

VISIONS ON HOUSING MANAGEMENT

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Free and unhindered access to housing is the right of each citizen of a state, enshrined in the Constitution. All measures taken to achieve the major objectives in housing sector represent one of the priority directions followed by public authorities at all levels.

The State's efforts in implementing the privatization reform in the housing sector have succeeded with the transfer of almost all housing stock to private ownership, although having stopped or failed in achieving an efficient performance in terms of administration and service delivery in housing sector. That positive achievement of the reform is significantly diminished by the lack of a viable and efficient system of building administration that consequently doubts the safety and reliability of the apartment buildings in the future.

To ensure a sustainable process in upgrading the housing stock, including through energy efficiency measures, the State must establish goals and objectives and maintain a consistent approach in implementing the planned actions.

All stakeholders' relations within the maintenance of the housing stock framework have to be addressed in the view of implementation and unconditional compliance with the private ownership right on the property. The State may intervene with regulations aimed only to ensure the resilience and stability of housing stock, security and protection of human health and establishment of reliable tools in stimulating the owners' efforts for maintenance and repairs of buildings and their thermal rehabilitation.

In Moldova, the housing maintenance processes are not quite efficient. The old multi-apartment buildings are in deplorable technical conditions, thus adversely affecting not only the quality of life, but also decreasing the economic value of this property. Lately, the real estate market noted the phenomenon of housing procurements not only for living but also for investment purposes, aiming to protect the invested capital from inflation and other financial risks, or, earning benefits of subsequent sale of property and/or its rental. However, to ensure the building's integrity and avoid its value decrease, a consistent mechanism for regular maintenance and repairs should be

established. Under situation when current repairs had not being performed during a long period of time, the building remediation costs become substantial and growing exponentially if not taken necessary measures.

Obviously, all relevant expenses, independently of housing destination - for living or business - are under the responsibility of the property owner. Approx 97% of the housing stock have been privatized and the responsibility for maintenance of apartment buildings – residential and non residential premises located in these buildings - shall be transferred to owners of privatized apartments.

In this context, some important aspects can be highlighted for consideration in achieving the main objective for efficient administration of buildings belonging to multiple owners:

1) *Calculation and registration in the Real Estate Register of ownership rights on the shares in common premises/parts of the building for each owner of residential and non residential spaces.*

2) *The funding the works necessary to maintain the buildings in adequate technical conditions to be organized by creating appropriate permanent funds with applied contributions needed for maintenance.*

3) *Ensuring state control over compliance with mandatory requirements set out in the legislation for property owners located in buildings with multiple owners.*

1) Calculation and registration in the Real Estate Register of ownership rights on the shares in the common premises of the building for each owner of residential and non residential spaces. The existing regulatory framework in the housing sector is being characterized as one with many gaps, which require the redefinition of condominium so as to clearly establish the property relations among all involved stakeholders, and responsibilities arising from property rights. It is impending the development of a relevant legal framework aimed to protect the owners who, in addition to individual properties, have in ownership a share of common parts of the building. In this context, the condominium can be defined, as:

- a) *Multi-level building (with apartments) or, where the common property and each section with one or more staircases can be demarcated therein.*
- b) *A residential complex consisting of residential and non-residential premises, individual, isolated, lined up or coupled, where the individual properties are interrelated through a common property in forced and perpetual ownership.*

Namely, the collocation - "*forced and perpetual*" - is the legal term that distinguishes the common parts of the building in condominium. Although not clearly enshrined in the special housing legislation and not observed in Moldova, this rule imposes new responsibilities and requirements to the owners (unaware of till date), to undertake measures for the maintenance of common premises of the building as integral parts of jointly owned housing facilities.

According to the Law on Privatization of Housing Stock[1], the privatized apartments have been registered in the Real Estate Register as prerequisite for acknowledgement of ownership right over this property. The registration has been done by the territorial Cadastral offices, at the request of the owners. However, only the parts related to "isolated rooms" - apartments in buildings with multiple owners - were subject to registration, without mentioning the ownership over the common parts of the building. Thus, the non-residential spaces (common parts of the building) remained to be recognized as property of the state or administrative units. It is impossible to explain how this could happen while the Civil Code expressly states that "*in multi-apartment buildings with multiple owners, each owner have the ownership, forced and perpetual, right over a share in the common parts of the building*"[2].

The reason why the Cadastral offices did not register the shares of common premises of the building belonging to each isolated room / apartment is the Article 8 par.(1) of the Law on Privatization of Housing Stock, which provides: "*the privatized homeowners are co-possessors of communication and engineering facilities and of places of common use of the building and its adjacent land*". This provision, in our opinion, take rather a technical foul for inappropriate use of legal terminology, but subsequently entailing multiple problems and confusions related to registration of ownership rights on privatized housing and management of common premises of apartment buildings. Among them, 2 contradictory issues of huge importance can be mentioned:

- the value of common premises of the building (the building structure which is a common element consisting of basic components in a construction estimate) **have been included into the price calculation** of privatized housing, and,

- these common premises have been subject to privatization **separately**.

Furthermore, the fact that the share in the common property have not been registered in the benefit of owners and remained on the balance of public authorities (mostly local), have generated uncertainty in buildings' management processes. In reality, the owners of privatized apartments do not hold any responsibility for the property they own, and therefore, do not undertake any measures to maintain the premises of common use. In addition, the local budgets are forced to cover certain expenditures in housing sector, although such funding does not cover all repair and maintenance needs, and relevant interventions are mostly based on sporadic, chaotic and ineffective actions. Therefore, the housing sector management performed by LPA units is one flawed both, in terms of management quality and sufficiency in funding the housing sector, even if the state or administrative units' ownership therein remained not more than 3% of total housing stock.

As for non-residential premises of buildings, mostly occupied by enterprises, these are not involved in the maintenance of the building in any ways and must be definitely encumbered by the right (obligation) on common parts, and raised the issue at least in the upgrading process of the relevant legislation. These occupied premises represent a substantial share of the common property of apartment building – typically the entire ground level, and in some cases being located on several levels of the building. The need to include the owners of these enterprises in the maintenance and repair of the building is very urgent and concrete actions are necessary to regulate the building administration responsibilities and assign them to all owners, regardless of their ownership nature.

Enforcement of responsibilities, emerged from specifics of ownership right in apartment buildings with multiple owners, can be performed only if the common property shares are transmitted in private ownership, with their registration in the Real Estate Register - this is one of the priority measures to be undertaken. Local governments are being responsible for this process and the lack of finance cannot be the reason of failure in duties the specialized subdivisions are responsible for. Evidently, a huge volume of work has to be done -

someone shall calculate the shares in the common property for each apartment owner and perform the inventory of assets, - but this shall not make the reason of excuse to concerned authorities, and an argument to avoid fulfilling their duties.

2) Funding the works maintaining the buildings in adequate technical conditions. Repair and maintenance works of the housing sector are very expensive and require substantial financial resources, especially when current repairs have not been made for a longer period. Would-be accumulated resources of apartment owners are envisaged to be limited. The current tariffs for technical maintenance of housing sector are low and accumulation accounts of municipal management enterprises could hardly cover the expenses of some minor works.

The situation has become critical and further irresponsible attitude towards housing maintenance can turn into unpredictable consequences. The buildings' technical condition is continuously deteriorating and the risk for buildings' structural damages increases exponentially. Funding is the key element in the buildings' technical and energy efficiency rehabilitation. This requires both, an adequate legal framework and state involvement through housing rehabilitation programs and supportive actions in housing problems for vulnerable population.

It's worth realizing, that the issue of effective housing stock management denotes a high level of complexity. Therefore, the approach should be a matching one, taking into account all legal, economic, financial, social, etc., aspects. Only this way, the citizens' fundamental right - the right to housing - could be effectively secured.

The international practice distinguishes several components of an effective funding scheme for housing repairs. Some of them are worth mentioning:

A. Mandatory payments as contributions to Repair Fund (RF) obligatorily created in each condominium.

B. The lending institutions' resources are made available to homeowners associations, homeowners or administrators, being guaranteed by the accumulations of the Repair Fund secured by owners' contributions.

C. State support in terms of co-financing the rehabilitation / repair (ex. through energy efficiency programs in housing sector) and through financial instruments created for such purposes by the State (bank guarantees, funds, etc.).

All these components must be viewed through the prism of a stable operational and well-organized system with consistent measures from both, the public authorities and the owners of residential and non residential assets of multi-apartment buildings. Further below are described some conditions that will ensure, in our opinion, the successful implementation of mentioned tools.

A. Mandatory payments to Repair Fund (RF). The owners' contribution fees collected to cover the maintenance costs represent the only solution for maintaining the building in appropriate technical condition. This statement is considered an acknowledged one, once the owned housing represents an investment and has its economic value and can generate profits. Though, it happens to Moldova, that the apartments, which have been privatized against Property Bonds, are not considered under economic viewpoint, except for a few special cases. "The local tradition" is to use the apartment as a location of residence of the owner's family. But this cannot justify the lack of responsibility for maintenance of the building where the apartment is located. Therefore, the owners shall be enforced to contribute financially to maintenance and repair of the building they live in.

Moreover, the Law on Quality in Constructions [3] establishes the responsibilities of building owners to perform timely maintenance and repair of building, in accordance with legal and technical norms and followed behaviour in building operation, as well as to ensure any reconstruction, strengthening interventions, etc.

Following the above-mentioned, the extent of responsibilities shall be enforced by Law and not left at the discretion of the building owner - as these responsibilities are ensuring the building operation at appropriate quality level and aiming to protect the people's lives, their property, society and the environment in general. Therefore, all owners of the apartment building are responsible for its technical condition, based on "forced" right on the common premises of the building, thus acquiring the obligation to contribute to the fund required for maintenance works.

However, it won't be easy to convince the owners to pay fees for maintenance and repairs of common premises. One solution would be the creation, through law enforcement, of a Repair Fund, where owners' regular contributions shall be disbursed and used for a consistent and qualitative maintenance of apartment buildings on a transparent basis. Due to continuous deterioration of the apartment buildings, it is necessary for the legislature to urgently regulate the creation of repair

funds, ensuring transparency and providing maximum protection of owners against possible risks. One of essential conditions to be enforced by the laws is the separation of resources (financial flows), i.e. a single Fund¹ and single owners' Association for each apartment building, prohibiting the use of one's resources for other residential buildings, even if several buildings are administered by the same Administrator. Also, for the safety of Fund's resources, a number of conditions will be required to meet, such as:

- The Repair Fund's financial resources represent a shared property of residential and non residential spaces' owners in the multi-apartment buildings;
- The contributions to the Repair Fund are collected in a bank account, stating that the holder of the account (Administrator or Association) cannot dispose the resources otherwise than decided by the owners general assembly.
- The Repair Fund deposits in the bank (the entire amount equal to the amount of mandatory payments) must be provided the same safeguards as for citizens' personal bank deposits.

An efficient method of accumulating contributions to Repair Fund (as a measure against absconding debtors) could be the execution of legal mortgage on private isolated spaces (apartments and non residential premises) for the benefit of owners' Association or owners in condominium. In such cases, the mortgage is obligatorily registered in the Real Estate Register and applicable in cases when the owner does not contribute to the Fund during a certain period of time (ex. 6 months). It should be mentioned that in Moldova, the legal mortgage cannot be established except for amounts due under the tax laws as a result of court decisions [2,4,5]. Therefore, the execution of mortgage in condominium will require modifications made to three laws and the Condominium Law [6] in particular.

The execution of mortgage under the law would be the most effective tool to ensure the accumulation of financial resources in the Repair Fund, but it requires great caution in making such decisions, as mortgaging the property is a very drastic measure against owners, while the apartment is, in most cases, the only place to live. Weak

financial situation of apartment owners can generate deprivation of housing facilities, while the authorities being unable to provide rental space for such socially vulnerable population which risk reaching the street. In this context the State may adopt mortgaging procedures for apartments of Repair Fund's debtors, if also provides some supportive complementary tools, for ex.: 1) social rent fund aimed to mitigate the effects of risks generated by loss of housing property, 2) creation of conditions for commercial leasing market development, 3) increase overall welfare of population.

Meanwhile, the state could regulate the conditions whereby the local authorities have the preemption right over the mortgaged apartments for sale, thus increasing the stock of social housing (the correct sale price is determinant for the success of this measure). Subsequently, these apartments may be made available for social housing or rental to former owners, if they meet the qualifications to benefit from social assistance. To this end, this requires preparation and approval of regulations on social housing stock, the modalities of formation and administration of this stock, the conditions for use and indicators for assessing the persons who are entitled to social rent, etc.

B. The lending institutions' resources made available to homeowners associations, owners or administrators. Housing sector requires periodical significant investment in repairs and maintenance to keep the buildings in good condition and to maintain its economic value. Planning and realization of these investments depend on the Administrator's managerial spirit, and its ability to associate the owners to cope with problems related to repairs of common property. The owners / Association may apply for loans offered by financial institutions. The amount borrowed can be guaranteed by Fund resources which are replenished by the owners' contributions. The banks could accept such guarantees, due to the mandatory nature of owners' contributions to the Fund. But pledging the Fund resources requires the approval of all owners in condominium which is very difficult to achieve. The Civil Code, Art. 457 (5) provides that the common property may be mortgaged only with the agreement of all co-owners. In this context, it would be reasonable to set a quorum of 2/3 of the owners to validate the pledge over Fund's resources. The argument for lowering the quorum on pledge approval is that there will always appear some owners who, motivated or not, will not sign the pledge agreement, in spite of joint responsibility to participate in the maintenance and repair of

¹ Fund –Repair Fund for the common property in the building. Do not refer to other funds that can be created upon necessities (ex. Revolving Fund that can be used for payment of utility services, for which the Association shall be empowered to contribute)

common property and being equally responsible for keeping the building in safe and operational condition.

In our opinion, there are several essential conditions ensuring the access to loans for buildings' repairs and thermal rehabilitation purposes: i). the legal status of condominium associations should be very clearly defined; ii). associations must have the right to borrow on behalf of all owners in the building; iii). to be clearly defined the procedures for forced collection of debts from owners who avoid to pay contributions established for rehabilitation / repairs of building.

Presently, the Moldovan legislation does not sufficiently clear stipulate the principles of efficient administration of the apartment building, even ignoring the importance of regulating such real estate intended to ensure a decent living of population. The stability and efficiency of the system can be achieved only if each owner in condominium obligatorily becomes a participant / member of one or another form of association in that condominium.

C. State support in terms of co-financing the rehabilitation / repair works. Housing sector is considered a priority and the state interventions in the sector shall be appropriate. However, the current situation shows an almost total restriction of State interference in the problems related with housing sector. The relevant tasks were assigned to local public authorities, the buildings being all transferred to their subdivisions while the share of the common property have still not been transferred to the owners though most of apartments have been privatized (97%). As a result, we have a confusing situation when the State has not yet finished the privatization process, nor provided LPAs with legal instruments necessary for the administration of multi-apartment buildings.

In addition to the legislation approval process in the sector, the State has the responsibility to intervene with other tools aimed to support the housing sector and offer the population a secure and real realization of ownership right on housing. In our opinion, the state will have to intervene through the following:

- Programs for thermal rehabilitation of buildings incorporated in country's energy efficiency programs, by providing grants to cover shares of repair costs.
- Provide guarantees for repair loans contracted by the owners. In this context, mortgage risk guarantee funds should be created, where the state would be the founder. Such guarantees can

be sold, but may be granted to certain categories of people, or, for thermal rehabilitation projects or building strengthening purposes.

- Financial support to LPAs for local rehabilitation programs of apartment buildings.
- Support to vulnerable citizens by compensating a portion or full amount of the debt to Repair Fund. This support shall be allocated directly, through nominative compensations to owners in difficulty.
- Contributions to Repair Fund for the condominium premises owned by the state. The size of the contributions shall be determined by same principles as for private owners.
- Support the process of calculating the share of common property for each apartment building, ensuring the registration of these shares in the Real Estate Register. For this purpose, certain state budgetary resources have to be approved as the process will be an expensive one.

When granting state support in financing the buildings repairs, the following principles shall be considered:

- State co-financing programs should stimulate the repair of common premises and elements of the building.
- A priority for decision-making process in budgetary allocations should be the enhancement of building energy efficiency capacity.
- The volume of funding from state subsidies shall depend on the level of energy efficiency and energy saving rate as a result of performed repairs.
- The power to approve decisions on capital repairs of multi-apartment building belongs to the owners' Association (or body, the Association may delegate this power to).
- The owners' Association shall be the supervisory and control body over the resources accumulated by the owners in the Fund and used for repair works done.
- The same owners' Association shall be responsible for monitoring and control over the utilization of resources for capital repairs allocated through state subsidies.

Some of the most effective state support mechanisms may be considered and required for the following purposes:

1. Co-financing the rehabilitation works aimed to reduce the repair costs of apartment owners and increase the energy efficiency of the building.
2. Creation of commercial agencies / funds guaranteeing the risks emerging from lending to

owners' Associations, which may contribute to the reduction of loan risks.

Being aware that not all owners are prepared to meet the financing obligations for building repairs, and therefore, relevant enforcement mechanisms will be necessary to apply. The same refers to the owners, who are not avoiding but unable to fulfill their financial obligations due to lack of available resources. In both cases, the situation must be resolved by implementing viable mechanisms: by enforcement on the one hand, and by stable mechanisms of social assistance and social housing development on the other hand.

3) State control over compliance with the mandatory requirements set out in the legislation for property owners located in multi-apartment buildings. The success of actions proposed for the implementation of efficient administration of housing can be achieved only when a rigorous control over compliance with legislation by all participants in condominium relations is being assumed.

The need to establish an efficient control over compliance with housing legislation shall not be postponed. The unrepaired buildings since soviet times, being affected by uncontrolled interventions in constructive and resistance elements, require a systemic approach in organizing the operation and technical maintenance, where the control task is one of key elements. Whatever the responsible body is – the State Construction Inspectorate (SCI), State or Municipal Housing Inspection – clear and efficient control procedures are required to be approved with sanctioning powers and punitive measures in addressing shortcomings resulted from mismanagement of condominiums and interventions damaging the building structure.

To achieve the success, it is necessary for a specialized central authority to develop a set of regulatory legislation to support the control process, starting with tasks of control bodies, regulation on activity, control procedures, ways of assessing violations and penalties. Not less important is the determination of authorities (public servants) vested with such duties. In addition, modifications are needed in a number of legislation such as: Contravention Code, Criminal Code and statement of specific measures to attract liability for owners' failures in condominium and for inappropriate interventions in constructions. These legislative amendments should be developed concurrently with the whole set of documents governing the control process. Their elaboration will take into account the complexity of control interventions, staffing needs

and time period necessary to control all objects, which actually are practically outside of any management processes and, effectively outside of any control. Since the control over construction process and operational phase are under competencies of State Construction Inspectorate, the elaboration of required procedures and mechanisms might make the task of this body, obviously, with experts' support from various professional organizations.

It is worth mentioning, that the problems of buildings administration and maintenance do not refer only to the economic interests of apartment owners, but also include the life and health security of people, since badly maintained, repaired or rehabilitated buildings represent a major threat and this threat is increasing annually. The currently owned assets still represent some economic value and place of residence for owners' families. Besides continuous reduction of its economic value, the apartment becomes a source of life hazards, chronic diseases, etc. Rehabilitation of building is expensive, and in some cases will be impossible, therefore the State control through SCI or the other structure is determinant.

In our opinion, the supervisory authorities should fulfill the following tasks:

- Detecting and counteracting actions that contradict the housing legislation, the requirements for use and maintenance of housing (individual and common property units);
- Undertaking energy efficiency measures in housing, regardless of the form of ownership of residential and non residential premises and common property.
- Overseeing the process of formation and activity of natural and legal entities practicing the administration of multi-apartment buildings, businesses providing utility and non-utility services in the housing sector, enterprises specialized in repair and maintenance of buildings, and other units engaged in housing activities.
- Monitoring the compliance with mandatory requirements set out in legislation on energy efficiency and installation of measuring devices for energy resources.
- Monitoring and analysis of mandatory requirements set out by law for central and local governments, owners, administrators, service providers, entrepreneurs, in order to enhance the efficiency in the administration of housing sector, to ensure qualitative maintenance and operation of housing stock.

Based on the principle of local autonomy, it may be appropriate to create two levels of control, but with a clear delineation of duties of each authority. The specifics of State control mostly underlie responsibilities ensuring the strength and stability of the building, so the hard work will fall on the State shoulders, as well as funding problems will be also solved easier from the central budget. At the level of administrative units, the control body should be tied to its housing stock and relevant regulatory issues of administration. It is absolutely wrong to believe that all housing problems can be solved locally. Only the State can create sufficient capacity to control sector-specific housing problems, including quality control, and that's because the situation is enormously endangered as seen behind the careless attitude towards maintenance of residential buildings. An optimal formula would be for the State to create the control structures, to perform an inventory, to establish operational procedures, and only afterwards, to gradually transmit the control functions to local authorities, depending on their capacity and ability to take over such functions, step by step, and only upon their request.

In this context, the following immediate tasks can be highlighted and submitted to the authorities for approval:

- Creation of Repair Funds of buildings and ensure the enforcement of contributions thereto, by implementing clear decision-making mechanisms.
- Approval of support programs for the buildings' rehabilitation process, financed from the state and TAU budgets.
- Create mechanisms to guarantee legal mortgage on residential / non residential spaces for claims, supported by social protection mechanisms for those owners who, due to such processes, would remain without living spaces.
- Ensure effective control of the State over the regulated processes.

Only a comprehensive approach and measures undertaken both, by modifying the legislation and approval of housing rehabilitation programs, as well as solving the underlying social problems, we can ensure an efficient administration of apartment buildings, which would lead to the improvement of life quality and eliminating the risks of property loss.

Referense

- 1. Law on privatisation of housing stock nr.1324 from 10.03.1993.**
- 2. Civil Code, Art. 355, 467: Ownership right over the common parts of the building with multiple apartments.**
- 3. Law on Quality in Constructions Nr. 721 from 02.02.1996.**
- 4. Law on Mortgage, nr. 838 from 23.05. 1996.**
- 5. Law on Lien, nr. 142 from 26.06.2008.**
- 6. Law on Condominium in housing sector, nr.913 from 30.03.2000.**