

Chaper 4

Housing Policy Reforms in South East Europe

In the context of multiple ‘transitions’ to markets, democracy and decentralised governance across the region, this chapter evaluates progress in housing reforms. The emphasis is on change and progress in the development of institutional and legal framework to assist access to affordable housing and more effective operation of housing markets.

4.1 Major Housing Policy Developments: Challenges and Opportunities

4.1.1 *The First Phase of Housing Reforms*

Following the political changes in 1989, various reform initiatives were carried out in the region to transform the housing sector. Housing reforms were motivated by pressures to reduce budget deficits and to move away from macro regulation and direct subsidisation of housing supply to a market-oriented housing sector. It should be recognised that different points of departure had a considerable impact on choices and reform strategies.

In general terms housing reforms in the first stage of the transition focused on strengthening market forces and reducing state intervention in the housing system. Those policies promoted deregulation, increased the role of private sector institutions and reduced public expenditure. The reform also involved the privatisation of public assets – public rented stock and state construction enterprises. The practical implementation of housing reforms in the different countries is directly related to the new directions in housing policy, the process of economic restructuring and the wider context of social and political change. Risking oversimplification, this analysis will focus on the most significant reform measures in the transformation of the housing sector:

- privatisation of public housing
- deregulation of housing markets and restructuring of subsidies
- privatisation of state construction enterprises.

4.1.1.1 Privatisation of Public Housing

Different privatisation forms have been implemented – sale of public housing, restitution and conversion of co-operatives into condominiums.

- *Sale of Public Housing.* Reform strategies mainly differ with respect to the price at which dwellings were sold to existing tenants. They can be grouped into the following categories: voucher privatisation (BiH), privatisation free of charge (Albania, Moldova),¹ and low-price privatisation (Bulgaria, Romania, Serbia and Montenegro). The extent of sales has varied considerably both within and between countries. The low-price strategy, typically at less than 15% of the real market value of the dwelling unit, created a flood of sales. Privatisation progressed rapidly in Albania, Bulgaria, Moldova and Romania. Despite its late start in BiH more than half of the socially owned housing has been privatised. Regarding the size of ownership transformation since 1990, the “fore-runners” are Albania, Croatia and Romania. Starting from a low level of public ownership, Former Yugoslav Republic of Macedonia sold 90% of its public housing, while Bulgaria sold half (see Fig. 4.1).²

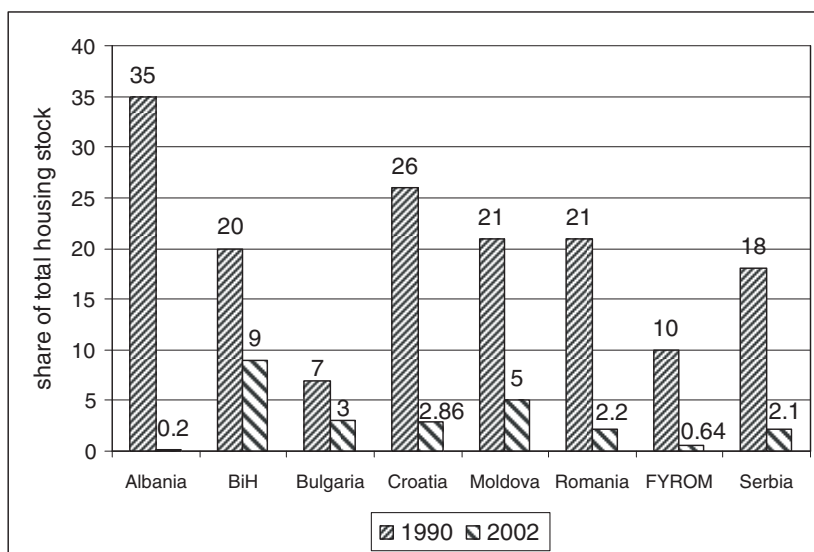


Fig. 4.1 The privatisation of public housing in the region, 1990–2002. *Source:* Hegedüs and Teller (2003) (data for 1990) and Tsenkova (2005) (data for 2002)

¹ In Moldova, a fixed amount of living space is provided free, but high prices are charged on any extra space. In Albania, a symbolic fee was applied which differed with respect to location and age (e.g. it was higher for ground level apartments and reduces to zero in case of apartments older than 20 years).

² In Former Yugoslav Republic of Macedonia there is a moratorium on privatisation, two thirds of the 5,000 public housing units have the legal status of controlled rents.

- *Restitution.* Apart from Albania, Bulgaria and Croatia, restitution has not been an issue in the other countries in South East Europe. Tenants of state-owned housing built before 1950 found themselves being tenants of a private landlord, which reportedly creates a lot of tension between tenants and new landlords. The restitution had some impact on the inner parts of towns and cities affecting in Bulgaria (5%), Albania (3%) and Croatia (4.2%) a significant share of housing.
- *The Transformation of Cooperatives into Condominiums* is another aspect of privatisation in countries which were part of former Yugoslavia. Although the sector was relatively small, the legislation in 1992 allowed the conversion to entities where owners have exclusive ownership of the unit and a stake in the common areas in proportion to the floor space of their flat.

The discount policy has given rise to concerns about the distribution of wealth in transition countries (Clapham et al, 1996; Hegedus and Tosics, 1996). While the general view is that privatisation has shifted wealth towards a significant part of existing tenants, it has also increased social inequality. Among the losers are typically households in the waiting queue for housing, but also those with a low or even negative value of their dwelling as a result of inferior quality with high repair and maintenance costs. On the other hand, uniform prices allowed privileged households to acquire considerable wealth at insignificant cost (Tsenkova et al., 1996).

4.1.1.2 Deregulation of Housing Markets and Restructuring of Subsidies

In the general restructuring of the housing system along market principles, the administrative distribution of owner occupied housing has been replaced by market allocation and restrictions on housing consumption have been abolished. More importantly, reforms have dramatically expanded property rights of home owners, permitting free property transactions at market prices. Traditional perceptions of housing supply and demand were transformed by the emerging housing and land markets. Price controls over housing, construction and land prices were abolished resulting in escalation of housing related costs. Economically constrained governments were pressed to reform housing budgets in a radical way. Five main types of changes can be distinguished: (1) elimination of production subsidies, (2) reduction of public investment in new housing construction, and (3) elimination of universal subsidies for homeowners (e.g. mortgage or maintenance subsidies).

4.1.1.3 Privatisation of Construction Enterprises

The privatisation of construction and building materials enterprises was undertaken in all South East European countries although at varying paces and in different ways. Models of privatisation adopted were based on those employed in other industrial sectors, such as employee buy-outs or the creation of large state investment funds to hold shares. Other means included sale of enterprises to foreign investors, and/or coupon

sales where citizens were given vouchers which can be exchanged for shares. The privatisation of large-scale, vertically-integrated, state-owned construction enterprises (*kombinats*) was completed due to the low demand for their product and lack of projects to ensure large scale production and economies of scale.

4.1.2 *The Second Phase of Housing Reforms*

The second phase of housing reforms in South East Europe since the mid-1990s has proceeded through 'trial and error', focusing on problems to be remedied rather than strategic intervention. This incremental style of policy action means that a number of limited options are supported and that the policy process is fragmented through devolution of power to a number of participants. In the spirit of incrementalism, policy evolves through complex and reciprocal relations between bureaucrats, politicians, and representatives of interest groups.³ There have been limited attempts to launch more strategic interventions. Albania has a *Housing Action Plan* approved in 2001 and Moldova developed its *Housing Strategy* in 1998, but it was never implemented. Croatia's attempt to get its Housing Strategy approved failed due to changes in government and Serbia's efforts to build consensus on social housing issues and further reforms has been jeopardised by political instability. In Bulgaria, after 15 years of neglect, the government approved a *Housing Strategy* in 2004 and several ambitious programmes to deal with rehabilitation of existing housing.

Overall most countries in South East Europe today have a myriad of regulations and housing related initiatives that are not necessarily consistent and coherent with stated housing policy goals and objectives. Despite some diversity of housing policy experiences, the reform path emphasises a less prominent controlling and subsidising role of the state and a greater role of the market. Generic subsidies have been cut back and responsibilities for social housing devolved to local governments. However, new transfers have emerged, such as deductibility of mortgage interest or contract savings in Croatia and Romania. New programmes providing public/social housing for low-income households have been introduced in Romania, Former Yugoslav Republic of Macedonia and Serbia. These developments sketched in broad strokes, are comparable elements of housing policy pursued in South East European countries. Yet, some specific arrangements, the timing of these instruments and the response of different housing systems, determine a range of 'enabling' housing market strategies.

Notwithstanding the diversity of arrangements, policy instruments can be grouped into the following categories: *voluntary* (community, non-profit, markets), *mixed* (information, subsidy, taxation) and *compulsory* (regulation and direct provision) (Doling, 1997; Howlett and Ramesh, 1995). It appears that the overall reform path

³ The 'trial and error' approach is contrasted to rational policy making. It is incremental in nature and does not imply a fundamentally new approach thus reducing the uncertainty and errors (Lindblom and Woodhouse, 1993).

followed by most countries in the last decade has been a move away from direct provision of housing services to reliance on voluntary instruments (housing markets, voluntary organisations and self-help. This reform trajectory can be presented through the ladder of policy instruments in Fig. 4.2. While the spectrum includes a range of ‘enabling’ housing market strategies, the second phase of the reform has marked a shift to mixed instruments (demand-based subsidies to support homeownership or post-war reconstruction) and institutional development aiming at building market-based institutions of housing finance and other market intermediaries. In the realm of ‘compulsory instruments’, housing policy activity has focused on harmonisation of the legal framework for housing management, property registration, mortgage and construction. Public provision of housing has remained limited. A harsher public expenditure regime has led to less investment in social housing, although in some countries limited support for low income and socially disadvantaged groups has been launched (Council of Europe, 2002).

The direction of change is no doubt the same across the region, and the underlying elements are similar. However some countries have been more successful than others in designing and implementing housing reforms. In fact, notions of convergence do not really match the reality of widening differences in the structure and operation of housing markets between Albania and Croatia for example, or Bosnia and Herzegovina and some of its South East European neighbours (Tsenkova, 2004a). The reform path can be summarised by the following clusters of actions:

- Institutional reforms enabling more efficient operation of market intermediaries and HOAs
- Legal reforms to establish a more effective framework for housing finance, property registration, and land management for housing

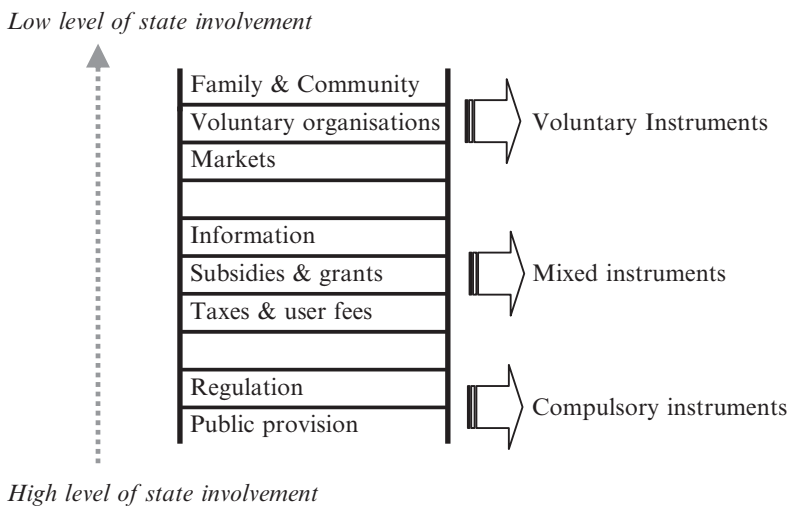


Fig. 4.2 The ladder of policy instruments

- Fiscal reforms and programmes for the management of public housing and social assistance
- Financial support for homeownership
- War-related housing and refugee programmes.

These issues will be reviewed in a comparative perspective in the next two chapters with an emphasis on differences and similarities across countries in the region.

4.1.3 Progress in Housing Reforms

The evaluation on progress and challenges in housing reforms summarises the results of a survey administered to housing policy officials representing major government institutions in South East Europe in the Housing Expert Network of the Council of Europe (see Annex 2). The sample is small, so the results are not considered representative for the policy community in the region. Notwithstanding these limitations, the survey highlights important areas for housing reforms as well as major challenges.

Figure 4.3 presents a summary evaluation of progress achieved in four areas of housing reforms: legal, fiscal, financial and institutional. Overall the ranking, measured by percentage of responses identifying poor reform performance, indicates inadequate progress in most policy areas. Although significant progress has been

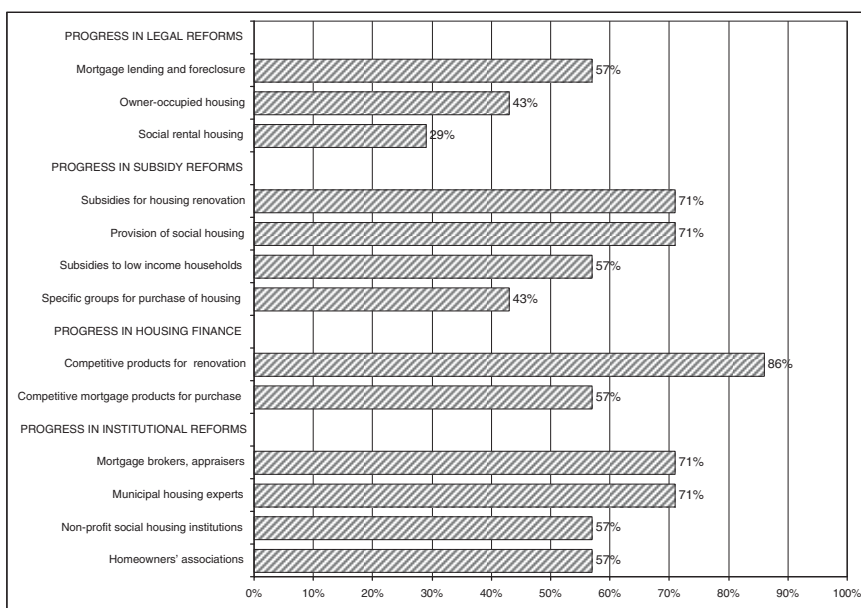


Fig. 4.3 Inadequate progress in housing reforms in South East Europe. *Source:* Tsenkova (2004a)

accomplished in developing adequate legislation, the legal framework for mortgage lending and foreclosure is considered inappropriate. With respect to subsidy reforms, major concerns relate to the lack of subsidies for renovation as well as social housing (71% of respondents). Equally unsuccessful so far has been the institutional development of market intermediaries (mortgage brokers, property appraisers, real estate agents) and municipal housing experts. Not surprisingly, mortgage lending is viewed as the area where virtually no progress has been achieved (86% of respondents identify poor performance).

The second cluster of interview questions relates to housing policy priorities in major policy areas. Responses in Fig. 4.4 show the percentage of respondents who felt that intervention in these areas with a focus on selected measures was most important. First, there is a clear indication that more emphasis needs to be placed on legal and fiscal reforms. Second, the development of a legal framework for social housing seems to be a clear winner (71% of respondents), followed by legislation related to mortgage lending and foreclosure (57%). Third, in the area of fiscal reforms preferences for subsidy instruments for housing renovation, social housing and support to low income groups prevail (43% each). Fourth, in the area of financial reforms, competitive products for mortgage finance seem to be a priority, while in the area of institutional reforms - support for capacity building programmes for municipal housing experts (57%).

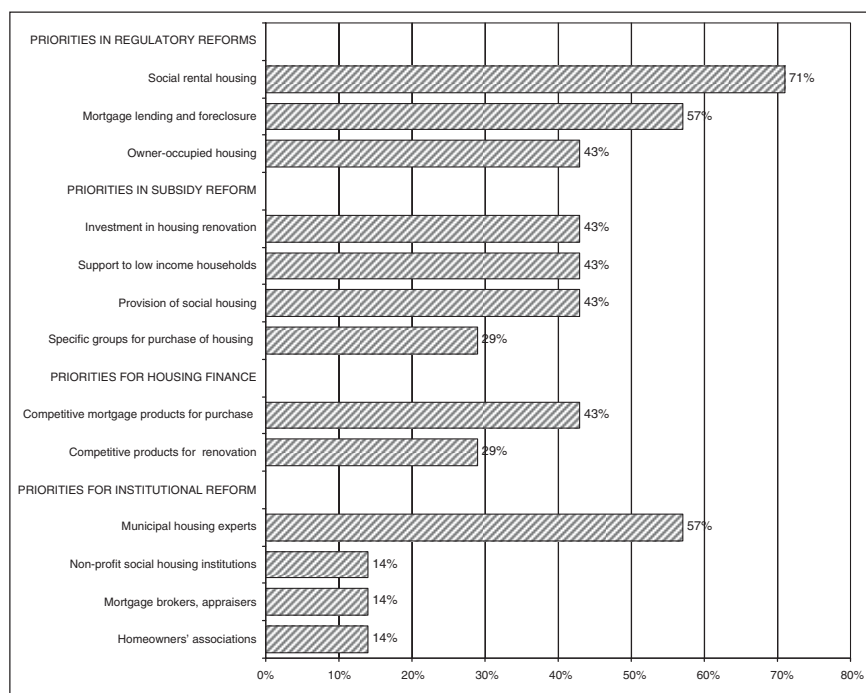


Fig. 4.4 Housing policy priorities in South East Europe. Source: Tsenkova (2004a)

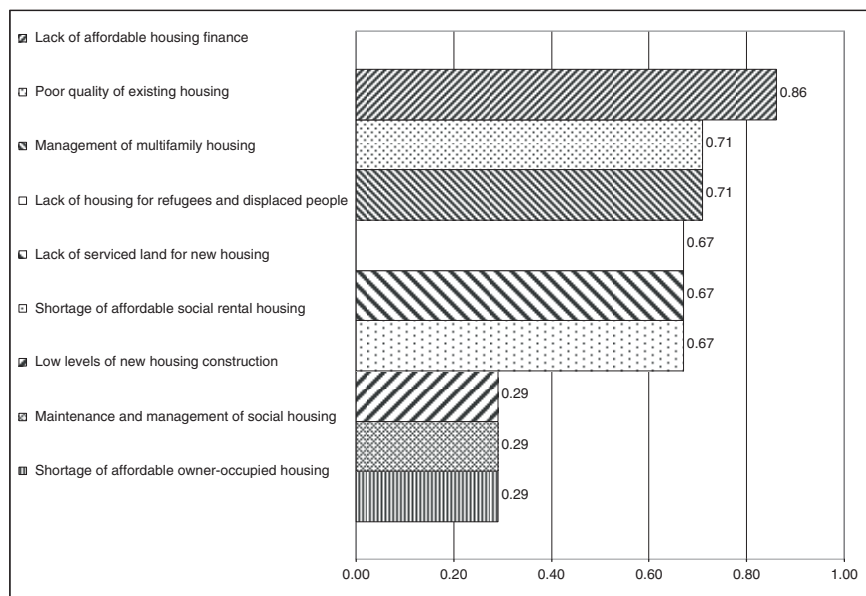


Fig. 4.5 Major challenges for housing reforms. *Source:* Tsenkova (2004a)

Policy officials were asked to prioritise major challenges for housing reforms in their countries. The responses presented in Fig. 4.5 refer to share of respondents who felt that these issues were ‘important’ or ‘most important’ in housing policy. The order of priority suggests clearly that lack of affordable housing finance (86%), poor quality of existing housing and the maintenance and management of private multi-apartment housing (71% each) are the most significant challenges for housing reforms in the region. The next important set of issues relates to the lack of affordable housing for refugees and socially disadvantaged people as well as constraints in access to serviced land for housing (57% of respondents).

4.2 Institutional Reforms: Privatisation and Private Sector Growth

Until the 1990s private sector activities (excluding self-help) were virtually non-existent in most countries in South East Europe. New actors have emerged – speculative house builders, real estate agents, private building firms and maintenance companies. Former participants have received new roles and responsibilities. Major change has occurred in the distribution mechanisms, where market allocation of housing has become dominant. Decentralisation and privatisation in the production and distribution of building materials occurred rapidly in most of the countries, while the construction sector has been relatively slow to adjust, particularly in Bulgaria and Moldova where

the industrial privatisation has been delayed. The supply of land and housing finance, the most controlled elements of socialist housing provision, have been deregulated (with the exception of Serbia and Moldova). Governments have replaced bureaucratic allocation of housing with market mechanisms. On the supply side this has resulted in a shift to private sector promotion and production of owner-occupied housing and private maintenance and management.

The institutional transformation in the housing sector is embedded in the overall economic, political and institutional restructuring of individual countries. In particular, fiscal austerity and economic uncertainty have affected the operation of central and local governments in the region and their ability to formulate and effectively implement housing policies. The public sector overall is playing an enabling role in housing with major responsibilities centred on legislative reforms. Local governments in some countries have acquired important responsibilities related to public housing (Bulgaria, Moldova, and Romania). In addition, responsibilities for refugee related programmes and post-war reconstruction in Croatia and BiH require a much more significant commitment from governments, both at the local, entity and central level.

4.2.1 Public Sector Institutions in Housing Provision

4.2.1.1 Central Government

The responsibility for housing policy in South East Europe is typically given to the ministries responsible for public works, construction and spatial planning. The need for coordination among the departments dealing with the different aspects of the housing sector as well as with other line ministries – Social Welfare, Finance, Local Government, and Justice – presents a complicated task. Financial ministries have the decisive role in housing policy and determine the allocation of resources for the sector, either in the state budget process or through the transfers to local governments. Some demand-based assistance for housing purposes is also included in the overall system of social assistance. In other words, the housing ministries typically do not control a large range of policy instruments and need to work with a number of other ministries to achieve real change (Box 4.1).

4.2.1.2 National Housing Agencies

New national housing agencies have been established in several countries to facilitate the implementation of housing policies and/or deal with specific housing problems. In Albania, Croatia, Moldova and Romania these agencies act as housing developers using budget resources, public land and donor funding to solve urgent housing problems (e.g. completion of unfinished housing, compensation of tenants in housing subject to restitution, etc.). Although the mandate of these national housing agencies was much broader including institutional support to condominium associations,

Box 4.1 Key Central Government Institutions in Housing

In *Albania* the Ministry of Territorial Adjustment and Tourism is responsible for the preparation of housing policy. The Housing Department is composed of four experts and the Director. In *Romania* the Ministry of Public Works, Transports and Housing with four major subdivisions is responsible for legal reforms in the area of housing, urban planning and management and real estate cadastre. In *Croatia* the Ministry of Public Works, Reconstruction and Construction is the leading institution in the area of housing policy with three departments: (1) Department for Housing, Building and Housing Construction; (2) Department for Reconstruction; and (3) Department for Displaced and Dislocated Persons. In *Serbia*, housing responsibility is given to the Ministry of Capital Investments with a task to prepare programmes, legislation and housing construction important for the Republic of Serbia. In *Former Yugoslav Republic of Macedonia*, the Ministry of Transport and Communication is responsible for housing, and the Public Enterprise for Housing is responsible for the execution of government programmes. In *Bulgaria*, the Ministry of Regional Development and Public Works has the leading role on housing matters. In *Kosovo/UNMIK* the Ministry of Environment and Planning is the major institution with responsibilities for housing legislation and monitoring of donor assistance in the area of housing.

research on housing issues, and development of new mechanisms for affordable housing, most of the current operations have focused on new housing construction with limited degree of targeting. Redefining their role in the long-term might be necessary due to the unfair competition with the private sector in the areas of housing construction and finance.

In *Romania* the National Housing Agency was set up in 1999. This is an off-budget government institution designed to manage government subsidised housing programmes. In the *National Strategy for Housing* for 2001–2004 the government housing policy aimed at (1) mitigating the ratio between the market price of housing and the average family income; (2) facilitating access to the market for specific categories, especially young individuals and families; (3) Providing incentives for private investment in housing; (4) Enhancing the role of the National Housing Agency as a developer and a housing lending institution. But funding the programme is a question of politics and budgetary allocation (Council of Europe [CoE], 2003b).

In *Albania* the central government through the National Housing Agency (NHA) has built almost 10,372 apartments for ‘homeless households’ registered with local authorities. NHA sells the apartments with a contract for a lump-sum payment, applying 30% discount covered by the state budget. The second option is to take a loan; payments are made in instalments, which should not exceed 20% of the salary. The period is 25 years and the interest is equal to zero.

The National Housing Agency in *Moldova* has centred its activities on the completion of unfinished housing. These projects abandoned in the early 1990s by state enterprises

are at various stages of the construction process.⁴ The Agency receives every year a certain amount of projects, approved by a government decree, and mobilises funding from prospective buyers for their completion. The prices of housing are usually 20–30% lower compared to other new housing due to the initial transfer of land and partially completed construction involved. While this might be a reasonable way to deal with the problem of uncompleted multi-apartment housing by unleashing frozen assets into the market, the Agency operates like any private developer and does not fulfil a social housing mandate. Similar approaches have been used by the Public Enterprise in Former Yugoslav Republic of Macedonia, which acquired a number of uncompleted buildings from social enterprises in its portfolio.

4.2.1.3 Cadastre and Property Registration Agencies

Traditionally, in the region of South Eastern Europe, courts were competent for the registration of real property rights, whereas central administrative authorities had to ascertain the physical status of real property, like location, size and value. The Land Cadastre, together with the land books, and/or a system of *tapija* (Turkish based verification of property rights) was introduced during different times in the region. In the former Yugoslavia there was an unsuccessful attempt to transform the existing dual system into a new unified Real Estate Cadastre. Romania, Bulgaria and Moldova are the three countries with a well functioning cadastre and real property registration, which are essential instruments for providing the state and the economy with reliable data on real estate. In Serbia and Montenegro, BiH, Croatia, Former Yugoslav Republic of Macedonia and Kosovo/UNMIK, the cadastre system has a limited coverage (less than 60% of the territory) and court enforcement of property rights is required (ECE, 2005; Zülsdorf et al, 2004). The situation of the property registration system is a significant constraint for the functioning of housing and mortgage markets and prevents the introduction of market-based property taxation. Reliable data on land and real estate guarantee fair taxation and provide the basis for land administration, land use planning and economic development essential for the desired integration of South East Europe into the EU.

4.2.1.4 Local Governments

The reform process in the region has emphasised decentralisation, deregulation and local autonomy. In the new fiscal reality local authorities are seen as ‘crisis managers’ charged with a lot of responsibilities related to the provision of infrastructure and services, but without the corresponding resources to address those problems. Thus, the

⁴The stock consisted of 296 buildings with more than 20,000 apartments. Various options were applied – auctions of buildings, long-term credits subsidised by the National Bank, VAT exemption, etc. So far the agency has received 50 buildings with 3,000 units to complete.

central government has shifted the conflicts in housing and urban development to the local level.

Reforms on local self-government adopted in the early 1990s introduced municipalities as the basic territorial unit for local self-government. Typically municipalities will have a directly elected Assembly (Council), and a Mayor elected at large. In most countries local government is organised at one level with the exception of capital cities and some large urban centres which have a two tier municipal structure. Serbia for example has 161 municipalities,⁵ Moldova – 65, Albania – 303 municipalities (including 65 in urban areas), Romania – 42 counties (including Bucharest) with 3,000 municipalities and Bulgaria – 265. The degree of local government fragmentation, particularly in some countries, has raised serious questions related to institutional capacity and the lack of economies of scale in the management of public utility enterprises (ECE, 2001).

The functions of local governments include making decisions concerning development programmes, urban planning and management, protection of the environment, as well as the budgeting, maintenance and development of communal activities. They plan and regulate the use of building land and adopt development plans and zoning plans. Municipal enterprises also provide infrastructure and services related to water, sewer, waste management and public transport. Housing is typically a responsibility which is shared between the central and local governments with the central level focusing primarily on legal issues and the provision of housing subsidies. Local governments are the new social landlords with major responsibilities of housing the poor and disadvantaged.

Overall decentralisation has been much slower in Serbia⁶ and Former Yugoslav Republic of Macedonia due to potential ethnic conflicts and political reluctance to vest many responsibilities with the public administration. Bosnia and Herzegovina has the most decentralised structure with a great degree of autonomy at the entity level – FBiH, Republic of Srpska and District of Brcko. Despite these differences in the extent of decentralisation, most local governments are highly dependent on central government transfers and have limited possibility to raise funds through local taxes and fees.⁷ A major source of local government funding in the European Union – property taxes – is very limited in South East Europe. The issue of funding is particularly critical with the scale of demands exceeding current resources. Reliance on donor funded projects, particularly in Serbia, Montenegro, Kosovo/UNMIK, Bosnia and Herzegovina, makes the need for sustainable local funding more important. The delivery of many services, such as apartment maintenance, is carried out by enterprises that are working for, but not directly controlled by, municipalities.

⁵There are total of 161 municipalities, excluding Kosovo/Metohija ranging in size from 235,000 to 3,000. The City of Belgrade includes 16 municipalities (ECE, 2005).

⁶For example, local governments do not own urban land in Serbia. In Former Yugoslav Republic of Macedonia urban planning control is exercised by the Ministry of Transport and Construction, while in Albania there is a Construction Inspectorate.

⁷Albania's government is highly centralised with financial resources and powers concentrated at the national level. Only 6% of the national budget finds its way to local governments (ECE, 2002).

4.2.1.5 Public Utility and Maintenance Companies

As a result of decentralisation, municipal governments were given the control and ownership of public service companies. The experience proved that strengthening municipal governance and the management of local public utilities is one of the key factors for the housing management reform. The old state-owned management structures have collapsed and the efforts to introduce new fiscal discipline and new forms of corporate governance have been limited. First, the sector is inefficient due to its limited managerial independence as far as service policies, operations and pricing is concerned. Second, prices charged for services historically have been low relative to the cost of supply. Efforts to adjust prices in line with inflation and costs have been made on an *ad hoc* basis with limited effect. Third, the funding gap in working and investment capital has led to postponing replacement, deferring maintenance, reducing services, and finally options for concessions and contracting out (Council of Europe Development Bank, 2004).

4.2.2 Private Institutions in the Provision of Housing

Many institutions are involved in the production, allocation and consumption of housing. The emerging housing markets in South East Europe are at different stages in their development and have unique characteristics. The lack of well-established regulatory institutions at the central and local level, as well as the weakness of financial institutions, contributes to the inefficiency and immaturity of these markets. The most significant ones in the process are: the developers (private institutions or individuals); the landowners; the financial institutions; the building industry (mostly private); the local housing and planning authorities and the consumers. These new roles and responsibilities are associated with the transformation of the housing sector along market principles.

The housing provision chain model is used to identify the institutions in the development process. As shown in Fig. 4.6, the housing provision process is divided into four stages: promotion/investment, production, allocation, and occupancy/service. Major public and private sector institutions involved at each stage of the process are grouped in two separate categories representing public and private interests. The effect of the reform is the growing importance of private sector activities associated with the operation of the market.

4.2.2.1 Building and Maintenance Housing Industry

The nature of the building industry and the diversity of promotion/production are vital to understanding the varying nature of output between countries. State construction enterprises in South East Europe have disappeared in the early 1990s and the 'municipal developer or social enterprise housing' has ceased to exist.

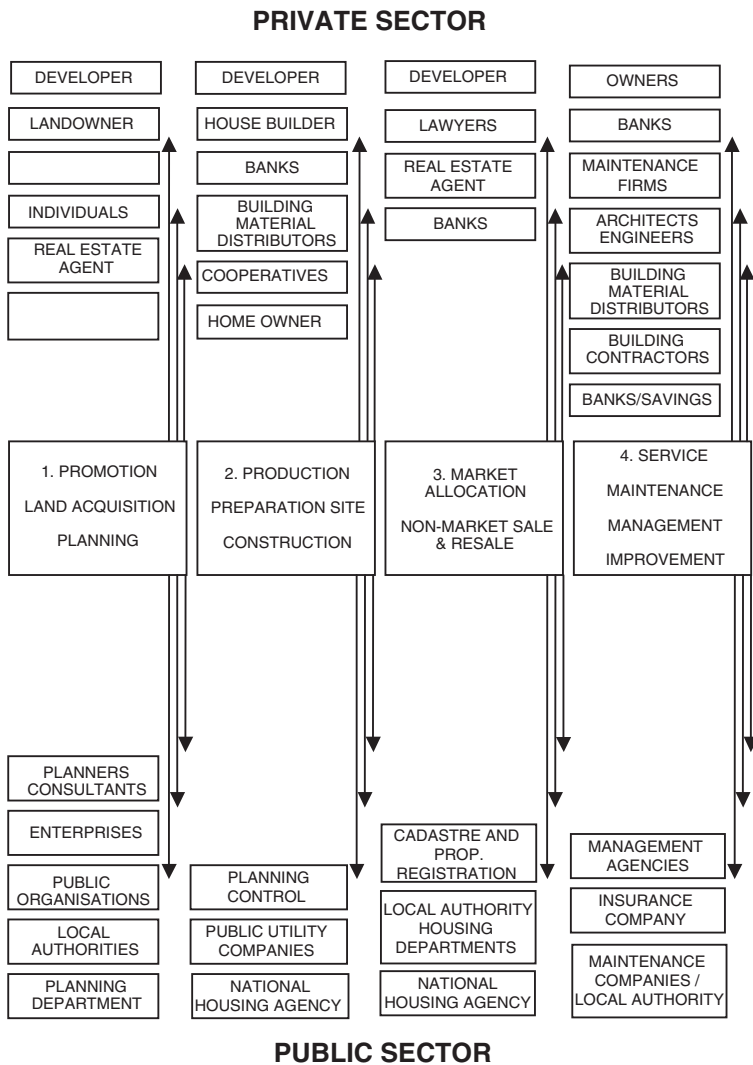


Fig. 4.6 The housing provision system: major institutions

The enterprises used to play a decisive role in former Yugoslavia, where the Solidarity Housing Fund was a significant source of housing finance. The role of public enterprises as housing developers for their employees disappeared in most of the countries, including Serbia. Meanwhile the private building industry has established a considerable market presence. Most of the firms are small, with less than 50 employees, currently holding more than 70% of the total construction industry assets (ECE, 2004). Specifically in Serbia, Former Yugoslav Republic of Macedonia and Croatia, privatisation of the construction sector has contributed to

the dramatic reorganisation of the housing industry. Before the transition the housing industry represented a dual system: (1) big state owned construction companies typically building multi-apartment housing, and (2) self-help sector, where households promoted the construction using the help of relatives and friends and/or contracting state enterprises. The speculative house builders have emerged very quickly building mostly for the elite market (Tsenkova, 2000).

The radical changes in housing markets have established a new role for private landowners. Though some of the land is still provided by public agencies (mostly through auction of leasehold or freehold rights), landowners, due to a shortage of urban land with a clear title and various local planning restrictions, are in a position to charge a 'private tax' on development.⁸ In areas with land shortages, this ranges from 30% to 50% of the house price. Considerable private sector activity in the market-based housing system is focused on maintenance and renewal. A growing number of small construction firms are competing for repair and improvement contracts with the municipal maintenance firms, even in public sector housing. Important changes have also occurred in the roles of local and central institutions associated with housing policy.

4.2.2.2 Housing Finance Institutions

Recent studies indicate that the banking system across the region has recovered (Butler et al, 2004; Falcetti et al, 2003; Merrill et al., 2003). Although privatisation occurred more slowly than planned, much of the controlling interest in the commercial banks of Bulgaria, Croatia and Romania was sold to strategic investors. By comparison, state ownership of capital in the region has been reduced dramatically to less than 15% on average. Not only is the banking system dominated by private, and in a number of cases foreign ownership, it has experienced large scale restructuring and consolidation. In most of the other countries in the region, credit activity in general, and household lending in particular, has increased substantially during the past 2 years. Reportedly, despite current low level by European Union standards, the mortgage markets in Former Yugoslav Republic of Macedonia, Bulgaria, Romania and BiH are expanding at a rate of 20–40% annually. Banks have started to offer much more competitive financial terms – particularly longer maturities and lower interest rates – and apply less restrictive underwriting criteria (Bothwell and Merrill, 2005). The mortgage market in the region is dominated by commercial banks. Recent overview of the mortgage market in a number of countries suggests that mortgage lending is offered by a small number of institutions, often the largest commercial lenders with some degree of foreign ownership.

⁸Private landowners in most cases own a small lot with older, often substandard housing. Urban renewal in socialist cities was often delayed, so some neighbourhoods in prime locations experienced considerable decline. Such situations alternatively have generated opportunities for private redevelopment of those areas. Restitution of land and housing has increased to some extent the supply of urban land.

4.2.3 *Non-Government Organisations and Housing Market Intermediaries*

Non-government organisations (NGOs) in the countries of South East Europe are at an early stage of development and require support to act as effective intermediaries between the public sector and civil society. They are generally limited in capacity and reliant on international donors for funding. Representative bodies of owners or tenants at the national or local level are few, though there has been some attempt to involve NGOs in the development of national housing policies. There are no institutions dealing with housing research, surveys, data collection and policy evaluation.

4.2.3.1 Associations of Homeowners

The new institutions in the urban housing system are homeowners' associations (HOAs) or condominiums. Studies indicate that despite the effort to establish an adequate legal framework for the operation of these new entities, the privatisation has resulted in quasi-ownership with inefficient way of managing housing assets (Council of Europe [CoE], 2003b). In most countries less than 20% of the multi-family housing has HOAs acting as legal entities. Lack of funding and experience to deal with the complicated tasks of asset management and financial planning has aggravated the housing conditions across the region. In some cases municipal maintenance companies still manage privatised housing under contractual obligations with new owners at nationally controlled prices. The scale of multi-apartment developments also creates difficulties in management and co-ordination of financial contributions. In addition, the level of housing related services (water, energy services, district heating, garbage collection and waste management) has declined because of subsidy cuts, rapidly escalating costs and massive arrears with respect to utility costs. As a result of these processes not only have the public services deteriorated, but the normal maintenance of the housing stock has also accumulated a huge backlog.

4.2.3.2 Housing Market Intermediaries

A housing market and land administration can function only through close cooperation of the public sector (policies, legal framework, institutions, such as the cadastre and rights registration) with the private sector participants, such as the mortgage based financing system, the professions of notaries, surveyors and real estate agents. All of these elements are not well developed in the countries in the region and in some cases do not exist (Serbia, Montenegro, BiH). The introduction of professions such as notaries, real estate appraisers and housing managers would improve the operation of the housing market. Similarly, the profession of real estate agents has to be regulated with regard to qualifications, licensing, monitoring of activities, fee

structures and the creation of a self-regulating organisation. Romania and Bulgaria have professional organisations for property appraisers, Construction Chambers, Unions of Architects and Licensed Engineers. Realtors in Sofia, Bucharest, Dubrovnik and Zagreb typically have sophisticated databases of properties and sales prices, and web sites listing properties on the market (Merrill et al., 2003, 2004). In Chisinau Laura is the largest real estate agency providing similar services. While there is no formal multiple listing, some of the largest realtors share information on a voluntary basis. As the market matures and both mortgage and management contracts become more sophisticated, the need to regulate the work of housing market intermediaries – real estate agents, housing managers, property appraisers and maintenance firms according to international standards will become much more pronounced.

In summary, the most important constraints for the efficient operation of housing institutions in the region are:

- Lack of adequate institutional capacity of public institutions
- Lack of effective institutional cooperation – bureaucratic structures, corruption, red tape
- Lack of well established professional intermediaries
- Ineffective operation of Condominiums
- Unsustainable operation of public utility companies.

4.3 Reforms of the Legal Framework for Housing

Further development in the legal framework is the cornerstone of the second phase in housing reforms. Some countries have been more successful than others in designing and implementing adequate legislation to ensure a more efficient market-based system of housing provision. The comparative analysis will focus on the development of housing related legislation in several areas:

- Property rights and registration
- Housing loans and mortgages
- Privatisation of public housing
- Management of housing
- Planning and construction
- Property taxes.

The matrix in Table 4.1 summarises the main areas for reforms in the housing legislation, which have received attention in recent years. This stylised assessment indicates overwhelming emphasis on access to homeownership through privatisation with legislative action to ensure private property rights in housing and other real estate. Although some progress is made in developing legal frameworks for cadastre and property rights registration, in a number of countries the system is ineffective, incomplete and often court-based. Some countries (Romania, Croatia and more recently

Table 4.1 Matrix of priority areas for reforms in housing legislation

Country	Property rights and registration	Housing loans and mortgages	Privatisation of public housing	Management of housing	Planning and construction	Property taxes
Albania	X ^a		X	X ^b	X ^b	
Bulgaria	X		X		X	X
BiH	X ^a		X	X ^b	X ^b	X
Croatia	X ^a	X	X	X		X
FYR Macedonia	X ^a		X	X	X	X
Moldova	X		X	X ^b	X	X
Romania	X	X	X	X	X	X
Serbia	X ^a		X		X ^b	X
Montenegro	X ^a	X	X			X
Kosovo/ UNMIK			X			X

^aProblematic property registration system

^bInefficient implementation of the legal framework

Montenegro) have introduced mortgage legislation. With respect to housing management, progress is uneven and despite the introduction of housing acts and/or special condominium legislation, a handful of countries have an adequate legal basis. In fact, even if the legislation exists (Albania and Moldova), the enforcement is inadequate. Efforts to reform the legal framework for planning have been limited and particularly inadequate in Serbia, Montenegro, Albania and Former Yugoslav Republic of Macedonia. While property tax legislation exists in the region, there is no systematic effort to introduce market-based property tax assessment.

4.3.1 Property Rights Legislation

In most countries in South East Europe private property rights to land and housing are secured in the Constitution (e.g. Albania, Bulgaria, Croatia, Moldova, Former Yugoslav Republic of Macedonia, and Romania). This has been an essential component of the transition to market-based systems in the early 1990s.

Title and ownership rights in real property in most countries today are considered to be adequately complete and clear for operation of the housing and mortgage market. In Bulgaria these rights are stipulated in the *Property Law*, in Croatia—in the basic *Law on Possession and Other Real Property Rights* of 1996, while in Albania property rights are governed by the *Civil Code*. In BiH work is underway on comprehensive revisions of the *Law on Property*, which governs property ownership as well as mortgage and some pledge relationships. New amendments to the *Law on Enforcement Procedure* were adopted in 2003 introducing more streamlined execution process, including sale of real estate, and clearer procedures for real estate auctions. In Serbia property ownership is regulated primarily by the *Law on the*

Basic Elements of Property Rights, 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 *Housing Law of 1992* (as amended in 2001), and *Law on Transactions in Real Estate*. Moldova and Romania have introduced *Housing Acts* in the mid-1990s defining new housing relations, rights and obligations of the owners and maintenance of apartment buildings. Former Yugoslav Republic of Macedonia had a similar experience with a new *Law on Housing* since 1998, which in addition to the *Law on Ownership and Other Real Rights* (2001) regulates property acquisition, inheritance and disposal.

4.3.1.1 Property Registration

All countries have developed to a different degree the legal framework for property registration and validation of property rights in real estate and housing. In Bulgaria the *Property Registration Law* requires titles and property transactions to be recorded in the legal registry maintained by the district courts.⁹ In Romania the process is regulated in the *Real Estate Registration and Cadastre Law* of 1996. Romania has a strong system for registration of real estate and mortgages. In fact, in both countries ownership records were reasonably well kept up during socialist years and the registration of privatised apartments has been handled in an efficient manner. The cadastre in Romania is under the jurisdiction of the Ministry of Public Administration, while the land book or legal registry is administered by the Ministry of Justice and the courts (Merrill et al., 2003).

Urban land and other immovable real estate in Albania are registered in the Hipoteka Offices, which since 1995 have been transformed into Immovable Property Registries created by the *Law on Registration of Immovable Property*. The first registration of property was free of charge, however, the completeness of the database today is questionable (ECE, 2002).¹⁰ In Moldova the *Law on Real Estate Cadastre* (1998) stipulates mandatory registration of all real estate property and established a unified system bringing technical, legal and ownership characteristics together (including mortgage and lien). The National Agency for Geodesy and Cadastre maintains the system, which has over 90% coverage of all real estate on the territory of Moldova.

In Croatia the process is regulated in the *Land Registration Act* of 1996, the *Regulations on Land Registration Procedures of 1997*, and Book of Ordinances of the Land Register of 2000. Dwellings bought or acquired on any basis until 1997 used to be entered into the Book of Deposited Contracts. Since 1997, all real estate is registered into the land books. Efforts are made to simplify and improve the process

⁹Registration of title or mortgages in Bulgaria is handled by notaries and is reported to be very speedy – as little as 24h from submission of documentation to completion of registration (Merrill et al., 2003). The legal registry and cadastre are not yet unified.

¹⁰Recent changes in the legislation allow initial registration of ownership over land with buildings under construction, which is then finalised upon completion.

of consolidation of integrated Land and Real Estate Register. While Croatia has an adequate legal framework for registration, in practice many properties are not in the registration system.¹¹

The *Law on Land Registry* in Bosnia and Herzegovina since 2002 aims at introducing a unified system for property registration. At present, separate Geodetic Administrations in FBiH and RS are responsible for the cadastre, while the land registry maintained by the courts under the supervision of the Ministry of Justice is responsible for establishing the legal rights to the object (Box 4.2). While it is difficult to get reliable quantitative estimates of the state of the title registration system today, there are some indications that upward of 40% of the country lacks a functional titling system. This is consistent with the conditions found in Croatia, Serbia and Former Yugoslav Republic of Macedonia by ongoing World Bank cadastre projects (Butler et al.,

Box 4.2 Problematic Property Registration in Croatia and Bosnia and Herzegovina

Property registration in Croatia often fails to include enterprise owned properties built during the socialist years and more recent transactions with privatised apartments. It is estimated that in Zagreb only about 50% of the properties are registered. This problem is exacerbated by the manner in which registration of privatised apartments is regulated – all apartments in a building must be registered at the same time. In Zagreb, 90% of the population lives in privatised apartments. Banks will not consider making mortgages on properties that are not registered. There are also reports that the registration records are not accurate, in other words, even in cases where properties are registered, the records cannot be trusted. To help address the problem of unregistered properties, the courts maintain Books of Deposited Contracts. This can be used for apartments in buildings that have not yet been registered but where the owner has a valid sales contract. While this procedure does not afford the same legal protection as the land books or legal registers, it is often used for purposes buying and selling real estate.

Similarly in Bosnia and Herzegovina registration of privatised apartments was handled outside the usual Land Book system to allow for speedy and reliable registration. A Book of Deposited Contracts was set up in a separate office in each jurisdiction with a Land Book registry, and entry in this system is legally tantamount to Land Book registration.

Source: Butler et al. (2004) and Merrill et al. (2003)

¹¹ While the property and ownership rights are adequately set out in the Law, there are problems with establishing ownership rights. There are conflicting claims to ownership in areas affected by population displacements during the war, and some properties are affected by restitution claims under the Law on Compensation for Properties taken during Yugoslav Communist Rule (Merrill et al., 2003).

2004; Zülsdorf et al., 2004). It is believed that in about 20% of the towns in BiH no court land book exists due largely to war caused damage and destruction.

In Serbia the lack of adequate registration in the new unified Real Estate Cadastre is a major constraint for the development of efficient housing and mortgage markets. *The Law on Cadastre and the State Registration of Real Estate* has been challenging to implement due to the lack of property records from socialist times and incomplete cadastre covering only 55% of the territory. In Former Yugoslav Republic of Macedonia the issues are similar. Recent amendments to the *Law on Survey, Cadastre and the Real Estate Rights Registry* in 1991 introduced the framework for integrated cadastre and real estate property system – Public Paper – which contains information on the property ownership, rights, lien and technical characteristics of the property.

4.3.2 *Legislation on Housing Loans and Mortgages*

The Croatian *Law on Ownership*, Article 304, defines types of mortgages and specifies that real property may be used as security for a loan. In Bulgaria this is specified in the *Property Law*, while in Romania the *Mortgage Law* (1999) and the *Banking Law* allow licensed banks and other financial institutions to make loans secured by real property. The *Mortgage Law* has provisions for loans to be secured by future (to-be constructed) property. These provisions were included to allow the National Housing Agency to develop and finance the sale of housing (Merrill et al., 2003). In Albania the regulation of borrowing using real estate as collateral is in the Civil Code, further supplemented by the *Law on Collateral*. The separate ownership of buildings and land is not allowed and mortgages can be used only if the title on both is consolidated. In Moldova a new *Mortgage Law* is currently under review; in BiH a *Law on Pledge of Movable Property* is under consideration.

Reportedly in Serbia mortgaging is inadequately regulated by just a handful of articles in the *Law on the Basic Elements of Property Rights*. The right of pledge is established by legal transaction, court ruling and law. By contrast, in Montenegro the *Mortgage Law* was adopted in 2004

Croatia has several laws related to the financing of housing – *Law on Building Society Savings and State Subsidies for Building Societies*, *Law on the Fund for Long-term Financing of Housing Construction with State Subvention* and *Law on State Subsidised Housing Construction*.

4.3.2.1 **Foreclosure**

In Bulgaria a court judgment is required, and the “executive judge” supervises each step, including appraisal of the property, public sale or auction, and eviction. Execution is conducted under the *Civil Procedure Code* and the *Law on Obligations and Contracts Law*. Romanian law generally provides a good framework for foreclosure with details specifying court involvement, action process and priority claims (Bothwell

and Merrill, 2005). In Croatia the legal framework for foreclosure is reportedly inadequate. The typical procedure ranges from 1 to 3 years, depending on the jurisdiction. Banks tend to use guarantors in addition to collateral to counteract this uncertainty.¹² In Serbia the lack of detail in the property legislation, in conjunction with the provisions of the *Law on Enforcement Procedure* of 2000, has not allowed for the development of foreclosure as a means for a creditor to retrieve a loan. Mortgage lenders cannot initiate foreclosure; the execution of the procedure requires a favourable court ruling in a declaratory process (ECE, 2005).

4.3.3 *Legislation on Housing Privatisation*

Albania and Moldova were the first countries in the region to introduce privatisation in 1992. In Serbia 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. While a percentage of the proceeds were expected to contribute towards the provision of social housing for vulnerable groups, very little was built. The price was estimated based on different criteria such as average gross monthly income in the Republic, age of the dwelling and its quality, and flat size. A reduction was made on the basis of years of working experience of tenants. Prices were discounted by 50% for disabled veterans from World War II.

In Montenegro the *Law on Floor Property* of 1995, amended in 1998, provides the basis for privatisation. In contrast to the situation in Serbia, however, the legislation terminates the possibility for the tenant to purchase the apartment within 2 years of the law coming into force. 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. Montenegro adopted a new *Law on Floor Property* in 2004 defining maintenance responsibilities of apartment owners in a more explicit manner.

In Former Yugoslav Republic of Macedonia the *Law of the Sale of Socially-Owned Housing* (1990) and *Regulations on Establishment of Sale Prices for Socially-Owned Housing* (1992) defined the conditions for privatisation. The price was established on the basis of construction price, expenses for preparation of construction land, location and amortisation. Payment was executed in full or in instalments. In the case of payment in full, a discount of 10% could be approved. In the case of payment in instalments, these could not be lower than the prescribed rate of amortisation increased by 50% payable annually for up to 40 years (Box 4.3). *The Housing Law* (1998) further regulates housing relations in the rental and privately owned housing. The right to buy if not exercised by December 2004, is transformed into a rental

¹²In addition to mortgage loans secured by a registered lien on the borrower's property, Croatian law provides for a second type of mortgage arrangement – the fiduciary ownership model. Under fiduciary ownership, the lender holds the borrower's ownership documents (the deed or title) to the property until the loan is paid (Registra, Analystas and Imantra (RAI), 2005b).

Box 4.3 Implementation of the Law on Privatisation of Apartments in Bosnia and Herzegovina

The legislation did not specify what entity will actually implement the law, that is, accept and decide on applications, calculate prices, issue contracts, and register new ownership rights. Since the municipality owns the land upon which the housing is built, and a proportionate share of the land is included in each privatisation contract, the implication is that the municipality will have to be involved in each sale. Even though the average purchase price of 7,000–10,000 DM was reportedly high for most families, many used vouchers to pay. The law allowed payments over a 25 year term at 1% interest. The price for a privatised apartment was substantially higher than in other countries in the region, which on average ranged from several hundred dollars (Romania, Bulgaria and Serbia) to a symbolic price in Albania and Moldova.¹³ It is generally believed that the voucher an average family receives is sufficient to acquire ownership of their apartment. A voucher expires after 2 years, and an individual must live in his or her apartment for 2 years to acquire a voucher.

Source: Rabenhorst (2000)

right, on the basis of a rental agreement concluded with an entity authorised by the Government of Former Yugoslav Republic of Macedonia.

In Bosnia and Herzegovina the *Law on Privatisation of Apartments with Existing Tenure Rights* was passed in November 1997. In BiH (Republic of Srpska) this was supplemented by the *Law on the Housing Fund* (2001).

4.3.4 Legal Framework for Apartment Ownership and Management

Most countries have introduced condominium laws or changes to existing legislation to define ownership rights and responsibilities to individual and common parts of apartment buildings, including land under the building. However the formation of institutional entities such as associations of homeowners or condominiums has been very slow and in most countries the market for maintenance and management is dominated by municipal companies. With respect to multifamily housing, the legislation fails to impose in reality an obligation on residents to take responsibility for buildings, which in practice leads to further deterioration of the stock. These issues are discussed in more detail in chapter seven.

¹³The hyperinflation which followed in Serbia, Bulgaria and Croatia reduced the outstanding debt to a negligible amount.

4.3.5 *Legislation on Construction and Planning*

Most countries in the region have adopted, or revised substantially, planning legislation to define private and public responsibilities in the development process. A new generation of master plans has been developed, at least in the capital cities and major urban centres, recognising new real estate market realities. The differences in the legal framework on planning and construction are significant between Bulgaria and Romania on one hand and the countries from the former Yugoslavia on the other.¹⁴ The legacy of a system which did not recognise private property over urban land, coupled with the lack of adequate property registration of property rights, is a major constraint for the implementation of an effective planning framework in these countries. The problems that have plagued the construction of new housing, particularly in Serbia, Albania, BiH, and Montenegro, are manifold. The primary problem is access to land and cumbersome planning and building permit process. In addition, massive illegal construction, especially on the periphery of urban settlements, testifies to a failure to develop a coherent and comprehensive urban planning and zoning policy. Failure to establish transparent and consistent procedures for the auctioning of building land and the issuance of the necessary construction permits also contribute to the high volume of illegal construction. Even in Former Yugoslav Republic of Macedonia, where the regulatory framework for the realisation of detailed urban plans and construction of buildings (*Law on Spatial and Urban Planning and Law on Construction of Investment Buildings*) is in place, the amount of illegal buildings in Skopje is high.

Undeveloped municipal land still has not been denationalised in Serbia and Montenegro as well as BiH and remains in state ownership. The municipality has the right to allocate the land by several methods (leasehold, auctioning of rights, outright sale) as agent of the state. Both the Federation and RS now have *Laws on Urban Construction Land* (2003) and *Law on Spatial (Urban) Planning* (2002) which establish the principles that: (1) building owners are considered to also own the land under their building; (2) holders of rights of use to undeveloped lands created prior to 1992 have a temporary right to use the land and a preferential right for construction; and (3) other undeveloped urban lands are to be allocated by the municipalities primarily through competitive procedures under short term construction leases which will convert to ownership upon completion of construction (Butler et al., 2004).

In Serbia the *Law on Planning and Construction* (2003) provides for construction on public building land through lease by the local government in accordance with the Urban Plan. Fees for the use of developed construction land are paid by the owner of the building, whilst payment for the use of public land that has not been used for construction is made by the user. The legislation also regulates the legalisation

¹⁴Former Yugoslav Republic of Macedonia only recently adopted its *National Spatial Plan* (2004). However, new legislation on construction and planning with secondary regulations was adopted in 1996 followed by the *Law on Building Land* in 2001.

procedure for buildings constructed without a permit; however, the procedures are implemented on a case by case basis.

Effectively the lack of private ownership over construction land results in inability to mortgage land for construction, which is a constraint for individuals and cooperatives alike.¹⁵ Tenure is limited to a long-term use right, which can be registered in the land books, but most banks will not lend for construction on this basis.

4.3.6 *Taxes and Transaction Fees*

Property taxes on housing in most countries are not ad valorem, but are assessed on the basis of normative amounts multiplied by the number of square metres of the taxed property. Reportedly in most countries in the region, the normative tax is established on the basis of tax zones, distinguished by quality of municipal services and other real property valuation factors. Overall the amount on property taxes in the region accounts for less than 3% of the household budget. BiH has tax exemptions for primary residences. Moldova is introducing property taxes based on mass evaluation in 2005. In Romania property taxes are calculated as 0.5% of the market value on the first property owned by the taxpayer, 0.75% of the second property and 1.0% of the third property. Property taxes are not assessed on newly built properties for the first 10 years (Merrill et al., 2003).

In Serbia, BiH and Former Yugoslav Republic of Macedonia only improvements, not land, are taxed, although there is a small amount of land lease rent that is paid. In Montenegro and Moldova the right to use state and/or municipal land for housing construction is acquired through competition/ auction. According to the *Law on Property Taxes* (1993), amended in 2003, property taxes in the Former Yugoslav Republic of Macedonia are 0.10% of the assessed market value for the first property and 0.20% for second and third.

In BiH the 1995 *Decree Law on Real Property Transfer*, effective in both entities, sets a maximum property transfer tax of 15% of the value of property being transferred. Property transfer tax rates vary considerably among jurisdictions (from 15% in Tuzla Canton to 8% in Sarajevo Canton 8% and 3% in Republika Srpska). By comparison, the property transfer tax in Croatia is 5% and in Romania it ranges between 2% and 4% of the sales price (Rabenhorst, 2000). In the Former Yugoslav Republic of Macedonia property transfer tax is set at 3%.

¹⁵In Serbia the *Law On Cooperatives*, 1996, deals with the operation of housing/construction co-operatives as both investors and contractors. 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 (ECE, 2005).

4.4 Institutional and Legal Reforms: Concluding Comments

One of the fundamental questions addressed in this chapter relates to the importance of institutions in the housing market which account for the critical differences in the nature and operation of different housing systems. Given the significance of institutional change in reshaping centrally-planned into market-based housing systems, the chapter identified major institutions and their relationships in the production, allocation, management and consumption of housing. This is essential for the understanding of housing reforms and market outcomes in different national and local contexts.

It has been argued that housing reforms have modified the socialist system of housing provision and have set a new framework for the operation of key private sector institutions. However, the institutional transformation in the region is far from complete. Although the second phase of housing reforms is attempting to address the institutional and regulatory 'vacuum' of the early 1990s, progress across countries has been uneven. In particular, efficient mortgage institutions to ensure a steady flow of capital in the housing market have not been established. Further, the uncertainties imposed by the lack of an adequate land and property registration system in most of the South East European countries have negative implications for the efficient operation of the housing markets. Despite the efforts of governments to create new legislation and/or to amend the existing one, the legal framework has failed to keep up with the market. These are important constraints for the competitive provision of housing management services as well as for the provision of new housing, issues explored in more detail in the following chapters.