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The Landlord's Limited Right to Terminate a Residential Lease Contract

Estonian Law in Comparative Perspective*

1. Introduction

Residential tenancy law forms a field of private law wherein the parties' autonomy has been seen as, in principle, superseded by mandatory provisions oriented toward solidarity among citizens.^{*1} These mandatory provisions are intended to compensate for the asymmetric power and monopoly possessed by landlords vis-à-vis sitting tenants^{*2} and to guarantee security in housing.^{*3} However, excessively high tenure security can have an adverse effect on the rental market, as it potentially reduces investments and/or encourages alternative uses of the existing stock by households.^{*4} On the other hand, while reduction in the level of security for the tenant facilitates investments in the rental-housing sector and supports short-term demand, it has a negative impact on long-term demand, as, for example, has arguably been experienced in Finland.^{*5} Therefore, rental regulations should strike a balance between landlords' and tenants' interests, create security of

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¹ See, e.g., C. Schmid, J.R. Dinse. Towards a common core of residential tenancy law in Europe? The impact of the European Court of Human Rights on tenancy law. – L. Nogler, U. Reifner (eds). *Life Time Contracts: Social Long-term Contracts in Labour, Tenancy and Consumer Credit Law*. The Hague: Eleven International 2014, p. 606.

² 'Asymmetry in relations between landlords and tenants' stems from 'inelastic supply of rented housing due to geographical constraints, planning restrictions, financial system etc., and [the] landlord's monopoly in relations with sitting tenants as it is', according to C. Whitehead *et al.* See *The Private Rented Sector in the New Century: A Comparative Approach (med dansk sammenfatning)*. Cambridge 2012, p. 93.

³ There are several aspects that make security in housing much more important than the property-rights perspective alone. Among others, Hulse and Milligan refer to human well-being, families' functioning, childhood development, economic and social participation, and physical and mental health. For more information, see K. Hulse, V. Milligan. Secure occupancy: A new framework for analysing security in rental housing. – *Housing Studies* 29 (2014)/5, p. 639. – DOI: <http://dx.doi.org/10.1080/02673037.2013.873116> (31.3.2016).

⁴ See, e.g., D. Andrews *et al.* Housing markets and structural policies in OECD countries. *OECD Economics Department Working Papers*, No. 836. OECD Publishing 2011, p. 65. – DOI: <http://dx.doi.org/10.1787/5kgk8t2k9vf3-en> (31.3.2016).

⁵ R. de Boer, R. Bitetti. A revival of the private rental sector of the housing market? Lessons from Germany, Finland, the Czech Republic and the Netherlands. *OECD Economic Department Working Papers*, No 1170, 2014, p. 54. – DOI: <http://dx.doi.org/10.1787/5jxv9f32j0zp-en>.

tenure to support long-term demand, and avoid market segmentation between sitting and new tenants – in a way that would have adverse effects on neither the supply nor the demand side of the market.^{*6}

In the context of secure tenancy^{*7}, the element of stability covers the presumption that the landlord has no arbitrary control over the tenant's rights to occupy the dwelling, that the tenant can make a home and stay in the dwelling as long as he wishes.^{*8} This article addresses the core question of the stability issue in tenancy relations: on what conditions the landlord has a right to terminate a tenancy contract for reasons other than factors stemming from the tenant's sphere of risk. In consideration of the fact that, as has been underscored in recent comparative studies on tenancy law, security of tenure differs between countries and over time and can best be seen as a continuum rather than a dichotomy^{*9}, the purpose of the research is to find a position for Estonian regulation on a relative scale in comparison with Latvian, Lithuanian, German, Swiss, Finnish, and Swedish law^{*10}.

The authors firstly provide a general overview of legal regulation of tenancy relations in the countries compared (in Section 2), in order to lay the groundwork for a presentation of the various policy questions involved (in Section 3). For the purpose of structural clarity in the following analysis of regulatory regimes, lease contracts concluded for an unspecified and a specified term are differentiated (these are covered in Sections 4 and 5, respectively).

2. Legal regulation of tenancy relations in the countries under comparison

2.1. Estonia, Latvia, and Lithuania

The time after the 1991 regaining of independence marked a radical turning point for housing policies in the Baltics.^{*11} In one result of the extensive privatisation, restitution, and general liberalisation of their housing markets over the last 25 years, the Baltics can be commonly characterised as displaying a high rate of private ownership of the housing stock and a high rate of owner-occupancy.^{*12} Another typical characteristic feature is that a relatively large proportion of the population of the Baltics lives in flats.^{*13}

The legislation of all three Baltic States includes special rules on residential lease contracts. In Estonia, residential lease contracts as a special kind of lease contract are regulated in §§ 271–338 of the Law of Obligations Act^{*14} (LOA). In Latvia, a special law, the Law on Residential Tenancy (LRT)^{*15}, governs residential

⁶ See, e.g., D. Andrews *et al.* (Note 4), p. 52.

⁷ Or 'secure occupancy' as a broader concept. See K. Hulse, V. Milligan (Note 3), pp. 638–656. See also S. Nasarre. Leases as an alternative to homeownership in Europe: Some key legal aspects. – *European Review of Private Law* 6 (2014), p. 820; K. Hulse *et al.* Secure occupancy in rental housing: Conceptual foundations and comparative perspectives. AHURI Final Report No. 170. Melbourne: Australian Housing and Urban Research Institute 2011, p. 30. Available at https://www.be.unsw.edu.au/sites/default/files/upload/research/centres/cf/publications/ahuriprojectreports/AHURI_Final_Report_No170.pdf (31.3.2016).

⁸ A similar approach is applied by S. Nasarre (Note 7).

⁹ See K. Hulse, V. Milligan (Note 3), p. 22.

¹⁰ This article is based largely on country-level reports and comparative studies of housing policy and legal frameworks for residential rental markets in European countries prepared under a grant from the European 7 Framework Programme for research into tenancy law and housing policy in a multilevel Europe (TENLAW: Tenancy Law and Housing Policy in Multi-level Europe), with grant agreement 290694. Reports are available at <http://www.tenlaw.uni-bremen.de/reports.html> (31.3.2016). The terminology used by the authors here is based on that applied by the national reporters, and the term 'tenancy' has the same meaning as the term 'residential lease'.

¹¹ For general discussion, see A. Hussar. National report for Estonia. Available at http://www.tenlaw.uni-bremen.de/reports/EstoniaReport_18062014.pdf; J. Kolomijceva. National report for Latvia. Available at http://www.tenlaw.uni-bremen.de/reports/LatviaReport_09052014.pdf; A. Mikelénaitė. 'National report for Lithuania.' Available at http://www.tenlaw.uni-bremen.de/reports/LithuaniaReport_09052014.pdf (31.3.2016).

¹² In Estonia, 81.5%; in Latvia, 80.9%; and in Lithuania, 89.9% of the population, with the EU average being 70.1%. Data, for 2014, are available in 'Living conditions and social protection'. Eurostat, Housing Statistics, published in 2015, online data code: ilc_lvho02 (31.3.2016).

¹³ In Estonia, 63.8%; in Lithuania, 58.4%. The EU average is 46.2%. Data are available in 'Living conditions and social protection'. Eurostat, Housing Statistics, published in 2013, online data code: ilc_lvho01 (31.3.2016).

¹⁴ Võlaõigusseadus. 1.7.2002. Available in English at <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/516092014001/consolidate> (31.3.2016).

¹⁵ Likums Par dzīvojamā telpu īri (the Law on Residential Tenancy), 16.2.1993. Available in English at <http://likumi.lv/doc.php?id=56863> (31.3.2016).

tenancy agreements. As *lex generalis*, the Latvian Civil Law^{*16} applies to those matters not governed by the special law. Lack of consistency between the *lex specialis* and *lex generalis* norms has been pointed to as a reason for contradictory case law and legal commentaries.^{*17} In Lithuania, residential lease contracts are regulated by the Civil Code (CC)^{*18}, in its special Chapter XXXI ('Lease of dwellings') as *lex specialis* in relation to Chapter XXVIII ('Lease') and the General Part of the Civil Code.

2.2. Germany and Switzerland

Germany and Switzerland were selected for comparison in this paper on the basis of the choices made in Estonia during the transition period. Namely, the rules on tenancy relations found in the Estonian LOA are strongly influenced by the German civil code (BGB) and the Swiss Code of Obligations (CO).^{*19} Germany and Switzerland differ from the rest of the countries under comparison in the high proportion of the population there who occupy a dwelling as a tenant at market rates.^{*20} The central norms of German tenancy law can be found in BGB §§ 535–548 (on general questions related to lease contracts) and §§ 549–577 (on leasing of a dwelling). Major reforms took place in 2001 (regulation of contract length, reasons for termination, rent levels) and in 2013 (energy-efficient maintenance and modernization measures, simplified enforcement of an eviction title).^{*21} In Switzerland, general questions of tenancy relations are regulated in Articles 253–304 of the CO^{*22}. Swiss tenancy law was substantially reformed in July 1990.

2.3. Finland and Sweden

Finnish and Swedish law deserve attention firstly because of Estonia's close socio-economic ties with those countries, which, in a way, influence the social perceptions of tenancy also in Estonia. Moreover, as the regulation in those countries is positioned at opposite ends of the spectrum of tenancy protection – the Finnish system, after the reforms in the mid-1990s, being one of the most liberal systems in Europe^{*23} and the Swedish system among the most protective – comparison with those countries aids in ascertaining the scale of that spectrum. Rental housing accounts for about 30% of the housing stock in Finland, where it is fairly evenly divided between private rental housing (about 16%)^{*24} and 'social housing' (14%)^{*25}, and about

¹⁶ Civillikums ['Civil Law of the Republic of Latvia'], 28.1.1937. Available in English at <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018388.pdf> (31.3.2016).

¹⁷ More details about the inconsistency of the court practice can be found in I. Kull *et al.* Comparative remarks on residential tenancy law in Latvia and Estonia. – *Law Journal of the University of Latvia* 8, pp. 5–21. See also J. Kolomijceva (Note 11), p. 175.

¹⁸ Lietuvos Respublikos civilinis kodeksas ['Lithuanian Civil Code'], 18.7.2000, No. VIII-1864. Available in English at http://www3.lrs.lt/pls/inter3/dokpaiseska.showdoc_l?p_id=245495 (31.3.2016).

¹⁹ For more information, see V. Kõve. Applicable Law in the Light of Modern Law of Obligations and Bases for the Preparation of the Law of Obligations Act. – *Juridical International* 6 (2001), pp. 30–36. Available at <http://www.juridicinternational.eu/?id=12551> (31.3.2016); P. Varul. Legal Policy Decisions and Choices in the Creation of New Private Law in Estonia. – *Juridica International* 2000/5, pp. 104–118. Available at <http://www.juridicinternational.eu/index/2000/vol-v/legal-policy-decisions-and-choices-in-the-creation-of-new-private-law-in-estonia/> (31.3.2016); the Swiss Code of obligations is said to be "Part Five" of the Swiss Civil Code, but is indeed a separate code in the Systematic Collection (SC 220), an English "unofficial" translation might be found on the official site of the "Confederation" (Federal State): <https://www.admin.ch/opc/en/classified-compilation/19110009/index.html> (17.7.2016). Since 1 January 2016, the electronic version prevails over the paper version.

²⁰ In Germany, 39.6% (in 2014) and in Switzerland, 51.8% (in 2013), according to Eurostat, online data code: ilc_lvho02 (current as of 31.3.2016). For further details, see Santos Silva, 'Intra-team Comparison Report for Austria, Germany, Luxembourg and Switzerland.' Available at <http://www.tenlaw.uni-bremen.de/intrateamcom/AT-DE-LU-CH%20comparison%20report%2020151218.pdf> (31.3.2016), p. 3.

²¹ Gesetz zur Neugliederung, Vereinfachung und Reform des Mietrechts vom 19. Juni 2001. BGBl. I 1149. Gesetz über die energetische Modernisierung von vermietetem Wohnraum und über die vereinfachte Durchsetzung von Räumungstiteln vom 18.03.2013. BGB I 434.

²² Cf. special regulations such as an Ordinance on adaptation of rent exist, see (no English version available, but German, French or Italian official versions), Verordnung vom 9. Mai 1990 über die Miete und Pacht von Wohn- und Geschäftsräumen (VMWG, SC 221.213.11). Available at <https://www.admin.ch/opc/de/classified-compilation/19900092/index.html> (17.7.2016).

²³ C. Whitehead (Note 2), p. 122.

²⁴ T. Ralli. National report for Finland, 2014, p. 31. Available at http://www.tenlaw.uni-bremen.de/reports/FinlandReport_09052014.pdf (31.3.2016); R. de Boer, R. Bitetti (Note 5), p. 11.

²⁵ State-subsidised rental dwellings (in the so-called ARAVA system).

40% of the housing stock in Sweden.^{*26} In both countries, residential lease contracts in the private rental market are regulated with special legislation: the Act on Residential Leases (ARL)^{*27} in Finland and the Land Code^{*28} and Rent Negotiation Act^{*29} in Sweden. As *lex generalis*, the Contracts Act^{*30} applies.

3. The landlord's limited right to terminate the lease contract as the guarantee for stability

In the analysis that follows, the focus is on the question: on what conditions could a tenancy contract be terminated by the landlord when the tenant fulfils the contractual obligations and the dwelling itself is in sound condition? The fundamental elements of this question involve 1) suitable grounds for notice, 2) the term for advance notice, and 3) possible damage claims. With respect to suitable grounds, the need for the landlord to accommodate himself or a family member and the landlord's interest in increasing the rent or intention to sell the property such that it is free from the tenant's possession are more particularly under scrutiny. Questions of the duration and extension of the contract, along with the issue of expectations of continuation of the contractual relationship in the event of transfer of ownership, as other important aspects of tenancy stability, are dealt with only to the extent necessary for providing context.

In all countries under comparison here, tenancy contracts, in principle, can be concluded for either a specified or an unspecified term.^{*31} Only in Germany, where contracts for an unspecified term are the norm, is a contract deemed to be for a specified term only if the landlord 1) wishes to use the premises as a dwelling for himself, members of his family, or members of his household; 2) wishes, admissibly, to eliminate the premises or change or repair them so substantially that the measures entailed by this would be rendered significantly more difficult by continuation of the lease; or 3) wishes to lease the premises to a person obliged to perform services, where any of those reasons is reported to the tenant by the landlord in writing and these conditions are stated when the agreement is entered into.^{*32}

As for contracts for an unspecified term, it is argued^{*33} that the 'good-cause eviction' condition already keeps the harm to the landlord's property rights to a minimum. Analogously the employer should not terminate a contract (even one for an unspecified term) without good cause, while the employee has no obligation to supply reasoning for giving notice.^{*34} The landlord's property interests are protected on account of the existing right to evict the tenant for breach of contract or to improve the property or substantially alter the nature of the property. As is elegantly stated by Salzberg and Zibelman^{*35}, the only property interest the landlord is losing is the ability to assert control over another individual's right to live where that individual desires.

As to contracts for a specified term, in principle, once the term has been agreed upon, there should be very limited options for terminating the contract before its term has elapsed. A further question is this: if there are circumstances within the terminating party's sphere of risk that render the contract unreasonably

²⁶ O. Bååth. National report for Sweden, 2014, p. 22. Available at http://www.tenlaw.uni-bremen.de/reports/SwedenReport_18052015.pdf (31.3.2016).

²⁷ Laki asuinhuoneiston vuokraksesta, 31.3.1995/481. Unofficial translation into English available at <http://www.finlex.fi/en/laki/kaannokset/1995/en19950481.pdf> (31.3.2016).

²⁸ Tenancy contracts are regulated in Chapter 12 of the Swedish Land Code of 1970, SFS 1970:994. Available at https://www.kth.se/polopoly_fs/1.476821!/Land_Code.pdf (31.3.2016).

²⁹ Hyresförhandlingslagen ['Rent Negotiation Act'], of 6.1.1978, SFS 1978:304. Available in Swedish at http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Hyresforhandlingslag-1978304_sfs-1978-304/?bet=1978:304 (31.3.2016).

³⁰ Lag (SFS 1915:218.) om avtal och andra rättshandlingar på förmögenhetsrättens område ['Contract Act'], SFS 1994:1513, of 6.11.1915.

³¹ For comparison: In Spain, open-ended lease contracts are not allowed, as lease contracts require a time limit, with the minimum duration being three years. Greece too requires a three-year minimum duration, for first-residence leases. In Malta, while open-ended contracts are not permitted, there is no minimum duration set by law. For more information, see S. Nasarre (Note 7), p. 852.

³² BGB's §575 (I).

³³ K. Salzberg, A. Zibelman. 'Good cause eviction.' – *Willamette Law Review* 21 (1985), p. 71. Electronic copy available at <http://ssrn.com/abstract=1973710> (31.3.2016).

³⁴ More details surrounding the concept of a 'lifetime contract' can be found in the collection of articles edited by L. Nogler and U. Reifner. *Life Time Contracts: Social Long-term Contracts in Labour, Tenancy and Consumer Credit Law* (see Note 1).

³⁵ *Ibid.*, p. 71.

burdensome or expensive for the obligor^{*36} (e.g., urgent personal need on the side of the landlord or the necessity of moving for personal or professional reasons from the side of the tenant), would it then be possible to substitute performance in kind for the right to claim damages? This would, however, be an option only in cases in which the damages would compensate for the loss adequately.

The question of stability of tenancy relations cannot be assessed in isolation. The regulation dealing with termination of a contract for an unspecified term directly addresses the question of the right to increase the rent periodically. Strict rules to protect the stability of a contract for the tenant may be in place, but if rent regulation is prohibitive – i.e., if the landlord may not increase the rent even in a contractual relationship that extends for an indefinite period – incentive would be created for the landlord to get rid of the tenant in an abusive manner. This question will be addressed further in the following parts of the article.

4. The landlord's limited right to terminate a lease contract concluded for an unspecified term

4.1. Germany, Switzerland, Finland, Sweden, Latvia, and Lithuania

The landlord's right to terminate the contract for an unspecified term for reasons that do not proceed from the tenant's sphere of risk can be examined as one element in classification of the level of security of the tenure in the countries subject to comparison from strong to weak. The greatest security of tenure, as defined by Hulse and Milligan, is based on the presupposition that tenants can use the housing under the lease contract as long as they wish and that they can transfer tenancy to their heirs or even become owners.^{*37} In contrast, a 'weak' level of security in tenure is described as following from a regulatory regime wherein the owner has a right to require the tenant to leave the dwelling in certain circumstances – for instance, on account of his intention to use the property for his own needs, to sell it, or to undertake major renovations or redevelopment. Some legal systems guarantee the landlord a right to terminate a lease contract without stating any reasons, so long as the relevant term of notice is honoured.^{*38}

Let us start with the strongest protection. Under Swedish law, the landlord's right to terminate the contract is very limited and there are strict procedural rules to be followed. For example, the validity of the termination notice depends on its approval by a rent tribunal. If the landlord does not apply to the rent tribunal within one month after the lease expires, the notice of termination is void. However, for the purpose of the current analysis, it is important to note that, insofar as the tenant fulfils his obligations, the landlord cannot terminate a lease contract for an unspecified term.^{*39}

The outcome is similar under Latvian law, which neither formally distinguishes between ordinary and extra-ordinary termination nor provides specific rules for contracts of a specified or unspecified term in the case of the landlord giving notice.^{*40} Contracts for an unspecified term may be terminated at the initiative of the landlord on only the grounds set forth in the LRT, most particularly in the event of breach of contract on the part of the tenant.^{*41} The grounds for a contract's termination by the landlord that are specified in Articles 28–28⁶ of the LRT are exhaustive and completely supersede the corresponding regulation in the Civil Law.^{*42}

Also in Germany, the starting point is that if the landlord is interested in getting back his property after some time, he should conclude the contract for a specified time^{*43}, and the landlord's right to terminate a lease contract concluded for an unspecified term (in the case of ordinary termination with notice)

³⁶ Compare with §108 (2) 2) of the LOA.

³⁷ K. Hulse, V. Milligan (Note 3), p. 22.

³⁸ *Ibid.*

³⁹ A landlord may terminate the contract only under Section 42 or 46 of the Tenancy Act. O. Bååth (Note 26) provides details, on pp. 95–99.

⁴⁰ See J. Kolomjceva (Note 11), p. 156.

⁴¹ A practically non-existent right to terminate an open-ended contract could lead to law evasion. That is also a reason that landlords in Latvia prefer to conclude time-limited contracts. *Ibid.*, pp. 157, 174.

⁴² Article 2166 of the Civil Law stipulates that a lease or rental contract pertaining to immovable property, when entered into for an indefinite time, shall be terminated, unless agreement is made otherwise, only after six months' prior notice, which may be given by either party of its own volition.

⁴³ J. Bieber. Münchener Kommentar zum BGB. 6th ed., 2012, §573, para. 3.

is predicated upon the existence of a **justified interest**.⁴⁴ This condition is absolute. A justified interest exists, without limitation, in cases wherein the landlord needs the premises as a dwelling for himself, members of his family, or members of his household.⁴⁵ Cornelius and Rzeznik have stated that German case law has applied a broad definition in its interpretation of family and household; however, the landlord should always be able to prove genuine need for the dwelling. There is an obligation to offer the tenant replacement accommodation if suitable dwellings with comparable rent are available in the same building. Finally, and most importantly, termination for reason of personal needs is ultimately regarded as an abuse of rights if the landlord could have foreseen his needs at the time of concluding the tenancy contract. However, these protective rules are available to the tenant for only the first three years of the tenancy.⁴⁶ Since 2001, the notice period for landlords has been linked to the duration of tenancy, ranging from three to nine months.⁴⁷

It is, nonetheless, important to note that the requirement to present a justified interest does not apply if the landlord terminates a lease for a dwelling in a building inhabited by himself when said landlord has up to two dwellings⁴⁸ (i.e., in cases in which the landlord has physical closeness to the lessee). To compensate for the easier termination, the notice period is extended by three months in this situation.

According to BGB §573 (I) 2, notice of termination for the purpose of increasing the rent is explicitly excluded. At the same time, BGB §558 (I) does give a landlord the right to increase the rent to the market level after a certain interval. This rule guarantees the sitting tenant a right to choose (as he may terminate the contract at any time) while offering an option of reasonable return for the landlord.

Yet, in Germany, even if the landlord's termination of the contract is legitimate, the tenant may object and demand continuation of the lease if its termination would, for the lessee, his family, or another member of his household, be a hardship that is not justifiable even when the justified interests of the lessor are taken into account.⁴⁹ The reasons can be as varied as pregnancy, advanced age, serious diseases, a low income, disability, infirmity, and upcoming exams. Hardship also exists if appropriate substitute residential space cannot be procured on reasonable terms.⁵⁰

In Switzerland, for leases for an unspecified term, the landlord can, in principle, terminate a lease without giving any reason, as long as he respects the appropriate notice period the specific termination dates.⁵¹ However, such notice is open to challenge if it contravenes the principle of good faith.⁵² In order to be able to judge whether he should challenge the notice or not, the tenant may request that the landlord state the reasons for giving notice.⁵³ For the purpose of this analysis, most importantly, termination of a tenancy contract by the landlord is considered to contravene the principle of good faith if, in fact, the landlord has given notice because he wishes to impose unilateral amendment of the lease to the tenant's detriment or to change the rent⁵⁴. The purpose of this regulation is to free the tenant from pressure during the process of negotiating with the landlord over rent increases.⁵⁵ Nevertheless, according to the – controversial – case law of the Supreme Court (Swiss Federal Tribunal)⁵⁶, the landlord is allowed to terminate a tenancy contract for the purpose of renting the flat out to a new tenant a higher rent, provided that the latter rent would not be unfair under an absolute rent calculation method.⁵⁷ The same result could not (at least to the same

⁴⁴ BGB's §573.

⁴⁵ BGB's §573, 2 (2).

⁴⁶ J. Cornelius, J. Rzeznik. National report for Germany, p. 166. Available at http://www.tenlaw.uni-bremen.de/reports/GermanyReport_09052014.pdf (31.3.2016).

⁴⁷ BGB's §573c. J. Cornelius, J. Rzeznik (Note 46), pp. 93, 164.

⁴⁸ BGB's §573a.

⁴⁹ BGB's §574.

⁵⁰ J. Cornelius, J. Rzeznik (Note 46), p. 170.

⁵¹ CO's Article 266a.

⁵² CO's Articles 271, item 1 and 271a. See A. Wehrmüller. National report for Switzerland, p. 132. Available at http://www.tenlaw.uni-bremen.de/reports/SwitzerlandReport_24072014.pdf (31.3.2016).

⁵³ CO's Article 271, item 2.

⁵⁴ CO's Article 271a, item 1 (b).

⁵⁵ R. Weber. Basler Kommentar. 5th ed., 2011, on Article 271/271a, para. 15.

⁵⁶ *Ibid.*, para. 16; DSFT 120/1994 II 105/110, nr 3b/bb, confirmed later in DSFT 136/2010 III 74/75 nr 2.1; for other economic reasons also DSFT 136 III 190/194, nr 3.

⁵⁷ *Ibid.* With the *absolute calculation method (absolute Berechnungsmethode)*, a rent is assessed independently from previous contractual terms. It is applied to assess the fairness of rent which are agreed on using net return (CO's Article 269), gross return (CO's Article 269a c)) and the range of rents customary in the locality or district (CO's Article 269a a)) as criteria.

extent) be achieved by rent increases in the existing tenancy, since even though Swiss landlord has a right to increase the rent any time for the next termination date,^{*58} he or she may, and herein lies a difference from the German law (see above), basically do so only according to relative rent calculation method, i.e., in line with increase in costs or in connection with additional services provided by the landlord.^{*59} Indeed, the increase of the rent for adapting it to the market level can be challenged by the tenant as unfair if that would give permit the landlord to derive excessive income from the leased property.^{*60} In any case, where the termination of the lease would cause a hardship for the tenant or his family in a degree that cannot be justified by the interests of the landlord, the tenant may request and extension of the lease up to four years in one or two requests.^{*61}

In Finland, landlords may terminate a contract for an unspecified term providing justified reason. However, since the tenancy-law reform of 1995, in the main, any grounds, inclusive of an intention to sell the property, satisfies the requirement to state the grounds in the notice, as long as it is not contrary to good rental practice.^{*62} The landlord may also terminate the contract if he intends to increase the rent to a (otherwise reasonable) level that is not acceptable to the sitting tenant.^{*63} In the latter case, according to the 'Fair Rental Practices'^{*64}, negotiations on a rent increase must be initiated at least six months prior to the intended increase. If negotiations do not lead to agreement, the lessor is entitled to give notice of termination of the lease agreement. According to the cited guidelines, it is advisable, in conjunction with giving notice to inform the tenant of the rent level with which the agreement could be continued. Simultaneously, the tenant should be informed of the deadline for accepting this change in rent if he is to avoid termination of the lease. The acceptance period should end one month before the end of the period of notice.^{*65} Term of notice is to be minimum of six months if the lease agreement has lasted for at least one year; otherwise, it is minimum of three months, calculated from the last day of the calendar month in which notice is given, unless otherwise agreed. The courts shall, at the tenant's request, declare the notice given by the lessor ineffective if the requested rent or stipulation on determining the rent would be considered unreasonable or if it is unreasonable or unjustified on other grounds when the specific circumstances of the case are taken into account.^{*66} In sum, for the Finnish landlord the means of seeking rent increase in private tenancies are an agreement, notice for termination (increasing the rent to a reasonable level is a justifiable reason), and action in court.^{*67}

Under Lithuanian law, the landlord may initiate ordinary termination, without stating any reason, for a lease contract for a dwelling that has an unspecified term by giving notice six months in advance, unless a longer term has been agreed upon. There are no specific objections to termination of the contract that are deemed valid for exercising by the tenant – good faith, hardship, etc. However, the tenant has a limited opportunity to raise subjective objections in the course of the eviction process.^{*68}

⁵⁸ CO's Article 269d.

⁵⁹ CO's Article 269a.

⁶⁰ CO's Article 269. Tenant may legitimately expect that the previously agreed rent gives the landlord a sufficient income. A further rent increase can therefore only be based on changes which have occurred after the previous one; the new rent increase will be assessed according to the relative method compared to the situation after the previous rent increase. In other words, a rent increase which is unfair according to the 'relative method' cannot be justified by invoking that according to the 'absolute method' the new rent was not unfair. On the other hand, where a rent increase would not be unfair according to the relative method, the tenant can still invoke that the increased rent is unfair according to the absolute method. BGE 121 III 163 E. 2c; R. Weber (Note 55), Article 269d, para. 4; A. Wehrmüller (Note 52), pp. 87, 93 ff; See also DSFT 140/2014 III 433/435 nr 3.1.

⁶¹ CO's Articles 272, item 1 and 272b.

⁶² Under Article 54, paras 1 and 5 of the Finnish Act on Residential Leases.

⁶³ R. de Boer and R. Bitetti (Note 5), p. 20.

⁶⁴ Mutually agreed upon by the organisations for tenants and for landlords in 2003. Available at <http://www.vuokranantajat.fi/attachments/2008-09-22T17-05-1515.pdf> (31.3.2016).

⁶⁵ *Ibid.*, pp. 3–4.

⁶⁶ Specific circumstances might be, for example, difficulties in finding a comparable flat in the region. If the notice is not in conformity with good leasing practice, the tenant may, alternatively, claim damages, including compensation for the costs of removal and, at most, three months' rent for the inconvenience. See Article 56 of the Finnish Act on Residential Leases.

⁶⁷ T. Ralli (Note 24), p. 132.

⁶⁸ Article 6.614 of the Lithuanian CC. More details are provided by A. Mikelénaité (Note 11), p. 156.

4.2. Position of Estonian law in the context of analysed regulatory systems

In sum, there are, in essence, three types of regulation that address 'ordinary termination' of a contract for an unspecified term by the landlord. The majority of the regulatory regimes examined here acknowledge a landlord's right to give notice without stating any reason or to state 'any old reason', though this is subject to some form of control under the good-faith principle on the initiative of the tenant (as in Lithuania, Finland, and Switzerland), while in Germany, the landlord should prove justified interest if the notice is to be considered valid, and, furthermore, in Sweden and Latvia, the landlord principally does not have a right to give notice insofar as the tenant fulfils his obligations. If the right to terminate exists, the terms for advance notice range from one to nine months. It can be concluded that, except in Sweden and Latvia, it is possible for a landlord to terminate a tenancy contract concluded for an unspecified term for reason of needing to accommodate himself or his family. Except in those two countries and Germany, it is possible for the landlord to terminate the contract with the (hidden) motivation of freeing the property before sale.

As to the landlord's dilemma surrounding a rent increase for the sitting tenant *v.* termination of the contract with the aim of concluding a new contract, with higher rent, it should be asked, firstly, whether there is a possibility of increasing the rent up to market level within the framework of the existing contract and, secondly, whether the tenant has the last word in the decision on continuation of the contract.

A unilateral rent increase is out of the question for Swedish as well as for Latvian, Lithuanian and Finnish landlords. In Sweden, the rent increase is often subject to negotiations between associations representing tenants, on one side, and landlords, on the other^{*69}, while in Latvian, Lithuanian and Finnish law, rent increases are possible only in accordance with the initial agreement.^{*70} In simple terms, Swedish and Latvian landlords have neither statutory right to neither increase the rent nor terminate the contract freely, while landlords in Lithuania and Finland may not increase the rent but may freely terminate a contract that has an unspecified term.^{*71} Under Swiss law, increasing the rent to market levels is difficult; it is only possible if based on a relative rent calculation method, i.e., change of costs factors, or an absolute rent calculation method based on the market level of the locality or district as long as it does not provide for an excessive benefit for the landlord (see above section 4.1.). A termination motivated by an intention to increase the rent may be contested if it consists of pressure on the tenant to accept the rent increase^{*72}. However, the case law indicates that it is still possible to terminate a tenancy contract for the purpose of obtaining higher rent from another tenant if that higher rent level is fair according to the absolute rent calculation method.^{*73} A clear-cut solution can be found in German law: the right to increase rent levels to the market level, as foreseen by the German legislator (BGB §558), should compensate for the prohibition of termination of a contract with the intention of raising the rent (BGB §573 (I) 2). While §561 of BGB prescribes a special right of termination for the lessee after a rent increase, the tenant also has the last word in deciding on continuation of the contract.

Under Estonian law, rules on ordinary termination of residential lease contracts provide that either party may terminate a lease contract entered into for an unspecified term by giving at least three months' advance notice.^{*74} Even though, according to §325 (1) of the LOA, the notice of termination should state, *inter alia*, the basis for the termination, if, in the framework of tenancy relationships for an unspecified term, said notice has been delivered to the other party without stating any particular reason for the termination, it is presumed to be a notice of ordinary termination.^{*75} As a protective measure, the Estonian law has

⁶⁹ If the landlord has a principal bargaining agreement (*förförhandlingsordning*) in place with the Swedish Union of Tenants, the increase in rent has to be negotiated with that union. If there is no such agreement between the landlord and the union, the rent must be negotiated with each tenant individually. If agreement cannot be reached, the landlord is entitled to apply to the regional rent tribunal. More details are provided by O. Bååth (Note 26), pp. 55–56.

⁷⁰ See J. Kolomijceva (Note 11), p. 128; also, see A. Mikelénaité (Note 11), p. 124.

⁷¹ Schmid and Dinse rightly argue that such restrictions to the landlord's property rights manifestly disturb the economic balance of the contractual exchange and, accordingly, may possibly be challenged before the European Court of Human Rights. See C. Schmid, J.R. Dinse (Note 1), p. 622.

⁷² See DSFT 4A_547/2015 (14 April 2016), nr 2.1.1.

⁷³ See A. Wehrmüller (Note 52), pp. 85 ff.; DSFT 136/2010 III 74/76 nr 2.1.

⁷⁴ LOA's §§ 311, 312 (1).

⁷⁵ K. Paal. Commentary to §312, p. 3. In: P. Varul *et al.* Võlaõigusseadus II. Kommenteeritud väljaanne [‘Law of Obligations Act II. Commented Edition’]. Tallinn: Juura 2007 (in Estonian).

also adopted terms on hardship, which allow the tenant to ask for dismissal protection and for extension of the contract for up to three years if termination of the contract would result in serious consequences for the lessee or his or her family.^{*76}

In Estonian law, it is presumed that the lessor may raise the rent after each six months as of entry into the contract for an unspecified term.^{*77} A lessee may contest an excessive increase in the amount of the rent.^{*78} The rent for a dwelling is excessive if unreasonable benefit is received from the lease of the dwelling.^{*79} It is further specified that the amount of the rent for a dwelling is not excessive if it does not exceed the usual market rent, or an increase in the rent is not excessive if it is based on an increase in the expenses.^{*80} Thus, while there is no direct rule similar to BGB's §558, explicitly allowing rent increases to the market level, and there are rules similar to the Swiss one regarding challenging a rent increase as unreasonable, Estonian case law^{*81}, however, does confirm the landlord's right to raise the rent to market levels.

Further, there are two protective provisions to ensure that the tenant is not placed under pressure in the event that the landlord has increased the rent or intends to do so. Firstly, the increase in rent is void if the lessor warns the lessee that the lessor will terminate the lease contract if the rent increase is contested.^{*82} Secondly, in a parallel to the Swiss law, the tenant has a right to challenge the termination through being heard by a lease committee or court if the termination runs counter to the principle of good faith: *inter alia*, the landlord gives notice of reasons for wishing to amend the contract (inclusive of increasing the rent) that are to the detriment of the tenant and the latter does not consent thereto.^{*83} Thus, in the case of the rent increase being valid in its own right (in substance, if no illegal warning about termination is involved, its validity is dependent only on formal requirements, since there is no limit to the increases possible; see above) and the landlord terminating the contract (e.g., for non-payment of the higher rent), termination may still be contested as conflicting the principle of good faith.^{*84} However, in that case, the tenant should have first formally contested the rent increase in due time (by application to the court).^{*85} If the rent increase remains valid, the tenant's only option is to terminate the contract ordinarily, with three month's notice, since Estonian law lacks a provision similar to BGB §561 that confers a special right for the tenant to terminate the contract in the case of raising of the rent to market rates (§284 (2) and (3) of the LOA associate the special right to termination only with an increase in rent that is due to improvements and alterations).

In sum, Estonian landlord has a right to increase the rent up to market rent after certain intervals (as in Germany) as well as terminate the contract without stating any (real) reason. The latter means that termination is also possible for the purpose of concluding another contract for market rent (this matches Swiss, Finnish and Lithuanian law but diverges from German law). Yet it is possible to argue, following the line of argumentation in Finnish law, that termination without offering the intended new (higher, but still reasonable) rent level first to the sitting tenant would be against the good-faith principle. However, exactly this practice, 'offering' a rent increase while threatening with termination after refusal would contravene the principle of good faith under Estonian and Swiss law and render termination invalid in Germany.

⁷⁶ LOA's §326 (2).

⁷⁷ LOA's §299 (1)

⁷⁸ LOA's §303 (1).

⁷⁹ LOA's §301 (1). This disposition is comparable to Article 269 of CO.

⁸⁰ LOA's §301 (2). Should be noted that non-excessiveness of the market rent is formulated in affirmative and not as a rebuttable presumption as in Article 269a a) of CO: 'rents are not generally held to be unfair if... '(see section 4.2.).

⁸¹ For example, in CCSCd 19.9.2005, 3-2-1-76-05, para. 16.

⁸² LOA's §299 (3).

⁸³ LOA's §§ 326 (1) and 327.

⁸⁴ As is explained in a number of judgements of the Estonian Supreme Court. See CCSCd 22.10.2008, 3-2-1-81-08, para. 10 and CCSCd 29.10.2004, 3-2-1-100-04, para. 17.

⁸⁵ There are several judgements from district courts of Estonia on this subject. See the judgements of the Tallinn District Court of 12.5.2006, No. 2-03-824, 24.3.2010, No. 2-04-2168, and 28.2.2007, No. 2-03-219.

5. The landlord's limited right to terminate a lease contract concluded for a specified term

5.1. Germany, Switzerland, Finland, Sweden, Latvia, and Lithuania

This part of the paper elaborates on the matter of how to determine the conditions under which a landlord may terminate a contract for a specified term for reasons originating within his sphere of risk.

We begin with the systems that offer the strongest protection. The regulation in Latvia^{*86} and Lithuania does not foresee a right to give notice of termination for any reason other than one stemming from the tenant's breach of contract.^{*87} The outcome under Swedish law is similar. If the parties have a fixed-term agreement in place, the landlord is bound by the term specified and cannot give notice of early termination (while the tenant has a right to terminate even this type of contract with three months' notice and has right to demand prolongation).^{*88}

Under German law, the landlord (as well as the tenant) may terminate a contract concluded for a specified term only for **compelling reason** (*ein wichtiger Grund*), as indicated in BGB §543(1). A reason is deemed to be compelling 'if the party giving notice, with all circumstances of the individual case taken into account, including, without limitation, fault of the parties to the contract, and after weighing of the interests of the parties, cannot be reasonably expected to continue the lease to the end of the notice period or until the lease relationship ends in another way'.^{*89} The compelling reason leading to termination must be stated in the notice of termination.^{*90} Application of this general rule presupposes, in principle, that the compelling reason originates from the other party's sphere of risk, as in the case of breach of contract by that party.^{*91} Compelling reasons on the part of the landlord might be serious insults against him or his employees or consist of criminal acts, threats, or wilful making of false reports of offences by him.^{*92} Hence, mere intention to use the dwelling for themselves may well be classified as **justified interest** in the context of giving notice with respect to a contract for an unspecified term but is not, in principle, considered to constitute compelling reason in the context of extraordinary termination of a contract for a specified term. Tenants in Germany have also a right to object on subjective grounds to termination (hardship clause).^{*93}

According to Article 266g of the Swiss CO, where performance of the contract becomes unconscionable for the parties, they may, with **compelling reason** (*aus wichtigen Gründen*), terminate the lease by giving the legally prescribed notice (of three month).^{*94} Qualifying compelling reason is an extraordinary grave circumstance that neither was known nor could have been foreseen at the time of conclusion of the contract, where said reason may arise because of external factors or internal ones.^{*95} External factors are elements such as a war or severe economic crisis. Internal factors are factors in the sphere of the landlord or tenant. These factors are, in reported Swiss court practice, sickness, being an invalid, economic ruin or changes in family circumstances, death threats against the landlord by the tenant, and repeated breach of contract that constitutes a serious infringement on account of the frequency of the violations.^{*96} Differently from German law, it is for the court to determine the financial consequences of early termination (i.e., address the claim

⁸⁶ The landlord may terminate the rental contract only in the cases specified in Section 28 of the LRT – breach of contract by the tenant, the necessity of capital repairs, and demolition of the building. See J. Kolomijceva (Note 11), p. 158.

⁸⁷ Grounds for termination of a lease contract in general can be found in Article 6.497 of the CC and those for lease contracts for dwellings specifically in Article 6.611 of the CC. See A. Miklėnaitė (Note 11), pp. 83, 156.

⁸⁸ Section 4 of the Swedish Tenancy Act. See O. Bååth (Note 26), pp. 77, 96.

⁸⁹ BGB's §543.

⁹⁰ BGB's §569 (4).

⁹¹ J. Bieber (Note 45), §543, para. 10.

⁹² For details, see J. Cornelius, J. Rzeznik (Note 46), p. 166. Relevant case law can be found in Beck'scher Online-Kommentar Mietrecht, Schach/Schultz. 3rd ed., §543 paras 1–9.1.

⁹³ In German, Sozialklausel. See BGB's §§ 574 and 574a. J. Cornelius, J. Rzeznik (Note 46), p. 95.

⁹⁴ CO's Article 266g, item 1.

⁹⁵ See R. Weber (Note 55), Article 266g, para. 5.

⁹⁶ More details are provided by A. Wehrmüller (Note 52), p. 127. The report refers to the case law cited by M. Blumer. Gebrauchsüberlassungsverträge (Miete/Pacht). Vol. VII/3. Basel, Switzerland: Helbing Lichtenhahn Verlag 2012, p. 911 and U. Hulliger. Kündigung aus wichtigen Gründen, Überblick über Lehre und Rechtsprechung (Termination for compelling reason. Overview of the doctrine and case law). – MRA 2011/1, p. 1 ff.

for damages), taking due account of all the circumstances.^{*97} When assessing the damage claim by the tenant, the court takes account of the obligation to mitigate damages.^{*98} Nonetheless, notice of termination by the landlord, also in cases of a contract for a specified term, is open to challenge if, in certain specified condition, it contravenes the principle of good faith (see section 4.1 of the article above).^{*99}

In Finland, the parties are, in principle, bound by the agreed time period and cannot give notice unless agreement has been made otherwise. However, exceptionally, under Section 55 of the ARL, the court may grant a landlord the right to terminate 1) if he needs the flat for his own use or for use by a member of his family for reasons of which he could not have been aware at the time when the agreement was made or 2) if, for some comparable reason, the agreement's remaining in force until the agreed date would be patently unreasonable from the landlord's point of view. It is noteworthy that the tenant is entitled to reasonable compensation for any loss incurred as a result of premature termination of the agreement by the landlord and shall in any case be given an opportunity to be heard before court in connection with these matters.^{*100}

5.2. Position of Estonian law in the context of analysed regulatory systems

In summary, where contracts for an unspecified term are involved, the regulatory systems under scrutiny can be divided into three groups. Firstly, in one group of countries (Latvia, Lithuania, and Sweden, for example), the tenant's protection is relatively strong: it is practically impossible for the landlord to terminate a contract for a specified term for reasons other than fundamental breach of contract by the tenant or the condition of the dwelling posing a hazard.

The second group consists of those countries that acknowledge a general clause on 'compelling reason' (of the countries considered here, Germany and Switzerland), which should be related to an unforeseeable circumstance and should not be caused by the terminating party. If the reason originates from the landlord's own sphere of risk, termination by the landlord would be valid but subject to a damage claim by the tenant, so long as the circumstances still satisfy the condition, necessary for application of the general clause, that the landlord cannot reasonably be expected to continue performing the contract due to unforeseeable circumstance.

Adopting a third type of approach, Finland has developed special regulation that differs from the above-mentioned systems in a procedure – application to the court instead of notice to the tenant (the latter is still the procedure employed if the termination is related to breach of contract by the tenant) – that puts emphasis on the landlord's point of view (thereby deviating from German and Swiss law) and that involves the possibility of a damage claim (comparable with the terms of Swiss law).

In Estonian law, a lease contract entered into for a specified term ends upon expiry of the term unless the contract is extraordinarily terminated (see §309 (1) of the LOA). The general clause on extraordinary termination set forth in §313 (1) of the LOA resembles §543 (I) of BGB in German law and Article 266g of CO in Swiss law. Accordingly, a lease contract (with either a specified or an unspecified term) may be terminated extraordinarily (i.e., without prior notice) only when there is **compelling reason**. A reason is compelling if, when it arises, the party seeking termination cannot, in light of all the circumstances and the interests of both parties, be reasonably expected to continue performing the contract. Example grounds for extraordinary termination, mainly involving reasons originating outside the sphere of risk of the party wishing to terminate, are referred to in §§ 314–319 of the LOA.^{*101}

According to the guidance given by the Supreme Court,^{*102} application of §313 (1) of the LOA requires the court's application of discretionary authority whereby the court is required to consider whether the interest of the party wishing to terminate the contract is more significant and would be more severely dam-

⁹⁷ CO's Article 266g, item 2.

⁹⁸ R. Weber (Note 55), on the CO's Article 266g, paras 8–9.

⁹⁹ CO's Articles 271, item 1 and 271a.

¹⁰⁰ ARL's Article 55.

¹⁰¹ For the landlord, the following is a non-exhaustive list of admissible grounds: 1) the object of the lease being used for non-stipulated purposes (see the LOA's §315), 2) payment of rent having been delayed (see the LOA's §316), 3) the property being a health hazard (see the LOA's §317), and 4) the lessee is declared bankrupt (see the LOA's §319).

¹⁰² E.g., CCSCd 21.5.2004, 3-2-1-62-04, para. 14; CCSCd 29.10.2004, 3-2-1-100-04, para. 13; CCSCd 9.11.2010, 3-2-1-84-10, paras 10.

aged if the contractual relationship were to continue. In any case, the reason is ‘compelling’ only if it is unexpected by the parties. If those conditions are fulfilled, the terminating party has no duty to cover any damages claimed by the other party. However, a compelling reason for terminating the contract under the article referred to above may be attributable to the party applying for termination, in which case the termination is considered a breach of contract that entitles the other party to demand compensation for damage under §115 (1) of the LOA.^{*103} But even in the cases encompassed by the latter terms, the interests of both parties must be considered. For example, the landlord returning from abroad a year earlier than expected most probably would not justify extraordinary termination before the end of the specified term but may, subject to conditions of the ‘unexpected change of circumstances’ and ‘more severely damaged interests’, still be qualified as termination by breach of contract if the damages provide adequate compensation to the tenant. However, the courts in practice seldom consider this approach.

That said, a residential lease contract may be entered into with a resolute condition – in case, for example, the landlord should return from abroad early. Upon fulfilment of such a condition, the lease contract is deemed to have been entered into for an unspecified term and the landlord may terminate the contract ‘ordinarily’ by giving at least three months’ notice (under the LOA’s §309 (4)). In addition, it should be noted that the parties are free to agree on special grounds for termination if the object of the lease is a dwelling used by the lessor and the greater part of it is furnished by the lessor (see the LOA’s §272 (4) 3)).

As a protective measure in contracts both for specified and unspecified terms, the tenant may contest valid termination if that termination runs counter to the principle of good faith (see also section 4.2. above)^{*104} or may demand the extension of the lease contract for up to three years if termination of the contract would result in serious negative consequences for the lessee or his family (hardship clause)^{*105}.

6. Conclusions

The aim with this article was to develop a relative scale for the various regulatory regimes and finally evaluate how well Estonian law, in comparison to Latvian, Lithuanian, German, Swiss, Finnish, and Swedish law, has managed to strike a balance between landlords’ and tenants’ interests in placing limits on the landlord’s right to terminate a tenancy contract for reasons other than factors stemming from the tenant’s sphere of risk.

It is clear from the foregoing analysis that the most protective regime is to be found in Sweden. In essence, a Swedish landlord offers a lifetime product of secure tenure whereby the decision to terminate the contract (i.e., in the case of a contract for a specified term, not to prolong it or, in the case of a contract for an unspecified term, to give notice) is in the hands of the tenant. Latvia too belongs to the group of countries where tenants can feel secure with contracts for a specified and an unspecified term alike, because the right to terminate the contract is non-existent or strongly limited.

In Germany also, the level of tenancy protection is relatively high.^{*106} The large proportion of private rental housing, however, shows that it supports stable demand for a long-term relationship as almost all rental agreements in Germany are concluded for an unspecified term, keeping tenants flexible, yet protected from arbitrary unilateral termination by the landlord. Termination of a contract for a specified term is limited to rare cases of unforeseeable compelling reason.

Less protection is provided by Estonian, Finnish, and Swiss law, under which a tenant who is party to a contract for an unspecified term is not protected from notice of termination, except in a few cases wherein the notice proves to contravene the good-faith principle or good practice. In cases of contracts for a specified term, Finnish and Swiss law provide a degree of protection higher than that under Estonian law, by placing the burden of initiating court review on the landlord and guaranteeing compensation for damage in the event of termination for reasons originating within landlords’ sphere of risk.

¹⁰³ E.g., CCSCd 29.5.2004, 3-2-1-100-04, para. 13, CCSCd 21.5.2004, 3-2-1-62-04, para. 18; CCSCd 9.11.2010, 3-2-1-84-10, paras 12–13.

¹⁰⁴ LOA’s §327 (1).

¹⁰⁵ LOA’s §326 (2).

¹⁰⁶ For general information, see also S. Nasarre (Note 7); C. Schmid. Tenancy law and procedure in the EU. General Report, 2003. Available at <http://www.eui.eu/DepartmentsAndCentres/Law/ResearchAndTeaching/ResearchThemes/Project-TenancyLaw.aspx> (31.3.2016); see also R. de Boer and R. Bitetti (Note 5) and C. Whitehead (Note 2).

It is worth noting in the case of Lithuania that the distinction between contracts for a specified and an unspecified term is set forth in black and white: a landlord has no right to terminate the first (i.e., there is strong protection) but has an unlimited right to terminate the latter (here, protection is weak). Hence, it is difficult to position Lithuania on the general continuum outlined in this paper.

Admittedly, only one aspect of secure tenancy has been analysed here. There are several other factors – among them automatic renewal of a contract for a specified term, faithfulness to the contract in the case of sale of the property, and a statutory pre-emption right – that have an influence on perceptions of the security of the tenure. Additionally, a certain degree of flexibility is important for guaranteeing the tenant's right to free movement and facilitating mobility in the labour market; i.e., the tenant enjoys a right to terminate the tenancy relationship (at least for good cause) without extensive adverse consequences. Analysis of these questions, however, is a subject best left for another article.