

## V. THE LEGAL FRAMEWORK

### A. General

The existence of a well-functioning legal and institutional structure is a prerequisite for a market economy with a social policy component.

The most fundamental changes needed in the legal system of economies in transition, however, concern the ordering of economic life. Such changes include the introduction of commercial law (*lex mercatoria*), a system of legal persons (shareholding enterprises, etc.), bankruptcy law and debt collection, labour law, a system of registration and ownership of land and real property, credit law, etc.

For the housing sector the cornerstones are:

(a) Basic constitutional rights of citizens and foreigners to own and inherit land and buildings, the freedom of contract and the right to privacy;

(b) The division of power and competence between the central and the local level (municipalities) and an independent judiciary linked with the individual right of recourse to the courts;

(c) Law on personal and real property;

(d) (Contract) law on rental housing (public and private);

(e) Law on condominiums and on housing cooperatives;

(f) Law on housing financing and credits;

(g) Law on housing subsidies; and

(h) Procedural law as a means of implementing given legal provisions.

### B. Legal development in Bulgaria since the start of the transformation in 1989

The first freely elected Government gave priority to an economic reform policy stressing privatization, tax reform, fighting inflation, conversion of debts and keeping up with IMF requirements. This had led to major commercial law reforms. Besides the Constitution, the law on the Constitutional Court, the Law on the confiscation of property of communist organizations, the Law on local self-government and local administration, the Environmental Law and other important economy-related laws have been enacted. In addition, a number of acts related to the restitution of urban and rural property have been enacted. The most important ones are the Act on property and use of agricultural land of 22 February 1991 (D.V. 1991, No. 17), regulating the restitution

of agricultural land to the former owners, the dissolution of the cooperatives, and the restitution of urban properties (i.e. non-agricultural and non-industrial land). These estates are returned to their former owners (or their heirs) by law. Acquisition in good faith is protected. Compensation will be regulated, but no legislation has yet been approved.

Although economic issues, restitution and privatization have received adequate legal attention, this is not the case for the housing sector. Up until now no housing sector related law has been enacted, nor have bills passed Parliament. Housing sector related laws are not high on the political agenda.

Because of the lack of new housing laws or of major amendments to existing housing laws, the Council of Ministers—not Parliament—uses the constitutional regulation of article 114, which provides for sublegislative normative acts of the Council of Ministers, thus substituting parliamentary approved legislation.

Due to the traditional high percentage of privately owned dwellings (90-92 per cent), the question of privatization of publicly owned dwellings has not been a major focus of interest.

Drastic price increases both for rental (residential and commercial) stock and for the sale of housing have taken place. The unrestricted transfer of private flats and the unsanctioned conversion of dwelling stock into commercial rental property have already led to a very unstable and highly speculative real estate market.

### C. Constitutional framework and constitutional rights

According to the Constitution of 13 July 1991, Bulgaria is defined as a democratic and parliamentary republic bound by the rule of law. Basic principles are proclaimed as follows: sovereignty of the citizens, democracy, political pluralism, humanism, legality and separation of powers, i.e. legislative, executive and judiciary. Economic freedom (art. 19 I and III) and private property (art. 17 III) as well as equal treatment of all citizens and legal entities, protection against monopolies and unfair competition (art. 19 II), equal treatment of foreigners (art. 26 II) are guaranteed.

The Constitution provides for a strong Constitutional Court, which can check the constitutional conformity of post-constitutional legislation (art. 149).

The local authorities should play a prominent role. The legal relations between territorially divided administrative units, municipalities and regions are set out in chapter 7 of the Constitution and in the Act on local self-government and local administration.

According to article 136 of the Constitution and article 5 of the Act on local self-government and local administration, "the municipality is a principal administrative territorial unit where local self-government is exercised".

According to article 136 of the Constitution and article 14 of the Act on local self-government and local administration, "the municipality is a corporation and can hold property rights and dispose of an autonomous municipal budget". This creates the possibility for the municipality to be a subject of civil law (economic, commercial, etc.). It can participate in economic activity independently or through its enterprises, by using its assets.

Municipal ownership is regulated by the Constitution and according to its article 17, "... the regime of State and municipal sites is determined by law ...", thus separating State from municipal ownership.

The right of the municipalities to own property is laid down in article 140 of the Constitution. The same article states that "the municipality has the right to own property, which it has to use for the good of the territorial community". Municipal ownership is further developed in article 22 of the Act on local self-government and local administration, which states that "the municipal council makes decisions on acquisition, management and disposal of municipal property ...". The municipal council adopts regulations on issues of local importance relating to public utilities, public order, the use of municipal property, and environmental protection.

In the Act on local self-government and local administration, article 6 of the Property Act has been changed. This amendment lays down the principle that all assets on the territory of the municipality which are not private property, exclusively State property or acquired by the State are municipal property. The law fixes the ways for acquiring municipal property, namely:

- (i) Ceded by law as property of municipalities, and included in the authorized capital of municipal companies;
- (ii) Acquired against funds from the municipal budget, or out of an extra-budgetary account of the municipality;
- (iii) Built by the voluntary labour and contributions of the community;
- (iv) Acquired through loans, obtained and redeemed by the municipality;
- (v) Bestowed or bequeathed to the municipal council or to the individual settlements;
- (vi) Restored through restitution;
- (vii) Ceded gratuitously by the State.

Within this general legal framework regulating local authority activity, the freedom of municipalities to for-

mulate and implement policy independently in the housing sector is severely limited by central government laws and regulations.

The Bulgarian Constitution guarantees the right to own and inherit land. However, this constitutional right applies only to Bulgarian citizens. Private property is inviolable and expropriation is permitted only for important reasons linked to State and municipal needs. However, the underground resources, the coastline, the national road network, the waters, forests, parks of national importance and protected natural and archaeological areas are exclusive State property and cannot be transferred into private ownership. In other cases, however, State and municipal land can be transferred to private persons. However, since August 1990, Parliament has stopped all sales of State or municipal property, i.e. for the time being only privately owned property can change hands.

Bulgaria has a long tradition (also under communism) of permitting the private ownership of land related to privately owned homes in one- or two-family houses. In the case of multi-family housing, however, the ownership of the land remains in public hands, even when the building is privately owned or privatized.

According to article 21 II of the Constitution, article 2 of the Law on land reform for agricultural land, article 22 I of the Constitution and article 5 I of the Law on investment for all non-agricultural land, foreigners or foreign legal bodies cannot acquire real property unless it has been inherited. However, in this case they have to transfer the acquired property. No real estate can, however, be transferred by means of a will or a donation. Even in the case of legal succession, the foreign legal person has to transfer the (inherited) property either to Bulgarian citizens, the State, municipalities or to legal bodies.

The Law on investment mentions neither deadlines nor sanctions in the case of transfer of non-agricultural land, but the Law on land reform is very precise. Its article 3 IV requires the transfer to take place within three years after succession. These rather complicated regulations have been softened by some constitutional court decisions as well as by the Law on investment, according to which a legal person registered in Bulgaria is regarded as a Bulgarian company regardless of the share of foreign investment. Natural persons with permanent residence in Bulgaria are treated as citizens regardless of their nationality. This discrepancy between constitutional regulations and subconstitutional laws might, however, be disadvantageous in the long run. Land acquisition by foreigners with the help of the above-mentioned laws might be challenged and declared void by the Constitutional Court. Consequently, there is a need for stringent constitutional regulations and ordinary laws.

Nevertheless, according to article 22 II of the Constitution and article 5 I of the Law on investment, foreigners, both natural and legal persons, can, under conditions provided for by law (Law on investment, Property Law), acquire the right to use land, to build on it and other

such rights short of ownership. Particular restrictions apply to the acquisition of dwellings by foreigners.

## D. Ownership and tenure

### 1. Ownership of public land and buildings

Under the Bulgarian Constitution, the ownership of land can be private or public. Public ownership includes State or municipal ownership. Certain kinds of property are exclusively State property, as mentioned above. The State and the municipalities can as a matter of course acquire property by way of purchase from private parties or from each other.

It appears that the legislation defining real estate as State or municipal property is still under preparation, which constitutes an impediment also to the transfer of State property to the municipalities and vice versa.

The relationship between the State and the municipalities concerning the management and ownership of the dwelling stock is complicated and subject to ongoing legal reform. Several acts cover this area (ownership law, ordinance on State real property, rent relations law, etc.). Both the State and the municipalities own a proportion of the rental housing (whereas departments, State enterprises and other public agencies own and rent other parts).

In general, the State and the municipalities are authorized to sell land to Bulgarian individuals, although it appears that it may today be unclear in what body such authority is vested. (See in particular the Ordinance on State real property.) In some cases, however, the State and the municipalities are required to transfer land, viz. according to the Act on solution of housing problems of persons with long-term housing savings deposits (the so-called Old Savers Act), who have a right to acquire a parcel of land at a fixed price. The rules on fixed prices in this Act apply also to other transfers of land, and constitute the minimum for which public land may be sold.<sup>3</sup>

After the Act on local self-government and local administration came into force in 1991, much of the State's real property (including departmental dwellings or rental dwellings for social purposes) was consigned to the municipalities. This includes the right to manage the properties. The consignment takes place according to an order or an agreement between the relevant authorities. The right to manage State property is given free of charge and can also be given to cooperatives or other public organizations. It appears, however, that this does not include a right to sell the property.

Whenever an enterprise or a cooperative is to build on publicly owned land, the land is not transferred, but the enterprise is given "building rights", according to the Property Law, for which a price is charged. It is, how-

ever, clear that this is not a building permit issued according to planning legislation, but that it is a right under private law to erect a building on that land. The payment is for a right to use. It is, however, not entirely clear whether this is a permanent right, or whether it has to be renewed. Also, it appears unclear whether additional charges can be made. Obviously, the "building right" can in theory function as a semi-ownership right, i.e. as a *superficial* right.<sup>4</sup> If this is the case, it should be spelt out, so that these rights can be made subject to registration and mortgages much in the same way as ownership. However, the Property Law does not require a notarial deed; a simple written contract is sufficient (art. 18 of the Property Law).

### 2. Rules on rental housing

As already mentioned, the rental sector is quite small in Bulgaria. There are regulations on public rental housing, but no particular regulation at all concerning private rentals.

The information available indicates that in *public rental housing* it is doubtful whether a contractual situation exists at all. The situation is thus similar to the old socialist regime notion of housing as a status relationship rather than as a contract relationship. Thus, the Act on rent relationships regulates the allocation of State, municipal, cooperative and public organizations' housing. Further rules are to be found in Decree No. 246/1993 with a regulation on the allocation of municipal housing, which defines the general conditions and the order according to which the allocation of, and renting and eviction from, municipal housing are carried out.

A basic requirement contained in the Act on rent relationships is that any person or family applying for public housing must not own or possess another dwelling in which they can live. If they later acquire such a dwelling, they will lose the right to their public dwelling. Furthermore, the Act sets out the order of priority between various groups of needy persons who are eligible for public housing. The rules on municipal rental dwellings are even stricter.

Public rental housing is subject to rent control. In Bulgaria, as is the case in many other central and east European countries, the rent excludes utility costs (heating, electrical power, hot and cold water, in some cases also waste disposal, etc.).

In *public housing*, according to the Act on rent relationships, the tenant enjoys tenancy protection as long as he is eligible. His lease may however be terminated and he may be evicted in the following cases:

- (i) If the rent is more than three months overdue or when payment has been systematically delayed;
- (ii) If new construction is carried out affecting the occupied premises;

<sup>3</sup> These are the sale and barter of State, municipal and departmental real estate pursuant to the Ordinance on State Real Property.

<sup>4</sup> Similar rights, e.g. site-leasehold rights exist in several countries, such as the Netherlands, Germany and Sweden.

- (iii) In case of severe moral misconduct of the tenant;
- (iv) If one of the co-tenants gets married. The tenancy is terminated for the other co-tenant;
- (v) If the term of the allocation of a departmental dwelling expires, i.e. in case of tied accommodation—linked to an employment contract;
- (vi) If the tenant or a member of his family acquires another permanent dwelling suitable for the family.

The conditions for public housing must be seen in relation to the extremely small size of that sector. Public housing is desperately needed in order to provide housing for the needy, those who have suffered from natural disasters, or whose former dwellings have been made subject to restitution, or those who have severe social or health problems. The eligibility of the tenants is assessed annually. Those who are no longer eligible for public housing, e.g. because they have found another dwelling, will have to leave and the flat is allocated to a new applicant.

In *private rental housing*, on the other hand, no special rules apply other than those that apply to commercial tenancies. The lease can be made freely for a maximum period of 10 years. Unless the lease provides otherwise, the period of notice is one month for both parties. Under these rules the tenant is responsible for the wear and tear of the flat, i.e. he has to repair it himself. Other repairs are carried out by the landlord. There is no tenancy protection, although it may of course be stipulated in the lease. If the property is transferred, the new owner is bound by the tenancy agreement, provided the contract of sale so stipulates.

One of the most common examples of private rent concerns the letting of a condominium flat. In such a case the tenant is required to comply with the conditions applicable to that property, or he may be evicted by the management of the condominium (see below).

### 3. Condominium ownership and administration

Bulgaria, like many other countries in central and eastern Europe, has a long tradition of public owners "selling" flats to sitting tenants. In effect this did not mean much, except that the "new owner" no longer paid the (very low, regulated) rent and that he had a right to transfer his flat to family members and relatives by way of sale or inheritance. He had no influence on the running of the enterprise and he had to pay for amenities as any other tenant. The legal basis for this is the Condominium Law, which is part of the Property Law. This Law was enacted in 1971 and amended in 1990. As already mentioned, the creation and construction of housing were supported by means of State-subsidized local authority funding. To construct new dwellings, cooperatives were established and dissolved after the completion of the construction work. The members of the former cooperative had to conclude a notarial contract to receive ownership of the flat, but without ownership rights to the land.

The Condominium Law only very basically defines individual and common property, it does not define the community of owners for instance, but it does include a number of organizational questions and instructions on the administration. However, these regulations seem to be vague, while regulations on State interference are still very numerous.

As a consequence of the sale of municipal housing stock, private condominiums are faced with the *problem of mixed ownership* forms, i.e. having private owners together with municipal owners of rental flats in one building. Experience shows that such mixed ownership forms cause severe organizational and financial problems and should be replaced by single ownership forms as soon as possible.

## E. Housing finance and credit systems

There are laudable projects for the introduction of a modern system for the registration of real property and mortgages based on a cadastral system.<sup>5</sup> In 1994 the Council of Ministers adopted the concept of land registration system which will provide for modern practices in this respect. The registration will have a substantive effect, i.e. deeds which are not registered will not have full legal effect, and it will be public.

There is an old system for the registration of mortgages on real property. A contract for a loan is recorded in a special mortgage book. In accordance with standard procedures applicable in most countries, the mortgage gives a right to foreclose if the debt is not paid. The mortgage holder may request the property to be sold to satisfy his claim. A mortgage holder with a better claim will be paid before one who has requested the property to be sold, whereas those with an inferior claim will lose their security if the proceeds of the sale are not sufficient to satisfy their claims as well. The sale of the property means that all mortgages are ended, unless those mortgage holders who have a better claim agree with the buyer that the mortgage is to remain unchanged.

## F. Procedural questions and legal infrastructure

The Constitution provides for the separation of powers and an independent judiciary. The judicial bodies are: the Constitutional Court, the Supreme Court of Appeal, the Supreme Administrative Court, and regional and district courts of justice, courts of appeal and courts martial. Since coming into existence the Constitutional Court has gained considerable power and influence and seems to have a major impact on legal interpretation.

Although the Constitution provides for the possibility of challenging the constitutionality of laws, there is no individual right to enforce constitutional rights or to challenge infringements of these rights.

<sup>5</sup> See: "A review of land registration in Bulgaria—options and process", ILIS—EU PHARE Land Reform Project, Sofia, 1994.

Civil substantive law and procedure law provide for courts resolving lawsuits on tenancy and condominium (enforcement in case of non-payment and eviction of tenants). The situation in the private housing sector, i.e. uncontrolled rents and leases for a limited period, leaves little scope for lawsuits to be brought to court. Evictions do take place, especially in the private sector. Local authorities do not exercise this right.

Land registration and cadastral systems are rudimentary. The cadastral system does not even cover the whole country and the registration of mortgages is haphazard.

Often it is not clear which of the dwellings are mortgaged. The transfer of property is not completely registered, partly because the housing books are kept with a great number of notaries, who are not very well coordinated. Those inadequacies have led to the recent moves by the Council of Ministers described in section E.

Although there is a lot of State intervention in the administration of privately owned flats by means of the Condominium Law, there is hardly any sanctioning of the conversion of dwellings into offices, which is illegal and has become a major problem.

### Summary of core issues

The division of roles and responsibilities in the housing sector between the State and the municipalities is not regulated satisfactorily. Although the State has relinquished most of its financial responsibilities, it still heavily regulates and interferes with municipal tasks, e.g. rent setting, allocation to tenants, land use, etc.

Bulgaria does not have a history of settled land tenure and practical implementation of real property law which would form a secure base for, and facilitate, land registration. Up to now only a rudimentary form of deeds registration for private land transactions has been developed. There is an urgent need for a comprehensive system of real property registration, to secure title, to provide security for loans, to facilitate the development of the land and real property market, and structure urban development.

Ownership rights, i.e. the right to sell or acquire land or a similar right such as a hereditary building right, are unduly limited. Local authorities do not have the freedom to sell their properties, nor do foreigners—be they individuals or companies—have the right to acquire property. Such restrictions form another obstacle to investment in the housing sector.

In Bulgaria the ownership of dwellings differs in several respects from that in other countries in transition. The most prominent difference is the traditionally high proportion of privately owned flats and houses. However, this does not imply privately organized and fully paid management, maintenance, repair and modernization of the private dwellings, and raises particular legal issues.

Regulations on condominium formation, management and financing are inadequate. The existing property laws lack clear definitions of individual and common property as well as of rights and duties of the community of flat owners, although they provide for much unnecessary State interference.

The “mixed ownership form”, i.e. municipal and private ownership in one and the same condominium, creates psychological, financial and administrative problems.

The rental sector (private and public)—though small—lacks proper legislation, for instance on tenants’ protection, as well as relaxed rent control and a housing allowance scheme.