

THE LEGAL FRAMEWORK FOR HOUSING

The State Union of Serbia and Montenegro is governed by a Constitutional Charter adopted in February 2003. In accordance with article 64, the legislation passed during the Federal Republic of Yugoslavia (FRY) remains effective as long as it is not invalidated by one of the Member States of the Federation. In this sense the provisions of the Constitution of Serbia, from 1990, and the Constitution of Montenegro, from 1992, remain applicable.

As a consequence there is a considerable similarity in the regulation of the housing sector in both Serbia and Montenegro. In this chapter the majority of the issues identified in relation to Serbia are equally pertinent for Montenegro. Thus section B largely restricts itself to commenting specifically on issues related to Montenegro.

A. Republic of Serbia

1. The role of local and central government

The Constitution of Serbia of 1990 provides that all construction land is to be categorised as 'state property' i.e. in the ownership of the Republic of Serbia. This was reinforced by the clauses of the *Law on Resources in Ownership of the Republic of Serbia of 1996* (as amended in 1997 and 2001) which in effect transferred ownership of land from the municipalities to the State. As will be demonstrated in the different sections of this chapter this has had a number of detrimental consequences, both in respect of the ability of municipal governments to facilitate and finance the provision of social housing, and for constructors and future home owners to access credit for the construction of privately owned housing. The situation is further complicated by the fact that 'state' property has not, in practice, been registered either before or after the passage of this law.

The functions of the municipal government were loosely defined in the *Law on Territorial Organisation and Local Self Government, 1991*, as including developing programmes for: planning and regulating the use of construction land; adopting plans and regulations and budgeting for and developing of social housing. Indeed, as will be discussed in greater detail, until recently municipal governments played an important role in the administration of Funds for Solidarity Housing Construction, and for organising the maintenance of the public housing stock. The manner in which this was done, however, illustrates the lack of sustainability in this system of public housing construction. The implementation of solidarity housing projects was usually contracted with municipal public companies as constructors. The municipal body administering the Fund itself decided upon the distribution of housing units to the enterprises contributing towards the Fund. The social housing that was provided was usually self-owned, funded by a mortgage backed scheme, which was heavily subsidised by the municipal government itself.

The obligation to contribute funds towards solidarity housing construction lasted until 1 July 2001. The continued provision of public housing is now neither regulated in legislation nor adequately defined by proposed legislative acts, such as the *Draft Law on Social Housing*. As will be detailed, further on, the draft law merely describes basic responsibilities at the central / republic and local / municipal levels i.e. the establishment of the National Housing Fund and local Municipal Housing Agencies. Municipal governments have the right to allocate land for construction purposes, yet whether or not such a decision is made is arbitrary, as the procedure remains unregulated. Although improvements have been introduced into other relevant legislation, i.e. the *Planning and Construction Law* of 2003 provides a procedure for constructed buildings to be held as private property,

fundamental problems remain due to the state ownership of all construction land. As the title to a building does not arise legally until the construction is complete, this hinders the secure finance for the construction.

Furthermore, the *Law on Local Self Government* (2002) which came into force in September 2004, was accompanied by fiscal and budgetary changes that aim to transfer more power and responsibilities to the local level. Although municipal governments do now have limited fiscal powers, as well as the expectation (created by the *Draft Law on Social Housing*) of receiving subsidies from central government, their ability to sustain a social housing policy is limited and they have little incentive to improve their financial management systems to achieve such a goal.

Indeed, since the passage of *the Housing Law* in 1992, when public provision was replaced by the market provision of housing, there has been deregulation and a subsequent virtual disintegration of state responsibility. Article 2 stipulates a mere rhetorical obligation, that, 'the State overtakes measures for the creation of favourable conditions for housing construction and ensures conditions for solving housing needs of socially vulnerable persons according to the Law.' Articles 16⁴⁸, 19 and 20 of the *Housing Law* effectively allowed for the privatisation of flats owned by the State: the occupier was awarded the right to buy the title to his flat at a fraction of the flat's market value, a percentage of the proceeds contributing towards the provision of social housing for vulnerable groups as identified in article 28. The provisions of this law, embodying the direction of those contained in other laws are, however, to a large extent restricted to the enactment of privatisation and its expected aftermath. In 2003 the Government of the Republic of Serbia introduced a Regulation for Solving Housing Needs of elected, appointed and other persons employed in public service. The Regulation concerns state agencies at the republic and local levels, all institutions financed from the budget as well as public enterprises established by the Republic or local authorities, and affects about 40% of all employees in Serbia.

According to the Regulation the apartments can only be used up to a limit of 5 years, with the possibility to purchase the apartment – subject to certain conditions on the basis of the market price under convenient conditions: participation 10 per cent, pay-off deadline 40 years, interest rate 1 per cent per year (see also chapter VI).

As will be maintained throughout this chapter, amendments are required to regulate post privatisation relationships. As an example, with regard to the registration of the right of ownership article 18 of the above law simply states 'the purchase contract for an apartment must be made in a written form and the signatures of the parties must be notarised in a court.' Article 25 states 'the seller of the apartment is obliged, within 30 days from the day the contract for apartment purchase was concluded, to submit the request to register the right of ownership and the mortgage in the Land Cadastre or the appropriate public registry.'

2. The regulation of property in law

In the absence of a Civil Code, property ownership is regulated by separate legislative acts, the primary one being the *Law on Basic Elements of the Property Rights*, which was initially adopted in 1980 but substantially amended in 1996. Other laws that regulate different aspects of the acquisition, ownership, possession and use of immovable property are: the *Law on Obligations*, 1978; the *Housing Law of 1992* (as amended in 2001); the *Law on Restitution of Agricultural Land* of 1991; the *Law on Transactions in Real Estate*, 1998; the *Law on State Survey, Cadastre and Registration of Rights on Real Property of 1992*; ("Official Gazete RS, 83/92, 15/96); the *Law on Changes and Amendments to the Law on State Survey, Cadastre and Registration of Rights on Real Property of 2002*; the *Planning and Construction Law, 2003*⁴⁹, *The Law on Deed Books of 1930/;* and *The Law on the Maintenance of Residential Buildings of 1995* (amended in 1998 and 2001). (See also chapter VII.)

Before detailing the articles of these laws, it should be noted that there are three absences.

⁴⁸ Article 16 stipulates that a landlord is under an obligation to allow the tenant to purchase the apartment he is using 'under the conditions prescribed by this law.' Article 19 provides that the purchase is to be paid for over the course of 40 years, article 20 providing a method for the calculation of the purchase price.

⁴⁹ With the adoption of this law the following laws became outdated: the Law On Building Land of 1995; the Urban Planning and Development Law ("Official Gazete RS", nos. 44/95,23/96,16/97,46/98; the Law On Construction; and the Law On the Conditions for Issuing Construction and Use Permits of 1997.

Firstly, there is no *Law on mortgages*.⁵⁰ At present mortgaging is inadequately regulated by just a handful of articles in the *Law on Basic Elements of the Property Rights*. Article 61 identifies that ‘a right of pledge is established by legal transaction, court ruling and law.’ Article 63 then details the function of a pledge: ‘a surety for a particular debt on immovable property may be encumbered by the right of pledge in favour of the pledgee who shall be entitled, in the manner prescribed by law, to demand settlement of his claim from the value of such immovable property in precedence over other pledges that do not hold a mortgage, as well as other pledges who acquire the mortgage subsequently, regardless of any change of ownership over the encumbered immovable property.’

The lack of detail in these articles, in conjunction with the clauses of the *Law on Enforcement Procedure, 2000* has not allowed for the development of foreclosure as a means for a secured creditor to retrieve a loan. Mortgage lenders cannot initiate foreclosure, the execution of the procedure requiring a favourable court ruling in a declaratory process.

A second absence, of significance given the partial nature of real estate registration, is a *Law on Bona Fide Purchasers*. Indeed, there are no clauses in the *Law on State Survey, Cadastre and Registration of Rights on Real Property* which regulate the position of bona fide purchasers. The court tends not to view registration as creating a legally valid and indisputable title if there has been a problem with a previous transaction. Such a purchase, even if registered, would be cancelled as invalid and a bona fide purchaser would be left with neither a right nor a remedy.

Finally, although article 12 of the *Law on Basic Elements of the Property Rights* and article 24 of the *Law on Maintenance* both establish the responsibility of the co-owners of a residential building to maintain the building, in reality such buildings are not maintained. This can to a large extent be attributed to the absence of a comprehensive *Law on Condominiums* where the obligations of co-owners, and a mechanism for their execution, is clearly established. Furthermore condominium ownership is not formally recognised and the consequent inability to register such ownership reduces the ability of

homeowner associations to raise financing for building maintenance. (See also p. 45-47 and chapters II p. 17, III p. 31.)

3. The registration of immovable property and the real estate cadastre

The implementation of an effective cadastre and system for the registration of immovable property is necessary for the creation of legal certainty with regard to rights held over a particular object, and as a consequence is integral for the development of a real estate market and mortgage / construction financing. It also provides a source of data on land and real estate that allows for the imposition of a fair level of taxation, as well as the development of a coherent land administration and planning policy.

The transformation of the dual system of identifying title holders, through land books and the Land Cadastre, into the new unified Real Estate Cadastre, therefore unifies both the factual status of land and immovable property, i.e. a physical description of the land parcel with constructions upon it, and the rights held over it in one register was initiated by the introduction of the *Law on Surveying and Cadaster and Registration of Real Estate*. The transfer of title to immovable property is only complete upon its registration.

At present, however, the law has not been fully implemented and the Real Estate Cadastre covers only 55% of the territory. This lack of implementation can be largely explained by the initial absence of documentation for the state ownership of immovable property and the consequent lack of documentation for transactions in which the property object has only been a part since privatisation in 1992. As will be emphasised below, however, this implementation will remain incomplete until the issue of the legalisation of ‘illegal constructions’ is resolved. Finally, the absence of a system of public notaries, who could efficiently provide the registry with the necessary documents, ensures that property transactions are not completed quickly and are thus unattractive to finance.

4. Construction

The problems that have plagued the construction of new housing are manifold. The primary problem of the state monopoly over the ownership of urban, i.e. building land, has already

⁵⁰ The law on National Corporation for the Insurance of Housing Credits, 2004, does not regulate the relationship between creditor and borrower.

been addressed. However, the number of illegal constructions, especially on the periphery of urban settlements, testify to the lack of legislative regulation for the transferral of agricultural land into building land, the failure to develop a coherent and comprehensive urban planning and zoning policy, and the failure to establish transparent consistent procedures for the auctioning of building land and the issuance of the necessary construction permits.

The *Planning and Construction Law* from 2003 covers construction on public building land. Public building land is defined as land where public objects of general interest have been, or may be, constructed. Article 70 of the *Planning and Construction Law* states that public construction land is to be leased by the local government ‘in accordance with this law and the Urban Plan.’ Article 81 states that public building land upon which nothing is constructed can be leased out for a definite time for the construction of a building ‘through public bidding or a gathering of offers through public advertising.’⁵¹ Finally, article 77 states that the fee for the use of developed construction land is paid by the owner of the object, whilst payment for the use of public land that has not been used for construction is made by the user.

These articles represent a considerable improvement upon those previously contained within separate legislative acts. As article 70 reveals, however, the efficacy of the provisions is largely dependent upon the implementation of an Urban Plan. Furthermore, the provisions contained in article 81 emphasise the continued lack of total transparency as the law fails to identify the nature of either a public bidding or gathering of offers. Finally, although the law simplifies the procedure for the issuance of a building permit, other regulations issued by both central and local government with regard to the technical rules and standards for construction still exist.

It should also be noted that there are other types of land which can be used for construction: land that was defined as construction land in the local plans but was not used for construction and cannot therefore be categorised as publicly owned construction land. The former owner of this land,

before the nationalisation of buildings and land in 1958, may request that the title to this land be transferred back to him.

The *Planning and Construction Law* also regulates the legalisation procedure for buildings constructed without a permit. An illegal construction can include a building constructed without specific permission for that type of construction, or built on state land without permission for the use of land. It is difficult to legalise all buildings as so many were built in violation of urban planning regulations. Although urban planning regulations prescribe the purpose land can be used for, they do not adequately state development regulations.

The law, however, establishes a legalisation process on a case-by-case basis. Article 160 states that ‘the owner of an object constructed or reconstructed without a building permit is obliged to report to the city administration the said object whose construction was completed without a building permit within 6 months from the day this law came into force. After the expiration of the deadline the city administration, within a timeframe no longer than 60 days, shall inform the owner of the structure on the conditions required for issuing a construction approval.’⁵²

Article 163 details a method for the calculation of the fee owners have to pay for a remedial registration.⁵³ Where as article 162 states that ‘if the owner of a structure that has been constructed or reconstructed without a construction permit does not report the structure prior to the prescribed deadline or does not apply for the construction approval within the timeframe referred to the relevant city administration shall make a decision to demolish the structure.’ This creates a potential legal problem as an illegal construction may be registered in the cadastre, and thus has property rights. This does not mean that it will automatically be awarded a construction permit.

⁵¹ Article 91 lists the documentation that should be submitted together with the application to construct.

⁵² Article 161 lists the documentation that the owner of a construction constructed without a building permit must submit within 60 days of receiving the notice referred to in article 160.

⁵³ If the owner of a structure that has been constructed or reconstructed without a construction permit does not obtain construction approval within 30 days from the deadline referred to, he shall pay an amount equal to one hundredfold the fee prescribed by the act for the use of the construction land had it had a construction permit, and the ownership right registered in the public book.’

If the building contravenes construction regulations and has to be destroyed than the owner will receive ownership rights. This then raises the question of whether the owner must be compensated. So this issue needs to be clarified.

Finally, until 1 January 2005 there was no tax on housing construction. On 1 January the *Law on Value Added Taxation* introduced an 18 per cent tax on construction. There are no incentives in tax legislation for construction i.e. there is no possibility to deduct the interest rate on a loan. Therefore the way in which credit is obtained to cover the cost of construction materials does not affect the level of taxation charged. This should be amended.

5. Housing and construction financing

A considerable percentage of housing and construction financing was provided in the past by housing co-operatives (see chapter III p.30). This was in spite of the lack of specialised legislation regulating the activity of housing co-operatives. Parts of the *Law on Cooperatives*, the federal law from 1996, deal with the operation of housing / construction co-operatives as both investors and contractors.⁵⁴ A construction / housing co-operative can be registered as a legal entity: on this basis it can obtain a lease for land, construct flats and sell them. Essentially, the co-operative provides a savings scheme for construction where credits are given to members for the purchase of apartments.

The law does not, however, adequately regulate the relationship between members of the co-operatives. After contributing money towards the construction of new housing the member of a co-operative has a contract for the purchase of a flat, but no legal title. The only security is for the future flat owner to register this contract of purchase in a court. In reality, the savings of co-operatives have been poorly regulated. Furthermore, contracts signed by co-operatives for the construction of apartments have been ineffectually implemented. Finally, as non-profit housing organisations the co-operatives do not

have any particular incentives, especially after the recent introduction of VAT 1 January 2005.

If a sufficient volume of housing is to be constructed, however, a system of house and construction financing based on secured credit has to be implemented. At present such a system is in its infancy.

Article 64 of the *Law on Basic Elements of the Property Rights* states that a mortgage can only be secured when the title to the real estate object is registered.⁵⁵ A construction can be registered only when it is complete. Legislation should be amended to allow for a building under construction to be registered and acquire legal title. Only a real estate object may be used as collateral and not the land itself as all urban land is held in state ownership. There is therefore no mechanism for the bank to take a security over the constructor aside from a state guarantee of the individual constructor.

In contrast, house financing is restricted due to the inability of the creditor to effectively foreclose on the collateral secured. This problem not only stems from the absence of a comprehensive Law on Mortgages (only draft mortgage law exists), but mainly results from the problems associated with registering real estate, and the ineffective nature of the enforcement procedure.

A mortgage loan will typically only be issued by a bank if a first-ranked mortgage can be taken on a real estate object that is already registered. The mortgage agreement must then be registered at both court and the State Registry for Real Estate, a process that takes about two months. Contracts registered in court, however, often undervalue the value of an apartment. Upon foreclosure the court will ask an independent expert to value the property and have their estimate registered in court. The actual value of the collateral is therefore based in practice on the authorised court assessment. The existence of both an official and unofficial price, however, heightens the insecurity felt by creditors.

The *Law on Enforcement Procedure*, however, allows for the court to prolong the period before the forced sale. This should be amended so that a public auction can quickly

⁵⁴ The Law on Cooperatives defines, 'Housing cooperatives, acting as investors and contractors, they organize construction and maintenance and build and maintain apartments, housing buildings and office space for members of a cooperative through engagement of finances and work of the cooperative's members and other physical and legal bodies.'

⁵⁵ 'Based on a legal transaction or court decision, a mortgage shall be instituted by entry into a public register or by some other adequate mode as provided by law.'

follow foreclosure. Eviction is permitted upon foreclosure. But in practice does not happen as there is no obligation on the local government to provide reserve housing for evicted creditors. (See also chapter V.)

6. Social housing

Under the system of the Funds for Solidarity Housing Construction public companies act as developers who utilise public money in accordance with the regulations set out in the legislation. The amendments introduced to the *Housing Law* of 1 June 2001 radically altered the way in which the Funds for Solidarity Housing Construction were financed. At the same time resources for the solidarity housing funds were defined by the *Salary and Wage Fund Tax Law* in article 4 which secured the direction of finances for social housing construction. It established that the municipal authority define the tax rate and the way of using the financial resources in accordance with the obligation that 0.3 to 1.0 per cent of the resources collected be directed towards solidarity housing construction. The law did not, however, define how the resources should be disposed, i.e. the criteria, the conditions for the granting and returning of resources. Furthermore, there was no legislative control of the use of the financial resources raised.

The *Draft Law on Social Housing* replaces this arrangement with municipal housing agencies which are responsible for the construction of social housing. The central plank of the draft law, contained in article 5, is the establishment of a national housing fund. However, the municipal housing agencies, at the local level are seen as the instrument of public policy, responsible for the implementation of the new social housing policy. So as to perform their responsibilities, municipalities are, for instance, obliged, in accordance with article 24 of the draft law, to formulate the municipal housing strategy, and facilitate the provision of social housing through the implementation of adequate land and urban policies and by the provision of local funding. Crucially, they are not only responsible for obtaining central funds but also for raising additional funds from commercial banks.

The system of financing that has been proposed in the draft law in many ways suggests the future replication of the problems witnessed in the previous system. This point is highlighted by

the somewhat convoluted definition of the use of the housing fund in article 8 of the draft law, 'to provide long term credit approval to non-profit housing organisations in order to provide dwellings for social housing; long term credit approval to persons and legal entities in order to provide dwellings for social housing; stimulating long term housing savings; stimulating different forms of providing housing for social housing as an own property or tenancy; stimulating the partnership of private and public sector in the field of social housing.'

The overall idea of the *Draft Law on Social Housing* is to create a 'private / public' partnership. The construction of social housing will be implemented at the local level. Municipal housing agencies, licensed by the State, will request funds from the Central State which will be combined with funds obtained from commercial banks. Private constructors will be contracted and the resultant housing will be sold or leased to groups who are identified as being in need of social housing. As was noted in the previous paragraph the role of the municipal housing agency in relation to the financing of the construction of social housing is ill-defined. Article 28 of the draft law states, 'the activities of the Municipal Housing Agency shall include: project management of dwelling construction for social housing for specific period of tenancy with the possibility of purchasing as a private property; managing and maintaining of public housing fund for social tenancy housing; reimbursement of mortgage loans for the final beneficiaries who acquire dwellings as a private property by purchase (collection of annuity and transfer of funds according to financial sources)'. Finally, the policy cannot be implemented effectively without a coherent system of urban planning.

In the *Draft Law on Social Housing* it is envisaged that public rental housing is to be made available to the most vulnerable social groups. The problem is that the purchase of such flats, as well as the cost of their maintenance, will have to be subsidised. It is envisaged that the purchase of such housing will be through favourable credit issued by the banks. Housing agencies are expected to identify which creditors and construction companies are eligible for loans. The law only implies, and does not defines, that there should be a special contract whereby the commercial banks offer favourable interest rates to the housing agencies. The subsidisation of homeowners with insufficient income is a

question that tax legislation should resolve. The *Value Added Tax Law* states that all types of construction are taxed in the same way. It was considered to exempt some categories of housing from VAT but this proposal was not accepted. Tax legislation should be amended to provide incentives for the construction of social housing by introducing differentiated tax rates.

With regard to maintenance, the *Draft Law on Social Housing* suggests that the municipal housing agency, as the owner of the leased housing will be responsible for maintenance work. In contrast, the social housing that is sold will be maintained in accordance with the *Law on the Maintenance of Residential Buildings*.

Furthermore, the law will have to prohibit the resale of such flats i.e. the provisions of the *Housing Law* compelling the landlord to accept an application by the tenant to privatise should either be removed or made non-applicable. Another option would be to impose a condition in a mortgage issued for the purchase of social housing that the mortgage cannot be assigned by the mortgagor. The fundamental problem with the provision of social housing is its unpopularity when it is in the midst of rented housing. As a consequence, the draft law only provides a loose definition for those who will receive housing under a lease agreement.

A number of sub-legislative acts are required to provide details to the policy aims introduced in the draft law. The draft law identifies various categories of applicants for social housing. The precise criteria for placing people in these groups needs to be detailed in sub-legislative acts as the groups are difficult to define in practice; and regulations cannot afford to be too strict in their categorisation as the income of the majority of the population remains unaccounted for. It is this discrepancy between official and unofficial earnings which represents the greatest hurdle to the development of an effective policy.

The enactment of the *Draft Law on Social Housing* is of crucial importance with regard to resolving many of the social issues which result from over ten years of civil war. Two years after the introduction of the National Strategy for Resolving the Problems of Refugees and IDPs there is no implemented legislation for identifying the beneficiaries of social housing, establishing selection criteria, and laying down the procedures

for the involvement of construction. At present it is the Municipal Urban Land Bureau that allocates land. Money is then disbursed by the Commissariat for Refugees which is responsible for allocating temporary housing to refugees. A recent decision of the Constitutional Court, when it ruled that the allocation procedure is not sufficiently clear or developed recognised that the system is unsatisfactory. Furthermore, the contracts concluded with refugees and IDPs are not often signed, and the ones that are signed are not properly authorised by a court. (Please see also chapter VI.)

7. Maintenance

The maintenance of residential buildings is regulated by the *Law on the Maintenance of Residential Buildings*. Its articles regulate the use and repair of the building and common areas, as well as establishing mechanisms for making decisions about the provision and use of finance for the purpose of building maintenance. Article 11 of the law states that ‘a residential building has the status of a legal entity in legal transactions which refer to the maintenance and use of a residential building.’

In accordance with article 12 of the law, ‘an assembly is formed in a residential building and it consists of the owners of all the apartments.’ The president of the assembly manages its work and he/she is elected by a majority of the votes. He/she represents the building in dealings with any third party, as well as proposing the annual building maintenance schedule and overseeing its implementation. The list of decisions which it is empowered to take is detailed in article 14. The decision-making procedure detailed in article 17 states: ‘the Assembly of the building may validly make decisions in case more than half of the members are present. The Assembly of the building makes decisions concerning the current maintenance of the building by a majority of votes of the members present at the Assembly. The Assembly of the building, with the consent of members of the Assembly to whom more than half of the total surface of the apartments belongs, makes decisions concerning the investment maintenance of the building.’

In many municipalities a significant number of the buildings have not established the above mentioned assembly, and have neglected to maintain the building as a consequence. In such

cases, in accordance with article 29 of the law, a competent municipal body is empowered to entrust the maintenance work to a public enterprise.⁵⁶ Article 24 of the law states that in this, as with any other maintenance work undertaken, 'the maintenance costs are born by the owners of the apartments, in proportion to the share of their apartment surfaces i.e. surfaces of other separate parts of the building in the total surface of all apartments and other separate parts of the building.' As the obligation of the building in such cases is to cover all the maintenance costs, and that in the case of default the payment must be enforced by a court, which is a long process, the competent municipal body often does not make such a decision.

In a related issue, the original *Law on the Maintenance of Residential Buildings*, 1995 defined the maintenance works necessary for the residents' safety, particular articles making it possible for municipalities to impose special fees on flat owners when it became necessary to carry out the works defined as 'building maintenance for the purposes of safeguarding lives.' The Constitutional Court of the Republic of Serbia made this regulation ineffective in 2001 by ruling against the imposition of this fee, and removing this clause from the law in its 2001 version.

Draft amendments to the law have attempted to provide a resolution to the problems caused by making it mandatory for residents to pay the costs of the building maintenance in cases of emergency, their respective contribution being based on an average rent amount that they pay on an indefinite time basis per square meter of useful housing unit area. As private flat owners cannot afford to pay any maintenance fees, any amendment is therefore unlikely in reality to provide a solution to the problem.

⁵⁶ In case the residential building does not secure the execution of maintenance works for the residential building as stipulated by article 6 (i.e. keep the structure safe) the person performing the supervision of the execution of the regulations of this law shall order to the competent body of the community to secure the execution of such works by public enterprise for apartment services. In this case the residential building shall compensate the costs for the executed maintenance works to the community within the time and in the manner as determined by the community...In the case that the residential building does not pay the community in time the compensation of costs for the executed maintenance works on the residential building, the community may realise its right to compensation on the basis of the invoice of then paid works which has the power of a valid document.'

Finally, the *Law on the Maintenance of Residential Buildings* was introduced with the intention to facilitate the development of management bodies i.e. home owner associations. As a consequence, the law states that in a condominium property, the owners are under obligation, in accordance with article 12, to form an assembly. They are not, however, under a direct obligation to maintain the building. Crucially, the common space of the building is stated as being in the use of the individual flat owners.

In contrast, the *Law on Basic Elements of the Property Rights* places the whole of a residential building in condominium property, the common space of the building stated as being in shared ownership. It is not possible; however, to register condominium property as the Registry of Real Estate and its Ownership (Land Cadastre) does not contain the classification 'condominium property.' The land is not owned by the homeowners as it is only deemed to be in 'use' by the State. At present, therefore, condominium property cannot develop within the scope stated in the *Law on Maintenance* or the *Law on Basic Elements of the Property Rights*. Until it develops, allowing home owner associations to raise financing against the title they hold to the land, home owners will continue to lack the resources to maintain their residential buildings. (See also chapters II p.17 and III p.31.)

B. Republic of Montenegro

As was stated in the introduction, the problems witnessed in Montenegro very much replicate those of Serbia. This section will focus on issues where there is a significant difference between the two republics. The analysis is limited to the main legislative texts. As demonstrated in the chapters on land administration, on financing, and on social housing, there is a general concern regarding the lack of legal regulation, or the ineffectiveness of its implementation, with regard to issues that fall within the parameters of these chapters.

The articles of the *Law on Floor Property* of 1995 (as amended in 1998) both compare with, and contradict, those described above in Serbian legislation. Reiterating the right to privatise contained in the *Law on Housing Relations* of 1991, article 56 of the *Law on Floor Property*

states, ‘the request for the purchase of the apartment shall be submitted to the holder of the right of disposal. The apartment owner shall be obliged to make possible for the person purchasing the apartment to conclude on the purchase within 30 days after the request for the apartment purchase was submitted. The apartment shall be purchased in accordance with the contract concluded between the applicant and the apartment owner.’ The mechanism for working out the purchase price, at minimal cost, is detailed in article 58. The vast majority of former tenants have taken advantage of the opportunity to purchase.

In contrast to the situation in Serbia, however, where no time limit has been placed upon privatisation, article 69 of the *Law on Floor Property*, in contradiction to the Constitution, effectively makes it impossible for the tenant to purchase the apartment within two years of the law coming into force. Article 69 states that, ‘if the contract on apartment purchase is not concluded within two years as of this law entering into force, the tenancy title holder, upon the expiration of this period, shall continue to use his apartment on the basis of the apartment tenancy for an indefinite period.’ The retention of such an article is of crucial importance for the development of further legislation i.e. defining who holds responsibility for the maintenance of buildings. However, such legislation has so far been undeveloped.

In a further contrast to the situation in Serbia, the owners of buildings constructed on private land have been awarded common indivisible ownership of both the building and the land. Article 15 of the *Law on Floor Property* states that, ‘if a construction land on which a building was built is in private property, the owners of separate parts of the building shall be entitled to common indivisible property over such land. If a building was built on a construction land in public or state property, the owners of the separate parts of such a building shall be entitled to permanent use of the land on which it was built.’ As the majority of land is held in public or state ownership, the effect of this provision has been limited. As with article 69, however, it does provide a basis for the development of further legislation i.e. on condominium ownership. Again, such legislation has not so far been developed.

As with Serbia, the law fails to impose in reality an obligation on residents to take responsibility for the building in which they live. Furthermore, legislation fails to clearly elaborate upon the circumstances when public finance from municipal government is to be provided.

Article 3 of the *Law on Housing Property* states that ‘a housing block is a legal person for the purposes of maintenance’ thus attempting to establish a form of home owner association. In accordance with article 21 of the law, ‘owners are obliged to form management bodies for managing blocks of flats.’ The list of decisions which it is empowered to take are listed in articles 36 and 37, the decision-making procedure detailed in article 27.⁵⁷ As in Serbia, buildings remain in a state of ill-repair. Although article 41 of the *Law on Housing Property* states that, ‘the costs of regular maintenance, emergency and necessary works shall be borne by owners proportionately to their respective share by the surface of separate parts of block of flats in the total surface of separate parts’, there is no mechanism, however, to ensure that the residents of a building comply with these payment obligations.

The articles of the *Law on Housing Property* appear to some extent to be repeated within, and to some extent contradicted by, the articles of the *Law on Floor Property*. Indeed, contradictions also appear in the same law itself. Thus, article 20 of the *Law on Floor Property* asserts, in apparent contradiction to those of article 15, that ‘any owner shall have the right to use common parts of a building according to the needs of his apartment.’ The law then goes on to stipulate that, ‘the owners shall be in obligation to participate in sharing expenses for the maintenance of the common part of their residential building.’ A point refined in article 33 that, ‘the owners bear the costs of the regular maintenance of the building.’ Yet in the subsequent articles of the law, there is a failure of elaboration which could in reality secure the clauses obligations to contribute towards the cost of the building maintenance.

⁵⁷ ‘The assembly of the building may validly make decisions in case more than half of the members are present. Decisions related to the regular keeping of the block of flats and emergency works shall be rendered by the majority votes present. The assembly renders decisions which exceeds the scope of regular maintenance after consent given by members of the assembly who together have more than half of the total surface of separate parts of the block of flats.’

Regular maintenance is implemented through article 28, which states that the owner's assembly is responsible for taking decisions on maintenance (article 30 detailing that decisions are to be taken by a majority of votes of the owners present.) Such decisions have in reality not been taken. With regard to irregular investment in maintenance, article 34 states that, 'investment maintenance of the common parts of the building (...) shall be of public interest,' and article 35 states that, 'the performing of public interest shall be ensured by the executive authority of the municipal government.'

How exactly both this investment is in practice financed is not specified, the law only suggesting the combination of private and public funds. Article 37 states that, 'accounts are established by owners for maintenance, and the competent authority of the municipal government shall account for it separately for each building. The municipal government unit can participate in providing funds for the investment maintenance and works referred to under article 34 of the law.'

Article 39 identifies that, 'the funds received by the payment of the fee referred to under article 37 shall belong to the building owners who paid them and can be used for investment maintenance of other residential buildings as credit funds under conditions prescribed by the regulation of the municipal government body.'

The new *Law on Floor Property*, which was adopted in 2004, has attempted to provide a resolution to these and other problems by making it mandatory for the residents to pay for the costs of the building maintenance in cases of emergency (e.g. failure of mechanical, electrical and heating systems in the building). The respective contribution is based on an average rent amount that they pay on a monthly basis per square meter of useful housing unit area. As private flat owners cannot afford to pay maintenance fees, this amendment is therefore unlikely in reality to provide a solution to the problem.