

# *PART I – HOUSING SECTOR*

## *Chapter I*

### *LEGAL, INSTITUTIONAL AND POLICY FRAMEWORK FOR HOUSING*

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The current policy framework is shaped by the following urgent problems and challenges in the housing sector:

- Uneven housing availability and the presence of population groups with inadequate housing consumption and poor housing conditions.
- High percentage of housing stock that is dilapidated and unsafe (amounting to 10% of total housing stock), requiring urgent major repairs.<sup>9</sup>
- Large existing state obligations, including the ones carried over from the period of a centrally planned economy, which exceed the current and projected capabilities of the State. Politically, however, it is almost impossible to declare these obligations void.

**Picture 2. House framework**



<sup>9</sup> See more on housing conditions in Chapter III.

## A. LEGAL FRAMEWORK FOR HOUSING

Ukraine faces major challenges in the housing sector. Starting from the 1990s, social, economic and legal changes have taken place due to the country's transformation into a market economy. To a large extent, current housing legislation reflects the transitory status of the economy and society.

The following describes the main legislation governing housing-related activities in Ukraine.

### 1. Ukraine's Constitution

The Constitution of Ukraine (Article 47) establishes the right to housing and determines the main direction of state housing policy: to create conditions that will enable each citizen to build, buy, or lease housing. In addition, for citizens in need of social protection, it creates an obligation for State and local governments to provide these citizens with housing for free or at an affordable price.

### 2. Ukraine's Civil Code No. 435-IV dated 31 January 2003

Chapter 28 of the Civil Code of Ukraine sets out the fundamental principles regulating property rights. It clarifies co-ownership rights as joint property rights (without setting the shares of owners) on common property in apartment buildings (Article 382). Common property includes premises and equipment required for servicing more than one apartment, whereas the land plot where the apartment building is located is not regarded as common property.

Chapter 59 of the Civil Code of Ukraine contains the fundamentals of housing lease regulation. One of the peculiarities of this regulation is that the tenant has a priority right to buy the housing if the landlord sells it. The tenant also has preferential rights in relation to lease agreement extensions, in particular the right to claim in court the transfer of obligations to the tenant if the landlord refused to extend the lease for a new term, then within a year made a lease agreement with another person. On the other hand, the landlord is entitled to terminate the agreement of the leased premises if the landlord or the landlord's family needs it for housing, with a 2-month notice. Such provisions do not provide incentives to either landlord or tenant to formalize their relations. Also, landlords often try to avoid paying tax on their rental incomes and enforcement in this area is relatively weak. As a result, most lease relations in the private rental sector take place in the informal economy. This makes each of the parties vulnerable in their relevant situations, where, for example, the landlord may raise the rental fee or terminate the lease for no valid reason (giving the tenant much shorter notice), or where the landlord risks receiving no rent from the tenant or proper compensation for damaged property.

### 3. Housing Code of the Ukrainian Socialist Soviet Republic No. 5464-X of 30 June 1983

In spite of a significant number of amendments made during the last 20 years to the Housing Code of the Ukrainian Socialist Soviet Republic, the structure and main provisions regulating legal relations under a centrally planned economy (during which the State dominated the housing sphere) have been preserved.

Legislators made limited amendments to the Housing Code and at the same time adopted new laws (see below) regulating particular legal relations in the housing sector that are assumed to overrule Housing Code provisions. However, corresponding amendments to the Housing Code itself are not being made.

As a result, the current text of the Housing Code contains a set of obviously outdated provisions such as:

- Ignoring the existence of communal property (property owned by municipalities)<sup>10</sup> as a separate type of property ownership and treating it as a subdivision of state property (Article 4)
- Keeping numerous references to the housing legislation of the Soviet Union and powers of the Soviet legislative and executive bodies in regulating housing relations (Article 14)
- Keeping the concept of apartment building owned by Local Soviets, (Article 24) and ignoring the fact that most apartment buildings, through the privatization of housing units in such buildings, now have, de facto, a condominium form of ownership with state- or municipality-ownership of non-privatized housing units in such structures

The above problems does not result in direct negative consequences as long as the Housing Code is treated by most policy makers and lawyers as a non-working document; however, they create a vague and ambiguous environment in housing legislation. The public status of the document and references to it in housing disputes do not contribute to transparency in housing relations. It therefore remains unclear to the general public which social obligations in the housing sector are still recognized by the State.

### 4. Law "On Social Housing Stock" No.3334-IV of 12 January 2006

This law stipulates the following very important social housing provisions under market economy conditions:

<sup>10</sup> Municipal housing is described in the document as state housing operated by local authorities; this concept continues to exist in a number of statistical forms as well.

- A separate category of population entitled to social housing (when the average family income per capita, minus the minimum subsistence level, is less than the average market rent in the area). The property value owned by the household is also taken into consideration (Article 10)
- Terms for social housing lease agreements and the conditions under which such agreements are terminated when a household's financial condition improves
- The separate registration of low-income households in need of housing improvements (in addition to creating a housing waiting list as stipulated by the Housing Code)
- Prohibition of privatization or subleasing of social housing

The area of legal relations regulated by the law is very similar to that regulated by chapters 1 and 2 of the Housing Code.

This law is more in line with the country's needs. However, it overlaps with the provisions in the existing Housing Code. In practice, neither this law nor the part of the Housing Code regulating the provision of housing to citizens entitled to social housing actually work. The number of households being put on a waiting list under the law "On Social Housing Stock" does not reflect the actual housing need. This is due to a lack of local funds to finance the construction of social housing.<sup>11</sup>

5. Law "On Housing and Utility Services" No. 1875-IV of 24 June 2004

This law regulates the terms and conditions of housing and utility service agreements, the fundamentals of tariff regulation and a few types of classification of housing and communal services. In particular, Article 14 contains the following classification of housing and communal services according to the approval process for rates and tariffs:

- Services in which tariffs are approved by authorized central bodies of executive authorities or regulators<sup>12</sup>
- Services in which tariffs are approved by the local government within the framework set forth by Ukraine's Cabinet of Ministers
- Services in which rates or tariffs are regulated according to arrangements made by the parties concerned

<sup>11</sup> By the end of 2010, only 615 households throughout Ukraine were put on waiting lists for social housing (according to SSSU).

<sup>12</sup> National Commission on Utility Tariff State Regulation and National Commission on Tariff Regulation in Energy Sector.

Most legislative regulations fail to take into consideration the different nature (monopolistic or non-monopolistic) of services in the utility and housing sector.

6. Law "On Co-owners of Apartment Buildings" No. 2866-III of 29 November 2001

This law regulates the activities of legal entities that are associations of owners of premises in apartment buildings (condominium associations). The most important from the housing policy point of view are the following:

- Ability of the association to engage in commercial activity to satisfy its internal needs either directly or via appropriate arrangements with third party natural or legal persons (Article 26)
- Voluntary establishment of associations, voluntary membership in such an association (Article 14) and the ability to leave such an association at any time
- Legislative regulation of the condominium charter
- Obligation of the former owner of the apartment building (national Government, local government body or enterprise) to participate in the first major repair of the building upon the establishment of a condominium.

The owners of premises and the manager (or management company) must conclude a standard agreement endorsed by the executive body authorized to regulate legal relations in town planning and housing (currently MinRegion). The law on housing and utility services also requires the use of a standard agreement by a contractor for contracts on the provision of housing and utility services. As a result, the principle of contractual freedom is not observed and contracting parties are not able to stipulate the terms and conditions of their contracts based on the requirements and capabilities of both condominium owners and managers or management companies.

The joint ownership status of common property in an apartment building, which requires unanimous management decisions, and the vague legal status of the land plot where the apartment building is erected (the land plot is not explicitly mentioned as an element of common property of an apartment building) continue to challenge the existing regulations concerning condominium associations. MinRegion intends to draft the law "On specifics of ownership in an apartment building", which would establish that the land plot is an element of common property of an apartment building and would regulate its ownership or usage.

There are examples of successful homeowners' associations (HOAs) but as the HOA is not a service provider, communal services may come from a number

of providers (unless the service is available from a monopoly). The association may be a borrower, with homeowners selecting a source of funding to finance capital repairs.

7. Law “On Privatization of State Housing Stock”  
No. 2482-XII of 19 June 1992

This law stipulates the regulation of housing stock privatization in two forms: housing with free transfer of ownership, or buyout of “residential space surplus with discount”. The existing law did not state the end date of free privatization, so central or local governments were not encouraged to construct social housing stock. The enactment of the Law “On Social Housing Stock” was an attempt to resolve this problem. Currently, most of the housing stock subject to privatization has already been privatized.

The current housing law of Ukraine is contradictory and fragmentary in nature:

- The law has provisions typical of a centrally-planned economy from Soviet times, provisions to address the transitioning economy and provisions developed to take into consideration future legal relations under a mature market system. All these different provisions are now being applied simultaneously.
- As the main code-setting document regulating housing law, the Housing Code has not been amended significantly to reflect the above changes. The additional laws “On Associations of Owners of Apartment Buildings” and “On Housing and Utility Services” were enacted to regulate housing relations under a market economy.
- Some provisions of the housing laws have considerable contradictions: in particular, the contradiction between the concept of common property in the apartment building and that of an asset holding company is one of the most serious.

In accordance with the Civil Code of Ukraine, unit owners in the apartment buildings own:

- The common premises (based on common ownership rights)
- The building structure and equipment that serves more than one apartment
- Structures providing utility support to all apartment owners and owners of non-residential premises located in the same apartment building

However, the legislation of Ukraine on housing and utility services<sup>13</sup> stipulates that the asset holder

<sup>13</sup> The Ukrainian law “On Housing and Utility Services” states that the asset holder is the owner or the legal entity, which, on the basis of an agreement with the owner of

(which could be a condominium association or any legal entity) is the owner of the apartment building and holds the property on the basis of an agreement with the apartment owners.

## B. POLICY AND INSTITUTIONAL FRAMEWORK

A review of the fundamentals of Ukrainian housing law shows that there are no clear-cut criteria to form a long-term state housing policy; some provisions reflect a paternalistic housing policy with Soviet-era roots (most provisions are based on the Housing Code of the Soviet Socialist Republic of Ukraine), while there are also provisions aligned with market economy (the law “On Social Housing”).

In such conditions, the housing policy of Ukraine, instead of being a long-term policy, is based on resolutions by legislative and executive authorities made with a short- or mid-term perspective with emphasis on lessening the impact of the global economic and financial crisis of 2008-2009.

The main documents which determine key state interventions in the housing sector at its current stage include the following:

- Decree of the President “On Measures Targeted at Constructing Affordable Housing and Improving Housing Availability in Ukraine” No.1077/2007 of 8 November 2007
- Law “On Prevention of the Impact of the Global Financial Crisis on the Development of the Construction Industry and Residential Construction” No. 800-VI of 25 December 2008 (see Chapter IV for more details)
- Law “On Complex Reconstruction of Quarters of Aged Housing Stock”
- State Programme on Housing and Utility Sector Restructuring for 2010-2014
- State housing programmes, including:
  - State Programme on Housing Provision for Youth for 2010-2012
  - State Targeted Social Economic Programme for Construction (Purchase) of Affordable Housing for 2010-2017
  - State discounted long-term loans for individual house builders in rural areas (the programme “Your Own

the property of the building, structure, housing complex or complex of buildings, shall reflect the property in its balance sheet for the purpose stipulated by the law, including capital repairs. It means that the property in the balance sheet shall have one owner.

House” within the State Programme for Ukrainian Countryside Development till 2015)

With the exception of the State Programme on Housing Provision for Youth, which is currently being implemented through a specially established Foundation, most of the programmes are being implemented directly by MinRegion.<sup>14</sup>

There are also state obligations for the provision of housing to particular population groups, either at the full expense of the State or with state support. These are regulated by particular legislative acts<sup>15</sup>. The most important of these documents is the State Programme on Provision of Affordable Housing for the period 2010-2017. This programme plans for the State to cover 30% of the apartment price for those who are on the housing waiting list, while the buyer will cover the remaining 70%. In 2012, about UAH 200 million (approximately USD 25 million) was allocated for construction or purchase of affordable housing from the state budget, more than twice the amount allocated from State funds in 2011.<sup>16</sup>

With reference to the documents mentioned above, the main priorities of current housing policy are to:

- Provide housing to government officials, veterans of wars and other special categories of citizens
- Provide housing support to young families
- Support individual (self-built) housing construction, especially in rural areas
- Provide incentives for the construction of affordable housing for people on low incomes
- Restrict speculation in the real estate market (introduce an extra tax if the real estate bought is sold within three years)

<sup>14</sup> The Foundation for Support of Individual Housing Construction in Rural Areas is involved as an agent for the implementation of the “Your Own House” Programme. The Foundation reports to MinRegion.

<sup>15</sup> Such categories include, among others: judges; first group invalids of the Great Patriotic War; scientists of the National Academy of Sciences and Academy of Agrarian Sciences; employees in health protection, education and culture; employees in budgetary organizations with labour contracts for 20 years; and state servants. People in these categories inhabit almost one fourth of the housing bought with state support.

<sup>16</sup> According to Yury Serbin, Deputy Chairman of the Verkhovna Rada Committee for Construction and Town Planning, Utilities and Regional, at least UAH 6.5 billion (approx. USD 812.5 million) shall be allocated from the State budget to resolve this problem.

- Support households in need of housing improvements and those capable of co-financing a housing purchase
- Use State demand (purchase of housing for transfer to particular categories of citizens and thus fulfilling existing obligations) to provide incentives for housing construction and the completion of unfinished construction projects
- Promote state and private partnerships in housing construction, including the overall rehabilitation of existing buildings

The following shows the impact of the implementation of the state housing policy:

- About 5,000 households received housing in 2011 through state housing policy programmes and actions, so half of the households on the housing waiting list which improved their housing conditions benefited from state supported housing programmes.
- In 2011, 250,000 m<sup>2</sup> of housing was built as a result of the implementation of State programmes, making up about 2.6% of the total housing floor space commissioned. State programmes supported 4% of apartment-building and 1.8% of individual (self-built) housing construction. The State Programme on Affordable Housing Construction (Purchase) and the State Programme for Provision of Housing for Youth acted as leverage; the demand supported by the Government assured the commissioning of housing that exceeded five to 10 times the amount of housing purchased under these programmes.
- State financing of housing construction and purchase is irregular; there is considerable variation from year to year (UAH 202.5 million [USD 25.3 million] in 2009, UAH 723.8 million [USD 90.5 million] in 2010 and UAH 496.3 million [USD 62 million] in 2011).<sup>17</sup>

The housing programmes supported by the State are further discussed in Chapter III.

MinRegion is the leading national executive body among the executive national bodies responsible for the implementation of national policy in the housing sector.<sup>18</sup> It is worth mentioning that the structure of the executive bodies (implementing agencies) dealing with housing policy has been reorganized

<sup>17</sup> Information on housing financing from State budget in 2002-2011 was provided by the Ministry of Finance.

<sup>18</sup> According to the decree of the President No. 633/2001 of 31 May 2011, article 1 approving the “Regulations of the Ministry of Regional Development, Construction, Housing and Communal Services”.

several times during the last 20 years. For some time, construction, housing and utilities were handled by different ministries. The current arrangement establishes a favourable environment for the sustainable, comprehensive and coordinated implementation of housing policy as an integral part of regional development. In particular, MinRegion carries out systematic activities to revise and upgrade all standards and provisions related to housing and supports the development of legislation on urban development at regional

and local levels. MinRegion is also responsible for the implementation of state programmes in the housing sector. However, there are housing programmes carried out by several other national executive bodies without proper coordination with the State programmes supervised by MinRegion.<sup>19</sup>

<sup>19</sup> For example, in 2011 more than 95 million m<sup>2</sup> of housing was built within the housing programmes of the Ministry of Defense.

**Picture 3. Soviet times apartment building (left) and a new construction (right)**

