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# CONDOMINIUM PROPERTY IN NORTH MACEDONIAN PROPERTY LAW

*The paper analyses the development and novelties in the regulation of condominium property in North Macedonian property law and comparatively. It dissects the concept of condominium property adopted in contemporary property law and examines the need for its redefining so that it could meet the requirements of modern living.*

*The paper focuses on the practical issues in implementing the novelties in regulating condominium property in North Macedonian law that have been, to some extent, adopted from other legal systems, primarily from the laws of neighbouring countries. As the paper will elaborate, research has shown inconsistencies in regulating condominium property between the basic property law – the Law on Ownership and Other Real Rights and special laws such as the Housing Law. The research has also shown inconsistencies or lack of precise and comprehensive provisions in the Housing law itself. Noting the shortcomings in the regulation relating to condominium property the paper directs attention to necessary amendments of the regulation that can be instrumental in overcoming practical issues in the management of condominiums, protection of rights and interests of homeowners and third parties, and the extent of administrative and judicial intervention in these relations.*

*Keywords: property, condominium, ownership, housing.*

## 1. INTRODUCTION

Over the past two decades, condominium living has become the standard way of living in North Macedonian society, especially in the State's capital, the city of Skopje. The land parcels primarily intended for individual housing are often repurposed for collective housing with the new zoning plans, especially in the so-called "attractive" locations that include the centre of the city, and the surrounding municipalities (Karposh, Kisela Voda,

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Aerodrom, etc.). The construction of apartment buildings in these "attractive" locations has been so extensive that they start to resemble nothing more than giant housing and business building complexes. The available housing enabled a fast concentration of the population within the capital's city limits, which had an adverse effect on the quality of living within the city.

There are many reasons why the extensive construction of condominiums has lowered the quality of living, especially in the city of Skopje. However, in this paper we will focus on one of those reasons - the inadequate regulation of condominium property.

## 2.THE CONCEPT OF CONDOMINIUM PROPERTY IN NORTH MACEDONIAN LEGISLATION

The contemporary concept of condominium property was introduced in the North Macedonian legal system by the Law on Ownership and Other Real Rights of 2001[1] (Law on Ownership). The Law on Ownership regulates condominium property in Chapter III dedicated to the regulation of the so-called "sub-forms of ownership" which includes co-ownership, joint ownership and condominium ownership. The fact that condominium ownership is included in the chapter regulating sub-forms of ownership is indicative of the intention of the legislator to view it as a separate sub-form of ownership. However, a closer look at the actual provision regulating condominium ownership does not support the outlined concept of the condominium property. First of all, the Law on Ownership doesn't clearly define what condominium ownership is. In the provisions of article 95 (1) it is stated that:

*Apartments, office spaces, basements, garages and other separate parts of apartment and office space buildings that have two or more apartments, offices or other separate parts may be owned by different natural and juridical persons (condominium ownership).*

A simplistic interpretation of the cited provision would lead us to a conclusion that condominium ownership is ownership of a separate unit (apartment, office or another separate part) within a building that has two or more such units. However, in our opinion, that would not be entirely correct. A separate unit within a building could be in private, state or municipal ownership, and can also be co-owned or jointly owned by several persons. The point is that the separate unit will not be a condominium ownership *per se*. The condominium ownership will in fact emerge at the moment when different persons acquire ownership over the separate units in the building[2]. The emergence of condominium ownership at that moment is compulsory (by law) because the relations between the different owners of the building units in the building need to be put in a legal framework. From this analysis, it can be concluded that condominium ownership is not in fact a separate sub-form of ownership like co-ownership and joint ownership, but is rather a collection of provisions regulating the relations between the owners of the separate building units

[1] Закон за сопственост и други стварни права, *Службен. весник на РМ*, бр.. 18/01, 92/08, 139/09, 35/10.

[2] Regarding the emergence of condominium ownership see: Живковска, Р. 2005. Стварно право. Европа 92: Скопје, pp. 116-117.

in the same building[3]. The relations include: a) rights and duties of the owners relating to the use and maintenance of the building units within the building (apartments, offices or other separate parts), b) rights and duties related to the use and maintenance of the common parts of the building (roof, stairs, hallways, elevators and etc.), and c) right and duties related to the use of the land the building is erected on.

a) Looking into the regulation of rights and duties related to the use and maintenance of the building units within the building, we note that the Law on Ownership has adopted a rather liberal approach, stipulating that the owner of the building unit is free to use and dispose of his or her unit as he or she sees fit (Art. 96). There are some limitations in place with respect to the manner of use such as the duty for the owner to maintain the building unit, although the extent of the maintenance duty it is not specified. We consider that the maintenance duty should include the degree of maintenance that will keep the unit in a condition adequate for its purposed use, not including upgrades. The owner of a building unit is also prohibited from using the unit in a manner that is disruptive or causes damage to the other building units or common parts of the building. Making changes to the building unit that deface the architectural look of the building or endanger its stability is also prohibited. Any owner that causes damages by misuse of the building unit or the common parts of the building is by law liable for those damages. The owner of the building unit is also obligated to permit necessary intervention inside it for the benefit of other building units or common parts within the building and has the right to be compensated for any damages caused by such interventions. The free disposal of the building unit is also limited by a pre-emption right in favour of the other owners and leaseholders within the building. When a garage space is being sold, the other owners in the building have the right of pre-emption, and after them the leaseholders in the building (Art. 100). The leaseholders also have the right of pre-emption in case the owner decides to sell the office space they are leasing (Art. 97). To our opinion the regulation of the pre-emption right of the owners and leaseholders in the building is not very solid. Considering the problem of lacking parking space in the cities, the new regulation related to the norms and standards for the construction of buildings rendered planning sufficient parking space for each building unit within the building obligatory for investors. The idea behind the regulation is for each building unit to have at least one parking space attributed to it. If the garage or parking space is viewed as auxiliary to the building unit there isn't much logic for it to

[3] Scholars tend to define condominium ownership as statutory creation or a legal concept, that enables individual ownership of separate parts of a real estate and co-ownership of common parts in which individual owners hold an undivided share of the whole. See: Harris, D.C. & Gilewicz, N. 2015. Dissolving Condominium, Private Takings, and the Nature of Property. In: B. Hoops et al.(eds.), *Rethinking Expropriation Law II: Context, Criteria, and Consequences of Expropriation*. The Hague, NL: Eleven, pp. 263-279. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2548508 (18. 8. 2022). Królikowska, K. 2017. Transplants of Condominium Law in Central and Eastern Europe. In: Bieś-Srokosz, P. et al. (eds.), *Mutual Interaction Between Contemporary Systems and Branches of Law in European Countries*. S. Podobiński Publishing House: University in Czestochowa, pp. 115-138. Avaiable at: https://www.academia.edu/37156372/Transplants_of_condominium_law_in_Central_and_Eastern_Europe?email_work_card=reading-history (18. 8. 2022). Van der Merwe, C. G. 1994. *Apartment Ownership*, *International Encyclopedia of Comparative Law.* Vol. 6 Ch. 5.J.C.B. Mohr Publisher, pp. 731-742. Available at: https://www.cambridge.org/core/journals/israel-law-review/article/abs/apartment-ownership-by-c-g-van-der-merwe-international-encyclopedia-of-comparative-law-volume-vi-chapter-5-martinusnijhoff-publishers-1994/FD45E1C519442963BD190F6C09590295 (18. 8. 2022).

be sold separately, even if such sale is not explicitly prohibited by law. Since it is allowed for the owner of the building unit to separately sell the garage space attributed to his or her building unit, there is justification for the right of pre-emption in favour of the other owners in the building, because they are the ones that will benefit the most from the extra space. On the other hand, there is no justification for the right of pre-emption of the garage space to be granted to the leaseholders in the building, because once their lease contract expires, they will be left owning a garage space in a building they no longer reside in. As for the other pre-emption right in favour of the leaseholders that grants them priority to purchase the office space they are leasing in the building, we considered it appropriate for the interest of the leaseholders. For the sake of proportionality, we consider that the Law should make the rule apply to apartments as well.

Regarding the free disposition of the building units on part of the owners, it needs to be underlined that the Law on Ownership contains a rather debatable provision which allows the owners to repurpose the building unit from an apartment into an office space. There are several conditions tied to the permit for repurposing the unit. Some of them are of general nature, mandating that the repurpose shouldn't affect the security of the tenants, damage the building or interfere with the peaceful use of the other building units within the building (Art. 101). In addition to these general conditions, there is also one fundamental condition for the repurposing permit to be granted, and that is the consent of the majority of the other owners of building units in the building. In practice, when deciding whether to grant the repurposing permit the planning authority (the municipalities[4]) only looks to see whether consent was given by the majority of owners of the building units in the building, neglecting the conditions of general nature set forth by the Law on Ownership. As a result of this practice, the right to peaceful enjoyment of one's property is often being violated. More often than not, the owners of building units which are most affected by the repurposing – the immediate neighbours - are not even consulted about the repurposing. Usually, the interested party goes on collecting signatures of consent from everyone else in the building except his or her immediate neighbours. We consider that repurposing an apartment into office space will unavoidably change the quality and manner of living within the condominium for all tenants, and mostly for the immediate neighbours, meaning those that own apartments on the same floor where the repurposed building unit is located, and also those that own apartments above and below the repurposed building unit. For the sake of just consideration of the interests of all concerned parties, we propose that these provisions of the Law on Ownership be amended. In our opinion, repurposing of apartment units into office spaces or vice versa should be restricted and possible only if all the immediate neighbours have given their consent for the repurposing, and aggregated to that, that consent is given by the majority of owners of the building units in the building.

b) According to the Law on Ownership, the common parts of the building are to be used as joint and indivisible ownership of all owners of building units (Art. 107) The right to use,

[4] See: Art. 58, Law on Construction (Закон за градење, *Службен весник на РМ* .бр. 130/09, 124/10, 18/11, 36/11, 54/11, 13/12, 144/12, 25/13, 79/13, 137/13, 163/13, 27/14, 28/14, 42/14, 115/14, 149/14, 187/14, 44/15, 129/15, 217/15, 226/15, 30/16, 31/16, 39/16, 71/16, 132/16, 35/18, 64/18, 168/18, *Службен весник на РСМ*, бр.. 244/19, 18/20).

as well as the duty to maintain the common parts in the building, falls proportionally on all the owners of the building units in the building (Art. 102). The Law doesn't regulate in detail how the owners of building units will manage the use and maintenance of the common parts in the building. Instead, it leaves the matter to be settled by way of a management contract between the owners. What is clearly stated by the Law is that all the owners of building units in the building have the right to use its common parts, implying that no owner can be deprived of or restricted from exercising that right (Art. 107). The law also states that every owner of a building unit is obligated to participate in the maintenance costs for the common parts of the building, in proportion to the interest he or she holds in the building. The interest is determined by the inputted value of the building unit in the value of the building (Art. 109). We consider that the provision should be more precise stating that: the interest is determined by the inputted value of the building unit in the collective value of all building units in the building, or in the section of the building if it is a building complex. Costs for maintenance of the common parts of the building are comprised of costs for regular maintenance and costs for investments. The Law on Ownership prescribes that the maintenance costs should be determined by the management contract, or in absence of such contract by a separate agreement between the owners of the building units. In case the owners are unable to come to an agreement on maintenance of the common parts, whether it is a matter of repairs or upgrades, any owner can appeal for the matter to be resolved by the courts in a non-litigious proceeding (Art. 110).

From the few provisions found in the Law on Ownership relating to the maintenance of the common parts of the building, we can note that the law has a *laissez-faire* approach leaving the management issues to the free disposition of the owners of the building unit. The special Housing Law[5] on the other hand diverges from this concept giving a more restrictive legal framework regulating building management, which, among other things, includes management of the common parts of the building. These provisions of the Housing Law will be discussed further in the text.

c) With respect to the use of the land the building is erected on, the Law on Ownership states that all owners of building units have the right to use that land. No owner is allowed to use the common land in a manner that limits the right of use of the other owners of building units (Art. 108).

## 3. COMPARATIVE LOOK ON REGULATION OF CONDOMINIUM PROPERTY

For the comparative analysis of condominium property, we look into the legislations of the countries with which the North Macedonian legal system has a shared legal history: Serbia, Croatia, Montenegro and Slovenia.

*Serbian Law on Property Relations* does not use the term condominium ownership when defining the ownership of separate and common parts of a building. Instead, the Law only specifies that a separate part of a building such as an apartment, office, garage or

[5] Закон за домување, *Службен весник на РМ*, бр.. 57/10, 98/10, 127/10, 36/11, 54/11, 13/12, 55/13, 163/13, 42/14, 199/14, 146/15, 31/16, 64/18, *Службен весник на РСМ*, бр. 302/20, 150/22.

garage space can be an object of ownership (Art. 19 (1))[6]. In continuance, the Law states that common parts of the building and the appliances in the building are jointly owned by the owners of the separate parts of the building and cannot be subject to division (Art. 19 (2). The same concept is adopted in the Housing and Building Maintenance Law of Serbia[7]. The special Law also avoids using the term "condominium ownership", and states that separate building units may be privately owned, co-owned or jointly owned (Art. 5). As for the common parts and the land the building is erected on, the special Law states that by acquiring ownership over the building unit, a person also acquires joint ownership over the common parts and co-ownership of the land (Art. 5 and 8). The rights and duties of the owners of the building units are also regulated in the special Housing and Building Maintenance Law of Serbia. According to the special Law, owners of building units have the right to freely use their units in accordance with the law, and to make changes and adaptations to their building units without disrupting the use of the other building units or common parts (Art. 12). The owner of the building unit can repurpose his or her unit according to the laws regulating construction, and can also agree for his or her building unit to be transformed into a common part of the building (Art. 6 and 7). The owner of the building unit is entitled to use the common parts in accordance with their purpose to the extent that meets his or her needs and the needs of the members of his or her household. Law imposed duties for the owners of the building units are the following: the duty to maintain the building unit functional, the duty to allow entrance in his or her building unit for necessary repairs of other building units or common parts, the duty to maintain the common parts and to participate in the maintenance costs for the common parts and the duty to tolerate the use of the common parts by the other tenants in the building (Art. 14). The special Housing and Building Maintenance Law of Serbia regulates a right of pre-emption of common parts in favour of the owners of building units. If several owners are interested in exercising the right of pre-emption, priority is given to the owner of the building unit that is closest to the common part offered for sale (Art. 13).

*The Croatian Law on Ownership and Other Real Rights* defines condominium ownership as ownership of separate parts of a real estate that is unbreakably linked to the co-ownership share in the real estate where it is established (Art. 66)[8]. According to the concept adopted in the Croatian Law on Ownership, condominium ownership enables the co-owner of the real-estate to use the separate part of the real estate individually and exclusively, excluding all others from using it. According to the Croatian Law on Ownership separate part of the building can be privately owned if it represents an independent and functional separate part. The Law considers such parts to be apartments, offices, garages and clearly marked parking spaces. Other auxiliary parts of the real estate such as open balconies, basements, attics, and house yards can also be considered separate parts when they are clearly separated from the other parts of the real estate. The auxiliary separate parts are treated as accessories

[6] See: Zakon o osnovama svojinskopravnih odnosa, *Službeni list SFRJ*, br.. 6/80 i 36/90, "Sl. list SRJ", br. 29/96 i *Službeni glasnik RS*, br. 115/2005.

[7] Закон о становању и одржавању зграда, *Службени гласник РС*, бр. 104/2016, 9/2020.

[8] See: Zakon o vlasništvu i drugim stvarnim pravima, *Narodne novine,* br. 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14.

of the independent separate part of the real estate (Art. 67). Regarding the connection between the ownership of the separate part and the co-ownership of the common parts, the Croatian Law on Ownership states that they are unbreakably linked, which means that they can be transferred, encumbered, inherited or subject to enforcement proceedings only as a whole (art. 69). Owners of the separate parts of the real estate have the right to use the separate part and all its accessories according to their disposition, they have the right to lease the separate part or to repursue it without the consent of the other owners (Art. 80, 81 and 82). Every owner of a separate part has a duty to maintain his or her separate part so that it won't cause damage to other owners and to allow access in his or her separate part for necessary repairs to other separate or common parts of the real estate (Art. 80). As for the use and management of the co-owned parts of the real estate, the Law states that the provision regulating the exercise of co-ownership rights apply accordingly, unless otherwise stipulated (Art. 85).

Similar to the Croatian Law, *the Law on Ownership of Montenegro* also defines condominium ownership as ownership of a separate part of an apartment or office building that is unbreakably linked to certain rights over the common parts of the building and the land the building is erected on (Art. 161)[9]. Further on, the Law specifies that the separate parts of the building can be privately owned, co-owned or jointly owned, while the common parts of the building are jointly owned by the owners of the separate parts (Art. 169 and 170). The land on which the building is erected is also jointly owned by the owners of the separate parts, and it can't be subject to division among the owners (art. 171). The Law on Ownership of Montenegro also states that the ownership of the separate part of the building, and the ownership of the common parts and the land are linked by law in a way that any change of ownership over the separate part of the building entails changes in ownership over the common parts and the land (Art. 173). There are no particular provisions regulating the exercise of the right of ownership over the separate parts of the building, which leads us to the conclusion that the general provisions for exercising the right of ownership apply. However, the Law does impose some duties on the owners of the separate parts such as the duty to maintain the separate part functional and to prevent any damages to the other parts of the building. While doing repairs or other construction work in his or her separate part the owner must refrain from any activity that may cause damage to other parts of the building, deface the architectural look of the building, or endanger its stability (Art. 175). The Law of Ownership of Montenegro allows for the existing building to be upgraded and the common parts to be transformed into separate parts according to laws regulating construction. According to the Law, the right to upgrade and transform the common parts into separate parts belongs to the owners of the building. If they are not interested in doing the upgrades, they are obligated to offer the public authority or the municipality pre-emption of the common part that can be upgraded and transformed into a separate part. Should the owners of the building fail to perform the upgrade, the common part that is planned for upgrade could be expropriated (Art. 177). Regarding the use of the common parts of the building, the Law on Ownership of Montenegro states that all owners are obligated to use the common parts according to their purpose, not disturbing

[9] See: Zakon o svojinsko-pravnim odnosima, *Službeni list CG*, br. 19/2009.

the right of use of others. Activities in the common parts that endanger the stability or security of the building, deface its architectural look or prevent the use of the common parts are prohibited (Art. 176).

*Slovenian Property Code* defines condominium ownership as ownership of a separate part of a building and co-ownership of the common parts (Art. 105). It appears that the Slovenian Property Code views condominium ownership to be a fusion of two ownership rights – ownership over the separate part of the building and co-ownership over common parts of the building[10]. Due to the concept of unity between the ownership of the separate part and the co-ownership of the common parts, the Property Code states that they are transferred as a whole (Art. 112). Similar to the Croatian Law on Ownership, the Slovenian Property Code defines the separate part of the building as a part that represents an independent and functional unit appropriate for individual use as an apartment, office, or other independent space (Art. 105-2). Common parts are considered to be all parts of the building intended to be used by all tenants. The land the building is erected on is also considered a common part of the real estate as a whole. Provisions regulating the use of the separate building unit in the Slovenian Property Code impose more or less the same duties as the other compared regulations: the duty to maintain the separate unit, to allow entry for repairs and to refrain from any repairs that may cause damages. If the owner of the building unit plans to undertake activities that may interfere with the use of other building units or common parts, he or she needs the consent of the owners who hold the majority of co-ownership shares (Art. 122). The Code affords the owners of the building units some dispositions connected to the building units and the common parts, such as the right to negotiate for a common part of the building to be attributed to a certain building unit, or to transform a common part into a separate part appropriate for individual use (Art. 113). The Property Code also allows for an owner to divide his or her building unit from one into several building units, which will call for changes in co-ownership shares in the common parts appropriately for each individual unit (Art. 114). When a building unit is offered for sale, the right of pre-emption is afforded to the other owners, but only if the building has more than two, and no more than five building units (Art. 124). Regarding the common parts, the Code states that all owners of building units have rights and duties concerning the common parts that are proportional to their co-ownership shares in the common parts. The Code also states that owners are entitled to regulate their relations concerning the use of common parts with an agreement (Art. 116). What draws particular attention in the Slovenian Property Code is the right of the owners to caution and consequently, sanction the owner of a building unit who has blatantly disregarded the rules of conduct set forth by the agreement for use of the common parts of the building. If, by disregarding the rules of conduct, an owner has made living in the condominium unsustainable for the other owners in the building, the owners that hold the majority in co-ownership shares can decide to issue a caution warning to the infringer. If the infringer ignores the warning, they may bring on legal action for his or her expulsion from the condominium and sale of his or her building unit (Art. 123).

[10] See: Stvarnopravni zakonik, *Uradni list RS*, št.. 87/02, 91/13, 23/20.

What the comparative analysis shows us is that there are similarities in the approach to defining condominium property. All regulations link condominium ownership with the ownership over buildings that have more than one building unit or other separate part owned by different persons. In all analysed laws, a difference is made between the ownership over the building unit or other separate parts and the common parts and the land of the building. While the building unit or other separate parts can be individually and exclusively owned, the common parts and the land are co-ownership or joint ownership of all individual owners in the building.

The comparative analysis has also shown similarities in regulating the rights and duties of the owners of building units regarding the use and maintenance of the building units and the common parts of the building. All regulations impose the standard duties: to maintain the building unit functional, to refrain from uses and activities that can be disruptive or cause damage to other building units and common parts, to refrain from defacing the architectural look of the building and to refrain from damages to the building as a whole. Regarding the common pars, all regulation calls for owners to practice appropriate use that is not disruptive or impedes the use by the other tenants in the building.

## 4. MANAGEMENT OF CONDOMINIUM PROPERTY

The management of condominium property in the North Macedonian legal system is closely regulated by the Housing Law. This Law only applies for housing condominiums comprised of apartment units only, or combined condominiums comprised of an apartment and office units, but it does not apply for condominium property in buildings comprised solely of office units.

According to the provision of the Housing law, management of condominiums consists of implementing the decisions of the owners of the building units concerning the management of the building, representation of the owners in legal traffic and representation of the owners before the public authorities relating to all matters connected to the management of the common parts of the building. Regarding the management of condominiums, the Housing law introduces two management models: management by an authorized administrator or by an owner's association (Art. 10)[11]. The introduced management models are in line with the United Nations Guidelines on the Management and Ownership of Condominium Housing aimed to aid in constructing effective and efficient management of housing condominiums in support of the Agenda for Sustainable Development, the New Urban Agenda and the

[11] The same two system of condominium management (authorized administrator or owner's association) are implemented by the Serbian Housing and Building Management Law (Art. 16).
The Croatian Law on Ownership prescribes that all owners manage the condominium abiding by the rules regulating co-ownership. Owners can also appoint a joint administrator (Art. 85).
According to the Law on Ownership of Montenegro the building itself represents a legal entity (Art. 163). Owners of building units are obligated to establish the organizational structure that consists of the owner's assembly and an administrator (Art. 181). If the owners fail to establish the required organizational structure, temporary administrator will be appointed (Art. 189).
The Slovenian Property Code prescribes that owners of building units manage the condominium according to the provision regulating co-ownership. However, if the building has more than two floors and more than eight building units appointing an administrator is mandatory (Art. 118).

Geneva UN Charter on Sustainable Housing and implementation of other United Nation agreements related to housing[12]. The Guidelines direct national legislations to strive for the management of condominiums with the participation of all owners of building units as an association where membership is compulsory. If for any reason the national legislation cannot provide a such form of management, the Guideline suggests alternative models of management, such as self-management or an authorized administrator[13]. Unlike the Guidelines, the North Macedonian Housing Law does not favour the owner's association as a model for condominium management. Instead, it puts it as an equally available model of management alongside the authorized administrator, affording liberty to the owners of the building units to decide which management model is best fitted to their needs. However, choosing one of the two available models of condominium management is compulsory for buildings that have more than 8 units within.

Although it is not explicitly mentioned in the text of the Housing Law, it can be concluded that in small buildings that have eight or fewer units within, owners are not obligated to choose one of the proposed management models. For them, self-management is an option. Self-management can be an option for the management of larger buildings, but only as a temporary solution, during the time that owners of building units decide which of the two models of condominium management they will implement (Art. 18(3), Housing Law).

Choosing the model of condominium management in North Macedonian law, as previously mentioned, is left up to the owners of the building units. According to the Housing Law, the owners of building units chose the model of condominium management through the owner's assembly which is a decision-making body. The decision of the owner's assembly is valid if passed by a majority vote (Art. 18 and 54, Housing Law). It is important to note that the majority, in this case, is determined by the number of owners who voted, which is debatable and can be attributed to the inconsistencies in the Housing Law. On the one hand, the Housing Law determines the degree of decision-making capacity of each owner on the basis of the interest he or she holds in the building (inputted value of the building unit in the value of the building) (Art. 17). The same proportion applies when calculating the participation in management costs. On the other hand, when making the decision about the condominium management model, each owner has equal voting rights. In practice, this can be interpreted very extensively to the point where co-owners of a single building unit may prevail in the voting process over a single owner who owns several building units in the building. It is our opinion that the Law should be consistent regarding the matter of the decision-making capacity of the owners of building units in the sense that the capacity for decision-making (the value of one's vote) should always be in correlation to the interest he or she holds as an owner in the building.

When deciding on the model of condominium management, one must be aware of the advantages and disadvantages of each model. In order to evaluate the efficiency of each management model, we look into its regulation by the Housing law.

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[12] United Nations, 2019. *Guidelines on the Management and Ownership of Condominium Housing*, United Nations Publication, ECE/HBP/198. Available at: https://unece.org/DAM/hlm/documents/Publications/Condo_Guidelines_ECE_HBP_198_en.pdf (18. 8. 2022).

[13] United Nations, 2019. *Guidelines on the Management and Ownership of Condominium Housing*, *op. cit*. pp 15-16.

*Condominium management by an authorized administrator* is regulated in Articles 18-41 of the Housing Law. The advantage of this model is that the authorized administrator is a person (natural or legal) specializing in the area of condominium management and holds a license for condominium management given by the Regulatory Housing Commission. In order to get the license, the administrator is obligated to register in the Central Registry of the Republic of North Macedonia and to have at least three employees - one with a university degree in law or economics and two with a high school degree (Art. 10, Housing Law). We note that the Housing Law puts a high standard for licensing administrators considering the educational requirements for the administrator's employees. Another advantage that we can point out concerning this model of condominium management is that the owners of the building units, even after appointing an administrator, still maintain a high level of control over the management of their condominium. The administrator acts as an agent of the owners who is obligated to follow the decisions of the owner's assembly. This means that the decision-making capacity is still in the hands of the owners of the building units.

The main rights and duties of the administrator are determined by law, which gives a certain level of security for owners that the condominium management will be appropriately conducted. According to the Housing Law, the administrator has the following duties: to obey the decisions of the owner's assembly, to maintain all common parts of the building functional, to represent the owners in matters of condominium management, to represent owners in acquiring permits and other necessary documents before public authorities in matters related to the condominium management and land property issues concerning the building and the land it is erected on, to prepare maintenance plans for the building, to calculate and distribute maintenance costs among the owners, to receive payments for maintenance costs, to submit work reports and render monthly and yearly accounts to the owners, to prepare a yearly report on condominium management, to administrate the reserves fund, to report information for registration in the Real Estate Cadastre and to be familiar with the standards and norms for access of persons with disabilities in the building (Art. 19). In addition to the listed duties, the administrator is also authorized to protect the condominium property against contractors and other third parties who have failed to fulfil their duties with respect to the condominium. None of the listed rights and duties of the administrator may be excluded or limited by way of contract, but it is possible for the owners to afford additional rights and impose additional duties on the administrator in the contract for conducting management services. In order to provide additional security for the owners, the Housing Law limits the duration of the contract for conducting management services to two years. The time limit imposed on the contract makes it rather easy for owners to end collaboration with an administrator that has not met their expectations without having to resort to additional legal actions. There is also a possibility for the contract between the administrator and the owners to be rescinded at any time. The owners can render a decision for dissolution of the contract with a majority vote, and the administrator can give written notice of intent for dissolution of the contract (Art. 29, Housing Law). Each party is obligated to give a two-month notice before dissolving the contract. The Housing Law also imposes personal responsibility on the administrator vis-à-vis the owners for all dealings with third parties related to

the condominium management. According to the Law, the administrator is personally responsible for the actions of third parties that acted under his authority in matters of condominium management (Art. 25 and 26). The Housing Law also makes it easy for owners to control the work of the administrator affording them the right to be informed in all matters related to condominium management. The right to be informed is not limited to receiving yearly work reports from the administrator. Each owner is authorized to demand access to documentation related to the condominium management, such as contracts with third parties, bills and expenses for services rendered, paid and unpaid management costs and etc. Owners may also appoint a Supervisory board to control the work of the administrator (Art. 40, Housing Law).

Taking all into account we can conclude that there are quite a few advantages to choosing an administrator for condominium management. By appointing an administrator, the owners are able to leave the day-to-day activities related to condominium management to the administrator while maintaining overall control over the management process. Along with the obvious advantages of this condominium management model, there are also some disadvantages. The main disadvantage is that it can be very costly, especially for buildings with a smaller number of units. The administrators tend to demand a fixed monthly fee for the management that doesn't include undertaking activities for regular building maintenance like changing lightbulbs, replacement of spare parts in the common areas and etc. These activities are considered by administrators as additional services and are charged separately. Some administrators went so far as to assign additional fees for each monthly calculation of management costs, and fees for each document they draft related to the condominium management, such as invites for the owner's assembly, fees for conducting and keeping records at the owner's assembly, gathering information from contractors and other third parties for matters concerning condominium management etc. Upon receiving various complaints from owners of building units, the Regulatory Housing Commission has cautioned administrators against such practices, since that type of regular activities should be covered by the monthly fee that administrators charge. Although steps were taken to eliminate bad practices, the initial surge of opportunism on the part of the administrators, combined with the delayed reaction on the part of the Regulatory Housing Commission, has irreparably damaged the reputation of the authorized administrators. The overall public opinion is that administrators take advantage of condominium management without really putting in the work that the Housing Law requires them to do. There were also isolated cases where administrators have directly breached the law, embezzled or misused funds and failed to pay electricity, water and other costs for the buildings under their management. The owners of building units affected by mismanagement on the part of the administrators found themselves tied up in long civil disputes and criminal proceedings, uncertain they will be able to recover their funds or claim damages. All these occurrences made owners of building units rather weary and reluctant to choose this model of condominium management.

There are some measures that the Housing Law can take in order to prevent similar abuses on part of administrators in the future, such as defining more precisely what are the duties of administrators with respect to day-to-day condominium management and

what falls out of that scope and therefore can be subject to additional fees. The Housing Law can also impose a duty on administrators to provide guarantees for fulfilment of their contractual obligations, since registering for condominium management services does not require investing large capital. The involvement of the Regulatory Housing Commission in supervising the work of the administrator, and, more importantly, its efficiency in dealing with filed complaints should also be increased.

*Condominium management by an owner's association* is regulated by Articles 54-64 of the Housing Law. The owner's association as a model for condominium management requires a more hands-on approach in management matters than the management by an authorized administrator. This can be a considerable advantage for owners of building units who want to have complete control over the way the condominium is being managed, and not just make major management decisions. In order for the owner's association to legally function, it must be registered as a legal entity (Art. 54, Housing Law). The decision for forming the owner's association is made by the majority of the owners. Once the decision is made, membership in the association is obligatory for all owners of building units in the building, regardless of whether they voted for the decision or against it. The owner's association is registered in the Central Registry of the Republic of North Macedonia. As a legal entity, it must have a founding document (Statute), and organizational structure as prescribed by the Housing Law and estate. The Statute of the association regulates the name of the association[14], contains data about the owners of building units, regulates the decision-making process, the obligations of a member of the association and the procedure for appointing and dismissal of the association's president. According to the Housing Law, the organizational structure of the owner's association must consist of the owner's assembly, which is a decision-making body, and the president of the association who is authorized to act as a representative of the association in legal relations with third parties. As a legal entity, the owner's association is able to enter into legal relations, but its active legal capacity is limited to undertakings linked to condominium management. The owner's association is explicitly prohibited to have any other business dealings that are not directly linked to the condominium management (Art. 58, Housing Law). By nature, the owner's association is a non-profit organization[15]. Due to its non-profit nature, the owner's association has limited resources in its estate, consisting of monthly payments made by the association members in the fund for management and the reserves fund. Since the association itself has limited resources at its disposal, the members of the association (the owners of building units) are jointly and severally liable for all obligations of the association in relation to third parties linked to the condominium management.

Another advantage of the owner's association, besides the fact that it enables direct participation of owners in condominium management, is the economical aspect. The owner's association is the less costly model for condominium management for buildings that have a smaller number of building units close to the legal limit set by the Housing Law, above which self-management is not an option (more than 8 units).

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[14] The name of the owner's association is the address of the building. The address of the building is also considered to be the seat of the association according to the Housing Law (Art. 55 and 56).

[15] More on the types and legal nature of juridical persons see: Живковска, Р. & Пржеска, Т. 2021. Граѓанско право, Општ дел. Скопје: Европа 92, pp. 157-165.

The disadvantage of the owner's association as a model for condominium management is the formality it is required for it to legally function. Formalities such as registration, drafting of constitutive documents, managing the legal entity and the condominium at the same time, learning and abiding by the regulation that governs legal entities as separate legal personalities, learning and abiding by accounting and tax laws and the like. The burden of all formalities linked to the functioning of the owner's association falls mainly on the association president. The president not only has to ensure that the association as a legal entity is functioning in accordance with laws and by-laws, but also has the same duties and responsibilities as the administrator with respect to the condominium management. This renders the position of the association president a time-consuming job with little or no reward for the inputted effort. Taking this into account, it is obvious why the owner's association's main problem is finding a person among the members who is willing to be elected president. It is redundant to point out that, if the owners fail to elect a president, the owner's association can't be constituted.

The Housing Law envisaging the two presented models for condominium management came into force in 2009; even after 13 years of its implementation, the issues in condominium management have not still been completely resolved. There is a large percentage of condominiums that haven't opted for either of the condominium management models, even though they are bound by law to do so. Some of those condominiums are old buildings, where owners continued to practice self-management as an informal way of managing, simply because they have been accustomed to it and had been practising it years before the Housing Law of 2009 came into force. Other condominiums began with self-management as an intermediate solution until they reach an agreement on the model of condominium management they want to implement, but stuck with the self-management for years.

Although *self-management* is not the preferred, nor legally available way for condominium management for most condominiums, the reality is that is still very widely practised. The reason why it is still practised is its informal nature. It doesn't require any formalities, no special organization or registration of any sort. That makes self-management easy to implement especially when there is a disposition on part of the owners to voluntary comply and fulfil their obligations concerning the use and maintenance of the condominium.

The informal nature of self-management of condominiums can be both an advantage and a disadvantage. Viewed as an advantage the informal nature of self-management allows for easy implementation. As a disadvantage, the informal nature of self-management makes it hard to force owners of building units to fulfil their obligations regarding the use and maintenance of the condominium.

On the issue of forcing irresponsible owners to fulfil their obligations to the condominium both of the formal models for condominium management (by an authorized administrator or by owner's association) are more effective than self-management. This is due to the fact that the formal models for condominium management enable the issuing of invoices for management costs that are directly enforceable (unless they have been disputed by the indebted party).

The Housing Law has made some obvious progress in regulating condominiums by giving a legal framework for the implementation of formal models of condominium management. However, as underlined in the paper, it would be beneficial for the regulation to be amended and made more consistent, precise, and comprehensive. Enhancement of the authority of the Regulatory Housing Commission could also be beneficial if it is directed to the effective protection of individual rights of the owners of building units against abuses from authorized administrators. If the owners feel that their rights are accordingly represented and protected, they will be more inclined to choose an authorized administrator for condominium management.

There is also a need for harmonization between the special Housing Law and the basic Law on Ownership on the matter of condominium property that will require amendment of the basic law as well. One issue that needs to be addressed in depth in the regulation of condominium property is the conduct of owners with respect to the use of the common parts of the building and the land the building is erected on. This issue hasn't been sufficiently addressed in the basic Law on Ownership. The Housing law is more focused on regulating the management of the common parts of the building, rather than the conduct of owners concerning the use of the common parts and the land the building is erected on.

## 5. ISSUES AND DISPUTES REGARDING THE USE AND MANAGEMENT OF CONDOMINIUMS

Regarding the use of the common parts of the building the basic Law on Ownership states that they are jointly owned and jointly used, and regarding the land, it is stated that it is jointly used without specifying the form of ownership over the land. The provisions of the Law on Construction Land[16] specify that the land where condominiums are built is jointly owned (Art. 11 (4)). Even though common parts of the building and the land the condominium is built on nowadays are being registered in the Real Estate Cadastre[17] as joint ownership of all owners in the building, they are still subject to usurpation or misuse by individual owners of building units. The common parts are repurposed to be used as separate building units and appropriated by some of the owners. The same happens with the land the condominium is built on - some owners put up fences and use it as their personal garden or yard. The damages some owners cause with misuse of the common parts and the land usually remain uncompensated, or, in some cases, they are passed off as maintenance costs.

Regarding the repurposing of the common parts of the building, we note that it is possible under the same conditions as repurposing a separate building unit. The main condition is for the majority of the owners to give consent for it. The Law on Ownership does not state what will happen once the common part is repurposed to serve as a separate building unit. In practice, when a common part of the building gets repurposed as a building unit,

[16] Закон за градежно земјиште, *Службен весник на РМ*, бр.. 15/15, 98/15, 193/15, 226/15, 31/16, 142/16, 190/16, *Службен весник на РСМ*, бр. 275/19.

[17] Закон за катастар на недвижности, *Службен весник на РМ*, бр. 55/13, 41/14, 115/14, 116/15, 153/15, 192/15, 61/16, 172/16, 64/18, *Службен весник на РСМ*, бр. 124/19.

the person who effected the repurposing expects to become its owner on the basis of the consent of the majority of owners in the building. In our opinion, this is unacceptable. The fact that the majority of the owners in the building have consented to the repurposing does not mean that they can also transfer ownership over the repurposed common part of the building. Even after a common part of the building has been repurposed to serve as a separate building unit, ownership over it does not change, meaning it will continue to be jointly owned by all of the owners in the building. Since, by repurposing, the common part becomes a separate building unit, it is possible to transfer the ownership over that part to an individual person, but only if all joint owners so agree. This is not a matter that can be decided with a majority vote, as the majority of owners in the building do not have the authority to deprive the minority of their stake in the joint ownership of the common parts, repurposed or not. Any other interpretation would be contrary to the Constitution where it is clearly stated that "No one can be deprived of ownership and the rights deriving from it, unless it is in public interest determined by law" (Art. 30 (3)).

Usurpation of the land the condominium is built on for individual use by some owners in the building has no legal basis. Both the Law on Ownership and the Law of Construction Land are clear on the matter that the land is intended to be used jointly by all owners in the building, and it can't be subject to divisions for individual use. Therefore, it is our opinion that the clauses in sales contracts where the buyer relinquishes the right to use the land where the condominium is built, or parts of that land, for the benefit of others are null and void because they are contrary to the imperative legal norms of the Law on Ownership and the Law on Construction Land.

Claiming damages incurred by misuse of the common part of the building on the part of some owners is littered with difficulties. The Law on Ownership proclaims that all owners are liable for the damages they may cause by misuse of the common part, but it fails to specify who is authorized to bring legal action against the person liable. The Housing Law authorizes the administrator or the president of the owner's association to take legal actions against third parties for all matters related to the condominium management, and against the owners in the building when they fail to pay their part of the management costs. Nothing is said about the possibility of taking legal action against the owners for damages incurred. So, the question is: What is the right way of taking legal action?

Having in mind that the liability for damages caused by misuse of the common parts is imposed by law, we consider that any owner in the building as an affected party is authorized to take legal action against the person liable. The common parts are jointly owned, so any of the joint owners can protect that ownership before the courts. The capacity to sue is not in question: however, what is problematic is resolving the relations between the owners regarding the lawsuit. If the lawsuit is successful, it will benefit all, so whoever brings up the legal action against the liable person should have the right to demand reimbursement of litigation costs from the other owners in the building. What if some of them are opposed to filing a lawsuit for damages against the liable person - do they have the right to forfeit the claim for damages? In a general sense claiming damages according to the Law of Obligations[18] is left to the free will of the affected party, meaning that they

[18] Закон за облигационите односи, *Службен весник на РМ*, бр. 18/01, 4/02, 5/03, 84/08, 81/09, 161/09, 123/13.

can freely decide whether to make the claim or not. However, considering the nature of joint ownership, where the relations between the joint owners are closely interlaced and the actions of one affect all, forfeiting rights guaranteed by law should not be a unilateral decision. Further on, if any of the joint owners are willing to exercise a right guaranteed by law that will be beneficial for the joint ownership as a whole, then the others should not be able to impede the exercise of that right and should bare their share of the costs linked to the exercise of that right. In our opinion, this should especially apply for joint ownership of the common parts in the condominium, because often in practice irresponsible owners damage or destroy installations and appliances in the common areas of the building, and no one holds them liable for that. We propose that additional provisions regarding the liability of owners of building units be added in the Law on Ownership, and also provisions in the Housing Law obligating the administrator or the president of the owner's association to take legal action against the liable owner in the building.

## 6. CONCLUSION

The paper demonstrates that according to the concept adopted by North Macedonian legislation, condominium ownership is not in fact a separate sub-form of ownership like co-ownership and joint ownership, but rather is a collection of provisions regulating the relations between the owners of the building units within the same building.

Using comparative analysis, the paper points out that similarities exist in the approach to defining condominium property. All analysed legislations, as shown in the paper, link condominium ownership with the ownership over buildings that have more than one building unit or other separate part owned by different persons.

Going into the issue of condominium property management, the paper demonstrates that the issue is regulated by the Housing Law, but only applies to housing condominiums or combined condominiums. Two models of management are available: management by an authorized administrator or by an owner's association. Condominium management by an authorized administrator is a type of management conducted by a natural or legal person that specializes in the area of condominium management and holds a license for condominium management. Condominium management by an owner's association calls for the creation of a legal entity by the owners of building units in the building.

The paper points out that self-management as a non-formal type of condominium management, can be an option for buildings with no more than 8 units, or as a temporary solution until a formal management model is implemented.

Regarding the shortcomings of the regulation and the need for amendments, the paper concludes that the Housing Law has made some obvious progress in regulating condominiums by providing a legal framework for the implementation of formal models of condominium management, although it would be beneficial for the regulation to be amended and made more consistent, precise and comprehensive. The paper also underlines the need for harmonization between the special Housing Law and the basic Law on Ownership, outlining the need for more precise regulation on the conduct of owners with respect to the use of the common parts of the building and the land on which the building is erected.

## LIST OF REFERENCES

*Bibliography*


Живковска, Р. 2005. Стварно право. Европа 92: Скопје. (Živkovska, R. 2005. *Stvarno pravo.* Evropa 92: Skopje).

Живковска, Р. & Пржеска, Т. 2021. Граѓанско право, Општ дел. Европа 92: Скопје. (Živkovska R. & Prželeska, T. 2021. *Građansko pravo, Opšt del.* Evropa 92:Skopje).

Harris, D. C. & Gilewicz, N. 2015. Dissolving Condominium, Private Takings, and the Nature of Property. In: Hoops, B. et al. (eds.), *Rethinking Expropriation Law II: Context, Criteria, and Consequences of Expropriation*, The Hague, NL: Eleven. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2548508 (18. 8. 2022).

Królikowska, K. 2017. Transplants of Condominium Law in Central and Eastern Europe. In: Bieś-Srokosz, P. et al. (eds.), *Mutual Interaction Between Contemporary Systems and Branches of Law in European Countries*, S. Podobiński Publishing House: University in Czestochowa, pp. 115-138. Available at: https://www.academia.edu/37156372/Transplants_of_condominium_law_in_Central_and_Eastern_Europe?email_work_card=reading-history (18. 8. 2022).

Stvarnopravni zakonik, *Uradni list RS*, št. 87/02, 91/13 in 23/20.

United Nations, 2019. *Guidelines on the Management and Ownership of Condominium Housing*, United Nations Publication, ECE/HBP/198. Available at: https://unece.org/DAM/hlm/documents/Publications/Condo_Guidelines_ECE_HBP_198_en.pdf (18. 8. 2022).

Van der Merwe, C.G. 1994, *Apartment Ownership*, *International Encyclopedia of Comparative Law*, Vol. 6 Ch. 5, J.C.B. Mohr Publisher. Available at: https://www.cambridge.org/core/journals/israel-law-review/article/abs/apartment-ownership-by-c-g-van-der-merwe-international-encyclopedia-of-comparative-law-volume-vi-chapter-5-martinusnijhoff-publishers-1994/FD45E1C519442963BD190F6C09590295 (18. 8. 2022).

Zakon o osnovama svojinskopravnih odnosa, *Službeni list SFRJ*, br. 6/80 i 36/90, *Službeni list SRJ,* br. 29/96 i *Sužbeni glasnik RS*, br. 115/2005.

Zakon o svojinsko-pravnim odnosima, *Službeni list CG*, br. 19/2009 Stvarnopravni zakonik, Uradni list RS, št. 87/02, 91/13 in 23/20.

Zakon o vlasništvu i drugim stvarnim pravima, *Narodne novine,* br. 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14.

Закон за градежно земјиште, *Службен весник на РМ*, бр. 15/15, 98/15, 193/15, 226/15, 31/16, 142/16, 190/16, *Службен весник на РСМ*, бр. 275/19. (Zakon za gradežno zemjište).

Закон за градење, *Службен весник на РМ* бр. 130/09, 124/10, 18/11, 36/11, 54/11, 13/12, 144/12, 25/13, 79/13, 137/13, 163/13, 27/14, 28/14, 42/14, 115/14, 149/14, 187/14, 44/15, 129/15, 217/15, 226/15, 30/16, 31/16, 39/16, 71/16, 132/16, 35/18, 64/18, 168/18, *Службен весник на РСМ*, бр. 244/19, 18/20. (Zakon za gradenje).

Закон за домување, *Службен весник на РМ*, бр. 57/10, 98/10, 127/10, 36/11, 54/11, 13/12, 55/13, 163/13, 42/14, 199/14, 146/15, 31/16, 64/18, *Службен весник на РСМ*, бр. 302/20, 150/22. (Zakon za domuvanje).

Закон за катастар на недвижности, *Службен весник на РМ*, бр. 55/13, 41/14, 115/14, 116/15, 153/15, 192/15, 61/16, 172/16, 64/18, *Службен весник на РСМ*, бр. 124/19. (Zakon za katastar na nedviznosti).
Закон за облигационите односи, *Службен весник на РМ*, бр. 18/01, 4/02, 5/03, 84/08, 81/09, 161/09, 123/13. (Zakon za obligacionite odnosi).
Закон за сопственост и други стварни права, *Службен весник на РМ*, бр. 18/01, 92/08, 139/09, 35/10. (Zakon za sopstvenost i drugi stvarni prava).
Закон о становању и одржавању зграда, *Службени гласник РС*, бр. 104/2016, 9/2020. (Zakon o stanovanju i održavanju zgrada).