

# Legal Aspects of Management of Commons within Residential Urban Space

## Comparative Review of Western European and Former Socialist Experiences

*Astghik Grigoryan, Jenny Paulsson*

---

A main reason for problems with property units in close connection within multi-owned buildings is ineffective management and maintenance of these buildings. The article aims to address legal problems related to proper management and maintenance of common ownership property within multi-owned housing. Case studies were conducted in two types of countries: 1) sustainable and diverse system of condominium and long-term management experience of multi-owned buildings (Sweden, the Netherlands); 2) relatively recent system of condominium and developing system of management of multi-owned buildings (Bulgaria, Armenia). A comparative analysis was made with a special focus on common ownership right.

The results show that there are various ways of defining common property and arranging the management and several obstacles preventing successful management and maintenance of multi-owned buildings, especially in post socialist countries. A well-designed legal framework is required in order to provide functional management and maintenance of the commons.

---

## 1 Introduction

### 1.1 Background

The tragedy of the commons, where resources that are open-to-all will lead to degradation, was mentioned as a problem already by Hardin (1968). Even though this situation often refers to management of natural common-pool resources, also man-made such resources, e.g. the common parts of multi-owned buildings, face collective action problems (Ho and Gao 2013, 10). Even though the owners of such buildings share a common interest in creating a good living environment, they are often not willing to take part in the management of the buildings. This can create a situation of free riders where the owners only want to maximize the use of the common parts of the buildings, which leads to poor maintenance and deterioration of these buildings.

Behind the following discussion on legal aspects of management of common residential property, in particular related to multi-owned building and surrounding land, stands the objective to improve the management of common property within residential urban space since we suppose that both apartment buildings and attached land are an indelible part of the latter.

The management and maintenance of common ownership property within multi-owned buildings are essential to achieve housing sustainability and thus contribute to urban quality. Common ownership property is an indivisible part of the ownership structure which refers to multi-owned apartment buildings and/or single-family residences within privately bounded urban spaces (Harris 2011). During recent decades the multi-owned hous-

ing has been extensively spread out all over the world. In Western Europe this form of housing is used in many countries since many years back (see e.g. van der Merwe 1994), and in U.S. and Australia the number of people living in multi-owned housing (or, in other words, common interest housing) has gradually increased from 1970 (Meltzer and Cheung 2014) and 1960 (Randolph and Tice 2013) accordingly. In China condominium has become predominant in the housing stock since the 1978's housing reforms (Wang 2013). In former socialist countries condominium has become popular from the beginning of the 1990s, after massive privatization of the public rental stock (UN/ECE 2002, 5). However, many potential problems are connected with owning property units in close connection with each other, such as management and the responsibility for it. Especially in many former socialist countries uncertainty in private and common ownership parts within residential urban space as well as imperfect management schemes resulted in gradual depreciation of common parts of apartment buildings and surrounding land, which has led to decline of urban quality.

Thus there is an urgent need for major repairs and energy efficiency improvements that must be managed and financed in some way (Lujanen 2010, 190). That is why it seems relevant to study the current situation in a few selected post-socialist countries and as a reference to some more experienced practices. Even though the context can vary to a large extent when it comes to legal, social, institutional etc., aspects, the existing challenges in balancing competing demands of management and regulation of multi-owned housing seem to be the same for all countries (Blandy et al. 2010, 2).

If considering that the most fundamental idea of sustainable development determined in the World Commission on Environment and Development (WCED) Report is "development which meets the needs of the present without compromising the ability of future generations to meet their own needs" (WCED 1987,16), yet, building deterioration will inevitably result in higher economic loss, more environmental waste and poorer social living conditions, in other words in decrease of urban quality. Similar to environmental protection, building maintenance requires the efforts and resources of the present generation, but the benefits will only be realised by future generations (Yim Yiu 2007).

Alterman (2010) claims that the issue regarding sustainable legal-financial mechanisms to ensure the long-term maintenance of condominium buildings has received very limited attention so far. She points out several factors that make multi-owned tower buildings particularly vulnerable to deterioration and decreased property values, e.g. that they are more complex and therefore create higher maintenance costs and less possibilities of structural modifications, which causes a greater risk for a diminished relative value and faster deterioration, that large investments are

needed for large scale repair, upgrading and renovation, and that because the costs are not consistent over time makes it more difficult to find a mechanism for financing the long-term maintenance.

Discussing an example of Vancouver, Harris (2011) reflects on the capacity of condominium as a certain form of residential property ownership and its contribution to the transformation of the urban landscape. According to Lippert and Steckle (2016) the inner governance of condominiums profoundly matters for understanding urban governance and life but has so far been neglected in urban studies.

A study of different systems of apartment ownership identified some basic legal challenges related to maintenance and repairs (Lujanen 2010), including obstacles in the decision-making process, securing financing of major repairs, means to enforce the collection of payments, and transparent and comprehensible structures. Before the apartment buildings were privatized in socialist countries, there were municipal service companies that took care of the maintenance of the common parts, but it seems that the former tenants have not fully understood that they themselves as owners now are required to do this (Lujanen 2010, 192). Lujanen therefore stresses the challenge of legislation that works in practice, but even more the challenge to change the attitude of the apartment owners to understand that they own not only their own apartment but also the common parts of the building and attached land. This challenge is relevant not only for former socialist countries, but for countries in most parts of the world where some form of apartment ownership exists.

In many countries, such as Russia, Balkan, Central Asia and China, there is lack of well-functioning legal ownership (Lujanen 2010, 178). There is a legal basis for the ownership and management, but the establishment of owners' associations has been slow and difficult (UN/ECE 2002, 5)<sup>1</sup>. The Economic Commission for Europe within the UN claims that the obstacles include financial arrangements, as well as organizational and institutional aspects (UN/ECE 2002, 5). They claim, for example, that it is essential to establish an owners' association to safeguard the interests of the individual owners, the common ownership, as well as national and municipal interests. Like Lujanen (2010) and Easthope et al. (2009) they also stress the importance of educating the owners of the nature of condominium, and the rights and responsibilities that the owners have, and assisting them in the management of it.

---

<sup>1</sup> Only Poland and Hungary were exceptions in this regard since in these countries the privatization of apartment buildings was pre-conditioned with establishment of owners' associations (Rabenhorst and Ignatova 2009).

## 1.2 Aim and method

For the purpose of the current discussion it is assumed that the urban residential space is the mixture of residential and public space within certain boundaries and the multi-owned buildings and attached land are considered as certain parts of this residential urban space.

The aim of this article is to identify and analyze legal issues of management of common ownership within multi-owned buildings and attached land that are found from case studies of some Western European and former socialist countries and to propose general recommendations for improvement of existing systems. For the purpose of case studies the authors have classified two types of countries, in particular:

- i.* Countries with relatively recent system of condominium and developing system of management of multi-owned buildings, namely Armenia and Bulgaria. These countries are selected as representatives of the most common situation relevant to the post socialist region,
- ii.* Countries with sustainable and in the meantime diverse system of condominium and long-term experience in management of multi-owned buildings, namely Sweden and the Netherlands.

The case studies present mainly the legal framework, in particular regarding ownership rights, common ownership, management and maintenance of multi-owned buildings. A comparative analysis is made of legal aspects of common property management, based on the experience of the selected countries. Finally, identification is made of the main problems and development of basic solutions for improvement of existing systems.

The article contains only brief general descriptions of the condominium systems in the selected countries and their forms of management. The purpose is only to give an overview of the regulations in order to understand the specific management issues and solutions. Comparative studies were used for the comparison of selected countries. The comparison is not intended to be comprehensive, but rather to point out areas relevant to the topic of management and maintenance of commons within multi-owned buildings and attached land. The analysis in this study was made from a static perspective, looking at systems for 3D property rights mainly with the rules and legislation currently in force. However, it is difficult to keep the static perspective in the comparison due to the fact that legislation and practice is constantly changing. There are also many other difficulties that are connected with making comparative studies of different legal systems, and they should also be taken into account when the results of such studies are interpreted (See e.g. Bogdan 1993; Bogdan 2004; Zweigert and Kötz 1998; Van Hoecke 2004; David et al. 1974; von Bar 2004). To avoid problems with

direct rule-comparison in this study, the focus has been on comparing functions and describing different possible solutions for successful management and maintenance of condominium.

## 2 Theoretical framework

### 2.1 Condominium

Condominium (apartment ownership) can be considered as a form of three-dimensional (3D) property right. It includes the use of a three-dimensionally delimited part of a building. Condominium is a common and wide-spread form of 3D property utilization and exists all over the world in e.g. Australia, Canada and South America (van der Merwe 1994; Paulsson 2007). Apartment ownership is sometimes considered to consist of three components, which are the ownership to a part of the building, a share in the common property and membership in an association for the management of the building. The apartment building normally consists of privately used spaces and common parts, where different parts of the building such as roof, stairs, facilities and main service pipes, as well as land attached to the building, can be included. According to Harris (2011, 697) the condominium is a particular bundle of property rights which facilitates increasing the density of private ownership in urban land through vertical subdivision of land and thereby becomes an indivisible part of the city.

There are two main forms of condominium, namely the condominium ownership type, or the dualistic form, and the condominium user right type, or the monistic form (Paulsson 2007, 36). In the condominium ownership type each apartment owner owns the certain private space he or she occupies, and the common parts of the building and surrounding land usually are owned jointly by all the owners of the building. This type can be found, for example, in most of the former Soviet countries, including Armenia, and was recently also introduced in Sweden (Paulsson 2007, 36; Paulsson 2013). The condominium user right, on the other hand, is a type where the apartment occupants jointly own the entire building and surrounding land together, including private and the common parts, but the share of the property each owner has gives the right to occupy a specific private space in the building. This type exists, for instance, in the Netherlands (Paulsson 2007, 37).

There are also more indirect forms of condominium where a legal person stands between the resident and the property as the formal owner (Nordisk Ministerråd 1997, 22). The legal person could be e.g. a co-operative, an association or a limited company (Lilleholt et al. 2002, 29). An example is the tenant-ownership form in Sweden where a tenant-owner association owns the building in which the members live. Connected to the membership of the association is the right to use a specific space.

## 2.2 Common ownership

The normal situation is that each private owner has got a share of the common property of the building and surrounding land and other facilities that the private owners own or control in common. This share can be based on e.g. equality, relative size or relative value of each private space, or a combination of such. The ownership fraction can determine the responsibility each owner has for the costs of management of the building and association, as well as for maintaining and repairing the common parts of the property.

There are differences in ownership and the consequences stemming from it between the individual ownership of the private space and the co-ownership of the common parts of the building. The owners have exclusive ownership or right to occupy the private space, but only a collective right to use the common parts. Normally, the responsibility for maintaining the private property lies with the owner, and the association is responsible for the management and maintenance of the common parts. The right for the owners to use the common property is usually determined by statute, by-laws and general neighbour law principles. The general meeting of the owners can also adopt special rules for this.

In some countries' statutes there are lists providing specifically everything that is included in the common property. Other countries have more general regulations on this, stating e.g. that the parts that are not included in the private space are common property, i.e. defined exclusively. In former socialist countries common property can be defined as the parts of an apartment ownership scheme that according to their nature are destined for the common use of the owners, such as the land, façade, foundations, roof, entrances to the building and common installations (Merwe 1994, 51-53).

The land that exists below and around the apartment building is usually included in the common property. This land becomes common property if the building is not surrounded by municipal or state land. In those cases easements are granted for the owners to use the land for access to their building, such as roads or pavements (Rabenhorst 2001). However, in former socialist countries this may cause difficulties. When buildings and surrounding land went from public to private ownership, how much land to include was fixed to the "footprint" of the building, i.e. the land under it, which creates difficulties for the apartment owners as to getting a right to use the surrounding land. Solutions that are applied are to include the land just under the building, or including the land to one meter around the building as well, although it might still be unclear to whom the land beyond this belongs. Another solution has been to let the municipality keep the ownership of the land and to grant long term user rights to the association, by which the owners will be responsible

for maintaining the land (Rabenhorst 2001). In Armenia, for instance, this type of solution was applied to the existing (inherited from soviet period) privatized housing stock, (RA Government Decree No 1855-N dated 30.11.2006). If more than one condominium building would like to use the land between the buildings, the owners in these buildings will jointly have to decide how to use and manage this land.

## 2.3 Management and maintenance of apartment buildings

The management of multi-owned housing mainly refers to management of various activities arisen from the use or occupation of this type of housing (Gao and Ho 2016). In management of multi-owned buildings are included several different aspects, e.g. work and organization of administrative bodies, decisions about extensive renovations, level of maintenance, level of investment, rules of behaviour in common areas, and mechanisms for resolving conflicts. All these aspects are sources of potential problems and conflicts if not regulated properly. When studying condominium internationally, there are several factors that seem to have created problems and that can be considered as important for creating a successful and lasting system for apartment ownership (Paulsson 2007, 320). Many of these factors relate in fact to management aspects, such as common property and what is included in it, co-operation between property units, responsibilities of management and settlement of disputes.

In all communal ownership it is of importance to deal with problems related to all forms of co-ownership, with external consequences. Thus, a factor that seems to create problems is management, which in general is important when dealing with individuals sharing the same resources (Ostrom 1990). A structured and efficient organisation for management is crucial for the commons and the community of owners to function properly, as well as for financial institutions with an interest in the property. This becomes more difficult when a large number of co-owners are involved, where there is also a need for enforcement mechanisms to promote cooperation and efforts from the co-owners (Tracht 2000, 85-86).

Good management will also reduce the risk of disputes, e.g. when deciding on more extensive renovations, as well as increase the availability of financial mechanisms necessary for major repairs. As to Lujanen (2010, 181-182), there are four basic options for financing major repairs:

- » the use of reserve funds of the owners' association;
- » a cash contribution of the owners;
- » a grant provided by national or local authorities;
- » loan finance from financial markets or from public authorities.

Thus, it is obvious that for the above mentioned financing mechanisms to be available a transparent housing management system in parallel with a properly functioning regulatory framework is required.

Usually there are provisions that all owners are to participate jointly in the management or, normally, an owners' association where all owners are members is created for this purpose (Merwe 1994, 141). The general meeting of the owners makes decisions on administration, and a manager or executive board, elected by the owners, implements the decisions on the day-to-day running of the association (Merwe 1994, 141). The complexity and increasing size of apartment complexes today put higher demands on the managers and therefore a need for professional managers has emerged. The board can engage professional management to assist the association. The managers are appointed by the owners for a fixed period, and can be either a natural or legal person and may be chosen amongst the owners (Merwe 1994, 148-150).

There are different models available for the management of the owners' association. The owners can take care of the management, or they will contract a professional person or company to carry out the work. Volunteer management by owners is only recommended for small apartment buildings with up to ten units due to the amount of work needed for larger apartment buildings. A managing agent might be needed for a larger development, although this places a lot of power to the external management. Even though the collective management of the co-owners together might be easier in smaller developments, it can, however, often lead to disputes between the owners (Blandy 2010, 32). An alternative to this are the state or municipal maintenance companies. However, this should normally be used only as a short-term solution, such as within countries in transition (UN/ECE 2002, 30-31).

By-laws are used for the apartment building to establish the rights and duties of the owners and to provide mechanisms for enforcing and monitoring these rules. Fundamental decisions and decisions on changes of the rules are normally made by the owners by vote and the day-to-day decisions on management issues are made by a board elected by the owners.

The above mentioned factors of importance for management and maintenance of apartment buildings can be related to Elinor Ostrom's design principles for governing the commons. They are designed to exclude others from obtaining benefits from its use and thereby creating successful long-enduring institutions for the government of common-pool resources. These principles include e.g. clearly defined boundaries, monitoring and conflict resolution mechanisms, as well as the possibility for the owners to create and enforce their own designed set of rules which are recognised by external governmental officials.

### 3 Case studies from Western European and former socialist countries

#### 3.1 Sweden

Sweden was selected as an example of the condominium ownership type and a country that rather recently introduced condominium. Sweden has an indirect form of condominium, the tenant-ownership, which has similarities with the condominium ownership form. Sweden rather recently introduced 3D property (Swedish Land Code, Chap. 3, 1a). Condominium in Sweden was added in 2009.

The Swedish apartment ownership form belongs to the dualistic condominium ownership type. Condominium is defined in the legislation as a three-dimensional property unit intended to contain nothing but one single residential apartment (Swedish Land Code, Chap. 3, 1a). It can thus only be formed for residential purposes and only in newly constructed buildings, or at least the building should not have been used for accommodation during eight years before. This is to avoid that the existing apartments are transformed into ownership apartments. In order to facilitate the management of the apartment building, there must be at least three ownership apartments closely connected to each other. The purpose is also to avoid a too complex property division, to enhance the opportunities for a good living environment and to promote the cooperation between adjoining apartments (Proposition 2008/09:91, 58-59). When forming the apartment units, necessary rights must be provided for, such as access and facilities.

The main rule is that the apartment unit contains the actual space of the apartment and the surface of the structures that are separating the apartments. What parts of the building that should be private or common is not specified in the legislation, but decided in the procedure when forming the apartments. Even though there is no compulsory form of cooperation between the apartment units, a joint facility and/or a joint property unit is usually formed, and easements can also be used.

Normally only one owners' association is recommended within a multi-owned building, but if needed, there can be several joint facilities within one multi-unit building, or separate parts within one joint facility with differentiated shares for the different parts of the building complex. An association is compulsory if joint facilities or joint property units are formed, i.e. in most cases the standard solution. The role of the owners' association is e.g. to create clear rules for management and to take action against disturbances amongst the residents. It is also possible for the association to issue house rules for the use of the common property. The law provides protection from insufficient maintenance or damage from the adjacent property. If occupants of private spaces within the building cause

disturbances to an extent that cannot be tolerated, the owner can be ordered under penalty that the disturbance should stop.

The predominant way in Sweden to obtain individual rights to a specific apartment is still the tenant-ownership. It is a type of condominium that has existed in Sweden for a longer time and is an indirect ownership type of 3D property. There are many similarities between this form and condominium, but instead of owning a physical part of the building the ownership is represented by a share in the capital of the economic association that owns the property (Brattström 1999, 83). The purpose of the association is to convey tenant-ownership rights to apartments in the building that is owned by the association. To that share is connected the right to use a specified private space in the property owned by the association. This right is not limited in time. The management of the tenant-ownership building is taken care of in a co-operative manner, where the association manages the building whereas the responsibility of maintaining the interior of the apartment lies on the tenant-owner.

An economic plan has to be drafted before any conveyance of private properties, which is a technical and economic description of the association's activities and specifies e.g. the estimated capital, operating expenses and taxes for the first few years, expenses associated with the association's loans. It includes the cost for required maintenance and reconstruction, how these costs should be financed, operating costs paid by the owners and an economic prognosis and sensitivity analysis.

The tenant-owner pays a fee each month to the association, which covers each owner's share of all common costs that the association has for the building, including e.g. interest expenses for loans, amortization payments for loans, operating costs, taxes, insurance, repairs and maintenance. It is also regulated that the association each year must put money into a fund for future maintenance of the property.

The board is the association's executive body and is appointed by the general meeting. The board's tasks are e.g. to ensure that new facilities will be constructed and that existing installations are managed. To finance the construction, maintenance and renewal of the association's facilities the association can levy charges from the members or take another mortgage. In the annual general meeting the issue of the board members' liability is examined.

## 3.2 The Netherlands

The Netherlands is selected as a representative of a one-tier system, in which a private space owner is allocated one title to all property involved in the division.

Regulations on condominium in the Netherlands have existed already from 1951. Before that the tenure to individual apartments was generally secured through certain contractual forms, especially cooperatives. Some of these older contractual relations are functioning till nowadays. The original law was revised in 1972 and its provisions were incorporated in the Dutch Civil Code (Paddock 2009). In 2005 the legislation was amended with introduction of obligations on the size of reserve fund and the authorities of owners on changing the division rules. In 2011 another provision was introduced in the law on the explicit role of the municipalities to interfere if owners' associations worsen the maintenance of their building to a level that danger appears for dwellers or visitors (Vegter 2012, 280).

In the Netherlands each owner of a private space is a co-owner of the whole building. The private property right gives the owner an exclusive user right to a separate unit of the building (Abrahamsson and Sjöling, 1). The co-owners jointly own the land and the building. However, each co-owner is granted an exclusive right to use a particular private space (for instance an apartment) (Schmid et al. 2005).

When the developer transfers the apartment rights to the owners of the apartments an owners' association needs to be formed in which all owners are members. The association of owners as a legal person does not own the common parts, but acts as a manager of the complex on a daily basis. The association is regulated by the law, as well as by the provisions of "division deed", or in other words, the Contract on formation of the association. The Contract should contain specific rules and regulations as well as provisions on the Statutes (charter) of the association, which should be drawn up separately. Also, the association shall determine "house rules", which can be changed by the meeting of members of the association. However, the charter can be changed only by the Contract, and has to be registered (Ploeger et al. 2005, 8). The house rules may contain provisions on the use and enjoyment of the apartments, in particular with regard to the issues such as keeping of pets. However, any significant restriction on ownership rights, such as control over the right to rent the apartment, is not relevant here. Such limitations can be established only through a notarial division contract (Paddock 2009).

In the Netherlands there are two different concepts in practice: the Community of Owners and the owners' association (or Homeowners Association). These are separate bodies but by law all apartments' owners are members of both. From the legal perspective the Community of Owners deals with the property rights and obligations, and the owners' association refers to the management and maintenance obligations. In practice, the difference between the Community of Owners and the owners' associations is not perceived as such by most individual owners. The

owners consider them as one body and during the annual meetings decisions are often taken without making distinction between these two bodies (Reinders 2015).

The legal ownership of the property itself (the ownership of the land and everything built on it) belongs to the Community of Owners and not to the individual buyers. In the Community of Owners the share is determined for the voting rights that every individual owner has. Through the shares the community regulates the relations, rights and duties between the individual owners. Within the owners' association the shares of the individual owners are used to determine the costs that every individual owner has to contribute for management and maintenance. In practice most of owners' associations contract the management of the building to the professional companies.

### 3.3 Armenia

Armenia represents an example of a majority of post-soviet countries which experienced massive privatization during transition from planned economy. Private apartment ownership in Armenia was formed in early 1990s after collapse of the Soviet Union when almost all state owned housing stock was transferred into private ownership of dwellers. Basic provisions on private and common ownership rights and other property rights to housing premises (RA Civil Code, chapter 14), as well as specifications on ownership rights within apartment buildings (RA Civil Code, art. 222 p.1, art. 223) were determined in the Civil Code only in 1999. Current apartment ownership type in Armenia can be determined as a condominium ownership type with a dualistic system, where apartment owners have private ownership right to the apartment and share of the right to own or to use the common property of apartment building and attached land.

The common ownership property within the multi-owned building is determined by the Civil Code of Armenia (art. 224). More detailed specification of the common ownership property is provided in the Law on Apartment Building Management (LABM, art.6).

The share of private owner in common ownership property of the apartment building shall be the ratio (expressed through percentage) between the entire floor area of the owner's privately owned property and the total floor area of the whole common ownership property of the building (LABM, art. 2).

Before the privatization of housing stock in Armenia the apartment buildings were managed by municipal enterprises called "zheks". Currently the management and maintenance of common property in apartment buildings is regulated by two basic legal acts: the Law on Apartment Building Management (LABM) and the Law on Owners' Associations (LOA), as well as by certain provisions of the Civil Code.

The LABM regulates relationship between co-owners of common ownership property in the apartment buildings regarding management and maintenance of this property, the rights and obligations of private owners towards the common ownership property, provides definition of maintenance and management of common ownership property, as well as the forms of the management body and the types of decision making on management of common property.

LOA provides mainly regulations for establishment, functioning, reorganization and/or dissolution of the associations, determines the legal status of association, relationships with state and municipal bodies and private sector.

The management of the common ownership property is conducted by the meeting of all co-owners of the apartment building (hereinafter the Meeting), which is considered to be the highest governing body of the association. The Meeting is conducted at least once a year and is authorized to make the final decision on any issue relevant to management of common property. The Meeting shall be convened by any co-owner and the governing body of the apartment building. The co-owners may vote during the meeting in accordance to their shares in the common ownership property (LABM, art. 11). According to LABM the co-owners of the apartment building elect a governing body which will be responsible for carrying out daily management and maintenance of the common ownership property. However, the law does not specify either a definition of these terms in the law, or a clear distinction of rights and obligations in relation to the owners' association.

According to LABM the management of the common ownership property may be implemented through the following legal models (art. 17):

- » An owners' association, established by the co-owners of the apartment building;
- » An authorized manager elected by the Meeting among the co-owners of the apartment building;
- » A trustee manager.

LABM also stipulates that only one governing body may be responsible for the management of common property of the apartment building (art. 17).

Notwithstanding the different management models provided by legislation, in practice the apartment buildings in the country are managed mainly by associations and local governments. After the adoption of the LOA nearly each apartment building has formed its own association. Further on, in order to sustain financially associations started to consolidate to greater units by involving more apartment buildings. However, in small towns the associations could not survive in transforming economic environment and were closed by transferring the responsibility of management and maintenance to local governments.

Like in many former Soviet countries, and in contrast to Western European experience, in Armenia, according to LOA a majority of above 50% of owners is sufficient for establishment of the association (Amann 2010, 22).

According to several surveys conducted in the field of apartment buildings management in Armenia (Ameria Management Advisory 2012, 23; Vanyan 2014, 323-327) the owners' association is considered as the most common and applicable housing management model in Armenia, however it has still not succeeded in practice due to the following main reasons:

- » the majority of owners do not accept responsibility for the common property of their buildings which results in non-payment of management fees,
- » lack of resources leading to poor service provision,
- » lack of knowledge and information amongst residents,
- » low level of managerial skills and competency provided by the owners' associations.

With the purpose of building capacity for owners' participation in management and maintenance of common ownership property, as well as for quality improvement of continuously deteriorating housing stock in Armenia, several public-private partnership projects have been initiated and are still being implemented by both municipal governments and non-governmental organizations (NGOs).

### 3.4 Bulgaria

In the beginning of 1990s the same trends were followed during the transition from state to private property ownership in both former soviet and Eastern European countries, thus the housing systems and the forms of condominium are much alike for the majority of these countries (Georgiev 2012, 27). Currently about 97 % of the dwellings in Bulgaria are privately owned and owner occupied (Georgiev 2014, 1).

Regulations for condominium in Bulgaria were developed during the market oriented housing reform.

The basic legal acts regulating currently the field are the Ownership Act of the Republic of Bulgaria (OA) and the Condominium Ownership Management Act (COMA). The latter was adopted in 2009 to regulate the main discrepancies existing in the field (Trifonov 2014).

According to Georgiev (2014, 4) the biggest problem of legal framework regulating the housing field in Bulgaria is the lack of coordination between stakeholders involved at different levels of governance. Furthermore, the legal regulations required for condominium functioning still lack updating in order to respond to the current economic, political and social circumstances in Bulgaria. Also consid-

erable time shall be needed for the newly adopted COMA to be successfully implemented.

The common ownership property is determined and regulated under OA. OA provides detailed description of the common ownership property, which besides common use property within the building includes also the land under the building and the land surrounding the building (OA, art. 38). However, according to this law individual owners, such as the state, municipalities and other legal or physical persons, may have ownership right to the floors or parts thereof, together with related to them premises in the attic or basement. Also, it may be decided that the parts of the building which serve only for certain privately owned floors or parts thereof are common only for those persons who are the owners of these floors. In the meantime, the law prohibits partitioning of the common parts (OA, art. 39).

According to the OA the shares of private owners in common ownership property shall be proportional to the ratio between the values of the premises privately owned by them. The size of the shares should be calculated when the apartment ownership is being established. However, later changes in privately owned premises shall not affect the size of the shares (OA, art. 40). Each co-owner participates in the benefits and liabilities related to the common ownership property proportionally to his or her share (OA, art. 30). Only those joint owners who according to their shares own more than half of the common ownership property can make decisions on use and management of the common ownership property (OA, art. 32).

According to the COMA, homeowners from apartment buildings in Bulgaria can form Homeowners Associations (HOA) as legal bodies entitled to access the renovation funds and subsidies.

COMA allows only one type of association - that is the owners' association (or Homeowners organization) with the General Meeting of Owners (GMO) as the main management body (COMA, art. 10). According to Article 25 of the same law, the association will be formed only in case if all private owners in the apartment building vote for this.

The GMO and the Manager or Managing Council elected by it are responsible for the management of the common property of the apartment building as well as for control over performance of obligations of private owners (COMA, art. 42).

According to COMA the expenses among co-owners are divided according to the following principle:

- » Renovation or reconstruction of any part of the common property can be implemented only according to the decision made by the GMO. The expenses for renovation works are divided between



the owners according to their shares in the common property.

- » Any expenses made by private owners for common property of the building are divided equally between the owners.
- » In case if the private owner does not comply with the resolutions adopted by GMO or infringes the rules determined in the Internal Rules Order, the GMO is authorized to force such an owner to leave his or her property for a period of maximum 3 years.

(former socialist countries) the legal framework is rather common with the Swedish law according to which the condominium belongs to the dualistic form of ownership. In contrary, quite a different type of ownership is provided by the Dutch legal framework that is the one-tier system, where both the private part and the common part of the property unit belong to the owner by a single right to the “division”. However, both the Swedish and the Dutch legal frameworks contain supplementary detailed provisions to avoid incomplete execution of obligations and responsibilities, while this is still a missing point in the case of Armenia and Bulgaria. Hence, whatever system is chosen the key issue is how well it is detailed and reasoned by the law.

## 4 Discussion of the case studies

Table 1 below provides a brief overview of the above discussed practices. Hence, either in the dualistic or in the monistic type of condominium the land attached to the building is considered as being within the common ownership structure. Urban space is thus involved while dealing with commons within multi-owned housing.

### Regulations for management and maintenance of commons within multi-owned buildings

It is apparent from the case studies that the maintenance and renewal of multi-unit buildings is an important and difficult issue not only in the former socialist countries but also in Western Europe where stable system and regulations exist for many years. As buildings are aging

Forms of condominium ownership	Condominium ownership necessarily includes common parts of the building and surrounding land	Condominium ownership may include only common parts of the building	Mandatory provision of reserve fund	Mandatory provision for creation of owners' association
Monistic	the Netherlands		the Netherlands	the Netherlands
Dualistic	Sweden, Armenia, Bulgaria	Armenia	Sweden, Bulgaria	Sweden, Bulgaria

**Table 1:** Summary of case studies  
 Source: Own elaboration

It can be seen from the case studies that there are various ways of defining common property and arranging the management within the apartment building. However, a well-designed and detailed legal framework is along with a range of others a must condition in order to provide functional management and maintenance of commons within multi-owned buildings. Especially in many former socialist countries the condominium legislation is still not successful to force the residents with regard to their obligations of taking responsibility for the common parts. According to Thomson (2015), a “wait and see culture” in these countries is still common among the homeowners, due to a history of public management organizations taking responsibility for building maintenance. The below discussion will try to reveal the main obstacles preventing successful management and maintenance of multi-owned buildings in post socialist countries and to highlight some basic tools to tackle these obstacles.

### Legal framework must contain enough detailed and reasoned (or targeted) provisions

Based on the above case studies the condominium types vary in different countries. Thus, in Armenia and Bulgaria

and deteriorating, the problem is that increasing and substantial funds will be needed in order to satisfy these needs. The question is just how to raise these funds or if regulations have already provided for it, such as in the Swedish system for tenant-ownership and condominium ownership, or in the Dutch model where cost sharing methods are used. With this regard a step forward is made in Bulgaria where owners’ associations are entitled to renovation funds and subsidies.

### Obligatory formation of the owners’ association

Based on the studied practice of different countries this is a key factor for successful management and maintenance of multi-owned buildings which is still missing in the legal system of Armenia. For the case of Armenia, while privatization of multi-owned housing was executed with a simple transfer of title, however, the consequences of transforming the entire public property into private and the responsibility for its further maintenance were not considered. The experts claim (Georgiev 2014) that even if the owners’ association is obligatory in Bulgaria, however the law should stipulate its creation in parallel to transferring of apartment ownership to the dwellers rather than afterwards.

### **Provisions on Reserve Fund for the owners' association**

The absence of this regulation in the legislations of a majority of post socialist countries creates difficulties with regard to making capital repairs of the buildings. Furthermore, and as also Alterman (2010) discusses, the creation of a reserve fund and the legal regulation of defining the extent of it and letting a public body regulating and monitoring this, facilitates the possibility of acquiring sufficient funds for long-term maintenance and upgrading.

### **Provisions in the legislation aimed to support condominium management**

This is especially crucial for countries like Armenia and Bulgaria. For instance, according to experts, the new condominium law in Bulgaria (LABM) was targeted at creation of incentives for improvement of apartment ownership management as well as at facilitating the launch of larger scale energy efficient renovation activities in apartment buildings (Georgiev 2014, 4).

### **Collaborative and participatory approach to management and maintenance**

Apparent is that several different options for management and maintenance of apartment buildings are possible, and the forms chosen depend on several factors, such as legal system, traditions, society, etc., but, as Blandy et al. (2010) point out, several actors, such as local governments, professional advisors and developers, have to be involved and provide good and sustainable solutions. In this regard Bulgarian legal framework provides a positive approach by allowing the state, municipalities or other legal or physical bodies to have private ownership to separate parts of an apartment building.

## **5 Conclusions and recommendations**

As we can see from the case studies, there are different solutions available for how to manage multi-owned buildings, which may function to a greater or smaller extent. The condominium systems in this study have developed and legislation has been changed to solve the emerging legal problems, with e.g. separate management laws added.

Due to difference in legislation and society it might not be possible to develop one single solution that fits all countries, but this article has at least presented some key factors to consider when creating a well-functioning system for management and maintenance of commons within residential urban space.

From the case studies we may also observe that the countries like Sweden or Netherlands should rather deal with choice of management system, while the reasons for limited efficiency of management organizations in Armenia or Bulgaria are more related to the social status of private owners and lack of awareness, deteriorated status of the existing housing stock and other institutional and financial discrepancies, in particular, certain gaps in institutional framework, lack of state subsidies and public-private partnership mechanisms. Thus, certain regulations in the existing legal framework in order to support transformation to a new housing management system, especially regarding the former socialist countries are required. Also, collaboration of public and private sectors would much support in revival and further promotion of a well-functioning management and maintenance system in most of the transitional societies. It is also important to stress the benefits that the owners will have from the proper management of the common property, including the availability of essential financial mechanisms for maintenance and energy efficiency improvement of multi-owned housing and further improved quality of urban space which they occupy and use. Ostrom's (1990) design principles for commons are clearly applicable also on the studied cases, showing that management aspects are very important when dealing with individuals sharing the same common resources.

From the studies it seems like there are certain legal issues regarding management and maintenance of commons within residential urban space that are important to deal with in order to create a robust and successful system. Further research could include additional countries for study, thus comparing more different types of housing systems and types of management.

From the discussion it is evident that condominium management schemes provide a very good example of collective action and participatory approach for dealing with commons which can be further applied as a management model for larger residential urban spaces within urban neighbourhoods.

## References

- Abrahamsson, A., Sjöling, I., (2008): Mixed tenures in the same building - What can Sweden learn from the Netherlands? Master of Science thesis. Division of Building and Real Estate Economics, KTH, Stockholm, Sweden.
- Alterman, R., (2010): The Maintenance of Residential Towers in Condominium Tenure: A Comparative Analysis of Two Extremes- Israel and Florida. Chapter 5 in Blandy, S., Dupuis, A., Dixon, J. (Eds.), (2010): Multi-owned Housing: Law, Power and Practice. Ashgate, Farnham.
- Amann, W., (2010): Armenia: Renovating and Securing Multi-Apartment Housing Stock, IIBW- Institute for Real Estate, Construction and Housing Ltd., Vienna/Austria, [www.iibw.at](http://www.iibw.at).
- América Management Advisory, (2012): Final Report "Assessing the Housing Energy Efficiency and the Housing Finance and Micro-finance Markets for Lower and Middle Income Households in Armenia": 23.
- von Bar, C., (2004): Comparative Law of Obligations: Methodology and Epistemology. In: Van Hoecke, M. (Ed.), Epistemology and Methodology of Comparative Law (123-135). Hart Publishing, Oxford and Portland Oregon.
- Blandy, S., (2010): Legal Frameworks for Multi-owned Housing in England and Wales: Owner's Experiences. Chapter 2 in Blandy, S., Dupuis, A., Dixon, J. (Eds.), 2010. Multi-owned Housing: Law, Power and Practice. Ashgate, Farnham.
- Blandy, S., Dupuis, A., Dixon, J. (Eds.), (2010): Multi-owned Housing: Law, Power and Practice. Ashgate, Farnham.
- Bogdan, M., (1993): Komparativ rättskunskap (in Swedish). Institutet för rättsvetenskaplig forskning (CL). Norstedts Juridik, Stockholm.
- Bogdan, M., (2004): On the Value and Method of Rule-Comparison in Comparative Law. Festschrift für Erik Jayme (1233-1242). Munich.
- Brattström M., (1999): LÄGA- Lägenhet med äganderätt (in Swedish). Skrifter från Institutet för fastighetsrättslig forskning vid Uppsala universitet, Nr 5. Iustus förlag, Uppsala.
- David, R., Szladits, Ch., Weir, T., Tschchikvadze, V. M., Zivs, S. L., Chehata, Ch., Derrett, J. D. M., Iyer, T. K. K., Cotran, E., (1974): Structure and the Divisions of the Law. Chapter 2 in David, R. (ed.), International encyclopedia of comparative law. Vol. 2, The Legal Systems of the World: Their Comparison and Unification. Mohr, Tübingen.
- Easthope, H., Randolph, B., Judd, S., (2009): Managing Major Repairs in Residential Strata Developments in New South Wales. City Futures Research Centre, University of New South Wales, Sydney.
- Gao, L.W, Ho, D. C. W, (2016): Explaining the outcomes of multi-owned housing management: a collective action perspective. Habitat International 50(2016): 233-241.
- Georgiev, G., (2012): Report on "Legal Framework for Social Affordable Housing in Eastern Europe", International Conference on Social Housing, Yerevan.
- Georgiev, G., (2014): Bulgarian Housing. Status and Prospectives. Journal of Economic Development, Environment and People, Vol. 3, Issue 3, 2014.
- Hardin, G., (1968): The tragedy of the commons. Science 162(1968): 1243-1248.
- Harris, D.C., (2011): Condominium and the City: The Rise of Property in Vancouver, Law and Social Inquiry, Vol. 36, Issue 3, 694-726, 2011.
- Ho, D. C. W, and Gao, W, (2013): Collective action in apartment building management in Hong Kong. Habitat International 38(2013): 10-17.
- Van Hoecke, M., (2004): Deep Level Comparative Law. In: Van Hoecke, M. (Ed.), Epistemology and Methodology of Comparative Law (pp. 165-195). Hart Publishing, Oxford and Portland Oregon.
- Lilleholt, K., Modeen, P., Rečiūnas, G., Stasevičius G., Victorin A., (2002): Apartment Ownership and Mortgage Finance in Lithuania. TemaNord 2002:579. Nordic Council of Ministers, Copenhagen.
- Lippert, R.K., Steckle, R., (2016): Conquering condos from within: Condo-isation as urban governance and knowledge. Urban Studies 2016, Vol. 53(1) 132-148.
- Lujanen, M., (2010): Legal challenges in ensuring regular maintenance and repairs of owner-occupied apartment blocks. International Journal of Law in the Built Environment Vol. 2 No. 2: 178-197.
- Meltzer, R., Cheung, R., (2014): How are homeowners associations capitalized into property values? Regional Science and Urban Economics, 46: 93-102.
- Merwe, V. D. C. G., (1994): Apartment ownership. Chapter 5 in: Yiannopoulos, A. N. (Ed.), International encyclopedia of comparative law. Vol. 6, Property and trust. Mohr, Tübingen.
- Nordisk ministerråd (Nordic Council of Ministers), (1997): Nordisk bustadrett (in Scandinavian languages). TemaNord 1997:594. Nordisk Ministerråd Copenhagen.
- Ostrom, E., (1990): Governing the Commons. University Press, Cambridge.
- Paulsson, J., (2007): 3D Property Rights- An Analysis of Key Factors Based on International Experience. (Doctorate thesis) Report 4:99 from the Section of Real Estate Planning and Land Law. Royal Institute of Technology, Stockholm.
- Paulsson, J., (2013): Reasons for Introducing 3D Property in a Legal System- Illustrated by the Swedish Case. Land Use Policy 33 (2013): 195-203.

- Paulsson, J., Paasch, J.M., (2013): 3D Property Research from a Legal Perspective. Computers, Environment and Urban Systems. Vol. 40: 7-13.
- Ploeger, H., van Velten, A., Zevenbergen, J., (2005): Real Property Law and Procedure in the European Union, Report for the Netherlands, European University Institute (EUI) Florence/European Private Law Forum Deutsches Notarinstitut (DNotI) Würzburg. <http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/RealPropertyProject/The-Netherlands.PDF>.
- Proposition (Bill to the Parliament) 2008/09:91. Ägarlägenheter (in Swedish). Swedish Government.
- Rabenhorst, C. S., (2001): Should the Laws of Slovenia Continue to Use the Term “Functional Land”? Subproject on Apartment Registration Development SMA\_3.1D\_IND, Slovenia Real Estate Registration Modernization Project. August 2001. Surveying and Mapping Authority of the Republic of Slovenia.
- Rabenhorst, C., Ignatova, S., (2009): Condominium housing and mortgage lending in emerging markets: Constraints and opportunities. Working paper no. 2009-04, Urban Institute Center on International Development and Governance, Washington, DC.
- Randolph, B., Tice, A., (2013): Who lives in higher density housing? A study of spatially discontinuous housing sub-markets in Sydney and Melbourne. *Urban Studies* 50(2013): 1-21.
- Reinders, D., (2015): Senior Advisor Housing Policies, Woonbron Housing Corporation, the Netherlands, May, 2015, online interview.
- Republic of Armenia Government Decree No 1855-N dated 30.11.2006 on “The procedure of uncompensated transfer of the land required for proper management and maintenance of the apartment buildings being built on the land of municipal or state ownership to the owners of apartments and non-residential premises of those buildings”.
- Schmid, Ch. U., Hertel Ch., Wicke H., (2005): Real property law and procedure in the European Union, General Report, European Private Law Forum, European University Institute (EUI) Florence, German Notary Institute (DNotI) Würzburg. <http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/RealPropertyProject/GeneralReport.pdf>.
- Thomson, H., (2015): Investing in Residential Energy Efficiency. EU Fuel Poverty Network. <http://fuelpoverty.eu/2015/02/17/investing-in-residential-energy-efficiency/>.
- Tracht, M. E., (2000): Co-ownership and Condominium. In: B. Bouckaert and G. De Geest (Eds.), *Encyclopedia of Law and Economics, Volume II, Civil Law and Economics* (62-89). Edward Elgar, Cheltenham.
- Trifonov E., (2014): Management of the Condominium Act- Frequently Asked Questions- Bulgaria, Copyright Trifonov Law Offices, Bulgaria, hg.org Legal Resources, <http://www.hg.org/article.asp?id=19614>.
- UN/ECE, (2002): Guidelines on Condominium Ownership of Housing for Countries in Transition. ECE/HBP/123. Economic Commission for Europe, United Nations, New York and Geneva.
- Vanyan, I. Gh., (2014): Monograph “ New Trends in Management in 21st Century”. Czestochowa university of Technology, Czestochowa, Poland: 323-327.
- Vegter N., (2012): De vereniging van eigenaars. Dissertation, University of Groningen, the Netherlands.
- VVERECHT, (2006): Dutch Framework Regulations for dividing property into apartment rights, English translation (unofficial), [www.vverecht.nl](http://www.vverecht.nl).
- Wang, F., (2013): Determinants of the effectiveness of Chinese homeowner associations in solving neighbourhood issues. *Urban Affairs Review*, 50: 311-339.
- WCED, (1987): *Our Common Future*, Report of the World Commission on Environment and Development, Oxford University Press, UK.
- Yim Yiu, C., (2007): Building depreciation and sustainable development. *Journal of Building Appraisal* (2007) 3: 97-103.
- Zweigert, K., Kötz, H., (1998): *An Introduction to Comparative Law*. 3rd edition. Clarendon Press, Oxford.