

IV. LEGAL FRAMEWORK

Legal development in the transition period

Developing an adequate legal framework for the housing sector is one of the major tasks in the transition from planning to markets. Slovakia has made significant progress in establishing the key legal documents that will enable the operation of its emerging housing and property markets. It is a very complicated process of adjustment, but in simple terms these are the important segments:

- Legislation revising the ownership rights of citizens with respect to land and buildings, the freedom to use and dispose of property;
- Legislation on privatization of public and cooperative housing;
- Legislation on planning and development of housing;
- Legislation on mortgages and savings for housing purposes;
- Legislation on subsidies.

Several acts and subsequent amendments form the basis of the legal framework (fig. XI):

A. The legal framework for owner-occupied dwellings

Slovakia has no housing act, the fundamental right to own property is however included in the Constitution (art. 20). The Civil Code—Act 40/1964, revised by Act 189/1992 and Act 264/1992—includes fundamental provisions on real estate, the acquisition of ownership and co-ownership, and on the lease and sub-lease of flats and non-residential premises.²⁴ Property rights are defined and governed by the Civil Code in accordance with provisions on basic human rights and freedoms laid down in the Constitution. Ownership is a transferable and inheritable right and a person having that right may use the property and dispose of it freely. Flats and non-residential space are owned separately from the ownership of the building.²⁵ Buildings may be owned independently from

²⁴ The Civil Code regulates civil rights. It is divided into eight parts: general provisions, family law, real property rights, law obligations, liabilities for damage and for unjustified enrichment, law of inheritance and concluding and transitional provisions. With respect to housing, part three (real property rights) and regulations about leases are especially important.

²⁵ The Civil Code distinguishes between "ideal co-ownership" and "real co-ownership". In "ideal co-ownership", owners own a proportional share of the building and the land, without the exclusive right to occupy a separate residential unit. In "real co-ownership", each owner owns a certain part of the building, often a separate residential unit, and a share of non-residential spaces and land.

the land on which they are constructed. It is also possible to rent land and build on the rented land according to the Civil Code. Under the Foreign Exchange Act (Public Law 202/1995), individuals domiciled or with permanent residence in Slovakia and legal entities on the Commercial Register are considered as residents and have the right to acquire real estate in Slovakia.

According to the Civil Code, the price of real estate is settled by agreement between the parties concerned. The real transfer tax—5 per cent of the value in the sales agreement—is payable by the seller; however, the purchaser guarantees its payment. For a long time the freedom to choose a contractual partner, to negotiate the transfer of property, mortgages, etc. has been restricted in Slovakia. In that respect the Civil Code, particularly part five, introduced important changes—conditions related to sales contracts, service, credit and loan contracts, rental and lease agreements, etc. Title can be established by means of a contract, a notary deed, or a court ruling on the partition of joint property, the distribution of inheritance or the dissolution of co-ownership.

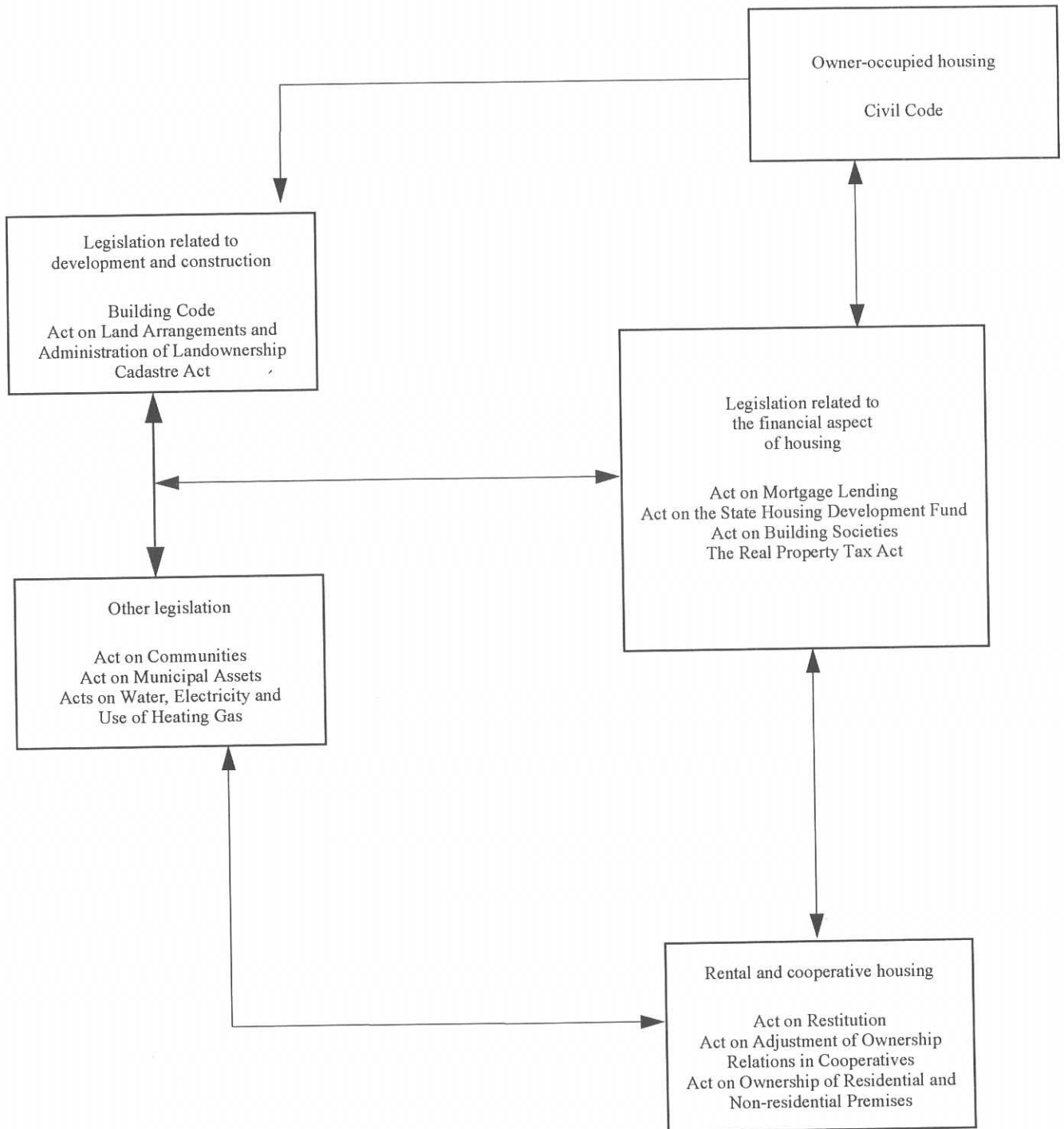
B. Privatization, division of rights and responsibilities in the cooperative and rental sector

The privatization and restitution of housing are an important component of the transition to a market-based housing sector. Several laws are important for the process of privatization: the Act on Restitution, the Act on Adjustments of Ownership Relations in Cooperatives, and the Act on Ownership of Residential and Non-residential Premises, regulating the privatization of municipal dwellings.

The Act on **Restitution**, which was implemented before the Housing Privatization Act, returned property, nationalized after 1948, to the former owners or their heirs. If the property was sold, financial compensation was provided through vouchers from the Restitution Fund. The rights of tenants in restituted housing are regulated by the Civil Code and are identical to those in the public rental housing. It is almost impossible to evict a tenant unless the landlord provides "substitute" housing. Land subject to restitution is divided among owners or heirs, which has fragmented the land ownership structure and restricted the supply of developable land as some claims remain unresolved.

Act 42/1992 on **Adjustments of Ownership Relations in Cooperatives** enabled the transfer of cooperative housing into private ownership. It was based on legal changes in Act 513/1991, which transformed cooperatives into legal entities operating in accordance with the legal regulations stipulated in the Commercial Code.

FIGURE XI
Legal framework of the housing sector—selected acts



Despite the great interest of cooperative members in the privatization (up to 65 per cent in Slovakia and up to 80 per cent in Bratislava), progress was slow as the annuity had to be paid back at once. The sales price is not differentiated according to location or quality and is well below the market price. Possibilities for transferring cooperative flats into private ownership were further extended by the Act on Ownership of Residential and Non-residential Premises. The exchange of cooperative flats between physical persons is permitted without the approval of the general meeting of cooperative members.²⁶

There are two forms of membership of housing cooperatives: *owner-occupier members and tenant members*. Owner-occupiers have paid the full construction cost (or market price) of the flat. It is not obligatory for them to be members of the cooperative, while for tenants it is. The option of non-member ownership status in housing cooperatives, coupled with privatization, has led to a situation of mixed ownership/membership both in individual buildings and within housing cooperatives. This creates barriers to the efficient management and administration of this housing stock.

Act 182/1993 on **Ownership of Residential and Non-residential Premises**, revised by Act 151/1995, regulates the privatization of municipal dwellings and the establishment of condominiums. Prices of dwellings are determined on the basis of purchasing costs at the time of construction, minus 2 per cent amortization per year. If the buyer pays 70 per cent cash, there is a 10 per cent discount. The sales prices of dwellings are regulated nationally. Relatively few tenants have taken advantage of the opportunity to become homeowners because of the poor quality of some buildings, the delayed maintenance and repair, and the administrative inefficiency of the local authorities and the cadastre offices. The 1995 amendment to the Act allowed for the privatization of the land associated with the house.

In addition to the transfer of municipal housing, the Act on Ownership of Residential and Non-residential Premises also regulates the general rules for the establishment of condominiums as new entities entitled to manage privatized housing and to collect funds for maintenance and future repair. Condominium associations are optional. Furthermore, the Act stipulates that, in case of mixed ownership, owners and tenants must make identical maintenance contributions.

The **Civil Code** constitutes the basis for contractual agreements to rent, exchange or sub-let a dwelling and for terminating leases. Tenants' rights are incorporated in the Civil Code. The tenants must maintain their flats in good condition. Unless otherwise stipulated in the lease, a tenant is not obliged to take out insurance. Tenants are legally entitled to swap units, which apparently has led to a black market and the payment of key money. Tenant protection is still very strong and it is difficult to terminate a lease. In the case of leases for an unlimited period, alternative accommodation has to be provided if the tenant is evicted.

By entering into a lease, the landlord grants the tenant the right to use the flat until further notice, against compensation. The landlord is responsible for the flat's maintenance during the term of the lease. The tenants must im-

mediately notify the landlord of any repairs that are his responsibility.²⁷ The lease is terminated by a written notice between the landlord and the tenant. If the contract is fixed-term, it expires automatically at the end of the term. At least three months' notice has to be given to terminate agreements made for an unspecified period. They expire at the end of the calendar month thereafter. According to the Civil Code, the landlord can terminate the lease only with court approval.

Rents and services related to rental housing are regulated by the Ministry of Finance, according to Regulation 15/1992 and the Price Act 18/1996. Apparently, controlled rents in municipal rental housing are insufficient to cover operational costs. Anecdotal evidence indicates that in some urban markets with housing shortages tenants sub-let their flats at 5-20 times the official rent.

Act 92/1991 specified the conditions for the transfer of State-owned flats to municipal ownership. Subsequent regulations—Act 263/1993 on **Public Procurement**—set the framework for the repair and maintenance of the municipal rental stock. According to its provisions, municipal companies, or commercial agencies selected through public tender, are responsible for organizing repair work and investment in the housing stock. Recent data indicate that, by the end of December 1995, 70,000 applicants were on the waiting lists for housing. Given that in 1996 and 1997 the municipalities built 3,000 new dwellings, housing shortage is still a problem. In those circumstances, it is apparent that local housing authorities need to develop a monitoring system to control the use of rental housing more efficiently and eliminate the illegal swapping of flats between tenants.

C. Legislation regulating the development process and the financial aspects of the housing sector

Landownership and housing construction

Several acts regulate the management and supply of land: Act 229/1991 on Landownership, Act 330/91 on Land Arrangements, Administration of Landownership, Land-register Offices, the Slovak Land Fund and Land Associations, and Act 307/1992 on Agricultural Land Fund Protection.²⁸ According to the Civil Code, municipal or privately owned land can be leased for an unlimited period of time and used for commercial or residential purposes. Annual rents are regulated by the Ministry of Finance in accordance with Decree 365/1991. Although they vary, annual rents can be as low as SK 5/m².

Land supply, in urban areas in particular, is a serious constraint on new housing development. In addition to the restrictions on the conversion of agricultural into urban land, high fees (in line with Decree 152/1996) discourage the expansion of urban areas. Closely related to the operation of land and property markets is the title registra-

²⁷ If the tenants have to carry out repairs that are the landlord's responsibility, they are entitled to reasonable compensation, provided the landlord has refused to carry out such repairs.

²⁸ These issues are elaborated further in Act 180/1995 on Selected Administration Measures for Arrangements of Landownership and in Act 181/1995 on Land Associations.

²⁶ According to the Commercial Code, para. 230.

tion system. The new **Cadastré Act**²⁹ (Act 162/1995 on Land Cadastre and on the Recording of Title) has created the basis for updating land and property registers and for verifying ownership rights. This information and mapping system assists the administration and taxation of land and property, and mortgage markets. The Cadastre Act includes regulations on subjects (cadastral areas, plots, etc.), contents (geometrical determination and location) of the cadastre and the cadastral system. It specifies cadastral dealings, for example the entry of the rights to the real estate, the revision and renewal of the cadastral system. Furthermore, it highlights the obligatory character of the cadastral data and regulates charges, expenses and sanctions.

Currently, the **Building Code (Act 50/1976)** forms the main legal basis for physical planning and outlines the building regulations. Although the Building Code has been revised several times (Act 103/1990, Act 262/1992, Act 136/1995, Act 199/1995, Act 229/1997) to accommodate changes in the economic and financial environment, the regulatory process of urban development and housing is still too complicated. Additional changes are needed to simplify procedures, streamline the approval process and ensure availability of land. According to the new amendments, the municipality has principal responsibility for commissioning and preparing master plans. It will be necessary to introduce a more flexible planning system and to give municipalities more freedom in land allocation and density regulations.

According to Act 262/1992 and the Building Code, any housing development requires three official permits: a spatial decision for the first preparatory phase, a building permit for construction and a certificate of occupancy for use of the building. An investor intending to develop any construction/reconstruction project has to apply for a *spatial decision*, which is valid for two years (the procedure is set out in section VII, paras. 32-42). A necessary prerequisite is ownership of the land. The process, which takes 3 to 4 months to complete, involves all departments of the municipal administration, utility companies and others. *The building permit* is issued on the basis of the full project documentation for construction within 2 to 6 months. *The certificate of occupancy*—according to Act 262/1992, section VII, paras. 76-85—is issued upon completion of construction. It certifies the quality of construction, the availability of all the certificates and completeness of project documentation, and compliance with building standards. The process might take 1 to 3 months.

The Act on Territorial Planning and Construction provides the framework for the spatial development of human settlements in Slovakia. It defines the goals and tasks of territorial planning and specifies the required territorial planning materials (town planning study, territorial master plan, territorial-technical background documents). More specifically, the Act provides guidelines for the preparation of the necessary territorial planning documentation (territorial prognosis, plan and project) at different levels of the hierarchy: the territory of the whole country, a large territorial unit, a settlement unit and a zone. The approval of the planning documentation, as well as regulations about required territorial decisions, competent bodies, and key participants in the process, are explicitly defined (parts 7 and 8). The Act on Planning with its latest amendment approved in 1997 defines four

planning documents: national spatial plan, regional spatial plans, municipal master plans, area/plot development plans. The Act does not make it compulsory for municipalities to produce master plans. Where such plans exist, however, the authority to approve both master plans and development plans rests with the municipality. The State (regional/district) retains final approval powers for construction plans for specific buildings and issues completion approval for these.

Financial aspects

Housing finance has been one of the major problems during the transition period. **Government regulations on the Housing Savings Scheme—Act 310/1992—established the framework for the operation of a powerful instrument for housing finance.** The Act defined a system to mobilize personal savings for new housing construction and/or home improvement, as well as the conditions for State involvement through subsidy. Through contract savings, building societies have become an important part of Slovakia's financial market. With the accumulated funds from 1.3 million clients, their contribution to the renovation and construction of housing is significant. According to existing legislation, contract saving loans for housing exceeding SK 200,000 are secured by a lien to the underlying real estate by means of a notarial deed. For new housing construction, the building can be used as security provided that construction has reached a certain stage (30 cm above the ground level). This implies that a considerable capital investment needs to be provided up front from private sources to cover the cost of land, project development and initial construction. Thus the potential pool of investors in new housebuilding becomes limited, since the same condition applies not only to the contract savings system, but also to other financial instruments that require a lien.

The key element of the contract savings system is the combination of savings and a loan on favourable conditions, which includes a State premium.³⁰ The contract savings system is limited to private individuals. Recent changes in the system have made *lending conditional upon the use of the loan, as well as the State premium, for housing purposes, such as purchase, construction, modernization or conversion.* This has discouraged ordinary savers from keeping their deposits at below-market interest rates in the contract savings system. To maintain the effectiveness of the system, legislation needs to reinstate the maximum savings period of 6 years and free access to savings.³¹

An important development in the legal framework of the housing sector was the approval of **Act 124/1996 on the State Housing Development Fund** (revised by Act 1/1997). The State Housing Development Fund provides State subsidies to build flats and temporary accommodation, improve the insulation of blocks of flats and family housing, to repair blocks of flats and complete unfinished buildings (art. 1, sect. 1). The Act specifies the terms and conditions for subsidy allocation, the eligibility criteria

²⁹ The Cadastre Act was revised by Act 222/1996.

³⁰ The contract savings system is discussed in detail in chapter III.

³¹ Since these legal restrictions were introduced on 31 December 1996, the volume of savings in the Building Savings Bank has dropped from SK 30 billion to 24 billion and the number of new contracts has halved.

and the responsibilities for the Fund's administration. The Ministry for Construction and Public Works issued Notice No. 203/1996 (revised by No. 136/1997) detailing the technical conditions and the period of construction for projects funded from the State Housing Development Fund.

Act 386/1996 introduced mortgage lending in Slovakia.³² According to the legislation, a mortgage loan is defined as a long-term loan earmarked for the purchase, construction, reconstruction or maintenance of real estate. It is secured by a mortgage lien and amounts to 60 per cent of the appraised value of the property. Mortgages are granted by banks specially licensed for this purpose. Banks, however, find it difficult to repossess the homes of those mortgagors who default. Although banks can apply article 41 of the Foreclosure Order and repossess the property, in practice this is a lengthy and costly procedure. At the moment in the case of bankruptcy a bank's claims come second after tax and wage claims (Bankruptcy and Liquidation Act). Another factor limiting the enforcement of a lien, is the absence of rules on public auction, which is necessary to recover part of the loan. Overall, the legal basis for foreclosure is still weak. Although the Commercial Code stipulates that "when exercising mortgage rights, the mortgagee may sell mortgaged real estate . . . , provided that the mortgagee informs the mortgagor in time of his intentions to exercise his right of lien . . .", in practice this can be quite difficult. Specifically, the eviction of tenants (if applicable) is long and difficult.

The Real Property Tax Act³³ outlines the principal changes in the taxation system (Act 317/1992). Real estate tax is managed by municipal offices. Any owner of land registered in Slovakia is subject to land-value tax. The tax varies from SK 0.5/m² to SK 11.6/m², according to the land's location. The annual tax for building land,

depending on the location, is SK 0.20-9/m². Those low levels of taxation certainly do not create incentives for recycling and redevelopment of urban land for residential or other, more profitable uses.

The building tax applies to houses, log cabins, garages and spaces used for business activity. The tax is based on the overall area of land occupied by the building expressed in square metres as determined on 1 January of the current year. Construction projects that improve the environment or buildings for the socially disadvantaged are tax-exempt.

Other housing related legislation

Important aspects related to the management of the existing housing stock and the provision of technical infrastructure in urban and rural areas were defined in Act 369/1990—Communities Act—and Act 138/1991 on the Management of Municipal Assets. The legal relations between municipalities and the State were changed with the introduction of the principle of local self-government. Municipalities have their own sources of income, but are still dependent on central government transfers to finance municipal activities. Municipalities own property, including housing, and other valuable assets. However, the present legal framework fails to define the responsibility of municipalities for housing.

The supply of water, heating, gas and electricity, including the construction and maintenance of networks, and pricing policies for these services are regulated by: Act 138/1973 on Water and Act 70/1998 on Energy.

Utility companies are State-owned at the moment, but the privatization of the water and sewerage companies is being considered. The current monopolistic position of these suppliers of crucial infrastructure services for urban and rural communities certainly does not facilitate competition or improvement in quality. Furthermore, suppliers are in a position to charge a premium for their services.

³² The legal framework on mortgage lending needs to be interpreted in the context of legal changes affecting the banking system in Slovakia.

³³ There are numerous revisions to this Act which need to be considered.