

## ANNEX 4

### THE LEGAL FRAMEWORK FOR HOUSING

#### 4.1 Purpose of the Annex

This annex presents an annotated listing of legislation of relevance to housing followed by a legal analysis with specific recommendations to be taken into consideration for the implementation of the proposed indicative National Programme.

##### **Spatial Development Act (SDA)**

*Promulgated January 2001, latest amendment July 2004*

This significant law determines:

- authority with regard to policy and implementation activities for spatial planning;
- land use, designation and size of land property (parcels);
- the manner of developing the territory through different layout schemes and plans, their creation, approval and amendment and the manner of changing the conditions in urbanised territories;
- forms and parameters of building development;
- rules and norms for disposition of the buildings, of the basic building development and the different deflections/deviations;
- requirements for residential buildings and dwelling units and their temporary use;
- spatial planning of green and forest areas;
- general requirements for the elements of the technical infrastructure;
- investment design, its coordination and approval, and the issue of permission of the construction;
- the construction process – procedures, participants and construction requirements;
- insurance of designs and constructions;
- issuing permission for use;
- establishment and transfer of the Right to Build (construction right);
- removal of construction not fit for use or threatening security, and construction prohibition;
- right of the state and of the municipality to be first buyer;

- technical requirements for acquisition and subdivision of immovable properties;
- conditions for compulsory alienation and indemnification;
- judicial control of the individual administrative acts for development of the territory;
- administrative control of development of the territory and construction, administrative-punitive responsibility, technical competence;
- non-admittal and removal of the unlawful construction, determination of tolerable buildings.

##### **Ordinance No7/2003 (SG. 3/13 Jan 2004)**

*with respect to the rules and the norms for development of the different kinds of territories and development zones.*

This ordinance sets out the rules and standards for the development of housing areas and the construction of residential buildings and dwelling units.

Apart from the above there are technical regulations on the norms for technical installations in dwellings, the structural frame, fire protection, thermal insulation, noise protection, the needed protocols within the construction period, the affordability by handicapped persons etc. – approximately 20 separate ordinances that must be respected.

There are no special orders or provisions for social housing, for low standards, for dwellings built without the needed documentary proof. Nor are there separate provisions for dwellings located within overpopulated areas or inhabited by low-income people.

##### **State Property Act (SPA)**

*Promulgated May 1996, latest amendment October 2004*

This law is important mainly because of the regula-

tion for its implementation that sets out the costs of land in different settlements and the cost of the Right to Build—setting out the basic prices that serve also municipal property.

### ***Municipal Property Act (MPA)***

*Promulgated May 1996, latest amendment November 2004*

This law is important for the National Housing strategy and the proposed programme because it defines the options delegated to local governments in order for them to determine themselves the approach regarding municipal property – which is often the case with respect to Roma neighbourhoods.

### ***Cadastre and Property Registration Act***

*Promulgated April 2000, latest amendment April 2004*

Arranges for the organisation, funding, creation, administration and use of the cadastre and the property register. It is related to the Programme only in so far as the cadastre serves as the base of the Detailed Layout Plans.

### ***Regional Development Act***

*Promulgated February 2004*

Determines public relations with regard to planning, programming, management, resource provision, state support, observation, control and assessment of the regional development. Its objectives are:

- creation of conditions for balanced and sustainable development of the regions in the Republic of Bulgaria;
- creation of preconditions for reduction of inter-regional and internal regional imbalances in the economic development of the country;
- provision of conditions for growth of employment and the income of the population;
- development of cross-border cooperation.

There is nothing specific here relating to housing pol-

icy and the proposed programme, but housing will need to be part of any development strategy on the regional or municipal levels and of the related action plans.

### ***Tax Procedure Code***

*Promulgated November 1999, latest amendment October 2004*

Provides the procedures for registration of tax subjects, establishing, securing and collecting tax and the other state and municipal public revenues – covers appeals and the associated acts as well as the structure and the powers of tax administration.

### ***Local Tax and Fees Act***

*Promulgated December 1997, latest amendment December 2004*

Determines the local fees and taxes and is relevant because it states that any owner, if he/she has built on state or municipal land owes the relevant tax for the building. There is no position on whether the building is legal or illegal. The owner has only to declare the building and then to pay the tax.

### ***Municipal Budgets Act***

*Promulgated March 1998, latest amendment December 2003*

Regulates the drafting, adoption, implementation, completion and accounting for the municipal budgets, the budget ratios between the municipalities and the central budget and the regime of the non-budget resources of the municipalities.

There is no special provision for social housing in the budget. There are only rules for managing the existing stock without any obligations for increasing the stock.

The adopted Municipal Plan for Development under the Law for Regional Development is presented as the main base for the draft budget.

### ***Ownership and Use of Farmland Act***

*Promulgated March 1991, latest amendment May 2004*

Relates to the proposed Programme since some of the neighbourhoods are built on farm land. The procedure to include these areas in the urban boundaries of the settlements shall be implemented according to this law on preserving farm lands and according to the SDA. The regulation for the allocation of farm land to citizens without property or with little property is relevant with respect to options for relocation of Roma in villages.

### **4.2 Analysis and Commentary on the Legal Framework<sup>53</sup>**

In terms of their basic designation, which is defined in the development plans, territories fall into several categories: urban (settlements and settlement formations), agricultural, forest, protected, and damaged territories for restoration. The specific designation of a parcel is determined by the Detailed Layout Plan (DLP). In urban areas, which are the target areas in terms of the proposed programme, land use may be: residential; public and public services; production; storage; resort; summer house; sports and recreation; green area; technical infrastructure; etc. Local authorities – mayors and municipal councils – have considerable powers to implement spatial development activities and formulate spatial development policies in their municipality. Construction of buildings, networks and facilities is done in accordance with the provisions of the respective Detailed Layout Plans. Where a special law provides for the execution of buildings, construction can occur following a change in the use of the respective land.

The detailed assessment of housing construction standards and housing layout standards reveals that the better part of the existing housing stock where disadvantaged ethnic minorities live fails to meet statutory requirements and thus it could not continue to exist and be accorded the status of tolerable housing

stock or legalisable housing stock unless less strict, special rules are introduced.

Construction in parcels is carried out under a construction permit issued by the municipality's chief architect. In Sofia and in other large cities subdivided in wards (regions) with their own regional mayors and administrations, this permit is issued either by the municipality's chief architect or by the chief architect of the respective ward, this being set in a municipal council decision. The construction permit is issued following the approval of the technical or detailed investment design and is issued to the owner of the parcel or to the persons granted the Right to Build on parcels they do not own. In the case of private parcels the Right to Build is granted by the owner under the terms and procedures of the *Property Act*. Right to Build on a state parcel is granted by the district governor under the terms and procedures of the *State Property Act (SPA)*, following a bidding process. Right to Build on a municipal parcel is granted by the Mayor of the municipality under the terms and procedure of the *Municipal Property Act (MPA)* following a decision of the Municipal Council. Through amendments to the MPA of 1999, municipalities acquired title over all parcels designated for housing construction (designation valid as of 8 Nov 1999).

Thus, at present the state hardly owns any land for housing development unless, following 1999, the state has acquired land through exchange deals or through changes being introduced in Detailed Layout Plans (DLP) bearing on other empty land owned by the state and falling within the boundaries of the settlements. This transfer of title over land from the state to the municipalities is justified as the state has no obligation to resolve the housing problems of citizens – neither through granting Right to Build at favourable terms nor through accommodating citizens in state dwellings against rent or selling those to citizens. Under the SDA those eligible for accommodation in state-owned dwellings are only officials of the respective ministries and other authorities.

Latest amendments to the MPA have established an

<sup>53</sup> Abridged version of the report submitted by the legal advisers to the UNDP programme formulation team: Mr. Stefan Todorov (Legal Adviser, Local Self-Government, Regional Policy and Urban Development Committee, National Assembly), and Ms. Margarita Prodanova (Head, Department "Procurement and Management of Municipal Property", Directorate "Municipal Property", Direction "Municipal Administration", Sofia Municipality).

enabling environment for eligible persons to be granted Right to Build without bidding for it and the legislation also allows for the right to be granted free of charge. It should be noted, however, that without exception, the Right to Build goes back to the owner of the land if not exercised for a period of 5 years.

Under all circumstances and irrespective of whether with respect to state or municipal land, the Right to Build is granted for future construction and not for construction already implemented. The only exception in this regard, enshrined by the legislation, is in Article 17 of the Transitory Provisions of the SDA and concerns temporary buildings that in accordance with the respective procedure have been awarded permanent development status.

Permit to build on a parcel owned by more than one individual, is made on the grounds of a contract made between the owners through which they grant to one another the Right to Build, or alternatively, expand a building or add more floors to it. Permit to undertake new construction on a parcel where an illegal construction exists cannot be issued to the person who carried out the illegal construction prior to the demolition of construction or its legalisation.

A building permit expires when, within three years of the permit's issue, construction has not started or when within five years of the permit's issue the structure of the building, inclusive of its roof, is not complete. Where a building permit is not reaffirmed by the authorities within one month of its expiry, the approved designs also expire and work on the building may not continue.

### **Opportunities available to the state and to municipalities**

Bulgarian legislation does not charge the state with any direct responsibility to build housing and to accommodate within it the citizens whose housing need has been proven.

The SPA does not make any provision for such a category of housing, and consequently sets no terms and procedures for its sale or allocation to citizens. The state housing stock is an institutional housing stock, i.e. meant to house or to be sold to eligible officials of ministries and other authorities as provided for in the

Act and the accompanying Regulation for its enforcement. Administrative authorities and ministries may, additionally, set more terms and rules on accommodating officials in dwellings they own. The Ministry of Defence and the Ministry of the Interior have, by orders of their ministers, set special terms on letting or offering for sale housing stock they own.

It appears that the *Act to Resolve Housing Problems of Citizens with Housing Savings Accounts of Long Standing (Housing Savings Accounts Act)* is the only Act imposing direct financial commitments on the State. This Act provides for a category of citizens to receive compensation, its amount being calculated based on the number of interest points they are awarded on their saving accounts, when buying or building a dwelling. The amounts to be disbursed under this provision are set annually in the *State Budget Act*. No matter that the direct commitment is the State's, it is the municipalities that prepare lists of citizens eligible for compensation, process documentation, verify data, etc. It is the DSK Bank who services the respective compensation accounts.

Provision of dwellings or parcels for housing construction is entirely a responsibility of the Municipality. The same Act makes provision for Municipal Councils to enable those persons eligible under the Act to build, individually or in groups, housing for themselves and their families. This land is to be sold to citizens at the rates set in the municipality's *Regulations on the Base Market Prices of Properties*.

It is the municipality that is charged with core responsibilities in resolving citizens' housing problems. It should be noted that latest amendments to the MPA, effective of 19 November 2004, established an enabling legal environment for the pursuit of independent municipal housing policies. "Independent" here should not be read as "completely independent" but as "independent to the extent to which a municipality is able to pursue such a policy in the absence of government national policy". The said amendments to the MPA repealed the Regulations on the Implementation of the MPA. Previously, this Regulation governed criteria and procedure to let municipal dwellings to citizens. It sets a package of eligibility criteria for citizens to be classified as "in need of housing" and thus become eligible to rent a municipal dwelling, and this package was universal and valid for all Bulgarian mu-

municipalities. This Regulation (with some exceptions) prohibited municipalities from using different rules accommodating the concrete situation in the municipality – housing stock available, number of citizens in need of housing, capacity to invest in building new housing.

Amendments to the Act now make it possible for each municipality to set, by regulation of the municipal council, criteria against which to establish the citizens' housing needs and their eligibility to receive rented municipal dwellings, together with criteria and cases when municipal dwellings may be offered for sale.

In terms of their use, municipal dwellings fall into: dwellings to rent to citizens with proven housing needs; dwellings to sell, exchange for other property, offer as compensation to persons whose properties have been purchased compulsorily by the municipality; reserve dwellings of municipal authorities. The use of each dwelling is defined by the Municipal Council upon the proposal of the mayor and may be changed subsequently by it depending on the needs of the municipality. To facilitate resolution of housing problems, the MPA enshrines preferential terms for citizens with proven housing needs to acquire from the municipality the Right to Build without bidding. Legislation features similar provisions with respect to the right to build additional floors or extensions to a building for the owners of condominiums or their associations. Besides, by municipal council decision made with a qualified majority (two-thirds of the municipal councilors) right to new construction, additional floors or extensions may be granted to individuals free of charge.

When planning to grant Right to Build through the general bidding procedure authorities may set out in the bidding documents that the price of the Right to Build, or part of it, may be paid through the acquisition of dwellings in the new building. This is an excellent opportunity for municipalities to acquire new dwellings while granting Right to Build. Similar opportunities exist also within the set of rules governing the exchange of municipal properties, and various forms of title over properties granted to the municipality, with properties owned by the state or by private natural and legal persons or with various forms of title over those properties. Good knowledge of legislation and appropriate combinations of the various legal mechanisms open for municipalities a good opportunity to acquire

dwellings as well as other properties – indeed a rather favourable opportunity in view of the fact that largely municipalities have very limited capacities to set aside funding for new construction.

### **Conclusions and recommendations for what municipalities can do within the now effective legislation**

Municipalities have been granted sufficient powers in terms of the conduct of urban development policy and property management. The SPA and Ordinance No 7 allow for specific conditions and peculiar features in the situation to be taken into consideration. The SDA itself opens an opportunity by means of the introduction of specific rules and standards to allow a legal deviation from special development rules and standards. This opportunity exists and is enough to design DLPs meeting the specifics of the Roma way of settling. One way to partially resolve housing issues is the legalisation of existing buildings. Prior to resolving the problem of illegal construction and legalisation of certain categories of buildings in Roma neighborhood a situation analysis should be undertaken.

Based on this situation analysis a programme to resolve the issues may be developed. The next step after analysis should be commissioning the design of DLPs. The issue of ownership cannot be resolved unless there is an approved and effective DLP as the following question needs to be answered – what will be the limits of the parcels with respect to which ceded Right to Build will be sought or acquisition of title? As mentioned above, opportunities on this are set out in the MPA and decisions may be made by the respective municipal councils. Municipalities have the powers and the capacity to allocate land for the construction of social housing. In addition to the allocation of land, it would be necessary to design or update the cadastre base and following that design DLPs, to set out in them the parameters of construction. Firstly, it is attainable and necessary to develop Street Regulation Plans and build the streets and the main technical infrastructure. Enough attention should be given on the selection of land where social housing is to be built for socially-disadvantaged people, among them the Roma, taking account of the value of the land and plans for the future development of the settlement. It would be economically ineffective to build such housing in city centres

on land that is of crucial significance to urban structure nor on first-class arable land, land allocated for the creation of green areas and similar areas.

The vast majority of the Roma have low purchasing power and rely heavily on social allowances. This pre-determines solutions when planning the construction of social housing and mass relocation of socially-disadvantaged citizens. This means that some “master” dwelling designs should be developed and donated to municipalities by their architects and designers, and these designs should meet the specific needs and attitudes of the individual disadvantaged minority groups.

The Act gives opportunities to legalise inhabitable buildings provided they meet construction, technical, hygiene and fire safety standards. From a legal perspective, existing municipal housing stock may also be adapted to fit the needs of minorities. Following an in-depth analysis of housing stock, for those buildings that fail to meet construction-and-technical requirements (yet may be upgraded to meet them) a time period should be given during which all requirements are met. For the short term, granting Right to Build (free of charge or for a consideration) would be an appropriate solution of Roma housing problems as in this way the Roma will have the lawful right to construct residential buildings as well as to apply to obtain funding to do this, be it through grants or loans. When the bidding procedure is held it is unlikely that a high price will be reached as Right to Build will be granted on parcels that will not be in central city areas, i. e. there will not be much interest and the price will hardly be high. In addition, the base price (bidding start price) will not be high either in view of the area on which Right to Build is granted – nor is it thought that there will be numerous bidders. Last but not least, there is, of course, the legal opportunity for all buildings that are illegal and illegalisable to be demolished. This is a measure that could be taken in those cases where municipalities build new social housing on their own land and relocate there some of the families occupying such buildings. Clearance of the land will provide an opportunity for new construction. It is well known that municipalities build such housing under various donor programmes, be it ones funded entirely from external sources or ones that entail cost-sharing.

### **The case for legislative amendments**

Although as described above there are significant openings, the opportunities available under the now effective legislation would require some enlargement. It is therefore necessary to consider some amendments that would give municipalities greater freedom in planning residential construction territories. One example would be to abolish restrictions under Article 19 of the SDA, which are rather stringent and inapplicable in the case of territories settled by ethnic minorities and socially-disadvantaged citizens.

One idea that could be considered is whether the territory to house socially-disadvantaged citizens should become a category in its own right under the SDA. A governance issue in this respect, however, would be the decision that the criteria to house socially-disadvantaged citizens be applied on a social and not an ethnic basis.

It is possible to create the formal, legislative framework (the SDA) that governs rules who may be housed in those territories with compact population of socially disadvantaged citizens and citizens in need of housing; together with opportunities to acquire title over properties in those territories; also opportunities for legalisation; also the special tolerance regime on illegal housing and others.

Specific standards and rules for the size and layout of construction should be set under the respective plans based on the type of development planned for the various quarters—luxury residential development, mainstream residential development, social housing for disadvantaged citizens.

As regards standards in housing construction, requirements should be simplified and provision should be made for specific requirements applicable to social housing, both for social housing of the one or two storey single family house type and social housing of the lodgers’ tenement or boarding house type. This simplification, however, should not be at the expense of quality and safety of dwellings.

All buildings now existing under the tolerance regime should be legalised. Currently, transactions with tolerable buildings do occur—with however the buildings transacted being illegal and also not being legalisable.

The Republic of Bulgaria has in the past been through several “legislative amnesties” on illegal dwellings and summer houses. These “amnesties” applied to all citizens and were implemented through the recognition of a Right to Build on municipal or state-owned parcels to persons squatting on them within the urbanised boundaries of settlements, provided they built on the parcel, continue to occupy it and do not own other dwellings. To do this, authorities used various regimes ranging from the free-of-charge recognition of title or Right to Build to fees for the Right to Build paid over various periods of time and also purchase of the parcel. An “amnesty”, however, is not an acceptable way to resolve housing issues of socially disadvantaged citizens, the Roma among them, as that would be a case where persons obtain rights owing to their past unlawful behaviour. This would be a privilege granted to those citizens and a “punishment” on everybody else who have built legally obtaining the respective papers and paying taxes and fees.

With respect to all amendments, a necessary precondition is to have the DLPs for quarters where ethnic minorities have squatted developed by the municipalities and to do so under specific rules on the size of parcels and the construction rules and standards.

As mentioned in the analysis, the burden to resolve housing issues falls on the municipalities. The conclusion is therefore that there is a need to strengthen municipal capacity to develop and implement housing policy and improve housing conditions of socially disadvantaged citizens.

### Recommended specific amendments

- a) Amendments are proposed to the SPA or to the MPA introducing provision for free parcels of the category of “private state property” to be transferred to the municipalities. This category covers properties that following 8 November 1999 were allocated for housing construction or various urban upgrading measures together with all remaining free parcels in urban territories and outside of them that are private state property. In practice those properties are sold by the state through the district
- governors and thus there is no opportunity to undertake housing construction for socially disadvantaged citizens on them. Transfer of title over those parcels will make it possible for the municipalities to allocate them for housing construction, when possible, or for other projects that would generate additional municipal revenue.
- b) Secondly, by amendment to the same Acts, surplus and idle dwellings owned by ministries and institutions should be transferred to the municipalities. Among those are dwellings owned by the Ministry of the Interior and the Ministry of Defence, together with dwellings owned by companies where the state has a stake and following privatisation of the company those have been left outside the scope of the privatisation agreement. Such dwellings do exist on the territory of the country.
- c) Amendments are also proposed to the State Budget Act in terms of provision of tied subsidies for municipalities to develop DLPs, upgrade certain quarters, develop “master” dwelling designs to be applied on numerous sites, and fund construction of social housing.
- d) Additionally, there may be provision for the state to guarantee municipal debt incurred to construct social housing. The *Local Tax and Fees Act* provides for some tax relief when a main dwelling is owned. This is applicable to all, no matter how many dwellings or other properties they own.
- e) An amendment to the *Local Tax and Fees Act* and provision for tax relief would be justified with respect to one single dwelling being owned. Also, cancellation of local tax may be provided for when a “social” dwelling is acquired. Thirdly, provision should be made for tax relief not only when dwellings are insulated but any time when repairs and improvements are undertaken. Similar to the Management Regulations of Condominiums, there may be Regulations for groups of social dwellings inhabited by socially-disadvantaged citizens, including Roma.

Part of the necessary legislative changes entail passing new legislation, namely those acts mentioned under the Action Plan to Implement the National Housing Strategy and the National Programme for the Renewal of Residential Buildings adopted in January 2005.