

POSSIBLE ENVIRONMENT FOR HOUSING ASSOCIATIONS: A LEGAL, FINANCIAL AND INSTITUTIONAL FRAMEWORK

Ivan Prikryl – Doctor of Law

President – The Union of Czech and Moravian Housing Co-operatives

Vice – president – Cooperative Association of Czech Republic

Member – ICA Legislative Advisory Group

Remarks:

1. According to the ICA definition, 'cooperative'/housing association' is an autonomous alliance of persons who joined voluntarily in order to satisfy their joint economic, social and cultural needs & aspirations through an jointly owned enterprise working on a democratic principle. It happens to be an unquestionable part of the market economy. Cooperatives/ housing associations are found both in advanced and developing countries (there are 47,000 cooperatives/housing associations with more than 100 million members in the USA; 132.000 cooperatives/housing associations with 83.5 million members in the EU; and some 23 million members in the candidate countries for EU membership).
2. A housing association fits the above-mentioned definition, its activities, however, are focused on securing their members' housing needs. The very essence of an association suggests that a housing association's objective is to obtain - with a priority for its members according to their free will in a form that is economically as advantageous as possible - housing by erecting a new, or renovating an older, building and consequently to maintain such a building for economically justified costs and to carry out all activities relating to the building's management and operations.
3. From this point of view, we recognized associations, which are real-estate owners and on the basis of personal (financial or other) supply on the part of a member the association provides a concrete apartment (dwelling) for that member for a specific lease (this is not the "classic" leasing relationship, since theory has it that leasing means using someone else's thing for consideration; here, however, the thing does not belong to someone else, since the member at the same time happens to be a co-owner of the real-estate property being leased). Exceptionally, there are associations, which do not own the real estate property, i.e. the apartment building (the apartments are owned by citizens – either as units – the condominium type, or in shared co-ownership by natural persons) and the association is a legal entity controlled and owned by members that carries out all services associated with ownership management and housing (e.g. in Estonia).
4. As a consequence of the removal of associations from being owned by the state and transformation of ownership relationships and circumstances within associations, there have appeared in the Eastern European countries also mixed-type associations meaning that within a single association, or even a single building, there co-exist units owned by a natural person and the association, where the basic entity is the association of the unit owners, and the association is gradually transforming into a management association.
5. In a number of countries, associations assume also the role of the provider of inexpensive (frequently subsidized by the state) construction of apartments for citizens with average to lower incomes. In many countries, this is a traditional form (Germany), often defined as publicly beneficial housing associations (Austria).

6. A specific role here is played by the Central & Easter European transforming countries, but certain similar problems had to be tackled at an earlier date by the advanced countries of the EU – it appears that precisely the cooperative form of financial management and association could become a base for transforming a segment of the "vertical solidarity" (government-managed forced redistribution – typical for totalitarian states) into a horizontal solidarity form (voluntary, civic interest-dominated redistribution supported for the benefit of the needy groups of population always through market-conforming instruments).
7. For many post-communist countries, this process means a painstaking search for proper ways, but at the same time, if adequate quality is maintained, a return to a civilized economy featuring a developed market, civic democracy and laws that work. It is a complicated process, though. Striving to free the society from deformations imposed by the communist totalitarian systems, political representations give preference to ownership transfers in favor of individual ownership. The rise of a society based on civic principles cannot be simply ordered, it is long-term process. Politicians are often wary of civic activities thinking that these could eventually defeat the influence of political parties, thus allegedly threatening the foundations of parliamentary democracy. Which of course only just shows that deformations have persisted.
8. In our opinion, housing associations are operating on the brink of profit/loss and they can generate benefit precisely through the provision of inexpensive housing. That is why we would prefer the housing associations to enjoy a suppression of certain market-imposed exceptions – in order to preserve the cooperative identity. There is no need for exceptions from the "one member equals one vote" rule clamored for by manufacturing, consumer and other cooperatives, which, in order to stay afloat on the market, must adopt certain rules meant for capital companies (see Hagen Henry, *The Framework of Cooperative Legislation*, ILO, 1995, or Documents from the ICA Legislative Conference, Prague 2000)
9. We refer also to the work of Swedish economist V. A. Pestof, whose triangular model of national economy appears, in our view, to have defined the space for cooperatives/housing associations quite precisely (see Enclosure).
10. A number of important discussions are currently taking place or have recently taken place - let's just mention the ILO conference and Recommendation No. 127 – which could have a huge importance in unifying cooperative law definitions and terms, or a EU white paper under preparations. It is not just in Europe, however, that immense work is getting accomplished. Asian/Pacific countries at their recent Katmandu, Nepal conference attended by ministers from their respective countries debated hotly the outlines of new legislation – work by Ravi Shankar (NCDFI) and Garry Cronan (ACCORD) "Second critical study on co-operative legislation and policy reforms" is a very valuable, well-arranged piece.
11. Back to our topic: As regards a general legal framework for cooperatives, it unquestionably falls under private law, where cooperatives are regulated either under civil code, commercial code, or a separate act. Specific regulations in each country spring from the legal tradition, culture or the entire systematic classification of law. None of these forms take preference over the other.
12. In terms of content, however, they stand for certain borderlines that should be endorsed – starting with a definition of an association/a cooperative and a respect for cooperative values and principles. As regards housing associations, however, there certain specific areas need to

be resolved – e.g. the form of a "lease" of a cooperative apartment to members, the protection under law of that relationship, a definition of members' rights and obligations, disposition concerning membership rights, obligations and the cooperative/housing association's ownership sovereignty – only the members themselves should have a say in property matters.

13. Legal developments in our country: From 1873 on, identical with the neighboring Austria, but after 1948 complete liquidation of cooperatives as a vestige of capitalism, cooperatives later instituted as part of the planned economy; members had the duty to pay for one's housing but his rights were restricted in a major way. However, at all times, the legal regulation was carried out through a special act. In 1991, the legal regulation was entrusted to the commercial code. Next year we are expecting an entirely new codification of civil and commercial law, where cooperatives will have a special part reserved – both in the general regulation of cooperatives, and special provisions concerning the housing association. This special regulation will not permit risky entrepreneurial deals, any derogation from the "one member equals one vote" principle; we also expect that a title on economic audit of cooperatives and on audit associations will be added.
14. It is because today there are some 10,000 housing associations in the Czech Republic, for the most part owning one building each, but about 1,000 own 720,000 apartments, the rest approximately 150,000 apartments. The latter came into existence through privatization of the available housing and are managed by volunteers. Economic audits do not interfere with management of a housing association but rather are to increase management prudence
15. As regards the financial institutions giving support to construction, some of these instruments, in our opinion, need to be structured. It needs to be realized that a cooperative/a housing association is to work for its members – if they succeed in putting together a group of citizens who found a cooperative/a housing association, they own activity is a must – they will have to look for a contractor, a piece of land or a location, where the supply fits their ideas and financial capabilities – certain self-help is necessary, especially in the first shopping-around-for-contractors stage. In our experience (CZK 30 = 1 EUR), the average price of new housing on the market ranges from CZK 28,000 to 30,000 per square meter, and up in attractive downtown areas. Some of our housing associations, however, found without any major problems contractors willing and capable of erecting an apartment building of standard and decent amenities for CZK 15,000 to 18,000 per square meter.
16. Access to certain instruments is required to fund such construction – in the Czech Republic, savings earmarked for housing have been quite popular in paying for the membership share (around CZK 200,000). The state contributes a certain bonus and once one has saved up some 40 % of the target amount, the saver may apply for a favorable loan with a low interest rate (lower by some 3 to 4 % than your regular interest rate). The average citizen can save the aforementioned amount in 2 to 3 years.
17. The rest of the amount is paid by the housing associations – which obtains a loan secured by mortgage and calculates installments for the members according to the floor area they inhabit.
18. Social rules will then make possible (a law like that is expected) for citizens with precisely defined low incomes an additional social contribution of up to CZK 400,000 per apartment. The contribution will have to be refunded if the citizen concerned wants to dispose of such an apartment.

19. It may be generalized that for a functioning housing association a set of safeguarded and well-considered legal regulations for cooperatives is needed, together with a plenty of financial instruments. Unlike many of our politicians I am convinced that the ultimate criterion of success is the civic (member's) activity in the search for a suitable project and cooperation in the implementation thereof – which means self-help not only in the sense of physical efforts at, but also in the preparations and organization of, the construction site.
20. This is where the role of the confederacy of cooperatives starts – especially in the area of methodology and membership education – a sort of theoretical finishing school for volunteers. It has been proven helpful if the existing housing associations with an experience in the operations and management of apartment buildings take up such functions, and organize the construction endeavors.