		Law applicable in Insolvency Proceedings (Article 8).	7.2

Commission Regulation (EC) 1920/2001 of 28 September 2001 laying down detailed rules for the implementation of Council Regulation (EC) 2494/95 as regards minimum standards for the treatment of service charges proportional to transactions values in the harmonized index of consumer prices and amending Regulation (EC) 2214/96 (OJEC L 214/1).		CPI harmonization: Estate agents' services for lease transactions (Article 5).	
Commission Regulation (EC) 1749/99 of 23 July 1999 amending Regulation (EC) 2214/96 concerning the sub-indices of the harmonized indices of consumer prices (OJEC L 214/1).		CPI harmonization: Lease, housing preservation and repair, water and other services (subscript 4).	6.4
Council Regulation (EC) 1687/98 of 20 July 1998 amending Commission Regulation 1749/96 concerning the coverage of goods and services of the harmonised indices of consumer prices (HICP) (OJEC L 214/12).			6.4
Commission Regulation (EC) 2214/96 of 20 November 1996 concerning harmonized indices of consumer prices: transmission and dissemination of sub-indices of the HICP (OJEC L 137/27).			
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 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.	7.1
DISCRIMINATION			
Council Directive 2004/113/EC of 13 December 2004 on the principle of equal treatment between men and women in the access to and supply of goods and services (OJEC L 373/37).	*Yhdenvertaisuuslaki* (20.1.2004/21)	Discrimination on grounds of sex.	6.3
Council Directive 2000/43/EC of		Discrimination	6.3

29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC L 180/22).		on grounds of racial or ethnic origin.	
IMMIGRANTS OR COMMUNITY NATIONALS			
Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJEU L 95/1); repealing the former **Directive 89/552/EEC** and its amending Directive 2007/65/EC (Article 34). Cf. also Commission Communication on the Application of the General Principles of Free Movement of Goods and Services - Concerning the Use of Satellite Dishes (COM 2001, 351 final).	*Laki televisio- ja radiotoiminnasta* (9.10.1998/744)	Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States (Article 3 (1)).	
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 L 155/17).	*Laki ulkomaalaislain muuttamisesta* (16.12.2011/ 1338)	Equality of treatment with housing (Article 14 (1g); However, Member States may impose restrictions (Article 14 (2)).	7.1
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) 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJEU L 158/77).	*Ulkomaalaislaki* (30.4.2004/301)	Discrimination on grounds of nationality; Free movement (Article 4,5) and residence (Article 6,7) for European citizens and their families.	7.1
Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals	*Ulkomaalaislaki* (30.4.2004/301)	Equality of treatment with housing	7.1

who are long-term residents (OJEU L 16/44).		(Article 11 (1f)).	
Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJEU L 251/12).		The reunification applicant shall prove to have a habitable and large enough dwelling (Article 7 (1a)).	7.1
Regulation (EEC) 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJEEC L 257/2).		Equal treatment in housing and access to the housing applicants' lists (Article 9, 10 (3)).	6.3
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 Regulations (EC) 1060/2009 and (EU) 1095/2010 (OJEU L 174/1).	*Laki vaihtoehtorahastojen hoitajista* (7.3.2014/162)	Real estate investment funds.	2.3
MORTGAGES			
Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property of 31 March 2011 (COM 2011/0142 final).		Credit agreements secured by a mortgage or by another security, loans to purchase a property and certain credit agreements aimed at financing the renovation of a property.	

8. Typical national cases (with short solutions)

8.1 Penalty as compensation for paying the agent's fee

A contract for an unlimited period included a clause, according to which the tenant must compensate to the landlord the commission that the landlord had paid to the agent, if the tenant terminates the contract during the first 18 months. These type of situations are said to have encouraged tenants to invoke the unreasonableness of terms, although generally the terms of tenancy contracts are quite rarely/seldom adjusted.[673]

The term was discarded. The reason was that the commission can lawfully be claimed only from the principal and applying the clause would lead to a situation, where the tenant would become the actual payer. The clause also limits, in the form of an additional economic burden, the tenant's right to a notice period of one month. Additionally, the inability to terminate the lease agreement without extra payment is unreasonable taking into consideration the fact that the parties can make a fixed-term agreement, which the court may also permit to terminate, and no ground for damages has been provided in legislation in the case of terminating a contract for an unlimited term unlike the case of terminating a fixed-term contract.

8.2 Security deposit and legal costs

The tenant had neglected to pay the legal costs assigned by the district court, but had paid rent arrears, water bills and interest on arrears. The question was now whether the landlord may withhold the deposit as security for the payment of legal costs.

The obligations arising from a contract include not only rent but also associated costs, such as interest, interest on arrears, liquidation costs, and costs of foreclosure. Similalry, when the landlord has justifiably needed to resort to litigation, legal costs are damage caused by the tenant's failure to fulfill the obligation to pay the rent. The landlord was entitled to deduct these costs from the security.

8.3 Discrimination against applicants with credit defaults

A large general-interest owner of state-subsidised dwellings placed applicant in an order of priority so that, in the mass processing of applications, no comparison was made between applicants in equal need of housing as to their income and wealth. Instead, a vacated dwelling was first offered to a person who did not have credit defaults, and only then to a person with default. In a complaint to the Parliamentary Ombudsman, it was claimed that the procedure was illegal; it was said to lack an economic ground, because the company demanded in any case a higher deposit from persons with credit defaults; and the discrimination against persons with credit defaults was considered indirectly

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discriminatory against ethnic minorities, low-income pensioners, the unemployed, and people suffering from illness, as just these persons have difficulties in coping with all payments.

The Ombudsman stated that the statutory criteria for selection are, besides need, income and wealth. Credit data are not mentioned in legislation or in decree. The selection procedure described in the case is, thus, not based on valid law. If some other applicant does not provide a reason for an exception in the individual case, the dwelling must be offered to an applicant in accordance with the order of priority, even if the applicant had defaults in credit data. The only exception is the situation where all means have been considered and there is still a real and grounded danger that the tenant will neglect to pay the rent.

8.4 Rent reduction in a state-subsidised dwelling

The tenant lived in a state-subsidised rental dwelling, where the landlord recouped its costs from tenants in the rental buildings in its whole area of operations. The tenant's kitchen was renovated. The tenant claimed rent reduction for the period of renovation, but the real-estate company refused. The company argued that the tenant had received a new and improved kitchen and that, according to a principle followed in repair construction in the public sector, the resident must tolerate repairs without rent reduction, if the repair was made for the benefit of the tenant and all tenants were treated equally.

Any term restricting the tenant's right to a rent reduction is null and void. The fact that the landlord operates on a cost-recovery basis does not give ground for a special treatment of this kind of landlord. Neither does the right violate the tenants' equality. The consideration that the rent reduction may possibly have to be recouped from the tenants in the form of a rent increase has no significance with respect to the said right provided by law.

8.5 Claim for the return of rent: deficient condition of the apartment

In the case it was shown that there was a strong smell of mildew and damp, detected by the municipal health inspector, in the apartment and, in addition, the washing facilities were partly infected by humidity damage. The tenant claimed back the rent paid during the lease period, which had been four and a half months from 15 October to 28 February.

As the tenants had moved in the dwelling only in December, they could not have had suffered from possible humidity and mildew damage before that date. Thus, this part of the claim was dismissed. They had also lived in the apartment until the end of February without paying rent for January and February. The rent they had paid in December was considered to cover, on account of the deficient condition of the apartment, the rent from

December to February. Also the claim for the return of rent paid in December was dismissed.

8.7 Social defence against termination

A municipal rental housing company claimed that a tenancy contract should be rescinded because of unpaid rents. At the time the summons was served on 20 April, the tenant had not paid the rent due on 2 April nor about two thirds of the previous month's rent. The tenant had earlier neglected to pay the rent in time in February and March, and during the previous year she had also had arrears of rent, a little over one month's rent at the end of the year. The failures to pay the rent had been caused by the tenant's unemployment and, further, the tenant's spouse's acute illness in the beginning of February of the present year. On 8 June, two days after a lower court judgment was given against the tenant, the tenant had, according to the court of appeal, arrears of rent to the amount of only one tenth of the monthly rent.

The Supreme Court stated that the right to rescind the tenancy contract must be evaluated on the basis of the situation at the time when the notice of rescission is served. It is immaterial in the evaluation whether the tenant has since then redressed her neglect. On the basis of the wording of the act, the landlord may rescind the contract, unless the breaching act has minor significance. In the light of this expression, the causes that have led to the breach are not decisive. In case law, the fact whether the tenant has had good grounds has been taken into account in assessing the significance of the breach. Nevertheless, the reasons are only taken into consideration in a restricted way, and anyway the starting-point is that the defaults must have been temporary in order to be considered minor. The tenant had already earlier, throughout the previous year, paid rent or at least the portion of the rent that exceeded the amount of housing allowance several weeks late. Although the financial difficulties immediately preceding the rescission had at least partly been due to the spouse's illness, based especially on the fact that the tenant had earlier been repeatedly and substantially in default, the significance of her neglect to pay the rent was not minor. The company had the right to rescind the agreement.

8.8 Part of the rent covered by allowance: unpaid excess

This particular case illustrates a common situation, where the tenant receives part of the rent as housing allowance or other social allowance. The authorities often pay the share of the allowance directly to the landlord's account. In the case, the tenant had regularly been late in paying the excess share for nearly a year, and a little less than three month's excess shares were unpaid at the time when the landlord claimed that the contract should be rescinded.

The contract was rescinded. The district court reasoned as follows:

> When assessing the right of rescission it has been taken into consideration that the neglect to pay the rent has concerned only part of the rent. Nevertheless, the monthly delays have not been of short duration, but rents have regularly been paid not till the months following the months when they were due. Further, the delays have persisted as a whole for a long period and the neglect has continued also after the summons was served. For the aforesaid reasons, the neglect to pay the rent is not considered minor. A difficult life situation cannot be considered a valid reason for neglecting to pay the rent in case of delays that have continued this long and been regular.

The appellate court kept the outcome unchanged. It reasoned,

> It has been considered in case law that, usually, the neglect to pay two to three month's rent is no longer to be regarded as having the sort of minor significance that the right to rescind the tenancy agreement does not exist. In addition to the amount of unpaid rents, emphasis has been laid in case law on the duration and the regularity of the defaults. In this case, the greater part of the rent has been paid by the Social Security Institution on behalf of the tenant, and the delays do not relate to this portion. The Court of Appeals considers that, when assessing the significance of the overdue amounts, attention may not be given only to what the total amount of unpaid rents is in proportion to the total monthly rent.

8.9 The significance of a house rule violation

The house rules in a real-estate company prohibited parking inside a certain area in the yard. Despite the prohibition, many residents parked their cars in the area: on weekdays, twenty to thirty cars and, on weekends, forty to fifty cars were parked in the yard. The tenant permitted her partner to park regularly in the area even after the company had issued her a written warning. In its action, the company claimed, in the first place, that the contract should be rescinded with immediate effect and, secondarily, that the contract should be terminated (under the requirements of the old tenancy act of 1987).

The district court (housing division) decided that, as parking in the area had previously been rather free and the area was used for parking even during the trial, there were no sufficiently significant grounds to rescind the contract. But the landlord was allowed to terminate the agreement (under the old requirements for notice). On the latter issue, the Supreme Court reasoned that the tenant's breach may not be considered minor solely for the reason that certain other residents in the company have violated the prohibition and that the company had not initiated the same process against all the others.

8.10 Lease in force three years 'continuing' after that for an unspecified period

The parties had agreed that a commercial lease was in force three years 'continuing' after that for an unspecified period with a six month's period for notice. The tenant had

notified the landlord two month's prior that it shall terminate the contract at the date when the fixed term expires. The landlord claimed the rents due for the remaining months of the notice period.

The district court decided for the landlord, and the tenant appealed. According to a new procedure, a permit is required to appeal to the appellate court, and in this case the court of appeal declined a permit. The Supreme Court reversed, noting that there is no statutory provision dealing with the termination of such a contract where a fixed term is agreed in the beginning and which then continues for an unspecified period. It continued that there is also no case law on the point at issue by distinguishing an earlier case as follows:

> The [prior] case differs from the matter now to be resolved in the respect that in it both parties had wanted to continue the lease even after the fixed term had expired. In the case under consideration, the tenant has wanted to terminate the lease when the fixed term expires.

The Supreme Court ordered the court of appeal to continue processing the tenant's complaint. The case is pending.