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

National Report for

ROMANIA

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National Report for Romania
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1. Current housing situation

1.1 General features

The first part of the report provides a general introduction of the housing stock, tenure structure, and general aspects of the housing situation in Romania. The country's population of 21.12 million is dispersed in 7.4 million households. The full housing stock consists of 8.5 million housing units and around 12% of all dwellings are vacant.
The vast majority of housing units are owner-occupied. With an owner occupation rate of 98.2%, Romania is a "super" home-ownership state, while public rental accounts for only 1.4%. (NIS, Census 2011). According to the 2002 census (NIS didn't release by this moment figures from the 2011 Census), the share of occupied units made up of rented units was about 4.4 percent, and an additional 2.3 percent of the occupied stock consisted of households who occupy housing without formally paying rent (sometimes called "rent-free tenants"). While it is difficult to estimate precisely the size of the private rental stock, it is clear that the various official national estimates in the range of 4 to 7 percent are significantly lower than the actual figures for urban areas.
We consider this a distorted tenure structure: the lack of a well-functioning rental sector steers households towards ownership. This is partly a result of the massive privatization of the formerly state owned rental stock in the 1990s, but the various ownership programs promoted by local politicians after transformation also contributed to the current housing situation.

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

In the course of European integration, Romania has made considerable progress in economic and legal transition. By contrast, housing policy and housing legislation lag behind. Only the legislation on condominium ownership has been sufficiently developed. Social housing policy has mainly been conceived as part of day-today political initiatives. The few housing policy measures available have targeted young families, key workers, the mitigation of seismic risks, and the completion of uncompleted multi-apartment buildings.

When analyzing the policy measures of social housing support in Romania, it turns out that it was only in the period 1997 to 2007 that social rental construction increased, but the stock had declined considerably during the large-scale privatization after 1990. With the support of international financial institutions a National Housing Agency was estab-

lished in 1999 to finance and create affordable rental housing. Yet, a lot of public support was directed into new construction of subsidized owner-occupied dwellings. In general, rental housing is clearly on the decline in Romania, not only the social rental sector, but in the market rental housing sector as well.

Housing policy reforms so far have not improved consumer choices on housing tenure. Housing policy programs have contributed to an increasing fostering of ownership ideology. When the funds for new social rental housing programs were cut in the aftermath of the financial crisis, housing construction was intended to be financed from the sell-off of existing social dwellings to tenants at prices lower than the replacement value.[1]

The reluctance to carry out a major housing reform may be explained with housing policy being not a priority in the EU accession's procedures, as well as with the frequent changes of responsibility within the Government. Housing reform in many cases has the character of ad hoc decisions, referring to current emergency, but disregarding a long term strategy. There is no long-term housing sector policy in place, and social housing projects have rather been conceived as part of day-to-day political initiatives. Consequently, a regular assessment of implementation (including gathering reliable data) is missing[2].

Attempts to make rental housing a secure and economically rational alternative to home ownership were insufficient. Nothing has changed in the last 23 years as regards the segmentation of the rental market: there are still extremely unequal market segments, with rents set much too low in the very small social housing stock, and rents compatible with the Western Europe rent price level on the private rental market. The access to rental housing is hardly accessible, due to various factors such as:

- very small no. of available social houses (only 1% of the total no. of houses are social houses)
- private rental market affordability (rents compatible with the EU price level)
- rental terms insecurity (very few rental contracts).

As a consequence, housing mobility in Romania is very low. Also, the "maneuvering mass" of former social dwellings is missing (Hegedüs et al. 2012). This is harmful particularly for young households (which do not benefit from privatization any more), for migrants to the cities and, of course, for low-income households.

The migration pattern in Romania is characterized by emigration. According to unofficial estimates, there are 3 million Romanians living abroad. In a 2011 report from the Commission to the Council[3], approximately 2.3 million Romanians live in other EU Member States.

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[1] In 2009, the Romanian Government announced that in the next years the financial sources for new housing construction for young people will come mainly from the selling of existing dwellings to sitting tenants. The regulated selling prices approved by the Government are lower than the dwellings replacement value; in other words the funds received from selling an apartment are insufficient for the completion of a new dwelling.

[2] Hegedüs, J. et al. (2012) Social Housing in Transition Countries. Routledge, USA

[3] http://dx.doi.org/10.1787/migr_outlook-2013-en

Romania is atypical with regards to internal migration. The migration trend is not from rural to urban areas, but the opposite. An analysis of the period 1993-2007 proves that starting with 1997 there were more people migrating to rural areas, not because of the advantages of village life, but as a survival strategy. The main group that has migrated into rural areas is the urban poor. Recent analysis suggest that also elder people migrate to rural areas, preferring to live in a residential area outside the city.

We conclude that housing provision in Romania is strongly determined by:
- extensive privatization in the past 20 years;
- very low construction rates; and
- insufficient investment in the existing housing stock.

Nevertheless, give-away housing privatization contributed to the affordability of housing, at least for the sitting tenants: more than 2.2 million dwellings were sold to sitting tenants after 1990. The case is quite the contrary for households that enter the housing market today. Three household groups suffer particularly from shortages in affordable housing: the young, the mobile, and the poor.

With the extensive nationalization taking place in 1945, former owners have become tenants. By the Laws 112/1995 and 10/2001, the Romanian state attempted to repair the damage done by the totalitarian regime, returning the property in kind or in equivalent, in the framework of the restitution. The former owners may require the restitution of their property. During this judicial or administrative procedure a new rental contract cannot be concluded. According to the Emergency Ordinance no. 40/1999, for real estate – land and buildings – as well as residential areas used as residence, privatized after 1 January 1990, the owner will conclude at the request of the tenant or former tenant who is using the dwelling, a rental contract for a period of 5 years.
The restitution regulations have caused much controversy in doctrine and jurisprudence. Even the European Court of Human Rights suggested that the current Romanian legislation should be modified because of its numerous deficiencies, which are not subject of this study. On 5th of June 2012 the Committee of Ministers informed the public that the ECHR approved the adjournment issued by the Romanian state in order to develop new legislation on compensation.

Probably the most important challenge on the Romanian housing market is the high quantity of privately owned apartments that are rented out without written contracts. This private rental segment is not reflected in the official statistics on tenure in Romania. Also, taxes are not collected and the Romanian authorities have hardly any possibility to encourage tenant protection.

The public rental sector is presently almost non-existent in Romania. Residual social rental housing, decimated by the mass privatization and homeownership programs, cannot accommodate the newly created post-privatization households with lower incomes, let alone the young and mobile, to any meaningful degree. Occupancy of the social housing stock is dominated by the previously allocated tenants and thus lacks socioeconomic targeting for the current dynamic situation. Also, the huge difference between the social and private rental rents effectively lock sitting tenants into their dwell-

ings, preventing any significant adjustment, restructuring and reallocation within this stock.

Housing policy design and implementation capacities remains limited in Romania. This is demonstrated amply by the backlog in both private and public/non-profit rental housing production and maintenance of the existing stock. Additional rental housing production, or stock repair and modernization, could cater young and mobile households and thus avoid future sub-prime lending problems. The households currently often have no other choice than buying, and in addition do so in urban centers where prices are driven up by migration pressure.

Rental choice policies should be seen as strategic, long-term and poverty-focused complements to home-ownership policies, not as mere residual and temporary measures. The Government should consider anchoring its rental housing policy on a competitive, private, formalized rental sector, supplemented only by well-targeted social rental housing programs. Greater private resources should be mobilized into the rental sector through programs aimed at developing the private market, public-private partnerships (PPPs), and non-profit sectors. Reliance on the private rental sector requires abolishing hard rent controls in public rental, development of transparent and balanced landlord-tenant regulations, including dispute resolution and eviction procedures, as well as enacting new tax regulations to assure tenure-neutral treatment of housing sector investors.

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?

With its 20.12 million inhabitants (2011 census)[4] Romania is the largest country of South East Europe. Its economy and population are strongly concentrated in Bucharest,the capital city, with its two million inhabitants. Following in size, there is a group of cities with an average size of 300,000 inhabitants, i.e. Cluj-Napoca, Braşov, Timişoara, Constanța and Iaşi.

Romania has a housing stock of 8.5 million units, located in 5.1 million buildings, for a stable population of 20 million persons of 7.4 million households (2011 census)[5]. This is around 425 dwellings per 1,000 inhabitants. Bucharest has a housing stock of slightly above 920,000, with only 2% social rental dwellings[6].

[4] National Institute of Statistics, Census 2011, http://www.recensamantromania.ro/rezultate-2/

[5] NIS, Census 2011. Since there are cases of multiple households living in one unit, and other unconventional arrangements, these figures cannot be used as a reliable source regarding the number of empty dwellings. The official data on empty units is not yet published.

[6] National Institute of Statistics, Census 2011, http://www.recensamantromania.ro/rezultate-2/

The average household consists of 2.66 persons, which is relatively large, compared to the EU-27 average of 2.4 persons per household. The average useable floor space per capita is 24.5 square meters.(NIS Census 2011) This is one third below the EU27 average of 38 square meters. (Amann et al. 2011)

Table 1. Specific housing figures

	1992	2002	2011
Population (1, 000)	22,810	21,834	19,043
Households in mill.	7,288	732	71
Household size	3,07	2,92	2,66
Housing stock in mill.	7,65	8,1	8,5
Housing buildings in mill.	4.49	4.84	5.1
Dwellings per 1 000 inhabitants	336	374	447
Average rooms per dwelling	2.5	2.6	2.7
Average floor space of a dwelling (m²)	33.8	37.6	47.1
Average floor space per person (m²)	11.6	14.3	17.5
Housing completions total (1,000)	49	27,7	45,4
of which with public funds (1,000)	42	3	2,3
Housing completions (per 1,000 inhab.)	2,1	1,3	2,2

Source: N.I.S.

Residential buildings in urban areas represent only 26.7% of the total and they are regularly multilevel buildings. The ratio of conventional dwellings in the urban areas (54.2%) is higher than in the rural areas. (The ratio of urban to rural population is about 55% to 45%.)

Table 2. Housing structure by settlement type

	Total	Cities and Towns	Villages
No. of housing buildings*	5,104,662	1,364,897	3,739,765
No. of conventional buildings	8,450,942	4,583,045	3,867,897
No. of rooms	22,741,372	11,418,978	11,322,394

*residential buildings, buildings for collective living containing conventional housing and non-residential buildings containing conventional housing
Source: N.I.S

The housing ownership structure highlights that Romania is a “super” home-ownership state[7]: 98.2% of all conventional dwellings are privately-owned (97.5% in municipalities and cities and 99.1% in communes), followed by state property, which accounts for only 1.5% (2.1 % in municipalities and cities and 0.7% in communes). Other forms of owner-

[7] Stephens, M. (2005): A Critical Analysis of Housing Finance Reform in a ‘Super’ Home-ownership State: The Case of Armenia. Urban Studies, Vol. 42, No. 10, pp. 1795-1815.

ship are almost nonexistent, accounting for about 0.3% of the total number of conventional dwellings.

Table 3. Tenure structure*

Home ownership - Total				Public Rental		Other		Total	
		Out of which: Private rental**							
No.	%	No.	%	No.	%	No.	%	No.	%
8,301,476	98.2	1,000,000	11.8	122,538	1.4	16,928	0.4	8,450,942	100

* Source: N.I.S (2012)
**Expert estimate

Private rental housing has increased significantly after 1990, as a result of rent control elimination, privatization and restitution of public housing, mainly in larger cities.[8]
The share of private rental sector is unanimously considered underestimated due to tax avoidance by practically all housing market stakeholders.

If we rely only on statistical data we could say that Romania's private rental stock is insignificant compared to all European countries. According to the 2002 census[9], the share of occupied units made up of rented units was about 4.4 percent, and an additional 2.3 percent of the occupied stock consisted of households who occupy housing without formally paying rent (sometimes called "rent-free tenants"). These two combined represent 6.7 percent; however, it still does not cover the entire occupied rental stock. From the way the National Institute of Statistics compiles tenure figures, we know that an additional 1.3 percent of dwelling units are occupied by more than one household, containing a combination of an owner household and either renting households, or other households not paying rent.

Another source of information for comparison is EU – SILC data for 2012, according to which 96.6% of the Romanian families lives in owner occupied housing, 2.8% in social rental and "rent-free tenure" and around 0.8% in private rental[10].

While it is difficult to estimate precisely the size of the private rental stock, it is clear that the various official national estimates in the range of 4 to 7 percent are lower than the actual figures for urban areas. From a methodological point of view, the enumeration of rental properties is even more difficult within the Census, because a grey market exists in which rental properties are not reported to census officials. A frequent reason for this might be that landlords wish to avoid paying taxes. Starting with the official tenure statistics available from the 2002 census and making adjustments for rental units that are "in-

[8] Diamond, D. (2006) Housing Policy and Subsidy Review for Romania with Recommended Specific Policy Reforms (The Urban Institute, Washington, USA).
[9] Data from the last 2011 census is not yet available; it is expected to be published by April 2013
[10] Eurostat (SILC) – Distribution of population by tenure status, type of household and income group, 2012

visible" because they are vacant or part of the grey market, it is reasonable to assume that the share of the urban housing stock consisting of rental units is in the 11 to 15 percent range. Some estimates go up to 1 million units (12% of the urban housing stock).

The surface of the living area per capita is smaller than anywhere else in Europe with ca. 17.5 m² per person. This issue of "overcrowding" can only be solved by new residential construction, but the rate of renewal of the housing stock has drastically decreased after 1990. The private sector is unable to compensate for the diminishing public funds allocated to housing construction.

Almost 67% of the existing housing stock was built after 1960. These buildings suffer from poor thermal insulation and ongoing deterioration.

Table 4. Age of the housing stock

Period of construction	Total		Urban		Rural	
< 1945	1,246	15%	481	11%	765	20%
1945 – 1960	1,436	18%	387	9%	1,049	27%
1961 – 1970	1,589	20%	760	18%	829	22%
1971 – 1980	1,932	24%	1,411	33%	521	14%
1981 – 1990	1,292	16%	958	23%	333	9%
> 1990	612	8%	262	6%	350	9%
Total	8,107	100%	4,260	100%	3,848	100%

Source: N.I.S.

The housing stock privatization has made rehabilitation more difficult. Many of the new owners were reluctant to contribute to the maintenance of the building, especially to the common parts. As they gained ownership of their dwelling for a very low price, they did not realize for a relatively long period that their homes were indeed valuable assets. Although there is no exact data on this, one could say that most of them faced serious financial problems concerning the maintenance of their own dwelling after the transition. Under these circumstances, the owners were either no longer interested in the rehabilitation of their residential unit, or gave up the idea of improving their living conditions because of their inability to cover rehabilitation costs. Also, many owners still believe that the state should provide the much-needed support in this field as it used to do. In a general statement, a large number of people like to enjoy the benefits of private ownership but reject the responsibility such a status entails.

Housing completions have increased considerably over the years, with a peak in 2008 with 67,000 units for the whole of Romania. This was 3.1 units per 1,000 inhabitants, while the EU average was 5.2 in the same year. Since then, housing completions have constantly decreased, to 49,000 units in 2010 (2.3 per 1,000 inhabitants) and to some 45,000 units in 2011.

Table 5. New housing construction (completions) in 1,000

	1990	1994	1997	2000	2002	2006	2010	2011
Total	48.6	36.7	29.6	26.3	27.7	39.6	48.8	45.4
Private	5.8	25.9	26.1	24.7	24.2	34.7	45.9	43.0
Public	42.8	10.8	3.5	1.6	3.0	4.8	2.8	2.3

Source: N.I.S.

New housing construction activities are quite visible in the suburbs of Bucharest, whereas the capital city itself has bellow-average numbers of new homes, representing 1 new unit per 1,000 inhabitants. This is due to various factors, including restitution issues (see details in 4.1.2.). Other cities with high construction output are Cluj-Napoca or Braşov, but none of them reaches EU average numbers[11]. Many cities with less economic dynamics, small cities and villages still have very low numbers of new construction.

Table 6. New housing construction in Bucharest (completions) in 1,000

	2003	2006	2011
Total	1.4	2.0	1.96
Private	1.2	1.8	1.73
Public	0.2	0.2	0.23

Source: N.I.S.

1.4 Types of housing tenures

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

[11] National Institute of Statistics, The Housing Stock, annual publication, various years

- 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)

- What is the market share (% of stock) of each type of tenure and what can be said in general on the quality of housing provided?
  Please consider the following criteria: type of building (single family versus multifamily versus high-rise; plus definition); construction period; number of rooms, number of square metres or average number of rooms or average useful floor area per dwelling and per person; availability of bath/shower, hot running water and/or central heating, etc.)
  - For EU-countries, Housing Statistics in the European Union would be a possible source, although more updated data would be preferred, if available
- Which actors own these dwellings (private persons, profit or non-profit organizations, etc.)?

Owner-occupation is currently considered to be cheaper than rental, especially with the present very limited access to affordable rental; and home ownership has quickly become a major goal of households.

The vast majority of new construction is single family houses and condominiums, 57.7% being built in rural areas. More than 90% of new construction is realized by private persons or companies, with around one quarter of this by foreign companies.

Addressing the owner-occupied sector, for many years the banking sector was very open to financing any projects and borrowers in order to establish a robust client profile and market share in Europe's emerging economies (Buckley and Van Order, 2004; OECD, 2005; Maechler and Ong, 2009). Between 2006 and 2008, retail financing developed very quickly and covered 100 per cent or even more of purchase prices. Foreign currency loans were increasingly promoted. But in the wake of the GFC, banks have significantly tightened their lending standards both for companies and physical persons. As regards the institutional financing, there was, and still is, a shortage. Currently, housing developers are often subsidiaries of construction companies. Their primary interest is to employ their own construction division and to get returns on investment as soon as possible. Long-term investments, including rental market development, are neither their core business nor in their interest.

The emergence of professional landlords is a relatively new and so far marginal phenomenon. The typical lessor is a so called "accidental landlord": a private individual of above average income who has more living space than what their own housing needs require, or more than one housing unit, so s/he rents out the unused living quarters as a secondary source of income.

Between 1990 and 2004, as many as 2.2 million dwellings were privatized, which is 27% of the total housing stock. As a result, the official owner occupation share rose to 98.2%. Only 1.5% of the stock has remained social rental housing, let at rents far below market levels.

Condominiums represent an ownership form, the ownership of the common parts of the buildings, like roof, staircase, corridors, basement, elevator, chimneys, and pipes in the walls. The owners of the dwellings in a multilevel building are obliged to form a condominium (in case there are more than 4 dwellings in a house), and have to perform tasks related to the management and maintenance of the building as a common responsibility. In case of non-payment of co-owners, the condominium may act as a natural person, and for example sue non-payers.

With the extensive nationalization in 1945, former owners have become tenants. By the Laws 112/1995 and 10/2001, the Romanian state attempted to repair the damage done by the totalitarian regime, returning the property in kind or in equivalent, in the framework of the restitution. The former owners may require property restitution. During this judicial or administrative procedure a new rental contract cannot be concluded.

Lease contracts concluded on confiscated dwellings, that were in progress at the moment when the law entered into force, have been extended for a 5-year period regardless of the owner of the leased dwelling[12]. It was stated in jurisprudence that the extension provided by the Law no. 17/1994 was operational, even though at the time when the initial lease term expired, the property had been returned to the former owner. It didn't matter whether at the moment when the contract renewal occurred the lessor company was aware of the fact that the property had been returned to the former owner, or didn't know about this fact. Provisions in Law no. 17/1994 were not applicable for the properties with another use than housing.

The restitution regulations have caused much controversy in doctrine and jurisprudence. Even the European Court of Human Rights suggested that the current Romanian legislation should be modified because of its numerous deficiencies, which are not subject of this study. On 5th of June 2012 the Committee of Ministers informed the public that the ECHR approved the adjournment issued by the Romanian state in order to develop new legislation on compensation to former owners abusively dispossessed by the communist regime.. The deadline for the Romanian state to resolve the situation of compensation by issuing or amending legislation was April 12, 2013.

In October 2010, through the decision rendered in two "pilot" cases (joined under the name Atanasiu and Others v. Romania), ECHR compelled the Romanian state to solve the issue of owners waiting for compensations within 18 months. The State was forced to take urgent measures in order to solve the problem of the confiscated properties in an adequate way. The Court also recommended that Romania remediate restitution. The pilot decision forced the state to take action, otherwise Romania could have risked exclusion from the European Council.

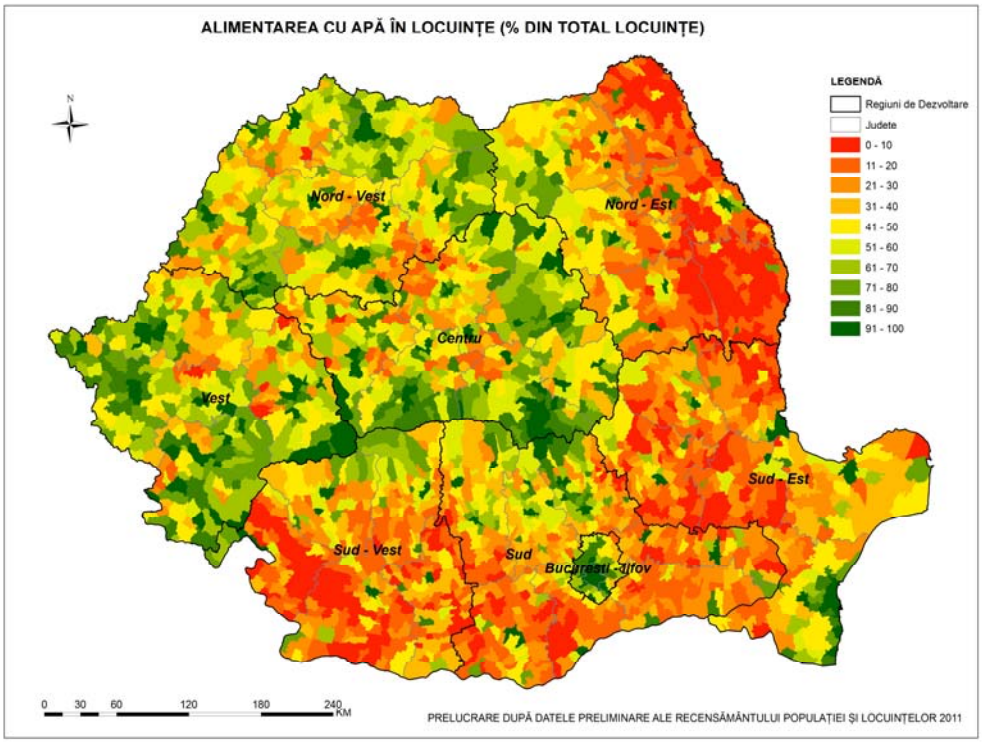
Under the impression that it follows the advice of the ECHR, the Romanian National Authority for the Restitution of Properties issued a legislative project which proposed the simplest but least equitable solution, namely the limiting of the damages to 15% of the value of the real estate, and a payment in instalments over a period of 12 years. This legislative project also abolished the possibility of the restitution in kind of the real estate

[12] Law no. 17/1994, art. 1 and art. 5

in question, allowing only payment of damages. The project was, of course, rejected by the public.

Public housing is, essentially, financed from the very limited local budgets in accordance with Law 189/1998, within annually approved budgetary limits. The State assists the construction of public housing by transfers from the national budget, annually set for this purpose in the budget of the Ministry for Regional Development and Public Administration (see Table 15). Local authorities have the responsibility to prepare development plans and to ensure provision of infrastructure to support development. Most programs rely on provision of building land and infrastructure by municipalities free of charge. Some programs (e.g. Rental Housing for Young People) have addressed funding from international financing institutions such as CEB, the Council of Europe Development Bank, or the Deutsche Bank AG.

Figure 1 Access to running water (% of total no. of houses)



Data Source: National Institute of Statistics

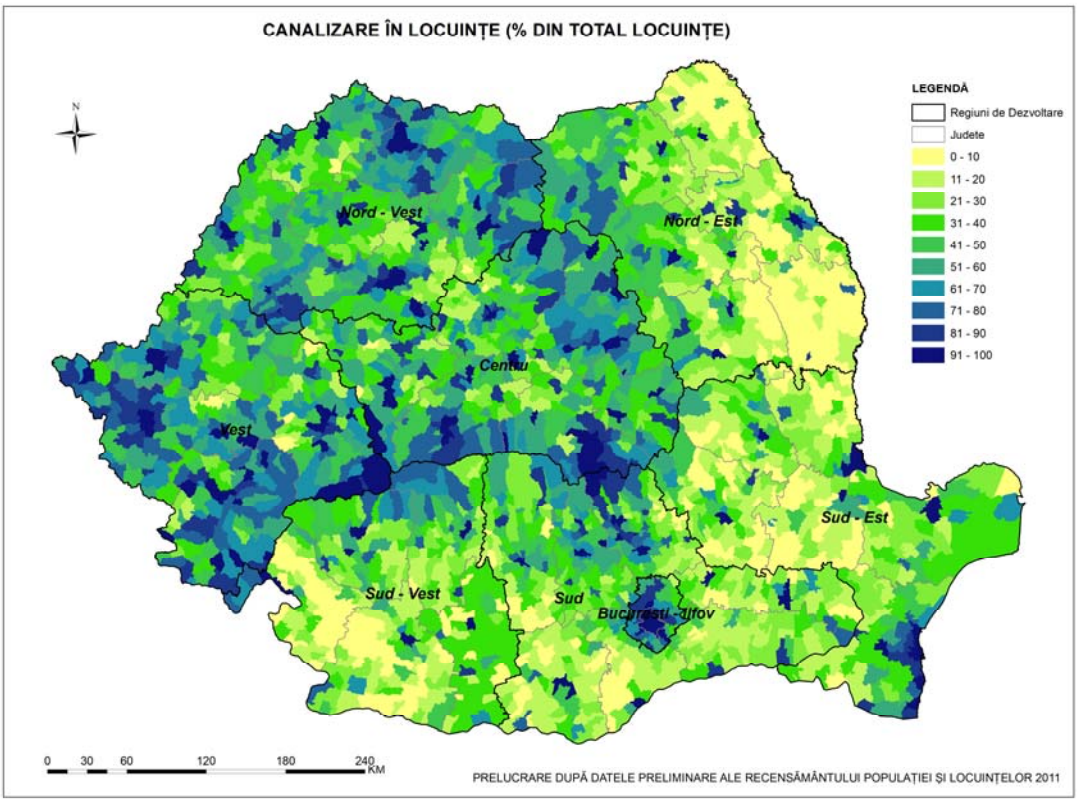
Preliminary results of the 2011 census show that 66.7% of houses benefit from running water, 65.1% benefit from sewage system, 96.6% have electricity and 44.4% of houses have central heating[13].

Most market activities are the acquisition of existing dwellings. However, a significant part of the market consists of parents mortgaging their own residence to help finance the construction or the purchase of a new dwelling for a child. After 2009, more than 60,000

[13] http://www.recensamantromania.ro/wp-content/uploads/2012/08/Comunicat-presa_Rezultate-preliminare.pdf

housing transactions have been supported by the Prima Casa program (the First House Program).

Figure 2 Access to sewage (% of total no. of houses)



Data Source: National Institute of Statistics

Table 7. Infrastructure supply and facilities in conventional dwellings

	Conventional dwellings	
	Number	%
Houses with:		
Infrastructure		
Running water	5,638,465	66.7
Sewage system	5,504,450	65.1
Electricity	8,166,508	96.6
Central heating	3,755,761	44.4
Facilities		
Kitchen (inside house)	7,146,931	84.6
Bathroom (inside house)	5,230,511	61.9

Source: N.I.S

At national level, 84.6% of the conventional dwellings have the kitchen inside the house (93.6% in municipalities and cities and 73.9% in communes). In Bucharest, 96.2% of the total conventional dwellings have the kitchen inside the house. Concerning bathroom

facilities, only three out of five homes have at least one bathroom inside the house (61.9%). The discrepancy between rural and urban areas is even higher: 88.0% of the households in urban areas and only 31.0% of those in rural areas have a bathroom inside the housing unit. In Bucharest, 95.2% of all conventional dwellings have a bathroom inside the house. [14]

1.5 Other general aspects of the current national housing situation

- Are there lobby groups or umbrella groups active in any of the tenure types? If so, what are they called, how many members, etc.?
- What is the number (and percentage) of vacant dwellings?
- Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?

The Law no. 230/2007 regulates the setting up, organization and operation of owners associations. The document defines a homeowners' association as a nonprofit organization for managing and improving a multilevel housing building. Homeowners' associations represent and support the joint interests of the owners regarding the use of assets under common ownership in a condominium.

The association may be managed by physical or legal persons, associations, public agencies, or specialized companies. In each case, however, the management is to be appointed by and under the control of the joint owners, in whose interest it operates. Today already the majority of owners associations has appointed housing managers, in most cases one of the owners. Professional housing management companies have not yet been widely established, but do exist.

The members of the homeowners' association have the right to participate and the right to vote in the general meeting, the right to put up their candidacy, to run for, to choose and to be elected into the organizational structure of the homeowners' association. The revenues from the use of the common parts belong to the homeowners' association. These revenues are added to a special fund of the association for repairs and investments regarding the common parts and are not paid to the owners. The owner has the duty to maintain his individual property in a good condition, at his own expense. No owner can break, affect or harm the individual or common property right of other owners.

The major obligations of the housing manager from a multilevel housing building are to:
- Administer the goods and funds;
- Prepare the contracts with all suppliers of services;
- Inform all inhabitants in the housing unit as regards the regulations governing their cohabitation;
- Represent the owners' interests in contracts signed with the public authorities and fulfill any other legally contracted responsibilities.

[14] Legislation concerning the quality of construction prescribes including a bathroom in newly constructed units. However, this legislation is only really enforced in urban areas. In rural areas, people build by their own judgement, and many will follow traditions that do not comply with the law.

The law stipulates that owners' associations may associate in federations, unions, leagues of the owners' associations at local, regional or national level. Currently there are two main such organizations established at national level:

- Habitat League of Romania (The League of Homeowners Associations, Habitat)[15]
- The Federation of Homeowners Associations from Romania[16]

About 88.4% of the total housing stock is occupied (according to 2002 census; more recent figures are not yet available).

Table 8. Occupied housing by tenure category

Category	Number	%
Owner – occupied	6,680,523	93.2
Public rental	179,116	2.5
Private rental and other	138,703	4.2
Total occupied units	7,165,792	100
Total housing units	8,107,114	
Vacancies	941,322	11.6

Source: N.I.S.

In absence of any rent regulations in Romania, private rental tenancy is regulated by contract law. Rents are determined by the market, but in numerous cases there is no written lease contract at all. Therefore , the private rental market functions to a large extent as part of the black market. Tax evasion is still a typical strategy for households to manage hardships caused by the transitional recession. The informal economy was estimated in 2013 to be as large as 28% of GDP, around 39.6 bill. EUR, with over 3.5% less than in 2008 and around 15% less compared with 2013[17].
Informal transactions have been widely accepted by the population: consumers pay and accept payments for service without invoices (VAT tax evasion); and employers pay wages or part of the wages in cash directly to employees (income tax evasion), just to mention the two most pervasive examples.

The rental market is informally treated as a relatively safe terrain for grey market: a very widespread issue – and source of conflict – is that private landlords rarely pay income tax after their rental income. While market rent rates are fairly expensive for tenants and provide a solid income for landlords, the latter always face significant risks, especially non-payment, damage in their property, or the tenant accumulating utility arrears. Landlords will, accordingly, hide their income to raise their margin, in order to balance these risks.

[15] http://www.habitaturban.ro/
[16] www.fapr.ro
[17] Schneider, F. 2011, The Shadow Economy in Europe. Using electronic payment systems to combat the shadow economy. 2011, A.T. Kearney, Inc.

Black market contracts are not statistically numbered, this situation being typically to the detriment of the tenant. Both landlords and tenants are in favour of tax avoidance – on the one hand, in order to keep the rent lower, and on the other, in order to raise the margin – and contracts often go unregistered. This, in turn, leads to further legal complications in case of a disagreement.

2. Economic, urban and social factors

2.1 Current situation of the housing market

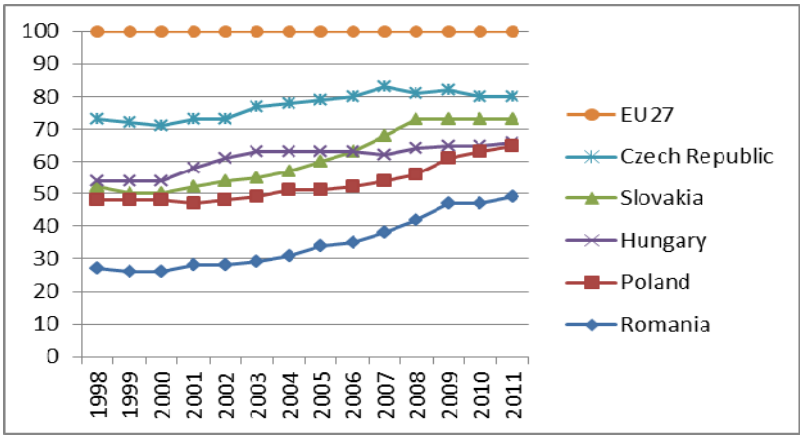
- What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)? What have been the effects of the current crisis since 2007?
- How is the demand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

After Romania's Communist regime was overthrown in late 1989, Romania experienced a decade of economic instability and decline, partly due to an obsolete industrial base, as well as to a lack of structural reforms. Between 2000 and 2008, however, the economy was transformed into one with relative macroeconomic stability, high growth, low unemployment and increasing foreign investment. Economic growth (measured as % of GDP) during this period has averaged 6.9%, rising to 6.3% in 2007 and 7.3% in 2008. In October 2004, Romania was granted the much desired “functional market economy” status by EU officials, and joined the EU in January 2007.

After 2008 Romania had to cope with persistent economic difficulties, exacerbated by the protracted economic turmoil in the European Union. However, prudent macroeconomic management has enabled Romania to reduce its imbalances and to experience a gradual recovery from the global financial crisis. In 2011, the implementation of a comprehensive and strict package of macroeconomic stabilization and structural measures, supported by a multilateral program with the International Monetary Fund, the European Commission and the World Bank, began to yield results. After a sharp GDP decline in 2009 (-6.6%) and 2010 (-1.6%), Romania experienced a modest recovery of 2.5% in 2011, with a forecast of GDP growth of 0.8% for 2012. Romania's per-capita GDP, calculated by purchasing power parity, was around EUR 5,720 in 2011, which is roughly half

of the EU average. The national budget was EUR 25.07 billion (2011), which represents 22.2% of the GDP of EUR 122.7 billion[18] .

Figure 1. Gross Domestic Income per capita in relation to the EU (EU27=100)[19]



Source: Eurostat, Housing Statistics in the EU

Inflation eased to 2.9% at the end of 2011, down from 6.1% in December 2010. Unemployment in Romania in 2011 stood at 7.4%, below the European Union average of 9.7%.

Table 9. Key economic data

	2007	2008	2009	2010	2011	2012
GDP	EUR 121.26 Bn	EUR 136.84 Bn	EUR 115.94 Bn	EUR 122.21 Bn	EUR 136.51 Bn	EUR 138.41 Bn (est.)
GDP (% real change per year)	+6.3%	+7.3%	-6.6%	-1.6%	+2.5%	+0.8% (est.)
GDP per capita (EUR)	5,650	6,376	5,402	5,694	6,361	5,694 (est.)
GDP per capita (EU27=100)	42	47	47	47	49	49 (est.)
Inflation	4.8%	7.8%	5.5%	6.0%	5.7%	5.1% (est.)
Minimum wage	RON 390 = EUR 116	RON 500 = EUR 135	RON 600 = EUR 141	RON 600 = EUR 142	RON 670 = EUR 158	RON 700 = EUR 157

[18] Eurostat, News Release 97/2012 on Member State per capita GDP in 2011.

[19] Amann et.al.(2008) Implementation of European Standards in Romanian Housing Legislation. Final Report. Unpublished research study commissioned by the Romanian Ministry of Development, Public Works and Housing. IIBW, Vienna. Estimations on EU27 data prior to 2007 are provided in the study.

Medium gross wage	RON 765 = EUR 229	RON 870 = EUR 236	RON 995 = EUR 234	RON 1,145 = EUR 271	RON 1,300 = EUR 306	RON 1,800 = EUR 405 (est.)
Unemployment	6.4%	5.8%	6.9%	7.3%	7.4%	6.9% (est.)
FDI (Bn EUR)	7.2	9.4	3.4	2.2	1.81	1.4 (est.)
Foreign exchange reserves (Bn EUR)	27.1	28.2	30.8	35.95	36.02	36.17 (est.)

Source: N.I.S., Eurostat

The decrease of the number of inhabitants and the aging society should reduce the housing demand, but the increased number of homeowners and the small living space per person maintain a significant demand for new dwellings in Romania.[20]

It is quite difficult to identify a benchmark for real housing demand. PRC (2005)[21] has estimated that the housing demand in Romania for the decade after 2003 was only 2.7% of the existing housing stock (220,000 units for 10 years), which is much lower than in the EU15 (10.3%) or in the accession countries of 2004 (EU10, 16%). This estimation is deficient, as it would mean a housing production rate of only 1.0 completion per 1,000 inhabitants per year.

Orientation on the EU average may serve as another reference figure. The 1.0 completed unit per 1,000 inhabitants level may be regarded as the lower limit to meet housing demand in Romania for the following reasons:

- the average floor space per capita is far below EU average;
- large parts of the existing housing stock is in poor condition and requires substantial replacement or upgrading;
- the economic development of Romania requires further urbanization and hence affordable housing options in urban regions.

Housing construction on the EU average of some 5.0 completions per 1,000 inhabitants would mean a yearly production of 100,000 units. This is twice the volume of 2011. Before 2011, housing supply in many cases did not match the demand in terms of location and affordability. An increase of the production volume only makes sense if the calibration of location and affordability is substantially improved. After several years of rapid growth, the residential construction output sector was hit hard by the financial turbulence; its annual growth rate at constant price dropped by 22% in 2009 and by more

[20] Amann et.al. (2008): Implementation of European Standards in Romanian Housing Legislation. Final Report. Unpublished research study commissioned by the Romanian Ministry of Development, Public Works and Housing. IIBW, Vienna

[21] PRC (2005) Sustainable Refurbishment of High-Rise Residential Buildings and Restructuring of Surrounding Areas in Europe, Report for European Housing Ministers, in: conference proceedings 14-15 March 2005

than 35% in 2010. This trend is estimated to continue at least for the next 12-18 months. The implications of the downturn affected both supply and demand.

Supply side:

- In 2008 supply was only supported by developers, whereas after 2009 it was also boosted by real estate bought in the boom years with speculative aim.
- In 2009-2010 rising joblessness caused financial difficulties, and more buyers were forced to cancel pre-contracts with construction companies. According to these off-plan agreements, properties are paid during the construction phase and buyers are to make the final payment upon completion. Thus, new dwellings were added to the total supply, many of which were left unoccupied and many developers went into insolvency procedures.[22]
- A number of other projects have been delayed or called off due to the uncertain market.
- The Young People Rental Housing Construction Program was reduced in size, the state premium payment for the "Bauspar" banks was postponed more than one year, the number of housing completions decreased significantly (see Table), and borrowing for new construction virtually stopped.
- Speculative investments have disappeared.
- Around 80% of the brokerage companies went bankrupt after 2009.
- Investment appetite decreased significantly, more and more people choosing to rent an apartment from the private market.[23]

Demand side:

- Slackening average income had a direct negative impact on demand.
- Banks have radically changed their policy. It has become complicated for new private customers to finance housing and it is becoming increasingly difficult for existing customers to settle payback.
- Unemployment increased and devaluation of currencies jeopardizes all households which have financed their home with foreign currency loans. At the beginning of 2010, the government launched a controversial program called "Prima Casa", to foster residential demand, through supporting mortgage lending and the construction sector.[24] The program includes state guarantees provided to participating banks by the "National Loan Guarantee Fund for Small and Medium-sized enterprises". The guarantee covers up to 95% of the acquisition/construction costs (up to EUR 70,000 per case) for the full loan period. With this guarantee, the beneficiary households (first-time buyers without age limit) get mortgage loans with interests including a fixed margin on a reference index, which consequently is far below the market level. Re-sale of apartments is prohibited. Despite the substantial number of subsidized loans of an estimated 60,000 cases since

[22] There is no transparent data on this; a huge share of developers went bankrupt in the insolvency boom that followed the crisis. The estimate of the authors of this report is that about 70% of housing developers have gone insolvent since the GFC hit in.

[23] This again is based on the authors' assessment, with no official data available. People, especially young people, have become more cautious to make long-term commitments; so in spite of Romanians' predominant preference to home-ownership, they have become much more inclined to rent on the private market instead of investing in a home of their own.

[24] Governmental Urgency Ordinance 60/2009 and Governmental Decision 717/2009

2009, the outcomes of the program are sobering. It is almost entirely used for the sale of existing apartments, and hardly contributes to new construction with less than 5% of total lending. The government is experiencing sharp fiscal difficulties, thus any additional spending on the program might worsen the public budget balance.

- Starting with august 2013, the new Government decided to provide a 50% state guarantee only for mortgage loans issued by banks in the local currency – lei. At the beginning the new product was less appealing for the potential buyers. At that time, the installment for the loan co-guaranteed by the government was 30% higher than the equivalent loan in euro. But in the meantime, the Romanian National Bank (BNR) brought about four cuts of the political monetary interest rate, to minimal record level of 4% per year (with respect to a 5,25% at the beginning of 2013). As a consequence, the loans co-guaranteed by the government have become gradually lower than the standard mortgage loans in lei and the loans have costs that are close to the best offers in euro on the market. If, at the beginning of August 2013, the lowest mortgage loan interest rate in lei had a DAE of 6.8%, in December 2013 the banks started to provide mortgage loans in lei with an interest rate lower than 6% (5.81%).

Currently, the share of public rental housing is the lowest in EU, below 2% from the total housing stock. There is a clear link between the rise in housing prices — and the resulting affordability problems — and the demand for public and affordable housing. The constant reduction of public housing has resulted in very long waiting lists, keeping a large number of people in inadequate housing conditions or affecting their expenditures in other areas, such as food, clothing and health (U.N. Special Rapporteur 2009: para. 34).

Having a sufficient supply of affordable housing affects different areas of development. It is important not only for shelter purposes, but also for the formation of a cohesive, inclusive society and for a country's economic development.

2.2 Issues of price and affordability

- Prices and affordability:
  - What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)? (Explanation: If rent is 300€ per month and disposable household income 1000€ per month, the rent-to-income ratio is 30%).
  - To what extent is home ownership attractive as an alternative to rental housing?
  - What were the effects of the crisis since 2007?

With the dynamic economic development in Romania since the early 2000s, incomes have increased similarly. But during the economic crisis incomes stagnated, whereas inflation remained high. Hence, household incomes in real terms decreased.

In spite of the governments' promise to reinstate the value of public employees' to the level of 2008-2009, salaries in real terms have not yet reverted to this currently, the employees' purchasing power is set at 122% with respect to the reference one (from October 1990), the last one before the liberalization of prices.

Table 10. Purchasing power evolution

Month	Oct. 06	Oct. 07	Oct. 08	Oct. 09	Oct. 10	Oct. 11	Oct. 12	Oct. 13
Gross Income (lei)	1.155	1.471	1.795	1.881	1.846	2.008	2.139	2.232
Net Income (lei)	866	1.084	1.327	1.375	1.340	1.457	1.552	1.615
Purchasing Power (%)	93,5	106,6	124,9	124,1	112,1	117,1	119,5	122,0

It should be noted that it took over 16 years for the purchasing power incomes to come back to the starting point of 1990.

The average income has increased with 16% in Euro, compared with the minimum level in October 2010, but with only 9% in real terms (adjusted with the inflation).

Table 11. Income evolution

Month	Oct. 06	Oct, 07	Oct. 08	Oct. 09	Oct. 10	Oct. 11	Oct. 12	Oct. 13
Gross Income (lei)	866	1.084	1.327	1.375	1.340	1.457	1.552	1.615
Rate of exchange (lei/euro)	3,53	3,35	3,75	4,28	4,28	4,32	4,56	4,45
Net Income (euro)	245,5	323,3	354,3	320,9	313,1	337.0	340,5	363,2

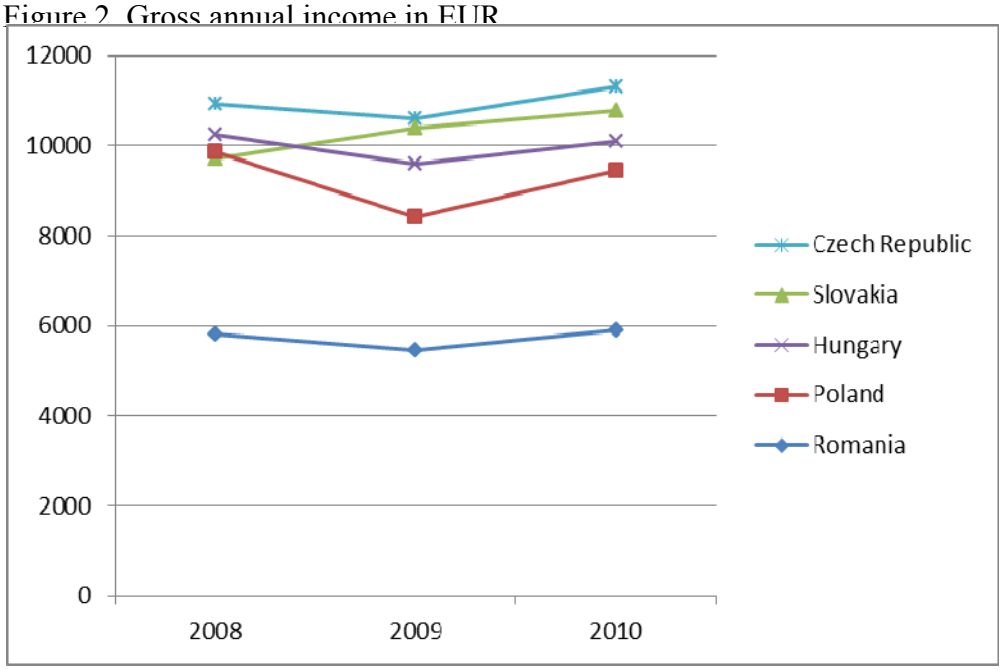
The explanation lies in the process of convergence of internal prices towards the level of Western countries, a process that has also put pressure on the competitiveness of local products in comparison with imported ones. While the incomes are now higher in Euro their purchasing power is still weaker to this moment, i.e. Romanians have better incomes, but can buy less with the same amount of money.

Inequality of incomes has grown strongly between 2004 and 2008. An inequality of income ratio of 7.0 (2008, ratio between the highest and the lowest income quintile) was one of the highest in all Europe. The EU 27 average is 5.1.[25] Generally, southern European and SEE countries have higher income disparities than Western, Northern and CEE countries. Together with Bulgaria, Romania has the highest share of households threatened by poverty and social exclusion within the EU and all candidate

[25] EU-SILC (ilc_di11) - Income quintile share ratio by sex and selected age group

states. 43% (2009), almost twice the share of population compared to EU average, can be regarded as poor. A large part of the population has difficulties affording everyday commodities, such as accommodation.[26]

Figure 2. Gross annual income in EUR



Source: UNECE, Eurostat, N.I.S., WIIW, IIBW

The affordability of housing expenses poses a serious problem for low-income social groups. Romanian households spend 25% of their disposable incomes on housing, including energy. By comparison, EU27 average is 23%.

According to a recent N.I.S. research, 36.5% of the interviewed households recognizes constant debts for the main monthly costs: 53.7% of the households declare constant debts for paying the energy invoices, and 11.7% have difficulties for paying monthly bank installments.

In the old housing stock, maintenance and management are still hardly developed, and therefore generate almost no costs for tenants (at the price of deteriorating buildings). On the other hand, energy prices are being gradually raised to international level and hence cause an increasing burden for households compared to higher income western countries.[27]

The situation is quite different for those households which have bought or rented apartments in recent years. The situation is really serious in the small rental sector. Overbur-

[26] EU-SILC (ilc_pns4): Inequality of income distribution S80/S20 income quintile share ratio http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_pns4&lang=en

[27] In accordance with EU/IMF negotiations, the Romanian government has gradually been lifting off energy price subsidies since 2009; energy prices will reach international level by 2018.

den is defined by the total housing costs being more than 40% of the disposable household income. Consumer prices increased on average by 6.3% per annum between 2005 and 2010, housing costs by 9.2% in the same period[28].

Although the general affordability situation has been varying after '90, access to acceptable housing has not been affordable for the majority of households, either in the owner-occupied sector, or in the private rental sector. The public rental sector offers affordable housing, but the demand is several times higher than the supply. In the private rental sector the rental costs are too high to be considered affordable, partly because of the legal uncertainties (leading to risks on both the supply and the demand side) and the inappropriate tax policy. Privatization contributed to the affordability of housing, at least for the sitting tenants. The case is quite the contrary for households entering the housing market today. Three household groups suffer particularly from shortages in affordable housing: the young, the mobile and the poor.
Unfortunately, the lack of reliable market data and statistical figures limits our possibility to provide a more in-depth analysis. But, taken into consideration that a monthly average rent for a one-room apartment in Bucharest is cca. 200 Eur, and the official monthly net income for October 2013 released by the Romanian N.I.S. is cca. 365 Eur, we can estimate the rent-to-income ratio to be cca. 55%. In reality, this ratio is around 30% because the monthly net income is considerably higher (many Romanians don't declare their real incomes).

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?
- 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?

There are basically no institutional developers on the rental market and there are no well-developed financial instruments built around rental sector financing.
Real Estate Investment Trusts (REITS) or similar instruments do not exist in Romania.
There is no securitization system related to tenancies in the country. Although the commercial (or other) landlords are allowed to securitize their rental incomes there is no such practice identified (even less – usual or frequent) within this research.

2.4 Other economic factors

[28] PRC Bouwcentrum International (2005) Sustainable Refurbishment of High-Rise Residential Buildings and Restructuring of Surrounding Areas in Europe, Report for European Housing Ministers, in: conference proceedings 14-15 March 2005, The Netherlands, PRC.

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

Local insurance companies provide two types of insurance products for a house: a compulsory and a voluntary one. The compulsory insurance covers only natural disasters: earthquake, flood, or landslide. The amount covered by the insurance is EUR 20,000, except buildings from any materials that are not heat treated, for which the amount covered is EUR 10,000. As this is a new scheme, launched in 2012, its expansion and longer term effects are not yet visible. Local authorities control whether the insurance products are in place, and they have not yet developed efficient means of control. In addition to the compulsory insurance, a homeowner may sign a voluntary one, in order to cover risks for the entire property market value[29].

The most typical form of private rental tenure is an individual landlord contracted to an individual tenant (or family). The term of the contract is typically short, one or two years. The real estate agents may have a more important role for finding and selecting tenants; they typically do a first selection (selecting the 'good tenants'), but they seldom share any risk with the landlords.

The profession of real estate broker is not yet regulated as such, but there are some provisions issued by the National Authority for Consumers Protection. Even though real estate brokers have a rather negative public image, they act as intermediaries in more than 90% of private housing transactions. Less than 1% assumes representation of a party involved in a transaction; most of them play an intermediary role, the fees depending on the value of the transaction. Usually the brokerage companies' fees vary between 1-3% of the value of the housing transaction, or alternatively, the amount of a monthly rent. Owners usually decrease the required rent by 10% during the negotiations.

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?

Gross new lending in Romania has increased over the last years, but with much smaller rhythms compared with the boom years, being supported by the public Prima Casa program (see below). The share of non-performing loans has grown up to 21.7% in december 2013, more than 3 times then in 2009 (7.8%). Local banks started the mass foreclo-

[29] Law 260/2008

sures in summer of 2013, at the pressure of the Romanian National Bank. Many banks hidden in the previous years their non-performing portfolio, by repeatedly restructuring their loans portfolio, in some cases more than 20 times. In this way, the local banks avoided to frame their portfolio as non-performing loans, postponing thus as much as possible the foreclosure process starting. There are no official figures as regards the number of foreclosed mortgage loans.

Market prices for new owner-occupied apartments skyrocketed from the early 2000s to 2007, when prices in Bucharest and the other bigger cities reached the level of many Western European countries, up to 3,000 EUR/m². With the economic crisis and the breakdown of retail mortgage financing, the housing market prices tumbled. Today, it is possible to find a new apartment in Bucharest for less than 1,000 EUR /m².

The market prices have been following a negative trend for four years and it is hard to believe that this trend will change significantly in the next 12-18 months. Most of the housing transactions between 2009 and 2012 (over 60 000) were supported through the Prima Casa (First House) program[30].

In late 2012, at national level, the average price per square meter requested by apartment owners was 963 Euro. It has decreased by 48% since October 2008 and considering the reduction of the average wage after taxes by 4%, the price per square meter expressed in monthly average wage after taxes has fallen from 4.9 to 2.8.[31]

In the last 4 years the rents have also decreased drastically. In Bucharest, where the rental prices have decreased the most significantly, the average rent asked by apartment owners fell by 51% from October 2008 to October 2012, namely from 940 Euro to 480 Euro. Constanta follows with a decrease of 37%, Timisoara and Cluj with 26%, and Iasi with 18%. Between October 2008 and October 2012, the rents decreased by 49%, faster than the prices (by 43%) in Bucharest. In Timisoara and Cluj, the case was the opposite: prices fell more rapidly than rents.[32]

We could conclude that the future growing number of the repossessions will influence the rental market by contributing for an additional supply of dwellings to the real estate market and further decrease of housing and rental prices.

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?)

[30] http://www.imobiliare.ro/default/prima-casa-4-%e2%80%93-banii-se-vor-termina-pana-la-sfarsitul-anului-ce-se-va-intampla-daca-programul-nu-va-continua_db/

[31] http://www.imobiliare.ro/apartamente/cu-cat-s-au-ieftinit-locuintele-in-aproape-5-ani-de-criza-topul-oraselor-cu-cele-mai-mari-scaderi_db/

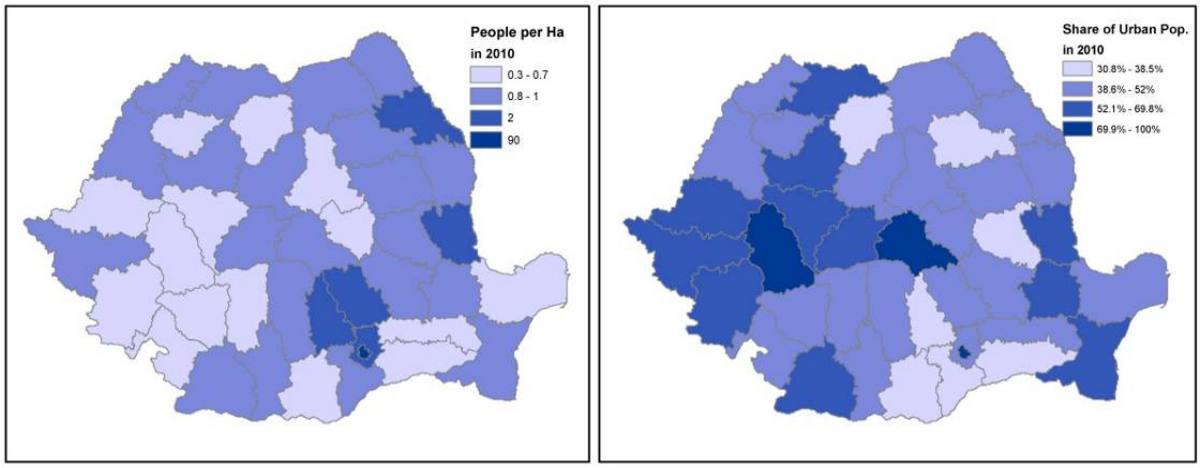
[32] http://www.imobiliare.ro/chirii/mai-este-loc-de-scaderi-pe-piata-imobiliara-o-comparatie-chirii-versus-preturi-versus-salarii_db/

- Are the different types of housing regarded as contributing to specific, mostly critical, “socio-urban” phenomena, in particular ghettoization and gentrification
- Do phenomena of squatting exist? What are their – legal and real world – consequences?

According to preliminary results of the 2011 Census, the density of the population is 79.9 inhabitants/square km, with highest results in Ilfov County (230.1 inhabitants/square km) and lowest in Tulcea County (23.7 inhabitants/square km).[33]

The level of urbanisation in Romania remains among the lowest in the EU - 55%. One specific issue for Romania is that some areas with high density also correspond to some of the least urban areas[34].

Figure 3 Some of the densest counties are also some of the least urban[35]



Data Source: National Institute of Statistics

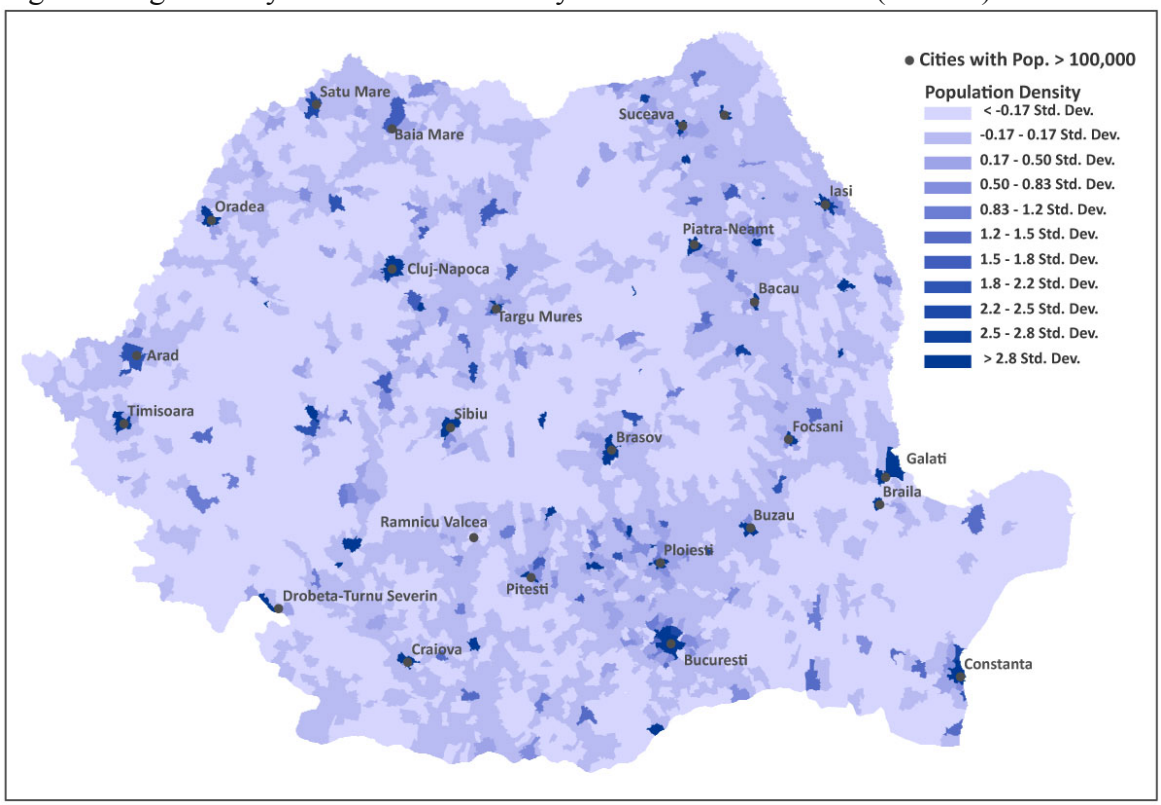
As the map below shows, rural areas with highest density are around the cities.

[33] http://www.recensamantromania.ro/wp-content/uploads/2012/08/Comunicat-presa_Rezultate-preliminare.pdf

[34] World Bank, 2014, “Competitive Cities Reshaping the Economic Geography of Romania”, Bucharest, Romania

[35] ibidem

Figure 4 High density rural areas are usually clustered around cities (in 2011)[36]

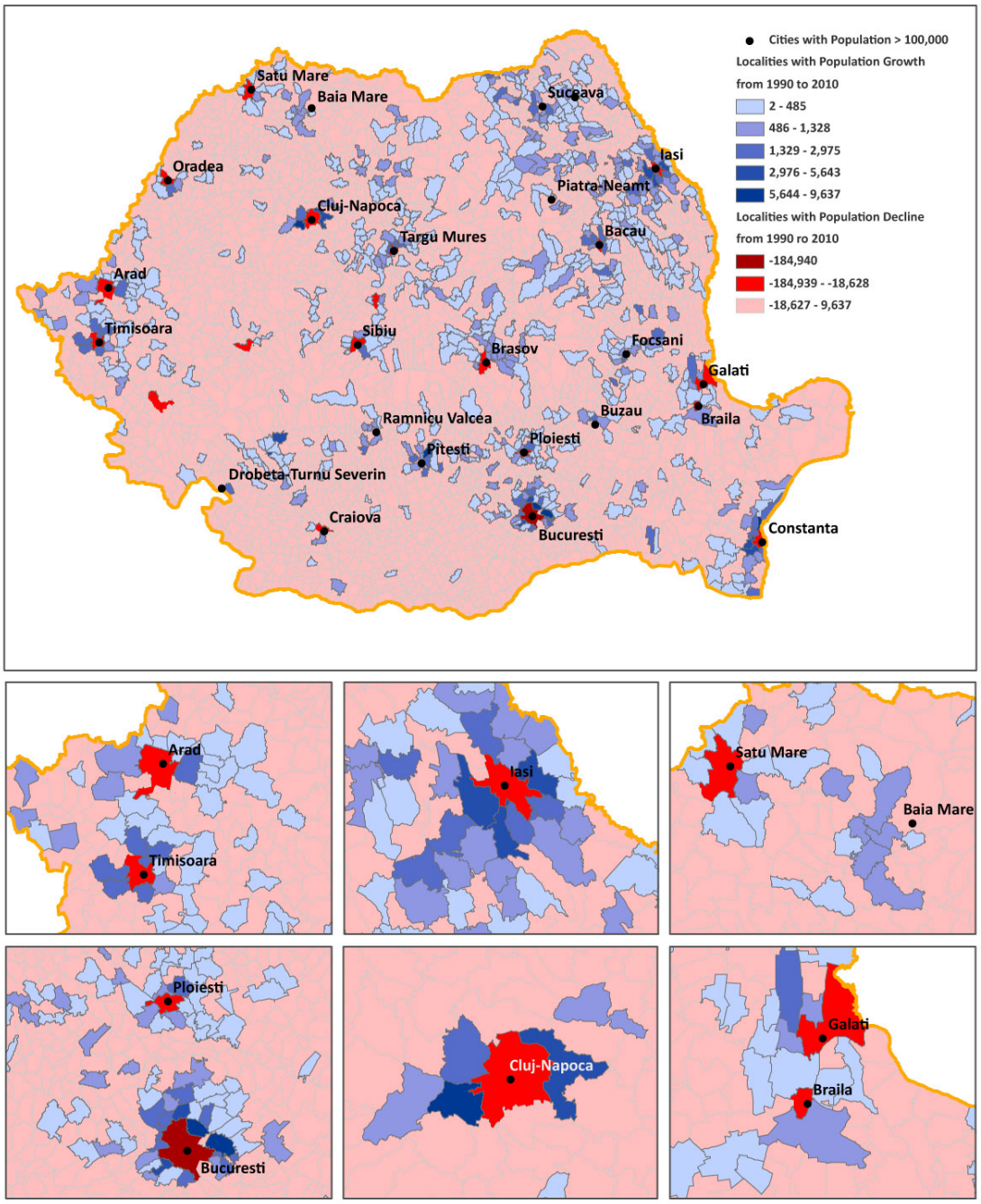


Data Source: National Institute of Statistics

The low urbanisation percentage of Romania (55%) is missing the recent suburbanisation trend and can be partly explained by the way rural and urban areas are defined. Official data include many suburbs under rural areas. The way a commune becomes a town (or remains a commune instead of being incorporated into the town/municipality) or a town becomes a municipality is very much linked to political will, although there are clear criteria stipulated by the Law 100/2007 based on which an area can be declared as urban. Romania, where the number of population is half compared to Poland, has almost 400 more localities than Poland[37]. Between 2000 and 2010 a number of 229 new localities appeared, decreasing the financial power at local level.[38]
The internal migration is characterised by urban to rural movement of population. A deeper analyses at this phenomena shows that is very much related to suburbanisation process. People living in most developed cities (Bucharest, Cluj-Napoca, Timisoara, Constanta, Iasi, Ploiesti) move in areas around these cities, areas that are still wrongly defined as communes.[39]

[36] ibidem
[37] ibidem
[38] http://www.ipp.ro/pagini/clientelismul-politic-a-falimentat-nu-nu.php
[39] World Bank, 2014, "Competitive Cities Reshaping the Economic Geography of Romania", Bucharest, Romania

Figure 5 Suburbanisation process[40]



Data Source: National Institute of Statistics

In concrete numbers, number of people in the suburbs of the big cities increased with 300 000, while the number of the entire population decreased with almost 4 million since last census.[41]

40 ibidem

41 ibidem

The recent political and public debate on regionalisation process in Romania revealed a bigger problem that is also related to suburbanisation - defining and agreeing a territorial division of the country that is functional and efficient.

More than 98.2% of all conventional dwellings are privately-owned; 97.5% are located in municipalities and cities and 99.1% in communes. Public housing accounts for only 1.5%; 2.1% is located in the biggest and only 0.7% in communes. Other forms of ownership are almost nonexistent, accounting for about 0.3% of the total number of conventional dwellings. Public rental housing is concentrated in the biggest cities.

The private rental sector has several problems that are related to its illegal (unreported) nature. The biggest problem is the high risk for both the tenant and the landlord. For the tenant it means that they can be moved out any time if they do not have a contract. Very often they cannot register themselves to the address. Even if they do have a legal rental contract, it can be terminated any time by the landlord, and the tenant be given only 3 months to move out from the apartment. The risk on the landlords' side is that if the tenant does not pay the rent and bills, or the tenant causes damage in the unit, there is no opportunity to seek legal remedy. These facts provide incentives to legalize the sector, but the tax burden is quite high.

Romania is one of the countries with the highest rates of poverty when it comes to living conditions. Some of the most relevant EU-SILC data for 2011 show the following:

- the overcrowding rate in Romania in 2011 is 57.6%, with 70.7% for poor people (below 60% of median equalized income). It is the highest percentage throughout Europe, and is more than three times higher than the EU27 average (18.2%);[42]
- material deprivation rate is 47.7%, compared to 18.2% the average in EU27 countries;[43]
- housing deprivation rate is the highest in Romania if we measure it by the percentage of the population deprived of 2, 3 or 4 housing deprivation items;[44]
- the share of the population with neither a bath nor a shower in their dwelling is the highest in Romania (36.8%). Latvia comes second (18.2%), while the average for the New Member States (EU12) is 12.1%;[45]
- the percentage of the population not having an indoor flush toilet is again the highest in Romania (38.7%). The average in the New Member States (EU12) is 13.1%;[46] the housing cost overburden rate is close to the EU-27 average[47]. The authors of this study do not consider EU-SILC data entirely reliable on the issue of housing overburden.

[42] EU-SILC (tessi178): Overcrowding rate by poverty status - Population without single-person households

[43] EU-SILC (tessi082): Material Deprivation rate by age group

[44] EU-SILC (tessi291): Housing deprivation rate by number of item

[45] EU-SILC (tessi293): Share of total population having neither a bath, nor a shower in their dwelling

[46] EU-SILC (tessi294): Share of total population not having indoor flushing toilet for the sole use of their household

[47] EU_SILC(tessi163): Housing cost overburden rate by poverty status

According to the preliminary data of the last Census,[48] 66.7% of the dwellings are provided with running water, 65.1% with sewage system and 44.4% with central heating system. Only 31% of the dwellings in rural areas have a bathroom inside the house.

An extended report on the social situation commissioned by the Romanian Presidency[49] identifies three major groups that suffer from housing poverty: people living in rural areas, young people, and Roma communities. The main problems in rural areas are lack of utilities (running water, sewage, bathrooms and kitchen inside the house, etc.) and the quality of houses, many of them built from adobe or other non-solid materials.

Young people represent the only group whose needs the government has addressed by a strong housing construction program. Due to the success of the "Prima Casa" program, initially targeted to them, it was extended to other groups, as well.

Living conditions in Roma communities have never constituted a strong priority for the government, although poverty and housing related figures are worrying.[50]

Approximately 45% of the Roma in Romania lack at least one of the four basic facilities: indoor kitchen, indoor toilet, indoor shower or bathroom, and electricity.[51] According to another research, 70% of the Roma in the urban areas are not connected to drinking water, sewage or gas.[52] 13% of the Roma lack electricity compared to the 2% national average. Most of the Roma live on the outskirts of cities (83%). Only 40% own their house, while 30% have no tenancy documents.[53]

Statistics show that Romania has a lot of things to improve when it comes to poverty and housing. What the figures do not yet show is the growing trend of segregation and the increasing number of ghettoes, generated by the economic crisis and facilitated by governance issues and negative attitudes towards Roma and vulnerable groups.

2.7 Social aspects of the housing situation

- What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior or economically unsound in the sense of a "rental trap"?) In par-

[48] Preliminary census data, 2012: http://www.insse.ro/cms/files/statistici/comunicate/alte/2012/RPL_rezultate %20preliminare.pdf (last visited on 3 December 2012)

[49] http://www.presidency.ro/static/CPARSDR_raport_extins.pdf (last visited on 3 December 2012)

[50] EU-SILC (tessi294):Share of total population not having indoor flushing toilet for the sole use of their household

[51] FRA – EU Agency for Fundamental Rights (2012): Situatia Romilor in 11 state membre ale UE – Rezultate sondajelor pe scurt (Roma situation in 11 EU member states - brief survey results)

[52] Soros Foundation Romania, 2006, "Barometer of Social Inclusion"

[53] The Research Institute for Quality of Life, 2010, Legal and Equal on Labour Market for Roma Communities - Diagnosis of the Influencing Factors on the Employment of Roma Population in Romania, Soros Foundation, Bucharest

ticuar: Is only home ownership regarded as a safe protection after retirement?

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

The general attitude toward different tenure forms has been a preference for home-ownership: conventional wisdom holds that 'it is cheaper to buy than to rent'. Consequently, private rental is chosen by families who have no other options. The preference towards ownership has a tradition starting with 1990, but is also connected to the shortage of social housing provision. The private rental market accommodates people who cannot afford a mortgage (due to instability of incomes, and not necessarily because of the big price difference between rent and mortgage), and students (in big cities).

Social housing is regarded in Romania as housing for the poorest strata of the society and over time it became a residual sector. Some of the social houses are built in segregated areas, on the margins of the cities, and are usually inhabited by the Roma.

It is estimated that a big part of the private renting contracts are not registered, so that owners do not have to pay income taxes. So, in reality, the private renting market is bigger than what official statistics show.[54]

Attitudes towards poor neighborhoods become increasingly problematic. These are regarded not only as places of poverty, but also as places full of criminals, usually associated with the ethnic Roma. The negative attitude of the majority population towards Roma neighborhoods is often used by local politicians for electoral advantages and this leads to segregation.

Table 12. Attitudes toward different tenure types

	Home-ownership	Public rental	Private rental
Dominant public opinion	Main tenure form	Usually poor households	Households who have no access to home-ownership / mobile workers
Tenant opinion	Tenants prefer to leave the rental sector	Very low probability to leave the sector, a quasi – ownership	Temporarily acceptable, e.g. students, mobile workers
Contribution to gentrification?	No relevant gentrification process		
Contribution to ghettoization?	Low end of the owner occupied sector is at risk	High risk of ghettoization	Not concentrated geographically
Squatting?	Exists to a small extent, but poorly documented. Regarded as an undesirable phenomenon, the general attitude is to expel squatters from the city, but no real alternatives offered by local authorities.		

[54] Amann & Mundt (2010): Designing a New Housing Law for Romania.

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

The Communist regime largely solved housing shortage by a massive social program of building mainly cheap, low quality pre-fab dwellings. Most of the new dwellings were built especially in urban areas as multilevel buildings with about 30 apartments per building. Between 1971 and 1989 approximately 141,000 apartments were built annually. In 1988 from 103,267 new dwellings only 5,004 were built with private funds. On the other hand, these dwellings were equipped with major installations and facilities. The construction was of a low quality, which has led to an exacerbated dilapidation of the stock. Most of these homes were connected to district heating, which after the privatization and the restructuring of district heating provision led to the cutting of heating in many homes. About 85% of the total housing stock has 1 to 3 rooms.

Even before 1989, 67% of the housing stock was held privately, most in the form of single-family residences in rural areas. Most households in urban areas, and even some in relatively small towns, lived in state-owned rental properties, paying a nominal level of rent. There was no form of cooperative or condominium ownership in Romania. Over 55% of the urban housing units were built between 1970 and 1990, mostly as large apartment blocks out of prefabricated panels.
Public social housing was distributed by public authorities only to people who were employed by state enterprises.

According to the Romanian Constitution from the communist period, every citizen was entitled to the right of housing, and the state had the obligation to provide adequate housing to every citizen. However, the communist state promoted a kind of “wage earners’ welfare state”, where the condition of all welfare benefits – including access to housing – was work in the state economy (and nearly all production capacities, including land and forest, were state owned).

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?

The executive institution in implementing housing policies in Romania is the Government. The structural and fundamental decisions in housing policy are stipulated in laws or governmental ordinances. The institution responsible for the design, promotion and implementation of housing policy and programs in Romania is the Ministry of Regional Development and Public Administration (former Ministry of Regional Development and Tourism).[55] Yet, for the housing sector, the competence of the Romanian Government is largely dispersed. This situation has not changed since the UNECE's criticism in 2001,[56] when the fragmentation of responsibilities was assessed to be an impediment to lasting housing policy reform.

There are now six ministries with partly overlapping responsibilities in housing. Funding of housing programs as well as technical and physical management of the housing stock are assigned to the Ministry of Regional Development and Public Administration. The Ministry of Internal Affairs is authorized to provide heating, hot and cold water subsidies to low-income families, formulates and implements regional development policies, and ensures coordination of state and local government interests. Issues related to energy use are decided by the Ministry of Economy, Trade and Business Environment. The Ministry of Justice is responsible for the real estate register; and the Ministry of Agriculture manages land matters and the Ministry of Public Finance facilitates the financing of the sector through budget allocation.[57]

Local authorities are mainly responsible for social housing administration, management of public services, and social issues (Laws 215/2001 and 286/2006). Municipalities are allowed to outsource social housing services to private or publicly owned management companies.

A main player in Romanian social housing is the National Housing Agency (ANL). It was established as a self-financing institution of public interest by Law 152/1998 and operates under the authority of the Ministry of Regional Development and Public Administration.[58] Its main objectives are to promote housing markets, stimulate new housing construction, and the rehabilitation of the existing housing stock. Since its establishment this institution has been regarded as a practical solution to existing housing problems and an adequate channel through which the State may provide assistance to its citizens. ANL has a national network of territorial offices and collaborates with builders, financial institutions, local and central administration authorities and foreign organizations. ANL programs focus on mortgage-financed privately-owned housing construction, provision of rental housing for young people and a pilot-program for Roma families (300 housing units all around the country).[59] A new program focuses on attracting young specialists to move to rural areas.

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55 Ministry of Regional Development and Public Administration (www.mdrt.ro)

56 http://www.unece.org/fileadmin/DAM/hlm/prgm/cph/countries/romania/CP%20RomaniaPubl.pdf (last visited on 5 December 2012)

57 Dübel (2012): CEE Mortgage Market Regulation.

58 Hegedüs et al. (2012) Social Housing in Transition Countries.

59 Niță, D. L., Romania. Raxen National Focal Point. Thematic Study. Housing Conditions of Roma and Travellers.Center for Legal Resources. Study commissioned as comparative report on housing conditions of Roma and Travellers in EU Member States by the European Union Agency for Fundamental Rights, 2009

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

Regarding the stages of Romanian housing policy, the public rental stock declined considerably during the large-scale privatization after 1990, and a tendency to increase social rental housing emerged only in the period between 1997 and 2007. With the support of international financing institutions, a National Housing Agency was established in 1999 to finance and create affordable rental housing.

There is some continuity in the housing policy path taken in the mid-nineties, but it seems to be limited to a least common denominator: although the Housing Law has been amended more than 10 times since its enactment in 1996, substantial changes of housing models and subsidy schemes have hardly taken place so far. The reluctance to carry out a major housing reform may be explained with housing policy being no priority in the European integration process, and with the frequent changes of responsibility within the Government.

In general, not only social but also market rental housing is clearly on the defensive in Romania. Housing policy reform so far has not improved consumer choice of housing tenure. Ownership ideology is still the prevalent ideology in Romania (today more than 97.5% of the housing stock is privately owned), as housing policy programs have largely provided support for becoming a home-owner. Attempts to make rental housing a secure and economically rational alternative were insufficient.

Following the political changes after 1990, various initiatives were carried out to transform the Romanian housing sector. For the sake of analysis it is helpful to distinguish four phases with changing priorities.

Privatization and state withdrawal

In the first stage of the transition (1990-1996) the housing reform focused on building up and strengthening market forces and minimizing state intervention in the housing system. The policies promoted deregulation, increased the private sector institutions' role and reduced public expenses. Also, during this period, the reform involved privatization of the public rented stock and state construction companies.[60]

[60] Hegedüs et al. (2012) Social Housing in Transition Countries.

The Decree-Law no. 61/1990 enabled the privatization of housing units built with State funds through selling them to tenants who could make a down payment and sign the purchase contract backed by a loan. Non-Romanian citizens wishing to settle in Romania could purchase a housing unit with foreign currency. Legally, repatriated Romanian citizens had priority if they purchased a dwelling with foreign currency. (The exact share of these repatriated citizens is not known, nonetheless, it is not a significant pressure on the housing market.)

The terms of sale to sitting tenants were a minimum partial payment of 10-30% of the official price, plus signing on an installment plan with the CEC (State Savings Bank) for the remaining amount, at a 2-4% rate of interest, over 25-30 years. However, many chose to pay all cash or pay back the loan as quickly as possible. Otherwise, the high levels of inflation during this period have fully dissipated the real value of these debts.

According to art. 6 of Decree Law no. 61/1990, the sale prices for dwellings built with state funds and received up to 31 December 1989 are set according to annexes no 1 and 2 of the Decree Law. In order to adjust the selling prices to the estimate housing prices received after January 1, 1990, the Ministry of National Economy, the Ministry of Finance and the National Planning Commission will be presented within 60 days of the date of this decree-law the price levels. In other words, in the annexes 1 and 2 of the Decree-Law no 61/1990, the selling prices are set in clear tables according to a set of criteria such as the number of rooms, useful area, degree of comfort and finishing. According to other criteria that do not appear in the table, such as the age, the seismic risk, the type of heating, the metal joinery, the wooden shutters etc., the price is adjusted with several coefficients. For instance, the price of a house with two rooms, first comfort, 50 m2 is 123 700 ROL (Romanian Old Currency, the equivalent in USD at the date of February 7, 1990, of 1948.95 USD). If the heating installation is based on solid fuel stoves, the price is reduced with 3.5% and so on (as we mentioned above, the price adjusts with other criteria).

Between 1990 and 2004, as many as 2.2 million dwellings were privatized, which is 27% of the total housing stock.[61] As a result, the official owner occupation share rose to 97.6%. Only 1.5% of the stock has remained social rental housing (below market rents)[62]. The number of rental dwellings varies significantly according to city size.[63]

After the general withdrawal of the state from the housing sector and the privatization of the state rental stock, there were no significant interventions until 1994, when the state started to provide support for the completion of partially completed building projects suspended prior to 1989. Soon thereafter, the state intervened to provide a limited number of low-interest housing loans through the State Savings Bank, the CEC.

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61 PRC (2005)

62 No reliable data as of yet on the share of market rental.

63 Pascariu, S. si Stănculescu, M. S., "Homeownership Model: Management Improvement and Quality Standard Challenges; Local Government and Housing in Romania.

The “uncompleted houses” special program came with two subsidies: one was a discount of 30% of construction costs; the second was a below-market interest rate. In total, some 10,000 dwellings were completed in this way.[64]

A second CEC scheme was targeted at young households up to the age of 35. Young households were offered local currency loans with a regulated interest rate at 15%. Although not so low in absolute terms, this interest rate was still very low relative to inflation. Although no official data is available, the authors of this report believe that a significant portion of young people benefited from this scheme.

More state involvement and the National Housing Agency (ANL)

In the second period of transition (1997-2002), new institutions were set up and the legal framework for housing policy improved. In 1996 the Romanian Housing Law (Law no. 114/1996) was enacted, following a French model, regulating amongst others social housing construction, general conditions of condominium housing and housing management. Even though it has been modified around 10 times since 1996, the main principles of this law are still prevailing today, as shown below.

In 1999, the government made a policy decision to end the subsidy scheme through the CEC and focus on social housing provision through a new state-owned enterprise, the National Housing Agency (ANL – Agentia Nationala pentru Locuinte). This entity works with local governments, which have to provide building land and infrastructure, to build and finance affordable housing, i.e. low-rent dwellings for young people, owner-occupied dwellings and single family homes for first-time buyers.

Initially, ANL focused on “pioneering” the use of mortgage lending under the terms of the Mortgage Law enacted in 1999. It offered long term loans with interest rates of 7% to 9%, according to the age of the borrower. These loans were, in principle, useable for any kind of housing, but after 2002 they got restricted to new construction funded by ANL and to first-time buyers. As land and utilities were provided by local governments free of charge and they enjoyed other indirect subsidies by ANL, these dwellings were offered at around 50% below market prices or even lower.

With the appropriate legal changes in October 2002, Romania also adopted a system of separate contract-savings banks for housing very close to the German and Austrian “Bausparkassen” model. These institutions are designed to collect deposits below market interest rate, and recycle these funds into low interest rate housing loans. To attract funds, a yearly premium and tax-deductibility of interest is granted. The first contract-savings bank in Romania was set up in 2004 (Raiffeisen Banca pentru Locuinte); the second immediately afterwards in 2005 (HVB Banca pentru Locuinte), and 3 years later it merged with the first entity. A second Bauspar type bank was set up by BCR (ERSTE Group), the biggest local bank, in 2009.

Rental housing for the young and the mortgage market

[64] Diamond, D. (2006) Housing Policy and Subsidy Review for Romania with Recommended Specific Policy Reforms (Washington, The Urban Institute).

After 2003 the Romanian Government started an intensive program, backed by positive macroeconomic developments, targeting at three housing areas: 1. emergence of a primary mortgage market; 2. expanding the Rental Housing for Young People program; 3. energy efficiency refurbishment (thermal rehabilitation) of the housing stock.

As a result of a new public-private partnership established between ANL and several banks in 2003, ANL stopped its housing lending activities, as its pilot program was considered to have accomplished its pioneer catalyst role. The banks started to grant mortgage loans to eligible applicants who were registered in the ANL database as qualified beneficiaries. However, in 2005 subsidies for construction of new privately-owned housing were cancelled because of their interference with market rules. For compensation, a new law was passed for providing a subsidy of up to 20% of the housing value (up to €10,000). In 2006 another program was launched to encourage young people to take a mortgage loan for building their new house. It comprised of a 30% subsidy to construction costs (up to €15,000) for first-time builders, if realized with a developer using a mortgage loan. The focus of these programs is clearly the improvement of the affordability of owner-occupation.

The ANL Rental Housing for Young People program, established in the early 2000s, to date has been the main rental housing policy program. Within almost one decade, more than 33,000 housing units have been completed all over the country. With this program, the Government tried to put the focus of housing policy on the population group that had not benefited from the large-scale privatization, and was facing affordability problems on the private rental housing market.

In 2007 the Romanian Government decided to change the program's legislative framework, allowing the sitting tenants to buy their apartments after a minimum renting period of only one year for a price far below market level. The reasoning behind this new procedure was that funds needed to flow back for the construction of new social dwellings, according to the revised law on ANL. Sale may be initiated only at the tenant's request. Returns from the sale of these social rental dwellings are earmarked for new rental housing construction for young people, but sales revenues hardly suffice for a similar number of newly built social dwellings. Above all, this right-to-buy scheme was not as successful as expected. Considering the very low rents, the indefinite contracts and the security of tenure, for many households it is still economically rational to continue renting instead of buying.

In 2003 a thermal rehabilitation program was initiated with funds provided by the Romanian Government and the Swiss Development Aid. The results are still unsatisfactory due to the very frequent changes of the legal framework both in housing law and condominium law, the ineffectiveness of homeowners' associations, and the banks' reluctance to lend money to such bodies.

Economic crisis and return to ownership policies

After 2008, the housing market was hit hard in the wake of the financial crisis: the Young People Rental Housing Construction Program was reduced in size, the state premium

payment for the “Bauspar” banks was postponed by about one year, the number of housing completions decreased significantly, and borrowing for new construction virtually stopped.

As an anti-crisis measure, the Romanian Government launched the Prima Casa (First House) program in early 2009 to support mortgage lending and encourage the construction sector.[65] The program includes state guarantees provided to participating banks through the „National Loan Guarantee Fund for Small and Medium-sized enterprises” (see details under 2.2.4 Housing needs and demand). As described earlier, the outcomes of the program fall short of expectations: it is nearly only used for sale of existing dwellings, and barely 5% of the total lending contributes to new construction.

Parallel to this program, the Government in 2009 agreed to a limited VAT exemption for new housing construction for apartments with maximum 120m², maximum land use of 250m², and total costs up to €90,000. The effects of this program are not yet clear.

Table 13. Priorities of housing policy measures in different phases after 1990

	1990-1996	1997-2002	2003-2008	2009 -
Public Rental housing programs			XXX	
Home ownership – investments	X	XX	XXX	X
Housing allowances		X	X	X
Other sources	XXX			XXX

3.4 Urban policies

- Are there any measures/ incentives to prevent ghettoization, in particular
- mixed tenure type estates[66]
- “pepper potting”[67]
- “tenure blind”[68]
- public authorities “seizing” apartments to be rented to certain social groups

Other “anti-ghettoization” measures could be: lower taxes, building permit easier to obtain or requirement of especially attractive lo-

[65] Government Urgency Ordinance no. 60/2009 and Government Decision no. 717/2009

[66] 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 homogenized communities, and to strengthen diversification of housing supply.

[67] 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.

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

calization as a condition to obtain building permit, condition of city contribution in technical infrastructure.

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

There is no specific type of housing (social rental housing, or high-rises, etc.) considered as a primary risk source for ghettoization. Usually there are blocks built under the previous regime that have become deteriorated, and their entire area is regarded as a ghetto. In some other ghettoes, families live in shacks, adobe houses or cardboard houses.[69] The formation of the ghettoes after 1990 (especially after 2001) has two main causes:

1. Degradation of living conditions in certain areas has progressively led to a concentration of poor people. Middle class people have moved away, petty criminality has developed and the area has become segregated.
2. Building of social housing in remote, segregated areas, outside cities also contributes to the creation of ghettoes, following the same mechanisms as described above. By moving the poorest people in, living conditions worsen in a few years, and the neighborhood slowly turns into a ghetto[70].

There are a lot of segregated communities in Romania, most of them with a high percentage of Roma population. Forms of segregation are very different, from gated communities with fences and walls around, to communities that are in the city (or in historic centre of the city/town), but where barriers are more symbolic than physical. There are segregated communities that are in place for more than 40 years and other that are very recent. Some of the ghettoes are ethnically mixed (but with a majority of Roma). Physical degradation of the area led to decrease of housing price and as a result more and more poor population has moved in. Some of these areas were designed by the action of local authorities, who relocated Roma on the margins or far from the cities. Economic opportunities for the people living in these areas are limited, due to discrimination and lack of education. Some of these areas are well known for criminality. At this

[69] Berescu C. & Celac, M. (2006): Housing and extreme poverty. The case of Roma.

[70] Botonogu F, coord. (2011): Hidden Communities – Ferentari.

moment there is no coherent national approach to improve and de-segregate these communities. Financial resources and power are at local level. Mayors, for different reasons (political gains or prejudice) often ignore or try to relocate these communities outside the city.

Here are two examples of gated communities.

In summer 2011 local authorities in Baia Mare built a high fence around couple of blocks inhabited by Roma[71]. The pretext was to protect the children from possible car accidents. In 2008 Tarlungeni (Brasov County) another high fence was built by local authorities to separate 1 100 Roma from their neighbours (700 Romanians and 1900 Hungarians).[72] These are two famous cases where national and international human rights NGOs have been involved. At the moment the walls are still there.

Related to segregation of Roma communities, more examples have been recently documented by the "Sparex" project[73] .

Unfortunately there are no measures to prevent ghettoization. As long as local authorities do not recognize ghettoization (sometimes encouraged by them) and central authorities do not have a clear policy on this, ghettoization will continue to spread in Romania. The only measures are taken by the National Council for Combating Discrimination, which can apply a fine that is small in comparison to the social impact and damages caused to individual life paths. At the moment there are no measures that combat ghettoization, either. It is a phenomenon that is mostly in the hands of local authorities and supported by the negative attitudes of the population towards the Roma.[74]

Squatting

Squatting exists to a certain (limited) level in Romania, although it is very scarcely documented. There are areas occupied illegally by poor people, sometimes with the verbal agreement of local authorities. The legal consequences are that people have basically no rights or access to local services, as they do not have a legal residence. They are permanently exposed to abuses, evictions, even death, due to improper living conditions. People living in the garbage are also common. The consequences are substantial, starting from permanent health dangers to lack of perspectives for the adults and lack of basic education for children.

Gentrification

Regarding gentrification, in Romania there have been some problems related to the restitution of houses confiscated by the communist regime. An analysis of gentrification in

[71] http://www.red-network.eu/?i=red-network.en.items&id=466

[72] http://www.romanialibera.ro/exclusiv-rl/documentar/dezbaterile-r-l-la-brasov-zid-antiromi-ca-incisiordania-144392.html

[73] http://sparex-ro.eu/

[74] http://cncd.org.ro/files/file/Raport%20de%20cercetare%20CNCD_Discriminare.pdf (last visited on 15 January 2013)

Romania[75] shows that the acquisition of urban properties (land or houses) is a process of accumulation of capital by private persons (with the help of the state that facilitates the acquisition of properties). It leads to the formation of a new social class and the state has an important contribution, as it owns some of these buildings. Also specific to Romania is that sometimes gentrified areas and poor areas co-exist as neighbors, without any physical or social links.

There are several forms of gentrification process in Romania:[76]

- transformation/refurbishment of some buildings situated in the city center that remained unfinished due to the withdrawal of the state from the role of main builder;
- transformation of the unfinished buildings destined for collective housing by the National Housing Agency;
- transforming land belonging to large factories in the communist regime into commercial areas and new residential developments in the peri-urban areas.

The gentrification process in Romania, as well as in other post-communist countries is not similar to what happened in other European countries. The basic difference is that the relation between capital and space is reversed. It is not the capital that controls and changes the space, but rather the control of the space leads to accumulation of capital[77].

Gentrification contributed to the creation of the capitalist class by the allocation of property rights. In cities like Bucharest this was possible due to two main factors: lack of clear property rights and lack of capital[78]. After 1990 the legal status of many centrally located buildings (nationalized before 1950) was very unclear. If the building was claimed by an owner, a very long trial started. At the end of the trial, the existing tenant was usually allowed to stay in the building for many more years. Some of the restitution claims were denied. Some of the former owners received money as compensations. Until now Romania has offered compensation of EUR 5 billion[79]. The houses that remained in state property were sold at a very low price (10% of the market price).

The gentrifies were not usually people with a big amount of capital, but rather people that were well connected with the administration. This allowed them to buy cheaper housing from the state in expensive areas.

There are elements that suggest similarities to a gentrification process (transformation of residential buildings into office buildings or commercial space, higher incomes of the residents, emergence of the owners who rent the space but also elements that suggest the opposite (the level of education of new residents is not higher and the presence of poor

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75 http://www.revistacalitateavietii.ro/2006/CV-3-4-06/4.pdf (last visited on 6 December 2010)

76 Valceanu, Daniel G. (2013): Gentrificarea spatiilor de locuit - proces de restructurare socio-spatiala urbana (Gentrification of living spaces – urban socio-spatial restructuring).

77 Chelcea, Liviu (2006): Marginal Groups in Central Places.

78 Ibid.

79 ZIARE.COM:LEGEA RETROCEDARILOR: FOSTII PROPRIETARI AR PUTEA FI DESPAGUBITI IN NATURA (RESTITUTION LAW: FORMER OWNERS MAY BE COMPENSATED IN KIND) 25 DECEMBER 2012.HTTP://WWW.ZIARE.COM/POLITICA/LEGE/LEGEA-RETROCEDARILOR-FOSTII-PROPRIETARI-AR-PUTEA-FI-DESPAGUBITI-IN-NATURA-1212255

Roma in the area). This results in gentrified enclaves that are physically (usually by high fences) and socially (no contact with the other residents) insulated.

There are several gentrification strategies used in Romania. The most important are[80]:

1. The 1995 Nationalized Houses Law allowed existing tenants to buy the houses. Many of them were poor, so real estate agents provided the tenants with the necessary money to buy the house (as a loan), but under the condition that they will sell the house to them. Real estate agents would also find tenants housing in block of flats, in marginal areas. In the end the former tenants ended up owning an apartment while real estate agent acquired the nationalized house.
2. In case of restitutions to the owners, existing owners are protected from evictions for many years. The only legal way for owners to make a profit was to ensure alternative accommodation for tenants and then sell the house.
3. Owners of these houses move in other parts of the city and rent their house at high prices. There are also cases when tenants sub-lease the state-subsidized housing at market level.
4. Many financially and politically powerful people managed to obtain access in nationalized buildings. They became neighbors to poor families, whom they managed to relocate (with the help of the state institutions).
5. Many of the nationalized buildings are inhabited by senior citizens. Some family member agrees to take care of the poor old person and when the person dies, the house will remain with that family.

3.5 Energy policies

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

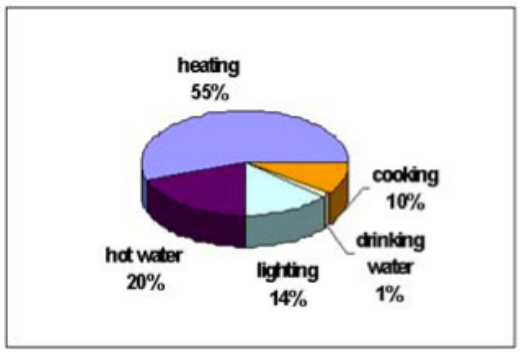
In 2008, the EU agreed on a climate and energy package, including a set of measures known as “20-20-20” targets with the aim of transforming the EU into an energy-efficient and low-carbon economy. By 2020, greenhouse gases shall be reduced by 20 percent compared with 1990 levels, the use of renewable energy sources shall be increased to 20 percent of total EU energy consumption, and energy consumption shall be reduced by 20 percent compared with projected levels through improvements in energy efficiency. All of these targets have strong implications for the housing sector. The 20-20-20 goals are to be implemented through a number of EU directives, including the Energy Performance of Buildings Directive. By 2020, all new buildings must apply a nearly zero energy standard (calculated on primary energy consumption), to be achieved with ambitious energy standards and utilization of local renewable energy sources.
Romania is the 38th largest energy consumer in the world and the largest in South Eastern Europe as well as an important producer of natural gas, oil and coal in Europe.

The total energy consumption of Romania was in 2005 40.5 million toe structured as follows:

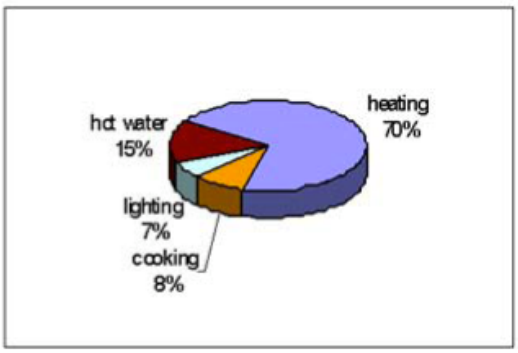
[80] Checlcea, Liviu (2006): Marginal Groups in Central Places.

36.4 % - natural gas
25.1 % - oil and derivates
22.4 % - coal and coke
16.1 % - hydro and others

For most of the Romanian households heating makes up the largest component of energy costs.



Medium apartment in Bucharest



Individual building

Within the Government's "National Strategy for Energy Efficiency" the residential sector is given high importance because of its high potential for energy conservation; estimated savings are 35 - 50%, with an average of 41.5%. These savings will be obtained mainly by applying important measures for the thermal rehabilitation of the building envelopes, and increasing energy efficiency of the heating systems and also of the lighting systems. The Romanian governance framework for energy efficiency has largely been driven by EU accession.

Most of the strategic documents were adopted during the accession phase and have set targets for 2015. The national energy strategy covers the timeframe 2007 – 2020 and contains some targets for energy efficiency. A clear overall target for the mid and the long term is, however, missing.

Government Support Structures[81]

The institutional framework for the promotion of measures to encourage the efficient use of energy was created in 1990 with the founding of the Romanian Agency for Energy Conservation (ARCE). The powers of this agency were strengthened in 2000 with the adoption of Law 199/2000 regarding the efficient use of energy, this law being amended and supplemented by Law 56/2006. Legally, the Romanian Agency for Energy Conservation was considered to be the main specialized body, at national level, in the field of energy efficiency. In December 2009, the Romanian Agency for Energy Conservation (ARCE) was dissolved, and was merged by absorption with Regulatory Authority for Energy (ANRE), an independent administrative authority with legal personality under parliamentary control. ANRE's activities are entirely financed from its own sources, and

[81] Extracts from: Government of Romania – "First National Action Plan on Energy Efficiency (2007 – 2010)".

cover the development, approval and monitoring of the application of mandatory rules necessary in functioning of energy sector and market, heating and gas, in terms of efficiency, competition, transparency and consumer protection.

The main regulations in this field are as follows:

- GO No. 22/2008 regarding energy efficiency and promoting its use to the final consumers of renewable energy sources, which aims to create the necessary legal framework for the development and implementation of national policies for the efficient use of energy.
- Law No 3/2001 ratifying the Kyoto Protocol to the United Nations Framework Convention on Climate Change. According to the Kyoto Protocol, Romania is obliged to cut its emissions of greenhouse gases by 8% from 1989 levels between 2008 and 2012.
- Emergency Ordinance no. 18/2009 on improving the energy efficiency of multilevel residential buildings
- GO No. 163/2009 approving the Methodological Norms for the application of Government Emergency Ordinance no. 18/2009 on improving the energy efficiency of residential buildings
- Government Decision No 163/2004 regarding the approval of the National Strategy for Energy Efficiency. The main objective of this strategy is the identification of possibilities and means to increase energy efficiency over the entire energy network through the implementation of suitable programs.
- Government Decision No 1535/2003 regarding the “Strategy for the Promotion of Renewable Sources of Energy” and the Law no. 220/2008 on establishing the promotion system of energy production from renewable energy sources. The above mentioned legislation has been supplemented by national legislation that transposes, in its entirety, the EU legislation dealing with energy efficiency, including time frames for implementation.
- Emergency Ordinance No. 69/2010 regarding the thermal rehabilitation of apartment buildings financed by bank loans with government guarantee
- Government Decision No. 736/2010 for approving the Application Norms of Government Emergency Ordinance no. 69/2010 regarding the thermal rehabilitation of apartment buildings financed by bank loans with government guarantee.

Other institutions/ministries involved in the field of energy efficiency are as follows:

- The Ministry of Finance
- Ministry of Internal Affairs
- Ministry of Economy, Trade and Business Environment
- The Ministry of the Environment and Climate Change

Furthermore, the National Energy Observer (OEN) was founded in 2003, its mission being to compile data and to determine the main indicators of energy efficiency in Romania. Also in 2003, the Romanian Fund for Energy Efficiency was established and began providing financial assistance, in commercial conditions, to companies in the industrial sector and other energy consumers in order to enable them to implement projects for the efficient use of energy.

Thermal Refurbishment of Multilevel Residential Buildings

Romania has 83,800 multilevel housing buildings with approximately 3 million dwellings in which over 7 million people live, and the yearly potential of energy saving in buildings is approximately 600 thousand tones equivalent of oil. Considering the low degree of thermal insulation and the dilapidated state of residential buildings, a Multi-annual National Action Program for thermal rehabilitation was designed in 2005, especially targeting housing blocks built between 1950-1990. The Program is financed through the state's budget (50%), local budgets (30%) and owners' associations' funds (20%).

In order to properly inform and educate the population, an information campaign regarding the methods of energy saving in buildings was launched in September 2006. This was quite successful; the number of buildings participating in the Program jumped from 25 in 2005 to 614 at the end of 2006, and presently there are over 2,000 buildings participating in the program.

In 2011 the Government included in this program other housing buildings: multilevel public housing buildings and private single housing buildings. According to interviewed officials, more than 77,600 dwellings have been rehabilitated by now.

Through the Emergency Ordinance no. 69/30.06.2010, the Government approved the diversification of the financing sources for the thermal rehabilitation program, by providing State Guarantees for owners and home-owners' associations to get interest rate subsidized loans from commercial banks. Interviewed officials have stated that only 10 loans have been provided by now by CEC Bank and BCR, the only banks that signed a partnership with the Ministry. Eligible costs for housing buildings thermal rehabilitation are also provided through the Regional Operational program 2007 – 2013.[82]

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 subjective right to certain subsidies or does the public administration have discretion in whom to assign the subsidy?
- Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?
- Summarize these findings in tables as follows:

Past subsidy schemes for ownership

[82] Applicant's Guidelines for Priority Axis 1 - Support to sustainable development of urban growth poleshttp://www.inforegio.ro/en/applicants-guidelines-priority-axis-1-support-sustainable-development-urban-growth-poles.html

After the general withdrawal of the state from the housing sector and the privatization of the state rental stock, there seems not to have been any significant interventions until 1994, when the state started to provide support for the completion of partially completed building projects left over from prior to 1989. Soon thereafter, the state intervened to provide a limited number of relatively low-rate housing loans through the state savings bank, the CEC. Each housing program is briefly described below.

· Completion of unfinished residential buildings

This program aims to construct private housing units by completing unfinished residential buildings the construction of which commenced before 1 January 1990. The program falls under Government Ordinance no. 19/1994; its financial sources are private funds, central and local budgets. The Ministry approves and coordinates the annual programs; local authorities select the applicants by social selection criteria:

- young married couples, under 35 years;
- disabled persons (I, II degree);
- handicapped persons;
- affiliates of those deceased in the Revolution of December 1989;
- individuals and families changing their domicile from towns to countryside and working in agriculture or forestry;
- qualified staff in education and health care.

Only these groups of population are entitled to a single subsidy of up to 30% of the dwelling's contract purchase price.

These units come with at least two subsidies. One is a specific discount of 30% of the construction costs, to be paid to the local government by the ministry. The second is a below-market interest rate, 5% in RON, payable on the installment payments due over 20 years to cover the other 70% of the construction costs, minus a 10% down payment. When inflation was high in the 1990s and early 2000s, the real value of such installments sank rapidly.

· CEC Subsidy Scheme

In this scheme, the state paid the difference between a fixed rate of 15% on a ROL loan with a term of 20 years and the "market rate" (defined by law as the average rate paid on ROL time deposits, plus a margin of 5%). This was the first scheme designed specifically for people under 35. Its rate was not particularly low in absolute terms (often the politically acceptable threshold is a rate around 5-7%), but was still very low relative to inflation. Most importantly, it was far lower than the rate on bank deposits, and thus it was profitable for qualified borrowers, who would have bought a home anyway, to benefit from the scheme. Because of this, it is very unlikely that the scheme did anything but enrich those who qualified for it.

Despite the high stated rate and probably because the rate on the loan was lower than the rate available on bank deposits, the scheme was quite popular, with 11,000 loans

being originated just in 1997-98. Fortunately for the state, interest rates have declined sharply since 1998. Otherwise, this scheme would have been very expensive.[83]

Another notable aspect of this scheme is that the loan could be freely used to purchase either a new house or an existing house. Not surprisingly, especially when considering young households, almost all of the loans were used to purchase an existing house. Especially at that time (as noted above), existing homes were much less expensive than new ones, and so only the wealthiest young households were interested in buying a new home.

A last important aspect of the scheme was that not all that met the eligibility requirements necessarily received a loan. There were a pre-defined annual number of loans provided under the scheme. In each subsidy scheme since then, there has been a limit on the total subsidy provided on an aggregate level each year, thus, similarly, not everyone who is eligible can receive a subsidy. This close ended scheme protects the state budget from excessive spending. It also implies that the way the funding is rationed is at least as important as the nature of the subsidy, as far as assessing the effectiveness of the scheme is concerned.[84]

It appears that the allocation procedure under the CEC program was mostly based on a waiting list, and not on differentiating between the means of applicants. However, waiting lists were many times manipulated, and the social impact of the scheme was very low.

In 1999, the scheme was modified to require that 70% of the funds be used to buy a new apartment or a house. This probably would have been difficult to execute, given the much higher prices of new homes. By 2000, the scheme was entirely canceled before the 8,000 originally planned loans were granted, due to budgetary considerations.

· National Housing Agency Ownership Scheme

The subsidy scheme through the CEC was replaced by the National Housing Agency (ANL) in 1999. It works with local governments to use serviced land owned by the local government to build and finance housing, both low-rent flats for young people and new flats and villas for all first-time buyers. The ANL scheme for ownership was changing frequently over its short life of 5 years.

- Phase 1 (2000-2001): Initially, the ANL focused on mortgage lending under the terms of the Mortgage Law enacted in 1999 (see under 3.2.1.2. on the ANL). It offered loans on the following terms: 7% in euros for 25 years if the borrowers were under the age of 35, 9% for 20 years if 35 or older. These credits were, in principle, open to use for all forms of construction or acquisition of housing, or even for refurbishment. The funding was rationed according to a formula which

[83] There are no official figures, but based on expert data, the funds allocated for housing in general represented between 0.5-0.7% of the annual budget.

[84] Diamond, D. (2006) Housing Policy and Subsidy Review for Romania with Recommended Specific Policy Reforms (Washington, The Urban Institute).

favored those who do not yet own a home, and accounted for the portion of the down payment the applicant could cover.

- Phase 2 (2001-2003): The extensive eligibility for low-rate loans was ended in 2001, and lending became restricted to new construction sponsored by the ANL (Build-to-Sell program) and to first-time buyers of houses, with allocation favoring married couples under 35. It appears that the cost of these units was at least 50% less than those on the private market, due to the free land and utilities provided by local governments and other indirect subsidies enjoyed by the ANL. In 2001, when the government ended the exemption of housing construction from the 19% VAT, the ANL added a discount of 20% to compensate, further expanding its advantage over free market suppliers.
- Phase 3 (2003-2005): In 2003, the ANL determined that their subsidized lending scheme was no longer needed, with the banking sector entering the mortgage market. As a result, they ended that part of the package. However, with the other large subsidies involved, they had no difficulty selling all the homes that they could produce.
- Phase 4 (2005 to date): In 2005, the build-to-sell scheme was ended formally, after the Competition Council ruled that it distorts competition. The current format of the program is described under 3.3.2.1.

It is not known how many units were contracted for under each specific phase of the ANL programs for owners. We know, however, that the finance phase (2000-2003) led to the origination of about 2,000 loans for a total of about EUR 28 million. (These were of an average size of about EUR 14,000, because one of the main criteria in granting these was the size of down payment the buyer could cover. The official minimum down-payment was only 10%, but the actual average was 40% of the contract value.)

Current subsidy programs for home-ownership

· New construction of owner occupied housing

This program entails the construction of new privately owned residential units, financed through mortgage loans granted by banks. Its legal framework is laid down in Law no. 152/1998 regarding the establishment of the Romanian National Housing Agency, with later modifications and completions; Methodological Norms for the application of the Law no. 152/1998 regarding the establishment of the Romanian National Housing Agency with later modifications and completions; and the Emergency Governmental Ordinance no 148/1999 regarding the regulation of the legal status of the land meant for the housing construction through the Romanian National Housing Agency, with later modifications and completions.

The financial sources are secured by private funds (the down payment) and residential mortgage loans that are granted by local banks to eligible applicants who are registered in the ANL database and wish to purchase a new residential unit built through ANL.

This program has never been operated at a large volume (averaged about 400 units per year), which has meant that it has not cost very much and has not disrupted the private market too much, while still serving as a highly visible state policy. Any person could ap-

ply for contracting the construction of a single house or of a dwelling from a multilevel building. ANL is responsible for coordinating new residential construction on sites provided by local authorities for this purpose. Local authorities provide funds for infrastructure as well.

· Direct subsidy for new housing construction

Between 2005 and 2007, the State was providing a subsidy of up to 20% of the housing value but not more than EUR10,000, if the housing unit was built by an authorized developer/construction company. The entitled recipients were people under 35 without any residential property, homeless people who lost their homes because of floods and other natural disasters, and evacuated people from retrofitted properties. Local authorities collected the subsidy applications and paid the grants to the entitled persons after the construction works had been finished. This program was stopped in 2007 due to the crisis, because of budgetary constraints.[85]

· Savings for housing purposes

The Romanian Bauspar system is regulated under "Support for development of the collective saving-crediting system for housing purposes", according to Law 541/2002 with its amendments and completions. Like in several Central European countries, Romania has also adopted a version of the German and Austrian system of separate contract-savings banks for housing, Bausparkassen. These institutions are designed to collect savings deposits at a below-market rate and recycle the low rate on their funding into low rates on their loans.

The Romanian building society system can be summarised as follows:

Main Act:	October 2002, first operations in June 2004
Regulations:	Ministry of Regional Development and Tourism / Ministry of Finance - regulation /supervision of premium payment. Central Bank regulation / supervision of the building societies, following certain special regulations and restrictions, following mainly the German models.
Yearly Premium:	In 2004 - 2005, 30% of savings but limited to the monthly average gross salary per contract. Starting with 2006, 15% of savings but limited to € 120. The premium may vary between € 135 and € 150 depending on the customer's age (under 35 years) and number of minor children. Starting with 2009, the state premium was increased to 25% (but not exceeding 250/client), regardless of age and children.
Minimum Saving Period:	18 months to get a housing contractual loan (currently at 5 - 6%) if 40-50% of contracted sum is saved. Interim loans are available at a market rate. Saving for five years required to cash the premium without use for housing.

[85] It reached about 300 beneficiaries in its lifetime.

Housing Purpose Requiring:	Housing purpose required to withdraw savings and premium, except after five years. Loans are only for housing purposes as demonstrated by justifying documents.

Other relevant aspects of the system include:

- Interest and premium on savings exempt from taxation (interest on regular deposits is subject to taxation).
- Starting with the new 2007 fiscal code physical persons can deduct up to 300 RON from the annual taxable income.
- Parameters of the state premium embedded in law, with Parliament action needed to change it.

· Granting land to young people for home ownership

The state supports young people (up to 35 years) for building privately-owned housing units by granting land to them (250-500 m^2 maximum). The legal framework is Law 15/2003.

· Granting land to young people in rural areas

This is a state support scheme for young people who live in rural areas or wish to take residence in rural areas: they are provided with land (up to 1,000 m²) free of charge to build their own home. The legal framework of the program is set up in law 646/2002.

Subsidy programs for social rental housing

Theoretically, the main target groups of the various housing programs are disadvantaged people, young people leaving social care establishments (after 18 years of age), first and second-degree disabled persons, other people with handicaps, young married couples under age 35, people with low income, evicted tenants from resituated housing, persons from houses affected by natural disasters.

Through several types of social housing construction programs, the Government has been the only major developer of rental housing over the past two decades. Their main parameters are described below.

· Construction of new social and necessity rental housing.

The oldest subsidized housing program is represented by the Construction of new social and necessity rental housing, according to the Housing Law no. 114/1996 republished, with later modifications and completions and to the Methodological Norms for application of the provisions of this law. The financial sources are provided by the local and central budgets. The allocation of the dwellings is decided by the local councils, considering the proposals of the social commissions that analyze the housing applications at local level.
At a smaller scale than the young people's rentals program (only a few hundred units completed annually), local governments and the responsible ministry have been adding

units intended for lower-income people and those temporarily dislocated for some reason. The rules are similar as for the young people's rentals, but in this case it is more appropriate for rents to be low and stay low. Rents for social dwellings are fixed by the local authorities. They exceed hardly 1/10 of the market level[86].However, the program is currently being run at such low rents that the beneficiaries are being unnecessarily subsidized and the local governments are not being funded to properly take care of the buildings.

Social dwellings as such are defined as dwellings with subsidized lease, allocated to individuals or families whose financial position would not otherwise allow them access to tenements leased on the market. It is public property of the local authorities. Necessity (emergency) dwellings are intended as temporary accommodation following natural disasters or accidents, or where homes have been demolished to permit the construction of public utilities, or rehabilitation work which cannot be undertaken while homes are occupied.

·New construction for young people

The most important and largest housing subsidy currently is the ANL program “Rental Housing for Young People”. With this program the Government tried to put the focus of housing policy on the population group that had not benefited from the large-scale privatizations and was facing affordability problems on the private housing market. Started in 2001, more than 32000 housing units have been completed by now.

The financial sources come from local and central budgets, as well as from foreign loans (CEB - Council of Europe Development Bank, Deutsche Bank AG). The housing units are built on sites provided by the local authorities to the National Housing Agency, according to the law, in observance of the legally approved town planning documentation. The necessary infrastructure (sewage, water supply, roads, electricity, gas) is also provided by the local authorities, its costs being covered from their local budgets.

The local authorities assign the housing units built through the National Housing Agency taking into account the applications submitted. These applications are analyzed by the social committees of each local authority on the basis of the criteria established by law.
The idea of facilitating access to rental housing for young people responds to a public perception that many such households find it hard to find rentals or cannot afford decent rental accommodations. Thus this program is good for electoral popularity and could be good for the housing situation at a reasonable cost. But, in our judgment, the actual operation of the program is poor. The rents are set at levels well below what these households can reasonably afford to pay, and by doing so, local governments are not collecting the funds they will need for the long-term maintenance and renovation of these buildings. Equally disappointing, the very low rents will discourage the households from leaving these flats. This sharply reduces the potential for such flats to ease the situation for many more young families starting off and even discourages the beneficiaries from seeking their best job opportunities if in another city.

[86] Amann, W.etal.(2008) Implementation of European Standards in Romanian Housing Legislation. Final Report.

In 2007 the Romanian Government decided to change the program legislation, allowing the sitting tenants to buy their apartments after a minimum renting period of only one year for a price also far below market level. Funds needed to flow back for the construction of new social dwellings. Sale may be initiated only at the tenant's request. Returns from the sale of these social rental dwellings are earmarked for new rental housing construction for young people, but sales revenues hardly suffice for a similar number of newly built social dwellings. Above all, this right-to-buy scheme was not as successful as expected. Taking the very low rents, the unlimited contracts and security of tenure, it is for many beneficiary households still economically rational to continue renting instead of buying. As a consequence, according to interviewed officials, only around 300 such dwellings have been sold by now.

·Rental Housing Units for Young Doctors

This is a sub-program of the program related to the rental housing units for young people, which focuses on the construction of rental housing units for young doctors and other young specialists working in the health system. The land is provided by interested hospitals and the local authority provides infrastructure funding. The applications are submitted to the local authority, which is in charge for the area in which the hospital of the applicants is situated.

Programs for housing refurbishment

· Refurbishment against seismic risk

According to local officials, Romania is the only country in the world with seismic risk, where the State is involving in securing the safety of the old privately owned housing building stock, allocating funds from the state budget for the design and execution of multilevel buildings classified in the seismic risk class and considered as public danger.

The financing sources to cover costs related to the technical examination of privately owned houses are provided from the state budget, within the limits of the approved annual funds. The owners of the apartments in multilevel buildings classified in I class of seismic risk, benefit as follows:

- Annual allocation of funds from the Ministry for financing the costs related to the designing and execution of the consolidation works.
- Paid in advance from the state budget for the execution of the consolidation works, paid in monthly instalments with a reimbursement term of up to 25 years from the date of taking over the consolidation works.
- Exemption of the home owners from the monthly instalment payments as long as the monthly net average income per family member remains under the national average.

·Thermal refurbishment of multilevel residential buildings

Considering the low degree of thermal insulation and of the dilapidated state of residential buildings, a Multi-annual National Action Program for thermal rehabilitation was de-

signed and approved, especially for the housing blocks built during 1950-1990. The Program started in 2005, and the funding for the execution of the specific works for increasing energy efficiency in buildings is covered equally from the state's budget, the local budgets and the owners' associations' funds. In addition, the state's budget finances the energy audit and technical project of the thermal rehabilitation works.

In order to properly inform and educate the population, in September 2006 an information campaign was launched regarding the methods of energy saving in buildings. Thus, in 2005 the Program started with 23 buildings, which grew to 614 buildings in 2006 due to the information campaign, while at the moment the Ministry has over 2,000 requirements.

Romania is one of the European countries with the most buildings with a low degree of thermal insulation: 83,800 multilevel housing buildings with approximately 3 million dwellings in which over 7 million people live, and the yearly potential of energy saving in buildings is approximately 600 thousand tones equivalent of oil.

Through OUG 18/2009, approved by Law 158/2011, the Government makes available important financial resources for the building thermal rehabilitation program. The energy audit and the designing of the rehabilitation works are financed from allocations from the local budgets. The necessary funds for financing the costs regarding the execution of thermal rehabilitation works are ensured as follows: 50% allocations from the state's budget; 30% allocations from the local budgets and 20% from the owners' associations' fund. In 2011 the Government included in this program other housing buildings: multilevel public housing buildings and private single housing buildings. According to interviewed officials more than 77,600 dwellings have been rehabilitated by now.

Through the EMERGENCY ORDINANCE no. 69/30.06.2010, the Government approved the diversification of the financing sources for the thermal rehabilitation program, by providing State Guarantees for owners and home-owners' associations to get interest rate subsidized loans from commercial banks. Interviewed officials told that only 10 loans have been provided by now by CEC Bank and BCR, the only banks that signed a partnership with the Ministry.
Eligible costs for housing units' thermal rehabilitation are also provided through the Regional Operational program 2007 – 2013.[87]

Table 14. Summary of subsidies for the tenants in private and public rental

[87] Applicant's Guidelines for Priority Axis 1 - Support to sustainable development of urban growth poleshttp://www.inforegio.ro/en/applicants-guidelines-priority-axis-1-support-sustainable-development-urban-growth-poles.html

	Public rental	Private rental
Rent subsidy	Implicit subsidy: below market rents, very low levels set by municipalities	No subsidy
Housing Allowance	Program for low-income households to cover the housing cost, provided by municipalities, according to regulations set by the Ministry of Labor	

Table 15. Summary of subsidies for owner occupations

Subsidization	Explanation
Contract saving schemes	Introduced in 2004, supports the housing saving of the households. The subsidy is 25% of the deposits, but the ceiling is EUR 250 per year.
State Mortgage Insurance	"Prima Casa" Program (The First House) – for first time home-owners up to 35 years
Infrastructure	ANL home-ownership program

3.7 Taxation

- What taxes apply to the various types of tenure (ranging from ownership to rentals)? In particular:
  - Tenants: Do tenants also pay taxes on their rental tenancies? If so, which ones?
  - Homeowners:
    - Income tax of homeowners: is the value of occupying a house considered as a taxable income?
    - Is the profit derived from the sale of a residential home taxed?
- Is there any subsidization via the tax system? If so, how is it organized? (for instance, tenants being able to deduct rent from taxable income; landlords being able to deduct special costs; home-owners being treated favourably via the tax system)
- In what way do tax subsidies influence the rental markets?
- Is tax evasion a problem? If yes, does it affect the rental markets in any way?

Deficiencies of the tax law are to the advantage of the tenant. Thus, as long as the tax law does not motivate or force the tenant to register the rental contract, tax evasion is encouraged.

Property tax

The first due tax is the one on buildings (a property tax), which is, in principle, covered by the owner. The tax is levied – and the exact rate is established – by the local coun-

cils. The rate is usually 0.1% when the owner is a physical person. It is applied on a fixed taxable value (depending on the type of the building) and adjusted with several coefficients depending on the location. On the other hand, when the owner of the building is a legal person, the tax is located somewhere between 0.25% and 1.5% of the value of the building, or between 30% and 40% if the building has not been re-evaluated in the last 5 years. A simple calculation shows that the physical person will pay a tax which is at least 15 times less than the one paid by a juridical person, for the same building, located in the very same place. In exceptional situations, even the tenant may have to pay the property tax. So, for the buildings that are public or private property of the state or of the administrative units which are rented, the property tax is covered by the tenant. First, it is an incentive for the State to lease the buildings which are in its property. Secondly, for equity reasons, the State cannot support the property tax if the building is rented (social housing etc.).

Income tax

In January 2005, Romania's new government imposed major fiscal reforms, replacing Romania's progressive tax system with a 16% flat tax on both personal income and company profit. This liberal taxation system has some deficiencies like the buildings tax described above.

According to the Fiscal Code, all incomes in cash or in nature, arising from assigning the use of mobile and estate goods acquired by the owner, usufructuary or other legal owner, are assimilated with the incomes from rents. It is not only the incomes from rents that are included in this income category, but also the incomes from subletting mobile and estate goods and also incomes obtained from leasing agricultural goods, parts of the personal inheritance.

The tax rate on incomes from rents is 16% applied on the net income, determined by the difference between the amount representing the rent/lease in cash and/or the equivalent in RON of the incomes in nature, stipulated in the contract concluded between the parties and the flat-rate of 25%, representing deductible expenses related to the income. So, the general tax rate applied upon the gross income is 12%.

According to the applicable legal provisions, the owner is obliged to bear the repair and maintenance costs related to the rented property. In case the lessee incurs such costs which, as stated above, are incumbent on the owner pursuant to the regulations in force (the rent being diminished accordingly), the tax payable by the owner shall remain unchanged, should these costs not exceed the flat-rate of 25%.

The owner is not bound by the legal provisions to present the tax authorities justifying documents in order to benefit from the deductibility of the flat-rated amount pertaining to the expenses incurred. These deductible expenses correspondent to the income earned from the renting of property in question, established at the flat rate of 25% applied to the gross income, represent the costs of tear and wear of the rented property and the costs necessary for its maintenance and repair, income taxes and taxes on property payable according to the tax legislation, the charges payable to the real estate agencies, the insurance premium payable in relation with the rented property.

A differentiated regime is applicable to natural persons who earn income from the property rent on the basis of more than five lease agreements or sub-lease agreements in a fiscal year. Therefore, as of the beginning of the next fiscal year, such income earned by natural persons from lease agreements shall be qualified as income earned from independent activities. Such persons are compelled to establish their net income, pursuant to the real system accountancy rules, in accordance with the tax regulations applicable to the independent activities and are obliged to conduct single-entry book-keeping and pay taxes and contributions accordingly. Of course, in practice such cases are almost non-existent. Owners register such a large number of contracts only in cases when it cannot be avoided (e.g. real estate developers).

VAT

Value Added Tax (VAT) of 24% is payable on the sale of real estate. However it is exempt from VAT for the physical person who sells his/her residence (including the holiday residence). According to the Fiscal Code, the rent is exempt from VAT payment. At the same time, maintenance costs and energy have a VAT of 24%.

Health Insurance Contribution

According to newly introduced elements in the Fiscal Code, applicable from 1st of January 2014, the landlord who registers the contract with the fiscal authorities is forced to pay a health contribution (5.5%), applied to the rent income.
As we have shown, the new Civil Code conferred enforceable character to the lease contracts concluded under private signature and registered at the fiscal authorities and also to the ones concluded before a public notary. This new provision led to a practice among the landlords regarding the registration of the lease contracts at the fiscal authorities, which determined a decreasing of the tax evasion.

Unfortunately, the new provision regarding the contribution for health insurance on rental income constituted a step back because it discouraged the landlords from registering the lease contracts at the fiscal authorities.

Tax evasion

The central problem of the Romanian taxation system is evasion. Landlords do not register the contracts with fiscal authorities. The main cause of tax evasion is determined by the fact that contract registration is not a requirement for the contract's validity. The aim of the registration of the contracts at the fiscal authorities is to ensure the evidence of all the incomes obtained from renting housing in order to calculate the tax income. . But, at the same time, the tenant has also no reason to put pressure on the owner because his or her legal protection would stay the same and, furthermore, he or she usually receives a "rent discount". If the contract is registered, the landlord owes the income tax and, in practice, he raises the rent.

As a novelty, the new Civil Code (in force since October 2011) establishes the enforceability of the contracts signed under private signature which were registered at the fiscal

authorities and also of the ones concluded in front of the notary. Thus, the landlord has an extra incentive to register the contract with the fiscal authorities in order to save the time and costs of a regular litigation (forced execution procedure) of the tenant. So, on one hand, the contracts concluded under private signature and registered with the fiscal authorities have to be enforced by execution (executor clause applied by court),[88] and become enforceable in practice only afterwards. On the other hand, the contracts concluded in authentic form (concluded in front of the notary) can be directly enforced without any other additional formalities.

Table 16. Taxation and tenure forms

TAX	TYPE OF TENURE			
	Private rental - individual	Private rental – institution	Public rental	Owner-occupied
VAT (Value Added Tax)	No	typically no, but VAT option can be selected	No	n.a
Rental income	Personal Income Tax (plus legally utility cost is taxed as well), cost deduction is possible	Corporate Income Tax	No	no imputed rent
Health Insurance Contribution	5.5%	-	No	-
Capital gain tax	same rules			
Stamp duty	same rules			
Property tax	local government tax, typically not introduced for residential property		no	typically not used
Communal Tax	local government tax, typically the landlord pays it		no	yes

[88] The registered contracts must to be vested with executory clause (enforced by execution or appending of the executor clause). This is a measure by which the court applies to the registered lease contracts the order given on behalf of the President of Romania to the enforcement bodies, administrative officers and prosecutors to enforce the contract and to support its execution. This procedure is preliminary to the foreclosure procedure (enforcement). So, after the contract is vested with executor clause (enforced by execution) the enforcer will have to ask the court to approve the enforcement. Both of these bureaucratic procedures are necessary and preliminary to the actual enforcement in the case of the contract concluded under private signature and registered to the fiscal authorities. In the case of the contract concluded in authentic form, the second procedure is sufficient.

4 Regulatory types of rental and intermediate tenures[89]

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 are two rental regimes: private rental and public rental. In Romania there are no mixed tenure types. The small percentage of houses provided by the state accommodates young people or poor people, but the two groups are usually not mixed.

The Romanian Housing Law was adopted in the year 1996 (Law no. 114/1996) and has been amended more than ten times since then. The Housing Act was inspired by the French rental law[90]. This raises a question of continuity and previsions about the legal environment. The purchase agreement for dwellings or land in Romania is regulated by the New Romanian Civil Code (Law no 287/2009). The regulations from the Housing Law concerning lease contracts were repealed with effect from 1 October 2011 by the law implementing the New Civil Code, which wanted to provide a uniform regulation for rental agreements. In other words, the provisions of the Housing Law are supplemented by the provisions of the New Civil Code.

The definition of all kinds of existing dwellings in Romania can be found in article 2 of the Romanian Housing Law. According to this article an apartment/housing unit means a dwelling if it has one or more rooms, outbuildings[91], and necessary utilities fulfilling the housing requirements of a normal person or family.

Moreover, the Romanian legislation defines specific types of dwellings. These are:

- Social housing – dwellings with subsidized lease, allocated to individuals or families whose financial position would not otherwise allow them access to tenements leased on the market; it is public property of the local authorities;
- Official residence – dwelling for public servants or employees of certain institutions or businesses, allocated under the employment contract, which may be financed by the State, local authorities or by businesses;
- Tied accommodation – for employees of businesses who, by their employment contract, perform activities or jobs requiring their presence permanently or in case of emergency, inside or in close proximity to the business premises, built under the same conditions as those stipulated for official residences;
- Protocol residence – tenement for persons elected or appointed to certain posts or public positions, exclusively for their term of office, it is state property;
- Emergency dwelling – intended as temporary accommodation following natural disasters or accidents, or where homes have been demolished to permit the con-

89 I.e. all types of tenure apart from full and unconditional ownership.
90 The “Mermaz-Malandain Act”, Act no. 89-462 of 9 July 1989.
91 Outbuilding: a building subordinate to but separate from a main building

struction of public utilities, or rehabilitation work which cannot be undertaken while homes are occupied; it is financed and built under the same conditions as social housing;

- Holiday residence – a dwelling temporarily occupied as a second home, for rest and leisure. However, given the definition of the residence in the Housing Law, the holiday residence is a temporary dwelling, not covered by the Housing Law. But the holiday residence may become a residence if the person or his/her family lives permanently in it, and the dwelling respects the other conditions prescribed by law. So the qualification of holiday house takes into account its temporary use.

Social housing, emergency housing and necessity housing belong to the public domain of the administrative units[92] (cities, villages, counties) and cannot be privatized. Emergency housing is temporarily rented to persons and families whose dwellings were demolished or got unsafe and only until the removal of the effects that made their dwellings unusable; the allocation of these dwellings is not bound to income limits. The service and protocol houses are administrated as a rule by administrative units and the General State Company for Administration of the State Protocol and they are in the ownership of the state or public administrative units. The description of the dwelling is part of the annexes of the law no. 114/1996.

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.[93]
  - Different types of private rental tenures and equivalents:
    - Rental contracts
      - Are there different intertemporal tenancy law regimes in general and systems of rent regulation in particular?
      - Are there regulatory differences between professional/commercial and private landlords?
        - Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)
      - Apartments made available by employer at special conditions
      - Mix of private and commercial renting (e.g. the flat above the shop)
    - Cooperatives
    - Company law schemes
    - Real rights of habitation

[92] The central and the local authorities hold assets both in private property (as any other subject of law) and in public property (the public domain).

[93] 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.

- Any other relevant type of tenure

The most prevalent form of the rental regime is private rental. The most typical form of the private rental is based on the contract between an individual landlord and an individual tenant. The term of the contract is typically short, one or two years maximum.

General Private Law stems from the New Romania's Civil Code, which replaced the Civil Code from 1864 on the basis of Code Napoleon (with its subsequent amendments), the project for the Italian Civil Code, Belgian mortgage legislation (from 1851) and old Romanian Civil Laws (Codul Calimach, Codul Caragea). As shown, the Romanian Civil Code may complete with the Housing Law.

The Civil Code does not require the written form for a lease contract, but a written contract is a clearer point of reference on the one hand, and helps landlords enforce rent payment on the other. As we mentioned, as a novelty, the new Civil Code establishes the enforceability of contracts signed under private signature, and registered with fiscal authorities; and so are the ones concluded in front of a notary public. Thus, an owner has extra motivation to register the contract with the fiscal authorities in order to the save time and costs of a forced execution procedure. So the contracts concluded under private signature and registered with the fiscal authorities have to be enforced by execution and afterwards enforced, as shown above. On the other hand, the contracts concluded in front of a notary are directly enforceable without any other additional formalities.

There are no statistics on the number of registered contracts, but we think that they are less than 20% of the total number of contracts concluded between landlords and tenants. Therefore the difference between individual landlords and professional landlords consists only in the fiscal regime. There are no statistics regarding the share of professional landlords, but their number is small due to the high rate of tax evasion. However, the economic crisis has forced some real estate developers to rent the unsold dwellings[94]. So, new juridical figures appeared in the real estate domain. E.g. the promissory buyers can pay an advance and after that they become tenants until they can afford to buy the dwelling or until they obtain a bank credit[95].

A significant portion of the Romanian population currently lives in their own apartments. The Romanian Constitution only restricts non-Romanians from owning land in Romania – it does not prevent foreigners from owning buildings constructed on land in Romania. It is therefore perfectly possible for non-Romanians to purchase flats in Romania.

As already mentioned, the housing sector is largely governed by the New Civil Code, where basic landlord and tenant responsibilities are prescribed. The Civil Code also covers topics such as leases, eviction conditions, and principles of setting rent. The various subsidy programs are included in the Housing Law, or in the Law establishing the National Housing Agency (ANL). In absence of any rent regulations in Romania, tenancy is regulated by contract law. Rents are determined by the market, but since written

[94] http://www.victoriainvest.ro/top-3-ansambluri-rezidentiale-din-bucuresti-pentru-inchiriat/
[95] http://www.greenfieldresidence.ro/cum_cumperi_CallBuy

lease contracts are not always used, a substantial part of it functions within the black market.

Distribution of tenancy obligations

As previously mentioned, the landlord is the one who covers tax liabilities (income tax, propriety tax and so on). On the other hand, ownership implies many other costs beyond tax contributions.

First of all, the owners found or join the associations of owners, with all the rights and obligations resulting from this legal relationship.
An owners' association is a non-profit company for improving and managing the multi-levelled building. Condominiums may be managed by natural or legal persons, associations, public agencies, or specialised companies. In each case, however, the management is to be appointed by and under the control of the joint owners, in whose interest it operates.

The members of the home-owners association have the right to participate and the right to vote in the general meeting, the right to put up their candidacy, to run for, to choose and to be elected in the organizational structure of the home-owners association. The revenue from the use of the common parts belongs to the home-owners association. These revenues are added to the special funds of the association for repairs and investments regarding the common parts and are not paid to the owners. The owner has the duty to maintain his individual property in a good condition, on his own expense. No owner can break, affect or harm the individual or common property right of the other owners inside the condominium.[96]

The major obligations of the housing manager of a multi-apartment block are to:
- Administer the assets and funds;
- Prepare the contracts with all suppliers of services;
- Inform all inhabitants in the block of the regulations governing their cohabitation;
- Represent the owners' interests in contracts signed with the public authorities; and
- Fulfil any other legally contracted responsibilities.

Although the tenants are registered in the Building Register, they are not part of the owners' associations, but they may form associations of tenants, which have a different regime and cannot be subrogated in the rights/obligations of the owner. So according to the law, the owner cannot be exempted from her/his obligations to the owners' association neither the legal relationship between the owner and the tenant, nor the statute of the home or the breach of contractual obligations by the tenant. The law specifies that the owners' association has the right to sue any owner who is guilty of default contribution rates to the owners' association costs (management fee) for more than 90 days from the deadline. Moreover, the owners' association has a prior real estate lien on the apartments and other areas, individual properties of the owners in the condominium and also a privilege on all their mobile assets for due amounts in respect of contribution rate

[96] Art. 13,14.

at the associations of owners, after the court costs due to all the creditors in whose interest were made. There are no official statistics on this issue, but a legislative proposal shows that, in 2013, over 100,000 homes across the country can be enforced for maintenance debts over 10,000 RON.

The solution provided by the legislator is reasonable, if we consider the senior property privilege of the owners' association upon the building that is the subject of the lease contract, and the fact that the association of owners is a third party from the lease (the contract is not opposable to the association). Under this condition, it is almost impossible to conclude a contract with an insolvent person in order to avoid payment of contributions to the owners' association, because the association will enforce the owner (respectively the property that is subject to the lease) and not the tenant. In turn, the owner is the one who has at hand all necessary legal means to recover these amounts from the tenant (if they are due according to law and contract), such as tenant eviction, obtaining compensation for damages caused by the tenant, retaining the deposit paid by the tenant etc. Consequently, the tenant is a third party for the association of owners. The owners' association has no influence on the lease contract, irrespectively of the contract's provisions. The legislation does not deliver any exhaustive rules regarding utilities. Only the New Civil Code stipulates that tenants are required to contribute to the costs of lighting, heating, and cleaning of common parts, and installations or other expenses here. Therefore, the owner and the tenant may agree freely on the distribution of the financial burdens related to utilities.

Utilities traditionally constituted the subject of direct contracts between the service providers (for heating, water, electricity, garbage collection, gas, telephone, cable TV, etc.) and homeowners. Nowadays, utility companies use standard contracts for apartment buildings with registered owners' associations. So utilities are usually contracted and charged to the owner who, according to the provisions of the lease contract, recovers them from the tenant. In case the owner is a legal entity that will issue an invoice for the tenant's utilities, which shall be subject to VAT (only rent is exempt from paying VAT)[97], it is possible that a tenant has to pay an amount which is 24% higher than what he or she would be invoiced for as a 'regular' consumer. In practice, this inconvenient situation is avoided if the tenant pays these utilities directly to the provider without an invoice from the owner.

Some companies (e.g. some Internet providers) agree to contract the tenant directly, since there is no risk of significant loss in case of default. However, in the absence of contrary contractual provisions, the owner has no obligation to conclude a contract with service providers (for phone, Internet, cable TV, etc.) in order to make them available to the tenant. This is not part of the landlord's legal obligations, which are to keep the property in good condition for use throughout the rental contract, since they are considered "luxury" expenses. However, in practice, even these extra utilities are provided by the owner, most often being sine qua non conditions of the rental contract.

4.3 Regulatory types of tenures with a public task

[97] We acknowledge that this solution is dubious. In other words, the owner (legal entity) cannot collect VAT from the tenant unless he owes it to the service providers.

- 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
  - Privatized or restituted housing with social restrictions
  - Public entities (e.g. municipalities) taking over private contracts, typically for poor tenants to counteract homelessness
  - Etc.

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

Public rental is regulated under the Romanian Housing Law (Law nr. 114/1996), modified on numerous occasions since 1996. The Housing Law created a new concept of "public housing", owned by the local authorities, but not subject to sale to the tenants. It can be created by new construction (zoned accordingly in town plans) or by the purchase and rehabilitation of existing buildings. The present tendency is for local authorities to simply purchase dwellings on the market and let them out at reduced rent levels. The law stipulates minimum norms for floor space and facilities. It also specifies renting to families with low disposable income and who are social benefit recipients.
Public rental housing stock is now owned and managed by the local councils for use as either "social housing" for people judged to be incapable of affording housing otherwise, or as "emergency housing" for those who are temporarily displaced by natural disaster, or evacuated for restitution, eviction for non-payment of utility charges, foreclosure, or other reasons. Development and additions to the social rental stock are the responsibility of the local councils.

The main target groups of the various housing policies are disadvantaged people, young people leaving social care establishments (after 18 years of age), disabled persons, young married couples up to age 35, people below average income, evicted tenants from restituted housing, and persons who lost their homes in natural disasters. There is no accurate official information regarding the percentage of the targeted groups of these policies.

The law stipulates minimum norms for floor space and facilities. The tenant's contract is usually for five years, with the possibility of prolongation or renewal of the contract on the basis of written proof of income. This should be signed by the mayor or an authorized representative. The law specifies the contract's provisions and conditions of cancel-

lation. The law stipulates also the kinds of families and persons who are not eligible for being allocated a public housing unit, such as persons who own / owned a house or foreigners. The National Housing Agency Framework has introduced specific general criteria for establishing a prioritized position of young people to give access to them to a rental housing unit. Local authorities are entitled to detail and approve specific allocation criteria, according to local economic and social realities.

The lease regime for social dwellings is regulated by the Emergency Ordinance no.40/1999 and is based on the constitutional norm that ascribes to the State the function of guaranteeing measures of social protection and ensuring a decent living standard. The rent level in social rental apartments is determined by a complicated formula, but should in no case exceed 10% of the disposable household income. In those frequent cases when such rents do not suffice to cover all annuities, housing management, maintenance costs and local taxes, the local authorities are obliged to cover the gap with an adequate allowance scheme. Such income-tested rents lead to highly subsidized apartments[98]. It is very unattractive for tenants to leave such dwellings, so housing mobility in this sector is extremely low. Supply of affordable rental housing for eligible households is hardly generated from the existing stock, but mostly from new construction. This makes this scheme rather costly for the state.

The most important and largest housing subsidy currently is the ANL program “Rental Housing for Young People”. The local authorities assign the housing units built through the National Housing Agency taking into account the applications submitted. In order to get a housing unit, a prospective tenant must register a file with his application at the local authority.

General criteria establishing the access to a housing unit:

1. The applicant for a housing unit, who may be assigned a renting housing unit for young people, and holder of the lease must be of age, under 35 of age on the date when the housing unit is assigned. The application for a housing unit is made only individually and in the applicant's own name. Supporting documents: legalized copy of the birth certificate and/or the identity card.

2. The applicant and the applicant's family members - spouse, children and/or other dependants shall not privately own or did not privately own a housing unit and/or have not been assigned another renting housing unit for young people in the locality² where they applied for a housing unit (as far as Bucharest is concerned, this restriction refers to the fact that the applicant should not privately own a housing unit in Bucharest, irrespective of the sector). Supporting documents: legalized representations (statements) of the applicant and, as the case may be, legalized representations of the applicant's spouse and of the other family members of the applicant, who are of age. NOTE: - This restriction does not refer to housing units alienated as a result of a divorce (property adjustment) or abusively nationalized housing units which have not been subject to restitution in kind.

98 Hegedüs et al. (2012) Social Housing in Transition Countries.

3. The applicant for a housing unit must carry on his/her activity in the locality where the housing unit is situated. In the case of the sectors[3] in Bucharest and the Ilfov county communes situated within their proximity (around Bucharest), the area which this requirement refers to shall be determined by the local authorities with the approval of the Ministry of Construction, Transport and Tourism, for each of the housing sites, and it will be made public in compliance with Article 14, paragraph (1) of the Methodological Norms. Supporting documents: certificate issued by the institution the applicant works for (stating that the applicant is their employee) accompanied by a copy of his/her updated Work Record.

4. The allocation of the housing units is made within the limits of the available housing stock, taking into account both the vacant housing units from the existing housing stock and the housing units to be completed under sub-projects approved and included in the Program regarding the renting housing construction for young people.

Social rental contracts are usually limited to five years, with an option to be extended if income eligibility is proven. In a survey conducted in 2002, it was shown that rent arrears are very common in the social housing stock, ranging from one third of all dwellings in larger cities to one quarter in smaller cities (Pascariu & Stanculescu, 2003, p. 281). The tenant can be evicted only under an irrevocable court decision, but this rarely happens, as mayors try to avoid such practices due to their low popularity. There are, however, cases of forced collective evictions of Roma people in some local authorities, sometimes in combination with abusive interventions and police brutality (Rughinis, 2004; Nițǎ, 2009, p. 5).

Given the substantial economic benefit of qualifying for a social dwelling, access to social housing is of high political significance on a local level. The legal procedure privileges the mayor to nominate a special inter-departmental committee that analysis all submitted applications and prepares the final approval by the Local Council. Decision is taken based on previously approved detailed allocation criteria. In practice, there are no official statistics available for further analysis of the allocation process of social dwellings, but demand significantly exceeds supply.

In 2012 the construction of rental housing by attracting private capital regulation was created (government decision no 352/2012). This program is intended to be a public-private partnership aimed to provide social housing. The private investor should finance the design, construction and operation of assets. In return the private investors should receive a share of the rents collected, together with the periodic payments from the National Housing Agency. The law requires the same conditions as the Housing Law, but further provisions are still expected.

Table 2. Summary table for the regulatory types of rental tenure

	Description of the type	Significance

Rental housing without a public task		
Occasional owner	It is typical in Romania: individual families inherited or bought second homes, which they do not need for immediate use	XXX
Construction companies	Companies that cannot sell all the apartments and houses they build, rent them out temporarily (even to the future owners who already paid the earnest).	XX
Professional landlords	Professional landlords are an exception in Romania.	X
Employer	Tied accommodation– for employees of businesses who, by their employment contract, perform activities or jobs requiring their presence permanently or in case of emergency, inside or in close proximity to the business premises. At the same time, there are other housing units, properties of employers, which are rented to their employees.	X
Rental housing with public task		
Local Authorities' rental homes. Social housing	Widespread rental arrangement. Social housing – dwellings with subsidized rents, allocated to individuals or families whose financial position would not otherwise allow them access to tenements leased on the market; it is public property of local authorities.	XXX
Local or other Central Authorities	There are housing units, property of State Authorities/Companies, which are rented to their employees (even the Central Bank of Romania).	X
Social housing by the Orthodox Church and other NGOs	Churches and NGOs own housing units, which are used according to their specific programs.	X

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)?

The Romanian legal system is a part of the French law family. The tenancy legislation has currently its origin under the Romanian Civil Code enacted in 2009, that entered into force in 2011[99], replacing thus the "old" Civil Code in force since 1865 (the "1865 Civil Code").

[99] Whenever reference is made under this document to the Civil Code or the New Civil Code it shall be deemed as reference to the code currently in force since 2011.

- 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)

Naturally, the political regime influenced the tenancy law. As against the Napoleonic Code, during the Interwar Period there were no significant changes in the guiding principles. However, in the socialist regime, according to communist philosophy, in most cases the owner became a tenant.
Currently, the general philosophy behind the tenancy law is on the one hand to have a free rental market, and on the other hand to harmonize the tenant's and the landlord's rights and obligations in line with the European legislation and specifically with the French law[100].

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

The Romanian regulations before 1800 did not include a specific legal regime for housing rental areas. Subsequently, there were two civil codes applicable in two areas of the country: (i) the Calimach Code (1817) applicable in the eastern part of Romania (the Moldavia part), regulated the renting in general, called "bargaining giving and taking into possession" ("tocmelii darei şi luarei în posesie"); and (ii) the Caragea Code (1818) applicable in the southern part of Romania, regulated the lease contract under the section named "About hiring or lease", based on the contemporary French regulation of the rental contract.
The Romanian rental regulation was improved in 1836 by the Law regarding the execution of renting and lease contacts. This law regulated for a long time the legal relationships between owners and tenants.

From the 1865 Civil Code to the end of WWII

In 1865 the Civil Code entered into force and introduced new general provisions regarding the lease contract. The Romanian private law has its origins in the 1865 Civil Code inspired by the French 1804 Napoleon Civil Code's structure. The 1865 Civil Code dedicated articles to the lease contract regulating. For example, by virtue of articles 1410 to 1490, special provisions were allotted to renting houses and renting land.

The 1865 Civil Code was subsequently followed by the landlords' laws of 1903 and of 21st of August 1920, which did not include any change regarding the lease contract. The 1903 law attempted to regulate the legal relationships between landlords and tenants, because it was considered that landlords did not benefit from enough protection.

Since 1903, the lease contract legal provisions have not been substantially amended until the entering into force of the 1920 law. The main laws regulating the lease contract were:

[100] The majority of the Romanian laws are inspired by the French legislation.

- the Law dated 5th April 1916 regarding the prolongation of the lease contracts of the urban and rural housing in the old kingdom, which modified the previous regulation. This law forbade the increase of the rent during the First World War and one year after, for all the contracts concluded after 1913.
- the Decree no. 1058 (6th March), which limited the prolonged term described above until the 23rd of April 1920.

In 1920, 1922 and 1923, the laws regulating and prolonging the lease contracts were prolonged again. They eventually enabled rent increase and other advantages for the owners. Another prorogation was established by a law in 1924, but only for some of the contracts and only until 1927. The law of 1927 reintroduced common law provisions, but it revoked all the advantages of the tenants provided by the former laws.

The Socialist / Communist Era

The start of the communist regime has driven further changes as a consequence of the economic and social transformation. The main differences concerned the housing demand side, as public property was the main tenure form before the transition. The forced conversion of the private property into public property, the nationalization and the abusive property takeovers have brought drastic changes in the rental legal system as well.

The state had the tendency to safeguard the acquired property and to eliminate any form of manifestation of the private property, which lead to a generally state owned and state managed housing stock. In the need of an efficient administration, the system has been granted a legal make-up which favoured the landlord (the state). At the same time, the system was also advantageous and favourable for the masses i.e. its beneficiaries, the tenants, except from the rightful owners of the dwelling.

Given the widespread character of the system in which the private property was subdued by the public one, the legal framework facilitated the establishment of specialized enterprises. They were directly subordinated to executive committees and offices of the public councils, empowered with specific competencies regarding the closing of rental contracts and the extension of the housing stock.

After Law no. 5/1973 on the management of the housing stock and the regulation of relations between landlords and tenants entered into force, a system for rental housing contracting was properly established (public rental, a few cases of private dwelling). Even though it got slightly altered throughout the years, it has remained in force for more than twenty years, throughout the communist era and even after the Revolution of 1989. It was, however, almost entirely replaced by the 1996 Housing Law.

The greatest quality of Law 5/1973 was that it homogenized the social relations which were at stake when a house was to be rented. It has been conceived as a substantially socialist law. During the communist period, most dwellings that belonged to the state or to some co-operative and public organizations fell under the scope of almost all renting contracts.

Moreover, Law no. 5/1973 stipulated that citizens had the right to own one house only, which was to be occupied by them and their family. According to the law, the husband, the wife and only their under age (under 18) children were accepted as legitimate members of a family.

At the same time, by virtue of the law mentioned above, the housing areas have been standardized to 10 square meters per capita, together with an inherent obligation to put up the exceeding space for rent.

Furthermore, Law no. 5/1973 practically repealed the provisions of the Civil Code in regards to the housing rental contracts, even when it came to the relations between private landlords and their tenants. According to art. 60 – 64 Law no. 5/1973, private house could be rented partially or entirely (if the owner did not live in it) in the same manner as public dwelling.

The only contracts which were still regulated by the 1865 Civil Code during the socialist era, as per the interpretation of legal texts in force illo tempore, were the ones referring to housing premises which were considered to be private property, located in rural areas.

The Romanian Housing Law

The Romanian Housing Law no. 114/1996 (the "1996 Housing Law") was adopted after the fall of the communist regime, which took place in 1989. It has been modified many times since then.

The 1996 Housing Law was inspired by the similar 1989 French law.[101] The 1996 Housing Law is based on two (2) main principles: (i) unlimited and free access to housing is a right of every citizen, and (ii) the construction of dwellings is a major objective of national interest in the long term, both for the central and the local public administration.

The origins of the New Civil Code and its correlation to 1996 Housing Law

The entering into force of the New Civil Code - Law no. 287/2009 – on the 1st of October 2011, represented an unprecedented legislative reform in Romania's recent legal history, comparable only with the adoption and entry into force of the 1865 Civil Code. However, the two moments have special characteristics and meanings. They were adapted during different historical contexts, in a different economic, social and cultural phase of the Romanian society. Another difference is perhaps especially the wording of procedure codes and sources of inspiration used by the legislative authority.

By virtue of example in 1865, the Romanian Civil Code was drafted in 40 days, after the model of the Napoleonic Code. By comparison, the New Civil Code came into force in 2011 and went through a long period of drafting (the first Commission was established at the Ministry of Justice in 1997), has undergone many changes and was inspired by the

[101] Act 89-462 or "Mermaz Act" of 6 July 1989.

French Civil Code, Italian Civil Code, Swiss civil Code, Civil Code of Quebec, UNIDROIT Principles and Principles of European Contract Law[102].

The New Civil Code of 2011

The New Civil Code (Law 71/2011) dedicates a separate chapter to lease contract in general (art. 1777 to art. 1850), while the rental housing contract has certain articles allotted specifically to it. The New Civil code has repealed certain parts of the 1996 Housing Law which nonetheless continues to still be in force to date.
Given the novelty of the New Civil Code that applies only to contracts concluded after its entry into force (on tempus regit actum principle) and the duration of disputes, there are no court decisions yet on the basis of the new legislation. Moreover, the changes are not significant and the differences will be shown in the following.
New Civil Code reaffirms its status of jus commune in rental housing, after a long period of time that the civil code had subsidiary character, despite the main provisions for rental housing being enshrined in some special laws, among which Law no. 5/1973[103] and Housing Law no. 114/1996. As the provisions of art. 1824-1835 of the New Civil Code established common law regulations in rental housing, the housing law was repealed in part by its entry into force; and it also abrogated Law 5/1973.

The New Civil Code keeps the old regulation, meaning that the lease of the dwelling has the same legal character as the lease contract. The only difference is the subject leased, meaning the dwelling. Furthermore, the New Civil Code tried to encourage the registration of the contracts to the fiscal authorities by establishing the enforceability of the registered contracts. In the base of this regulation, the landlord saves time and costs by avoiding the common trial. Therefore, the only formality is forced execution. This mechanism is not disproportionate in relation to the rights of tenants. Firstly, the direct eviction of the tenant is provided by law only in the case of the contracts concluded in front of public notary or of those registered at fiscal authorities. Secondly, the activity of the judicial executor is limited by law. Moreover, he/she has the obligation to request to a court, based on the writ of execution, the approval of forced execution (formal and quick procedure, performed by the executor).Furthermore, the tenants may complain to a court of the forced execution procedure.

- Human Rights:
    - oTo what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in
        - ▪the national constitution
        - ▪international instruments, in particular the ECHR

The Romanian Constitution does not directly regulate the rental right. However, it mentions that public property assets, although they cannot be sold, can be rented according to special laws. In fact, of all constitutional provisions, it can be concluded that the rental right is protected like any claim right.

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[102] F. Baias (coord.), The New civil code: Articles analyses (Bucharest: CH Beck Publishing, 2012)

[103] Law no. 5/1973 on housing management and regulation of relations between landlords and tenants.

By attempting to return to private and legal entities, the housing stock that has been confiscated during the communist regime (by virtue of Laws no. 112/1995 and 10/2001), and the Romanian State housing stock has significantly been reduced.

The Decree-Law 61/1990 enabled the privatization of housing units built with State funds, by selling them to tenants who could make a down payment and sign the buying contract backed by a loan.

In general, private tenancy disputes do not reach the European Court of Human Rights. They are solved according to the internal law. Given the transition from the regime of public ownership to the regime of private property, dwellings have been either returned to former owners or sold to sitting tenants, who have been given the right of first preference for buying the dwelling. However, there are many cases in which the Romanian State was penalized by ECHR for violating the rights of tenants in the sense that the State did not respect the first preference right of tenants to buy home, or because the State violated other rights of tenants living in public housing.

To date, mainly the dwellings for certain categories of persons (disadvantaged or under exceptional circumstances or holding public function) remained under the Romanian State property and in the propriety of administrative and territorial units. Those dwellings have the function of social housing, intervention housing, necessity housing, protocol housing etc.

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

Even if the Constitution does not regulate a right to housing, as it has been already mentioned above, the extensive regulation regarding rental housing proves the concern of the State authorities to: (i) create conditions for exercising the right to housing as a fundamental human right and (ii) to achieve adequate tenant protection, as tenants' relationship with the landlords cannot be left solely to the discretion of supply and demand, especially under the current economic crisis.

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)].

Main governing laws regarding rental housing contracts

As mentioned above, the execution of the rental housing contracts is governed by the provisions of the Romanian Civil Code, which has a chapter dedicated to lease agreements. The articles 1777-1850 and section no. 2 of the chapter (articles 1824-1835) deal specifically with regulating rental housing contracts.

In addition to these general legal regulations, the execution of rental housing contracts is subject to several special pieces of legislation, amongst which the following may be mentioned:

- Housing Law no. 114/1996 (the “1996 Housing Law”) (already referred to above);
- Government Emergency Ordinance no. 40/1999 regarding the tenants’ protection and setting-up the rent for the premises used for housing purposes (which is currently repealed in part by the entering into force of the New Civil Code);
- Law no. 230/2007 on setting-up, organization and functioning of owners’ associations.

It is not mandatory to prepare and sign residential rental contracts in front of a public notary; the parties' agreement as expressed through the contract is sufficient. However, the owner is obliged to register the contract with the fiscal authorities, and to pay the income tax after the rental income.

Concerning the rental housing contract’s termination, on the one hand, in case the parties have determined a specific duration of the contract, both of them are obliged to comply with such term. Nevertheless, the tenant can terminate the contract by complying with a notification period of 60 days. The landlord can terminate the contract in case he needs to use the dwelling, but only if this possibility is stipulated in the contract. On the other hand, if the contract’s duration was not previously determined, both parties might terminate the agreement by complying with a specific notification period, provided by the contract or set according to the New Civil Code.

As a matter of principle, neither the landlord nor the tenant may amend the rent value determined by virtue of the rental housing contract. However, the New Civil Code has introduced a hardship clause regulation, stating that if the contract becomes "excessively onerous" for either of the parties due to unforeseen circumstances, the party in question can file a claim to the relevant court to amend the rent (either by increasing or decreasing it as necessary), or terminate the contract.

Article 2 of the Housing Law (no. 114/1996) stipulates the following definitions:

a) House
Building made up of one or more dwelling rooms, with its belongings, its facilities and the required utilities, which satisfies the living demands of a person or a family.

b) Convenient house
A house which through the ratio between the requirements of the user and the attributes of the inhabiting space, at a certain moment, covers the essential needs: resting,

cooking, education and hygiene; thus ensuring the minimal exigencies presented in Annex 1 of the current law[104].

c) Social house
A house obtained with a subsidized rent for persons or families, whose economic situation does not allow them to own a property or to rent a house under market conditions.

d) Tied accommodation

A house used by public servants, the employees of some institutions or economic agents, granted in terms of the employment contract, in compliance with the legal provisions.

e) Houses for employees on business premises
A house used to accommodate the personnel of private or public units. According to their employment contract, they carry out activities or fill in positions which require their permanent presence or in cases of emergency, within the premises of the economic units.

f) Shelter house
A house used to temporarily accommodate persons or families whose homes have become untenable as the consequence of natural or man-made disaster, or when their houses are subject to demolition for public use scopes, as well as in the cases when there are rehabilitation works which cannot be carried out in buildings inhabited by tenants.

g) Protocol house
A house to be used by selected people or persons appointed in public positions, which are to be used exclusively during the exercise thereof.

h) Vacation house
A temporarily inhabited house, which functions as a secondary residence, used for rest and recreational purposes.

i) Condominium
The real estate property made up of one or more buildings, some of which are common properties, and the remainder are individual properties. A collective real estate register is drawn up as well as an individual real estate register for each property which is an exclusive property. Such exclusive property can incorporate dwelling spaces and spaces fulfilling other purposes, as applicable. Under a condominium the following may be included:

- a multi-levelled building or a common property with one or more stairs;

[104] The minimal exigencies are presented in the tables from the question regarding Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented. The law provides minimum requirements for each room surface and for minimal equipment of the dwelling.

- a residential complex made up of inhabiting spaces and spaces fulfilling other purposes, which can be arranged individually, isolated or combined; the private properties therein are interdependent, this being ensured by the coerced permanent common property.

j) Individual unit
This is a functional unit, a component of a condominium, made up of one or more dwelling rooms and/or spaces fulfilling other purposes situated on the same level of the building or on distinct levels, with their belongings, their facilities and the required utilities, having a direct access area and separate entry. These have been built and transformed in order to be used normally by a single household. In the case the entrance to the functional unit or to the condominium is not directly linked to a public road, the entrance has to be ensured by means of an access way or a right of passing, which have to be stipulated in the legal documents and recorded in the real estate register.

Aside from these definitions, the Housing Law also includes, currently, the following provisions:

1. Provisions for the development of residential buildings (art. 4, 5, 7, and 19 of the Housing Law). Romanian natural or legal persons can build habitable spaces for their own use or for investment purposes, under the requirements of the provisions stipulated in the Housing Law.
Moreover, art 7 stipulates that the local councils can build dwelling areas, measuring the areas stipulated in Annex no. 1 of the current law, utilizing deposits put together for this purpose. They enhance the access to property for some categories of people, following the guidelines below:

a) young married couples, who are both under 35 years of age at the date of the housing contract;
b) the people who, at the time of purchasing or building a house, benefit from the facilities according to the provisions of Law no. 42/1990[105], republished;
c) persons working in agriculture, education, healthcare, public administration and religion, who settle in the rural areas;
d) other categories of people established by the local councils.

The persons included in these categories can benefit from a state budget subsidy up to 30% of the final value of the dwelling, within the limits of the annual budgetary previsions and in a direct ratio to the average monthly net income per family member. Simultaneously, they can benefit from a monthly payment by instalments, for 20 years, of the difference to the final price of the dwelling, after deducting the subsidy and the compulsory minimal advance of 10% (paid by the buyer) from the value of the dwellings

[105] Law 42/1990 was established to honor the heroes, martyrs and to grant rights to their survivors, to the wounded and to the fighters from the Revolution of December 1989. The descendants of the heroes of the revolution, the wounded and disability pensioners who have lost the capacity for work in the struggle for the revolution benefit of a few rights (priority in renting and buying housing from the state, rent payment facilities etc.).

at the time of contracting. The interest rate for the advanced amount from the special deposit, which is paid back in instalments, amounts to 5% annually. In case of non-reimbursement at the pre-established deadline of the due instalments, an extra 10% interest will be charged. The local public authorities will close loan contracts with the natural persons stipulated in the current article for the amounts advanced from the special deposit, in compliance with the legal regulations in force.

2. General provisions for the establishment, organisation and functioning of Home owners' Association (art. 34, 35 of the Housing Law);

3. General provisions concerning tenants' possibility to associate (art. 37 of the Housing Law).

4. Art. 36 of the Housing Law includes provisions which reinforce the pertaining provisions of the New Civil Law. It stipulates that if one of the landlords or one of the tenants knowingly and fully encumbers the general possibility to use the said dwelling and causes damage to other landlords or tenants, the court may take the necessary measures in order to ensure that the dwelling is properly utilized. The court may make appeal to the owners of the buildings or to their legal representatives.

5. Provisions regarding social houses.
6. Provisions regarding company houses and houses for employees on business premises.
7. Provisions regarding shelter houses.
8. Provisions regarding protocol houses.

Main rules governing the execution of rental housing contracts

Residential lease represents a contract by which one party (the landlord) undertakes to provide the other party (the tenant) the use of a part or of the whole asset for a specified period and for a specified price (rent). The lease contract has a dual object: the leased asset (the dwelling) and the lease price (the rent).

Unlike a sales contract, where the property right is transmitted, in the case of the lease contract only the right to use the property is transmitted as a right of claim, not as a real right.

A tenancy is a mutually binding contract, giving rise to reciprocal and interdependent obligations between the parties. Lease is, by definition, a contract for pecuniary interest, both sides seeking to procure an advantage in exchange obligations. Lease is a contract with successive execution. The lessor is entitled to successive allowances corresponding to the use of the asset over time. The equivalent allowance of the lessee is calculated by time usage. Lease is a commutative contract, since the certain rights and obligations of the parties, and their extent are determined at the time of its conclusion.

A tenancy is usually a consensual agreement, concluded by the mere agreement of the parties. However, an orally concluded contract cannot be registered to the fiscal authorities with the previously mentioned consequences. Unlike the previous legislation

(Article 21 of the Housing Law) which provided the written form and the registration to the fiscal authorities (even only ad probationem), the New Civil Code does not mention these requirements. Consequently, the general provisions are applicable. However, the conclusion of the lease contract in written form and its registration to the fiscal authorities makes it easier to prove. The contract becomes an enforcement title with regards to the rent and the transmission of the dwelling.[106]

The lease contract can be concluded without determining the duration or length, but generally, the maximum lease cannot exceed 49 years. This maximum lease period clause is a novelty introduced by the New Civil Code.

In addition, the termination of lease can be subject to a certain date or determined by a future event whose time of occurrence is uncertain, such as tenants` death.

Lease duration is determined freely by the parties. However, in some cases, the lease term established by law may be extended in order to protect the rights and interests of certain categories of persons. This is the case of public housing. Thus, in order to protect the tenant, Law 17/1994, Law 112/1995, Government Emergency Ordinance (GEO) 40/1999, GEO 44/2009 etc. have extended the effect of lease contracts unless the tenant has lost the right of use due to legal reasons (e.g. breach of contractual obligations).[107]

The sublease and transfer of the contract are permitted provided the written consent of the landlord.

If, at the end of the time limit of the contract, the tenant remains and is allowed to stay in possession of the dwelling, the lease will be considered renewed (tacita reconductio), even if the parties have not signed a new contract.

The New Civil Code, according to the previous judicial case law, has introduced for the first time an express provision which guarantees the tenant the possibility of concluding a new contract under the same terms and conditions, even if the parties have not signed a new contract. The new “contract” is considered to be concluded for an undetermined period of time.

- 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)

Romania is organized as a single legislation state. The legal acts referred to in the section above are therefore applicable throughout the whole territory.

- 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?

106 M.L. Belu Magdo, The lease contract (Bucharest: Hamangiu Publishing, 2012)

107 Idem.

The legal right attributed following the conclusion of a rental housing contract is not a real right as the ownership title. It is a personal/obligatory right (jus ad rem).

During the evolution of the discussed regulation, the tenant's right of use has been qualified in different ways. It was either understood as a right of claim, as a proprietary interest or as a right of a mixed nature, including traits which are specific both to personal non-property rights and rights of claim (this idea is grounded by the Law no. 5/1973).

After a series of controversies it was established that the tenant's right of use, brought by a rental contract, is a right of claim. Hence, without going into the debate which arose from the old doctrine, we note the unanimously acknowledged fact that the leasing contract is not a constitutive contract. It is not a contract which transfers real rights, but a contract which binds the tenant, generating judicial relations.

- 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?

Currently, the common law is enforced through the New Civil Code. Its legal provisions are conveniently complemented by 1996 Housing Law and by the other legal acts which constitute the special provisions underlining the Latin principle specialia generalibus derogant.

Pacta sund servanda principle is also applicable to the rental housing contract.

As a general principle of the law applicable to rental housing contracts, the parties are free to set forth any and all provisions that they might find necessary and/or appropriate. However, such provisions should not breach the law, the public order or the accepted behaviours.

By virtue of example, the New Civil Code has expressly prohibited from including under a rental housing contract any of the following regulations by which:
a) the tenant is obliged to take out insurance with an insurer required by the landlord;
b) provides the joint/indivisible liability of the tenants from different apartments in the same building if the degradation building elements and installations, objects and equipping the common parts of the building occurs;
c) the tenant is obliged to acknowledge or pay in advance the housing repair amounts estimated exclusively by the landlord;
d) the landlord is entitled to reduce or remove, without counter equivalent, his/her obligations stipulated in the contract.

- 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 no special provisions regarding the settlement of all legal proceedings related to the rental housing contract. Thus, the first judicial instance to solve the dispute is either the first instance court (Judecătoria) or the superior court -Tribunalul, according to the value of the annual rent. Any unsatisfied party can appeal the solution (ratione materiae competence) to the superior court.

The judicial action raised from the rental housing contract must be introduced at the court in whose jurisdiction the dwelling is situated, or at the court in whose jurisdiction the defendant lives (alternative ratione loci competence). However, if the landlord chooses to formulate an action for recovery (in order to obtain the dwelling) the New Civil Procedure Code regulates an exclusive competence for the court in whose jurisdiction the dwelling is situated.

Furthermore, under strict conditions prescribed by the New Civil Procedure Code, any party can formulate two extraordinary appeals but only based on specific limited reasons.

In order to eliminate all kinds of discrimination and to solve any other conflict deriving from the lease contract, parties may resort to mediation. The mediation and the profession of a mediator are regulated by Law no. 192/2006.

On the other hand, the landlords' trust in Romanian judicial system is extremely low. They prefer to remain passive because tenants have no assets in most of the cases. Moreover, until the entering into force of the New Civil Code, owners gave up on suing their tenants (via regular litigation) because the procedure lasted too long. Lease contracts were not enforceable. Thanks to the New Civil Code, the latter disadvantage has been removed.

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

A novelty of the New Civil Code (in force since October 2011) is the establishment of the enforceability of the contracts signed under private signature, registered at the fiscal authorities and of those concluded in front of the notary. Thus, the landlord has an extra incentive to register the contract with the fiscal authorities in order to save time and costs of a regular litigation of the tenant. However, registering the contract at the fiscal authorities is not an ad validitatem requirement or even an ad probationem one. Its role is only to provide evidence of income from rental contracts and thus to prevent tax evasion.[108] If under the old legislation, only the contracts concluded before a public notary were directly enforceable, the New Civil Code confers direct enforceable character also to the contracts which are not concluded in front of a notary public, but are registered with the fiscal authorities.

[108] M.L. Belu Magdo, The lease contract (Bucharest: Hamangiu Publishing, 2012)

Moreover, the tenants are registered in the Building Register but they are not part of the owners' associations. They may form associations of tenants which have a different regime and cannot be subrogated in the rights/obligations of the owner.

If the lease is concluded for a period longer than 3 (three) years, the law states the obligation to register the lease with the relevant land registry, for third parties opposability purposes. Even shorter term rental housing contracts may be registered for opposability purposes with the land register.

- 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.

A. Private Rental

With regards to private dwellings, as stated in article 1787 of the New Civil Code, the landlord is under the obligation to provide the tenant both with the dwelling at issue and with all its properly functioning facilities. There are no clear-cut legal provisions on the matter, such as the ones that are to be found in the Housing Law. Therefore, the possibility to use the inhabited space will be established in concreto, depending on the purpose that the said space should serve for and on other external factors.

The law stipulates that the landlord is under the obligation to rent an inhabitable dwelling. Failure to comply with the mentioned obligation may be reproached to the landlord by invoking exceptio non adimpleti contractus so that the failure to pay the rent could be justified. Given the synallagmatic character of the contract, the latter constitutes the legal cause of the former.

Detailing the landlord’s obligation to keep the inhabiting space appropriate for use throughout the whole renting period, in accordance with what the said space is designed for, the provisions of art. 1788 of the New Civil Code stipulate that the landlord is required to carry out major and crucial repairs, which should make the space fit for being used.

B. Public Rental

The 1996 Housing Law stipulates that dwellings have to meet certain minimal requirements. According to the existing law, these are not necessarily applicable in relation to all kinds of lease contracts. These rules are applicable only in the following cases:
i. the requirements are compulsory when it comes to the building of new inhabited spaces, irrespective of the nature of the property or settlement at issue.
ii. the requirements are compulsory when it comes to the inhabited spaces built up by local councils, in accordance with the provisions stipulated by article 5 of the 1996 Housing Law, in order to facilitate the access of some social categories to inhabited spaces.
iii. Public dwellings.

Minimal requirements stipulated by the 1996 Housing Law in regards to the previously discussed issues:
- individual free access to the inhabited space, without encumbering the right of use and the exclusive usage of said space by a third-party or by another family:
- the existence of a resting space;
- the existence of a cooking facility;
- the existence of a bathroom;
- access to electricity and drinking water, controlled evacuation of the water which is no longer fit for use (e.g. domestic waste).

Minimal areas which must be respected for any dwelling the cases i. – iii. mentioned above

Persons/ family	Rooms/ Dwelling	Living Room	Bedrooms	Dining room	Kitchen	Bathrooms	Depositing spaces	Net area	Built area
no.	no.	m^2	m^2	m^2	m^2	m^2	m^2	m^2	m^2
1	1	18,00	–	2,50	5,00	4,50	2,00	37,00	58,00
2	2	18,00	12,00	3,00	5,00	4,50	2,00	52,00	81,00
3	3	18,00	22,00	3,00	5,50	6,50	2,50	66,00	102,00
4	3	19,00	24,00	3,50	5,50	6,50	3,50	74,00	115,00
5	4	20,00	34,00	3,50	6,00	7,50	4,00	87,00	135,00
6	4	21,00	36,00	4,50	6,00	7,50	4,50	93,00	144,00
7	5	22,00	46,00	5,00	6,50	9,00	5,00	107,00	166,00
8	5	22,00	48,00	6,00	6,50	9,00	5,50	110,00	171,00

Bathrooms (number of rooms/dwelling)

	1	2	3	4	5
Bathroom	1	1	1	1	2
Shower	–	–	–	1	–
WC	–	–	1	–	–

Minimum equipment of the bathrooms

		Bathroom	Shower	WC
Bathtub		1	–	–
WC		1	1	1
Washstand	Big	1	–	–
	Small	–	1	1
Shower tub		–	1	–
Shelf	Big	1	–	–
	Small	–	1	1
Mirror	Big	1	–	–
	Small	–	1	1

Towel rail		1	1	1
Soap rail		1	1	1
Paper rail		1	1	1
Hanger		1	1	–
Floor drain		1	1	–

Minimum equipment of the kitchen

No of rooms/dwelling	1–2	3	4	5
Tank washer and drainer	1	1	1	1

Minimum equipment of electrical installations

	Bedroom	Living room	Kitchen	Bathroom	Shower	WC
Place for a lamp I	1	1	–	–	–	–
Lamp	–	–	1	1	1	1
Commutator	1	1	–	–	–	–
Switch I	–	–	1	1	–	1
Socket	2	3	1	–	–	–
Protective contact socket	–	–	1	1	–	–

- Regulation on energy saving

Law 372/2005 regulates the energy performance of buildings, and it aims to promote the improvement of the energy performance of buildings, taking into account: the outdoor climatic and location conditions, the internal temperature requirements and the economic efficiency. It is mandatory that the owner presents the building energy performance certificate (valid for 10 years from the issuing date) upon the execution date of the sale contract or the lease contract.

The owner is also under the obligation to submit the energy performance certificate upon the registration date of the rental housing contract with the fiscal authorities.

6.2 Preparation and negotiation of tenancy contracts

Preliminary Note: We suggest that for each section (b through g) and each tenancy type, some concluding remarks should be provided in a summary table containing the rights and duties of tenant and landlord and the main characteristics.

Example of table for b) Preparation and negotiation of tenancy contracts

	Main characteristic(s) Private tenancy	Main characteristic(s) of Public tenancy	(Ranking from strongest to weakest regulation, if there is more than one tenancy type)
Choice of tenant	Free choice of tenant by the landlord; Parties are equal and they have to meet the conditions regarding the civil capacity and consent;	Conditions and procedures for choice of tenants are strictly prescribed by law depending on the type of dwelling (social dwelling, intervention dwelling etc.)	Public tenancy – strong regulations; Private tenancy – weak regulation
Ancillary duties	- No special ancillary duties	- Obligation of the applicant to submit evidence and documents establishing his/her eligibility	Public tenancy – strong regulations; Private tenancy – weak regulation

· Freedom of contract

According to art. 1169 of the New Civil Code, parties are free to conclude any contracts and determine their contents, within the limits imposed by the law, public order and good morals. Parties are free to decide whether or not to enter the contracts, to conclude any contract desired and/or to insert all kind of provisions, even those unregulated under law. The silence of the law on particular legal operations should not be seen as a prohibition on the conclusion of the agreement or of the operation.

On the other hand, there are a few interdictions provided by the New Civil Code in relation to the lease contracts.

For example, art. 1826 of the New Civil Code stipulates that any of the following contract provisions will be considered unwritten (a new type of sanction for non-compliance with legal provisions introduced by the New Civil Code):

a) the tenant is forced to conclude an insurance with an insurer required by the landlord;
b) provides indivisible joint liability of tenants from different apartments of the same building in the case of degradation of construction elements and installations, objects and facilities in common parts of the building;
c) the tenant is forced to acknowledge or pay in advance the housing repairs amounts, based on estimations made exclusively by the landlord;
d) the landlord is entitled to reduce or remove, without equivalent compensation the benefits to which he/she was obliged by contract.

Also, there are various imperative regulations (such as the duration of the contract, the notice period when the landlord decides to end the contract and so on) which will be analysed in a different section.

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

As we have already shown, the principle of freedom of contract governs the rental housing contracts. Any landlord may enter into contracts with any tenant on the basis of mutual agreement, and vice versa. An example of a case when we can consider that the landlord is obliged to enter into a rental contract is the one of social housing. In this case, if the tenant is eligible (all the conditions prescribed by the law are fulfilled and there are no better files of other tenants), the local authority must conclude with the applicant.

Social housing (or 'social houses') is officially defined as 'public dwellings with subsidized lease, allocated to individuals or families whose financial position would not otherwise allow them access the market. There are also other housing programs aimed at fulfilling specific social needs (housing for young people and young specialists, necessity housing for people who are evacuated from dwelling due to seismic risk, among others) but they are not considered as social housing according to the legal definition. The social housing stock is entirely owned by local authorities. More specific, the responsibility for social housing is shared between the authorities of the local public administration and the central public administration.

The requests for social housing are centralized and sent to the Ministry of Regional Development and Public Administration in order to establish the total housing need and to plan the investments for social housing construction, within the limits of the approved budget. There is also the possibility that the authorities of the local public administration build social houses entirely from their own funds (it applies mainly for larger municipalities), or that they buy houses from the free market and use them as social houses.

Social housing is mainly financed from local budgets and transfers from the national state budget. It can also be financed from donations or contributions provided by physical persons or companies.

According to the 1996 Housing Law, the families or persons with a monthly average net income per person below the overall national monthly average net income are entitled to social housing. Therefore, in the case of social housing, the landlord is obliged to provide housing to a specific category of persons.
In other words, given the sensitivity of the regulation domain, the legislative authority has often intervened, by means of dispositions meant to establish ex lege dwelling lease contracts.

Another situation in which the parties are obliged into rental housing contracts is the prorogations of lease contracts. The legal prorogation represents the extension of the

effects of the housing lease contracts, under the provision of the law. Briefly, the intervention of the law has been visible by means of the following legislative acts:

-Government Emergency Ordinance no. 40/1999 has instituted two categories of legal prorogations: mandatory and optional prorogation (both covering a five-year fixed-term contract). The “mandatory” prorogation has coerced both contracting parties to extend the effect of the contract, while the “optional” prorogation has been coercive only for the landlord (the tenant having the possibility to freely continue or discontinue the contract).

-Government Emergency Ordinance no. 8/2004 had intervened with a new legal prorogation, by means of which the lease contracts for the inhabited spaces owned by the state or the administrative and territorial units have been legally extended by 5 years.

According to the latest regulation and through the Government Emergency Ordinance no. 44/2009, “the period of the lease contracts regarding the inhabited areas owned by the state or the administrative and territorial units” has been extended by 5 years, starting with the date the regulation entered into force. The forced termination of the dwelling lease contracts presupposes the termination, by law, of a fixed terms lease contract between the owner and the sitting tenant.[109]

It is worth mentioning that pursuant to the New Civil Code, the tenant benefits from “the right of pre-emption regarding the lease”. On its basis, the tenant takes priority, by law, to perfect a new lease contract if he/she fulfilled his/her obligations (art. 1828 of the Civil Code). The provisions mentioned above are applicable as jus commune to any type of rental (especially private dwelling because in the case of public dwelling there are special provisions).

·Matching the parties

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

Choosing the tenant is an important problem that the landlord faces in order to conclude a lease contract. The most usual ways for a landlord to find a tenant are advertising on the internet, the real estate agencies, acquaintances etc. Unfortunately, none of these ways guarantee the landlord that the tenant is a good choice. The most usual way to match the landlord and the tenant has been through the real estate agencies which have had a booming period in the last decade.

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

When a landlord searches for a tenant, he looks for some specific criteria that the tenant should meet. Generally, the relation between the landlord and the tenant is based on

[109] Liviu Stănciulescu & Vasile Nemeş, The civil and commercial contracts law (Bucharest: Hamangiu Publishing, 2013)

mutual trust. There are also some landlords who search for a specific kind of potential tenants, namely: young couples, women, students, depending on their needs and beliefs. There is, however, no regulation that allows the landlord to ask a salary statement from the tenant or other information regarding his financial status. Therefore, these demands are not met in practice.

When a lease contract is concluded, the tenant pays a guarantee that is equivalent to one up to three months' rent (generally, the guarantee is equivalent to the rent for one month). Such guarantee is used in practice to pay the utility invoices at the end of the lease's term or may represent the last month of rent.

- 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?

Unfortunately, in Romania there is no official source where information about tenants is centralized. The best way for a landlord to find a tenant is by recommendations.

Another unofficial way for a landlord to find out information about a potential tenant is through the real estate agencies. Some agencies reserve their right to select their clients and they also keep a database of the tenants who resorted to the real estate agency services in order to find an apartment/house. This is, in turn, also a good way for the potential tenant to find out information about the potential landlord.

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

The tenant may protect himself from the possible abuses of the landlord. Therefore, a diligent tenant should:

i. verify if the landlord has the right to conclude a lease contract (check the ownership title etc.); make sure that the contract is registered to the fiscal authorities;
ii. register its lease contract with the land book registry;
iii. conclude a protocol (signed by both parties) by which the exact condition of the dwelling is detailed;
iv. ask for a receipt for the paid rent.

However, there are is no databases for the registration of swindler landlords. Therefore, the same real estate agencies' recommendations fill the gap in this case.

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

According to the occupational profile, the real estate agent deals with sales, purchases, leases and rentals of real estate on behalf of clients, in exchange for a commission. In practice, these are the usual services provided by estate agents. Moreover, the agents can provide information to the clients regarding the market prices, history of the building,

demands of the owner/tenant and recommendation regarding general accepted provisions (market practices) under the rental housing contracts.

- 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?

According to Government Ordinance no. 3/2000 (currently not in force), the intermediation (as a professional activity) of judicial acts related to immovable property and the management thereof is held by individuals and companies who act as real estate agents. The obtaining of real estate agent certification is based upon an examination, whose rules of development are provided in the Statute of the National Union of Real Estate Agents. The real estate agent is entitled to receive remuneration if the contract is concluded. However, the real estate agent has to support the costs incurred in order to fulfil the obligations which he/she has assumed towards the client, in case the latter concludes a contract through another person.

Government Ordinance no. 3/2000 has been rejected by the Romanian Parliament (Law no 581/2003). Therefore, the only legislation that regulates this field is the legislation of the consumer's protection. In conclusion, at this moment, the examination mentioned above and a clear and transparent legislation about real estate agents/companies are just a desideratum in Romania.

Beside consumer protection legislation, there is an occupational profile of real estate agents. According to the occupational profile, the real estate agent deals with sales, purchases, locations and rentals of real estate on behalf of clients on a commission basis.

In case of violating the consumer protection law (by inserting unfair terms in contracts etc.) or the advertising law, consumers may contact the National Consumer Protection Agency or even sue the real estate agent.

Usually, the real estate agent and the client (landlord/tenant) conclude a brokerage contract which stipulates the value of the commission, the eventual exclusivity of a certain real estate agent etc. So in case of non-performance of the tasks stipulated in contract (confidentiality clause, exclusivity clause etc.), both parties may formulate an action in court based on the contract.

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

Real estate agents working for real estate companies generally pay a percentage of the receivables to the company. For this reason, the companies avoid hiring the agents under an individual employment contract (they would benefit from the protection of labour law). Thus, a real estate agent is an authorized natural person, but there is also the possibility that some of them work illegally.
As we have already shown, there is a legislative gap in the field of real estate agents. There are no limitations regarding the amount of the commission, method of work etc.

However, the tenant is shielded by the consumer protection law and by the contract concluded with the real estate agent (pacta sunt servanda).

In practice, the standard commission of real estate agents is the equivalent of a one monthly rent, which is paid in two equal instalments by the landlord and the tenant. At the same time, there is usually reference to an exclusivity clause for a certain estate agent/company under the landlord's contract; the tenant is free to contract multiple estate agents.

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

Usually, lease contracts in Romania are concluded in a very short time and the legal phases are not very well defined.
The Romanian civil code regulates the negotiation phase. In this phase, both parties have the obligation to act in good faith. Article 1183 paragraph (3) in the Civil Code establishes that a contracting party who initiates or continues the negotiations without having the intention to conclude the contract is acting contrary to the requirement of good faith.

In principle, consumer protection legislation does not interfere with private lease law, except in the situation of commercial/professional rental housing. In this latter case, the contract must contain negotiated and comprehensible clauses.

6.3 Conclusion of tenancy contracts

Conclusion of tenancy contracts

	Private Rental	Public Rental	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Requirements for valid conclusion	NO	YES	Public rental, private rental
Regulations limiting freedom of contract	YES	YES	Public rental, private rental

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

The lease contract is considered concluded when the parties have agreed on the asset and the price (the main elements).

To a certain extent, the rental housing contract is similar to a usufruct agreement. Similar to the usufructuary, the tenant can benefit from the fruits produced by the asset that is someone else's property. However, one should note that there are important differences between the rental housing contract and the usufruct agreement.

While the tenant's use right is in fact a claim, the usufruct agreement represents a real right. The object of lease is represented by movable or immovable property, tangible or intangible. The object of a usufruct agreement is represented not only by movable or immovable property, tangible or intangible, but also by a patrimony, an universality in fact or a share of this universality. The legal maximum duration of a lease is 49 years and the tenant may be a natural person or a company. On the other hand, the usufruct agreement established in the favour of a natural person may only last until the death of the usufructuary and the usufruct established in favour of a company may last maximum 30 years. Lease is always a patrimonial/pecuniary contract[110], while the usufruct may be both patrimonial and free.[111]

The usufructuary has the obligation to respect the destination of the object of the contract that was established by the owner. An exception would be in the case when the actions of the usufructuary are increasing the leased thing's value or at least when these actions do not in any way prejudice the owner's interests.

In the case of a lease contract, the destination of the object of the lease contract is established by contractual clauses or is the one presumed by circumstances like: the previous destination of the thing, its nature or the destination given by the owner.

While the usufructuary's death or the termination of legal personality means the termination of the usufruct, the lease does not terminate at the death of the tenant.

In case of a partial impossibility to use the asset, the tenant may request the contract termination or a reduction of rent without compensation. In the same case, the usufructuary continues to exercise the right of usufruct on the remaining part and on the compensation paid by the third party (e.g. insurance indemnity).

In addition, it is important to note that there is a special kind of rental housing contract called "habitation agreement". The dwelling may be used by the lessee for his/her own use or for the use of his/her family.

The rental housing contract includes certain differences to the lease contract. In the latter, the lessee has the right to choose between the acquisition of the asset at the residual value, the extension of the contract or its termination.

The rental contract bears similarities, but also important differences to the deposit contract, whose object is the preservation of goods (rather than the use thereof). In this case, the concept of a lease may be misleading. For instance, leaving an owned vehicle

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[110] In the Romanian law, the patrimonial/pecuniary contracts also include those which object can valued in money, not only the ones consisting of or involving money.

[111] A. Tabacu, The tenancy contract (Bucharest: Rosetti Publishing, 2005)

in a garage which belongs to a third party can be qualified both as a lease or a deposit. On the one hand, we can talk about a lease contract if the keys of the garage are in the car owner's possession and the purpose of the lease is the lack of parking space. On the other hand, if the intention of the car's owner is the surveillance, the safekeeping and the preservation of the vehicle[112], then we have an example of a deposit contract.

- 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.

The Romanian Legislation does not regulate specific rental housing contracts. The general principles described above are applicable to all kinds of rental housing contracts, regardless of their object matter. They need to comply with the terms and conditions set forth pursuant to the relevant legislation.
Therefore, depending on the situation and on each party's needs, there are some clauses that parties want to negotiate and include in the rental housing contract. For example, a student may try to conclude the contract for the length of an academic year and a tenant, who lives in the same house as the owner, will want to regulate the use of shared objects and spaces (kitchen, bathroom, appliances and so on).

oRequirements for a valid conclusion of the contract

- formal requirements

The Romanian legislative authority has decided that the rental housing contract should ultimately be governed by the principle of consensus, since no formal requirements had been set. Therefore, in the existing law, the Roman law rule et hujusmodi contractus neque verba, neque scripturam utique desiderant, sed modo consensus convalescent is still fully applicable; meaning that written form is not an obligation, the consensus of the parties is fully sufficient to conclude a contract.

Ad probationem (as a legal proof) the tenant and the landlord choose to sign a legal document in order to formalize their agreement. Such a written document is required for the fiscal registration and land book registration. In addition, a written contract is useful for both parties in case a disagreement arises in relation to the rights and obligations of the housing lease contract.

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

The Romanian legislation does not foresee any fee for the lease contract conclusion. In case the parties choose to conclude a contract under authenticated form (in front of the public notary), they must cover the notary fees in amount of 0.3% from the rent owed for the entire term of the lease agreement.

[112] Liviu Stănciulescu & Vasile Nemeş, The civil and commercial contracts law (Bucharest: Hamangiu Publishing, 2013)

For the registration of the rental housing contract in the land book, the relevant registration fees amount approx. Euro 15 per registration.

- registration requirements; legal consequences in the absence of registration. Note: If relevant, please distinguish the various existing registers, e.g. land register, tax register, register of domicile.

Requirements for a valid conclusion of the contract

As we have already shown, the lease contract is usually a consensual agreement concluded by the mere agreement of the parties. In this area, unlike the previous legislation (Article 21 of the Housing Law) which provided the written form and the registration to the fiscal authorities (even only ad probationem), the New Civil Code does not mention these requirements. In conclusion, the general provisions are applicable.

A. Registration to fiscal authorities

The New Civil Code tried to encourage the registration of the contracts to the fiscal authorities by establishing the enforceability of the registered contracts with the fiscal authorities in what concerns the payment of the rent and the surrender of the leased premises.

In other words, the conclusion of the lease contract in written form and its registration to the fiscal authorities makes it easier to prove and, at the same time, the contract becomes en enforcement title regarding the rent and the transmission of the dwelling. The authentic contracts (concluded in front of the notary) have the same judicial regime.

B. Building Register

According to the law, the tenants are registered in the Building Register but they are not part of the owners' associations. Tenants may form associations of tenants which have a different regime and cannot subrogate under the rights/obligations of the owner.

C. Land Register

If the lease is concluded for a period longer than 3 (three) years, it is by law mandatory to register the lease in the relevant land registry in order to be enforceable against third parties. For rental housing contracts concluded for a period less than 3 years, the parties can decide whether or not to register the agreement with the land register.

- o Restrictions on choice of tenant – anti discrimination issues
  - EU directives (see enclosed list) and national law on anti discrimination

Discrimination is regulated by the Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination. The Ordinance was modified by the Government Emergency Ordinance no. 19/2013 and the Law no. 189/2013.

According to article 2 paragraph (2) of this ordinance, discrimination is defined as any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social status, belief, sex, sexual orientation, age, disability, contagious chronic disease, HIV infection, belonging to a disadvantaged category, and any other criteria that has the purpose or effect of restriction, prevention recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms and legal rights in the political, economic, social, cultural or any other field of public life.
According to the mentioned ordinance, the refusal to sell or lease a land or building for housing on discrimination basis against an individual or a group of persons is considered a contravention, excepting the case when the act falls under criminal law.

The discrimination may be determined by the membership of the individual, of the group of persons or of the manager of a legal person to a particular race, nationality, religion, social or to a disadvantaged category, because of their beliefs, sex or sexual orientation of the persons. The sanction for this contravention consists in a fine of 1,000 to 30,000 lei if discrimination is directed against an individual, or a fine of 2,000 lei to 100,000 lei if perpetrated against a group of people or a community.
Therefore, the private landlord, just like the State or municipalities, can be held accountable in cases of breach of the principle of equal treatment. In this respect, the Romanian Law is perfectly harmonized with the EU Law.

- Limitations on freedom of contract through regulation

  - mandatory provisions in rental contracts, in particular: mandat ory minimum requirements of what needs to be stated in a tenancy contract

With respect to private dwellings, the New Civil Code regulates sine qua non conditions in the lease contract. Anyway, in the absence of contractual clauses, the contract is completed by provisions of the New Civil code. At the same time, art. 1826 of the New Civil Code regulates some clauses which cannot be introduced in the lease contract.
A contract is deemed null and void if it contains any clauses under which the tenant would have to conclude a contract with a specific insurance company, would have to take on disproportionate liability etc. (see points a-d under b) Preparation and negotiation of tenancy contracts).

As regards the public dwellings, the parties must comply with all the provisions of Government Emergency Ordinance 40/1999.

Otherwise the parties are free to agree upon any contractual terms and conditions under a housing lease contract, as long as those are within the limits set forth under the law, the public order and the accepted behaviours.

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

If the landlord acts as a professional, the consumer protection law is applicable and, therefore, the Consumer Protection Authority can act in order to cancel certain contractual clauses.
Moreover, if one of the contractual clauses falls under art. 1826 (deemed null and void), the parties can ignore it or they can ask the court to invalidate it.
If the situations mentioned above (consumer protection law, clauses deemed unwritten etc.) are not applicable, any party can ask the court to invalidate a contractual provision. If the cancellation of some clauses does not affect the validity of the contract, the lease contract will continue. Otherwise, the court will invalidate the entire contract. These principles apply to public dwellings to the same extent.

- statutory pre-emption rights of the tenant

The New Civil Code regulates "the right of pre-emption (first refusal) of the tenant" in the context of a lease. On its basis, the tenant is given priority, by law, to sign a new lease contract (art. 1828 of the Civil Code). At the execution of a new lease of the dwelling, the tenant has, on equal terms, preference right, only if he/she complied with the previous lease contract.

The right of preference of the tenant to purchase the dwelling, according to Law no. 10/2001 on restituted buildings

Article 42, paragraph (3) of Law no. 10/2001 establishes a pre-emption right for the purchase of the dwelling, in favour of the tenants. The right of preemption is referring to residential buildings that were not given back to their rightful owners, after the termination of the legal proceedings, stipulated in Chapter III of the law. In other words, if the dwelling was not restituted to the former owner, the tenant (other person than the formal/rightful owner) has a pre-emption right to buy the dwelling from the State.

By recognizing the pre-emption right of the tenants, Law no. 10/2001 favours the conclusion that such houses could be sold to other persons than the tenants as well, if the latter refuses the offer.
The pre-emption right can be lost if the tenant does not exercises his right in a 90 days term from the date of receiving the notice regarding the intention to sell. The term of 90 days established by law cannot be interrupted or suspended. Therefore, the tenant risks not to benefit from his pre-emption right, in the case he did not exert it within the legal term.
The notice stipulated in art. 17 paragraph (2) of Law no. 10/2001 has to meet all the valid requirements of a selling offer, including the price.

The text is defective because it does not stipulate the form in which the acceptance of the offer must be expressed. Therefore, the acceptance may be expressed in any form if the acceptance or refusal is unequivocal.

Basically, the answer sent by the pre-emption right holder must coincide with the offer with respect to all the selling clauses. In other words, if the tenant brings amendments to

the offer, it is consider as a refusal. The written notice functions as a means to prove the acceptance of the offer.

The breaching of the pre-emption right stipulated in art. 17 paragraph (4) of Law no. 10/2001 is sanctioned with the invalidation of the purchase agreement.

There are various ways in which one can breach a right, but this is just a de facto matter, which has to be proved and ultimately decided by the court.

If the pre-emption right is not respected, the nullity of the sale contract will intervene.

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

The mortgagor has no restriction to lease the dwelling. However, we note that in practice the banks include under the financing agreement an interdiction clause by which they interdict the mortgagees/owner to lease the house without their expressly stated prior consent. This provision is no longer valid under the terms and conditions set forth by the New Civil Code.

6.4 Contents of tenancy contracts

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

We have shown that under the 1996 Housing Law, an inhabited space has to meet only some special requirements in certain cases. Despite all this, given the fact that a residential tenancy contract drawn up for a dwelling may only apply to an inhabited space, the rented piece of property must be compatible with the concept of “dwelling”, as defined by the law[113]. At the same time, the provisions of Government Emergency Ordinance no. 40/1999 have to be applied. Romanian legislation does not provide a template for such contracts or any kind of mandatory clauses. Therefore, the area need not be stipulated in the contract. Just like in the case of any other contract, the object of the lease contract (in this case, the inhabited area) must be properly identified (postal address etc.). For the registration in the land book, the land book number and the cadastral number of the dwelling have to be also provided under the rental housing contract.

In case the piece of property does not meet the requirements that the parties have agreed upon, the tenant may ask the dishonest landlord the full recovery of the damages.

[113] The dwelling is defined by the Housing Law as a construction composed of one or more living rooms with outbuildings, facilities and the necessary utilities which satisfies the living requirements of an individual or of a family.

As per art. 1827 of the New Civil Code, if the rented inhabited space, through its configuration or condition, constitutes a real danger for the health of those who work or live there, the tenant is allowed to terminate the rental contract, under the provisions of the law. The same applies even in cases when the tenant has given up this right.

At the same time, the tenant has the right to ask for repair of all damages if, at the time of signing the contract, he/she was unaware of the problems that had been affecting the inhabited space.

- o 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)

The situation under which the same building is leased to residential and commercial purposes is not uncommon. In practice, depending on the activity performed, certain special authorizations, permits and licenses might be required. In addition, in order to perform a certain kind of commercial activity, it might become necessary the consent of the other tenants/owners in the building.

- o Parties to a tenancy contract
  - Landlord: who can lawfully be a landlord?

Depending on its duration (3 years threshold), a rental housing contract might be qualified under the law as an administration deed (an act of administration) or as a disposition deed (an act of disposition). In order to execute a disposition deed, a person must have a full exercise capacity. Natural persons acquire full exercise capacity when they reach the age of 18.

In principle, any natural or legal person can be a landlord provided it has the legal right of renting the respective premises. This is subject to the above mentioned legal restrictions and to other specific regulations of the law and depends upon the nature and quality of the parties.

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

In principle, only if the opposability formalities are respected (in general, the registration in the land book) the change of the landlord will not affect the tenant's right of use.

Moreover, article 1820 from the New Civil Code stipulates that the death of the landlord does not lead to contract termination.

Selling a particular inhabited space/Foreclosure

A tenancy contract terminates on the date of the foreclosure because, after the disposing, the initial landlord cannot continue to ensure the undisturbed use of the

dwelling to the tenant. However, in favour of the tenant, art. 1811 from the New Civil Code recognizes two exceptions to the rule:

1. If the tenancy contract was registered in the Land Registry;
2. If the tenancy contract has a fixed term, and was concluded prior to the certain date of the sale.

In these situations the lease contract is transferred to the acquirer of the dwelling, which is bound to observe and perform the obligations of the initial landlord. In the absence of a specific contractual provision on this issue, we appreciate that the transfer takes effect from the date of the tenant notification.

- Tenant:
  - Who can lawfully be a tenant?

For the tenant, the lease contract is an administration deed. Therefore, it may even be concluded by a minor child who has turned 14. Regarding legal persons, in principle, any company may act as tenant under a lease contract.

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

According to the New Civil Code's regulations (art. 1.832), in the absence of a prohibition stipulated with respect to this matter, other people may also live together with the tenant. In this case, as long as they use the space that forms the object of the lease contract, they will also be held responsible for any of the obligations arising from the contract.

  - 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

According to art. 1834 from the New Civil Code, the rental housing contract terminates within a period of 30 days following the death of the tenant.

Descendants and ascendants of the tenant have the right to choose the continuation of the rental housing contract in a term of 30 days following the death of the tenant. This is possible only if their names appear in the contract and if they have lived with the tenant (cumulative conditions). In other words, even if the descendants and ascendants of the tenant live with the contracted tenant and their name appears in the contract, they do not automatically inherit the tenancy. They must choose in 30 days between contract termination and contract continuation.

The parties referred to above, that requested continuation of the contract, will name a party or parties who have to sign the lease contract on behalf of the deceased tenant. If they do not reach an agreement within 30 days from the registration of the tenant's death, the appointment shall be made by the landlord.

Even though only one of the spouses is the holder of the contract or the contract had been concluded before marriage, each of the spouses has a personal right to housing, arisen from the rental contract. Should one of the spouses die, the surviving spouse will continue executing the lease contract, if he/she does not waive his/her right, within the aforementioned 30 days term.

The assignment of the lease contract's benefits in the case of the marriage dissolution

The problem of inheriting lease contract can be taken into account even in the case of divorce. If the two spouses cannot continue to share the family dwelling and they have irreconcilable disputes, the benefit of the lease contract can be assigned to one of the spouses. When assigning the lease, a number of things must be taken into consideration, in the following order: (1) the situation of minor children, (2) what and who triggered the divorce and (3) whether the former spouses have the possibility to acquire another place to live. Assigning the benefit of the lease contract is made with the citation of the landlord and takes effect from the moment the court makes the final decision.

- 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)?

Pursuant to the regulations of the New Civil Code (art. 1833), the tenant may transfer the lease or sublet the dwelling only with the written consent of the landlord. In case of agreement and in the absence of a contrary stipulation, the transferee shall be jointly liable with the tenant for the obligations towards the landlord stipulated under the rental housing contract.
In practice, subletting is rarely used in the context of rental housing contracts.

As a protection measure for the landlord, in case of subletting, the landlord can sue both the main tenant and the sub-lessee (the landlord has a direct action against the sub-lessee) in order to obtain the fulfilment of the obligations arising from the residential lease, as art. 1833 of the New Civil Code establishes joint liability of the transferee and of the sub-lessee with regard to tenant’s obligations and to the fulfilment of the obligations towards the landlord established by the lease contract.

This provision, which has a protective character, is not of public order. The parties can stipulate that the transferee or the sub-lessee is not liable jointly with the tenant for the fulfilment of the obligations set forth under the rental housing contract.

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

The lease contract can be concluded with a multiplicity of tenants, but the joint liability institution will operate.

- Duration of contract

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

The lease contract can be concluded without specifying the duration or length. However, a lease contract cannot exceed 49 years. The delimitation of the maximum leasing period is a novelty brought by the New Civil Code.
Also, the termination of a lease can be a certain date or a future event whose time of occurrence is uncertain, such as tenant's death.

As with the other terms of the contract, lease duration is determined freely by the parties. However, in some cases, in order to protect the rights and interests of certain categories of persons, extensions of the lease term are possible. This is the case of public housing. Thus, in this matter, in order to protect the tenant, Law 17/1994, Law 112/1995, Government Emergency Ordinance no. 40/1999, Government Emergency Ordinance no. 44/2009 etc. extended the effect of lease contracts if the tenant did not lose the right of use, for other reasons than contract expiry (e.g. breach of contractual obligations).

There is no legal minimum duration of the housing lease contract. In practice, however, the minimum term for which such contracts are concluded is of 1 (one) year.

- 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.

The parties are free to introduce in the lease contract any clause regarding the contract duration and its prolongation, without exceeding the 49 years limit. If the parties agree on a longer term then the one prescribed by New Civil Code, the term agreed by the parties will be reduced de jure at 49 years.

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

A. The rent for the dwellings which constitute private property of natural or legal persons is freely agreed by means of a negotiation between the owner and the tenant at the moment of concluding the lease contract. (art. 32 par. 1 of the Government Emergency Ordinance no. 40/1999).

B. The rent for the dwellings that belong to the public or private property of the state or the State's administrative units, as well as for intervention housing and tied accommodation is calculated on the basis of a monthly fee, depending on the rented area. (art. 26 par. 1 of the Government Emergency Ordinance no. 40/1999).

The maximum rent level for the above mentioned dwellings (including the adjacent land) cannot exceed 15% of the monthly net income per family, when the monthly average net income per capita does not exceed the national average net salary[114].

By family, in the sense of the said Government Emergency Ordinance one refers to the husband, the wife, the children, the parents of the spouses, as well as the sons-in-law, the daughters-in-law and the children thereof, if they live together within the same household.

The tenant has the obligation to inform the owner, within 30 days, of any change in the monthly net income per family, which may have as a consequence the increase of the rent. Not complying with this obligation may trigger the termination of the contract (art. 31 par. 2 of the Government Emergency Ordinance no. 40/1999).

It is worth mentioning that art. 35 par. 5 forbids the termination of the lease contract or the eviction of the tenant on the grounds that he/she does not agree with the increase of the rent.
If there are any disputes regarding the amount or the payment of rent, the litigation will be solved by the court from the area where the dwelling is situated (art. 42 of the Government Emergency Ordinance no. 40/1999).

- 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

In the private rental market there is no legal rent control. The parties can agree on any rent level. At the same time, the rent amount must be serious (it must not be insignificant) and sincere (it must not be fictitious). Otherwise, the rental housing contract may be declared non-existent. Of course, the rent amount can be much higher or lower than the market value because the parties are free to agree any amount they want. It is a common practice in the market.

In principle, the amount of the monthly rent as well as its rules for changing and the method of payment, have to be stipulated in the contract. In this sense, the provisions of article 1781 of the Civil Code stipulate that the closing up of the lease contract takes place as soon as the parties, by consensus, have agreed on the good and its price, i.e. the rent. The text is corroborated with article 1798 of the Civil Code. The latter stipulates that the lease contracts concluded in written form, that have been registered with the fiscal bodies, as well as the authenticated ones, represent enforceable titles for the rent payment at the term and by the method stipulated in the contract or, in the lack thereof, by the law.

By means of special norms, the contractual freedom may be restricted, regarding the rent amount, where such a measure can be justified by reasons related to social protection. This kind of restrictions are applicable equally to the dwellings belonging to the pub-

[114] Liviu Stănciulescu & Vasile Nemeş, The civil and commercial contracts law (Bucharest: Hamangiu Publishing, 2013)

lic and private domain of the state[115] or that of the administrative and territorial units and with respect to the special status dwellings (social houses, houses for employees on business premises, company houses, hostels for the employees of the trading companies, companies, national societies or autonomous administrations) and to the dwellings privately owned by natural or legal persons.
If the parties have not stipulated the date of the rent payment because of their lack of practical experience in the matter, it is established in compliance with the provisions of art. 1797 par. (2) of the NCC.

Modification of the rent by the court

The hardship clause stipulated under article 1271 of the New Civil Code is a legal method to decrease or increase the rent if it becomes disproportionately onerous to one of the contracting parties. Art. 1271 stipulates that the parties are bound to perform their obligations, even if their execution has become more onerous, whether because the execution costs of their own obligations have increased, or because the value of the performance that the other party was obliged to execute has decreased. However, if the execution of the contract has become excessively cumbersome, because of some exceptional circumstances which make impossible the coercion of the debtor to execute his obligation, the court can decide to:
a) adapt the contract, in order to distribute the damages and the benefits fairly between the parties;
b) terminate the contract, at the time and in the conditions which are seen as fit.

The provisions above are applicable only if:
a) the change of circumstances has occurred after the concluding of the contract;
b) the change of circumstances, as well as the length thereof were not and could have not been foreseen by the debtor, within reasonable terms, at the time when the contract was concluded;
c) the debtor has not considered the risk of a change of circumstances and he cannot be held responsible for not taking this risk into consideration;
d) the debtor has tried, within reasonable terms and in good faith, to negotiate a reasonable and equitable amendment of the contract.

The Romanian courts applied for the first time the unpredictability theory in a concrete case solved in 1920, namely the affair Lascăr Catargiu vs. the Bercovici Bank. After 1990, the national jurisprudence has introduced the unforeseeable situation in two do-

[115] In Romanian law, social housing buildings are included, in principle, in the private domain of the State. The private domain of the state consists of movable and immovable assets which are not affected to a general interest or public service and therefore the rules of private law apply.

On the other hand, the public domain includes: land under which public buildings are built, markets, communications paths, road networks and public parks, ports and airports, lands under forest, the river bed, lake/rivers basins, the Black Sea shores, including beaches, land for nature reserves and national parks, monuments, ensembles and archaeological sites, land or military or other assets which, by law, are in the public domain of the State or which, by their nature, serve a public interest.

Land belonging to the public domain are inalienable and imprescriptible. They can not be placed in the civil circuit unless, under the law, are transferred to the public domain.

mains: the increase of rents for lease contracts (CSJ, sect. com, decree no. 21/1994), and the update of some delivered but unpaid merchandise (CSJ, sect. com, decree no. 4456/1999, C. Bădoiu, C. Haraga; Commercial obligations. Jurisprudence, Hamangiu Publishing, Bucharest, 2006, page 200). Similarly, the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania has decided to allow as a principle the theory of the unpredictability within the Romanian legal system (decision no. 208/2005).

The regulation of the hardship clause under article 1271 of the New Civil Code represents a national legal novelty.

Article 1271 from the New Civil code does not expressly specify the foundation of the existing relationship between the compulsory character of the contract and the unpredictable situation. Nevertheless, the foundation of this relationship can be deduced from the official comment of the European project called Principles of European Contract Law, which was the first source of inspiration for article 1271, and mentions the idea of contractual justice. According to this idea it is considered fair that, in the absence of contractual provision, expenses and costs of an unpredictable situation should not be the responsibility of a single party (Principles of European Contract Law, p . 323). The basis of the new rules of unpredictability is only suggested by the legal text by keeping the attribute of the effect on the contract. This effect is determined by the changing of circumstances. In this case, it would be "manifestly unjust" to require the debtor to execute his obligation.

The application of the mechanism provided by the law for the unpredictable situation implies the need to ascertain the conditions mentioned in par. (2)-(3) of article 1271. Strictly formally, the way in which the text is elaborated would suggest that we are dealing with only one premise (the excessively cumbersome execution of the obligation), with only one condition (the exceptional change of circumstances) which, in its turn, should meet some sub-conditions. The mentioned sub-conditions regard the following: the moment when the change of circumstances has occurred, the reasonable unpredictability of the changing of the circumstances and the generated risk had not been assumed by the affected party. The stipulation of the exceptional character of the change should not be qualified as a genuine additional request: the term “exceptional” is only a metaphor used by the law, which covers all the attributes-conditions of the change of circumstances, as they are stipulated in par. (3) letters a) and b).

The problematic of the unforeseeable situation should not be minimized to the issue of inflation. The unpredictable situation has the character of an efficient legal tool in solving a contractual legal situation which is determined by the unpredictable change of circumstances. Taking into consideration that paragraph (3) of article 1271 does not specify anything about the nature of the changing of the circumstances, we can conclude that this nature is irrelevant because ubi lex non distinguit nec nos distinguere debemus.

Once the contractual conditions for an unforeseeable situation have been fulfilled, one of the following two situations will have to be solved: a) either the situation of the debtor, who will not be required to fulfill his obligation which has become excessively cumbersome, or b) the situation of the creditor, who will not be obligated to accept the execution

of the debtor's obligation which had been drastically reduced by the occurrence of the unforeseeable situation. In order to solve any of these two problems, art. 1271 stipulates two possible effects of the unforeseeable situation: amending or terminating the contract. Regarding the effects of an unforeseeable situation we have to pay attention to two phases: a) the negotiation phase initiated by the debtor (in the sense of the text) in order to amend the contract, and b) the legal phase, represented by the intervention of the court at the request of any of the parties, that is not satisfied by the failure of the negotiation phase, either for terminating or for amending the contract. The role of the court is tributary to the idea of cooperation between the parties and it becomes effective in case the negotiations fail.

After the New Civil Code came into force, the unforeseeable situation is expressly regulated. Though, it has a contractual character regarding its application domain and maintains its praetorian character by referring to some non-regulated aspects (the criterion of establishing the excessively cumbersome character of the execution of the obligation and the unforeseeable situation).
We appreciate that both parties of the contract (the landlord and the tenant) can introduce an action at the court based on article 1271 NCC. The financial crisis led to a significant decrease of the dwellings value and, in the same time, it led to a significant decrease of the tenants' purchasing power. In consequence, tenant's situation is an unbalanced one. Though, the landlord can be also in a position of inferiority. For example, if the contract stipulates that the utilities are paid by the landlord and, after the contract conclusion, their price rises significantly in relation with the rent level, the landlord can require the equilibration of the contract.

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

The date of the rent payment is established by contract. In the absence of such a provision, the tenant is obliged to pay the rent at the term established by customary practices (art. 1797 of the Civil Code). If there are no customary practices, in the absence of a contrary provision rent is paid as follows:
- in advance for the whole period of the contract, if it does not exceed the period of one month;
- in advance in the first working day of each month, if the duration of the lease is longer than a month, but shorter than one year;
- in advance in the first working day of each trimester if the lease equals at least one year.

If the landlord wrongfully (in bad faith) refuses to receive the rent, the tenant can appeal to the rules which govern the payment offer followed by placing the sum of money in a bank account at the landlord's disposal.

In the case when the tenant does not carry out his obligation to pay the rent, the landlord can proceed to:
- the forced execution of the contract, benefiting from the enforceable title of the rental contract, concluded under the provisions of art. 1798 of the New Civil Code;

- the termination of the residential lease contract, under the provisions of art. 1830 par. (1) of the New Civil Code;
- the use of the non-performance exception, if the dwelling has not been handed over by the landlord, and the rent had to be paid in advance. In this case, the landlord can refuse to hand over the dwelling because the tenant didn't perform his obligation to pay the rent in advance (if such an obligation exists). Thus, the obligation of the landlord to hand over the dwelling is suspended until the tenant performs his own obligation to pay the rent in advance.

The proof for the payment of the rent is made by means of a written notice of the landlord. The receipt issued unconditionally is equal to the recognition of the rent for the previous months.

- 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);

It is important to mention that the right of retention, as it is defined by the applicable Romanian legislation, is applicable only with regard to goods and not with regard to the rent. Thus, the tenant cannot exercise set off and retention rights over the rent payment.

Nevertheless, the tenant is allowed, by virtue of the law, to perform the compensation between the amount of the rent owed to the landlord on the one hand and the amount that the landlord owes to the tenant on the other hand. This is possible, for example if the landlord does not repair a defect that he is obliged to do, and the tenant repairs it on his own expense. In this case, by virtue of article 1616 in the New Civil Code, the tenant may invoke the compensation between the amount of money that he had spent with the repairs and the rent that he owes to the tenant.

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

According to the law, the landlord may transfer his claims that result from the rental contract to a third party or to a bank, and the tenant is obliged to respect this transfer (assignment). The transfer becomes opposable to the tenant after he had received the notification letter from the assignee, informing him about the assignment.

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

The rent is the price paid by the tenant for the use of the dwelling. In a first opinion, the type of the rent can be agreed by the contract parties, but, in practice, the rent usually consists in an amount of money. But, at the same time, the price for the use of the dwell-

ing can be represented by any other goods or performances in kind (article 1780 paragraph (1) of the New Civil Code). This is the case of the common contract of lease.

Although there have been divergent opinions, it seems that in the case of residential lease the rent has to be established only in money. The divergent opinions were based on the idea that in the absence of some clear, imperative legal provisions setting that rent must be represented only by an amount of money, the possibility of establishing the rent in the form of other services is not excluded.

Regarding this aspect, the doctrine based on the previous Civil Code (the Civil Code from 1865) interpreted the provisions of art. 1411 from the mentioned Civil code stating that "…defining the lease contract does not require that the rent should necessarily consist in money, and it stipulates only for the rent to be established in the way it needs to be fulfilled or at a pre-established time – hence, one can conceive a lease contract whose rent is not represented by money".

As regards the potential lien of the tenant, we have to mention the provisions of art. 1823 of the New Civil Code, regulating the regime of the improvements performed by the tenant into the leased premises. With respect to these improvements, the tenant can invoke the retention right in case the relevant amounts invested are not voluntarily paid by the landlord.

- 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?

In the regulation of the Civil Code from 1865, the owner was the beneficiary of a legal privilege regarding the tenant's assets that were in the dwelling. This privilege was conferring priority to the landlord in order to recover, with priority towards other creditors of the tenant, the receivable that resulted from the non-payment of the rent.
The New Civil Code does not provide such a privilege for the benefit of the landlord. However the parties may agree to insert a clause in the lease contract which establishes a conventional right of retention in the benefit of the landlord. Moreover, the jus commune regarding the retention right (art. 2495 New Civil Code) may be used with a few difficulties.

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

The parties are free to set any rent amount. By agreement of the parties, the rent may also increase or decrease from one year to another, can be renegotiated after a certain period of time, can be determined by a third party, expert, etc.
Under the general practice of the housing lease contracts, in case of contracts concluded for a period of one year, the rent remains unchangeable during this period.

Public dwelling

As we have already shown, the rent for the dwellings which belong to the public or private domain of the state or the State's administrative units, as well as for employees' housing, intervention housing and the hostels destined to the employees of trading companies, national companies and societies and autonomous administrations is calculated by the basis of a standard monthly fee, depending on the rented area (art. 26 par. 1 of the Government Emergency Ordinance no. 40/1999).

The maximum level of the rent for the above mentioned dwellings (including the adjacent land) cannot exceed 15% of the monthly net income per family, when the monthly average net income per capita does not exceed the national average net salary.
But the rent increase can be requested for the contracts (regulated by article 26 paragraph 1 from Government Emergency Ordinance no. 40/1999) that were concluded for a period of more than 1 year and which do not contain the prohibition of rent increase (article 35 from Government Emergency Ordinance no. 40/1999). The request for the rent increase, motivated by the improvements made to the dwelling or by the increase of the tenant's incomes, must be notified to the tenant by the judicial executor/bailiff (article 10 from the same Government Emergency Ordinance). If the tenant does not accept the rent increase, he can file a claim to the competent court within 60 days. The landlord (the State, the administrative unit etc.) cannot evict the tenant if he/she does not agree with the rent increase. Nonetheless, the landlord is entitled to evict the tenant if he/she does not pay the rent for a 3 month period.

- Index-oriented increase clauses

As we have shown, parties may freely determine the content of the lease contract, within the limits of the Hosing law's provisions. The rent update with the inflation index does not represent a real change of the rent, but it must be regulated in the contract (the easiest method) or the court can apply the hardship clause (art 1721 of the New Civil Code). Moreover, the rent update with the inflation index can be used in the private rental market for reasons of equality with public dwelling.

In practice, the indexation based upon the European Index of Consumer Practice is used under the rental housing contracts concluded for a period of more than 1 year.

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

The legislation does not contain any exhaustive rules regarding utilities. Only the New Civil Code stipulates that tenants are required to contribute to the costs of lighting, heating and cleaning of common parts and installations or other similar expenses. Therefore, the landlord and the tenant may agree freely on the distribution of the financial burdens related to utilities.

The utilities have constituted traditionally the subject of direct contracts between the service providers (for heating, water, electricity, garbage collection, gas, telephone, cable

TV, etc.) and homeowners. Nowadays, utility companies use standard contracts for apartment buildings that have a registered association of owners[116]. Therefore, the contracts for the utilities are usually concluded with the owner and are invoiced on behalf of the owner. Then, according to the provisions of the lease contract, the owner recovers them (the utilities) from the tenant(s).

In practice, the usual utilities desired by the tenants are: electricity, gas for heating and cooking, water, waste collection. Even though some additional utilities are not necessary for a building to be and remain habitable, the tenants desire at least to have access to TV and telephone suppliers (and to conclude themselves the contracts).

- Responsibility of and distribution among the parties:

  - Does the landlord or the tenant have to conclude the contracts of supply?

Some companies (e.g. some Internet providers) agree to contract directly with the tenant, since there is no risk of significant loss in case of default. However, in the absence of contrary contractual provisions, the owner does not have an obligation to conclude a contract with service providers (for phone, Internet, cable TV, etc.) in order to make them available to the tenant. This is not part of the landlord's legal obligations, because telecommunication services are considered luxury utilities, and not basic utilities. In the Romanian legislation there are three types of expenses: necessary expenses (that are made in order to preserve the good), useful expenses (that are made in order to increase the value of the good) and luxury expenses (that are made only for the pleasure of the owner of the good). Or, the legal obligation of the landlord is to keep the property in good condition for use throughout the rental contract and the telecommunication services are usually included in the category of the luxury expenses, which are not the obligation of the landlord. However, in practice, even these extra utilities are provided by the landlord (and paid by the tenant), most often being sine qua non conditions of the rental contract.

  - Which utilities may be charged from the tenant?

As we already mentioned, the Romanian legislation is not very clear regarding the contracting party which bears the whole cost of the utilities. However, in principle, the whole cost of the utilities (heating, electricity, water, gas, waste collection, TV, internet etc.) is supported by the tenant on the grounds of interpretation of the art. 1829 of the New Civil Code (use of the common parts), and also because the tenant has the obligation to pay the locative/housing expenses. These are the expenses that the tenant is obliged to bear because they result from the usual use of the dwelling (i.e. the tenant has the obligation to whitewash the apartment).

  - What is the standing practice?

[116] In Romania, the owners are obliged to administer the condominium. The simplest and most usual way to care for the common areas is the establishment of an association of owners (which is not mandatory). The latter has legal personality and it can conclude, on behalf of the owners, contracts with suppliers.

In practice, the utilities are paid for by the tenant, even if this aspect was not expressly regulated by the contract. However, the parties can agree freely upon the distribution of the financial burdens related to utilities.

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

In principle, the utilities are paid by the tenant, but the lease contract can provide any other solution. A significant increase of the price for utilities could lead to the application of the unpredictability clause. Since the landlord cannot control the costs of the utilities, the risk of increasing is usually born by the tenant.

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

The supply of the utilities can be disrupted only by the external provider if their cost was not paid. It is true that the landlord can ask the provider to disrupt the utilities if the tenant does not pay their cost and their payment is difficult for the landlord, but a disruption request in case when the rent was paid may be deemed as an abuse committed by the landlord.

o 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)?
- 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 New Civil Code and the 1996 Housing Law do not contain any rules regarding deposit in relation to tenancy contracts. However, this is a standard practice in the case of private dwellings and it is regulated by Government Emergency Ordinance no. 40/1999.

Article 37 of GEO 40/1999 stipulates the tenant must provide a deposit in order to guarantee the execution of his obligations. At the date of the conclusion of the housing lease contract, the parties have to agree on establishing a warranty deposit. The deposit cannot exceed the amount equal to the rent for three months, at the rate for the current year, if the rent is not paid in advance for a period of three months (art. 38 of the GEO 40/1999). According to article 38 para. (2), if the rent is paid in advance for a period longer than three months, the warranty deposit will no longer be provided.

At the termination date of the rental housing contract, under justified terms, the landlord may withhold from the deposit the following costs (art. 40 of the GEO 40/1999):

- the expenses for the repair or the replacement of the sanitary objects, and for the repair works which fall under the obligations of the tenant;

- the expenses for the regular maintenance and for the repairs of the common use elements, which fall under the obligations of the tenant;
- the expenses associated with the services carried out in the interest of the tenant, of which he has benefited during the period of the renting contract and which he has not paid for.

The security deposit is reimbursed to tenants within 3 months from the date when the parties handed over the keys. If the deposit is not reimbursed, the whole deposited amount or the remained balance of it, after deducting the expenses stipulated in art. 40 of the Government Emergency Ordinance no. 40/1999, produces interests.

After the financial crisis began, the amount of this guarantee is usually equal to the rent for one month. But, in some cases, it can vary to the equivalent of the rent for several months (two or three). However, the amount of the guarantee depends on the agreement of the parties.
In practice, the landlord can use the deposit only if the tenant does not comply with his/her obligations (to pay the rent, to maintain the dwelling under normal conditions, to pay the utilities etc.). Otherwise, at the termination of the contract, the landlord is obliged to reimburse the deposit.

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

As per article 1788 of the New Civil Code, the landlord has to do all the required repairs in the rented space in order to maintain it suitable for use throughout all the lease period. The same legal text stipulates that locative repairs resulted from the normal use of the dwelling are the responsibility of the tenant (the housing repairs).

After concluding the lease contract, if the landlord refuses to make the necessary repairs that he is obliged to do, and refuses to immediately take the proper measures in this respect, after he had been previously informed regarding the necessity of making the repairs, the tenant might carry out the necessary repairs on the landlord's behalf. In this case, the landlord is obliged to pay the tenant the costs of the repairs. Apart from the principal costs of the repairs, the landlord is obliged to pay interest for the sums paid by the tenant from the date the expenses had been made. The interest rate is, in principle, the one established by the parties in the rental contract. If the parties didn’t determine the interest rate in their contract, the legal interest rate would be applicable. The legal interest rate is provided by the law. For example, in 2013, the legal interest rate was 5%/year.

In case of emergency, the tenant may inform the landlord about the necessity of making the repairs even after the reparations are initiated, but the interest for the amount of money invested by the tenant only starts to accumulate after the landlord had been informed about the repairing process.

As we have shown before, the most important obligation of the landlord is to maintain the dwelling in a state suitable for habitation. Therefore, with regards to this obligation of

the landlord, we can affirm that the purpose of the provisions of article 1788 paragraph (1) of the New Civil Code is to assure the execution of this obligation, by establishing the responsibility of the landlord to make the major repairs that are necessary in order to preserve the rented space in a proper state for use by the tenant.

The landlord has to preserve and repair the rented space not only in the tenant's interest, but in his own interest. The obligation of making the necessary repairs extends also to the accessories of the leased space.[117]

In its jurisprudence, the French Court of Cassation had sometimes used the regulations regarding the usufruct in order to determine – in a rather strict manner – the meaning of major repairs that are the responsibility of the landlord.[118]

As the provisions stipulated in article 1788 paragraph (1) of the New Civil code are not of public order (they are dispositive provisions), the parties involved may derogate by agreement from their applicability. So, for example, the parties may agree on exonerating the landlord of his obligation to make some of the repairs that would otherwise be his responsibility based on the provisions of the Housing Law.[119]

The landlord is responsible to make the necessary repairs to the common parts that are used by more than one tenant, if it cannot be proven that the damages have been caused by a particular tenant, by the members of his family or by the sub-lessees that have contracted with that particular tenant.[120]

Article 1032 from the New Civil Procedure Code regulates an efficient procedural instrument that can be used in order to get done the execution of the required repairs. This consists in the judge's order (presidential ordinance), pronounced with the summoning of the parties. By this means, the tenant or the sub-lessee may be obliged to use a smaller area of the rented space or may even be obliged to the eviction of the space. These measures could be applied only if they are justified during the repairing process regarding the repairs provided by the law that are the responsibility of the landlord.

If the landlord refuses to carry out the necessary repairs: the tenant is obliged to immediately notify the landlord of any kind of required repairs that fall under the responsibility of the latter. If the tenant does not respect this obligation, he might be obliged to pay the damages and bear any other costs.

As discussed before, if the landlord refuses to make the necessary repairs that he is obliged to do after immediately concluding the lease contract, despite having been previously informed about the necessity of such repairs, the tenant is entitled according to the article 1788 paragraph (3) from the New civil Code to carry out the necessary repairs

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117 F. Baias (coord.), The New civil code: Articles analyses (Bucharest: CH Beck Publishing, 2012)

118 Cas. fr., 3 civ., dec. din 13 iulie 2005, în Ph. Malaurie, L. Aynès, P.-Yv. Gautier, Civil Law. Special contracts, p. 371

119 Ph. Malaurie, L. Aynès, P.-Yv. Gautier, Civil Law. Special Contracts, p. 362

120 Fr. Deak, Tratat de drept civil. Contracte speciale, vol. II, (Bucharest: Universul Juridic Publishing, 2007) 28, precum şi comentariul de la art. 654 NCC)

himself on the landlord's behalf. Art. 1788 paragraph (3) NCC is an application of the common rule that governs the domain of the performance of the so called to do obligations (compliance obligations with a broader meaning) [article 1528 paragraph (1) NCC]. According to this rule the creditor is entitled to execute the obligation on the debtor's expense.

Even the old regulation concerning residential leases (art. 30 in the Housing Law nr. 114/1996) stipulated that the tenant may carry out some reparations on the landlord's expenses (in this case, the value of the repairs made by the tenant was deducted from the rent), if the latter failed to execute his/her obligations regarding the maintenance and reparations of the rented dwelling. The tenant would be allowed to perform such work only if the produced damage was likely to affect the normal use of the building or of the dwelling, and only if the owner who had been previously notified by the tenant refused to take the necessary action within a term of 30 days from the mentioned notification.

Apart from the possibility to carry out reparations falling under the landlord's responsibility on his expense, the tenant may request, under the general provisions, the termination of the contract.
According to article 1788 paragraph (2) NCC, the repairs determined by the normal use of the rented asset have to be made by the tenant (housing/locative repairs). This rule is also emphasized by article 1802, according to which any current upkeep repairing falls under the responsibility of the tenant. Given the character of this rule, the parties can derogate from it by their agreement.

Finally, if the landlord insists on adding a clause to the rental contract, according to which the tenant would be obliged to pay in advance for small repairs implemented exclusively by the landlord, where the amount of payment would be determined by the landlord, the clause is considered null and void.

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

As it was mentioned above, to the extent that the housing lease contract is made opposable towards third parties by the registration in the land book, any subsequent acquirer of the asset shall be obliged to comply with its provisions. This rule is applicable in the situation in which the landlord keeps the propriety of the dwelling, even though a mortgage was instituted.

But the rule mentioned above does not apply when the landlord's title is canceled; in this last case, as a general rule, according to art. 1819 New Civil code, the contract shall be terminated. The contract would not be terminated if the tenant acted in good faith, when the lease shall continue for a period of maximum one year (art. 1819 par. 2 New Civil Code).

6.5 Implementation of tenancy contracts

- 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

Art. 1787 from the New Civil Code stipulates that the landlord is under the obligation to provide the tenant the dwelling at issue and all its accessories in good condition. Therefore the landlord's delay to provide the use of the dwelling entitles the tenant to ask for pecuniary compensation. Moreover, the refusal/the significant delay of the landlord to provide the dwelling to the tenant entitles the latter not only to pecuniary compensation but also to introduce an action in order to request the termination of the housing lease contract. If the tenant had the obligation to pay the rent in advance, he might refuse this obligation until the landlord executes his obligation to provide the dwelling.

- 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)

According to New Civil Code, a tenant gets preferential position if his contract is registered in the land register (mandatory for contracts longer than 3 years, and optional for shorter term contracts). If all lease contracts in conflict are noted in the land register, the tenant who first registered his right into the land register will be preferred, regardless the date of the contract conclusion.

In the case of unregistered contracts in the land register, the conflict between the successive tenants will be solved in favor of the tenant who acted in good faith (did not know and could not know about the parallel obligation assumed by the landlord) and started to use the dwelling first, even if the contract was signed on a later date. If none of the tenants in conflict started to use the dwelling yet, the preference is given to the tenant who brought the action to court first. In either case, the other tenant has the right to introduce an action against the landlord in order to obtain pecuniary compensation.

- Refusal of clearing and handover by previous tenant

According to article 1793 of the New Civil Code, in principle, the landlord is obliged to provide guarantee to the tenant only for de jure disturbances. But, at the same time, if the landlord did not provide undisturbed use of the dwelling to the tenant, he would also be forced to assume responsibility for de facto disturbances.

Under these circumstances, the provisions of article 1794 paragraph (2) of the Civil Code are applicable, on the considerable adjustment of the amount paid as rent, or the termination of the contract in case the disturbance was so grave that the tenant would not have signed the contract if he had known about it.

- Public law impediments to handover to the tenant

The Romanian law does not regulate any public law impediment to handing over the dwelling to the tenant, if all the other legal provisions were respected.

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

According to article 1796 a) of the New Civil Code, the tenant has the obligation to take the dwelling into possession. Delay in taking the dwelling into possession entitles the landlord to choose from the following actions:

i. to request the payment of the rent, the cost of utilities and pecuniary compensations;
ii. to ask for the termination of contract the termination;
iii. initiate the procedure of placing the dwelling at the tenant's disposal (in which case the tenant is notified by the judicial executor/bailiff to take possession of the dwelling; meanwhile the dwelling is preserved on the expenses of the tenant. This means that during this period, all the expenses regarding the dwelling are in charge of the tenant).

- 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 landlord is fully responsible for any hidden defects that the dwelling may have, even if he/she was unaware of them at the time of signing the contract, and regardless of whether they existed before signing the contract.

The legal definition of 'hidden defects' refers to cases so severe that they partly or completely hinder the proper use of the dwelling, and accordingly the tenant would not have signed the contract in the first place, or would not have paid the whole rent stipulated in the contract, if he/she had known about them.

The idea of hidden defect of a rented good existing in the Civil Code must be discussed in connection to the special provisions of Law no. 114/1996, which makes use of the term "convenient dwelling". This concept shows that a particular living space has to satisfy the user's requirement to cover all the essential needs - rest, cooking, education and hygiene – through its characteristics, facilities, and quality, ensuring the minimal requirements stipulated by Annex 1 of the Housing Law, as there were presented at the introduction of the report.

All these minimal legal requirements shall be offered to the tenant by the landlord upon handing over the dwelling. Moreover, the landlord needs to maintain them throughout the duration of the contract, by carrying out the repair work which is required of him/her.

The refusal of the landlord to comply with this obligation leads to his/her patrimonial liability, which can mean either that he/she has to offer compensation to the tenant, or

even the termination of the contract, since the dwelling does not satisfy the tenant's needs.

The law makes a distinction between hidden and surface defects, and it suggests that the landlord is responsible for hidden defects only. It is believed that, as far as surface defects are concerned, the tenant should take note of them upon taking over the dwelling.

The inventory signed by the parties, to be drafted based on the general regulations concerning lease contracts, offers a clear and true-to-life picture of the de facto state of the dwelling. Moreover, the tenant cannot claim that the dwelling has any defects that he/she did not notice upon taking over the dwelling even though he/she could have indeed noticed them, since art. no. 1821 of the Civil Code stipulates that the tenant must return the rented dwelling in the same condition in which he/she received it. The law presumes that the tenant receives the goods in an appropriate condition.

Regarding the surface defects that might come up during the period of the contract, the text of the Civil Code is a bit more difficult to grasp, with respect to the obligation of the landlord to make sure that the tenant can properly use the dwelling throughout the period of the contract.
We cannot make any distinction between the two categories of hidden and surface defects and the moment in which they occurred, as the legal text stipulates that "the landlord protects the tenant against all kinds of defects", even if the landlord was unaware of them at the time of signing the contract, and regardless whether they were there before or occurred during the lease. The main imposition is that these defects "must render the undisturbed use of the dwelling difficult or impossible".

Par. (2) of art. 1790 of the Civil Code does not stipulate that the landlord is to be held responsible for the surface defects that existed at the time of concluding the contract. Per a contrario, the landlord is to be held responsible for all other defects, either hidden or apparent, without making any distinctions, irrespective of when they occurred, apart from those which existed at the time when the contract was concluded and which the tenant did not mention.
Par. (2) of art. 1790 of the Civil Code stipulates the existence of a special responsibility that the landlord has regarding the defects that occur during the period of the contract which, through their nature, do not impede or diminish the proper use of the dwelling in the material sense of the word, but which endangers the life, health and physical integrity of the tenant. Chapter II, Section 2 of the Civil Code tries to reach this goal at a contractual level as well, forcing upon the landlord the obligation to ensure the continuous use of the dwelling, which should be both peaceful and useful, as well as adequate for the life, health and physical integrity of the tenant.

If the provisions of art 1790 par (2) of the Civil code regarding this part of the landlord's responsibility are supplementary (can be changed by contract provisions), the provisions of art. 1827 of the Civil Code regarding the defects that endanger the health or physical integrity of the tenant are bound to be taken into account by the landlord, and the tenant has the right to ask for the termination of the contract, as stipulated by the law, and for

recovery of damages, if he/she was not aware of the existing defects upon signing the contract.

In such cases, the landlord is subject to a more serious form of legal punishment, not limited to offering pecuniary compensation, like in the case of art 1790 par (2) of the Civil Code. It may also lead to the termination of the contract, with the tenant's right to ask for recovery of damages, even if the former gave up such rights in the form of the written contract if the defects of the dwelling threatened his/her health or physical integrity.

Moreover, art. 1827 of the Civil Code stipulates that both hidden and surface defects may threaten the health and physical integrity of the tenant, which means that the danger that these defects may have are related to the condition of the rented dwelling (e.g. contagious disease existing in the rented housing unit, foul smell, malfunctioning of the waste evacuation system which may lead to infection).

A distinction has to be made between the defect of the dwelling and the consent defect regarding the problematic dwelling, in order to establish which institution should intervene and which consequences should be suffered.

Unlike error, deception may target other elements of the act, which are not necessarily related to the substance of the dwelling or to the identity of the party involved. The defect of the dwelling is an imperfection which diminishes the tenant's possibility of undisturbed use, or which renders it unusable by virtue of its nature or its contractually stipulated destination. Its existence is legally punished through pecuniary compensation or through the termination of the contract. It does not mean that the punishment is conditioned by the defects which could end up affecting the substance of the good, although it is possible for the defects to affect the substance as well.

The hidden fault (e.g. when it is hidden by deception) of a dwelling may lead to a consent defect[121], if the defect has occurred prior to concluding the contract. The domain of the defects affecting the dwelling is wider than the one encompassing the consent defect. E.g. the consent defect does not necessarily include the hidden defect of an inhabiting space. The consent defect leads to the relative invalidity of the act, but if the tenant rented a dwelling which had defects or if the tenant neglected to look for them, the only possible outcome is compensation or termination of the contract.

- Examples: Is the exposure of the house to noise from a building site in front of the house or are noisy neighbours a defect? What about damages caused by a party or third persons? Is the occupation of the house by third parties such as squatters considered as a defect in the legal terms?

As we already shown, the landlord guarantees only for the de jure disturbances (only if a third persons claims a right over the dwelling) and not for the de facto disturbances (squatters etc.). Pursuant to the regulations of Art. 1793 of the New Civil Code the tenant

[121] The consent defects are circumstances which affect the freedom of consent to enter into a contract, entitling the person concerned to request its cancellation (e.g. error, deception, violence).

is liable to protect him/herself against de facto disturbances, save for the disturbances that have started prior to the asset's handover procedure that impedes the tenant to take over the asset.
Based upon the specific circumstances of each case the exposure to noise might be deemed to represent a defect of the dwelling, but such cases are to be reviewed by the court depending on several circumstances, for instance if the tenant has been aware of such defects when entering the housing lease contract.

- Discuss the possible legal consequences: rent reduction; damages; "right to cure" (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third parties) what are the relationships between different remedies; what are the prescription periods for these remedies

As per art. 1791 of the Civil Code, the tenant is entitled to pay a lower rent if the landlord does not eliminate the defects within the shortest time span. This means that the hidden and surface defects that occurred during the period of the contract only diminished the tenant's possibility to properly use the dwelling. The seriousness of the defects is discussed in relation to the intermediate cause of the renting contract, which is can determine whether the fault encumbers or only diminishes the proper use of the dwelling.
If the landlord repairs the defects of the dwelling, hence eliminating all defects that might encumber or diminish the use of the dwelling, the provisions stipulated by art. 1791 of the Civil Code are not in effect any more. The tenant may ask a court of justice to force the landlord to carry out the repair works in order to eliminate the defects and to keep the dwelling in good condition. At the same time, on the basis of art. 1788 par. (3) of the Civil Code, the tenant may carry out the repair works on behalf of the landlord, if the landlord does not take any action within a 30 day period once the tenant notified him/her in writing about the problem.

Based on art. 1827 of the Civil Code, the tenant is entitled to terminate the contract if the defects continue to pose a danger to the health of physical integrity of the inhabitants after the repair works.

According to art. 1791 par. (2) of the Civil Code, the landlord can be held accountable for the torts inflicted upon the tenant by the existing defects, even if the landlord was unaware of such defects upon concluding the contract, since his main obligation is to ensure the undisturbed and proper use of the rented dwelling.

The landlord does not have to offer recovery of damages to the tenant, if he/she can prove that he/she was not aware of the existence of any hidden defects and that, given the circumstances, he/she was not under the obligation to be aware of them.

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

In principle, the landlord does not have the legal right to enter into the rented dwelling without the consent of the tenant. Moreover, this protection of the tenant's right to use the dwelling is underpinned by criminal law.

As an exception to the principle mentioned above, according to article 1804 from the New Civil Code, the tenant is obliged to allow the landlord to examine the dwelling or to allow the access of the potential buyers or future tenants. According to article 33 of Government Decision 1275/2000, the landlord can check the dwelling in the presence of the tenant, between 7 am to 8 p.m, after a written notification. This legal provision is backed (using the expression reasonable intervals) by the New Civil Code.

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

Romanian law does not forbid the landlord to keep a set of keys, which is common in practice.

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

The landlord cannot lock a tenant out of the dwelling, because such an act of vigilantism is not legitimated by the Romanian law system. The legal methods to be used by a landlord to evict or to force execute the tenant will be detailed later.

- Rent regulation (in particular implementation of rent increases by the landlord)

  - Ordinary rent increases to compensate inflation/ increase gains

The change in the rent amount can occur in certain cases; a distinction needs to be made between the properties belonging to the State or administrative units (public or private propriety of the State) and those which belong to natural or legal persons (private propriety).

If the dwelling belongs to the State or to the administrative units, the rent amount is updated under the provisions of the law, to be adjusted by the annual inflation rate, stipulated in the governmental decisions until the 31st of January of each year [art. 27 par. (2) of the GEO 40/1999]. For the dwellings stipulated in art 26 of GEO 40/1999 (intervention housing, emergency housing etc.), rent increase can be required if the owner has not given up his right of property.

If the contractual parties mutually agree, they can insert in the contract a rent increase clause for certain circumstances. Moreover, the increase of the rent can also occur in the absence of a contractual clause, when the conditions for an unpredictable situation are met (art. 1271 of the Civil Code)

  - 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?

In the private rental sector, de lege lata, the contractual parties are free to insert a rent increase clause in the contract for certain circumstances. The rent increase can occur even in the absence of a contractual clause, when the conditions of the hardship/unpredictability clause are applicable (art. 1271 of the Civil Code detailed earlier).

• Rent increases in “housing with public task”

The rent increase can be requested for the contracts (regulated by art. 26 par. 1 from GEO 40/1999) concluded for a period of more than 1 year and which do not prohibit the rent increase (art. 35 fron GEO 40/1999). If the landlord requests a rent increase based on the improvements made to the dwelling or on the increase of the tenant’s income, he must indicate it in writing to the tenant through the judicial executor (art. 10 from the same GEO). If the expresses disagreement with the rent increase within 60 days, a judicial claim will be introduced to the competent court. The landlord (the State, the administrative unit etc.) cannot evict the tenant if he/she does not agree with the rent increase. But the landlord does have the right evict the tenant if he/she does not pay the rent for a 3 month period.

• Procedure to be followed for rent increases

In the public sector, the procedure is expressly regulated by GEO 40/1999 as shown above. In private rental housing, the situation is determined by the contractual clauses. If there is a contractual provision which allows the landlord to increase the rent (on the basis of objective criteria), it must be carefully applied. Otherwise, the only solution is a judicial adaptation of the contracts on the grounds of hardship clause regulated under article 1271 of the New Civil Code.

- 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])?

Sometimes a market rent value is necessary in order to obtain pecuniary compensations for the lack of use of the dwelling. This information is provided by the National Institute of Statistics or the value is calculated by the court to a specific area and characteristics by using the services of a certified expert. The rent value is generally set forth by the relation between demand and offer.

• Possible objections of the tenant against the rent increase

In the public sector, the tenant can be passive (not respond to the notification) and to oppose to the rent increase until the judicial claim is introduced. In front of the court the tenant can bring arguments regarding the groundlessness of the state/administrative unit/public institution request. However, if the court admits the grounds for rent increase, the only option the tenant has to oppose the increase is the termination of the contract.

In the private housing market, the opposition of the tenant can be expressed in the court: as an opposition to the judicial change of the rent or as a judicial claim against the rent increase on contractual grounds.

- Alterations and improvements by the tenant
  - Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?
  - Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?
  - Is the tenant allowed to make other changes to the dwelling?
    - in particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)?
    - fixing antennas, including parabolic antennas

According to article 1823 of the New Civil Code, the tenant has the right to compensations proved by justifying documents, for the necessary and useful renovations made to the dwelling, if they have been made with the prior consent of the landlord. In order to secure the compensations, the tenant benefits from a right of retention.

The judicial practice recognized the tenant's right of compensation at the time of the termination of the rental contract, by any of the methods stipulated by the law, because until the respective moment the tenant is the one who uses the value added to the building.
If the claim according to which the tenant could pretend the value of the ameliorations which exceed the inhabiting expenses were valid, it would favour a wrongful financial increase for the tenant. In such a case, at the end of the lease contract, the value of the renovations would be inferior (by their physical and moral usage) to the ones that the tenant has taken advantage (without any direct profit in favour of the landlord).

The improvements performed without the prior consent of the landlord give him the right to require the tenant to restore the dwelling to its original state; and it entitles him to require compensation for any damage inflicted upon the dwelling by the tenant.
Until the termination of the renting contract, the tenant does not have any clear, actual or determined right of claim regarding the value of the improvements made, so that he cannot benefit from a right of retention in order to guarantee the claim.

The tenant can also claim the payment of the compensations from the new owner, if the dwelling has been renovated during the period of the lease contract, regardless of the moment when these expenses have been made.
The tenants living in a dwelling redeemed to their former owners according to Law no. 10/2001 also benefit from the right of compensation for the value added to the housing unit by means of necessary and useful renovations.

By renovations, we legally understand the necessary and useful expenses performed or carried out on the dwelling unit or the common spaces, which increase the value of the property, and which are borne exclusively by the tenant. The value of the renovations is

established by an expert, by deducting the degree of usage of the renovation in a direct ratio to their lifespan from the updated value of the expenses borne by the tenant.

If the improvements made by the tenant are luxury expenses (for the personal pleasure of the tenant, i.e. those which do not include the necessary and useful expenses) the landlord can ask the tenant to undo them at the termination of the rental contract. In the same time, the landlord can choose to keep them, by paying to the tenant their counter value, averaged at the market price [art. 48 par. (1) of the Methodological Application Norms of Law no. 10/2001 modified by art. I of the H.G. no. 923/2010, republished in the Off. M. no. 640 of 13.09.2010]. The proof of the improvements is made by a specialized expert, and the court establishes the actual necessity and usefulness of the renovations, depending on other pieces of evidence provided.

- 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?

On the basis of the obligation to guarantee the tenant the proper use of the dwelling, the landlord is required to make sure that the tenant is able to properly use the dwelling. The landlord has the obligation to abstain from conducting any action that could hinder, diminish or encumber the proper use of the dwelling (art. 1789 of the Civil Code).

In the Romanian law, the import concept of "eviction" (evicțiune) has a different meaning. It can be defined as the loss in whole or in part, by the tenant of the right to use the dwelling as a result of exploitation by the landlord or by a third person of a right which excludes, in whole or in part, the tenant's right on same dwelling. To avoid confusion with the common meaning in other legal systems, we will try to use the concept of disturbances in this case.
Obligation to guarantee the tenant encompasses the obligation of the landlord to protect the tenant from disturbances (evicțiune), brought about either by the landlord, in terms of the article 1789 in the New Civil Code (the landlord is obliged to abstain from every behaviour that may impede, diminish or hinder the use of the dwelling by the tenant) or by third parties, in the terms of articles 1793, 1794 in the New Civil Code, as well as his/her obligation to notify the tenant about possible hidden defects of the dwelling.

In other words, the obligation of guarantee springs from the obligation of the landlord to refrain from causing any problems in fact and in law that might prevent the tenant from peacefully and effectively using the dwelling, or that might diminish or encumber said use.
The unnecessary change of the dwelling form or its destination, through the one-sided desire of the landlord, the building up of some structures which affect the dwelling and the adjacent spaces (i.e. the yard) by narrowing down the space, or the pollution of the environment, are considered to be an intrusion de facto, which calls for the responsibility of the landlord for disturbances (evic□iune).

In conclusion, in the Romanian law, the concept of “disturbances” (evicțiune) should be understood in a broad sense that includes any factual or legal disorder, produced by the landlord or by a third party. It is important to mention that in the case of an disturbance (evicțiune) produced by a third party, the landlord is forced to guarantee only for de jure disturbances. The tenant can protect himself/herself without the support of the landlord against the abusive intruders in the dwelling. But if the intruder claims a right regarding the dwelling, the landlord must protect the tenant against disturbances (evicțiune).

The landlord is obliged to carry out the repair works in order to mend the damages that occurred independently of his/her will (exceptional cases, force majeure, the age of the inhabiting space), which, if they are not carried out may seriously affect the building (art. 1803 of the Civil Code). The repair works mentioned above can limit the usage right of the tenant and can call for the responsibility of the landlord for the de facto disturbances (evicțiune), if the repair works take more than ten days. In this case, the rent can be reduced in proportion to the time interval of the works or to the part of the inhabited space that the tenant was deprived. In the same time, the rental contract can be terminated if, during the repair works, the inhabited space becomes unusable. Hence, the purpose of contract cannot be met anymore, as paying the rent would become irrelevant.

However, the landlord is not liable to compensate for whatever loss the tenant might suffer, if the repair works are imposed as a result of accidental damages or of force majeure, because the landlord cannot be rightfully held accountable for such damages.

As we already mentioned, when the disturbance of the tenant comes from the landlord, the distinction between the de facto disturbance and the de jure disturbance is irrelevant.

The disturbance of the tenant may also be indirect, resulting from the landlord’s conclusion of some legal documents with third parties, which impose the existence of some rights that may affect the tenant’s right to use the dwelling (e.g. he can conclude an usufruct contract with a third party etc.).

If the third party disturb the tenant, this is only as a consequence of the culpable conduct of the landlord who concluded the contract with a third party.

As we already showed, the disturbance of the third party may be de jure and the right invoked against the tenant may be connected to the actions of the landlord, who, before or after closing up the contract, passed down said right onto the third party at issue.

The landlord may be held responsible only if the third party invokes a certain right against the tenant, and not if the disturbance is de facto. Against the de facto disturbances inflicted upon him/her by the third party, the tenant can protect himself/herself, by making claims against the third party. However, the landlord has to protect the tenant from the disturbances caused by a third party (who does not claim any rights on the dwelling), whose disturbances are prior to the handing over of the dwelling (art. 1193 of the Civil Code).

Under these circumstances the provisions of art. 1794 par. (2) of the Civil Code are applicable. According to the article mentioned above, if the disturbance is so serious that if the tenant had known about it, he/she would have never signed the contract in the first place, a considerable adjustment of the rent or the termination of the contract can occur.

The landlord may be held responsible for a disturbance (evicțiune) which was executed by a third party only if the third party invokes a right upon the rented piece of properly, a right which could prevent the tenant's proper use of that place. The landlord has the obligation to continuously ensure the tenant's undisturbed use of the rented residential property throughout the duration of the contract.

The production of the disturbances (evicțiune) can take effect independently of the existence of a trial, if the tenant agrees to the claims of the third party involved. Under these circumstances, the guarantee against disturbance (evicțiune) of the tenant cannot apply.

In the event of a trial that discusses a right regarding the rented dwelling, the provisions stipulated by art. 1794 of the Civil Code become applicable and the landlord must protect the tenant.

The de jure disturbance provoked by a third party forces the tenant, on the grounds of art. 1794 of the Civil Code, to inform the landlord in due time about the claimed right, so that the landlord could protect him/her against any disturbance of the sort.

If the tenant, without informing the landlord, defends himself against the claims of the third party and he/she is unable to reject them, on the basis of art. 1795 of the Civil Code, he/she is under the obligation to offer compensations to the landlord for the torts inflicted upon him/her as a result of the tenant's refusal to inform him/her of the disturbances. An exception to the principle mentioned above is given by the case when the tenant proves that the landlord would not have won or, being aware of the disturbance, he/she would not have taken any kind of action.

- 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)?

We showed above the conditions in which the landlord can improve the dwelling without the tenant's consent. Naturally, the tenant can ask the landlord for compensation for the torts inflicted upon him/her as a result of his/her partial or total deprivation of his/her right to use the dwelling [art. 1794 par. (2) of the Civil Code].

If, during the trial, the landlord did not manage to diffuse the disturbances inflicted upon the tenant, irrespective of how serious they might be, the tenant is entitled to request a lower rent or even the termination of the contract, when the disturbance is so serious that if the tenant known about it, he/she would have never signed the contract in the first place [art. 1794 par. (2) of the Civil Code].

- 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.

Under the provisions of art. 1799 of the Civil Code, the tenant is obliged to use the dwelling "prudently and diligently", in compliance with the purpose stipulated in the contract.
This implies that the tenant will refrain from committing abuses in its use and that he/she will respect the purpose for which the good was rented. The abusive character of the tenant's behaviour will have to be sanctioned restrictively.

If the profession of the tenant is mentioned within the contract, the consent of the landlord is needed for carrying out the profession (e.g. liberal arts, handcraft) in the dwelling. However, the dwelling cannot become the headquarters of a political party or the premises for commercial activity.The judicial practice has concluded that we can talk about a change in the purpose of the inhabited space only when the dwelling is used for commercial purposes and not when the dwelling, rented under the provisions of the lease legislation, also represents the premises of a trading company (just a company seat, without carrying out real commercial activity). A company seat, as an identifying attribute thereof, is meant to localize it spatially, and to establish the legal relationships of the company, and it can differ from the place where the company is carrying out its activity.

The abusive use of the dwelling entails the change of its shape and purpose without the consent of the landlord. The provisional works executed by the tenants or cohabitants for facilitating its use do not constitute a transformation of the structure of the dwelling, so the consent of the landlord is not needed for these works. The consent of the landlord in order to change the purpose or the structure of the dwelling is needed when their rights, i.e. the property rights or the inhabiting rights, would be affected by the transformations or the planned works.

The legal interdiction to carry out constructional alterations takes into consideration the protection of the landlord's property right. The propriety right cannot be disturbed by starting constructional works which are not circumscribed within the limits of the tenant's right of use stipulated in the rental contract.
The parties can freely agree about the tenant's right to keep animals in the rented dwelling.

The legal sanction for the breach of this contractual obligation of the tenant to respect the intended purpose of the dwelling space is the termination of the rental contract at the request of the landlord and the payment for the recovery of damages (art. 1800 Civil Code).

There are even special laws which ratify this interdiction. Under the provisions of art. 13 of GEO 40/1999, the tenants living in nationalised buildings whose intended purpose

was habitation, who have changed the function of the building without the prior consent of the owner, could not benefit from the legal prorogation of the renting contract or the rightful renewal thereof, and they could be evicted at the request of the building's owner.

The termination of the contract can apply even in the case of a partial alteration of the functionality of the rented space.

The alteration of the purpose of the dwelling can be carried out only with the formal consent of the landlord, or under the provision of a contractual clause to this end. The extent to which the change of the aspect or the functionality of the dwelling, approved by the landlord, affects the aspect or the functionality of the common property, the consent of the flat owners' association is also required, as well as a favourable notice on the side of the owners or the renting contract holders of the dwellings neighbouring the space whose functionality is subject to altering.

- Is there an obligation of the tenant to live in the dwelling? Are there specificities for holiday homes?

The tenant's obligations were already detailed and, among them, there is no rule which forces the tenant to live in the dwelling; nonetheless, he/she cannot use the rented dwelling for a purpose other than the one permitted by the rental contract. Moreover, the rules mentioned above (the Romanian tenancy law) do not apply to the holiday home (it is not included in the definition of the dwelling).

- Video surveillance of the building

Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?

The video surveillance of the common spaces is not illegal if this measure is a result of a legal decision (a decision of the Owners/Tenants Association) and a warning announce is displayed. The cameras placed on corridors are usual especially in new buildings and it is appreciated that they do not violate the tenants/landlords right to privacy.

6.6 Termination of tenancy contracts

	Private rental	Public rental	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Mutual termination	YES	YES	-
Notice by tenant	YES	YES	-
Notice by landlord	YES	NO	-
Other reasons for termination	YES	YES	Private rental, public rental

- Mutual termination agreements

- Notice by the tenant
  - Periods and deadlines to be respected
  - 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)?
  - Are there preconditions such as proposing another tenant to the landlord?
- Notice by the landlord
  - Ordinary vs. extraordinary notice in open-ended or time-limited contracts; is such a distinction exists: definition of ordinary vs. extraordinary (= normally related to fundamental breaches of the contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)
  - Statutory restrictions on notice:
    - 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
  - Requirement of giving valid reasons for notice: admissible reasons
  - Objections by the tenant
  - Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?
- 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

- Termination for other reasons

- Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)
- Termination as a result of urban renewal or expropriation of the landlord, in particular:
  - What are the rights of tenants in urban renewal? What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?

Main rules

According to the New Civil Code (NCC), if one of the parties to the lease contract does not meet the obligations that derive from this contract, without any solid grounds, then the other party has the right to terminate the contract.

The landlord may ask the court to terminate the contract when the tenant or his/her cohabitants behave in such a way that the cohabitation with other parties who occupy the same or neighbouring dwellings becomes impossible, or when the tenant hinders the normal use of the dwelling or of the common parts.

Article 1830 par (1) of the NCC gives the right to the party of a lease contract to terminate the contract when the other party, without any solid grounds, does not comply with the obligations which arise from said contract. Of course, under the provisions of the norms of common law, the party who requests the termination of the renting contract has the right, under specific circumstances, to request recovery of damages, in conformity with the law.

The termination of the rental contract may be requested if one of the parties does not comply with one or more of the obligations which arise from the contract; or even if failure to comply on the part of the debtor is not of great importance, but happens recurrently, all other counter stipulations are regarded as void [see comments to art. 1817 and art. 1551 par. (1) thesis II and III of the NCC]. We note that the old regulations [art. 24 lit. b) and c) pertaining to Law no. 114/1996] stipulated that the rental contract could be terminated if the tenant failed to meet certain obligations expressly stated in it, sometimes at the request of the home owners' association, or if the tenant happened to breach the clauses stipulated in the contract.

As we already shown, the landlord-creditor may request the enforcement of the tenant's obligation to pay rent on the basis of the lease contract concluded in front of the notary public, or registered at the fiscal authorities.

The abusive behaviour of the tenant. Termination of the contract.

Art. 1830 par. (2) of the of the NCC stipulates that termination of the rental contract occurs if the tenant, the members of his/her family or the persons who the tenant allowed, in any way, to use or have access to the inhabited space:

- have a behaviour that makes impossible the coexistence with others who live in the same building or buildings in the vicinity;
- prevent/hinder normal use of the dwelling or the common parts.

The text seems to convey that, in these cases, the termination of the contract is always a judiciary termination of the contract (disposed by Court).

The legal practice which arose from previous regulations [art. 24 par. (1) lit. b) pertaining to Law no. 5/1973 and art. 24 lit. b) line 3 pertaining to Law no. 146/1997] – similar, in essence to that of art. 1830 par. (2) of the NCC – stipulated that the termination of the contract may become effective only if it can be proven that the normal use of the

dwelling is hindered by the tenant. But the termination of the lease contract cannot occur solely for impeding cohabitation, or if the conflict is not caused exclusively by the tenant.

Behaviour which makes cohabitation impossible exceeds the limit of a regular use if it is abusive towards the cohabitants, e. g. making noises which constantly bother cohabitants, creating perilous situations for the other inhabitants of the condominium, conducting some acts of immoral nature which other parties can witness and which are considered to hurt public morality. If said acts are performed by one cohabitant only, all the other parties whose names appear in the rental contract behaving in a proper way will not be affected by the contract termination, and may continue to inhabit the dwelling at issue.

In the New Civil Code system, the lease contract can be terminated whether the abuse is committed by the tenant or to any of the persons mentioned in art. 1830 par. (2) NCC (the persons who the tenant allowed, in any way, to use or have access to the inhabited space). In addition, the termination of the contract and the eviction of the tenant are opposable and executed against all persons living with title or without title, along with tenant.

According to art. 1824 NCC, titled 'The renting without establishing the duration thereof:

(1) When the rental contract has been concluded without establishing the duration thereof and it hasn't been stipulated otherwise, the tenant can terminate the contract by a prior notice in a term which cannot be shorter than a quarter of the period for which the payment of the rent has been set. Exempli gratia, if the payment of the rent is set for a period of a month (monthly rent payment) the term of prior notice can not be shorter than 8 days.

(2) In the case stipulated in par. (1), the landlord can denounce the contract by a prior notice in a term which cannot be shorter than:

a) 60 days, if the time period for which the payment of the rent has been set equals or exceeds one month;

b) 15 days, if the time period for which the payment of the rent has been set is shorter than one month.'

The unilateral termination of the renting without establishing the period thereof

Article 1824 of the New Civil Code establishes the right of any of the contracting parties to terminate unilaterally, by legal notice, the lease contract concluded without establishing the period thereof.

If the notice deadline is not respected the notice of terminating the contract will take effect only when that deadline would be met.

According to the New Civil Code, the parties can not give up to the notice deadline and they can not stipulate a service/other performance in exchange for the unilateral termination of the contract .

The tenant has the obligation to meet a notice deadline, which cannot be shorter than a quarter of the period for which the payment of the rent has been set. The parties can also agree on a longer notice than the one imposed by the provisions of art. 1824 par. (1) of the NCC.

In order to ensure an enhanced protection of the tenant, art. 1824 par. (2) of the NCC establishes the following notice deadlines which the landlord has to abide by in the case of a termination of the rental contract without establishing the period thereof: 60 days, if the time period for which the payment of the rent has been set is one month or longer; 15 days, if the time period for which the payment of the rent has been set is shorter than one month.

Under the influence of the old regulation, which did not clearly stipulate the right of the parties to denounce the rental contract without establishing the period thereof, the legal doctrine and practice has allowed, by virtue of the general rules on lease, the possibility for the parties to denounce the rental contract unilaterally.

The rental contract – enforceable title for the obligation to give back the inhabited space.

We believe that in applying the general rules which govern the common law lease contract, and the rental contracts (without establishing the period thereof or with a pre-established period), verified by legal documents or, should there be the case, in the form of written private consents and registered by the appropriate fiscal bodies, they are given enforceable authority regarding the inhabited space restitution obligation, in the case when they cease to operate because of the denunciation, or the expiring of the deadline, respectively.

According to art. 1825 NCC, entitled the denunciation of the renting for fixed terms:

(1) If the renting is for fixed terms, the landlord can unilaterally denounce the contract by legal notice, and he has the obligation to meet a notice deadline of at least 60 days. Any contrary clause is taken as not stipulated.

(2) In the case when the renting is for fixed terms, and it has been stipulated within the contract that the landlord can denounce unilaterally the contract in order to satisfy his personal dwelling needs or that of his family, the notice deadline for this denunciation is established in compliance with the provisions of art. 1824 par. (2).

The unilateral termination of the renting for fixed terms.

Article 1825 of the NCC grants the tenant the right to denounce unilaterally the contract and it regulates the notice deadlines which the tenant and, respectively, the landlord have to abide by (in the case of the unilateral termination in order to satisfy his personal dwelling needs or that of his family).

We consider that, by virtue of the general rules and unlike in the case of the rental contract without establishing the period thereof, in the case of the rental contracts for fixed terms, the parties can stipulate a service/performance in exchange for the unilateral termination, which has effects only if the service is executed.

The right of the tenant to unilaterally terminate the rental contract.

The tenant can terminate unilaterally the rental contract by legal notice, provided that a notice deadline of at least 60 days is met. Given the public order character of the rule, the clause by means of which the parties exclude the denunciation right of the tenant or by which they establish a notice deadline shorter than 60 days is taken as not stipulated. The tenant does not have to motivate the renting contract cancelation (to explain the reasons of his decision), but he cannot terminate the contract for the non-execution of the obligations by the landlord without a justification, in which case he can obtain the termination of the contract.

The tenant can terminate, given the aforementioned terms, not only the initial contract, but also the amended contract or the one for which a legal prorogation has been established as in the last case, as maintained in the judicial practice, the prorogation is established in the best interest of the tenant, who can waive this right.

The tenant does not have to pay any compensation interest for the denunciation of the renting before the deadline thereof, but he/she could be obliged to pay the rent by the end of the date of the notice deadline, even if he leaves the dwelling before that date.

The right of the landlord to terminate the contract.

Article 1825 par. (2) of the NCC stipulates that the minimum period for the unilateral notice in the case of a contract for fixed terms in order to satisfy his personal dwelling needs or that of his family is

(a) 60 days, if the time period for which the payment of the rent has been set is one month or longer,
(b) 15 days, if the time period for which the payment of the rent has been set is shorter than one month.

In our understanding, by virtue of the general rules applicable to the unilateral termination of the contract, the landlord has the right to unilaterally revoke the contract in other cases than the one stipulated in art. 1825 par. (2) of the NCC. The contract also establishes the terms in which the revocation is carried out (the reasonable notice deadline; the stipulation of the execution of a service in exchange for the denunciation).

We consider that, in the sense of the provisions of art. 1825 par. (2) of the NCC, the notion of family, whose boundaries will be, of course, configured by the judicial practice, should include the spouse, the children and the parents, including those of the spouse, as well as other members of the family of the landlord, if they live constantly within the same household with the landlord. We would like to reinforce that in terms of housing law, the notion of family has benefited from a broad definition by means of the provision

of art. 32^1 of the GEO no. 40/1999, which is applicable, however, only to the rental contracts governed by this special legal act.

In the case when the landlord denounces the renting in order to satisfy his dwelling needs, the tenant, in order to maintain his right of use, can go to show that the landlord and his family have at their disposal an appropriate inhabiting space, which meets the minimal requirements stipulated in Annex 1 of Law no. 114/1996.

Satisfying the dwelling needs (of the landlord or of the husband, of the parents or of the children of any of the aforementioned) has also served as grounds for the refusal of the renting contracts renewal governed by the GEO no. 40/1999, which could be carried out under restrictive terms [see art. 14 par. (2) letter a) and par. (3) thesis I and art. 17 of GEO 40/1999 – currently abrogated and, at the same time, inapplicable to the rental contracts unfolding at the time of the enforcement of the new Civil Code].

6.7 Enforcing tenancy contracts

	Private Rental	Public Rental	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Eviction procedure	YES	YES	The same
Protection from eviction	YES	YES	Public rental, private rental
Effects of bankruptcy	-	-	-

- Eviction procedure: conditions, competent courts, main procedural steps and objections

According to the New Civil Code, if the law does not stipulate otherwise, the eviction of tenant is to be carried out on the basis of a court order. The tenant has to pay the rent stipulated in the contract until the tenant leaves the dwelling, as well as to repair all damages brought upon the landlord's property until then.

As a way to protect the tenant and to guarantee his/her right of usage, the eviction of the tenant can only be carried out through a court order, on the basis of the procedural dispositions of the common law [art. 1831 par (1) partially reiterates the rule of principle already established, in the prior regulation system, by the provisions stipulated in art. 25 par. (1) pertaining to Housing Law no. 114/1996, according to which the eviction of the tenant could only be carried out through an unrepeatable court order].
However, as opposed to previous regulations, the provisions stipulated in art. 1831 par. (1) of the of the NCC does not officially decide upon the character of the court order, which leads us to believe that the eviction of the tenant may be carried out on the basis

of a temporary enforceable court order (for instance, the decision of the court of first instance regarding possession – art. 442 par. (1) pt. 8 of the NCPC, eviction decision – art. 1027 of the New Code of Civil Procedure, presiding judge's eviction.

As an exception to the rule, the eviction of the tenant may be carried out through a presiding judge's order, in clear and limited cases stipulated by special regulations [see, for instance, the provisions of art. 10 par. (3) 2nd thesis and those of art. 11 par. (2) pertaining to GEO no. 40/1999], as well as when the restrictive admissibility conditions stipulated by the procedural regulations of common law are carried out. The jurisprudence established that the procedure relative to the presiding judge's order can be used when the eviction of a tenant who abusively occupies a dwelling (or who does not hold a legal title is to be enforced. The eviction of a tenant, as a temporary measure, may be enforced, by means of a presiding judge's order, if this proves to be necessary for the carrying out of some kind of mending or renovations which, under the provisions of the law, fall under the responsibility of the landlord.

Additional procedural provisions

The New Code of Civil Procedure, which applies from 15th of February 2013, includes some legislative solutions meant to ensure a well-balanced safe-guarding of their rights and interests of the parties to the residential lease contract.

Art. 1039 of the New Code of Civil Procedure (NCCP) regulates the cases when the tenant or the occupant, after being notified according to the procedure stipulated under art. 1037-1038 of the New Code of Civil Procedure (through an officer of the court), willingly leaves the dwelling. Under these circumstances, the owner or landlord may resume possession of the dwelling, de jure, without needing any kind of legal eviction procedure. Voluntary eviction which translates into leaving the dwelling, without drawing up a formal transfer protocol is very dangerous for the former tenant because, upon taking over the dwelling, he/she did sign such a transfer protocol. In this case, it will be impossible for the tenant to prove that he/she has left the dwelling in the exact same condition in which he/she received it.[122]

If the tenant does not voluntarily leave the dwelling, the eviction may be carried out, as per the regulations of art. no. 1831 of NCCP, only by means of a court order. The eviction court order may be opposable and is effective to all parties who live together with the tenant, with or without a right to do so, according to art. 1832 par. (2) of the New Civil Code.

Additionally, according to art. 1040 of NCCP, if the tenant or occupant who has been notified of the eviction refuses to leave the dwelling, or has given up on his/her right to be notified and has lost, on any grounds, the right to use the dwelling, the landlord or the owner will ask the court to carry out, by means of a court order, the immediate eviction of the tenant or occupant at issue, on the basis of lack of right to keep using the dwelling.

[122] A.P. Dimitriu 'Corelatii. Explicatii'. in Gh. Piperea et al. Noul cod de procedura civila. Note. (Bucharest: Editura Ch Beck, 2013) 1001.

The law stipulates that the court may receive an eviction demand from a landlord or owner only if the tenant or the occupant of the dwelling has been notified of this, as per art. 1037-1038 of NCCP (through an officer of the court, in a 30 days' time-frame). Under such circumstances, if a notice has not been sent to the tenant, on the basis of art. 1037-1038 of NCCP, the eviction process could be dismissed on grounds of having been prematurely requested.

The eviction is not prematurely requested if, in accordance to the stipulations of art. 1037 par. (4) of NCCP, the tenant has given up, in writing (ad validatem) on their right to be notified of the eviction. The landlord's right to immediately evict the tenant by means of a court order is, hence, acquiesced.

Particular cases when the eviction of a tenant can be carried out, as they appear in the law:
Par. (1) of art. 1831 of the NCC, by making use of the phrase "if the law does not stipulate otherwise", the possibility of enforcing the eviction decision on the grounds of a non-jurisdictional act is not excluded.

We believe that the forced eviction of the tenant, as well as of those who live, with or without a title, together with the tenant, may be carried out on the grounds of the rental contract, by virtue of the common law regulations concerning the lease contract stipulated in art. 1809 par. (2) and (3) and in art. 1861 par. (3) of the NCC, applicable to dwelling rental contracts as well.

The obligation to pay the rent and to repair the damages inflicted upon the property

Par. (2) of art. 1832 of the NCC states that paying the rent agreed upon in the contract up to the moment in which the dwelling is vacated falls under the responsibility of the tenant. At the same time, if there are any kinds of damages brought upon the piece of property, irrespective of their nature, the tenant must repair them before vacating the property.

The moral damage caused to the landlord by the impossibility to use the dwelling, during the period between the date of the contract termination and the actual time when the dwelling becomes available, is evaluated by the law maker in a direct ratio to the rent stipulated in the contract.

- Rules on protection ("social defences") from eviction

Regulations protecting the tenant

For humanitarian and social security reasons, the New Code of Civil Procedure [art. 885 par. (1) of the New Code of Civil Procedure] sets up, in principle, regarding the direct real estate forced execution, the interdiction to evict the tenants from December 1st each year until March 1st of the following year [for the cases when the eviction is to be carried

out within the aforementioned time-frame, as stipulated by the provisions of art. 885 par. (1) in fine and par. (2) of the NCPC]. [123]

Regulations protecting the landlord

The landlord can make use of the provisions stipulated by art. 877 par (2) of the NCPC, according to which the assignment through a court order of a dwelling or the obligation to hand it over, to leave it for someone's possession or use, as the case might be, also encompasses the obligation of eviction of respective dwelling.

As a protection measure that favours the creditor's obligation to return the rented dwelling, the provisions of art. 891 of the New Code of Civil Procedure were enacted. According to these provisions, if the debtor moves in again or abusively occupies, without any title, the dwelling from which he/she was evicted or which he/she was forced to hand over to the creditor, the tenant can be evicted again at the request of the owner or of another third-party interested in the dwelling, on the grounds of the same enforceable title, without any kind of summons or other preliminary formality.

- o May rules on the bankruptcy of consumers influence the enforcement of tenancy contracts?

The Romanian legislation does not regulate the bankruptcy of the consumers. Moreover, the Romanian Courts rejected any request from the consumers which wanted to be protected by the bankruptcy law. Therefore, the only solution for the tenant is to apply hardship clause under art. 1271 NCC (unforeseeable situation) or to apply any contractual clause concluded in this purpose.

6.8 Tenancy law and procedure "in action"

Preliminary notice: To the extent that scientific sources are lacking, reporters are welcome to use any evidence (also newspaper articles, online sources, private interviews or even their own experience and opinion) in this section.

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?

1. The associations of landlords

The governance and maintenance of the huge private multilevel stock in urban areas is entirely in the hands of the private sector. Homeowners' associations contract with private management companies and organize the long-term repair and maintenance of buildings, in accordance with homeowner's associations' regulations.

[123] Ghinoiu, Decebal-Adrian, in Flavis Baias (coord), The New civil code. Articles analyses (Bucharest: CH Beck Publishing, 2012)

Law no. 230/2007 regulates the setting up, organization and operation of owners associations. The document defines a homeowners association as a nonprofit organization for managing and improving a multilevel housing building. Homeowners' associations represent and support the joint interests of the owners regarding the use of assets under common ownership in a condominium.

The association may be managed by natural or legal persons, associations, public agencies, or specialized companies. In each case, however, the management is to be appointed by and under the control of the joint owners, in whose interest it operates. By the present date, the majority of owners' associations has appointed housing managers, in most cases one of the owners. Professional housing management companies are not widely established yet, but do exist.

The members of the homeowners' association have the right to participate and the right to vote in the general meeting, the right to apply for, to choose and to be elected into the organizational structure of the homeowners association. The revenues from the use of the common parts belong to the homeowners association. These revenues are added to a special fund of the association for repairs and investments regarding the common parts and are not paid to the owners. The owner has the duty to maintain his individual property in a good condition, at his own expense. No owner can break, affect or harm the individual or common property right of other owners.

The major obligations of the housing manager from a multilevel housing building are to:

1. Administer the assets and funds;
2. Prepare the contracts with all suppliers of services;
3. Inform all inhabitants in the building as regards the regulations governing their cohabitation;
4. Represent the owners' interests in contracts signed with the public authorities and fulfill any other legally contracted responsibilities.

The law stipulates that owners' associations may associate in federations, unions, leagues of the owners' associations at local, regional or national level. Currently there are two main such organizations established at national level:

- Habitat League of Romania (The League of Homeowners Associations, Habitat) – is a non-profit federation of Romanian homeowner associations and tenant associations. Habitat provides guidance to local communities in the areas of housing association operation and sustainable development. The organization has a wide range of cooperation projects with the central and local administrative authorities (different ministries, city and town halls, police departments, housing services' regulation agencies and providers) and international organizations. The goal of Habitat League is the promotion of fair and equitable relations between the citizens and official authorities. Over 12,000 housing associations from all around the country are members of this organization. See also www.habitaturban.ro

- The Federation of Homeowners Associations from Romania – www.fapr.ro

2. The associations of tenants

According to art. no 37 of Law no. 114/1996 (the Housing Law has been partially abolished, but this article remains in force), the tenants of buildings comprised of more than one dwelling may associate with other tenants, in accordance with the law, so that their interests may be represented when it comes to the relationships that get established between them and the landlords or other natural persons and corporate bodies.

Hence, the role of tenants' associations is that of representing the interests of the tenants when it comes to the relationships that get established between them and the landlords.

Unfortunately, these associations are not very frequent in Romania (they usually get established when quite a lot of tenants live in the same building) and are not very powerful. However, there are actual cases when large tenants' associations have an impact upon the Romanian society. For instance, we need to mention the case when more than one thousand ANL tenants (tenants of National Housing Agency) coming from three Transylvanian districts formed up an association which came forth with a proposition which was forwarded to the Ministry of Tourism and Regional Development. What the tenants requested was to buy the ANL apartments, paying in installments directly to ANL.[124]

According to the source we cited, the founding members of the association realized that they could not afford to get a bank credit in order to purchase the apartments they inhabited and that they had to join forces in order to persuade the authorities to approve of their proposition.

Establishing more tenants' associations would have a positive effect on the Romanian market and it would ensure respect for the tenants' rights and could also discourage tax evasion among landlords.

- What is the role of standard contracts prepared by associations or other actors?

By and large, there are no standardized contracts drawn up by these associations (either by the tenants or by the owners). However, there are some standardized contracts put together by real estate agents. Their purpose is to help the clients (both tenants and owners) and to accelerate the process of signing the lease contract, and hence ensure the agency's commission income. In general, these contracts are faithful copies of the existing legal dispositions. They need to include some personal data about the parties at issue, the amount of rent that needs to be paid, and the deposit which the tenant also has to pay. Despite all this, the parties at issue may agree upon a different kind of contract.

[124] http://www.wall-street.ro/articol/Real-Estate/118600/asociatie-anl-cumpara-apartamente.html#ixzz2YZ4S9ppL

When a landlord is a professional and the tenant is an individual consumer, then the contract is subject to the provisions pertaining to the law dealing with consumer's protection.

- 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?

Although NCCP and the Law on Mediation (Law no. 192/2006) stipulate that mediation is possible (before an authorized mediator), in practice this possibility is almost completely ignored.

By and large, quite a few litigations are resolved (see next section: litigations were often quit as they risked dragging on for years and turning out extremely expensive for the litigants). The main reason is that, in order to avoid the stipulations of the existing tax law (the income tax), the owners do not conclude a written contract. This means that there is no way of proving that there are any kinds of contractual obligations at stake. Another reason is that litigations take too long to get resolved. Therefore, the regulations which stipulate that the renting contracts registered by the tax authorities serve as enforceable titles and the introduction with February 15th 2013 of the fast procedure from the NCPC, detailed above, are more than welcome.

All the issues we have previously mentioned take into account the cases when the tenant chooses to move out without carrying through his/her obligations (i.e. paying the rent). With respect to the eviction of the tenants, a court order is obligatory. However, if the existence of a contract is acknowledged (even if the contract is a verbal one), the whole process is faster and less complex. To this effect, the New Code of Civil Procedure regulates the existence of evictions under special circumstances. If there is no contract, the landlord who has not been diligent (in order to commit tax evasion) will be able ask for the eviction of the tenant under the provisions of the common law (drawn up by an owner against a non-owner), which is more complex (the written notification is transmitted by the bailiff etc.).

At the same time, when it comes to more complex litigations (i.e. the renovations made by the tenant, the non-compliance with the right of preference), the role of the court is paramount, given the fact that alternative means of resolving such issues are not very popular yet.[125]

- 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)?

[125] They are, however, common, when it comes to litigations among professionals.

The procedure newly introduced through the New Code of Civil Procedure (which is faster that the de jus commune[126] one) became effective as of February 15th 2013, and accordingly only limited practical experience is available regarding its impact. Before this regulation, the litigants met with some difficulties; a trial, before irrevocably ending, could have gone on even for several years on end. This is why the parties often gave up any demands they might have had so that they would not waste time and money on a probable but not certain solution.

According to the NCCP procedure, after validating the rental contract which has been registered by the revenue authorities which decides whether said contract functions as an enforceable title, and after giving up on the now-redundant summary judgment, the forced eviction is carried out, so that the inhabited space is transferred back to its rightful owner or so that the rent is paid. However, if the contract was not registered by the revenue authorities or if it was not signed in front of the notary, as well as if the litigation tackles issues other the payment of the rent or the restitution of the dwelling, the litigation will take place under the regulations of the common law (which can take quite a while) or under the provisions of the special procedure regulated by art. no. 1040 of the New Code of Civil Procedure (eviction and payment of the rent if the contract was not registered by the revenue authorities).

Of course, if we were to talk about more complex trials (i.e. compensations for the renovations of the inhabiting space) the litigation could take longer even today, as there is no special and shorter procedure at the time.

- 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?

Free access to the legal system is stipulated by the Constitution, as well as by other legislation than the Constitution itself. Hence, there are no legal obstacles for any of the parties to come before the law. However, at least until the new regulations are enforced, the excessive amount of time that litigations can take encumbered the parties and made it difficult for them to address their issues to the court. At the same time, we need to mention the fact that the predictability of the legal act is affected, irrespective of the domain in which it may come about, given the limited power that judicial precedence has.

Romanian law does not make any provisions regarding possible insurance/surety upon entering litigation. It does make some provision for certain special cases, such as suspension of forced execution. However, the costs of going to trial are:

i) a stamp duty (e.g. in order to carry out an eviction on the basis of a special procedure, it amounts to 100 lei/approx. 25 EUR, and for getting back a particular sum of money, it amounts to up to 8% of that amount of money)

[126] Jus communae is represented by the general law by which special laws derogate. In the Romanian tenancy law, jus commune is represented in the present by the New Civil Code. There are special provisions in GEO 40/1999, New Civil Procedure Code, Law no. 10/2001 etc.

ii) the lawyer's billable hours and, if need be, those of the experts sent out by the court (e.g. an expert sent out by the court to evaluate the renovations of the inhabiting space)
iii) payment of all legal costs (including those of the adversary) if the litigation is lost.

As we can see under iii), if one wins the litigation, all legal costs are covered by the adversary. At the same time, the law stipulates that, if one of the parties cannot afford the legal costs, some legal public help becomes effective (e.g. dispensation, deduction or lag of the stamp duty or, in some rare cases, the appointment of a lawyer designated by the Bar, etc.)

- How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)

As previously shown, the predictability of the Romanian judicial act has to suffer. However, the judge will preside in accordance with the law which, at least after the new codes have become effective, is clear and accessible. Of course, understanding the law and implementing them onto the formal procedural papers (summons) is easier for those who have been trained in this line of work (i.e. lawyers), but the parties may represent themselves, having clear access to the law and the court.

- 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)?

This practice is common regarding the sale-purchase of the dwellings. We do not have information about its extension to the rental sector.

- Are the areas of "non-enforcement" of tenancy law (such as legal provisions having become obsolete in practice)?

Having in mind the fact that these regulations are quite new, one cannot talk about the desuetude/non-enforcement of these regulations. At the same time, even before such regulations came into being, the problem was not their desuetude/non-enforcement, but the fact that they did not exist.

- What are the 10-20 most serious problems in tenancy law and its enforcement?

The most serious problems in tenancy law and its enforcement are:

1. Rent payment (unpaid rent);
2. Utility cost (the tenant does not pay the utilities);
3. At the contract maturity the tenant requests the value of the improvements and, therefore, a judicial dispute is started;
4. The landlord loses his propriety right (most of the litigations are started in the ground of the restitution law);
5. Other reasons for eviction: maturity of the contract, the improper use of the dwelling;
6. The duration of the disputes (there are legal improvements in this matter).

- What kind of tenancy-related issues are currently debated in public and/or in politics?

The main public issue regarding the tenancy law is given by the changes made to the Fiscal Code. According to these novelty elements, the landlord who registered the contract to the fiscal authorities is forced to pay a health contribution/tax (5,5%), applied to the rent income.

This regulation stopped the trend of the landlords to register the lease contracts (due to the fewer formalities to force the eviction of the tenant).

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

First of all, we would like to mention that it is very difficult to develop such an analysis, since there are only few recent literatures available, particularly in the field of housing policies and law.

At the EU level there is no legal basis for a common design of housing policies. Therefore this policy field is generally the responsibility of the individual Member States. Anyhow, for quite some time the EU legislation has influenced the housing policy of the Member States (Mundt, 2006; Elsinga et al., 2008; Boccadoro, 2008; Ghékière, 2008; Gruis and Priemus, 2008; Amann, 2008).

We believe that it is necessary to be aware of the variety of housing market models in place in all EU countries.

In several articles, Jim Kemeny has developed a classification to distinguish national housing policy schemes based on the relation between private and social rental markets in a country. He distinguishes between three types: dual, unitary and integrated rental markets.

All national housing systems have been developed independently for decades and decades. Even within the European Union there has been no formal attempt of markets unification. Changes in housing policy have been the result of overall trends, not of a common policy. In this way housing policies in the Member States aim at quite different targets.

Moreover, housing policy schemes are political concepts. Therefore they are not only designed with the objective of scientific efficiency, but reflect quite significantly the political philosophy behind them.

Nonetheless, the European Law affects certain areas of both housing policies and rental policies. But, at the same time, it is difficult to draw a delimitation line between these two categories of policies.

7.2 EU policies and legislation affecting national tenancy law

With only a few exceptions, there has been little effect of the EU regulation on the Romanian tenancy laws.

The first example is the Law 159/2013 for amending and completing the Law 372/2005 regarding the energetic performance of buildings, which draws provisions from the Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings. It stipulates that, whenever a tenancy contract is closed, the landlord is obliged to present the tenant with the energy efficiency certificate of the building and dwelling, in original or copy. The signature of the tenant is necessary at the time that the certificate is shown and taken over. In the case that the leasing is made by means of media, the energy efficiency index provided in the energy efficiency certificate has to be clearly highlighted.

The EU Charter of Fundamental Rights stipulates in art. 34 the right to decent living conditions, including decent housing. In the field of anti-discrimination, the EC Directive 2000/43 provides protection against discrimination in access to goods and services, including housing. This Directive requires EU Member States to provide efficient sanctions and remedies.
The national housing legislation does not include specific articles referring to discrimination. The national anti-discrimination legislation stipulates in art. 1 the right to property and the right to decent housing[127]. In terms of statistics, there are no official data on discrimination in the housing field against Roma; we only have NGOs and media reports[128]. An Amnesty International report on housing in Romania[129] concludes that there is no legal protection against forced evictions of Roma in Romania and they are often left in sub-standard housing conditions.

Private international Law and EU regulations and directives are relevant for contracts closed among different nationals on Romanian territory. They are applicable in cases of conflict to clarify obligations, jurisdictions, recognition and enforcement if civil judgements.

The consumer law and EU tax law do not have any impact on the tenancy law so far in Romania. Tenancy contracts are assumed to be private agreements or agreements between state or municipalities and private persons. Thus, the landlord is not seen as a service provider so that the consumer law does not apply here.

127 http://legislatie.resurse-pentru-democratie.org/48_2002.php
128 http://www.non-discrimination.net/countries/romania
129 http://www.amnesty.org/en/news-and-updates/report/romania-legal-system-condemning-roma-poor-housing-2011-06-23

7.3 Table of transposition of EU legislation

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT
CONSTRUCTION		
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJEU 30.4.2004 Nº L 134/114)	Government Emergency Ordinance no. 34/2006, modified and completed by several acts, including GEO no 35/2013 and Law no 193/2013 Government Decision No. 925 of 19 July 2006 which approved the rules for implementing the provisions concerning the award of public acquisition contracts in the Government Emergency Ordinance no. 34/2006 regarding the award of public acquisition contracts, public works concession contracts and services concession. Government Emergency Ordinance no. 68/2006 regarding measures to develop national housing construction Government Emergency Ordinance no. 74/2007 relating to insurance social housing for tenants evicted from their homes by former owners.	The Romanian law does not provide a special allocation procedure for builders when the target is the construction of social housing. In the same time, GEO 34/2006 provides a strict procedure as jus commune for the allocation of public works concession contracts. Moreover, the Romanian law provides obligations for the State regarding the construction of social housing.
Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC Text with EEA relevance	directly applicable	It is about construction products: free movement and the certificates required..
TECHNICAL STANDARDS		
Energy efficiency		

Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJEU 14.11.2012 Nº L 315/1).	Order no. 3466/2013 on the inventory of buildings heated and / or cooled, owned and occupied by the central government, and making the inventory available to the public and setting up data banks on energy efficiency. The order mentioned above and other secondary legislation correlated Law 372/2005 with Directive 2012/27.	Law 372/2005: Energy saving targets imposed to the State. It also deals with the Public Administration buildings and others that require greater energy savings. Order 3466/2013: An inventory of the heated/cooled buildings owned by the State is imposed.
Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 Nº L153/13).	The Law no. 372/2005 regarding the energy performance of buildings was republished on 23rd of July 2013 by Law no. 159/2013 in order to transpose Directive 2010/31/EU (in Romania, the law substantially amended or supplemented is republished). Moreover, according to the Order no. 3457/2013, the normative acts developed under Law no. 372/2005 shall be construed as normative technical acts developed under Law no. 372/2005, as detailed in the Annex to the Order.These normative technical acts transpose into the Romanian law the obligations provided by 2010/31 Directive. E.G. According to art. 3 from the Directive, the States are obliged to adopt a methodology for calculating the energy performance of buildings. In the Romanian law this methodology is provided by the Order no. 157/2007 (normative technical act).	Energy efficiency of the new and the existing buildings.
Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 Nº L 153/1).	Government Decision no. 217 of March 20, 2012 establishing the requirements for indication by labeling and standard product information of the consumption of energy and other resources by energy-related products	Labelling and basic information for household electric appliances' users.
Commission Delegated Regulation (EU) Nº 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires (OJEU 26.9.2012 Nº L 258/1).	Government Decision no. 217 of March 20, 2012 establishing the requirements for indication by labeling and standard product information of the consumption of energy and other resources by energy-related products	

Commission Directive 98/11/EC of 27 January 1998 implementing Council Directive 92/75/EEC with regard to energy labelling of household lamps (OJEC 10.3.1998 Nº L 71/1).	Government Decision no. 217 of March 20, 2012 establishing the requirements for indication by labeling and standard product information of the consumption of energy and other resources by energy-related products	
Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJEU 5.6.2009 Nº L 140/16).	GEO 88/2011 amending and supplementing Law no. 220/2008 on establishing the promotion system of energy production from renewable energy sources Government Decision 935 from 2011 GEO 29/2010	Promotion of the use of renewable energy in buildings.
Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (DOCE 14.8.2009 Nº L 211/55).	Law no 160/2012 on the organization and functioning of ANRE	Basic standards for electricity sector.
Heating, hot water and refrigeration		
Commission Delegated Regulation (EU) Nº 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of air conditioners (OJEU 6.7.2011 Nº L 178/1).	Government Decision no. 217 of March 20, 2012 establishing the requirements for the indication by labeling and standard product information of the consumption of energy and other resources by energy-related products	Labelling and information to provide about standard product information of the consumption of energy and other resources by energy-related products
Commission Delegated Regulation (EU) Nº 1060/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances (OJEU 30.11.2010 Nº L 314).	Government Decision no. 217 of March 20, 2012 establishing the requirements for the indication by labeling and standard product information of the consumption of energy and other resources by energy-related products	Ibidem
Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJEU 14.8.2009 Nº L 211/94).	Was not transposed http://www.curierulnational.ro/Eveniment/2013-03-22/Romania,+penalizata+de+CE+pentru+ca+nu+a+transpus+directivele+pe+energie	. Basic legislation about natural gas in buildings and dwellings.

Council Directive of 10 December 1982 amending Directive 78/170/EEC on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings (OJEC 31.12.1982 Nº L 378/19).	Government Decision no. 1.043/2007 on ecodesign requirements for energy-using products	About mandatory national targets for the share of energy from renewable sources in transport and sustainability criteria for biofuels and bioliquids.
Household appliances		
Commission Delegated Regulation (EU) Nº 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energylabelling of household tumble driers (OJEU 9.5.2012 Nº L 123/1).	Government Decision no. 217 of March 20, 2012	Labelling and information
Commission Delegated Regulation (EU) Nº 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household dishwashers (OJEU 30.11.2010 Nº L 314/1).	Government Decision no. 217 of March 20, 2012	Labelling and information
Commission Delegated Regulation (EU) Nº 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines (OJEU 30.10.2010 Nº L314/47).	Government Decision no. 217 of March 20, 2012	Labelling and information
Commission Delegated Regulation (EU) Nº 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJEU 30.11.2010 Nº L 314/64).	Government Decision no. 217 of March 20, 2012	Labelling and information
Commission Directive 2003/66/EC of 3 July 2003 amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJEU 09.07.2003 Nº L 170/10).	Government Decision no. 217 of March 20, 2012	Labelling and information
Commission Directive 2002/40/EC of 8 May 2002 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric ovens (OJEC 15.05.2012 Nº L 128/45).	Government Decision no. 217 of March 20, 2012	Labelling and information
Commission Directive 96/60/EC of 19 September 1996 implementing Council Directive 92/75/EEC with regard to energy labelling of household combined washer-driers (OJEC 18.10.1996 Nº L 266/1).	Government Decision no. 217 of March 20, 2012	Labelling and information

Lifts		
European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJEC 07.09.1995 Nº L 213). Directive 2006/42/CE	GD no.1029/2008 and GD no. 294/2008	Legislation about lifts.
Boilers		
Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJEC 22.06.1992, Nº L 167). Amended by Council Directive 93/68/EEC of 22 July 1993 (BOE 27.03.1995 Nº 73).	Government Decision no. 574/2005 on the establishment of the requirements for the efficiency of new boilers for hot-water-fuel	Legislation about boilers.
Hazardous substances		
Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJEU 01.07.2011 Nº 174/88).	Government Decision no. 322/2013	Legislation about restricted substances in electronic devices
CONSUMERS		
Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJEU 22.11.2011 Nº L 304/64).	It was not transposed	Information and consumer rights
Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) Nº 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJEU 18.12.2009 Nº L 337/11).	Law no. 506/2004 concerning the processing of personal data and privacy in the electronic communications sector.	Protection of personal data and privacy in the electronic communications sector.

Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJEU 01.05.2009, Nº 110/30).	GD 1553/2004	It regulates a few ways to stop illicit practices in the protection of the collective interests of consumers
Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJEU 27.12.2006, Nº L 376/21).	Law no158/2008 Concerning misleading and comparative advertising	misleading and comparative advertising
Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) Nº 2006/2004 of the European Parliament and of the Council (OJEU 01.6.2005 Nº L 149/22).	Law no. 363/2007 on combating unfair practices of traders with customers and regulatory harmonization with European legislation on consumer protection	About misleading advertising and unfair business-to-consumer commercial practices.
Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJEC 04.06.1997 Nº L 144/19).	Government Ordinance no. 130/2000	About consumer protection in the conclusion and execution of distance contracts.
Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEC 21.04.1993 Nº L 095).	Law no. 193/2000 on unfair terms in contracts concluded between traders and consumers	Unfair terms
Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJEC 31.12.1985 Nº L 372/31).	Included in the entire legislation	
HOUSING-LEASE		
Regulation (EC) Nº 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations - Rome I (OJEU 04.07.2008 Nº L 177/6).	Directly applicable	Law applicable from New civil code and Housing law

Council Regulation (EC) Nº 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEC 16.01.2001 Nº L 12/1).	It is directly applicable but we can find the same dispositions in The New Civil Code and New Civil procedure Code	International jurisdiction in proceedings which have tenancies of immovable property as their object (Article 22 (no. 1)). The jurisdiction lies with the court of the Member State where the property is situated.
Commission Regulation (EC) Nº 1920/2001 of 28 September 2001 laying down detailed rules for the implementation of Council Regulation (EC) Nº 2494/95 as regards minimum standards for the treatment of service charges proportional to transaction values in the harmonised index of consumer prices and amending Regulation (EC) Nº 2214/96 (OJEC 29.9.2001 Nº L 261/46).	Directly applicable	Law applicable in Insolvency Proceedings (Article 8). Lex rei sitae is the applicable law for the effects of cross-border insolvency proceedings on contracts conferring the right to make use of immovable property.
Commission Regulation (EC) Nº 1749/1999 of 23 July 1999 amending Regulation (EC) Nº 2214/96, concerning the sub-indices of the harmonized indices of consumer prices (OJEC 13.8.1999 Nº L 214/1).	Directly applicable	About the sub-indices of the harmonized indices of consumer prices.
Council Regulation (EC) Nº 1687/98 of 20 July 1998 amending Commission Regulation (EC) No 1749/96 concerning the coverage of goods and services of the harmonised index of consumer prices (OJEC 31.07.1998 Nº L 214/12).	Directly applicable	
Commission Regulation (EC) Nº 2214/96 of 20 November 1996 concerning harmonized indices of consumer prices: transmission and dissemination of sub indices of the HICP (OJCE 21.11.1996 Nº L 296/8).	Directly applicable	
Recommendation 65/379/EEC: Commission Recommendation of 7 July 1965 to the Member States on the housing of workers and their families moving within the Community (OJEC 27.07.1965 Nº L 137/27).		Discrimination on grounds of nationality. Equality in granting housing, aids, subsidies, premiums or tax advantatges to workers who have moved within the EU.
DISCRIMINATION		

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJEU 21.12.2004 Nº L 373/37).	GEO 61/2008 on the equal treatment between men and women in the access to and supply of goods and services	Discrimination on grounds of sex.
Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC 19.07.2000 Nº L 180/22).	G.O. no. 137/2000 on preventing and sanctioning all forms of discrimination, as amended and supplemented, modified by Law no 324/2006	All forms of discrimination
IMMIGRANTS OR COMMUNITY NATIONALS		
Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJEU 18.06.2009 Nº L 155/17).	Law no 157/2011	The regime of foreigners in Romania
Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) Nº 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJEU 30.04.2004 Nº L 158/77)	GEO 194/2002	The entrance, the exit and the rights of foreigners in Romania
Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJEU 23.01.2004 Nº L 16/44).	Organic Law 2/2009.	Equal treatment in housing (art. 11.1.f.)
Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJEU 03.10.2003, Nº L 251/12).	GEO 194/2002, as it was modified and Law no 157/2011	About the right to family unification
Regulation (EEC) Nº 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJEC 17.04.1964 Nº L 257/2).	Directly applicable	Regarding freedom of movement for workers within the EU
INVESTMENT FUNDS		

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) Nº 1060/2009 and (EU) Nº 1095/2010 (OJEU 01.07.2011, Nº L 174/1).	Law 272/2013	appearance of alternative investment fund managers

8. Typical national cases (with short solutions)

The New Civil Code is in force since October 2010 and it wanted to provide a uniform regulation for rental agreements. Also, the new regulation applies only to the contracts concluded after the New Civil Code was adopted. Therefore Romania has a very poor case law under the New Civil Code. Anyway there are no major changes to date.

8.1. Subletting. Transfer of rights and obligations. The consent of the landlord
(The Decision no 226/May 25 2011, Constanta Court of Appeal)

Brief sketch of typical case
The claimants HO and HL summoned Constanta local authorities in order to force them to conclude a lease contract.

The claimants HO and HL indicated that they lived with the tenant PLI, which was until 18.08.2009 beneficiary of the lease of the building. Latter, giving the transfer of the lease for the benefit of applicants, as apparent from the statement no. 2055/2009[130], the applicants immediately request for space allocation and rental contract.

They further argued that Housing Law does not prohibit the space assignment owned by a tenant to another possible beneficiary of the art. 1418 Civil Code[131]., under which the tenant has the right to assign the contract or the other if such a facility is not prohibited.

The solution of the court

The court repealed the action for the following reasons:

Notwithstanding the common law lease (art. 1418 Civil Code.) the tenant can sublet only with prior written permission and under the conditions established by the owner - art. 26 para. (1) of the Housing Law.

[130] The tenant PLI showed in the certified statement no. 2055/18.08.2009. that: he waives the benefit of the lease contract registered under no. 2455A/2008, he will not require additional space in state housing and he agrees to give the space to the HO and H.L. family.

[131] The old Civil Code

Housing Law contains no provision regarding the assignment of the lease. The silence of the law was considered in the legal literature and case law that the assignment of the lease contract is not prohibited, but for the valid conclusion of the contract assignment must be complied with common law. According to the Civil Code., lease assignment is permitted when subletting is permitted (art. 1418 Civil Code.). It means that the assignment of the lease can occur only if subletting is allowed in prior written consent and conditions established by the owner (art. 26 para. (1) of Housing Law). If the special law provides for sublease this condition, especially if it requires the assignment, which take effect even worse than subletting (cesio est maius sublocatio est minus).

In addition, if the house in question was leased to the tenant with the approval of the authority (state housing dwelling) - as is the case here, in the light of art. 33 of Housing Law, the assignment will also be subject to the opinion of the authority (local council).

Note that in this case the lease no. 2455A/01.09.2008 between P.L.I. and Constanta local authorities, the parties have expressly agreed that the lease holder may sublet the dwelling owned "only with prior written permission and under the conditions established by the owner" (art. 19).

It was also noted that in this case there was not a repartition for the benefit of applicants, and they have not proved that they meet the conditions provided by the law.

So, the Court rejected the action of HO and HL.

8.2. Termination of the lease contract. Penalty clause for late rent payment. (Decision no. 1747/18.05.2011 Cluj Court of Appeal)

The landlord Cluj-Napoca summoned the tenant P.C. in order to oblige the latter to pay the rent arrears of 1085,28 lei for the period March 2008 – February 2010 and the penalty for late payment for 1.03.2008 – 11.02.2010, to terminate the lease contract no. 53163/28.07.2003 concluded between the parties and evacuate the tenant. The landlord also requested that the tenant pay all the court costs.

The landlord showed that in 28th of July 2003, it was concluded a lease contract between him as representative for the Romanian State and the respondent P.C. regarding a house in Cluj-Napoca for a period of 5 years beginning with 08.04.1999 until 08.04.2004. Thus the duration of the contract ended, it continued to produce effects under tacit relocation. According to the contract the rent had to be paid every month until the 30th for the current month. The landlord notified the tenant many times to pay his arrears and prolong the contract, but the tenant did not take into consideration these notifications. At 11th of 02.2010, the tenant had rent arrears of 1085,28 lei.

The solution of the court

Regarding the rent arrears, the Court found that the defendant P.C. was culpable for not paying the rent between march 2008 – February 2010 and so obliged him to pay the lease return completed applicant to pay the rent arrears of 1085,28 lei. In order to

pronounce this solution the court considered that the applicant has proved the existence of his claim in accordance with Art. 1169 Civil Code, while the defendant did not show complete fulfilment of the payment obligation, although according to art. 1169 in the Civil Code and article 129 paragraph (1) in the Civil procedure code it was incumbent to him to prove the contrary.

This breach of contract by the defendant for a period of two years was assessed by the court sufficiently important to justify termination of the contract and it is certainly attributable to the defendant, since it is presumed at fault, according art.1082 civil Code. In these circumstances, the court admitted the fourth claim of the action and ordered the termination of the lease no. 53163/28.07.2003 agreement between the parties, as it has been extended under tacit relocation and then under legal relocation.

The court rejected the claim regarding the penalty for late payment. In order to pronounce this solution the court observed the contract contained a clause that said that failure to pay the rent attracts a penalty on the amount due for each day of delay from the day following that on which the amount became payable. But the court found that the clause contained by the contract is not a veritable penalty clause, likely to be opposed to the debtor, as long as it only specifies that failure to pay the rent attracts a penalty on the amount due for each day of delay, but no mention of the percentage amount interest on arrears, which would have allowed a conventional assessment of damages sought by the landlord by not paying the due rent.

Then, although the landlord relied on the provisions of article 115 para. (1) and (5) of the Fiscal Procedure Code, as amended by art. III nr.210/2005 Law, according to which the default is calculated for each day of delay from the day following the maturity date of settlement until the amount owed, inclusive and the level of penalties is 0.1% for each day late, and may be amended by the annual budget laws, the court found that these legal provisions are not applicable in the present case. Penalty for late payment applies to budget claims under Fiscal Procedure Code or rent received by the applicant under contracts of rental property managed in the account of Romanian state do not represent budgetary debts within the meaning of article 1 of the Fiscal Procedure Code in relation to Article 1 and 2 in the Fiscal Code.

So, the court admitted the action partially.

8.3. Termination of lease contract and eviction of the tenant for not paying the rent – art. 24 alin. (1) letter b) in the Housing Law
(File no. 759/C (11.07.2005) Constanta Court of Appeal

Brief sketch of the case
The landlord filed a complaint against M.E., M.C., M.M., M.R. in order to oblige M.E. to pay the amount of 8.762.458 lei, where 4.113.400 lei represent unpaid rent for February 2002 – January 2004 and 4.649.058 lei represent penalty for late payment of the principal. The applicant also requested that the court pronounces the termination of the lease contract and the eviction of the defendants.

Solution of the court

The court stated that according to art. 1021 1020 in the Civil Code, in contracts with mutual obligations, the termination condition is implied. The party on which the commitment was not executed can choose whether to oblige the other party to execute the contract or to request the termination of the contract with damages.
The applicant has chosen to oblige the defendants to execute his obligations, which has happened in the years 2003 and 2004 when they paid the full amount of the rent. This fact was proven by the documents in the file.
In fact, the applicant insisted that he appreciates the good faith of the defendants in fulfilling their contractual obligations.
So, the court considered that in this case, the provisions of article 24 paragraph 1 letter b in Housing law does not operate while the defendants executed their contractual obligation of paying the rent.

8.4. Lease contract. The establishment of the obligation for the tenant to pay the maintenance costs. Ways of probation. Dosar Nr. 5094 (24.05.2005)

Brief sketch of typical case

The landlord S.M. summoned the tenant S.C. XXL C. SRL in order to oblige the tenant to pay 112.692.893 lei, representing rent and unpaid utilities.
The landlord showed that he is the owner of the property located in Bucharest, Bd BM, sect. 1 and he concluded a lease contract since 9.12.1998 with S.C. XXL C. S.R.L., registered at Sector 1 Bucharest Financial Administration under no. 52 068.
The contract was renewed in 24th of May 2001 until 2002 and since 9th of December 2002 until 30th of April 2003 occurred tacit relocation.
Even though the contract did not contain an express obligation, the tenant undertook to pay the value of all the utilities. The tenant respected his word until June 2000, but after this date until he left the rented space, he did not pay the value of the common expenses.
So, the landlord was summoned by the Owner's Association and obliged to pay the debts and also the court expenses.
In addition to these debts, the tenant due to the landlord the rent for December 2001 in amount of 170 USD and the value of electricity for 27.02.2003-08.04.2003 in amount of 2.396.893 lei.
The tenant draw up a respondent plea requesting the rejection of the action and also filed a counterclaim requesting that the landlord pay the sum of 38.902.203 lei equivalent to 1.539 USD, representing the amount paid to the Owners' Association that had to be paid by the landlord.

The solution of the court

The court rejected the principal action and partially admitted the counterclaim.
In order to pronounce this solution the court stated the following:

As a general rule derived from the Housing Law, maintenance expenses are charged to the owner, if the contract has not been established that they are incumbent to the tenant.

It is true that, given the consensual character of the lease contract, the clause regarding the payment of the maintenance expenses by the tenant shall be deemed terminated by the mere agreement of the parties, without fulfilling any other additional formality.
On the other hand, according article 1169 in the Civil Code and art.129 para.1 in the Civil procedure code, the agreement between the parties, must be proved by the applicant.
In the field of housing rental the Housing law provides the written form in order to prove.
Since this provision has special character the landlord cannot prove the pretended agreement with other evidence. The sanction for not respecting the written form is not the invalidation of the act, but the impossibility to prove it with other evidence. In the absence of contrary regulations, this prohibition is applicable to all the clauses that constitute the entire agreement between the parties.

In conclusion, establishing that the landlord did not prove the fact that it was incumbent to the tenant to pay the maintenance expenses, the court rejected the principal action as unfounded.
The court admitted the counterclaim partially. So, the court stated that the payment of the maintenance expenses by the tenant represents an administration of the landlord's interests that gives rise to on obligation incumbent to the landlord to indemnify the manager for all necessary and useful expenses that he did, according to article 991 in the Civil Code.
From the expenses shown by the tenant, the court observed that for part of them occurred the extinctive prescription. In conclusion, from the amount of 38.902.203 lei the court obliged the landlord to pay to the tenant only the amount of 7.420.603 lei.

8.5. Lease contract. Hardship clause. Increase of the rent.
Civil judgment no. 492 COM/ 25.02.2000, final according to civil decision no. 582/2000 pronounced by Constanta Court of Appeal. File no. 492/25.02.2000.

The landlord S.C. P S.A. summoned the tenant SC GL SRL in order to oblige her to pay the amount of 19.912.242 lei representing rent for the rented space and the value of utilities.

According to clause IV regarding the way of payment, the parties have agreed to quarterly indexing location in relation to the average monthly inflation rate and the payment will be made monthly.
In this regard, the parties agreed to submit the contract value to a continuous reassessment. Tenants' contractual liability will be not eliminated if he does not sign the addendum to the contract provided in Clause IV art. 5.

Solution of the court

The court admitted the landlord's action stating that when the parties have agreed to quarterly indexing location in relation to the average monthly inflation rate has no relevance that the tenant hadn't signed the addenda on revaluation, if continued to use commercial space leased, in the term of validity of the contract.
Or, the tenant used the space made available for the duration of the contract and did not raise failure or improper performance of reciprocal obligations assumed by the applicant.

In conclusion, the court admitted the action on the grounds of article 969 and article 970 in the Civil code.

8.6. Lease contract. The loss of tenant's right of use. The family situation
(The Decision no 3713/December 18 2001, Bucharest Court of Appeal)

Brief sketch of typical case

The landlord filed an eviction complaint against the defendants DV and DT. The landlord showed that in the year 1968 he concluded a three years lease contract with the ex wife of the defendant. In the year 1970 a new 3 years lease contract was concluded with the same parties. The contract is expired and its object was the duty dwelling of the person mention above. After the divorce, the defendant and his family members continued to live in the house without the renewal of the lease contract.

The solution of the Court
The court repealed the action for the following reasons:
According to the lease contract, when the contract expires the tenant has the right to renew it. So the contract expired in the year 1973 but the tenant and her family (her husband and an aunt) continued to live in the house and the tacit relocation occurred.
In the year 1973 a new law was adopted and it applies to the contract renewed by tacit relocation. So according with the new regulation, the loss of tenant's right of use does not attract the same loss for her family members. The latter continue the lease relation by virtue of their own rights prescribed by the new law.
In this case, the law that regulates the lease contracts extension applies and, in consequence, the contract can be terminated under these regulations.
Therefore the defendants have the legal right to use the house until the contract is terminated in the conditions prescribed by the law.

8.7. The situation of the improvements made by the tenant to the building restituted to the former owner
(The Decision no 1323/May 27 2002, Bucharest Court of Appeal)

Brief sketch of typical case

The former owner obtained in justice the restitution of the building. The tenant was evicted in the absence of a locative title.
But, in the same time, the tenanted proved that he made improvements of the building which were evaluated at the amount of 885 USD. For this reason he summoned the former owner,

The solution of the Court
The court repealed the action for the following reasons:
It is true that the tenants have the right to a compensation for the improvements of the building from the owner (their beneficiary). But, if the building was abusively taken by the state (which is the case), the state has the obligation to pay the compensation for the

improvement. Therefore, the court repealed the action because the tenant should summon the state authorities and not the formal owner.

8.8. Maintenance expenses

(The Decision no 77/February 9 2009, Timisoara Court of Appeal)

Brief sketch of typical case

The tenants benefited from utilities cold water, hot water, heating and other maintenance, but they have not paid these obligations for a very long time, that between December 2004 - March 2007.
So, according to art. 35 and 36 of Housing Law in conjunction with paragraph 1 of the framework art.16 the owners' association and article 32 and article 34 b of GD 400/2003, the Owner Association force the tenants to pay the amount of 2,103.854 lei. In addition, under Article 13 of Ordinance 25/2001, amended by L.234/2002 and 31 of the same Regulation, the Owner Association asks the tenants to pay late fees, by applying the statutory rate 2% per day of delay, resulting sum of 1428.85 lei.
In the same time, the Owner Associations asks the Court to terminate the lease contract between the tenants and the owner and their eviction.

The solution of the Court

The court admitted the action for the following reasons:
According to art. 35 and 36 of Housing Law in conjunction with paragraph 1 of the framework art.16 the owners' association and article 32 and article 34 b of GD 400/2003, tenants must pay sum of 2,103.854 lei. In addition, under Article 13 of Ordinance 25/2001, amended by L.234/2002 and 31 of the same Regulation, the tenants must pay late fees, by applying the statutory rate 2% per day of delay, resulting sum of 1428.85 lei.
Article 24 from the Housing Law requires that the termination of the contract before the deadline can be required by the owners' association when the tenant has not paid the obligations deriving from the common expenses for a period of three months, if it were established by the lease in the tenant task. However, the evidence showed that tenants have not paid maintenance expenses since December 2004 and this situation persists at this time. On the other hand, the lease contract provides that in case the "tenant does not comply with obligations regarding the maintenance, repair, use of rented housing surface and the rent according to the law, then owner may request termination and eviction of tenants, as provided by law. "Further, Article 15 of the Convention provides that parties "This contract is completed properly and with the laws in force" and the legal provisions in force can not be other than the provisions of the Housing Law.
In conclusion, after analyzing the lease contract and the dispositions of the Housing Law, the court will find that the Owner Association can promote an action in order to terminate the lease contract and to evict the tenants.

8.9. Tacit relocation

Note of the researchers: The New Civil Code has introduced for the first time a legal right granting the tenant the possibility of concluding a new contract under the same terms and conditions. In other words, if at the end of the time limit of the contract, the tenant

remains and is allowed to stay in possession of the dwelling, the lease will be considered renewed (tacita reconductio).
File no: 3842.09 (06.03.2009), Iasi Court[132]

Brief sketch of typical case (including the Court solution): Tacit relocation operates only if the tenant remains in use of the dwelling after the contract termination and without the opposition of the landlord. Therefore, the rental renewal is conditioned by the remaining of the tenant in the possession of the dwelling, a fact which is not confirmed in the present case. The fact that the tenant and his family were allowed to use the house does not entitle them to believe that a tacit relocation intervened, even in the case of the overdue rent payment.
Moreover, the court observed that it can not substitute for the landlord to reassess its rent contract, given the principle of contractual freedom and the absence of legal provisions obliging the landlord to the conclusion of such conventions.

8.10. Improvements made by the tenant

Court Decision no. 2521 of 10 June 2003, the Civil Section, High Court of Cassation and Justice
Source: http://www.dreptonline.ro/spete/detaliu_speta.php?cod_speta=245
Brief sketch of typical case (including the Court solution): The right to compensation is born from the termination date of the lease contract by reaching term and in other conditions provided by law, because, until the termination of the lease, the tenant uses the added weight (the improvements).
If the tenant improvements may require equivalent value, the tenant will have an unjust enrichment because at the end of the rental, the improvements will be lower by wear, moral and physical. One the tenant has benefited from improvements without bringing any benefit to the owner.

[132] http://www.jurisprudenta.com/speta/contract-de-%C3%AEnchiriere-tacita-reloca%C5%A3iune-q6mqe/

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