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TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

National Report for

POLAND

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1. Housing situation

1.1. General features

The current situation on the housing market cannot be understood without the knowledge of historical background. The evolution of legal institutions (and specific tenures) is going to be thoroughly discussed at the beginning of Part II of the report. At this point, it seems important to define historical phenomena which led to the present situation. The most striking problem regarding the housing situation in Poland is scarcity of housing units. The number of units per 1000 inhabitants is the second lowest in Europe, following Albania.[1] This problem and its scale has multiple grounds and requires much time, as well as political attention to be addressed properly. In 2008, the proportion of houses erected before 1989 to the overall number of residential houses amounted to 84,8.[2] Over the past 20 years, the housing stock has not grown sufficiently. The increase in the number of permanently occupied units was lower between 1989 and 2002 (8.5%) than in the years 1979-1988 (14.9%).[3] Nearly 30% of units in municipal buildings in the cities still came from before 1918, with only every tenth constructed after 1970. Housing premises owned by mainly state run employers are much younger. Almost half of their total in the cities derive from the period following 1970. Before the political transformations, all housing units in private tenement houses came from before 1945.[4]

1.2. Historical evolution of the national housing situation and housing policy

- *Please describe the historic evolution of the national housing situation and housing policies briefly.*
    - *In particular: Please describe briefly the evolution of the principal types of housing tenures from the 1990s on. Explain the growth and decline of the different tenures and the reasons why that happened (e.g. privatization or other policies).*

The condition of private tenements is also quite poor because of former regulation of rents which could not be freely raised even when they finally became negotiable.[5] It must be admitted, though, that certain state interventions were justified by tenant necessities. Not only communist authorities were not particularly fond of landlords.

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[1] M. Frąckowiak, *Ekonomiczne i społeczne problemy polskiego mieszkalnictwa* (Poznań: Poznańskie Towarzystwo Przyjaciół Nauk, 2008), 10.

[2] Narodowe Strategiczne Ramy Odniesienia 2007 - 2013, Wytyczne Ministra Rozwoju Regionalnego w zakresie programowania działań dotyczących mieszkalnictwa opracowane przez Ministerstwo Rozwoju regionalnego, MRR/H/18(2)/08/08 (governmental document).

[3] R. Kierzenkowski, 'Bridging the Housing Gap in Poland', *OECD Economics Department Working Papers,* no. 639 (2008), 10.

[4] Por. T. Billiński, H. Kulesza, *Czynsze i dodatki mieszkaniowe. Uwarunkowania, konsekwencje i porady praktyczne* (Warszawa - Zielona Góra: Zachodnie Centrum Organizacji 1995), 33.

[5] Following the enactment of the Tenants Protection Act of 21 June 2001.

Already in 1919 the government froze rents at the 1914 rates.[6] As another war was coming to an end, in 1944 the new government could only follow the same pattern, freezing rents at pre-war values.[7] This step referred both to private and public sector. Unfortunately, this time devastations were more widespread, and such measures did not facilitate necessary restorations of the ageing tenements in private hands. In practice, they ousted - not without actual intent of the post-war legislator - many private owners from the market, since state institutions and co-operatives could claim the title to the premises reconditioned from their own funds where the private owner failed to comply with the duty to renovate the tenement at his own expense.[8] The situation of landlords, who could not duly exercise their ownership rights, was difficult even after the political transformations of the nineties. In a situation in which rental incomes were insufficient to cover necessary renovations, they were unable to gather profits on their own property.[9]

Before World War II, the government spent less than 1% of the state budget on stimulation of housing construction. There was, however, a well functioning system of subsidizing credits awarded to housing co-operatives and tax exemptions for investors.[10] The mid-war period saw the rise of housing co-operatives which developed in the second half of the 20th Century and still take up a considerable portion of the market.[11] Shortly before the war, in 1938 in the whole country there were 189 registered construction and housing cooperatives, with 10,3 thousand members who became owners of the erected premises, and 50 housing cooperatives in which the ownership was retained by the cooperative. In the latter case, the members became tenants vested with a *sui generis* title.[12]

Scarcity of housing premises was already apparent at that time. Shortly before the war a housing unit was occupied on average by 4.83 persons. The situation was especially difficult in rural areas in the Eastern regions of Poland. In 1938, an average room was occupied by 2,56 individuals, which was far from impressive when juxtaposed against comparative data from England, Holland or Denmark, in which countries the number of accessible rooms already exceeded the number of occupiers.[13]

The years 1944-49 were a period of intense restoration and construction. The following stagnation in the early 50's can be attributed to unnecessary centralization. Decisions made on high level could simply not be efficient. In 1957 a new policy was implemented. Once again, the state started to support initiatives of the local administration, co-operatives and predominantly industrial employers.[14] Despite the decentralization, most of the housing stock in Poland could be categorized as "social ownership" subject to special legal protection and held not only by the state, but also

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[6] M. Frąckowiak, *Ekonomiczne i społeczne problemy...*, 15, 136.

[7] PKWN Decree of 7 September 1944 on housing commissions, Official Law Journal 1944, no. 4, item 18.

[8] M. Frąckowiak, *Ekonomiczne i społeczne problemy...*, 15, 136.

[9] judgment of the European Court of Human Rights of 22 February 2005 in the case of Hutten-Czapska v. Poland, application no. 35014/97.

[10] M. Frąckowiak, *Ekonomiczne i społeczne problemy...*, 15, 137.

[11] It is true, however, that the pre-war spontaneous cooperative movement was nothing like the contemporary quasi-administrative system of huge cooperatives.

[12] M. Frąckowiak, *Ekonomiczne i społeczne problemy...*, 19.

[13] M. Frąckowiak, *Ekonomiczne i społeczne problemy...*, 22-23.

[14] M. Frąckowiak, *Ekonomiczne i społeczne problemy...,* 22-33.

cooperatives and other non-governmental organizations pursuant to art. 126[15] of the 1964 Civil Code. Tenements could be subject to individual property, however, rental housing was organized by a system of administrative allocation rather than freely concluded contracts.

After the collapse of communism, the legislator had to find a way to make a shift from the administrative system to contractual freedom and solutions best suited to the needs of the free market. This task was far from easy. The lawmaker had to weigh the interests of landlords, co-operatives and tenants, find the optimal proportion between the urge to introduce free rent and the generally poor financial standing of the society, between the necessity to restore proper attributes of ownership and the preservation of legitimate tenant needs, and finally between the calls for switching to market housing economy and the social and political conditions of the time (social awareness and habits which derived from the long-standing system of administrative management of the housing stock).[16]

In 1988 the deficit of units in the whole country was at the level of 1295 thousand.[17] In the early nineties, the problem pertained especially to cities. By 1995 the deficit increased to 1.4 million.[18] Citizens' wealth was even lower and crediting mechanisms were seriously underdeveloped. This had to translate in the standard of accommodation. Households were frequently formed by 2 or 3 generations. 12% of urban and 24% of rural population lived in severely overcrowded conditions (3 and more tenants per room).[19] The size of 28,7% urban and 15,8% rural units did not exceed 40 m^2. Also, the quality of the housing stock was poor. It was estimated that 33,6% of households lived in substandard conditions.[20] In 1995 units with basic utilities made for 84% of the urban and 56% of the rural stock.[21]

In the first years of the transformations, the construction market and housing economy were controlled by mechanisms worked out under the previous political regime. The market was still framed by supply of new housing units, which depended on budgetary funds allocated to housing. Already at the turn of 1992 and 1993, however, the change of the economic system led to a reorientation of the housing policy. The actual demand for new units, which reflected preferences and financial capacities of individual households, became a substantial factor influencing the housing market.[22] At that time housing premises ceased to be treated as welfare goods and became marketable. Among features particularly relevant to marketability one can enumerate their durability, location and costs of maintenance. High prices of such property outreached financial capacities of many families. As a result, early nineties brought stagnation to the construction market. Even though the real slump

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[15] This provision was repealed in 1990 (Official Law Journal 1990, no. 55, item. 321).

[16] T. Biliński, H. Kulesza, *Czynsze i Dodatki mieszkaniowe...*, 15.

[17] H. Kulesza, *Sytuacja mieszkaniowa w pierwszych latach transformacji w województwach* (Warszawa: PAN, 1995), 16.

[18] H. Kulesza, *Prognoza mieszkaniowa do 2010 r. Uwarunkowania społeczne i ekonomiczne. Synteza*, (Warszawa: Instytut Gospodarki Mieszkaniowej, 1995), 11.

[19] H. Kulesza, *Sytuacja mieszkaniowa...*, p. 17.

[20] Ibid., 19.

[21] H. Kulesza, *Prognoza mieszkaniowa...,* 12. Basic utilities include: running water, bathroom and toilet.

[22] T. Marszał, 'Zróżnicowanie i kierunki rozwoju budownictwa mieszkaniowego w Polsce' in *Budownictwo Mieszkaniowe w latach 90. Zróżnicowanie przestrzenne i kierunki rozwoju*, ed. T. Marszał (Warszawa: PAN 1999), 7.

took place in mid-nineties, the decrease in the number of housing units put into use can be already dated back to the eighties. In the early eighties the number of new units totalled 190 thousand annually, and in 1996 this figure equalled 62,1 thousand.[23]

The situation called for a new legislative impulse. It was the case not only with regard to the construction market, but also tenancies. The newly emerged market had yet to open up to low income households for which ownership was not an option. In 1995, 1/5 of Polish families could not afford a separate unit. The situation looked even worse with regard to young married couples, 2/3 out of which had no place they could call their own.[24]

In many ways, the Residential Tenancies and Housing Benefits Act 1994 (RTHBA)[25] prescribed compromise solutions which were called for since a long time. The statute lifted the administrative allocation system, restoring contractual freedom and setting at the same time restrictions on the maximal value of rent, increased tenants' participation in the costs of technical maintenance and exploitation of buildings, and simultaneously introduced benefits for the poor or tenants of temporarily low financial standing. The goal was to restore due entitlements of the owner on one hand, and preserve tenant rights on the other.[26]

The ownership structure of the housing stock at the beginning of the nineties reflected the policies of previous governments. Private ownership became the preferred form of satisfying housing needs of the population. Out of necessity, the dominant form of proprietorship in the cities was still the so called social ownership. In this case, title was held by a collective entity, most frequently cooperative. Nevertheless, individual ownership always took a significant share of the market. In 1988, 32% of urban housing units belonged to private individuals. In the country, almost all houses were private (except for housing for state-owned farm employees). Including housing units bought for preferential prices by tenants and holders of a specific freehold cooperative right, this figure grew to 45% by 1994.[27] For many cooperatives and municipalities, privatization of their stock was a means to reduce debt and get rid of unnecessary burden.

In the older stock (tenements erected before WWII), where the size of a unit was generally larger, municipal and private ownership prevailed. Newer units were most frequently owned by cooperatives. In the period between 1989 and 1995 cooperatives were still the biggest investors on the construction market. On the other hand, the investment portion of municipalities was at the same time almost reduced to zero. The same applied to investments undertaken formerly by state enterprises for their staff.[28]

Housing cooperatives played a dominant role in construction investments since the early seventies. At the turn of the centuries cooperative premises made up nearly 1/3 of the entire housing stock in Poland. Once unrivalled, the role of these corporate

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[23] T. Marszał, 'Zróżnicowanie i kierunki rozwoju...', 9.

[24] T. Marszał, 'Zróżnicowanie i kierunki rozwoju...', 8.

[25] Ustawa z dnia 2 lipca 1994 r. o najmie lokali mieszkalnych i dodatkach mieszkaniowych (Act of 2 July 1994 on Residential Tenancies and Housing Benefits), Official Law Journal 1994, no. 105, item 509.

[26] T. Biliński, H. Kulesza, *Czynsze i Dodatki mieszkaniowe...,* 15.

[27] H. Kulesza, *Prognoza mieszkaniowa*..., 13.

[28] H. Kulesza, *Prognoza mieszkaniowa*..., 15.

investors started to diminish in significance already in the eighties, for mainly economic reasons. At that time, the cooperative sector was responsible for about 50% of all investments (80-100 thousand of newly built housing units per annum). In 1998, cooperatives put into use 28 thousand units, which corresponded to over 1/3 of the construction market.[29] The position of the cooperative sector was weakening for yet another reason. Since the economic transition, the vast majority of tenants have bought the housing units they occupied or transformed their specific cooperative tenancies into cooperative freeholds[30] which make a specific right in rem.[31]

Throughout the nineties, the private construction sector was gradually growing in importance to become finally the major actor. In 1994, for the first time since World War II, the volume of construction funded by individual persons surpassed the volume of cooperative investments. In 1995, the participation of the private sector in the total number of housing premises put into use reached 1/2.[32] Housing units funded by private persons have usually been much bigger in size than cooperative or municipal units. For instance, in 1997 the surface area of average premises built by natural persons equalled to 130,5 m^2, which doubled the comparable figure for cooperative investments (60,6 m^2) and drastically surpassed the average size of municipal units (49,3 m^2).[33]

Since the mid-nineties the portion of developer investments has also gradually grown. Initially, the volume of constructions completed by developers was low in comparison with Western Europe. Already in 1998, however, these new entities put into use 9 thousand housing units, which made up 11% of the primary housing market - as compared to 3,7% in 1996 and 6.9 in 1997. At the turn of the century there were about four hundred developers operating in Poland. Most of them, however, suffered from the shortage of capital and poor chances of obtaining bank credit.[34] The developers' legal position was not entirely clear, and even up to the present day vital questions concerning basic elements of development agreements have not been sufficiently answered, although the contract as such is now defined in the Developers Act 2011.[35]

Municipal and staff/employee housing and investments were in recess throughout the past 20 years. The most significant decline concerned staff housing. The number of newly built units in this sector equalled 1.6 thousand in 1995, while in 1998 the same figure dropped to 1.4 thousand, which was over ten times less than in the preceding decade.[36] Industrial employers, gradually privatized and faced with harsh market conditions, were no longer interested in developing housing stock for their staff. Quite

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[29] T. Marszał, 'Zróżnicowanie i kierunki rozwoju...', 10.

[30] A. Stefaniak, *Prawo spółdzielcze oraz ustawa o spółdzielniach mieszkaniowych. Komentarz, orzecznictwo* (Warszawa: AJP Partners s.c., 2002), 259.

[31] J. Ignatowicz, K. Stefaniuk, *Prawo rzeczowe* (Warszawa: LexisNexis, 2006), 241 et seq.

[32] T. Marszał, 'Zróżnicowanie i kierunki rozwoju...', 10.

[33] T. Marszał, 'Zróżnicowanie i kierunki rozwoju...', 12.

[34] T. Marszał, *'Zróżnicowanie i kierunki rozwoju...',* 10-11.

[35] Ustawa z dnia 16 września 2011 o o ochronie praw nabywcy lokalu mieszkalnego lub domu jednorodzinnego (Act of 16 September On The Protection Of Purchasers Of Housing units Or Detached Houses), Official Law Journal 2011, no. 232, item 1378; B. Gliniecki, 'Charakterystyczne elementy treści umowy deweloperskiej', *Rejent*, no. 7 (2011), 9 et seq.

[36] T. Marszał, 'Zróżnicowanie i kierunki rozwoju...', 11.

conversely, they were willing to grant their holdings to other entities and get rid of the financial burden.

Also the municipal stock has slowly shrunk. On average, in 1997 each municipality in Poland built only one housing unit. In the following year the situation improved, although municipalities put into use only 4% of the annual construction output.[37] Instead of increasing their share, self-governmental authorities became more inclined to streamline the management of the existing stock, although more recently new investments have become a necessity, because the ageing municipal stock must be slowly replaced if the current market share is to be maintained. It should be added that self-governmental property encompasses assets owned by municipalities, but also the other two levels of self-government introduced in Poland in 1998. Self-governmental housing stock, however, rests predominantly in the hands of the former. In particular, municipalities have been encumbered with the duty to provide housing units to their poorest inhabitants whose level of income precludes any chances to obtain credit for a housing unit.[38]

One of the goals embraced by the legislator in the early nineties was to pass the general tasks as regards securing and satisfying the residential needs of the society over to municipalities.[39] Units of self-government were thought to be more likely to reasonably manage the housing stock than the State Treasury, in particular by its successive privatization.[40] Nevertheless, the control of a number of central agencies over the state housing stock has persisted. This relates to residential housing of the Military Housing Agency and similar entities[41] allocating units to servicemen, or State Agricultural Property Agency which still manages properties belonging to former state-owned farms, which have as well been generally successfully privatized.

The process of privatization progressed smoothly in the first years of economic transformations. Rather than whole buildings, municipalities were selling single housing units. The process was economically justified, because it allowed to cut public spending on the housing sector. Already by the end of the 20th Century privatization of the municipal housing stock led to emergence of 66,4 thousand condominiums (so called communities of owners explained in the section on intermediate tenures).[42]

In the case of the public stock owned by state enterprises, there was no other way but to privatize. Such premises made an excessive financial burden which required constant subsidies. Such burden weakened the already meagre financial condition of many enterprises. Only in the period 1995-1997, when the Act on Conveying Staff

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[37] T. Marszał, 'Zróżnicowanie i kierunki rozwoju...', 11.

[38] For instance, low income tenants can apply for a reduction of rent on the terms set forth in art. 7 of the Tenants Protection Act of 21 June 2001 (Dz.U. z 2001r. No 71, pos. 733 as amended). Municipalities organize as well social units defined in art. 2(5) of the cited statute for the homeless, evicted persons who cannot afford other accommodation. Allocation of such social units takes place within the framework set forth in art 22-25 thereof.

[39] Major transfer of property which formerly belonged to the Treasury was effected under art. 5 of the Act of 10 May 1990 - Provisions implementing the Act on territorial self-government.

[40] J. Korniłowicz, 'Problems of Privatising Housing in Poland' in *Housing ociology and societal change. New challenges and new Directions, eds.* J. Allen, I. Ambrose, E. Kaltenberg-Kwiatkowska, (Warsaw: CIB, 1996), passim.

[41] e.g. art. 88 of the 1990 Police Act entitles an officer to a unit in the locality of service.

[42] T. Marszał, 'Zróżnicowanie i kierunki rozwoju...', 16.

Housing units to Municipalities and Housing Cooperatives 1994[43] was binding, the number of such units plummeted from 1,2 million to 821 thousand. Despite further activity of private investors in this area, at the end of the last Century there were still 700 thousand staff units in the hands of public enterprises.[44]

In 1995, a new form of tenancy for households with low incomes was introduced by the Act on Certain Forms of Support for the Building Industry 1995 (ACFSBI).[45] Social Building Associations (Towarzystwo Budownictwa Społecznego - Social Building Association) are specific entities which can operate as companies or cooperatives established by juridical persons. Proceeds from their activity are not to be distributed among the shareholders or members, but invested for statutory purposes. According to art. 27 of the cited Act, the objects of the activity of the Associations are construction of housing premises and their rental. The rent is calculated in such a way as to cover maintenance and renovation costs connected with the stock in possession of the Associations. The terms and conditions of their leases are different from those provided in the Tenants Protection Act 2001 (TPA),[46] which (along with the Polish Civil Code) sets out the general framework for contracts relating to rental housing in general. This type of tenancy is offered only to households able to document that their income is below average. If the income of a particular household should grow and surmount the statutory quota, the tenancy agreement either terminates or the tenants lose their privileged position in terms of the amount of rent. On the other hand, however, prospective tenants may have to cover a part of the construction costs (up to 30%), which means that the offer is not addressed at the least affluent groups of the population.

o In particular: What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in Ex-Yugoslavia)

In the early nineties the housing policy and scarcity of residential premises practically frustrated the mobility of younger generations. Already the late eighties saw the process of conveying housing units from the older generation to their children.[47] The absence of an efficient and transparent rental market has only added to the disadvantage of curbed labour mobility across regions. In turn, this leads to consolidation of serious discrepancies in regional unemployment.[48] Even if the labour market has evolved, particularly around certain urban centres, the housing market tends to absorb such changes much slower. Some of such centres are developing strongly, for instance, the western quarters of Warsaw are a venue profoundly transformed by major developers. On the other hand, there are cities with significant

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[43] Ustawa z 12.10.1994 r. o zasadach przekazywania zakładowych budynków mieszkalnych przez przedsiębiorstwa państwowe (Act of 12 November 1994), Official Law Journal 1994, no. 119, item 567.

[44] T. Marszał, Zróżnicowanie i kierunki rozwoju...', 16.

[45] Ustawa z dnia 26.10.1995 r. o niektórych formach popierania budownictwa mieszkaniowego (Act of 26 October 1995), Official Law Journal 1995, no. 133, item 654 as amended.

[46] Ustawa z dnia 21 czerwca 2001 r. o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego (Act of 21 June 2001), Official Law Journal 2001, no. 71, item 733 as amended.

[47] H. Kulesza, *Prognoza mieszkaniowa...*, 15.

[48] R. Kierzenkowski, 'Bridging the Housing Gap...', 6.

residential stock remaining from the previous decades, erected once to provide habitation for industries which later proved unprofitable. This type of discrepancy triggers local and regional price differences. The price for purchasing 1 m^2 of residential floor area in Warsaw averages PLN 7,626 (approx. EUR 2000), while in the post-industrial Łódź the comparative figure equals PLN 4,900 (approx. EUR 1200).[49]

Residential mobility in Poland is exceptionally low even in the case of tenants. Annual changes in this respect affect only 1.6% of municipal units. In Social Building Associations, where the income criterion has to be followed, this figure is 2.4%. At the same time, mobility in French social rental housing amounts to 10%, while in private tenements it reaches 18%.[50]

In light of the above, it is not surprising that during the years 1989-2002 only 10% of the Polish population (3924,3 thousand) changed abode - either permanently or temporarily moved or returned to another location. The most sizeable population flow was recorded in Mazovia. The second biggest region, Silesia, is also the second most dynamic voievodship (self-government unit on regional level) of all in terms of migration. Housing conditions were frequently indicated as the reason for migration - by 19,1% of the respondent movers in 1989-2002.[51]

Immigration has not posed any major housing issues in Poland. When it comes to massive emigration for labour in the second half of the 2000's, most of the people who went abroad were young, and still had not earned funds for an own dwelling. Their foreign earnings, however, are frequently invested on the housing construction market.

1.3. Current situation

- *Give an overview of the current situation*.
- *In particular: What is the number of dwellings? How many of them are rented vs. owner-occupied? What would be the normal tenure structure (see summary table 1)? What is the most recent year of information on this?*

According to the data of the Central Statistical Office, in 2009 there were 13,302 thousand housing units in Poland, which compares to 12,994 in 2007. Out of this total, 2,583 thousand belonged to housing cooperatives, 1,063 thousand were municipal property, 132 thousand were staff units owned by employer companies, 57 thousand belonged to the State Treasury, 79 thousand to Social Building Associations. As far as units owned by private individuals are concerned, 1,987 thousand housing units were parts of condominiums, while 7,400 thousand did not

[49] Ober Haus, 'Raport z rynku nieruchomości', <http://www.ober-haus.pl/files/pl/files/pl/reports/ober_final_last.pdf> January 2013, 3, 25.

[50] J. Życiński, 'Czynszowe czy własne' <http://porady.domiporta.pl/poradnik/1,127301,9425366,Czynszowe_czy_wlasne_.html> January 2013.

[51] Central Statistical Office, 'Raport z wyników. Narodowy spis powszechny ludności i mieszkań' <http://www.stat.gov.pl/cps/rde/xbcr/gus/lud_raport_z_wynikow_NSP2011.pdf> January 2012, 38-39.

form any larger entities. The most striking figure in this breakdown is probably the number referring to the housing stock of cooperatives.[52] The rapid decline from 3148 thousand in 2007 to 2,583 thousand in 2009 was a result of intensified privatization of their housing units.

As far as average usable floor area of newly built premises (in 2010) is concerned, individual investors make the largest units (141.8 m^2,). Housing units built for sale or lease average 64.6 m^2. In cooperatives the same figure equals 58.3 m^2. Municipal premises are generally much smaller (49.5 m^2).[53]

When it comes to the number of rooms, available data depicts that most households opt for three room units (32.6% in total and 35.8% in the cities). In the countryside, houses most frequently comprise four rooms (27.0%). The percentage of four room housing units in the cities is 28.4%. The number of one room units in general is insignificant (3.0%). Two room units are statistically quite a rare option (14.1%).[54]

In the cities, multi-family housing is dominant. In the communist period, when the government policy was oriented towards mass investments, it was assumed that single-family housing takes up agricultural land, makes utilities more expensive, and consumes more materials. Most importantly, however, it was deemed to distract workforce from large industrial centres.[55] Also today single-family housing remains predominantly a rural phenomenon, although semi-detached housing investments are lately observable also in cities. Out of the 13,422 thousand Polish units in 2010, 4381 thousand were located in villages. At 87,8 m^2, the average floor area in vilagies is higher than in cities (62.7 m^2).[56] The data published by the Central Statistical Office does not point directly to the proportion between single- and multi-family housing stock.

Housing units built after 1945 make about 75% of the overall residential stock in Poland.[57] Older buildings are more frequent in Western and South-Western Poland. In Silesia, Opolskie and Lubuskie regions, housing resources from before 1945 make 25% of all residential premises. Although the technical condition of the stock in these regions is poor, the situation has improved since the previous census in terms of electrical and plumbing installations or central heating. Two factors account for this improvement: completion of new residential houses and modernization of the stock built in the previous years. In 2011, almost 94% of residential houses in Poland had water supply, which is 7.7% more as compared to 2002. Currently, only 2,7% of housing units have no plumbing.

As far as the ownership structure is concerned, tenancies in Poland are in minority. 69% of housing units are owner occupied.[58]

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[52] H. Dmochowska (ed.), *Concise Statistical Yearbook of Poland 2012*, (Warsaw: Central Statistical Office, 2012), 231; H. Dmochowska (ed.), *Statistical Yearbook of the Republic of Poland 2011*, (Warsaw: Central Statistical Office 2011), 313.

[53] H. Dmochowska (ed.), *Concise Statistical Yearbook...,* 232.

[54] H. Dmochowska (ed.), *Statistical Yearbook...,* 313.

[55] M. Frąckowiak, *Ekonomiczne i społeczne problemy...,* 112.

[56] H. Dmochowska (ed.), Concise Statistical Yearbook..., 231.

[57] Central Statistical Office, 'Raport z wyników...", 110.

[58] 'Własność czy najem?'
<http://www.nieruchomosci.beck.pl/index.php?mod=m_aktualnosci&cid=33&id=1271> January 2013.

1.4. Types of housing tenures

- *Describe the various types of housing tenures.*
  - *Home ownership*
    - *How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)*

Ownership is the broadest of all rights referring to property. Nevertheless, it is not unlimited. Provisions of Polish law define entitlements of an owner rather than define the concept of ownership as such. Pursuant to art. 140 of the Polish Civil Code (PCC), an owner may, to the exclusion of other persons and within statutory limits, enjoy the thing according to the social and economic purpose of his right, in particular by reaping the fruits and other revenues of the thing, or dispose of the thing. Although the right is not unlimited, it gives the owner a sense of stability. Apart from the residential needs, ownership may also be an investment, especially since the right is in each case inheritable and transferable.

Although ownership has been the preferred option from the perspective of state policies, issues of crediting prospective housing unit owners were a difficult question at the beginning of the economic transitions in Poland, because of the need to introduce market conditions in a reality of deficient funds. The Act on the Adjustment of Credit Relations 1989[59] lifted earlier duties resting on banks with regard to preferential credit for housing purposes. Since the credit prices were determined independently by financing institutions, depending on the demand and volume of their assets, in the first year of the transformations costs (interests) exceeded 100% of the principal amount of certain credits.[60] Measures implemented in the first half of the nineties could only partially improve the situation of borrowers.

Serious steps leading to a new active housing policy were undertaken in 1995 by the enactment of the ACFSBI.[61] The crucial decision was the establishment of the National Housing Fund (Krajowy Fundusz Mieszkaniowy - KFM). However, the main task of this institution was mainly to support the rental sector. Its funds were predominantly intended to credit rental investments. The Act introduced the institution of housing funds (kasy mieszkaniowe) which allowed to save money for a future acquisition of a housing unit.[62]

Individuals in pursuit of their own units on the primary or secondary market were in a difficult situation. Towards the end of the previous century, a person of average wage could only purchase a 60-meter housing unit after seven years of work.[63] The housing funds - apart from saving – also enabled a deduction of savings from income tax up to a certain limit. Individuals such as farmers, who were not PIT taxpayers, as well as low income families, were not interested in this form of support at all. Another reason for the failure of this system was that interest rates on the

[59] Official Law Journal 1989, no. 74, item 440.
[60] M. Frąckowiak, *Ekonomiczne i społeczne problemy...,* 116.
[61] Official Law Journal 1995, no. 133, item 654.
[62] K. Rzepka, 'Kredytowanie budownictwa mieszkaniowego w Polsce'*, Sprawy Mieszkaniowe, vol. 4* (1996).
[63] T. Marszał, *Zróżnicowanie i kierunki rozwoju...,* 17.

deposits were actually lower than inflation.[64] By 1998, the three banks which participated in the program managed to conclude only 30 thousand contracts.[65] In 1997 the legislator introduced a similar instrument, this time more favourable to an individual investor, that is saving and construction funds (kasy oszczędnościowo-budowlane), which were to function as joint-stock companies.[66] Eventually, not a single entity of this type came into existence.[67] Strangely enough, after the first decade of economic transition, Poland was probably the only jurisdiction in Europe where the lawmaker introduced two systems of accumulation of funds for housing purposes and none of them proved operative.[68] The system of saving funds (Bausparkassen), characteristic of Austria and Germany did not turn out to be successful in our country.

Eventually, Poland has chosen a state-supported model of financing housing acquisitions against mortgage. The statute which allows for such intervention in the market was passed in 2006.[69] Currently, after the 2011 amendment of this statute,[70] support within the program "A Family in Its Own Home" is provided predominantly to young married couples. The layout of the program is given below in the part referring to state subsidies.

Although the required own participation of mortgage borrowers has become generally high, the State support seems indispensable. The scarcity of units remains predominantly a question of coordinating supply and demand - in a situation of low affordability. Many households are unable to satisfy their basic housing needs. Ath the end of the previous decade, an average salary in Poland was sufficient for approximately 0,8 m^2 of usable floor area. The situation is worse in the largest cities, where an average salary is enough for about 0,5-0,6 m^2. In comparison, in Western economies citizens may buy approximately 2-3 m^2 of housing area for monthly wage. Low incomes, along with high construction costs and prices of new premises, have led to a situation in which only a part of the society may satisfy their housing needs on the property market.[71]

The mortgage credit market started to develop in the latter half of the nineties, A real boom started around 2005.[72] Although the economic crisis has strongly undermined this trend, first symptoms of recovery were observed in 2012. The current condition of the market is discussed more thoroughly in the section on economic policies.

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[64] M. Frąckowiak, *Ekonomiczne i społeczne problemy...,* 132.

[65] T. Marszał, *Zróżnicowanie i kierunki rozwoju...,* 18.

[66] Act of 5 June 1997 on saving and construction funds and the state support of saving for housing purposes, Official Law Journal 1997, no. 85, item 538.

[67] Z. Ofiarski, *Prawo bankowe,* (Warszawa: Wolters Kluwer, 2011), 48.

[68] M. Frąckowiak, *Ekonomiczne i społeczne problemy...,* 134.

[69] Ustawa z dnia 8.09.2006 r. o finansowym wsparciu rodzin w nabywaniu własnego mieszkania (Act of 8 September 2006 on the Financial Support for Families and Other Persons Concerning the Acquisition of Housing units), Official Law Journal 2006, no. 183 item 1354.

[70] Official Law Journal 2011, issue 168.item 1006.

[71] 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa', strategic document adopted by the Council of Ministers on 30 November 2010, 4, <http://bip.transport.gov.pl/pl/bip/projekty_aktow_prawnych/projekty_ustaw/ustawy_mieszkalnictwo_i_gospodarka_komunalna/bs_mieszk2020/px_18112010gp.pdf> January 2013.

[72] A. Tołudziecka, ' Rynek kredytów hipotecznych i instrumentów finansowania w Polsce na tle innych państw UE' <www.hipote.a.pl> February 2013.

- *Restituted and privatized ownership in Eastern Europe*

Since the political transition of 1989, the problem of reprivatisation (restitution) has not been addressed by the legislator. Although the parliament adopted proper legislation in 2001, the Reprivatisation Act was vetoed by the President in office at that time. As a consequence, the issue has been left to the courts and bodies of public administration to resolve on the basis of the current law. This brings about serious impediments to potential claimants, as the possibility to reclaim assets or win compensation is confined to situations in which the claimant or applicant may prove a breach of post-war legislation. The most suitable forms of action were claims for declaration of invalidity of administrative decisions (where the illicit nationalisation was based on an administrative decision) or for ascertainment that the property in question did not fall under the 1944 Land Reform Decree[73] (if this was the relevant legal basis for nationalisation).

Privatization predominantly concerned individual housing units. Towards the end of the eighties, rental units, including cooperative tenancy units - which made for the majority of the cooperative housing stock at the time - corresponded to more than half of all dwellings in Poland. Until the present day, the rental sector has decreased over three times.[74]

Municipalities sell housing units in their stock act under the Real Property Management Act 1997 (RPMA),[75] Unit Ownership Act (UOA) 1994, Municipal Self-Government Act 1990 and specific resolutions of municipal councils. These local ordinances are crucial, since it is the municipality as such that frames its own housing policy and decides whether, and which units, are to be sold. Should the municipality decide to sell, tenants may exercise pre-emption rights under art. 34(1) RPMA. Unlike cooperatives, municipal authorities may decline purchase offers from their tenants. If they wish to promote private ownership, they are free to introduce considerable price discounts which sometimes exceed 90% of the market value. Pursuant to art. 68(1) the discount may be granted by mayor within the framework established by the resolution of the municipal council.[76]

The entry into force of the Housing Cooperatives Act 2000 (HCA)[77] was a milestone point for housing co-operatives when it comes to the privatization. The lawmaker introduced legal provisions which facilitate converting both the tenancy and the proprietary co-operative rights into ownership of units. In accordance with art. 12, holder of the tenancy cooperative right may acquire full ownership rights on demand if he pays a fraction of the construction costs corresponding to his unit. In practice,

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[73] Official Law Journal 1944, no. 3, item 13 as amended.

[74] J. Życiński, 'Długa droga do zachodnich standardów mieszkaniowych', <www.kongresbudownictwa.pl.> January 2012.

[75] Ustawa z dnia 21 sierpnia 1997 r. o gospodarce nieruchomościami (Act of 21 August 1997), Official Law Journal 2010, no. 102, item 561 as amended.

[76] Municipal authorities exercise discretionary powers in this respect. The price does not have to be discounted, c.f. judgment of the Voivodeship Administrative Court in Łódź of 8 December 2009, II SA/Łd 634/09.

[77] Ustawa z dnia 15 grudnia 2000 r. o spółdzielniach mieszkaniowych (Act of 15 December 2000), Official Law Journal 2001, no. 4, item 27, as amended.

this can be presently done for a token price. Conditions set out in the cited provision are binding for the cooperative, which means that tenant's application may not be rejected.[78] Also in the case of a freehold cooperative right, its holder has a similar claim to convert this tenure into ownership. Such conversion is possible provided that legal status of the land on which the cooperative buildings were erected is clear. It seems that in such manner the legislator has expressed intention to gradually convert all housing cooperatives into condominiums - communities of private owners. Unfortunately, the legal status of many plots of land remains uncertain and tenants are not convinced about usefulness of such conversion, which is not entirely free of legal costs and takes a number of formalities. The lawmaker's preference leaning towards full ownership of units is also manifest in the 2007 amendment to the HCA, discussed below, which forbids to create new freehold cooperative rights.

- *Intermediate tenures:*
  - *Are there intermediate forms of tenure classified between ownership and renting? e.g.*
    - *Condominiums (if existing: different regulatory types of condominiums)*

Intermediate tenures predominantly comprise cooperatives. Condominiums, as such are communities of owners, however, common parts of the property are co-owned, which requires special governance procedures. Cooperatives, although well developed in pre-war Poland, are now considered by many as the relics of communism whose significance should gradually decrease. Condominiums formed of owners of individual units in a particular building or estate, as separate entities, have the legal capacity and capacity to sue under art 6 of Unit Ownership Act 1994 (UOA).[79] Condominiums and cooperatives have now become competing structures, since the owners of units bought from cooperatives have the option to either retain cooperative governance of the common property or manage this property as condominium.

Plurality of owners may be found in 60% of residential houses. These proportions have not changed significantly in the recent years. Privatisation as a process has generally been completed. Currently, municipalities are more likely to preserve their current housing resources in order to provide access to units for poorer inhabitants (in municipal offices there are long waiting lists for a unit). However, in the buildings where at least one housing unit has been sold, gradual increase in participation of private ownership can be noticed – already in 2010 the share of mixed-ownership buildings with majority interests in the hands of private individuals amounted to 70%.[80]

The UOA answered burning needs of the newly emerging market. Before World War II similar issues were dealt with in the Ownership of Units Ordinance of 24th October 1934. Under communism, questions regarding ownership were covered by

[78] A. Stefaniak, *Prawo spółdzielcze oraz ustawa o spółdzielniach...,* 257.

[79] Ustawa z 24 czerwca 1994 o odrębnej własności lokali (Act of 24 June 1994), Official Law Journal 1994, no. 85, item 388 as amended.

[80] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', p. 11.

provisions of the part of the Civil Code devoted to proprietary rights. Housing unit ownership was restricted to units in smaller houses built before 1956 and containing up to five separate units. For buildings erected after 1956, the usable area of a housing unit could not exceed 110 m^2 or, in special circumstances (e.g. an artist's studio), 140 m^2.[81] Since overall economic conditions had evolved drastically, in the new reality after the political transition, the legislator could not return to the long abandoned 1934 enactment.

The 1994 statute recognizes a threefold position of a unit owner after acquisition of a housing unit: private ownership of the purchased unit, co-ownership of the common property, and membership in the community of owners understood as a governance body of the condominium (art. 6 UOA).

Primary attention is given to ownership of a unit, correlated with the share in common parts of the property (art. 3(1)). The latter is established through sheer operation of law. Any transaction referring to the unit relate as well as a matter of course also to the share in the common parts.

Art. 2. of the Act provides that only an independent unit comes into question as separate property. What qualifies as an independent unit has been defined in art. 2(2) UOA. According to this provision, it is a room or set of rooms separated from the other parts of the building by permanent walls, intended for use together with appurtenant rooms (utility rooms, pantries, etc.) as permanent residence for humans. This general definition does not impose any specific standards, for instance in terms of utilities, still the condition of independence must be confirmed by a respective local self-governmental authority.[82] There is no minimal or maximal number of units to be separable within a building, however the Polish Supreme Court has noted that it is impossible to separate a unit and apply the UOA regime if the building contains only one unit.[83]

As far as the common property is concerned, the statute defines it as land and those parts of the building which do not serve exclusive needs of individual owners. The notion of land refers to all parcels which altogether form a single plot on which the building was erected. Unlike in the 1934 ordinance, the contemporary legislator has not pointed directly to the parts of a building which make such common property. In 1998, the Polish Supreme Court concluded that it was sufficient for an area to be classified as common if it fulfilled the needs of more than one owner, though it did not necessarily have to be utilized by all the owners in the condominium.[84]

The surface area of each housing unit determines the owner's share in the common property, as well the fraction of proceeds generated by this common property, e.g. income from billboards. This figure corresponds as well to the owner's voting power at a general meeting and his or her share in the costs of maintenance of the common property. In pursuance of art. 3(3) UOA, the share value is calculated by dividing the

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[81] More about the origins of the current Polish legislation in: C.G. van der Merwe, M. Habdas, 'Polish housing unit ownership compared with South African sectional titles', *Stellenbosch Law Rev.*, no. 1 (2006), 166.

[82] Pursuant to art. 2 § 1 POA the act covers not only residential premises, but also units held for commercial purposes. As a consequence, most condominiums are of a residential or mixed type (residential and office/retail premises).

[83] Supreme Court resolution 2010.11.19, III CZP 85/10, LEX no. 612265.

[84] C.G. van der Merwe, M. Habdas, 'Polish housing unit ownership...', 171-3.

total usable floor area of all units in the building by the floor area of a single unit with its appurtenant utility rooms.

Most resolutions of the community of owners at the general meeting are passed by simple majority of votes calculated according to share values. Only in small communities comprising up to 7 units which did not chose any other form of management, issues beyond the scope of ordinary management (e.g. yearly budget) must be decided unanimously. Any modification to the default statutory model of management must take the form of a notarial deed. In particular, this might be the case if owners wish to entrust the managing duties to a specific person or entity.[85]

- *Company law schemes: tenants buying shares of housing companies*

Although theoretically possible, such schemes are practically absent in Poland.

- *Cooperatives*

Very often, management of a house or estate is exercised by a housing cooperative even if it is only a co-owner of the property. This follows from the Housing Cooperatives Act 2000 (HCA). The lawmaker envisaged in art. 27(2) that the common property be managed by the cooperative whenever that cooperative is a co-owner. This statutory management expires once the cooperative sells the last unit in the estate. Other co-owners may also terminate the cooperative management earlier, by adopting a respective resolution if their share in the property exceeds 50% of all shares.

More than half of Polish condominiums manage their property independently. Condominiums located in large cities seem particularly active - 58% of them were independently managed in 2010 - as compared to 21% in the smallest towns.[86] Average down-payments charged by condominiums (for the management and maintenance of the common property) are lower than rent in the municipal stock. The same refers to expenditures on technical maintenance of the property, which can on one hand be a consequence of more effective governance, but may also lead to deficiencies concerning maintenance of the stock.[87]

Transition from large cooperatives to smaller condominiums is gradual. In the nineties the social preferences on the primary housing market began to gradually divert from cooperatives. Cooperative members are often older people without a specific source of income or economically stable households formed by older married couples. New cooperative housing units are generally acquired for children at the outset of their independent life or bought for ageing parents with the intention to pass the unit over to their adult children. Cooperative housing units are frequently bought as an investment for rental purposes.[88] Acquisition of the cooperative unit is treated

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[85] J. Ignatowicz, K. Stefaniuk, *Prawo rzeczowe...,* 149.

[86] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', 11.

[87] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', 12.

[88] H. Kulesza, *Prognoza mieszkaniowa...,* 53.

as an investment especially by holders of a cooperative right to a small housing unit of floor area below 45m^2. Only 24% of such acquires declared in 1995 the intention to stay permanently in a corporative dwelling.[89]

Nevertheless, rights to units within cooperatives as such still make an important alternative to ownership and lease. Currently, housing cooperatives are regulated by two statutes, that is the Law of Cooperatives Act 1982 (LCA)[90] and the HCA cited above. Provisions of the latter are *legi speciali* in relation to the former which provides general grounds for operation of various types cooperatives, and regulates such entities' legal capacity, establishment, governance structure, etc.

The basic right of the proprietary type within a co-operative is the freehold co-operative right to a unit set out in art. 17^1 – 17^{19} HCA. This limited right in rem is characteristic only of housing co-operatives. It is a right which allows its holder to enjoy the housing unit according to its purpose, most frequently residential, although other uses are likewise admissible. The right is eligible to transfer, it can be charged with encumbrances or devised. Since the right is transferable, it is also liable to execution for non-payment of debts under art. 17^2(1) HCA. The right as such is not limited in time, yet it is not of the gratuitous type. Provisions of law require that monthly payments should be made to the co-operative. The tenure may be held jointly by two or more individuals (e.g. heirs), while only one of them is a member of the cooperative. Where the right has been jointly conferred on a married couple, both spouses may be members of the cooperative.[91] The right may be entered in the Land and Mortgage Register, which usually is the case if the holder of this tenure wishes to encumber the unit with mortgage. As a matter of fact, market value of this limited real right does not stray from market values of owner occupied units.

In many ways the freehold cooperative right is similar to ownership. The transfer of the proprietary co-operative right must take the form of a notarial deed, but according to the 2004 judgment of the Constitutional Tribunal[92] the purchaser does not need to be or ever become a member of the housing cooperative. The Tribunal ascertained, that making the acquisition of the proprietary right dependent on the membership in a cooperative must be considered unconstitutional. In consequence, the only cooperative "ingredient" of the right is the fact that the housing cooperative is considered to be the unit's owner. Where the housing cooperative is wound up or pronounced bankrupt and its stock is sold to an entity other than another housing cooperative, under art. 17^{18} § 1 HCA, the freehold cooperative right to a unit is converted ipso jure into sheer ownership. The tenancy cooperative right, on the other hand, pursuant to art. 16 HCA, becomes converted in the same situation into mere lease, which makes the position of the tenant much less secure.

Pursuant to the Act Amending the Housing Cooperative Act 2007[93] and its judicial interpretation by the Supreme Court,[94] new freehold cooperative rights may no longer

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[89] H. Kulesza, *Prognoza mieszkaniowa...,* 55.

[90] Ustawa z dnia 16.09.1982 r. Prawo spółdzielcze (Act of 16 September 1982), Official Law Journal 1982, no. 30, item 210 as amended.

[91] S. Kalus, M. Habdas, 'The notion of real estate and rights pertaining to it, in selected legal systems' in *Modern Studies in Property Law*, vol. III, ed. E. Cooke (Oxford, Portland, Oregon: Hart Publishing, 2005), 267-68.

[92] Constitutional Tribunal judgment of 30.III.2004, Official Law Journal 2004, no. 63, item 591.

[93] Act of 13 September 2007, Official Law Journal 1982, no. 125, item 873.

be established. Not only would it be impossible to enter such a new right in the Land and Mortgage Register, but it is also inadmissible for cooperatives to conclude new contracts of this type. Unfortunately, the official state policy in this respect seems rather unstable. Originally, upon enactment of the HCA, housing cooperatives were also prohibited from creating new proprietary co-operative rights to a unit. The 2003 amendment brought back this possibility, however only for the period of four years, as it subsequently turned out.

The obligational cooperative tenancy right to a unit is limited only to housing units. In any case, the holder of this right must be the co-operative's member. Unlike the proprietary right, this tenure is inalienable, does not devolve to heirs, cannot be seized in execution proceedings or charged with mortgage (art. 9(3) HCA). It is established by contract concluded in writing between the co-operative and its member. The right may be held by that member exclusively or jointly with his or her spouse. The member may use the unit solely for residential purposes and is obliged to pay a monthly fee to the cooperative. Although the right as such is not inheritable, the spouse, children and other close relations of the deceased have a claim to be admitted as members of the cooperative and to continue the exercise of his or her right (see art. 14 and 15 HCA). This tenure resembles lease (bearing in mind its obligational nature) rather than real right.

In spite of the official state policy promoting primarily unit ownership, the vast possibilities of conversion of cooperative rights into proper ownership have not led to their elimination for a couple of reasons. Firstly, for persons who carry on business as sole traders it is profitable to preserve the cooperative tenancy right, since it cannot be seized in execution proceedings. In the case of the proprietary right it is not always clear what benefits, if any, the holders may reap from the conversion, since the value and legal characteristics of this tenure and ownership are comparable in practice. Many of them are unwilling to bear direct costs of building management (based on their share in common parts). They prefer to conserve the cooperative management in order to preserve claims or be able to demand changes and repairs through cooperative procedures. What counts as advantage of ownership and direct participation in the costs connected with ongoing management may at the same time prove disadvantageous. For instance, unit owners may reach a deadlock in important management issues. If the disagreement persists, various payments are paid with substantial delays, which frequently triggers additional costs. On the other hand, the security of a cooperative management seems advantageous only in the instances where the cooperative is managed effectively. Otherwise (especially in the case of large juridical persons), the factual costs borne by the members exceed down-payments to which co-owners of the common property within a condominium are obliged.[95]

Units belonging to state enterprises made a significant portion of the market before the political transformations. Most of them have been transferred to housing cooperatives ever since. Since they were acquired by cooperatives for practically

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[94] Resolution of the Supreme Court of 16 May 2012 r., III CZP 15/12.

[95] M. Habdas, Polish report in *Condominiums in Private European Law*, to be published within the Common Core of European Private Law Project.

symbolic amounts, tenants as well are entitled to purchase their units for even more preferential terms than regular cooperative members.[96]

- *Rental tenures*
  - *Are rental tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?*
  - *How is the financing for the building of rental housing typically arranged?*

Strictly speaking, the term lease refers to a specific contract described in more detail in the section on various regulatory types of tenures. Although lease is an obligational right, entitlements of a tenant enjoy special protection, because of its importance to families and the society as a whole. Since the legislator envisaged a very strong position of tenant, the frequent role of this tenure is to assure permanent habitation for whole families, since the lessee's close relations acquire the tenure upon his death. Obviously, the landlord may terminate the contract, but his termination rights have been restricted by the legislator to certain types of situations, and the period of notice may even stretch over three years (if the tenant is not defaulting, and the landlord wants to occupy the unit himself but has no replacement premises to offer - art. 11(5) TPA). Since the legal framework as such is to be explained later in the report, only the practical aspects of tenancy are going to be highlighted at this point.

In 2010 the lowest rates of rent rose in private tenements by about 30% compared to the previous year, while the highest rents were raised by 9% (and made 3,5% of the replacement cost). The situation of tenement owners differs in terms of the funds available for building maintenance - because of restrictions imposed on increase of rent or the possibility to let premises for commercial purposes, in which case the said restrictions do not apply. Although the legislator alleviated previous, more stringent, limitations in 2005, pursuant to art. 8a(4) TPA, the owner may increase the residential rent over 3% of the replacement value of the leased unit only in justified cases, which have also been defined by statutory provisions. Serious construction works are usually affordable if some premises in the building are let for commercial purposes (e.g. shops on the ground floor). There are also significant differences regarding the opportunities to cover maintenance costs between housing units allotted under old administrative decisions (before the political transformations) and under private law contracts. On the whole, out of all sectors of the housing stock, the dynamics of rent growth were highest in private tenements.[97]

Because of the general need to protect tenants from negative consequences of the economic transition, It would be difficult to state precisely which tenancies perform a public task and which do not. The public dimension is definitely vital when it comes to tenancies within Social Building Associations. As far as municipal stock is concerned, there are two distinguishable types of leases referring to: social premises in the strict

[96] judgment of the Constitutional Tribunal of 19 June 2012, P 27/10, Official Law Journal 2012 no. 0 item 672.
[97] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', p. 12.

sense, as described below in more detail, and the remaining municipal stock. Also in reference to the latter, public authorities support households of low and moderate income. As shown above, while discussing the private stock, the market still copes with the results of protective measures comprising initially rent control and subsequent restrictions on the increase of rent. In the sample examined in 2010 by the Institute for Urban Development, the average monthly rent amounted to PLN 6.87 (approx. 1.63 EUR) per 1 m^2 of usable floor area, which corresponded to 2% of the replacement cost. The average highest monthly rent per 1 m^2 for the examined cities was PLN 11.62 (approx. EUR 2.76), corresponding to about 3,5% of the average replacement cost.[98]

Rent values in municipal units are generally lower than in private tenements. Average rents in 2010, at the level of only 1,2 – 1,3% of the annual replacement cost, did not even allow for essential repairs.[99] In December 2010, rents in municipal units of the lowest standard varied between PLN 0.80 (approx. 0.19 EUR) and PLN 3.8 (approx. EUR 0.90) per 1 m^2 of floor area, and averaged PLN 2,06 (approx. EUR 0.49). In the case of modern standard housing units, monthly rents spanned between PLN 2.65 (approx. EUR 0.63) and 17.65 (approx. EUR 4.20) per 1 m^2 of surface area, averaging PLN 5.82 (approx. EUR 1.38), which makes 1,7% of the average replacement cost.[100]

Social Building Associations definitely fall under the category of social rental housing. In accordance with statutory requirements, rents in their stock are calculated so as to cover both the costs of current maintenance of the buildings (management, cleaning services, assignments to the maintenance and renovation fund) as well as repayment of the investment credit (average payback of the credit accounts for about 40% of the average rent). The possibilities of savings are in this case manifold. The Social Building Association housing stock is characterized by low parameters of heat penetration and frugal consumption of energy. This enables precise metering of consumption and individual allocation of central heating and hot water costs. Bills for central heating and hot water were lower than similar costs applying to municipal and cooperative units. The survey of the Institute for Urban Development shows that in 2010 total charges for a 50 m^2 housing unit in the Social Building Association resources occupied by three persons were similar to average charges in municipal premises (with standard utilities). The value of housing benefits granted in the Social Building Association stock declined considerably, which was also the case in municipal and cooperative holdings. This might be due to forfeiture of respective entitlements owing to the observable long term growth in household incomes.[101]

Due to the liquidation of the National Housing Fund, questions of financing rental housing construction are discussed below in the policy part of the report.

- *What is the market share (% of stock) of each type of tenure and what can be said in general on the quality of housing provided?*

[98] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', p. 56.
[99] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', p. 52.
[100] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', p. 53.
[101] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', p. 12.

Please consider the following criteria: type of building (single family versus multifamily versus high-rise; plus definition); construction period; number of rooms, number of square metres or average number of rooms or average useful floor area per dwelling and per person; availability of bath/shower, hot running water and/or central heating, etc.)

- *For EU-countries, Housing Statistics in the European Union would be a possible source, although more updated data would be preferred, if available*

- *Which actors own these dwellings (private persons, profit or non-profit organizations, etc.)?*

The market share of each type of tenure and the quality of housing provided have already been mentioned in the section on the housing situation. So has the data concerning usable floor area in particular tenures and their technical condition. When it comes to market shares, the information in the table below comes from the Main Statistical Office,[102] with the proviso that neither the 2012 Yearbook nor its previous editions differentiate between owner-occupied units and units let by individuals. Participation of the latter in the market is assessed at 3%,[103] even if the precise number is difficult to assess, since such tenancies generally form the grey market.

In general, the worst conditions are encountered in the old and dilapidating municipal stock, in particular its social part destined for low-income households. Private tenements are also frequently old, and for many years regulation of rents was barring necessary repairs. The quality of new occupier-owned units is the highest. In this respect, cooperative members as well have generally little to complain about.

1.5. Other general aspects of the current national housing situation

- *Are there lobby groups or umbrella groups active in any of the tenure types? If so, what are they called, how many members, etc.?*

According to officials from the Ministry of Infrastructure, Transport and Regional Development, there are about 85 active tenant associations. None of them functions as a registered lobbyist under the Lobby Activities in the Legislative Process Act 2005.[104] Most of the existing organizations operate on regional and local scale, still, there are nation-wide affiliations as well, such as the Polish Association of Tenants (member of the International Union of Tenants). Apparently, the most active ones are local, present in Warsaw and Cracow.

Private landlords are beginning to associate as well. The Polish Residential Landlords' Association "Mieszkanicznik" is a new initiative on a national scale, formed

[102] H. Dmochowska (ed.), Statistical Yearbook of the Republic of Poland 2012, (Warsaw: Central Statistical Office 2011), 314

[103] J. Życiński, 'Czynszowe czy własne?' <http://porady.domiporta.pl/poradnik/2029020,127301,9425366.html> February 2013.

[104] Act of 7 July 2005, Official Law Journal 2005, no. 169, item 1414.

in 2012.[105] Members of this organization try to introduce uniform standards for all residential leases, standards of landlord conduct, and establish a court of arbitration for tenancy disputes.

- What is the number (and percentage) of vacant dwellings?

In the persisting situation of deficit in the housing stock, vacant units do not pose a significant problem in Poland. Many of them are new premises built by developers and yet unsold. The first symptoms of recovery from the crisis allow to conclude that such situation is only temporary. Vacancies are also observable in the municipal stock. The problem refers primarily to old units, however, migration may also be a relevant factor. For instance, Bytom, a Silesian city which lost approximately 10 thousand inhabitants over the last decade, has 1178 vacant units.[106] Empty units are not only waste of precious residential floor area - they also attract squatters and decrease the market value of neighbouring premises. The situation of Bytom with its damp soil and flooded cellars is, however, not typical for the rest of Poland. The problem as such has not been addressed by central authorities. Vacancies remain a matter of policy decisions on municipal level. For example, authorities in Chorzów, another Silesian city, declared in 2004 that whoever finds and reports a vacancy in the stock owned by the municipality, may receive it as leasehold.

- *Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?*

In the private rental market, there is a considerable number of "informal" lease contracts, not registered at tax offices. The reason for such omission is the intention to avoid tax. The actual volume of this phenomenon is rather obscure to Polish authorities. If any official data was obtainable, the market would no longer be black since appropriate steps could be taken. In order to curb this tendency, in 2009 incidental lease was introduced for tenancies of short and medium duration. This institution is described in more detail in the second Part of the present report.

Landlords' scant possibility to verify credibility or even identity of lessees occasions transactions with individuals who use false ID's, notorious debtors or professional swindlers who may even earn their living on fraud. The landlord may also find out, for instance, that the rented unit is utilised for unlawful entertainment (e.g. prostitution or casinos). A lessee with a false ID may vanish without paying rent arrears. He may appropriate furniture or other movables left by landlord or vandalize the premises. Another widespread type of fraud on the rental market is sublease purporting to be the principal tenancy. A fraudulent "owner" may let the same premises to a number of willing lessees, cash deposit from each, and disappear.[107]

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[105] <http://mieszkanicznik.org.pl/> January 2013.

[106] M. Świech, 'Miasto pustostanów', <http://porady.domiporta.pl/poradnik/1,127301,6073481,Miasto_pustostanow.html> January 2013

[107] 'Jak działają oszuści na rynku najmu', < http://www.wykop.pl/ramka/1551591/jak-dzialaja-oszusci-na-rynku-najmu/> (August 2013).

Summary table 1 Tenure structure in Poland - 2011

Home ownership	Renting			Intermediate tenure	Other	Total
Including housing units in condominiums, former cooperative and municipal units	Municipalities, Social Building Associations, employers, private landlords	Renting with a public task, if distinguished - municipal stock and Social Building Associations	Renting without a public task, if distinguished - remaining rentals	Housing cooperatives	Undetermined ownership - according to the data of the Central Statistical Office	
62,6%[108]	12%	8%	4%	17,5	7,9%	100%

2. Economic factors

2.1. Current situation of the housing market

- *What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)? What have been the effects of the current crisis since 2007?*

Despite various government initiatives, the scarcity of housing units has remained a considerable problem in the 21st Century. Despite the increased investment activeness of developers and Social Building Associations, in the last decade no drastic improvement could be observed. The roots of this situation can be traced to the scarcity of funds available for investment and insufficient spatial planning. In the period between 2003 and 2009, the number of newly built housing units was 950 thousand, while the number of households increased by about 1,100 thousand. This means actual deficit of about 1,850 thousand. Taking into account the grey market of residential leases and premises occupied without any reported tenure, the deficit has reached the level of approximately 1.4 – 1.5 million units.[109] Various sources provide differing data in this respect. In 2011, A. Szelągowska assessed the shortage at 1,162 million.[110]

By the end of 2006, the number of units per 1000 inhabitants hardly reached 337. Poland simply needs additional two million houses to overcome the deficit.[111] Due to the higher level of wealth of the citizens, the housing situation is becoming

[108] The central Statistical Office does not provide data concerning individual landlords, whose stock makes about 3% of the total. This figure should be subtracted from the number referring to natural person ownership.

[109] The statistical data accessed at: <http://Social Building Association24.pl/artykuly/385-program-wspierania-rozwoju-budownictwa-mieszkaniowego.html> December 2012.

[110] A. Szelągowska, *Finansowanie społecznego budownictwa mieszkaniowego,* (Warszawa: CeDeWu, 2011), 325.

[111] R. Kierzenkowski, 'Bridging the Housing Gap...', 6.

manageable, however, this process takes much. The average number of persons per unit equalled 2.9 in 2008, 2.87 in 2009 and 2,84 in 2010, while the average unit surface seems stable at slightly above 70m^2.[112]

According to the data of the Central Statistical Office, In 2010 in Poland 135.8 thousand housing units were put into use, which is less than in 2009 by 15.1%. Within the structure of the newly built apartments, only the numbers corresponding to private persons' investments has grown in comparison with equivalent data from 2009. As far as remaining categories of investors are concerned, their activeness has decreased, both in terms of general figures relating to the construction industry and housing units put into use in the cities. In 2010 only the number of new units in the country has risen, where private investments dominate. In multi-family housing, 65.4 thousand housing units were constructed, which makes about 25% less than in the previous year. As far as individual construction is concerned, 70.4 thousand units were put into use, which is 2.5% less than in 2009.[113]

- *How is the demand for housing expected to develop? What is the expectation about the growth and decline in number of households in the future in a scenario of average economic development? Is there a year forecasted where growth in number of households will stabilize or will start declining?*

The general decline in the building industry can be dated back to 2008, when 160 thousand units were finalized.[114] This tendency seems only temporary, since in 2010 the number of initiated housing investments increased as compared to the preceding year. According to the accessible statistical data, in 2010 construction of 158.1 thousand housing units was initiated, which makes more by 10,6% than in the preceding year.[115]

In the period 2007–2008 the number of units put into use was increasing, while in the years 2009–2010 the decreasing trend ensued. The 165.189 new housing units in 2008 exceeded the equivalent figure for 2007 by 31.491. In 2009, 160.002 housing units were finalized, which makes 5.187 (o 3,1%) less than in 2008. In 2010 135.835 units were put into use, which was less than in 2009 by 24.167 (15,1%). 2011 was another year with decreasing tendency regarding the number of completed constructions. According to the preliminary data of the Central Statistical Office, 87,274 housing units were put into use between January and September 2011. The number was lesser than in the analogous period in 2009 by 10,6%.

Rather than by the number of finalized units, effects of the crisis may be measured more precisely by the number of initiated constructions. In the initial nine months of 2011, as compared to the same period in 2010, the number of initiated housing units increased by o 0,5% and amounted to 128.296 units. Another optimistic figure is the

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[112] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', report elaborated by the Institute of Urban Development (Instytut Rozwoju Miast), 7; and analogous report for 2009 , 7; <http://www.transport.gov.pl/2-4942413d8b932.htm> January 2013.

[113] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', 7.

[114] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2009', 7.

[115] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', 8.

growing number of housing units for which building permits were issued. In 2010 they totalled 14.1310, which means a 6,8% increase.[116]

The increasing trend is likely to continue, however, it is difficult to make any realistic forecasts.

The second basic long-standing problem of Polish housing has not been either entirely solved by the present day. A survey carried out in 2010 in 21 cities revealed that in most of the examined places, both when it comes to municipal stock and housing cooperatives, the level of rents and bills does not cover necessary replacement investments and renovation of the available resources. While cooperatives generally handle the situation without any major problems, municipalities must cope with their dilapidating stock. Large cities, which frequently implement rental reforms in their stock, make an exception in this respect. Also private tenement owners consequently adjust the rent to market needs (in 2010 up to the level of 3% – 4% of the replacement cost).[117]

There are no forecasts concerning when the growth in number of households will stabilize or start declining.

- *What is the number/percentage of families/households depending on rental housing (vs. owner-occupancy and other forms of tenure)? What is the number/percentage of immigrants among them?*

The census carried out in 2011[118] shows that changes in the ownership structure of residential premises between 2002 and 2011 were not as vital as before 2002. Major privatization had already taken place. The largest category are owner-occupied housing units (6,8 million) and cooperative units (3,4 million). In comparison with 2002 the number of municipal units decreased, which refers as well to staff housing and the State Treasury stock. According to data provided by the Central Statistical Office, 12% of the population rely on lease (in the public private sector) and as regards their housing needs.[119]

2.2. Issues of price and affordability

- *Prices and affordability:*
  - *What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)? (Explanation: If rent is 300€ per month and disposable household income 1000€ per month, the rent-to-income ratio is 30%).*

[116] Supreme Audit Office, 'Realizacja zadań..., 66.
[117] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', 8.
[118] Central Statistical Office, 'Raport z wyników....', 110.
[119] H. Dmochowska (ed.), Statistical Yearbook..., 331, B. Turek, 'Rynek najmu w Polsce rośnie, ale i tak jesteśmy w ogonie Europy', <http://www.money.pl/gospodarka/wiadomosci/artykul/rynek;najmu;w;polsce;rosnie;ale;i;tak;jestesmy;w;ogonie;europy,216,0,1430232.html> (last accessed: March 2014)

- *To what extent is home ownership attractive as an alternative to rental housing*
- *What were the effects of the crisis since 2007?*

Average rents in 2010 for various tenancy types were indicated above in the part referring to rentals, in order to show the correlation between the public task and amounts charged by different types of landlords. The average monthly gross salary in 2011 was PLN 3,403.51 (approx. EUR 810). Taking as a basis the data of the Institute for Urban Development, the average rent in the private housing stock for a 60 m^2 housing unit was low and amounted to PLN 412.2 (approx. EUR 100) in 2010, yet the research was predominantly carried out in less populous cities whose situation is much different from Warsaw. In addition, average rents were significantly raised in 2011. This was a response to stricter credit policies of commercial banks, which shifted the demand from the property market to tenancies. According to independent Home Broker data, payments for rental housing (rent plus charges) correspond to 30% of family budgets, which makes twice as high as in Germany.[120] Rents are particularly high in Warsaw – on average PLN 1,600 (approx. EUR 380) for a single room unit, PLN 2,300 (approx. EUR 548) for two PLN 3,350 (approx. EUR 798) for three rooms.[121] In Cracow average rents are much lower, ranging between PLN 900-1,200 (approx. EUR 214-286) for one room, PLN 1,100-1,800 (approx. EUR 262-429) for two, PLN 1,500-2,200 (approx. EUR 357-524) for three. Rents for a 70 m^2 housing unit Katowice span between PLN 2,200 and PLN 2,970 (approx. EUR 524-707).[122] In Gdańsk, along with the neighbouring Gdynia and Sopot, rents for one-, two- and three-room housing units average respectively PLN 700-1,200 (approx. EUR 167-286), PLN 800-2,2000 (approx. EUR 190-524), PLN 1,200-3,000 (approx. EUR 286-714).[123] Similar figures apply to Poznań.[124]

As reported by the Institute for Urban Development, in December 2010, the average monthly rent in cooperatives amounted to PLN 2.77 (approx. EUR 0.66) per 1 m^2,[125] which gives PLN 166 (approx. EUR 40) for a 60 m^2 unit. Although this figure might have grown as well over the last two years, it shows that cooperatives remain a cost-effective alternative to ownership and rentals. According to the information of the Central Statistical Office, average monthly bills for water, electricity, gas and other utilities totalled PLN 210.34 (approx. EUR 50). The highest costs of such type were borne by retirees and pensioners (PLN 269.07 - approx. EUR 64), which may be caused by the poorer condition of older housing stock. The lowest bills were paid by farmers (PLN 132.52 - approx. EUR 32).

Even if the average salary seems high, many households are not in a position to cover the habitation costs. Especially holders of the tenancy cooperative right fall

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[120] 'Najem w Polsce dwa razy droższy niż w Niemczech', <http://wyborcza.biz/finanse/1,105684,11200924,Najem_w_Polsce_dwa_razy_drozszy_niz_w_Niemczech.html> January 2013.
[121] Ober Haus, 'Raport z rynku...', 4.
[122] Ibid., 13.
[123] Ibid., 17.
[124] Ibid., 21.
[125] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', 54.

behind with payments. It is estimated that cooperatives on annual basis fall short of about 8–10% of the due rents. Nearly half of cooperative members fail to pay timely. Fortunately, in most cases arrears relate to a month or two. 12–15% holders of the tenancy cooperative right, however, are notorious debtors. The highest backlog refers to regions with the biggest agglomerations - Mazovia and Silesia, where 30% of all debtors live. For the whole Poland, the average amount of debt per one cooperative member in arrears is PLN 10,000 (approx. EUR 2,380). The most frequent debtors are persons aged between 46 and 55 (28% of all).[126]

To most households, ownership is the preferable option. It seems understandable, bearing in mind the choice between having to pay rent and live in somebody else's property, on one hand, and having to repay mortgage loan, on the other. This is particularly true for families who meet credit requirements set by banks in the time of the crisis. If one can afford an own unit, it seems even more profitable to buy in the times of crisis, because of lower property prices.

2.3. Tenancy contracts and investment

- *Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?*
  - *In particular: What were the effects of the crisis since 2007?*
- *To what extent are tenancy contracts relevant to professional and institutional investors?*
  - *In particular: may a bundle of tenancy contracts be included in Real Estate Investment Trusts (REITS) or similar instruments?*
  - *Is the securitization system related to tenancies in your country? Are commercial (or other) landlords allowed to securitise their rental incomes? If yes: Is this usual and frequent?*

There are few commercial rental investments. Developers generally build housing units for sale. Even though unsold stock could be leased, developers are unwilling to let, as long as the mortgage market can finance their business activity - partly because of the protective legislative framework (provisions of the Tenants Protection Act). Individual landlords are financially incapable to engage in new investments. Private tenements are usually old and in poor condition. There are practically no new constructions by Social Building Associations after the liquidation of the National Housing Fund (see the housing policy section below).

In this situation, the most significant investors in the rental sector are municipalities, which have to replace their old tenements with new premises in order to fulfil their statutory duties (see the section on regulatory types).

[126] Data of the National Debt Register <http://www2.krd.pl/Centrum-prasowe/Aktualnosci/Nie-placa-czynszu,-nie-mysla-o-sasiadach.aspx.> January 2013.

The rate of return on investment averages 5,5% in the whole country. It makes 4,5% In Warsaw, 6,5% in Katowice and Gdańsk, 5,5 in Poznań.[127]

Real Estate Investment Trusts are still absent in Poland.[128] If there were such enterprises, they would be probably preoccupied with commercial rather than residential tenancies. Advanced securitization systems do not seem feasible, considering the underdevelopment of the Polish tenancy market.

2.4. Other economic factors

- *What kind of insurances play a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant?)?*

Compulsory insurance in the housing sector refers to entire buildings and covers damage following from mishaps such as fire, pipe leaks, hurricane, electrical surge or dilapidation. For additional premium, insurance may be expanded to cover floods. The obligation to buy the insurance rests upon the owner of a house. The annual premium is rather insignificant when compared to average rents. The rest is open to the market. In practice, insurance of the financed property frequently makes one of the conditions that must be fulfilled by persons applying for a mortgage loan. Prospective borrowers must take into account that they will have to pay not only the monthly instalments, but also the insurance premium which secures the bank against disrepair of the unit. For an average credit of PLN 300 thousand (approx. EUR 71 thousand) the additional cost may be between PLN 120 (approx. EUR 29) and PLN 780 (approx. EUR 186) per annum.[129] The borrower is also required to buy life insurance. Other types of insurance are generally optional.

- *What is the role of estate agents? Are their performance and fees regarded as fair and efficient?*

Real estate agency contracts are regulated by sectoral legislation. Although provisions on the mandate contract (750 PCC) may be applied respectively, RPMA provisions give broad discretion to the parties, setting out in art. 180(3) that the obligations of a real estate agent are to be defined on case by case contractual basis. As a result, in practice agency transactions are highly diversified. By the contract of real estate agency, the agent undertakes to carry on activities leading to the purchase or sale of immovable property, acquisition or disposal of the freehold or tenancy cooperative right, conclusion of a lease contract referring to a real estate or its part. The principal, in turn, pledges to remunerate the agent for his activities. The

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[127] Ober Haus, 'Raport z rynku...', 4, 13, 17, 21.

[128] T. Gołyś, 'REIT - fundusze nieruchomości' <http://rynekpierwotny.com/wiadomosci/rynek-mieszkaniowy/rynek-wtorny-dla-dewelopera,415/> February 2013.

[129] 'Ubezpieczenie nieruchomości, dodatkowy obowiązek kredytobiorcy', <https://www.invigo.pl/dla-mediow/komunikaty-prasowe/raport-o-ubezpieczeniach-nieruchomosci> January 2013.

consensual and bilaterally binding contract must be executed in writing in order to become enforceable. The agent does not have to undertake that his activities are going to result in the desired transaction. His efforts involve the pursuit of the purchaser, communication of information offers, preparation of the prospective transaction (verification of the legal and factual status of the property, negotiating the terms of the transfer deed), inquiry of the property's defects, possible development of the land, soliciting bank credit necessary to finance the development or repairs.[130]

Since the law does not prescribe compulsory membership of estate agents in professional associations, such organizations cannot issue rules binding on practitioners. As a consequence, there is no readily applicable price-list. Remuneration should be stipulated directly in the contract. Where such clause is missing, the fee is determined by custom. In practice prices vary between 1.5% and 3% (+VAT) of the property value in the case of sale and amount to monthly rent in the case of lease. The work of real estate agents is generally received with approval, although no specific statistical data is available as far as public opinion is concerned.[131] Fees do not seem particularly exorbitant for either buyers or lessees.

2.5. Effects of the current crisis

- *Has mortgage credit been restricted? What are the effects for renting?*

Ownership as such is an affordable option for cooperative members who buy their units on preferential terms, as well as tenants in the municipal stock. The situation looks drastically different for households in pursuit of their first housing unit on the unregulated market, because of stringent income criteria currently adopted by banks. It should be added, however, that differences in commercial bank requirements are immense. Bank Pocztowy, for instance, may grant a PLN 300,000 (approx. EUR 71.5 thousand) credit to a couple earning no less than PLN 3,852 (approx. EUR 917). At the same time, SGB Bank requires monthly income higher by PLN 2,000 (approx. EUR 476). Apart from the requirements regarding earnings of the applicants, there are also thresholds relating to the necessary own participation. Certain banks expect as much as PLN 60,000 (approx. EUR 14,286).[132]

Legislation at the beginning of the Century reflected the ongoing evolution of the housing financing market. A real turning point was the emergence of favourable conditions for development of ever more accessible mortgage credit. As a consequence, priorities behind the state policy underwent significant changes. For instance, the system of tax allowances aimed in its final stage at supporting households in the clearance of credit debts (notional interest allowance in the period 2002–2006).[133]

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[130] S. Kalus, *Pozycja prawna uczestników rynku nieruchomości,* (Warszawa: LexisNexis, 2009), 158.

[131] 'Pośrednik w obrocie nieruchomościami–pożyteczne czy zbyteczne ogniwo?', <http://www.morizon.pl/pages/posrednik-w-obrocie-nieruchomosciami2> January 2013.

[132] <http://kredytyonline.hpu.pl/readarticle.php?article_id=93> January 2013.

[133] Supreme Audit Office, 'Realizacja zadań...', 77-78.

Even though mortgage loans were practically non-existent in Poland in the nineties, the market took off around 2000 and kept expanding very rapidly until late 2000's. Rising GDP per capita and declining interest rates increased affordability and loan demand. Due to intense competition, banks lowered credit standards and margins. Housing loans extended in the household sector have been growing at an impressive pace, rising 13-fold between mid 2000 and mid 2007. The share of housing loans in overall banking assets was also significantly growing - from 1.8% in mid 2000 to 13.3% in mid 2007. Housing loans corresponded to 25.8% of all bank loans in mid-2007, in comparison with only 4.1% in mid 2000. Apparently, banks relaxed their lending policies particularly in 2004 and 2005.[134]

Already in 2007, first symptoms of the crisis became apparent. Capital positions of commercial banks led to exacerbation of credit conditions in the last quarter of that year. The relation of banks' capital to their risk-weighted assets (solvency ratio) decreased from 15.5% in 2004 to 13.2% in 2007. Polish banks were inclined to fund their lending with deposits, yet the mortgage boom considerably narrowed the gap between loans and deposits on the balance sheets. Indeed, this gap has vanished by end of 2007 for households' assets and liabilities.[135] By end-2006, the relation of residential mortgage debt to GDP in Poland was as low as 8.3%, one-fifth of the average for the Euro area (41.2%).[136] Nonetheless, this figure has risen significantly in the recent years. In 2009, it amounted to 18.2%, while in 2010 to 19.1%.[137]

The financial crisis in 2008 and 2009 brought the boom in construction of new houses to a halt, and demand fell significantly. Since 2010, however, economic growth has started to speed up once more. New investments on the housing market have spread all over the country. Although the number of transactions on the primary market plummeted in 2008 and 2009, relative stabilization of prices was observed in 2010. This tendency is reflected in the annual growth of house prices. In 2009 this figure was negative and amounted to -0.9%, while in 2010 the growth was estimated at 4.2%, which looks impressive as compared to the data for the EU as a whole – with increase at only 0.7%.[138]

To counter the growing credit risk, the Polish Financial Supervisory Authority issued Recommendation T, a best practice guideline for the management of risk arising from loans granted to households.[139] In order to protect borrowers, the recommendation set an upper limit for monthly instalments to 50% of his income.

Such protection seems justified, since the volume of non-performing mortgage loans increased from EUR 0.5 billion (2008) to EUR 0.8 billion in 2009, and reached EUR 1.1 billion in the third quarter of 2010, that is respectively 1.1%, 1.5% and 1.8 % of the mortgage portfolio. The total outstanding value of loans in 2010 increased

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[134] R. Kierzenkowski, 'Bridging the Housing Gap...', 18.
[135] R. Kierzenkowski, 'Bridging the Housing Gap...', 19.
[136] R. Kierzenkowski, 'Bridging the Housing Gap...', 26.
[137] J. Ryszewski, A. Nierodka, 'Polish Country Report' in *Hypostat 2010. A Review of Europe's Mortgage and Housing Markets,* November 2011, 46.
[138] J. Ryszewski, A. Nierodka, 'Polish Country...', 46.
[139] Komisja Nadzoru Finansowego, 'Rekomendacja T dotycząca dobrych praktyk w zakresie zarządzania ryzykiem detalicznych ekspozycji kredytowych', Warsaw February 2010 <http://www.knf.gov.pl/Images/Rekomendacja%20T_tcm75-18474.pdf> January 2013.

significantly in relation to 2009 - by about 70%. The majority of the outstanding loan amount was repaid in the fourth quarter of 2010.[140]

Most new housing investment focused on small units tailored to customers with rather limited financial resources. There is little room for luxury spending, as a number of units built in the last three years, designed as a second family "holiday" apartment, or rental premises, are still unsold and are to attract potential buyers' interest. Mortgage loans are tailored mainly to households anxious to meet their basic housing needs.

The process of tightening credit criteria in 2012 related, above all, to higher interests on the loans. In the third quarter of this year, 32% of the banks surveyed by the National Bank of Poland pointed to this phenomenon. One third of them described the growth as significant. About 13% of the banks tightened credit criteria as regards own contribution required. The income threshold has also been increasing. Other conditions have not altered. None of the questioned banks declared relaxation of any criterion of granting mortgage loans.[141]

Another challenge for the preservation of a robust and healthy mortgage market is related to the fact that a substantial amount of housing loans has been contracted in foreign currencies. While the share of foreign-currency loans in real estate financing had been lower than 10% at the end of the nineties, it sky-rocketed at the beginning of 2000s to stabilise for a while at nearly 60% in mid-2002 (Figure 12). Given the scale of the spread between Polish and foreign – most specifically Swiss – interest rates, the share of loans denominated in Swiss francs among foreign-currency loans exceeded 90% at the end of 2006.[142] In order to mitigate the negative results of the crisis, in 2011 the government took measures to relieve foreign currency borrowers.[143] They are now allowed to pay with the money exchanged in another bank or bureau de exchange at the most profitable rate, which prevents manipulations and unnecessary fees cashed by the crediting bank.

- *Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?*

As far as repossessions are concerned, they are impeded by the time consuming procedure of eviction described below. Banks may strive for the repossession in accordance with provisions of the Civil Procedure Code. The bank terminate the contract, issues a bank enforcement order which initiates execution once endorsed by a court writ (appended with enforcement clause). Execution is carried out by a bailiff. In order to avoid protracted proceedings, banks usually ask for the borrower's promise to voluntarily subdue to execution in case of default. The form of a notary

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[140] J. Ryszewski, A. Nierodka, *Polish Country...,* 46.

[141] Report of the National Bank of Poland, *Sytuacja na rynku kredytowym - wyniki ankiety do przewodniczących komitetów kredytowych IV kwartał 2012,* 1, <http://nbp.pl/systemfinansowy/rynek_kredytowy_2012_1.pdf> January 2013.

[142] R. Kierzenkowski, 'Bridging the Housing Gap...', 22.

[143] Act of 29 July 2011, Official Law Journal 2011, no. 165, item 984

deed is required. This standard procedure, when applied in connection with mortgage loan contracts, seems advantageous to the bank, however, it may not exclude protective instruments of the Civil Procedure Code which make eviction a very complex process. Banks are unwilling to repossess, because the borrowed sums surpass the value of the auctioned housing unit, often significantly, and repossession does not allow to retrieve interests accruing over time. In addition, there is an inconvenient requirement that the property should be valuated six months before the bailiff auction, while circumstances may change within that period.

All this explains why banks prefer other instruments to discipline borrowers in arrears. One of the possible options is credit holiday, that is delaying credit instalments for a couple of months. If the borrower loses his job, such mechanism may allow him to find new employment and return to credit repayment on the terms agreed initially.

- *Has new housing or housing related legislation been introduced in response to the crisis?*

Apart from assistance to borrowers whose credit was awarded in Swiss francs, the legislator resolved to mitigate the results of the crisis by helping persons who lost employment while paying the credit. In order to achieve that end, appropriate statute was passed on 19 June 2009.[144] Public aid involves monthly payments of sums up to PLN 1200 (approx. EUR 286) from the state bank (Bank Gospodarstwa Krajowego) for the period no longer than 12 months. This intervention seems vital to borrowers in need. In addition, it does not constrain banks in pursuance of their credit policies in any way.

2.6. Urban aspects of the housing situation

- *What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)*
- *Are the different types of housing regarded as contributing to specific, mostly critical, "socio-urban" phenomena, in particular ghettoization and gentrification*

There is little data about private rented housing distribution on the municipal or regional scale (the Central Statistical Office[145] does not keep any register of private rented housing localisation, and even if it did, the large size of grey market of residential leases would make such register untrustworthy). As a rule, no location policy for public rental housing is implemented on the city scale. Public rented housing, mainly municipal, is usually located on cheap, peripheral or unattractive building lots. Naturally, poor condition and oldness of municipal social housing are

[144] Official Law Journal 2009, no. 115, item 964.
[145] GUS – Główny urząd statystyczny, Central Statistical Office

factors which account for ghettoization. Semi-public rented housing, built by Social Building Associations (Social Building Association), is usually located on building lots which are already held by municipalities. This form of housing is limited to urban areas. As far as location on a regional scale is concerned - public and semi-public rented housing is hardly present outside cities.[146] Vast majority of the housing stock in the country is owner occupied.

- *Do phenomena of squatting exist? What are their – legal and real world – consequences?*

Although they are not widespread, squats are observable in large Polish cities. Few of them involve standard exploitation of buildings - in a way which would not lead to their disrepair. Some squatters organize events like concerts, meetings, and exhibitions. Local authorities have little idea about how to cope with this phenomenon or how to approach it, especially that squatters are avowed critics of present urban policy, as they claim that city is not a business firm. They are unwilling to recognise financial profits as its main goal.[147] Most of the existing squats are systematically evicted.[148]

When left beyond control, squats may cause trouble to the owner, the city and the society, but there is also some cultural potential about them. Wrocław authorities, for instance, seem to notice that potential. In 2000 a former squat was transformed into an independent cultural centre - “Free Dom” (“dom” means “home” in Polish) where counter-culture artists are free to work, no one lives there though.

In order to prevent the emergence of squats, housing policy should address the problem of social exclusion. For persons of low income, it is increasingly difficult to acquire a unit or pay rent on time. The issue of homelessness becomes especially acute in winter, when temperatures fall below zero and shelters become overcrowded. The scale of homelessness may be determined based on the data from the general census. In 2011 there were 24 thousand homeless people in Poland. Unfortunately, this source does not allow to ascertain the number of people who lost their homes as a result of sidewalk eviction. Homelessness primarily affects the largest cities. 16,9% of all homeless live in the Mazovia region (mainly Warsaw).[149]

2.7. Social aspects of the housing situation

- *What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior or economically unsound in the sense of a “rental trap”?) In*

[146] E.g. In Gliwice, city in the Upper Silesia region, there are 16 010 municipal units and 183 246 city habitants (11 citizens per unit). In rural borough Pilchowice, located in Gliwice area, there are 37 public owned units and 10 137 habitants (273 citizens per unit). The case is not isolated [based on: Mienie Gmin i Powiatów 2006-2008, GUS, Warszawa 2009].

[147] P. Żuk, *Społeczeństwo w działaniu. Ekolodzy, feministki, skłotersi*, (Warszawa: WN Scholar, 2001), 223.

[148] E.g. Elba in Warsaw, <http://www.elba.bzzz.net> January 2013.

[149] Central Statistical Office, 'Raport z wyników...", 90-91.

particular: Is only home ownership regarded as a safe protection after retirement?

- *What is the typical attitude of tenants towards different forms of tenure (e.g. owners of privatized apartments in former Eastern Europe not feeling and behaving as full owners)*

Poles prefer ownership. This is quite clear, bearing in mind the data presented in the section on the current housing situation. It is apparent by the number of tenants in the municipal or cooperative stock who have decided to buy their housing units. It is, however, dubious whether specific cooperative rights described above (tenancy and freehold) are going to vanish in predictable future. Many people feel comfortable with their cooperative tenures and do not feel much difference between the cooperative right and ownership in terms of bills and entitlements.

These preferences are well grounded in the economic situation, supply on the primary market, as the new stock erected by developers is primarily destined for sale. Some developers considered the option of letting housing units where not all units had been sold by the time of completion of the house. Such practice did not become popular on the market because of the growth in sales observable in 2012.[150] It is true, however, that during the crisis demand shifted towards rental housing because of higher financial requirements for mortgage borrowers.

Municipal and social housing tenants simply cannot afford ownership, which is understandable taking into account the low tenant mobility described above.

Summary table 3

	Home ownership	Renting **with a public task**	Renting **without a public task**
Dominant public opinion	Preferred option	Insufficient supply	Cooperatives make an advantageous alternative to ownership
Contribution to gentrification?	New condominium buildings are sometimes constructed in former worker neighbourhoods	n.a.	Luxury housing units for rent, especially lofts, may contribute to gentrification
Contribution to ghettoization?	The phenomenon of gated communities refers only to modern condominiums	Social stock with its peripheral location in relation to city centres, as well as poor	Private tenements are often old and dilapidated, For many years rents were

[150] M. Świech, 'Wynajem od dewelopera' <http://porady.domiporta.pl/poradnik/1,126925,7009464,Mieszkania___wynajem_od_dewelopera.html> February 2013.

		technical condition, is connected with magnetization and social exclusion	insufficient to finance necessary repairs. The situation is improving as rents are systematically raised

3 Housing policies and related policies

3.1 Introduction

- *How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?*
- *What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)*

In accordance with art. 75 of the Polish Constitution, "public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen. Protection of the rights of tenants shall be established by statute." According to art. 76 of the Constitution, "public authorities shall protect consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices. The scope of such protection shall be specified by statute." These provisions should be interpreted in combination with the general conception of welfare state expressed art. 2 of the Constitution, pursuant to which "the Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice.

Constitutional principles by themselves do not provide any independent legal basis for actionable claims. They must find manifestation in specific solutions introduced by various statutory acts. The TPA seems the most significant of all pieces of legislation in this area. The concept of welfare state is apparent in legal provisions protecting the tenant against landlords, seen as the stronger party of tenancy arrangements.

The right to housing is regulated in a number of pieces of international legislation.[151] Under Paragraph 9 of the Istanbul Declaration on Human Settlements, signatory states, including Poland undertake that they "...shall work to expand the supply of affordable housing by enabling markets to perform efficiently and in a socially and environmentally responsible manner, enhancing access to land and credit and

[151] M. T. Wilczek, 'Prawo do mieszkania w regulacjach państwowych i międzynarodowych', Świat Nieruchomości 2008, no. 66, p. 24-27.

assisting those who are unable to participate in housing markets."[152] Poland has also adopted the revised European Social Charter which stipulates in art. 31 that "the Parties undertake with a view to ensuring effective exercise of the right to housing to take measures designed to promote access to housing of an adequate standard, to prevent and reduce homelessness with a view to its gradual elimination and to make the price of housing accessible to those without adequate resources."[153]

As far as domestic law is concerned, similar issues are dealt with in art. 75 of the Constitution of the Republic of Poland.[154] According to this provision, public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a housing unit by each citizen. The same provision provides that the protection of tenant rights is to be made more specific in statutory provisions.[155]

The latter comprise not only to the Tenants Protection Act but also, for instance, the Social Welfare Act 2004 (SWA),[156] which sets forth the terms for supporting individuals and families in their efforts to satisfy basic needs and live under conditions worthy of human dignity. Another piece of legislation which covers questions related to the right to housing is the Act on the Financial Support for the Creation of Communal Housing units, Protected Housing Units, Shelters and Houses for the Homeless 2006.[157] Under the terms of this statute, subsidies from a special fund are granted predominantly to municipalities, which could not afford to support the poorest and less fortunate inhabitants, as far as accommodation is concerned, without such central aid.

In Polish conditions we cannot speak about the right to housing in the French sense of that expression, which would enable individuals to assert a claim for a unit against the state.[158] Rather than that, Polish law only defines the directions of state policy in relation to citizens. Most definitely, the state is obliged to maintain policy in support of the citizens in respect of their housing needs. The necessity of intervention on the part of public authorities has never been questioned in this area. Only the goals and forms of state activities on the housing market have evolved over time.[159]

Previously forbidden, sidewalk eviction is now admissible, though only in especially unfavourable circumstances and in relation to debtors whose conduct does not justify legal protection. Most tenants, especially in the public stock (including cooperatives and Social Building Associations) are usually furnished with the protective right to social unit to be ensured by the municipality. The current situation is a consequence

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[152] General Assembly resolutions 51/177 of 16 December 1996 and 53/242 of 28 July 1999, <http://www.unhabitat.org> January 2013.

[153] European Social Charter - revised version (STE 163), signed in Strasbourg on 3 May 1995, ratified by Poland (Official Law Journal 1999, no. 8, item 67).

[154] Official Law Journal 1997, no. 78, item 483.

[155] English version of the Constitution is available at: http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm

[156] Act of 12 March 2004, Official Law Journal 2004, no. 64, item 593 .

[157] Ustawa z dnia 8.12.2006 r. o finansowym wsparciu tworzenia lokali socjalnych, mieszkań chronionych, noclegowni i domów dla bezdomnych, (Act of 8 December 2006), Official Law Journal 2006, no. 251, item 1844.

[158] M.T. Wilczek, *Rozwój standardu mieszkaniowego w Polsce na tle krajów europejskich,* (Katowice: Wydawnictwo Akademii Ekonomicznej w Katowicach, 2010), 27.

[159] 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa...' (govermnental strategy), 2.

of the judgment of the Constitutional Tribunal of 4 November 2010[160] which declared unconstitutional the former wording of art. 1046(4) of the Civil Procedure Code. The rights of the evicted must be weighed against the interest of an owner. Pursuant to the current version of this provision,[161] the bailiff may evict the debtor to other premises to which the debtor is entitled if the debtor was not awarded the right to a communal unit. If the debtor is not entitled to any other premises, the bailiff shall withhold the eviction until the municipality, at the bailiff's request, directs the debtor to temporary accommodation, however, no longer than for the period of six months. Upon expiry of that period, the bailiff shall evict the debtor to a night shelter or other place which provides overnight accommodation named by the respective municipality. When doing so, the bailiff is obliged to inform the municipality about the need to assure temporary premises to the debtor. Art 16 TPA provides seasonal protection against eviction which may not take place between 1 November and 31 March, unless the person concerned is to be evicted in relation to repeated acts of domestic violence or vandalism.

3.2. Governmental actors

- *Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?*
- *Which level(s) of government is/are responsible for designing which housing policy (instruments)?*
- *Which level(s) of government is/are responsible for which housing laws and policies?*

Official actors involved in housing policy making include primarily the government and municipalities. The name of the Ministry responsible for housing has changed a number of times over the last couple of years. The former Ministry of Infrastructure was then known as the Ministry of Transport, Construction and Maritime Economy, to finally become the Ministry of Transport, Infrastructure and Development. Matters of state housing policy are entrusted within the Ministry to the Department of Housing. Other units responsible for matters closely related are the Department of Real Estate Management and the Department of Spatial Development and Construction. Tax policies are decided by the Ministry of Finance. Ministers are responsible for designing legal instruments and draft bills. Irrespectively of governmental initiatives, bills are also prepared by Members of Parliament.

Another public authority issuing recommendations for commercial banks which frame their crediting and mortgage policies accordingly is the Polish Financial Supervision Authority, which took over supervision duties from the National Bank of Poland after the accession to the EU.[162] These recommendations are binding, and their non-implementation may lead to serious supervisory consequences.

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[160] K 19/06, Official Law Journal 2010, no. 215, item 1418.

[161] Introduced in the Act of 31 August 2011, Official Law Journal 2011, no. 224, item 1342.

[162] The Act of 21 July 2006, Official Law Journal 2006, no. 157, item 1119.

There are three levels of self-government in Poland, one regional (voivodeships) and two local: municipality and poviat. Poviats comprise of a number of municipalities. With regard to larger cities, they are both municipalities and independent poviats on their own. At the level of voivodeship, strategic plans are enacted relating to transport, location of facilities and investments of certain significance to the region as a whole. Poviats, in general, have not been entrusted with any major duties related to housing.

Under art. 4(2) of the Tenants Protection Act, municipalities are obliged to meet the needs of low income families within the limits envisaged by law, in particular assure social units and replacement units. Pursuant to art. 21 TPA, municipal councils enact multi-annual management programs for the municipal housing stock and general rules of letting housing units, including housing units allocated to municipality employees where such practice is accepted.

3.3. Housing policies

- *What are the main functions and objectives of housing policies pursued at different levels of governance?*
  - *In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation)?*

Not only structures on the central level have evolved. Over the last 20 years, the state policy in relation to the housing industry involved the implementation of various solutions, e.g. tax deductions and exemptions with a view to attracting potential investors. In the latter half of the previous decade serious modifications took place concerning the implements adopted. In particular, the building PIT deduction[163] was cancelled in 2006. Instead, the legislator introduced the possibility to return a part of expenses incurred for the purchase of building materials.[164]

In the mid 90–ties the lawmaker began to introduce solutions supporting housing construction in the form of direct budgetary expenditures. The first solution, already mentioned above, was the system of supporting housing construction for social rental purposes. The system relied on the establishment of the National Housing Fund whose assets were to finance constructions carried on by Social Building Associations, housing cooperatives, and contribute to municipal investments relating to technical infrastructure. Since 1998 there has also been an instrument of financing investments improving energy performance of houses. Bearing in mind generally poor condition of the private and municipal housing stock in Poland, the lawmaker implemented in 2009 a program of subsidizing renovation and maintenance works. Since 2004 municipalities may obtain state support for the construction of social premises, sheltered housing, night shelters and accommodation for the homeless.[165]

[163] See the section on taxation.
[164] Supreme Audit Office, 'Realizacja zadań w zakresie gospodarki mieszkaniowej...', p. 5.
[165] Supreme Audit Office, 'Realizacja zadań w zakresie...', 6.

The state policy in the next ten years is supposed to focus on the removal of deficiencies concerning social units, support for the supply of affordable housing units on tenancy and property markets, elimination of the basic types of risk attached to development of the private sector in the housing industry, reduction of construction costs, spatial and functional rationalization of the new housing stock by improving land for building purposes, as well as rationalization of management of the public housing stock. Higher rents in the private rental sector are to allow for necessary renovations. Consumption of energy in all sectors is going to be reduced.[166]

In the years 2008 – 2010, expenses on housing were decreasing in relation to the GDP. In 2008 they totalled 0,08%, in 2009 0,07% and in 2010 r. 0,06%.[167] In the face of economic crisis, expenditures in the areas for which a fixed annual pool of budgetary funds has been provided are fairly easy to control. Such was the case of the Thermal modernization and Repairs Fund 2010. In 2008 its spending amounted to PLN 270 million (approx. EUR 63 million), in 2009 to PLN 109 million (approx. EUR 26 million). No new means for the Fund were planned in the central budget for 2010. As a result, the free funds of PLN 151,7 million (approx. EUR 36 million) were all granted to investors. Because of their considerable demand, all the sums for 2010 were distributed by 20 August.[168] Underachievement of governmental programs in recent years demonstrates that there are more and more tasks, usually delegated to municipal authorities, without sufficient sources of funding.[169] As a result, the government is willing to stream the limited financial means provided for housing in a more orderly and structured manner and make cuts where expenses are less controllable.

Between 2006 and 2011 a considerable growth was observable as regards budgetary expenses on preferential credits for young families willing to purchase their first unit. Particular surge can be dated to 2010 when budgetary expenditures equalled PLN 255 million (approx. EUR 61 million) - with only PLN 60 million (approx. EUR 14 million) spent in 2009. Credits awarded by commercial banks grew both in terms of number and volume, which increased the demand for allowances described in more detail in the section on subsidies. According to preliminary estimates, the value of allowances for 2011 totalled PLN 494.6 million (approx. EUR 118 million). This high volume and the need to combat results of the crisis led to the decision concerning discontinuation of the program "Family in Its Own Home" by the end of 2012.[170] In light of the growing expenditures from the state budget on subsidies for commercial credits (according to the forecast by Bank Gospodarstwa Krajowego, expenses connected with the credits awarded between 2007 and 2010 are going to amount in the period 2011–2018 to approximately PLN 2,617.8 million - EUR 623 million) and the danger of economic slowdown, the Council of Ministers prepared a relevant statute, adopted by the parliament in 2011.[171]

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[166] 'Główne problemy, cele i kierunki...' (governmental strategy), 15.

[167] Supreme Audit Office, 'Realizacja zadań w zakresie...', 28.

[168] Supreme Audit Office, 'Realizacja zadań w zakresie...', 28.

[169] Statement of the Union of Polish Metropolises of 1 April 2010 on the governmental support for municipal housing construction (including social housing)

[170] Supreme Audit Office, 'Realizacja zadań...', 28-29.

[171] Act of 15 July 2011 Amending the Act on the Financial Support for Families and Other Persons Concerning the Acquisition of Housing units and Several Other Statutes – Official Law Journal, no. 168, item 1006.

The program of supporting mortgage credits demonstrates that state authorities prefer ownership to tenancy. In order to mitigate the results of the crisis, the government tries as well to revitalize the tenancy market. First, the so called incidental lease was introduced in Chapter 2a of the Tenants Protection Act (arts. 19a-19e).[172] This institution lifts certain TPA instruments protective of the tenant. Initially, such benefits could only be enjoyed by owners who are natural persons. Now, they are also available for corporate landlords. Most basically, it is easier to terminate the lease and evict the tenant. In order for the new construction to be applied, the tenancy period must not extend over 10 years. Notably, this new instrument is to help reduce the grey market, since the advantages available to owners are contingent on the registration of the tenancy at the tax office. Currently, the Ministry is considering expanding the scope of landlords entitled to conclude contracts on such preferential terms to juridical persons. This is to aid developers left with unsold housing units.

Even if the legislator should attempt to vitalize the commercial lease market, the problem of social tenancies has now been left to municipalities. One of the most controversial political decisions in recent years was the liquidation of the National Housing Fund in 2009.[173] Initially, the Ministry was opposed to the amendments. Liquidation and direct involvement of the state bank funds (Bank Gospodarstwa Krajowego) brought to an end the idea of a revolving fund for social housing and other initiatives falling under the heading of housing policy. Eventually, however, the Minister of Infrastructure withdrew his objections with regard to the liquidation of the Fund.[174]

Under the current legislation, Bank Gospodarstwa Krajowego, which is a state institution acting on more commercial basis, is to award respective preferential credits to Social Building Associations and cooperatives. If this system is to operate, appropriate delegated legislation must be issued by the Council of Ministers concerning the conditions and proceedings for awarding credit within the governmental programs of support for social housing. The missing regulations (as they have not been enacted until the present day) are to set additionally vital technical requirements for the units and buildings financed by the credits.[175] The lack of such secondary legislation has brought social housing construction to a deadlock, although in 2008 alone demand in this respect was estimated at over 90 thousand of housing units.[176]

Altogether, in the period of functioning of the National Housing Fund its crediting activity allowed for the construction of 87.5 thousand housing units let at moderate rents within the stock of the Social Building Associations and housing cooperatives.[177] As far as municipalities are concerned, they applied for preferential credit from the National Housing Fund not only for the construction and repairs, but also with a view to providing basic utilities to their tenants. The Fund allowed to credit

[172] Act of 17 December 2009, Official Law Journal 2010, no. 3, item 13.
[173] Official Law Journal 2009, no. 65, item 545.
[174] Supreme Audit Office, 'Realizacja zadań w zakresie...', 23.
[175] Official Law Journal 2009, no. 65, item 545; see art 15b of the Act.
[176] Supreme Audit Office, 'Realizacja zadań...', 11.
[177] Supreme Audit Office, 'Realizacja zadań...', 29.

103 municipal investments involving the development of technical infrastructure related to housing.[178]

- *Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?*
- *Are there special housing policies targeted at certain groups of the population (e.g. elderly people, migrants, Sinti and Roma etc.)?*

Official policy towards vacancies is a matter of local needs and management of local resources. That is why this issue has been left to municipalities. For example, municipal authorities of Chorzów, one of the cities which make Silesian conurbation, declared in 2004 that whoever finds and reports a vacancy in the municipal stock may become its lessee.[179]

There are no special housing policies on the central level which would target particular ethnic groups or immigrants. Such measures, however, are possible on the local level, especially in cooperation with non-governmental organizations.

3.4. Urban policies

- *Are there any measures/ incentives to prevent ghettoization, in particular*
- *mixed tenure type estates*[180]
- *"pepper potting"*[181]
- *"tenure blind"*[182]
- *public authorities "seizing" apartments to be rented to certain social groups*

Other "anti-ghettoization" measures could be: lower taxes, building permit easier to obtain or requirement of especially attractive localization as a condition to obtain building permit, condition of city contribution in technical infrastructure.

- *Are there policies to counteract gentrification?*

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[178] Supreme Audit Office, 'Realizacja zadań...', 11.

[179] P. Jedlecki, "Akcja 'Znajdź pustostan' w Chorzowie", <http://katowice.gazeta.pl/katowice/1,35019,2345880.html> (August 2013).

[180] Mixed tenure means that flats of different tenure types: rented, owner-occupied, social, etc. are mixed in one estate, it is the simplest way of avoiding homogenized communities, and to strengthen diversification of housing supply.

[181] This mechanism is locating social housing flats among open market ones, so as not to gather lowest income families in one place. The concept is quite controversial, however in English affordable housing system was used for a long time to minimize the modern city ghettos problem.

[182] This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable form outside. It is used to avoid/minimize stigmatization and social exclusion which could be caused by living in a (openly identifiable) social stock.

Ghettoization in Poland may be associated with low standard municipal stock neighbourhoods, XIX century neglected housing quarters, tower blocks, on one hand, and quite guarded estates, on the other. Nineteenth century buildings and post-war tower blocks, are located in unattractive places in relation to city centres. The intensity of ghettoization depends, to a large extent, on the economic standing of a particular city. Where finances are scarce, the processes of dilapidation and marginalization of relatively new post-war districts are progressing quickly. In more well-off urban areas, revitalization of urban fabric (particularly historical parts) proves successful.[183]

Under communism, population of the newly erected housing estates was diversified in terms of income and social position. Because of the stark housing deficit, unattractive neighbourhoods have not been abandoned by many affluent people, as was the case e.g. in French suburban tower blocks. As a result, those kinds of estates are not ghettos in the strict sense of the word. Frequently, municipal housing, usually intended for low-income households, assumes the form of clusters located in the suburbs (some of the so called temporary premises belonging to municipalities include container-houses), or less commonly down-town (but also as separate buildings with communal units), can be called ghettos though. Peripheral location and concentration of possibly disruptive tenants in one place leads to escalation of social problems. Tenants are united by a sense of community, exclusion and hostility toward strangers. Although the housing stock in such estates is often vandalized, and constantly require serious expenditures – no structural change to communal housing system is applied. The other issue, gated communities, are also designated for one group of tenants – wealthy middle class members. Gated communities, usually consisting of buildings of the same design (whether multi-family or detached houses), are surrounded by fences restraining access. Such estates, when built down-town, can lead to appropriation of public space, lower safety standards in the cities and, indirectly contribute to desolation of city centres. Nevertheless, neither measures nor incentives against fencing off residential areas are introduced. Moreover, fencing is also a common practice in the stock held by Social Building Associations. In recent years, due to chaotic urban planning, residential areas scattered within cities and gated condominiums,[184] a number of places with high landscape values have been lost.[185] In the absence of appropriate legal regulations, local authorities and developers may completely change the urban landscape of our country. Right now there are difficulties in finding any alternative for fenced housing, even though many people are unwilling to live in such places.[186]

Neither “pepper potting” nor “tenure blind” are present in urban policies. Selling municipal units to tenants, which is a common practice, may lead to tenant diversification, and gentrification in the long run. Combination of private housing with

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[183] G. Węcławowicz, *Geografia społeczna miast,* (Warszawa: PWN, 2007), 149.

[184] Gated communities are very common in Poland, especially in big cities: in 2007 there was over 200 gated communities in Warsaw, and this number is still increasing; K. Zaborska, 'Przestrzeń miejska – dobro wspólne czy ziemia niczyja?' in *Gettoizacja polskiej przestrzeni miejskiej,* eds. B. Jałowiecki, W. łukowski (Warszawa: Scholar, 2007), 113.

[185] M. Dymnicka, 'Osiedla za bramą a ciągłość kulturowa i społeczna w kształtowaniu przestrzeni miejskiej' in *Gettoizacja polskiej przestrzeni miejskiej,* eds. B. Jałowiecki, W. łukowski (Warszawa: Scholar, 2007), 59.

[186] J. Gądecki: '>>Za murami<< – Krytyczna analiza dyskursu na temat osiedli typu gated communities w Polsce' in *Gettoizacja polskiej przestrzeni miejskiej,* eds. B. Jałowiecki, W. łukowski (Warszawa: Scholar, 2007), 87.

social rentals is not a goal of central housing policies. Such phenomenon is not observable in Social Building Association estates, although in theory it is now possible for a tenant to purchase a unit.[187] It is the case because the terms of purchase offered by the Associations are not as favourable to the buyer as in the cooperative or municipal stock. As a result, this new possibility remains, for the most part, a dead letter. The price of the unit is only diminished by the tenant's valorised contribution to its construction cost. Consequently, for many tenants it is more profitable to withdraw the contribution and buy a unit on the developer market. There is no official policy concerning rental of units to certain social groups. Such policies may be adopted on municipal level.

Gentrification leads to changes in social structure, yet, it is not considered a serious problem in the view of Polish urban policies. Even though the problem is observable, no measures have been taken against it.

- *Are there any means of control and regulation of the quality of private rented housing or is quality determined only by free market mechanisms? (does a flat have to fulfil any standards so that it may be rented? E.g.: minimum floor area, equipment, access to technical and/or social infrastructure and/or public transport, parameters such as energy efficiency, power/water consumption, access to communal services such as garbage collection. If so: how are these factors verified and controlled?)*

There are no regulations on the quality of rented units, not only because of black market phenomena (major part of free market rentals are not registered because of tax avoidance) beyond official control. Registered rentals are neither under any type of quality control. New houses or houses with modified use are governed by provisions of the Construction Law Act (CLA).[188] These rules are the same for both owner occupied and rental housing. In addition, conditions which have to be fulfilled by municipal social units as well as temporary premises (see the chapter on Regulatory types) have been set forth in the Tenants Protection Act 2001. The term "social unit" means a place suitable to live, taking into account utilities and the technical condition, with the usable floor area of minimum 5 m^2 per person (10 m^2 in single-person household). Even while a social unit may be sub-standard, tenants must still have the access to basic utilities, for example bathroom and toilet shared with other units in the same building. The average area of municipal units is constantly decreasing. It was 55m2 in 1990, and 49,1m2 in 2004.[189]

- *Does a regional housing policy exist? (in particular: are there any tools to regulate housing at regional level,*

[187] As a result of the adoption of the Act of 19 August 2011, Official Law Journal 2011, no. 201, item 1180.

[188] Ustawa z dnia 7.07.1994 r. Prawo budowlane (Act of 7 July 1994), Official Law Journal 1994, no. 89, item 414.

[189] H. Zaniewska (ed.) *Bieda mieszkaniowa i wykluczenie. Analiza zjawiska i politki*, Warszawa: PBZ, 2007), 41.

e.g.: in order to prevent suburbanization and periurbanisation? Is it possible to distribute local taxes so that villages can afford the limitation of housing areas?)

According to Polish law catering for the housing needs of local communities, especially low-income households, remains the responsibility of the municipalities. The main tools of local housing policy are housing benefits, management of the affordable housing stock. Municipal housing is financed from municipalities' own funds with support of the state (preferential low-interest loans, grants). In addition, municipalities select plots for new constructions, adopt zoning plans and control its implementation.[190]

Therefore, housing policy is pursued mainly on the local and central level of administration. On the regional level, several voivodeships (regions) have adopted development strategies with optional housing policy elements. Voivodeships have no direct instruments related to housing. Housing-related issues may be dealt with only in connection with other fields, such as transportation, sustainable development or protection of cultural heritage.

Issues of suburbanization or periurbanisation are a concern of whole regions. As a result, regional strategies define goals in this respect. These strategies, however, are based on the principles of social cooperation and their implementation is also a dependent on the will to cooperate on the part of individual municipalities. Based on the development strategies, (regional) zoning plans are adopted also on the level of voivodeship. Basic elements of these plans must specify transportation and infrastructural links, problem and support areas or areas exposed to the danger of flooding.[191] Such issues delimit the scope of housing policies on regional level.

3.5. Energy policies

- *To what extent do European, national and or local energy policies affect housing?*

The question of energy efficiency in Poland has been limited to subsidizing thermal modernization investments, that is projects undertaken in order to limit consumption of thermal energy. This involves thermal insulation of buildings, sometimes in conjunction with replacement of windows or heat-pipes. Such investments have been supported by public authorities for fifteen years. The Thermal Modernization Support Act was enacted in 1998.[192] Ten years later, thermal modernization was structurally linked to renovation of the oldest housing stock. Current forms of state support in this respect are discussed thoroughly in the section on subsidies.

Since appropriate budgetary funds have been rather scarce in the resent years, questions regarding energy efficiency of the residential stock must wait for

[190] P. Sosnowski, *Gminne planowanie przestrzenne a administracja rządowa*, (Warszawa: LexisNexis, 2010), 47.
[191] M.J. Nowak, *Polityka przestrzenna w polskich obszarach metropolitalnych* (Warszawa: CeDeWu, 2010), 52.
[192] Act of 18 December 1998, Official Law Journal 1998, no. 162, item 1121.

implementation of new European legislation,[193] which refers predominantly to the Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings.[194]

Summary table 4

	National level	Lowest level (e.g. municipality)
Policy aims 1) 2) Etc.	Stimulation of supply of affordable housing units on the tenancy and property market, elimination of risk attached to development of the private sector in the housing industry, reduction of construction costs, rationalization of management of the public housing stock, revitalisation of social tenancy housing	Support of inhabitants, in particular low income families
Laws 1) 2) Etc.	Tenants Protection Act 2001; Housing Benefits Act 2001; Act on Certain Forms of Supporting the Building Industry and Delegated Legislation 1995; Housing Cooperatives Act 2000; Act on the Financial Support for Families and Other Persons Concerning the Acquisition of Housing units 2006 Unit Ownership Act 1994; Support for Thermal Modernization and Repairs Act 2008 Developers Act 2012	Municipal council resolutions: multi-annual management programs for the municipal housing stock and general rules of letting housing units
Instruments 1) 2) Etc.	Assistance in mortgage credit repayment, support for social housing construction (National Housing Fund credits) thermal modernization, repairs and compensation premiums	Tenancies in the social and general municipal stock; payment of housing benefits

3.6. Subsidization

- *Are different types of housing subsidized in general, and if so, to what extent? (give overview)*

[193] M. MacBrien, 'EU Energy Efficiency Regulation and Funding for Buildings', *REV. Journal of the Revognized European Valuer,* no. 2 (2013), 1.
[194] OJ L 153/13.

- *Explain the different forms of subsidies for tenants, (certain) landlords and, if relevant, housing associations or similar entities acting as intermediaries (e.g. direct, by means of investment loans, tax privileges). Which level of government is competent to assign the subsidies? Is there a subjective right to certain subsidies or does the public administration have discretion in whom to assign the subsidy?*

- *Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?*

Apart from young married couples (persons aged below 35) preferential credit within the governmental program "Family in Its Own Home" could be obtained by single parents. By definition, tenancies were excluded from the program. Credit with state allowances could be granted for acquisition of an already existing housing unit in a multi-occupied building or a detached house. The borrowed sum could be also spent on the purchase of a freehold cooperative right to a unit (described above).

Another criterion which had to be met was that the borrower could not be the owner of any housing premises, either a housing unit or detached house. Aid was granted only for the purchase of a first housing property. Only individuals or households who met the above requirements were admitted. State allowances were granted for the initial eight years of credit repayment. They could not overstep 50% of the interests. Their amount was geared to the surface area of the housing acquisition.

When it comes to implementation of the program introduced in 2006, the number of credits granted in the first two years was not significant as compared to the following years (4,001 in 2007 and 6,628 in 2008). A real growth could be dated to 2009 (30,868). The increasing trend was maintained in 2010 (43,074) and 2011 (51,264). In 2012, a slight decline was noticed with 40,129 contracts by the end of November.[195] From the start of the program until 31 December 2010 commercial banks granted 84.571 credits amounting to PLN 14,774.7 million (approx. EUR 3518 million). The overall sum of the allowances granted made PLN 308.9 million (approx. EUR 74 million). The decision concerning its discontinuation as of 31 December 2012 was justified by the need of budgetary cuts.[196]

Although 2012 was the final year of the subsidies, the succeeding program "Housing unit for the Young" (Mieszkanie dla Młodych) is also supposed to target young families, providing additional incentives to couples with more than two children. The respective statute was long in the consultation phase. At the beginning of 2013, there have been government declarations about the program's postponement to 2014 for the lack of available funds. Eventually, the respective statute was passed by the lower chamber of Polish parliament on 27 September 2013.[197] State assistance is to consist in a single payment (rather than periodic allowances as before) of 10% of the replacement value for a floor area up to 50 m^2 so that buyers could cover a part of their own contribution. The financial support is going to cover unit acquisition on the primary market as long as the unit meets specified criteria, referring, inter alia, to the

[195] Data of the Ministry of Transport, Construction and Maritime Economy.
[196] Supreme Audit Office, 'Realizacja zadań w zakresie...', 12.
[197] Official Law Journal 2013 item 1304.

floor area, which may not overstep 75 m^2. The price may not exceed - for 1 m^2 of the usable floor area - the averaged replacement cost ratio for 1 m^2 for housing premises announced by the Central Statistical Office. Another important feature of the new program is its family oriented character. If the couple have a child at the time of purchasing the unit, the payment discussed above will cover 15% rather than 10%. In the instance where the third (or yet another) child is born within 5 years following the acquisition of the housing unit, the borrower will be in a position to apply for extra 5%.[198]

Earlier during the crisis, the legislator decided to mitigate its results by helping persons who lost their jobs in repayment of the loan. In order to achieve that end, the respective Act was passed on 19 June 2009.[199] The aid involves monthly payments of sums up to PLN 1200 (approx. EUR 286) from the state bank (Bank Gospodarstwa Krajowego) for the period no longer than 12 months.

19 March 2009 saw the entry into force of the Support for Thermal Modernization and Repairs Act,[200] which expanded the previous regulation on supporting thermal isolation investments. Along with the premium for thermal modernization, the legislator now envisaged grants for repairs. This encompasses assistance to tenement owners in the repayment of credits borrowed for the improvement of the technical condition of the building and combating its deterioration.[201] The support refers only to investments in the oldest multi-family residential buildings put into use before 14 August 1961 owned by natural persons, condominiums with the majority share of private individuals, cooperatives and Social Building Associations.

Another instrument targeted at tenement owners is compensation premium introduced by another amendment to the Support for Thermal Modernization and Repairs Act.[202] It was to answer the needs uncovered by the European Court of Human Rights, in particular the judgment in the case *Hutten-Czapska v. Poland.*[203] Beneficiaries of the premium are the owners of tenements whose contracting freedom was formerly confined by regulation of rents, and who reaped incomes insufficient to properly maintain the property and gather decent benefits.

Although the resources for thermal modernization and other repairs are now structurally blended in one Fund, investor applications refer mainly to energy efficiency of the housing stock. In the years 2008–2010 there were only 585 repair- and 26 compensation premiums for landlords of premises with formerly regulated rent in the total of 8.849 premiums paid within the fund. In 2011, when the Fund was enriched by new sums from the budget, this proportion was similar. On the whole, 3.442 premiums totalling PLN 160,7 million (approx. EUR 38 million) were paid,

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[198] Data of the Ministry of Transport, Construction and Maritime Economy <http://www.transport.gov.pl/2-48203f1e24e2f-1795755-p_1.htm> January 2013.

[199] Official Law Journal 2009, no. 115, item 964.

[200] Ustawa z 21.11.2008 r. o wspieraniu termomodernizacji i remontów (Act of 21 November 2008), Official Law Journal 2011, no. 106, item 622 as amended.

[201] Official Law Journal 2001, no. 168, item 1006.

[202] Official Law Journal 2010, no. 76, item 493.

[203] judgment of the European Court of Human Rights of 22 February 2005 in *Hutten-Czapska v. Poland*, application no. 35014/97.

including 2.962 thermal modernization premiums of PLN 138,8 million (approx. EUR 33 million).[204]

State allowances of another type are to provide help in the discharge of old liabilities taken on under the previous political system. The aid granted under the Act on State Support for the Repayment of Cooperative Credits, Payment of Guarantee Bonuses and Refunding Guarantee Bonuses to Banks 1995[205] helped in the clearance of credits borrowed by housing cooperatives before 31 May 1992. In theory, in the times when large cooperatives flourished, citizens were to acquire cooperative rights to newly built units in exchange for the savings gathered on a special passbook in the state owned bank. In fact, investment credits awarded by the bank to cooperatives came from the bank's own funds, since citizen savings were far from sufficient. As the waiting period for a unit was long, passbook holders were mainly minors who could not gather significant sums. It has been estimated that in 1989 there were 5.812 thousand of such accounts. The liabilities result from the fact that an average passbook holder managed to save funds sufficient only for 2 m^2 of usable floor area.[206] The Act provides as well for reimbursement to holders of housing passbooks who never acquired their cooperative unit before the market transition. A passbook holder may apply for a so called guarantee bonus when he buys a new housing unit from a developer or cooperative, erects of his own house, or pays the participation quota in a Social Building Association. The same refers to acquisition of a unit on the secondary market. The value of the guarantee bonus depends on the time of saving, the amounts gathered, contributions in particular years, and the market price of 1 m² of the floor area announced by the Central Statistical Office. The rights from the passbooks may be assigned to close relations.[207]

The Housing Benefits Act 2001[208] (HBA) is targeted at a much broader range of beneficiaries. It regulates the principles of award and calculation of housing benefits, as well as the authorities competent to grant them. According to art. 2(1) of the statute, the beneficiaries may be: tenants, sub-tenants of housing units, holders of a tenancy cooperative right, owner-occupiers, persons with any other rightful tenure in a unit who bear expenses related to its enjoyment, occupiers without a valid tenure waiting for a replacement or social unit.

Housing benefits are paid by municipalities from their own funds. Declaratory decisions in this respect are issued by mayors, at the request of a person entitled by statute. Income criteria for applicants set forth in art. 3 HBA are uniform for the whole country. The average monthly income per household member in the three months preceding the application may not exceed 175% of the lowest old age pension at the time of application for single-person households and 125% of the same indicator for

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[204] Bank Gospodarstwa Krajowego, 'Dane liczbowe Funduszu Termomodernizacji i Remontów 2012', <http://www.bgk.com.pl/fundusz-termomodernizacji-i-remontow-2/dane-liczbowe> January 2013.

[205] Ustawa z dnia 30.11.1995 r. o pomocy państwa w spłacie niektórych kredytów mieszkaniowych, udzielaniu premii gwarancyjnych oraz refundacji bankom wypłaconych premii mieszkaniowych (Act of 30 November 1995), Official Law Journal 2003 no. 119, item 1115 as amended.

[206] J. Gawrzyński, *Środki publiczne w finansowaniu inwestycji mieszkaniowych,* (Warszawa: Instytut Gospodarki Mieszkaniowej, 1993), 35.

[207] The detailed data is accessible in the brochure of the former state bank PKO BP: <https://www.pkobp.pl/media_files/9e2b66a2-17d4-40e9-8878-641ddaa07002.pdf> January 2013.

[208] Ustawa z dnia 21.06.2001 r. o dodatkach mieszkaniowych (Act of 21 June 2001), Official Law Journal 2001, no. 71, item 734.

multi-person households. The benefits are awarded for 6 months as of the beginning of the month following the application. Respective sums are remitted to the owners of the premises to partly discharge the dues of the entitled persons. Owner-occupiers receive the benefit directly. They serve as an incentive for tenants to pay rent on time, as the beneficiaries may not be in arrears. If they are running late with any payment, the housing benefit is suspended, under art. 7(11), until full payment of the overdue sums.

Due to the number of beneficiaries, municipalities are not overburdened with their statutory duty to pay housing benefits. In 2010, the percentage of households receiving benefits in the cities surveyed by the Institute for Urban Development equalled 3.7%, which signifies a slight decrease by 0.2% in comparison with 2009. The average value of monthly benefits paid in December 2010 amounted to PLN 187 (approx. EUR 45), which is PLN 9 more (about 5%) than in the previous year. In 2010 the highest benefits went to the tenants of Social Building Associations – PLN 221 (approx. EUR 53), employee occupiers – PLN 209 (approx. EUR 50), tenants in municipal premises – PLN 199 (approx. EUR 47), tenants in private tenements – PLN 194 (approx. EUR 45), occupiers of the remaining stock – PLN 190 (approx. EUR 45). Just as the year before, the lowest benefits were paid to occupiers of cooperative units – PLN 165 (approx. EUR 39).[209]

Summary table 5

Subsidization of landlord	General tenancy	Social Tenancy Housing	Municipalities, their unions, poviats, NGO[210]
Subsidy before start of contract (e.g. savings scheme)		Preferential credit for investors such as Social Building Associations or municipalities from Bank Gospodarstwa Krajowego (practically suspended after the liquidation of the National Housing Fund)	State grants for entities organizing social premises, shelter housing or night shelters
Subsidy at start of contract (e.g. grant)	n.a.	n.a.	
Subsidy during tenancy (e.g. lower-than market interest rate for	Thermal modernization premium - for investors improving energy efficiency of		

[209] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', 13.

[210] See the section on regulatory types.

investment loan, subsidized loan guarantee)	residential houses Repairs premium - for repairs of the old housing stock Compensation premium - for landlords of tenements with formerly regulated rent		

Summary table 6

Subsidization of tenant	All types of tenure
Subsidy before start of contract (e.g. voucher allocated before find a rental unit)	n.a.
Subsidy at start of contract (e.g. subsidy to move)	n.a.
Subsidy during tenancy (in e.g. housing benefits, rent regulation)	Housing benefits for low income households

Summary table 7

Subsidization of owner-occupier	Tenure type 1
Subsidy before start of contract (e.g. savings scheme)	n.a.
Subsidy at start of contract (e.g. grant)	Guarantee premiums for passbook holders
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing benefits)	Help in mortgage credit repayment - special state allowances for young families and single parents (Family in Its Own Home); housing benefits;

3.7. Taxation

- *What taxes apply to the various types of tenure (ranging from ownership to rentals)? In particular:*
  - *Tenants: Do tenants also pay taxes on their rental tenancies? If so, which ones?*
  - *Home-owners:*

- *Income tax of home-owners: is the value of occupying a house considered as a taxable income?*

In Poland tenants as such are not taxed in any form. Although the black market of lease is a real phenomenon, there is no official data concerning its actual scale.

Individual non-professional landlords are taxed on income on general terms - with private income tax. Among many other sources of the taxed income, art. 10 of the Private Income Tax Act 1991,[211] points to proceeds from lease or sublease.[212] It is possible for landlords to pay a lump sum tax on registered revenue if, for some reason, they do not wish to tax their incomes in accordance with the progressive tax scale.[213] When taxed on general terms, they have to calculate and prepay monthly sums to the tax office until the 20th day of each month. Where the landlord chooses payment by lump sum, no expenses can be deducted from virtual proceeds, so that the lump sum depends on the volume of gross rather than net income.[214] The sums due may be paid either monthly or quarterly. For election of this model, it does not matter whether the tenancy contract institutes the general type of lease or the so called incidental lease described above. Taxation by lump sum must be expressly opted in before the 20th day January or any other month following the month of the first proceeds received. It may seem an attractive solution, as in the calculation of the lump sum the 8.5% tax rate is applied, however, this form of payment is beneficial only to landlords with high proceeds and moderate expenses, which is quite rare in practice, taking into consideration the poor technical condition of the private tenement stock. Landlords who carry on business activity may pay the income tax as professionals if they are entered in the central register of individual entrepreneurs.

Tenancy proceeds are the agreed rent. They do not cover expenditures incurred by the tenant and related to the premises (e.g. bills for running water, electricity, gas and other utilities, telephone fees) paid by the tenant under the contract. Tenancy incomes become taxable if they have been in fact collected by the landlord. If the tenant runs late with rent, the overdue sums are not included until paid.[215] Only where the lease is taxed as business activity carried on by a professional, the overdue sums are also taken into account. It is presumed that professionals acting diligently are able to enforce and execute any receivable debts. The tax rates applying to non-corporate professionals are either the general ones (18% and 32%) or the flat-rate 19%, if the taxpayer opts for the latter choice.

Corporate tenants are to pay Corporate Incomes Tax (19%), however housing cooperatives, Social Building Associations, municipalities and condominiums are

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[211] Act of 26 July 1991, Official Law Journal 2010, no. 51, item 307.

[212] Where the lessee may not only enjoy the thing, but also gather its profits. This category does not normally refer to residential leases.

[213] Roughly speaking, since 2009, there are three two rates: 18% applicable to sums up to PLN 85,528 (approx. EUR 20,300) and 32% for the remaining income.

[214] Act of 20 November 1998, Official Law Journal, no. 144, item 930 as amended.

[215] Ministry of Finance, 'Opodatkowanie dochodów z najmu i dzierżawy osiągniętych poza działalnością gospodarczą', <http://www.pit.pl/att//broszuryMF/broszury2011/ulotka_najem_2012.pdf> January 2013.

exempt from income tax in respect of tenancy proceeds covering maintenance costs under art. 17(1) item 44 of the Corporate Income Tax Act 1992.[216]

Real property owners are obliged to pay property tax to the municipality in which the property is located.[217] The surface area is the tax base in the case of land. Similarly, when it comes to building properties and privately owned units, the determinant of the due amount of tax is the floor area. The rates are determined by resolution of a municipal council. The legislator has only set maximal limits. In the case of housing areas, such maximal annual quota is PLN 0,62 (approx. EUR 0.15) per 1 m^2. It must be remembered, that owners within condominiums, apart from their private units, must also pay property tax for the common areas. In relation to the common plot of land, the maximal quota per 1 m^2 is PLN 0,37 (approx. EUR 0.88).

- *Is the profit derived from the sale of a residential home taxed?*

Tax on civil law transactions is payable on sale of immovable properties. The rate of this tax is 2% of the market value of the property. The few exemptions provided by law concern compulsory sale from expropriated owners, or barter of housing units between close relations.

When it comes to relation between the market value and taxation, it is sometimes suggested that the authorities should consider introduction of ad valorem property tax. In fact, municipalities are already allowed to collect a re-zoning fee, indexed on the changes value of the land following from the adoption or modification of local spatial development plans. The fee, however, cannot exceed 30% of the price appreciation of the plot. Such significant increase might be the case when the use of the land is turned from agricultural to residential. The fee is payable upon sale of the property within five years following the modification of the zoning plan. Taxpayers are not liable to the re-zoning only if the property is transferred non-gratuitously. As a result, evasion of the fee is possible. The seller has to wait these five years before selling the property. Although the period seems quite lengthy, many sellers decide to withhold the transaction. Meanwhile, it is possible to deliver the property to a third party, e.g. under the contract of lease or usufruct. In consequence, not much revenue is actually collected by municipalities.[218]

- *Is there any subsidization via the tax system? If so, how is it organized? (for instance, tenants being able to deduct rent from taxable income; landlords being able to deduct special costs; home-owners being treated favourably via the tax system)*
- In what way do tax subsidies influence the rental markets?

[216] Act of 15 February 1992, Official Law Journal 2011, no. 74 item 397.
[217] Local Taxes and Fees Act of 12 January 1991, Official Law Journal 1991, no. 9, item 31 as amended.
[218] R. Kierzenkowski, 'Bridging the Housing Gap...', p. 10.

- *Is tax evasion a problem? If yes, does it affect the rental markets in any way?*

In order to stimulate housing construction industry affected by deep stagnation in the mid-nineties, the legislator adopted incentives for persons able and willing to devote their funds to housing investments, including buildings destined for commercial leases. Within the system of income taxation one could enumerate: the so called "major construction PIT abatement" pertaining to housing investments (1992-2001 and rights acquired earlier until 2004), PIT deduction for the purchase of housing construction sites (1992-2001 and rights acquired earlier until 2004), PIT relief for multi-family tenement construction (1992-2000 and rights acquired earlier until 2003), CIT relief for constructions of the same type (1992-1998 and rights acquired earlier until 2001), and finally interest relief deduction (2002-2006). The common feature of these public law instruments was that the investor had to incur expenditures in advance. The arrangement of the whole system favoured persons of the highest incomes - who fell under the highest tax rates. An important element which supplemented the set of tax deductions introduced with the intention to enhance the effects of housing construction was the abatement for the expenses on repairs and renovation of housing premises.[219]

Each year, at the end of the previous century, several million of taxpayers benefited from this system of tax reliefs. At that time, they were definitely called for, as they slowed down the gradual decrease in the number of newly built houses observed in the first half of the nineties, and contributed to gradual improvement of the situation. Finally, the housing industry started to develop on free market basis, with full scale developer investments and mortgage lending from commercial banks. The system of tax deductions proved quite costly for the state budget. In the years 1993-1995, the annual costs averaged PLN 1.3 billion (approx. EUR 0.31 billion). This figure surged to PLN 3.7 billion (approx. EUR 0.88 billion) in the period 1996-2000 and PLN 4.4 billion (approx. EUR 1.05 billion) between 2001 and 2005.[220]

The ensuing modifications of the tax instruments, and cancellation of the PIT construction reliefs in 2006, were inscribed in a broader context of public finances reform. Since all the amendments reflected ongoing evolutions on the market of financing housing investments and the growing accessibility of mortgage credit, at the final stage of the program, state support for individual households was confined to assistance in repayment of the loan debts (PIT interest relief deduction).[221]

The effects of the tax abatements were additionally bolstered by lower VAT rate for building materials and exemption from tax of the supply of land up to 2004 (which had to be abandoned as a result of unification of the VAT system after Poland's accession to the European Union).[222] In 2006 the last housing deductions were replaced by the system of refunding a part of expenditures on the purchase of construction materials - which had been taxed with a lower VAT rate before 30 April 2004.[223]

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[219] 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa...' (govermnental strategy), 6.
[220] 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa...' (govermnental strategy), 6.
[221] 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa...', 7.
[222] 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa...', 7.
[223] Act of 29 September 2005, Official Law Journal 2005, no. 177, item 1468.

Since the problems concerning the Value Added Tax and its application in the housing sector have, for many years, remained high on the EU agenda, any direct modifications in this respect are not going to be expected on the national level. Bearing in mind the origins of the adopted solutions and the amount of subsidization, the present program is colloquially referred to as "VAT return." It is, indeed, inherently geared to tax provisions, forming at the same time an element of the budgetary expenditures on the housing sector. In fact, participation of this element in budgetary expenses on housing has become dominant. Currently, they make almost 125% of the annual sum of all expenditures provided for housing support within their budgetary partition. They double the volume of budget expenditures envisaged for the payment of historical liabilities (guarantee bonuses, assistance in repayment of "old portfolio" credits) and make four times more than the expenditures incurred in 2010 within the program "Family in Its Own Home".[224]

While tax evasion generally poses a problem in Poland, tenants without any formal agreement are normally protected. There is no need for a lease contract to be made in writing. Where there is no document affirming transaction, tenant may bring an action for ascertainment of legal relationship under art. 189 of the Polish Code of Civil Procedure (PCCP).

Summary table 8

	Home-owner		Landlord	Tenant
Taxation at point of acquisition	VAT on investments and repairs - when buying from a developer	"VAT return" for building materials	n.a.	n.a.
Taxation during tenancy	Property tax	n.a.	Income tax (PIT, CIT)	n.a.
Taxation at the end of tenancy	n.a.	n.a.	n.a.	n.a.

4. Regulatory types of rental and intermediate tenures

4.1 Classifications of different types of regulatory tenures

- *Which different regulatory types of tenure (different regulation about contracts and tenant security) do you classify within the rental sector? What are their shares in dwelling stock (compare summary table 1)?*

[224] 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa...', 35.

All basic types of tenures within the rental sector have been mentioned above. Apart from general lease of units and the so called incidental lease, one can speak of special regulation concerning leases in municipal premises, especially with regard to social units. In addition, there are specific entities, Social Building Societies in which lease contracts are concluded on yet different terms and under specific statutory framework.

According to data from the Central Statistical Office, municipalities owned in 2012 7.3% of all units. The portion of Social Building Societies is much smaller, equal to 0.3% of the stock. In comparison, it seems surprising that employer owned staff premises still make 0.9% of all housing units. This data, however, refers to cases where ownership is determinable. Proprietorship of as much as 7.9% of all units is undetermined.[225] Most of them are managed by cooperatives and municipalities and should, at least for the time being, be considered respectively cooperative and municipal stock. Tenancies can be classified in accordance with the ownership structure of the stock. There are private landlords, municipalities, Social Building Associations, employers providing accommodation for their staff. As far as intermediate tenures are concerned, specific (tenancy and freehold) rights within a cooperative come into question. Condominiums are communities of unit owners. Because of the special non-marketable character, tenancies of the Military Housing Agency[226] and other State Treasury estates are not covered in this report.

4.2 Regulatory types of tenures without a public task

- *Please describe the regulatory types in the rental sector in your country that do not have a public task. This category may be called private or market rental housing.*[227]
  - *Different types of private rental tenures and equivalents:*
    - *Rental contracts*
      - *Are there different inter-temporal tenancy law regimes in general and systems of rent regulation in particular?*
      - *Are there regulatory differences between professional/commercial and private landlords?*
        - *Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)*
      - *Apartments made available by employer at special conditions*

[225] H. Dmochowska (ed.), *Statistical Yearbook of the Republic of Poland,* (Warszawa: Central Statistics, 2013), 314.

[226] Military Accommodation Act of 22 June 1995, Official Law Journal 2010, no. 206, item 1367.

[227] Market rental housing means housing for which the rent price determines the conclusion of contracts and not some social rules of allocation based on need.

- *Mix of private and commercial renting (e.g. the flat above the shop)*

Rentals as such are regulated by the Tenants Protection Act 2001 and, in matters unsettled therein, the Civil Code, especially arts. 680-692. The former introduces a social dimension to all tenancies - given the unique significance of residential tenancy to individuals. It is sometimes argued that these provisions overextend protection and that the lease market cannot develop properly because of the relatively weak position of the landlord, practically unable to terminate the contract when needed.

The Civil Code defines lease in art. 659, providing that under the contract for lease the lessor undertakes to deliver a thing for the lessee's use for a specified or unspecified duration and the lessee pledges to pay the agreed rent. The contract may refer both to movable and immovable property. Under art 660, lease of a unit - whether residential or commercial - or real estate for a more than one year should be in writing, otherwise the contract is deemed to be concluded for unspecified period of time, which is generally much more protective to the tenant. Arts. 680-690 refer especially to lease of premises (both residential and commercial), yet the real protective measures have been introduced in the Tenants Protection Act 2001. Rather than confine its scope of application only to the rights and obligations of the parties to a lease contract, the latter Act defines the notion of tenant in very broad terms. In pursuance of art 2(1) item 1 TPA, a tenant is a lessee of a housing unit or any other person whose enjoyment of the unit follows from any other title - set aside ownership. As a consequence, legal protection is granted to a broad category of individuals, irrespective of the specific type of tenure and the question of ownership of the occupied unit.

In consequence, the public task element is gradable and detectable even in regular commercial leases because of such protective instruments as the right of termination narrowed in art. 11 to situations of the tenant's default. Art. 11(5) provides for the three year period of notice where the landlord merely intends to move in the unit himself but has no replacement premises to offer. In order to stimulate the tenancy market, the legislator introduced in 2009 the incidental lease, discussed in the housing policy section above.[228] Thus far, it is available only to natural person landlords. This new construction allows for termination on terms much more endurable for the landlord, as the tenant is to point in advance to a replacement unit he could go to after termination and declare the intention to wilfully submit to execution.

- *Cooperatives*

As regards cooperatives, they have been described above in much detail in the section on intermediary tenures (between home ownership and rentals).

[228] Act of 17 December 2009, Official Law Journal 2010, no. 3, item 13.

- *Real rights of habitation*

The report thus far has not mentioned proprietary rights other than ownership which may bear a residential function. One of the possible tenures is usufruct - construction defined in art. 252 PCC. Under this article, the entitled person may use the encumbered thing and reap its fruits. This is a limited proprietary right created through contract, relating to movables and immovable property, as well as rights which bring fruits. It may be gratuitous or non-gratuitous, specified or unspecified in time. By definition, usufruct is non-transferable and non-hereditary. Since the tenure is not marketable, its role is generally limited to provision of accommodation and means of persistence to family members. It is, however, admissible for the usufruct holder to let the object of usufruct to a third party. Usufruct terminates upon the death of a physical person or dissolution of a legal person. The right has been framed to satisfy personal needs of the user or occupier, e.g. as maintenance for a family. It usually refers to land, in particular farming land. Since usufruct is a proprietary right, the declaration of intent of the owner must take the form of a notarial deed. (art. 245(2) PCC). Usually both parties appear before a notary and the contract as such is executed as notarial deed.

Usufruct may, but does not have to be entered in the land register. If it is, it shall be effective against any future purchaser of the encumbered land, who will be unable to argue to have been in good faith and unaware of the legal condition of the acquired property.

Another type of proprietary right referring to dwellings is servitude of habitation, which is a special type of personal servitude envisaged in art 301 PCC. Rather than provide precise definition, this provision only stipulates that the entitled person may bring his spouse and minor children to the unit. Other persons come in question only if they are maintained by him or if their presence is needed in order to properly run the household. Children who moved in as minors may remain in the unit also after coming to age.

Pursuant to art. 301(2) the parties creating this servitude may additionally agree that upon death of the entitled person the right to habitation shall pass to his children, parents and spouse. As in the case of usufruct, the servitude may but does not have to be, registered. If it is, it is also effective against future buyers of the property.

- *Any other relevant type of tenure*

Lifetime habitation (908-916 PCC) is an institution of the law of obligations designed to enable the transfer of real property to a successor of a living natural person. The parties conclude a contract by virtue of which the property is transferred in return of the right of habitation, provision of food, clothing, access to electric energy and heating. The new owner is to care for the entitled one in illness and, eventually, to bear the costs of his funeral. The contract must be executed as notarial deed. Lifetime habitation is strictly personal and therefore non-transferable and non-hereditary. It is treated as an encumbrance of the transferred property, thus, the provisions on limited proprietary rights are to be applied accordingly. It may, but does not have to be entered in the land register. Even in the absence of registration, it will

be effective against a buyer of the property acting in good faith (art. 7 item 2 of the Land Register and Mortgage Act 1982 (LRMA)[229]).

4.3 Regulatory types of tenures with a public task

- *Please describe the regulatory types of rental and intermediary tenures with public task (typically non-profit or social housing allocated to need) such as*
  - *Municipal tenancies*
  - *Housing association tenancies*
  - *Social tenancies*
  - *Public renting through agencies*
  - *Privatized or restituted housing with social restrictions*
  - *Public entities (e.g. municipalities) taking over private contracts, typically for poor tenants to counteract homelessness*
  - *Etc.*
- *Specify for tenures with a public task:*
  - *selection procedure and criteria of eligibility for tenants*
  - *typical contractual arrangements, and regulatory interventions into rental contracts*
  - *opportunities of subsidization (if clarification is needed based on the text before)*
  - *from the perspective of prospective tenants: how do I proceed in order to get "housing with a public task"?*

Public task is definitely detectable in municipal tenancies. Pursuant to art. 4(2) of the Tenants Protection Act 2001, municipalities are required to assure social units and replacement units, and meet the housing needs of low income households on the terms provided by law.

In light of the above, social premises make a part of the municipal housing stock destined for the poorest persons living in difficult conditions, in particular those evicted from other places, e.g. for irregular payment of rent. As opposed to the remaining municipal housing resources, tenancy contracts are in this case concluded for a definite period, and renewed only where the tenants continue to meet the criteria set by the municipality (most importantly in terms of income). According to the latest accessible data, at the end of 2007 municipalities held 57 thousand social housing units. As reported by the Institute for Urban Development, in 2010 the number of households waiting for a municipal unit amounted approximately to 190

[229] Act of 6 June 1982, Official Law Journal 1982, no. 19, item 147.

thousand. This figure includes 90 thousand families awaiting the allocation of a social unit.[230]

In spite of governmental plans to change the situation,[231] tenants in the general housing stock held by municipalities enjoy special protection in the sense that the tenancy contract may not be concluded for a definite period as long as the let units are not social premises or staff units (art. 5(2) and 20(2) TPA). In addition, rent payable in municipal units is generally notably lower than in the case of other owners. Oftentimes, incomes from rent are too low to cover reasonable costs of maintenance. This necessitates subsidies for municipal resources in order to avoid further deterioration of their condition.

Since the lawmaker envisaged in 2005 the possibility of discounts in the municipal rental stock for low income households as long as municipal councils enact respective procedures, preferential treatment of all tenants in municipal resources seems no longer justified. There is also an operative system of housing benefits described above, addressed to families in need.[232]

Allocation of a social unit may not only result from the criteria set by the municipal council but, most importantly, judicial decisions. Pursuant to art. 14 of the Tenants Protection Act 2001, in the eviction judgment the court may oblige the municipality to provide a social unit for the evicted debtors, taking into account the manner of their enjoyment of the previous premises, as well as their financial standing and family situation. In addition, the cited statute lists several categories of persons to whom the court must award the right to a social unit if they are evicted from the public housing stock (including cooperatives and Social Building Associations). These encompass: pregnant women, minors, persons disabled, incapacitated or bedridden, pensioners, registered unemployed persons and individuals who meet the criteria set out in the respective resolution of municipal council (art. 14(4)). The exhaustive catalogue leaves the court no leeway. There are plans to waive the statutory enumeration and entirely leave the matter to the discretion of the court.[233]

Temporary premises, which should be provided by the municipality if the court does not adjudicate a social unit must be equipped in the most basic utilities, such as electric light, access to daylight (external windows), access to current water and toilet, even if located outside, heating facilities and non-dampened walls. It must also be possible to install an oven. As mentioned above, the minimal surface of such premises is 5 m^2 per one person.[234] If temporary premises are not designated by the respective municipality within 6 months following the eviction judgment, the bailiff may now evict the debtor to a local night shelter under art. 1046(4) of the Civil Procedure Code.

According to the survey carried out by the Supreme Audit Office, within the time span 2008 – 2010 the housing stock of Polish municipalities was far from sufficient. In the 33 municipalities covered by the survey, the housing resources altogether increased only by 816 newly built units, which made for 3,5% of overall demand. The number of

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[230] 'Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', 95.

[231] 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa...', 41-42.

[232] 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa...', 42.

[233] 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa...', 42.

[234] These are the conditions set out in the regulation of the Ministry of Justice of 26 January 2005, Official Law Journal 2005, no. 17, item 155.

households applying for a municipal unit totalled 23.293. As a result of long waiting lists, the waiting period in the controlled municipalities varied between 1 month and 18 years.[235] Insufficient state subsidies for municipal housing activities and scarcity of funds at the disposal of self-governments not only entrench housing problems of the population, but also lead to dilapidation of the existing municipal stock.[236] The problem seems most burning in the case of social premises, especially ones adjudicated by courts. In the years 2008–2010, out of the total number of 12,648 eviction judgments awarding a social unit 1,444 were executed, which makes only 11,4%.[237]

Under art. 23(4) of the Tenants Protection Act 2001, the rent for a social unit may not overstep half of the lowest rent payable in the general municipal housing stock. The contract for a specified period of time may be renewed for another fixed duration if the tenant remains in a situation justifying the social lease. Should the incomes of the protected household exceed the threshold defined in the resolution of the municipal council and the tenancy be terminated, art. 18(1-2) of the cited statute obliges the occupants of the premises to pay monthly reimbursement equal to the rent the municipality could obtain if the unit were let on regular basis.

The scarcity of available funds for social housing is not a matter of legislative shortcomings. The appropriate legislative framework exists, still, it is not embarked on by decision makers of different level. This is evident by the governmental pilot program implemented between 2004 and 2006 which led to the completion of 5 thousand social units and 500 places for the homeless in overnight shelters. The enactment of the Act on the Financial Support for the Creation of Communal Housing units, Protected Housing Units, Shelters and Houses for the Homeless 2006 clarified the legal situation, but the results of the program were not as satisfactory as expected. Since the beginning of the program in 2004, municipalities managed to put into use 11 thousand social premises, 900 places in night shelters and shelters for the homeless. Out of this total, 6 thousand were completed in the years 2008–2010.[238] Early expectations were much more ambitious. The objective was to deliver 100 000 social units and 20 000 places in night shelters over the years 2007-11, with the central government co-financing between 20 and 40% of the investment costs.[239]

In accordance with the Social Welfare Act 2004,[240] shelter unit is a non-pecuniary form of social assistance. It may be allocated to a person who, bearing in mind his or her age, disability or sickness, needs assistance in everyday life, but does not require to be placed in a residential care facility. These are for instance persons leaving orphanages while reaching full age. Shelter units may be managed by social welfare institutions or public benefit organizations. Organization of shelter units and assurance of their sufficient number is a compulsory task conferred on municipalities. As a result, municipalities should provide requisite funds to the NGO's managing such stock.

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[235] Supreme Audit Office, 'Realizacja zadań...', 14.
[236] Supreme Audit Office, 'Realizacja zadań...', 16.
[237] Supreme Audit Office, 'Realizacja zadań...', 14.
[238] Supreme Audit Office, 'Realizacja zadań...', 32.
[239] R. Kierzenkowski, 'Bridging the Housing Gap...', 10.
[240] Act of 12 March 2004, Official Law Journal 2004, no. 64 item 593.

For many years Social Building Associations[241] were active investors in the social tenancy sector. Even though new investments were practically brought to a halt after the liquidation of the National Housing Fund, there are 79 thousand housing units in their stock. The number seems low as compared to 1063 thousand municipal units, but the municipal stock consists mainly of old buildings (see the section on current situation). In order to become a Social Building Association tenant, an individual may have no title to any other unit in the same city. In addition, monthly income of the household applying for a unit may not overstep the statutory maximum. Pursuant to art. 30 of the Act on Certain Forms of Support for the Building Industry 1995, this income should not exceed the basic quota of 1,3 of an average monthly salary in a given voivodeship (regional level self-government), announced before contract conclusion, by more than 20% in a single-person household, 80% in a two-person household and 40% for each additional person.

Social Building Associations are entitled to verify their tenants' income. Every two years before 30 April, each tenant is obliged to submit a written statement reporting monthly incomes in the household and whether he has not acquired a tenure in another unit.

Transgression of the maximal income threshold, acquisition of a tenure in other premises or untimely submission of the statement may result in a rent increase notice. In such cases, the Association may introduce free rent, exceeding 4% of the replacement value. Where the tenant information provided in the statement proves false, the Association may instantly terminate the tenancy, and if the tenants fail to vacate the premises, the Association may claim compensation for wrongful enjoyment of the housing unit in the amount of 200% of the normally payable monthly rent.

Currently, rent in the stock controlled by Social Building Associations is determined so as to make the total of all rents in the units owned by the Association equal to the costs of maintenance, repairs and repayment of the credit borrowed for the construction. Two years ago, the government proposed to lift these preferences and introduce the general TPA regime instead. Under this regulation, Associations would be able to apply rents varying in accordance with the type of premises. Moreover, the limitation on the maximal rent value would no longer apply. At the same time, tenants would have the opportunity to question the amount of a rent increase.[242] These ideas have not been put into practice so far. It seems that decisions concerning the future of the Social Building Association stock will have to wait for the end of the crisis when more funds to allocate may come into question. On one hand, it must be emphasized that the investments of the Associations were definitely called for. They helped meet the housing demands of many lower income families in the general situation of deficit on the tenancy market and generally poor condition of the ageing municipal stock. On the other hand, the number of new units did not live up to the expectations, even if those expectations were overstated by political actors. Although, as certain scholars claim, it would be unwise to develop the new social tenancy stock to 100 thousand in 2020, as it was planned at the beginning of this Century,[243] it seems that the potential of these specific entities has not been entirely realized.

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[241] Discussed above in reference to housing policies and the future of social rentals.

[242] 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa...', 50.

[243] M. Frąckowiak, *Ekonomiczne i społeczne problemy...,* p. 121.

- Draw up summary table 9 which should like as follows:

Rental housing **without a public task** (market rental housing for which the ability to pay determines whether the tenant will rent the unit); for example different inter-temporal schemes of different landlord types with different tenancy rights and duties	Main characteristics • Types of landlords • Public task • Estimated size of market share within rental market • Etc.
1) Private tenements	Mainly natural person landlords (since developer tenancies are very rare), about 3% of the housing market, free rent with restricted increases
2) Cooperative tenancy[244]	Obligational rights close to tenancy contracts of unspecified duration, yet, more stable than lease and advantageous for the tenant
3) Cooperative freehold	Inheritable and transferable proprietary right similar to ownership
Rental housing for which a **public task** has been defined (Housing for which government has defined a task; often non-profit or social housing that is allocated according to need, but not always)	
4) General municipal stock	Municipalities are free to shape their policy regarding these tenancies and set criteria of their allocation; rents are gradually increased.
5) Social municipal stock	Low rent for low income households, often evicted for non-payment of rent
6) Social Building Associations	Rent calculated so as to cover maintenance and repair costs.

[244] Described in more detail in the section on intermediate tenures.

7) Shelter units	Allocated to a person who, bearing in mind his or her age, disability or sickness, needs assistance in everyday life, but does not require to be placed in a residential care facility

- For which of these types will you answer the questions in Part 2; which regulatory types are important in your country?
  - 1) private tenements
  - 2) cooperative tenancy right
  - 3) cooperative freehold right
  - 4) general municipal stock
  - 5) social municipal stock
  - 6) Social Building Associations

5. Origins and development of housing law

- *What are the origins of national tenancy law and where was and is it laid down (civil code, special statute, case law)?*
- *Who was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules (e.g. protection of the tenant's home as in Scandinavia vs. just a place to live as in most other countries)*
- *What were the principal reforms of tenancy law and their guiding ideas up to the present date?*
- ~~Do other forms of "lawful possession" of a premise for housing purposes (e.g. usufruct, licence etc) play a role? (~~deleted as contained in part 1)

The concept of tenancy law.

This part of the Report seeks to present the evolution of housing law in Poland. Norms of housing law make extremely important instruments of the state's housing policy. They are distinguished not according to the method of regulation of legal relationships (administrative or civil law) but rather their subject matter. The term refers to a set of legal norms which regulate a wide spectrum of socio-economic relations, related not only to acquisition of specific rights to dwellings but also their enjoyment, questions of development of the housing stock, its growth and proper maintenance.[245] Such issues are referred to as "housing law," which is justified by the fact that this expression already appeared in the Housing Units Law Act 1974 (HULA).[246] The Act covered the terms of catering for the housing needs of the population, in combination with the Civil Code provisions on the contract of lease.

[245] K. Krzekotowska, *Prawo mieszkaniowe,* (Warszawa: Wydawnictwo Prawnicze 1988) , 12.

[246] Act of 10 April 1974 r. consolidated text, Official Law Journal 1987, No.30, item 165 (hereafter referred to as "LRU1").

This piece of legislation referred to basic types of legal relationships pertaining to enjoyment of units and buildings (art.1 HULA).

Housing law refers to various tenures in housing units and encompasses a number of legislative acts falling under different legal branches, especially administrative and civil law. Evolution of tenancy law in communist Poland led to prevalence of the administrative law regime. Administrative norms, however, were supported by civil law foundations which finally allowed to account for the principle of party autonomy (art. 353^1 CC).[247] This was a consequence of the economic transition from the so called command economy to market conditions. Such adjustments were eventually possible in the 90's of the XX Century. That decade was a period of major legislative amendments.

Historical overview of tenures in units and buildings in Poland

As a result of three partitions of Poland in the XVIII Century, the last of which was executed in 1795, the Polish territory fell under the rule of three powerful monarchies, Prussia, Austria and Russia. Natural development of the Polish state, which had stretched over huge territories after the union between Poland and Lithuania was brought to an end. The states responsible for partitions introduced their own legal systems on the conquered terrains. In XIX Century, the civil law codifications of these powers were imposed on Polish territories. These was not only law of the conquerors. In the period of Napoleonic wars, the Duchy of Warsaw was created. The 1808 Constitution instituted the Napoleonic Civil Code of 1804 in this political entity. Following Napoleon's final defeat in 1815, the Kingdom of Poland was established in the Russian partition. In 1825, the amended Napoleonic Code was transformed into the Civil Code of the Kingdom of Poland.[248] As regards the Prussian partition, the basic piece of legislation which defined civil law relationships was initially the Prussian Landrecht (1794), subsequently replaced by the German Civil Code (Bürgerliches Gesetzbuch – 1896- BGB). On the territories captured by Austria, the Austrian Civil Code was imposed (das Allgemeine bürgerliche Gesetzbuch – 1812- ABGB). Finally, in the domain incorporated directly into the Russian Empire (outside the Kingdom of Poland), the genuinely domestic III Lithuanian Statute was eventually replaced by X Volume of the Russian Zvod Zakonov.[249]

This peculiar legal mosaic was one of the most serious challenges for the new Republic of Poland reinstituted in 1919 as a result of World War II - along with many issues following from uneven economic and social development in specific regions which had been under different rules for over 100 years. A necessary, though not sufficient, step in order to enable further development was the unification of civil law. This task was not accomplished over the twenty year mid-war period, however, the legislator managed to enact legislation which covered certain aspects of private law. This referred primarily to the Code of Obligations 1933 or Commercial Code 1934. Conflicts of laws were handled by the interregional regulations and the Act of 1926 - Private International Law which pertained to conflicts between various legal systems.[250]

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[247] K. Krzekotowska, *Prawo mieszkaniowe,* 12 ff.

[248] A. Wolter, J. Ignatowicz, K.Stefaniuk, *Prawo cywilne. Zarys części ogólnej.*(Warszawa 1996), 36-38.

[249] A. Wolter, *Prawo cywilne…,*39-40.

[250] A. Wolter, *Prawo cywilne…,*41 .

Housing unit management before World War II

The main problem of Polish housing, the inability to satisfactorily cater for housing needs of citizens, has been a major issue since the mid-war period. The difficulties are deeply entrenched in many critical areas and follow from various reasons. Among circumstances which lie at the basis of this situation one may point to:

1. economic transitions, especially the development of industry, which accounts for migration of the poorest population from the country to the city,
2. low income of the population, which made lessees unable to meet landlords' demands with regard to the amount of rent agreed in lease contracts,
3. destructive results of both world wars waged on Polish territories, much more disastrous than in other countries,
4. unclear legal status of many housing units, following from their abandonment after the war, complex legislation dictated by the need for unification, and subsequent adjustment of law to the requirements of the new political system,
5. "ideological grounds" connected with the socio-economic background of the regime defined as "socialism," which prioritized legal protection of the "weaker party" – the lessee, and, finally, market economy in which housing relations are best typified in terms of civil law contracts for lease whose parties are equal and able to exercise contractual freedom.

Already in the mid-war period, the housing situation in Poland was extremely difficult, which was a result of devastation caused by World War I. Those days, such phenomena as a very high number of occupiers per unit, degradation of the residential stock, high frequency of sub-leases, squatting and homelessness were widely observable. The underlying reason was the scarcity of residential housing which made the unit occupancy twice as high as in England, the Netherlands and Germany.[251] As time went by, one could hardly speak of any virtual improvement. Quite contrarily, problems intensified further due to the dominance of single-room units (two-room units were not so widespread), occupied by large worker families with many children.

These particularly adverse conditions were spotted by the decision-makers, who reacted by creating a national housing inspection, a tenant protection system and a temporary regime enabling acquisition of housing units.

As far as legislation is concerned, in the years 1918-1920 four acts on tenant protection were enacted. The final statute was adopted in 1924 and remained in force until the entry into force of the Tenancy Decree of 28 July 1948. The mid-war legislation imposed restrictions on party autonomy in lease contracts which fell within their scope. Justification behind the enactments was that "tenant protection was a specific area of law called for by post-war conditions. Its provisions owed their shape to the fact that the legislator, in a manner contrary to the general regulation, limited,

[251] E. Ochendowski, *Administracyjno – prawna regulacja korzystania z lokali mieszkalnych w systemie gospodarki planowej PRL*, (Poznań: UAM, 1965,).., s.10 na podstawie A.Andrzejewskiego, *Zagadnienia mieszkaniowe w Polsce Ludowej*, (Warszawa 1952), 33.

in the public interest, the owners' right to freely dispose of their property where that property was an object of a lease."[252]

These statutes confined the landlord's freedom to terminate the lease contract to cases justified by "important reasons." Important reasons could mean, for instance: that the lessee fell in arrears for two successive rent instalments (unless the backlog resulted from unemployment or abject poverty); that the lessee sublet the whole unit or its part for consideration higher than the rent paid by himself; that the lessee assigned the right to enjoy the unit to a third party without landlord's consent, had at his disposal another housing unit in the same city or village, obstinately or blatantly violated house regulations, repelled other occupiers from the house, or seriously breached the house rules by indecent conduct. These statutes introduced maximal rent rates, which disabled rent speculations. In the mid-war doctrine (F. Ochimowski, Z. Pietkiewicz, K. Krzeczkowski, W. Brzeziński, A. Andrzejewski)[253] these enactments were received with approval, even though the tenant protection envisaged by law was rather inflexible and schematic. It led to dilapidation of the housing stock in that it failed to assure the financial resources needed for maintenance. The statutes allowed, however, to protect at least a number of poor people from the prospects of homelessness. Unfortunately, legal regulation could not cure the housing deficit existing at that time, although it did not bar housing investment, since the protection did not apply to the newly built stock in which rent could be freely agreed according to the principle of contractual freedom.

Housing law in post-war Poland in the conditions of command economy

The housing situation devolved further after the World War II. This was, for the most part, due to massive devastation of the housing stock caused by the war, which was particularly intense in certain Polish cities. By July 1945, about 370 million m^2 of usable floor area was destroyed, which corresponded to approximately 3 million devastated or seriously damaged rooms.[254] Most severe devastation was observed in Warsaw, where 71,5% buildings were completely wiped out and 15% partially destroyed. Losses were also high in Wrocław, Gdańsk and Poznań, as well as Kołobrzeg, Grudziądz, Stargard, Gorzów and many other cities.

The scarcity of apartments had its impact on legislation. As stressed by academics,[255] the importance of correct regulation governing the distribution of deficit commodities is crucial. This goal, however, were not achieved in the initial period by the institution of public management of units supplemented by monopoly of housing cooperatives. Nonetheless, it was not possible to employ any alternative policy at that time, as we bear in mind the general social and political climate following the war.

In these conditions, a novel approach to housing had to be adopted. This was a result of the political system which put emphasis on the concept of "social justice" and necessary preference of the interests of "working people" over the interests of landlords. This translated into the housing policy of the government which pursued the constitutional principle of absolute equality among citizens before state authorities. Essential goods were to be distributed equally, which referred as well to

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[252] R.Baranowski, *Ustawa o ochronie lokatorów*. (Poznań: Drukarnia Dziennika Poznańskiego 1933), 195.
[253] Cited by E. Ochendowski, *Administracyjno-prawne*..., 13-16.
[254] See A. Andrzejewski, *Zagadnienia mieszkaniowe w Polsce Ludowej*, (Warszawa: Polskie Wyd. 1952), 44-45.
[255] K. Krzekotowska, *Prawo mieszkaniowe* (Warszawa, Wydawnictwo Prawnicze, 1988),13.

housing units. In a situation of deficit, such goods were to be distributed fairly. The basic difficulty related to implementation of the enacted solutions was that human needs were dynamic. The population whose needs were to be catered for was growing in number, whereas the capacities of the state were scant. Housing units were costly durables of low adaptability to the needs of occupiers.[256] A similar problem was shared by many countries, yet, solutions adopted in various "socialist states" were different. In order to improve the situation, the so called subsidy model was implemented, which involved the dominant position of the state, subsidies, central financing and housing administration, combined with strict control of state authorities pertaining to allotment of units.[257]

In the new political circumstances, principles of civil law were expected to be, and actually were, replaced by administrative regulation. In that period, W. Brzeziński asserted that the only relic of civil law in the institution of lease was the lessee's duty to pay rent.[258] Rentals in general were to be perceived as a matter of administrative law. A different view was presented by J. Gwiazdomorski, who emphasized the difference between the new regulation of tenancy and principles following from the Code of Obligations (civil law regulation).[259] In the opinion of that author, the relationship of lease under capitalism (before the war) had been a venue of economic battle between two opposing parties (lessor and lessee) who tried to enforce their adverse interests. Consequently, he advanced a new conception of "economic organization relationship," which was possible because the rules of the Decree on the Public Management of units and the Tenancy Decree clearly strayed from the rules of the Code of Obligations referring to lease contracts. The differences derived predominantly from the absence of express provisions in the pre-war 1933 Code of Obligations on social significance of tenancy and the parties' freedom to shape their rights and obligations.[260]

Such views were disputed by J. Skąpski, who asserted that in pre-war conditions the opposition between lessor and lessee interests could not be affirmed, because the lessor had little opportunity to abuse the weaker party, that is the lessee, and consequently there was no point in putting the equation mark between exploitation and residential lease, or postulating abolishment of this institution. According to Skąpski, even if rent was to embody a certain value, it did not merely encompass profits of the landlord. Rather than that, it was spent for the most part e.g. on repairs, taxes, contributions to the Housing Economy Fund, etc.[261] This author's contention that rent paid by lessees in the post-war period was a civil law rendition rather than administrative levy seemed well grounded. While it was not intended to generate income to the owner of the let unit, and its level was to assure citizens' durable rights

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[256] K. Krzekotowska, *Prawo mieszkaniowe...,* 10.

[257] K. Krzekotowska, *Prawo mieszkaniowe...,* 11.

[258] Por. W. Brzeziński: *Prawo mieszkaniowe*, s.110

[259] Por. J. Gwiazdomorski: '*Najem „lokali jako problem kodyfikacyjny'*, *Państwo i Prawo* (1956), no. 4, 675, and gloss by the same author to the decision of the Supreme Court of 25.01.1956, CR,75/56, *Nowe Prawo* (1957), no. 3, 123 ff.

[260] See J. Skąpski, 'Zagadnienia cywilistyczne prawa lokalowego', Nowe Prawo 7-8 (1957), 32.

[261] Cf. J. Skąpski , 'Zagadnienia …'. 33.

to units, rent payable by lessees was to provide funds for maintenance and running repairs of buildings in which the housing units were located.[262]

The administrative framework of housing relationships implied as well that public authorities may utilize the housing stock more fully. This was to be achieved by:

1. development of residential housing,
2. abolition of private ownership of tenements, or its reduction in a way which excluded the owner's choice of occupiers in particular units, accompanied by public management of the stock by officials or social organizations by way of administrative decisions,
3. inclusion of housing construction in long-term economic plans.

Resolution of these problems was in a way forced by such factors as: great scarcity of the stock (devastation caused by war, rapid development of industry, growth of population employed in the cities (migration from the country) and emergence of low cost housing complexes intended for workers, considerable rate of population growth, low wages disabling payment of rents imposed by landlords.[263] The final factor ought not to be neglected as lessees with lowest incomes could be ousted from the market if it was the standard of a unit alone that should determine the level of rent. Its value should rather be dependent on the costs of maintenance. It also seemed understandable that rent was to generate profits to the landlord. In the end, it was agreed that the amount of rent should be determined not only by the size of a unit and costs of its maintenance, but also financial standing and family status of tenants. The amount of rent payable was fixed on the basis of mandatory legal rules.

The system of rent control was a consequence of the so called public unit administration introduced by communist authorities. The piece of legislation which embodied these principles was the Decree of 21 December 1945 on Public management of Units and Lease Control.[264] Public management of units was first instituted in Warsaw and other six largest Polish cities, but the Council of Ministers, acting under the Decree, extended the administrative regime to many other places, including rural municipalities. On the whole over 800 urban and rural areas were involved. Municipal authorities (national councils) were also empowered to implement specific norms on filling vacant units. Soon the Tenancy Decree of 28 July 1948 was passed, which defined at length rents payable by lessees who made their living on wage labour (which held true for most of the population), public benefits and pensions.[265]

In the new system, legal provisions drastically limited actual amounts of rent. These rules were a product of a particularly inflexible system of unit allotment,[266] as described below in more detail. Notably, such conclusion follows from recent judgments of the European Court of Human Rights. It was also a matter of a ruling by

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[262] Cf. J. Skąpski , 'Zagadnienia …', 41.
[263] E. Ochendowski : *Administracyjno - prawne*..., 16-18.
[264] Official Law Journal 1946, No.4, item 27.
[265] E. Ochendowski, *Prawo mieszkaniowe i polityka mieszkaniowa* (Toruń: UMK, 1980), 28.
[266] judgment of the European Court of Human Rights of 22 February 2005 in the case Hutten-Czpska v. Poland , application no,35014/97

the Polish Constitutional Tribunal (of 12 January 2000) - one of the Tribunal's judgments pertaining to constitutionality of certain pieces of legislation concerning rents - which offered a thorough analysis of the historical background behind the current regulation and factors which justify preservation of instruments of rent control originating in the early years of the socialist regime in Poland.[267]

In the view of many scholars, the post-war regulations (Decrees on Public management and Lease of Units) did not preclude private ownership of houses or housing units, because the Constitution of the People's Republic of Poland - although guaranteeing full protection of citizens' personal ownership - limited that protection to property necessary to cater for the needs of an owner and his family. The guarantee referred not only to private tenements but also detached houses and housing units which served exclusively the needs of the owner and his close relations.[268] Such reservations, however, did not translate well into practice. The fact that owners managed to safe their homes from nationalization was not sufficient to preserve the ownership as such, since maintenance of the units proved extremely difficult in the conditions of impoverishment of the society and scarcity of funds for repairs or modernization of the resources. In addition, premises could not be passed to owners' offspring, whose residential needs had to be addressed by resort to municipal or cooperative stocks.

In the first years following the war, before 1948, the state supported private housing investments, since state funds had to be channelled to formation and reconstruction of the heavy industry, mining, transport and other branches of economy. Institutional support consisted in the enactment of rules assuring availability of credit, building plots, construction materials, tax concessions or exemption of buildings and housing units erected in the times of reconstruction from the public management of housing units and the system of rent control. The opposite tendency originated as late as in 1951, by adoption of the Act on Buildings and Newly Erected or Reconstructed Housing Units,[269] which subjected such buildings and units to public management. Previous exemptions were upheld only in relation to detached houses of more than five rooms if they were occupied by the owner. Provisions defining detached houses in this manner were subsequently applied to houses built before 1956.[270]

The years 1950-1958 stretched over the period of the so called six-year plan which subjected housing investments to the needs of industrialization of the country. This required basic development incentives in the area of housing construction for employees of industrial enterprises established in large cities and minor town facilities which bore an auxiliary function in relation to heavy industry, the mining sector, metallurgy and other manufacturing areas. It was pointed out at the time that, due to industrial construction, the volume of housing investments was consistently falling below the necessary minimum.[271]

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[267] I deliberately avoid the expression "communist authorities" used by the European Court of Human Rights and the Polish Constitutional Tribunal. In fact it would be difficult to call the Polish housing sector "communist," since the strategy typical for all such regimes and applied in other "people's democracy" countries: nationalization of real estate. Rather than that, properties remained in private hands.

[268] E.Ochendowski : *Administracyjno – prawne...*, 19, K.Krzekotowska, *Prawo mieszkaniowe...,* 13-14.

[269] Act of 26 February 1951, Official Law Journal 1951, no.10, item 75.

[270] E. Ochendowski, Administracyjno prawne...,24 – 25.

[271] M. Niedzielski,'Rozmiary miejskiego budownictwa mieszkaniowego w Polsce', *Gospodarka i Administracja Terenowa* (1965), 39.

The concept of "public management of units" was understood as " statutory allocation of housing units employed in the general public interest, with limitation or to the exclusion of the rights of an owner or manager of a building to freely let the units as well as restriction of the lessee's free use of the unit,"[272] for instance by its sublease. Under the same Decree, inception of lease was correlated to issuance of allotment decisions by proper authorities. Contractual lease was only possible in relation to particular buildings or their groups exempted from the application of the Decree (art. 4.).[273] It may be added that the relationship of lease was not instituted solely under a decision of the allocating authority. According to art.11 of the Decree, the period of lease started running after the receipt of the housing unit by the person named in the allotment. Two conditions had to be met jointly for a lease to start: issuance of an administrative allotment decision and factual receipt of the unit. One pivotal consequence of this regulation was that when the allotment decision was granted to a person who had acquired the right to a unit, and the owner or manager of the building declined to deliver the unit of their own accord, or where the delivery was impossible because the unit was illegally occupied by another person to be evicted first, the lessee named in the allotment decision could not assert any civil law claim for delivery of the unit against the landlord or squatter.[274] The only available option for the rightful lessee-to-be was to enforce the final allotment decision in administrative enforcement proceedings.

The Supreme Court gave an interesting legal opinion concerning the essence of lease relationships following from administrative allotment in a 1954 resolution.[275] The Court held that a relationship of lease was not instituted by exchange of parties' declarations of will but the decision of the allocating authority. It can, thus, be said that the parties' rights and obligations took roots in that administrative decision. In case of any doubts as to the object of the legal relationship, for instance as to the unit's appurtenances (e.g. a cellar), the authority competent to resolve the issue was not a general court of law but an administrative body acting in accordance with administrative procedures. An allotment decision set out the terms of lease in a mandatory way, which precluded any independent arrangements of the parties in terms of mutual regards their rights and obligations. If, for instance, the allotment decision entrusted the housing unit jointly to more than one person for common enjoyment, co-lessees could not agree on a *quoad usum* division. Modification of the use stipulated in the decision could only be effected by another decision of the allocating body.

In the cities not covered by the public management of units, authorities supervised the housing stock and its management in accordance with public law provisions. This supervision was exercised by competent bodies, poviat (local) or voivodeship (regional) commissions, as well as the National Housing Commission. These bodies were entitled to issue an allotment decision at the permission of a local housing commission if a given unit was needed by a state-owned company or proved necessary to accommodate an employee who was to be employed based on the enactments imposing the obligation to work, or for other important public objectives.

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[272] A. Andrzejewski, *Polityka mieszkaniowa...*, 340,
[273] J. Skąpski, 'Zagadnienia...', 34-35.
[274] J. Skąpski, 'Zagadnienia...'.36.
[275] J. Skąpski, 'Zagadnienia...'.35.

Provisions of the Decree on public management of units introduced an exception to the general need to obtain allotment in order to enter into the lease relationship. Art. 8 of the Decree referred to the problem of setting standards of the housing stock occupancy in particular localities. A lessee could file for official recognition of persons otherwise entitled to a housing allotment as co-tenants within 30 days following the announcement of local occupancy standards. In accordance with art. 11(2) of the Decree, the relation of lease was instantiated *ex lege* between such persons and the lessor.[276] In places in which the public management of units had been introduced, it was inadmissible to sublet housing units by contract. Only commercial units could exceptionally be sublet in such administrative areas.[277]

Pursuit of the so called new policy in the period 1950 – 1958 [278]

Another category of housing units covered by special rules, thus exempt from the provisions of the Decree on Public Management of Units, were housing units for professional staff and servicemen. Separate regulation followed from the need to ensure accommodation to specialists necessary for the development of cities and industry. This problem was addressed in two regulations of the Council of Ministers: of 21.06.1950 on staff housing,[279] and of 4.06.1952 on housing units for staff and servicemen,[280] which provided that allocation of a new staff unit should be effected by an agreement in writing between the employing institution and the employee. The contract laid down the terms of allotment and named the persons entitled to occupy the unit together with the employee. Since it was a contract, it was undoubtedly justified to apply civil law norms on general conditions of contract validity. Such commencement of lease had nothing in common with administrative law relationships.[281]

A similar situation was the case with regard to housing units located in places where public management of the stock had not been adopted. Lease relationships were instituted there (subject to certain exceptions) by civil law contracts, as envisaged in the Tenancy Decree. Formation of such contracts was subject to the rules of the pre-war Code of Obligations on the contract of lease, with the proviso that the Decree imposed mandatory regulation of rent for the unit let, as well as certain specific duties of the lessor and lessee. In addition, it addressed the question of admissibility of termination.

Public tenancy control was first imposed in 1950. Housing commissions mentioned above were abolished in that year. Their objective had been to apply the principles of allotment of units to each prospective lessee according to his or her profession, health condition and family status.[282] All lease contracts concluded otherwise than through housing commissions had been void. Following that date, provisions on public management of units and tenancy control were amended. More and more

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[276] J. Skąpski, 'Zagadnienia...'37.
[277] J. Skąpski, 'Zagadnienia...'.37.
[278] E. Ochendowski, *Prawo mieszkaniowe…,*29.
[279] Official Law Journal 1950. no. 28, item 257.
[280] Official Law Journal 1952, no. 29, item 196; J. Skąpski : 'Zagadnienia...'.38.
[281] J. Skąpski : 'Zagadnienia...' 38.
[282] E. Ochendowski, *Administracyjno prawne*..., 27.

units in new buildings were at the disposal of local administration (national councils) with the intention to fulfil people's most urgent needs. Then, the focus of residential housing understood as a branch of administration was shifted from the central level to local authorities and state enterprises employing prospective tenants, even though housing enactments of 1959[283] limited seriously the number of staff units, previously covered by the Regulation of the Council of Ministers of 4 June 1952 on housing units for staff and servicemen,[284] by changing the status of many such premises and their submission to public management of units.

A number of legal provisions were adopted with regard to the determination of rent in those units, which introduced rather complex mechanisms, yet, failed to ensure sufficient rental income to secure maintenance of buildings and their proper technical condition. That end was not attained, despite establishment of the Housing Management Fund, since the duty to pay contributions rested on lessors rather than lessees.[285] In addition, a vast group of individual landlords was exempt from this obligation, namely persons who made their living as regular employees, retirees and pensioners, students, academics, artists, writers, etc.[286] This shifted the burden of maintenance to the state, but was necessary because decision-makers realized that to increase rents to the level justified from the economic perspective would mean to reduce the standard of living of the population.

Unfortunately, neither the development of residential housing nor public management of units, nor the control of rents led to a visible improvement of the housing condition of the population. This was particularly true in the cities because of intensive migrations from the country, which led to a situation of over-crowdedness of the housing stock, especially in old buildings. In the years 1950-1955 the urban stock grew by 817 thousand new rooms constructed almost exclusively by state run entities. Only 7% of these premises were funded by the prospective occupiers, which demonstrated the ongoing impoverishment of the population. This did not, however, translate positively in the ratio between number of tenants and housing units, which even underwent further deterioration. The volume of housing investments was still below the necessary minimum allowing to cover current housing needs or achieve their stabilization.[287] Another pivotal phenomenon at that time was the absence of consequent housing policy with regard to administrative acts, allotment of housing units. This was a consequence of the absence of proper understanding of the needs of the candidates or any thorough investigation of circumstances relevant to a sound decision-making process in this respect. Academic writers emphasize massive irregularities, particularly when it comes to management of commercial units. State companies or institutions frequently made overstatements in their motions for allotment. They moved without actual commercial justification. Such motions could also have as their object units which were unfit for the intended economic purpose. This often led to a situation in which the premises remained vacant for a long period

[283] Act of 30 January 1959, Official Law Journal 1959, No. 10 item 59.
[284] Official Law Journal 1952. No. 29, item 196.
[285] J. Skąpski, 'Zagadnienia...', 34.
[286] E. Ochendowski, *Administracyjno prawne*..., 30.
[287] M. Niedzielski, 'Rozmiary miejskiego budownictwa mieszkaniowego w Polsce', Gospodarka i Administracja Terenowa (1965), 39.

of time, which obviously meant a breach of the principles of public, planned and proper management of the stock.[288]

In light of the above, it was necessary to lend, as a part of the so called "new housing policy," more support for cooperative and individual constructions, which required greater citizen participation than before. Effects of such strategy were powerful, because soon (already in 1960) the share of these means amounted to 33% of all urban housing investments.

In spite of the attempts to remedy the situation, a major improvement could not be observed between 1950 and 1958. Moreover, the same principles of allotment policy as previously imposed on the level of local authorities (national councils) have now been introduced for housing cooperatives. The latter form was utilized more frequently to the benefit of the population. A number of new statutes were adopted and a couple of earlier pieces of legislation amended. Nevertheless, in 1965, at the end of the 3-year plan period (a central planning interval), it was concluded that many urgent housing needs were still far from satisfied. In practice, this accounted for long waiting lists of prospective tenants (about 155 thousands of families) and no real real chances to fulfil the needs of single persons or families with many children, in particular families comprising six or more members.[289] In the following years, after 1958, significant changes took place in order to address the onerous situation.[290] After the entry into force of the Decree on Units in Cooperative-Owned Buildings and Detached Houses (1954) and the Decree on the Exemption of Detached Houses and Cooperative-Owned Units from Public Management (1957), the number of units administered by public authorities decreased. Especially the latter piece of legislation entrenched the main lines of housing policy and allowed for the development of housing investments financed from citizens' pocket.[291]

The years 1960-1970 were a period in which the number of housing units and rooms was systematically increasing, although the growth was far from impressive, especially in the second half of the 60's, which was a result of a decline in birth-rate. On the other hand, the number of units increased by 947,000, and the overall number of housing units totalled 3.580.000. In the cities, new housing constructions resulted from intense development of the cooperative sector which became the dominant investor catering for the housing needs of the population. In urban municipalities, the share of their investments in the overall number of new constructions made over 55% .[292] In spite of considerable progress in the area of cooperative investments, it would be difficult to maintain that housing needs of the population were satisfied sufficiently. In Poland at that time, intense processes of urbanization and industrialization took place, which entailed social and cultural transitions. It must be added that the number and standard of household equipment, particularly in the face of practical paralysis in the production of construction materials and accessories, were low. Almost 23% units had no water systems, almost half of them lacked bathrooms. In addition, the housing situation was diversified according to regions. It looked the best in Opolskie and the worst in

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[288] J. Skąpski, 'Zagadnienia...', 36.
[289] E. Ochendowski, *Administracyjno prawne...,* 35-37.
[290] E. Ochendowski, *Prawo mieszkaniowe…,* 31.
[291] E. Ochendowski. *Prawo mieszkaniowe…,* 31.
[292] E. Ochendowski, *Prawo mieszkaniowe...,* 32

Kieleckie region, which was also geared to the shortage of manpower in the building industry, caused by underdeveloped commuter traffic or inability to realize the production potential, regarding particularly construction machinery and equipment.[293]

For all these reasons, a number of rather extensive amendments to legal provisions were introduced. In the Act of 30 January 1959,[294] the legislator took into account the dynamics of development concerning cooperative constructions and staff housing. A vast number of provisions were devoted to individual construction of detached houses and units in multi-family buildings, whereas only one statutory chapter referred to public management of units. This only demonstrates that already at the time it was a phenomenon decreasing in importance. More attention was given to civil law regulations on tenancy contracts, thus far laid down in the 1933 Code of Obligations. Party (tenant and landlord) obligations were precisely defined in the new enactment, in particular duties referring to maintenance of units and buildings, a tenant's duty to put down a deposit as a pledge for the unit's preservation in proper condition. One crucial provision, considered an expression of the officials' struggle with private tenement owners, was a rule which allowed authorities to take control of the stock belonging to natural persons or other private entities when the owner failed to manage or neglected his management duties, or where his actions threatened integrity of the building. Many owners lost at that time titles to their buildings and tenements. The same statute contained as well certain protective provisions relating to cooperative units, detached houses and small residential buildings. These could not be taken over for state management. Even at such points where public management of units was preserved, the legislator considerably alleviated administrative burdens on the parties. This was for instance manifest in the freedom of a tenant in an under-occupied unit to take another person as co-tenant, or the requirement of landlord's consent to exchange a unit covered by public tenancy regime or make improvements to substandard units in order to make their enjoyment more comfortable.[295]

Provisions of that Act were amended on several occasions to express current tendencies in the government's housing policy. The main policy objectives were to distribute units according to the central plan in order to improve the housing situation of social groups living in the harshest conditions: in non-residential or overcrowded premises. Another closely related policy line was to hinder unit allotments to persons of higher incomes. What is more, units were allocated according to a list of individuals who were to obtain an allotment in a specified time. Such lists were announced to the public so that third parties could raise comments and objections concerning the candidates. A separate resolution of the Council of Ministers laid down the principles of unit allotment.[296]

The first statute on tenancy law was passed in 1974. It was thoroughly amended in 1987.[297] It brought about more stability to various tenures in housing units than before and limited additionally the administrative intervention in management of the

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[293] E. Ochendowski, *Prawo mieszkaniowe...*, 32-33.
[294] Official Law Journal 1959, No. 10, item 59.
[295] E. Ochendowski, *Prawo mieszkaniowe*....34.
[296] Resolution no.123 of 22.May 1965, MP No.27, item134, E. Ochendowski, *Prawo mieszkaniowe*....35., K. Krzekotowska, *Prawo mieszkaniowe,* 12-13.
[297] Official Law Journal No. 14, item 84.

housing stock, providing for the possibility to replace this intervention with economic instruments progressively - as the housing situation in the country was improving.

New legal and economic frames modifying the system of tenancy law.

Since the legal and economic measures implemented in the 40's and 50's did not lead to proper development of housing, other implements had to be applied with the intent to:

1. increase the number of new buildings and units, provide investors with land suitable for development,
2. assure wider utilization of prospective tenants' capital in the investment process,
3. amend the existing regulation in a way which could lead to accomplishment of these goals.

As regards the first objective, the steps taken to achieve that end were widely applied expropriations of owners from areas suitable for development and their acquisition by the State Treasury. The second goal was achieved by granting the right of perpetual usufruct[298] of land to investors, that is state enterprises, housing cooperatives and natural persons who advanced their own funds (state enterprises' proceeds and subsidies, cooperative members' contributions and own income of working people).

The third element required enactment of rules covering the land subject to of expropriation and compensation payable in such cases, as well as property law consequences of granting land for perpetual usufruct, starting from the definition of this tenure.

The basic problem was thus to obtain land for housing construction, which was an uneasy task. It was the case because in Poland, despite the political transformations, full nationalization of real estate was not implemented in the period following the war. As a result many properties remained in private hands.

Already before the war, there existed a statute of 24 September 1934 regulating procedures in expropriation cases which retained its force until the enactment of the Act of 29 December 1951,[299] although, in fact, it was not widely applied in the post-war period.[300] This was mainly the case because in the conditions of war devastation and the need for massive restoration, particularly after the entry into force of post-war Decrees which also served an expropriatory function. State authorities were compelled to change the pre-war expropriation policies.[301] The first detailed rules governing expropriation of properties and determination of compensation for expropriation were expressed in arts. 8 - 12 of the 1958 Act on the Principles and Procedure of Property Expropriation.[302]

Pursuant to these enactments, expropriation was to encompass only such immovable properties which were necessary to the entity applying for expropriation in order to

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[298] Proprietary right close to ownership.

[299] Official Law Journal 1952, No. 4, item 25.

[300] See W. Ramus, 'O wywłaszczaniu nieruchomości', in: Zaoczne Studium Prawne „Prawo rzeczowe w praktyce, (Warszawa, 1960), 1.

[301] This refers in particular to the Decree of 7 April 1948 on expropriation of properties seized for public utility purposes in the years of war 1939 – 1945, Official Law Journal, No. 20, item138, as amended.

[302] Act of 12 March 1958, consolidated text, Official Law Journal 1974, No.10 item 64.

pursue the objectives specified in legal provisions, namely: public policy, protection of the state, fulfilment of goals defined in the approved economic plans or timely finalization of a housing investment within the borders of a city or settlement.[303]

The principles of calculating compensation for expropriation based on these enactments were extremely unfair to expropriated persons. In reality, they had little to do with redress of the damage resulting from the owners' deprivation of title to the property or its part. Nonetheless, the main objective, that is the acquisition of vast areas of land necessary for housing development by the State Treasury was accomplished. It was argued that previous owners of the plots were not capable of making such investments on their own.[304]

In order to reach the intended end and make suitable land accessible to proper investors, it was still vital to introduce provisions enabling the transfer of the building lots to investors obliged to erect buildings, including residential premises. Investors were granted ownership of the buildings as a title separate from ownership of the land - on highly preferential terms, at much reduced prices payable to the State Treasury for the establishment of perpetual usufruct in the land. This tenure proved to be the desired legal instrument.

Since 1950, expert panels involved in the legislative process had been working on the definition and content of perpetual usufruct. The title, in its initial shape, was first introduced by the Act of 14 July 1961 on Land Management in Cities and Settlements.[305] The reasons for its introduction were indicated above. It was predominantly to answer the need to set up a cheap, and thus available, means to pass buildable areas suitable for detached and multi-family houses over to state enterprises, cooperatives and individual investors. Inclusion of such provisions in the 1961 Act accounted for its saturation with norms characteristic of administrative law. As has been pointed out above, this was a typical tendency in the period. It seems noteworthy that the transfer of land for perpetual usufruct was effectuated under this regulation in the form of administrative decisions. Soon, the urge to reinforce this institution with civil law foundations prevailed. Perpetual usufruct was regulated in the 1964 Civil Code which entered into force as of 1 January 1965.

Moreover, what previously had been settled by administrative decisions now became regulated by a contract with a perpetual usufructuary. Parties' rights and obligations became contractual again. If the transfer of land was made to enable erection of buildings or other installations, the contract was to include as well the date of commencement and finalization of construction works, the type of buildings or installations, and set out the duty of their due maintenance, terms and a deadline for reconstruction in cases of devastation or demolition of buildings and installations in the period of perpetual usufruct, as well as reimbursement payable to the perpetual usufructuary for buildings and installations standing on the plot on the expiry date of

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[303] See W.Ramus , 'O wywłaszczeniu nieruchomości' in: *Zaoczne Studium Prawne, Prawo rzeczowe w praktyce*, (Warszawa, 1960), 8, and W. Ramus , *Prawo wywłaszczeniowe*, (Warszawa: Wydawnictwo Prawnicze, 1970), 21 ff.

[304] S. Kalus, *Ewolucja wywłaszczenia jako sposobu nabycia własności nieruchomości***,** in: *O prawie i jego dziejach. Księgi dwie*, (Białystok-Katowice: Wydawnictwo Uniwersytetu w Białymstoku, 2010), Vol. II, 969-980.

[305] Consolidated text: Official Law Journal 1969, No. 22, item 159; S. Rudnicki, *Komentarz do kodeksu cywilnego. Księga druga. Własność i inne prawa rzeczowe*, (Warszawa: Lexis Nexis, 2007), 413,414.

the contract (art. 239 CC). The most important characteristics of perpetual usufruct were: availability of buildable land on highly preferable financial terms (a perpetual usufructuary bore only the cost of the initial fee amounting to 25% of the property's value; the remaining amounts were payable in yearly instalments). The period of perpetual usufruct was very long, it stretched over 40 to 99 years and could be prolonged (art. 236 CC). Buildings and installations erected on the municipal or state plot of land belonged to the perpetual usufructuary (art. 235 PCC). As a result, this institution made an exception to the principle *superficies solo cedit,* following generally from art. 48 CC.

Such an approach led to a specific duality of regulation which has persisted until the present day. This requires that the institution be grasped synthetically, bearing in mind its inherent split into private and public law elements.[306] Even today, specific legal provisions are missing a sense of coherence, for example in regard to the definition of land properties which can be granted for perpetual usufruct. Fortunately, such inconsistencies do not affect unfavourably in any way the essence and significance of this institution. Nowadays, after the intense socio-economic transformations and entrenchment of Polish economy in market conditions, these provisions still play a propitious role enabling access to buildable land without concession of ownership on the part of the state or municipality.[307] In addition, the manner of exercising the right by a perpetual usufructuary is controlled by competent officials of the owner, which generally excludes unauthorized use of the land under the pain of contract dissolution (art. 240 PCC). Moreover, upon termination of the legal relationship, usufractuary is entitled to reimbursement for all buildings or installations left on the plot.

Apart from erection of new buildings and units in the 70's, crucial modifications were introduced to the existing legislation. A gradual process was initiated in which the authorities moved away from the principle of unit allocation without regard to incomes of individuals interested in a housing acquisition. Units were to be allocated primarily to persons who found themselves in difficult circumstances. Other individuals had to fulfil their housing needs by resorting to cooperative or individual housing. Since 1961, the circle of individuals entitled to allotment of a unit in the stock managed by local bodies of state administration[308] was limited to persons of very low income or ones who fell into a highly unfavourable housing situation, occupied premises unfit for accommodation, overcrowded units or buildings to be demolished.[309] In 1972, based on a resolution of the Council of Ministers and Ordinance of the Minister of Urban Development,[310] further restrictions were introduced with regard to allotment of units in the stock controlled by local administration. It was laid down that such units may be acquired not only by persons of low income. Such individuals had to meet additionally one of the conditions set out

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[306] S. Kalus, *Prawo użytkowania wieczystego w Polsce – jego ewolucja i stan obecny*, Reforma prawa użytkowania wieczystego – prawo zabudowy. Kierunki zmian, (Warszawa: Europejski Instytut Nieruchomości, 2009),.26 – 38,.

[307] S. Kalus, *Prawo użytkowania...*,29.

[308] At the time there was no self-government as such in Poland.

[309] E. Ochendowski, *Prawo mieszkaniowe i polityka mieszkaniowa,*(Toruń: UMK 1980),64-65.

[310] Monitor Polski No. 60, item 97 i Monitor Polski No. 8 item 51.

in these pieces of legislation. These comprised: residence in a unit threatened by collapse or intended for demolition in connection with a plan of new construction or reconstruction, loss of a unit because of a calamity, occupancy of premises unfit for accommodation, premises located in a hospital, school, etc., not utilized for regular purposes attributable to such places, residence in an overcrowded unit (less than $5m^2$ per person), the candidates being persons needed in a given locality because of their profession or qualifications, a young married couple without any other residence, or, finally, relocation resulting from enforcement of a final administrative decision.[311]

Since it was difficult to obtain allotment under the above legislative acts, alternative forms of catering for the housing needs of the population were developed in Poland. Among these, one can enumerate two basic types, i.e.

1. the so called collective housing and
2. individual housing

Among various types of collective housing, one can point to housing investments of state enterprises, where units were intended for their staff, investments of local administration realized for state enterprises, cooperative investments made for state enterprises, and general cooperative constructions. They were funded from different sources, for instance state enterprises' own means, housing funds of local administration, or, finally, bank credits.[312]

Among these forms of housing particular attention was paid to two, that is state enterprises' building schemes, in which dwellings were allotted as staff units for employees of particular importance to the enterprise, and cooperative housing which was growing really intensely at the time.

When it comes to the first type of investments, they were realized as a part of investment plans of state enterprises and brought staff houses or units in buildings delivered to such enterprises by housing cooperatives, as well as units in houses located on guarded plots or even utility premises, railway buildings, objects situated on State Agricultural Farms and State Woodland Holdings.[313] Housing law was applied as appropriate to staff units, especially its provisions which referred to two issues of major significance at the time. According to the first one, it was assumed that a single family could enjoy only one unit; the second referred to strict norms defining the desired proportion of usable floor area to the number of occupiers.[314]

State enterprises catered for the needs of their employees not only by initiating constructions financed from their own pocket but also by remitting funds to cooperatives on contractual basis. Housing cooperatives put up buildings which would become a part of their stock. Agreements between cooperatives and state enterprises covered the issues of payable charges, prospective tenants, distribution of units, mode and deadlines of allocating cooperative units to persons employed in a particular enterprise. Provisions governing these issues, e.g. resolutions of the

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[311] E. Ochendowski, *Prawo mieszkaniowe...,*66.

[312] E. Ochendowski, *Prawo gospodarki komunalnej i mieszkaniowej,* (Toruń: UMK, 1984), 126-127.

[313] E. Ochendowski, *Prawo gospodarki...,*126; K. Krzekotowska, *Prawo mieszkaniowe...* .40-41.

[314] A. Jaroszyński, Z. Kuczyńska, *Prawo lokalowe z komentarzem,* (Warszawa: Wydawnictwo Prawnicze, 1978), 135.

Council of Ministers concerning participation of state enterprises in the fulfilment of housing needs of their staff,[315] provided for a specific mode of financing for this type of constructions. The capital would come from an enterprise's housing fund, bank credit and sums paid by employees as contributions to housing cooperatives. It was not uncommon for state enterprises to award these sums directly to employees who could enter into independent contracts with a cooperative.[316] In addition, state enterprises provided purpose-specific assistance to their employees in order to facilitate their individual housing investments, construction of detached houses, repairs and modernization of units.[317]

Another type of collective investors of fundamental significance to the housing sector were housing cooperatives. Apart from undertakings carried out to the benefit of state enterprises, cooperatives built residential houses for their members. Financial resources came both from their contributions and rather significant state aid. Specific pieces of legislation enabling such support took the form of resolutions of the Council of Ministers: Resolution no. 281 of 10 December 1971 on the principles of implementation and financing of collective housing investments, Resolution no. 282 of 10 December 1971 on state credit assistance for residential investments of natural persons, Resolution no. 22 of 28 January 1972 on detached residential housing.[318] These legislative acts provided for state aid in the form of:

- credit assistance
- transfer of land for housing investments,
- provision of typical design and (cost) estimate documentation,
- organisation and technical counselling,
- organisation of building and furnishing materials,
- professional supervision and technical training,
- project supervising services provided by specialized entities.[319]

Beyond any doubt, state assistance in respect of point 2 was possible only due to the legal instruments which enabled the acquisition of land for investments, in particular for detached housing and smaller multi-family buildings, by way of expropriation of owners and establishment of perpetual usufruct to the benefit of cooperatives or natural persons. As held by the Polish Constitutional Tribunal in the judgment of 2 April 2000,[320] "perpetual usufruct had first appeared in the Polish system in the period when sale of land owned by the state was forbidden, but its evolution led to its purification from elements of administrative coercion and made it an effective instrument of market economy - available on equal terms to all parties and competitive with ownership.

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[315] e.g. Resolution no. 110 of the Council of Ministers of 29 August 1983, MP no.31, item 167.
[316] K. Krzekotowska, *Prawo mieszkaniowe...,* 45-46.
[317] K. Krzekotowska, *Prawo mieszkaniow...,* 46.
[318] E. Ochendowski, *Prawo gospodarki...,* 127-128.
[319] E. Ochendowski, *Prawo gospodarki...,* 128.
[320] See e.g. CT judgment of 12 April 2000, K.8/98, OTK 3/00, item 87.

It is advantageous to investors, because it allows them to take control of a property without having to bear the costs of its acquisition. The title itself, because of its long duration, guarantees return of extensive outlays made to develop the plot.

Perpetual usufruct, in spite of its specific origin and competitive character in relation to poetry not a relic of the past. On the contrary, it makes an institution which conforms to European standards."

Coming back to the founding principles of housing law in the 70's and 80's of the XX Century, regard should be had to legislation concerning cooperative investments, especially the Act of 17 February 1961 on Cooperatives and Their Associations[321], the Act of 16 September 1982 - Cooperative Law.[322] These enactments made *lex specialis* in relation to the provisions of the Civil Code. In consequence, in matters unsettled or falling beyond the scope of these Acts, rules set out in the Civil Code applied.[323] Cooperative Law envisaged the option to acquire either the tenancy cooperative right to a unit or freehold cooperative right. The choice depended on the contribution which had to be made by a cooperative member willing to obtain accommodation. Once the member has paid the housing deposit, he could acquire a tenancy cooperative right to a unit. This was an inalienable, non-hereditary right which could not be encumbered. It was thus less definitive than freehold cooperative right and, because of lower individual participation, more widely available to less affluent members. The amount payable corresponded only to a part of the costs of the unit construction. Such deposit was refunded on termination of the legal relationship in the amount equal to the contribution payable by a cooperative member applying for a newly erected unit of analogous standard.

Freehold cooperative right had little to do with ownership. Once the construction deposit was paid by a member (this type of deposit was higher than ordinary housing deposit since it covered the full cost of construction of a housing unit or detached house), that member acquired an alienable right (first negotiable only among members of the same cooperative, then also outside that circle), hereditary and eligible for encumbrance, as, under the 1982 Land Register and Mortgage Act (LRMA) and the 1982 Cooperative Law Act,[324] the unit held under this tenure could be mortgaged (art. 65(4) LRMA). The right has been classified as proprietary. Apart from the freehold cooperative right, a cooperative member could acquire as well a cooperative right to a commercial unit or detached house - both of them enjoying a similar legal status.[325] This law was applicable until the entry into force of the Housing Cooperatives Act 2000.

As outlined in by authors in the field, the contribution payable in consideration for these entitlements led only partly to award of the tenure in a unit."[326] In housing cooperatives, just as it was the case with units allocated by administrative decisions, strict norms on occupancy and floor area were binding on the tenant (cooperative

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[321] Official Law Journal 1961, no. 12, item 61.

[322] Official Law Journal 1982, no, 30, item 210.

[323] K. Krzekotowska, *Prawo mieszkaniowe...,*58 ff.

[324] Act of 6 July 1982, consolidated text, Official Law Journal 2001, no. 124, item 1361, and the Act of 16 September 1982 - Cooperative Law, consolidated text. Official Law Journal 1995, no. 54, item 288.

[325] K. Krzekotowska, *Prawo mieszkaniowe...,* 63 -68, ff.

[326] K. Krzekotowska, *prawo mieszkaniowe...,* 73.

member) which delimited the number of his close relations who lived under the same roof, forming a single household, other than sub-tenants or third parties, caretakers for an aged tenant (cooperative member) whose aid in everyday affairs is needed. These norms took into account the needs of future progeny of a young couple. In order to make the application of these norms easier, the Regulation of the Minister of Local Economy and Environmental Protection of 29 January 1974[327] laid down six classes of units according to the number of occupiers, along with the minimal and maximal size of usable floor area and the number of occupiers corresponding to a particular class. In the six categories of housing units (M-1, M-2, M-3, M-4, M-5, M-6) the standard floor area was respectively 25-28 m^2, 30-35 m^2, 4, 44-48 m^2 , 56-61 m^2, 65-70 m^2, 75-85 $m^{2.}$. As far as the number of persons to occupy that surface area, each of them could enjoy 7-10 $m^{2.}$ A single person could not occupy a unit smaller than 10 m^2.

These provisions were a manifestation of the principle of social justice in the field of unit allocation. On the other hand, they set out conditions which enabled departure from general rules by creating privileged groups not restrained by the standards. Additional usable area was available to persons who:

- were persons especially distinguished in People's Poland,
- engaged in creative, artistic or cultural activity or journalism,
- held a responsible professional, political of social position or was engaged in scientific research,
- whose health conditions so dictated.[328]

Strict floor area standards were imposed in the Housing Units Law Act 1974 not only in relation to housing units but also detached houses. The latter type of construction was strongly promoted at that time. It allowed to meet the housing needs of a family, both the owner and his relations, and made an example of so called "personal" property. Before entry into force of the HULA, detached house was defined as a house of no more than 6 rooms, including kitchen. From 1974 on, detached house was conceived as a building whose usable floor area did not surpass 110 m^2. Where a part of the house was destined for performance of a profession by the owner, his children or parents, the usable floor area of the house could reach 140 m^2. This referred to creative activities in the areas outlined above.[329]

Apart from detached houses, housing needs of higher income investors were provided for by so called small residential houses. These comprised small buildings of two to four independent units. If they had been constructed before 1974, each of these units could not have had more than 5 rooms. From 1974 on, floor area of each unit could not overstep 110 - 140 m^2. Only housing units could make an object of ownership separate from land. Once such separate property has been founded, the plot of land on which the building had been erected, as well as land necessary to use the building, common parts of the building and all equipment which served not only the needs of individual unit owners, made common property. The share of a unit owner in this common property was appurtenant to the title to his unit.[330]

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[327] Dz.Urz. Budownictwa (Official Housing Journal) 1974, no. 2, item 3.
[328] E. Ochendowski, *Prawo mieszkaniowe...,* 60,61.
[329] E. Ochendowski, *Prawo mieszkaniowe...,* 124.
[330] E. Ochendowski, *Prawo mieszkaniowe...,* 125- 127.

Economic and legal transformations of the nineties and their impact on the housing situation in Poland.

The housing law system discussed above persisted in until the fundamental transformation of the whole economic and legal system. Serious modifications had to wait until abandonment of command economy and introduction of free market. These transitions were extensive and systematic. They changed radically relations of property management, which had to translate directly in the problems concerning housing. The fundamental modification was a switch from the system of allocating tenures by administrative decisions to a traditionally oriented civil law approach. This entailed broad application of civil law contracts in the conditions of official recognition and statutory reinforcement of party autonomy (art. 353^1 PCC), as well as contractual freedom to establish and shape legal relationships. This called for departure from public law decisions on unit allotment and their replacement by contracts for lease of a unit or any other tenure in a dwelling. The possibility to purchase a unit and become an independent owner within a condominium became widely open, if not prioritized by the legislator.

Application of these principles was possible only owing to the profound evolution of the whole economy, which took place in the nineties.

The most far reaching modifications involved:

1. liquidation of the uniform fund of the State Treasury and enfranchisement of state owned juridical persons, privatization of state enterprises and other state run entities, which brought state enterprise investments to an end and entailed transfer of staff units to their employees (by an Act adopted in 1994) on preferential terms; establishment of the Military Property Agency and sale of military units on preferential terms to persons employed in the army.
2. municipalisation and privatization of municipal housing stock,
3. turning the bureaucratic cooperative apparatus with unclear ownership structure into private ownership of cooperative members and transformation of rights to units within cooperatives,
4. guaranties of equality among all types and forms of ownership inscribed in the constitution, regardless of who the owner was; in other words, equality between so called collective and private ownership,
5. remarkable development of the building materials industry combined with import of such materials, which led to their widespread availability,
6. emergence of a new category of building investors: developers,
7. availability of bank credit and privatized banking sector.
8. abolishment of floor area restrictions for newly constructed houses and units,
9. serious amendments to the statutory regime on ownership of units and creation of condominiums,
10. protection of tenant rights against municipality landlords (the Residential Tenancies and Housing Benefits Act 1994 and the Tenants Protection Act 2001) accompanied by the Civil Code amendments regarding lease contracts.

Re.1.

In late eighties, the first economic transformations took place. The situation called for comprehensive and systemic changes. Most importantly, these referred to processes of privatization occurring in the public sector. The principle of uniform fund of the State Treasury envisaged in art. 128 PCC referred solely to the State Treasury and not state run juridical persons. In particular, state enterprises and state banks were exempted from this regime, since it was irreconcilable with their inherent autonomy, self-governance and self-financing.[331] In consequence, the said provision was amended by the Act of 31 January 1989.[332] It was now stipulated that state property may as well be held by state owned juridical persons capable to acquire rights and contract obligations on their own behalf and to their own benefit.

This did not affect in any way the status of assets held by such persons before entry into force of the Act. As a result, in 1990 a further step was made in order to enfranchise these entities. First, in July 1990, art. 128 PCC was repealed in whole.[333] Then, the amendment of the Land Management and Expropriation Act of 29 September 1990[334] "empowered" state owned entities, transferring land properties controlled and managed by state enterprises to these entities as perpetual usufruct holders by operation of law, whereas buildings and other installations raised on the plots become their property.[335] Consequently, state juridical persons became the rightful owners of units, also in their residential premises.

This did not, however, conclude the process of economic transformations. A process of creating separate housing unit properties ensued, followed by their sale to current lessees coupled by intense privatization of the enterprises by their transformation into companies owned solely by the State Treasury (limited liability companies or joint-stock companies) and their subsequent privatization.[336]

Re.2.

Fundamental transformations in the field of housing led as well to the evolution of self-government, replacement of the previous system of national councils by municipalities and municipalisation of their property. Among the assets held by local state administration, the most important category was buildable land, buildings and units located therein. Municipalities were empowered under the Municipal Self-Government Act 1990 (MSGA).[337] From the point of view of the present analysis, it is substantial that the Act envisaged that is was municipalities' own task to ensure lodgings to their inhabitants (art.7(1) MSGA).

Along with emergence of the municipal stocks, lessees gained the opportunity to buy their dwelling for a preferential price. The price of such units could be as low as 2-5% of their market value. There was, however, an imminent danger attached to such

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[331] M. Bednarek, *Przemiany własnosci w Polsce. Podstawowe koncepcje i konstrukcje normatywne,* (Warszawa: Instytut Nauk Prawnych Pan, 1994); E. Gniewek, *Prawo rzeczowe,* (Warszawa: C.H. Beck, 2006), 33 i ff.

[332] Official Law Journal 1989, no. 3 item 11.

[333] Act of 28 July 1990, Official Law Journal 1990, no. 55, item 321.

[334] Official Law Journal 1990, no. 79, item 464.

[335] E. Gniewek, *Prawo rzeczowe...,* 36; G. Bieniek , G. Matusik in: G. Bieniek, M. Gdesz, S. Kalus, G. Matusik, E. Mzyk: *Ustawa o gospodarce nieruchomościami. Komentarz* (.Warszawa: Lexis Nexis, 2012),1080-1081.

[336] E. Gniewek *Prawo rzeczowe...,* 38-39.

[337] Act of 8 March 1990, consolidated text, Official Law Journal 1990, no. 142, item 1591 as amended.

acquisition, which was not always realized by the buying tenants. The new owners were burdened with the duty to bear the costs of repairs and maintenance of the common property in the building (staircases, roofs, façades). Undoubtedly, such costs were oftentimes considerable, especially in respect of the older housing stock.

Re.3.

The housing cooperative sector, whose role had been very distinct in command economy, could no longer meet housing needs of the population and underwent major decomposition. Transformations planned for the cooperative sector did not involve its liquidation. Rather than that, official stakeholders intended to adopt such legislative and economic amendments that could assure their proper operation. Crucial changes in this respect followed the enactment of the new Housing Cooperatives Act in 2000.

Amendments to cooperative law outlined challenges for housing cooperatives of the new type. They were to comprise:

- construction or acquisition of buildings in which tenancy cooperative rights were to be assigned to cooperative members,
- construction or acquisition of buildings in which freehold cooperative rights were to be assigned to cooperative members, which referred to housing units within the buildings, but also other usable space, e.g. parking lots in the basement,
- construction or acquisition of buildings in which residential or commercial units were to be created and sold together with co-ownership of the parking space,
- construction and acquisition of detached houses in order to transfer their ownership to cooperative members,
- support to cooperative members erecting residential multi-family or detached houses,
- construction or acquisition of buildings with the intention to let or sale residential or commercial units these premises.[338]

This led to significant expansion of the scope of cooperative activities and opened up the miscellany of legal forms suitable for fulfilment of the housing needs of cooperative members.

Re. 4.

The new Constitution of the Republic of Poland adopted in 1997 equalized entirely all forms of ownership, regardless of who the owner is. Among other things, this referred to immovable properties, that is land, buildings and units. Such conclusion may be drawn from arts. 21 and 64 of the Constitution, which guarantee equal treatment to all types of ownership[339]. As early as in 1990, however, the Civil Code regulation relating to ownership was amended. Arts. 126-135 PCC were entirely repealed.

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[338] Art.1(2) HCA.

[339] W. Gontarski, 'Na wycisk'*, Rzeczpospolita PCD,* (5 June 2002); P. Granecki, 'Odpowiedzialność sprawcy szkody niemajątkowej na podstawie art.448 k.c.', *St.Prawn,* no. 2 (2002), 83.

These rules had been vital to command economy They had afforded particular protection of certain forms and types of public ownership. Full protection was extended as well to so called personal property, which was to satisfy personal needs of the owner and his relatives.[340] Alignment of ownership types was also recognized as a step towards preference of private ownership over its public equivalent.[341] Most notably, this preference is manifest in the tendency to transform tenancies in municipal and state units into full ownership for a price which corresponds only to a small proportion of their market value.

Re. 5.

One of the results of Poland's opening to international trade and accession to the European Union was a huge inflow of building materials and latest construction technologies to Poland. Currently, Poland is a country which produces and exports such materials on a large scale. This refers especially to sanitary ceramics, laundry equipment, kitchen appliances, etc.

RE.6.

In Polish conditions, four structural models of developer activity can be distinguished. In the first one, a developer purchases the plot of land on which the investment is to be realized, finalizes the building, and sells the property as a whole or its parts. This pertains predominantly to the situation envisaged in art. 9 UOA. Pursuant to this provision, validity of a developer contract requires in this model that the developer should own the land or be its perpetual usufructuary. Where a developer neither owns nor holds the land in perpetual usufruct, he is not in a position to transfer ownership rights once the construction has been completed. It would be a mistake to say that in such cases a contract in which the developer promises to sell a property precedes the final contract of sale. In legal terms, the former contract creates an obligation to transfer a future property - which is to be founded after the building's completion (art.157(1) PCC). The latter contract contains an additional agreement of the parties to urgently and unconditionally transfer the title to the agreed units. Both agreements, one creating an obligation and one transferring a property, must take the form of notarial deeds.[342]

The second model refers to a situation in which a developer finds land suitable for investment and enters into a contract with its owner or owners. The contract gives him the title necessary to undertake construction works and obtains a security for potential compensation in case of the owner's resignation on sale of the plot once the stage has been reached at which it is possible to sell readily made units. In this variation, the land is owned by the final buyers of units rather than the developer himself. The buyers purchase either parcelled plots of land (in case of detached houses) or become co-owners of the land in fractional parts (where they are to become unit owners). Purchasers of future houses or units hire the developer as general contractor of the investment, conferring on him exclusive rights to carry out

[340] Act of 28 July 1990 Amending the Civil Code, Official Law Journal 1990, no. 55, item 321.
[341] M. Habdas , *Publiczna własność nieruchomości* (Warszawa: Lexis Nexis, 2012), 125-130.
[342] M. Nazar, *Własność lokali. Podstawowe zagadnienia cywilnoprawne*, (Lublin: UMCS, 1995), 47-48.

the works until their finalization with the proviso that from the formal perspective they are themselves investors to whom the building permit has been granted.[343]

The third structural option mentioned in literature is the so called intermediate model. At the start, the developer is an owner of the land. During realization of the investment, he is selling the land and his position changes from investor to general contractor. This generally happens when semi-detached houses are being erected, once buildings are in raw but finished condition. On such occasion, the developer may, if the investor makes such wishes, carry on as a contractor for further works. Alternatively, such works may be delegated to a third party.[344]

The fourth model consists in purchase of a land property, its conversion, that is a change of purpose set out in the zoning plan. Most frequently, this refers to a shift in the plot status from agricultural to residential.[345] The next stage is to prepare a design and zoning plan, appropriate division of the land properties, improvement of the land involving basic infrastructure and sale of the parcelled plots either to single buyers or developer firms. Notably, such activity falls out of the scope of art. 9 of the UOA, even though in practice this contract type may be easily encountered.

Re. 7.

A very important aspect of economic transitions was also the increasing availability of funds for housing investments realized by individuals, cooperatives or other juridical persons. This required thorough modifications in the banking system, privatization of state owned banks and making the domestic credit market accessible to foreign bankers. One crucial step was the adoption of the Mortgage Bonds and Banks Act[346] and establishment of this type of banking in Poland. These new institutions were of great help to persons investing in real estate. They still manage to operate despite the economic crisis.

Re.8.

Standards concerning occupancy and floor area are no longer applicable. Quite contrarily, extremely diverse buildings and units are now constructed. Their size follows from investor needs and abilities to meet the construction costs. In principle, the concepts of a detached house and holiday house have now disappeared from legislation. The legislator withdrew as well from binding standards concerning floor area and the number of occupiers.

Re.9.

The most vital modification that can be traced to the repeal of arts. 136 and 137 PCC was the emergence of houses or estates where at least one housing unit made a separate property, that is so called condominiums. Nowadays, their role is essential. Proprietors of units who form such community of owners have to settle the questions of governance of the common property, elect members of the board, make decisions

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[343] M. Nazar, *Własność lokali...,* 104,105.
[344] M. Nazar, *Własność lokali...*, 105
[345] M. Nazar, *Własność lokali...*, 105
[346] Act of 29 August 1997, consolidated text, Official Law Journal 2003 no. 99, item 919.

in matters beyond ordinary management of the common property. The board cannot take independent decisions in such questions, e.g. relating to the costs of maintenance of the common property.

Re.10.

Beyond any doubt, all modifications indicated above, involving privatization of the housing stock and anchoring tenancies in the civil law contractual background led to severe changes in the legal position of tenants. Since housing relations have been based on civil law, principles most fundamental to tenancies include party autonomy, which enables free determination of rent so as to raise funds necessary to maintain the premises and reap benefits by the landlords. In spite of that, many tenants, particularly in the municipal stock, cannot afford to pay rent at the level which would allow to meet the ends indicated above. In light of the above, it seems advisable to point to provisions which model the current state of affairs, as discussed in further parts of this Report.

These include the following pieces of legislation:

- art. 680 – 692 PCC,
- Tenants Protection Act of 21 June 2001 (TPA),
- Housing Benefits Act of 21 June 2001 (HBA).

Both 2001 statutes regulate in much detail the terms and forms of tenant protection The first of the Acts sets forth specific obligations of tenants and landlords and factors relevant for determination of the amount of rent. This statutory regime protects as well tenants from excessive rent increases. By the other Act, the legislator sets out specific terms of calculation and payment of housing benefits to poor tenants. The benefits cannot be utilized in any other way than payment of rent and charges connected with enjoyment of a housing unit.

- *Human Rights:*
- *To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in*
  - *the national constitution*
  - *international instruments, in particular the ECHR*
- *Is there a constitutional (or similar) right to housing (droit au logement)?*

The constitutional framework, and international law binding in Poland have been discussed in section 2.1 of Part I of the Report.

6. Tenancy regulation and its context

6.1. General introduction

Overview of the legislative framework

- *As an introduction to your system, give a short overview over core principles and rules governing the field (e.g. basic requirements for conclusion, conditions for termination of contracts by the landlord, for rent increase etc.; social orientation of tenancy law in force; habitability (i.e. the dwellings legally capable of being leased))*

Tenancy contracts are regulated by two major pieces of legislation. The Civil Code defines main obligations of the parties to a lease contract, along with questions of contract formation, validity, termination, and outlays made on the unit by a tenant. Following the general regulation of lease, there is a chapter on the lease of units (which should be distinguished from the much broader concept of tenancy as defined by the Tenants Protection Act 2001), covering both residential and commercial units. Bearing in mind especially the social role played by housing law and the necessity to protect the weaker party whose fundamental needs need to be catered for on the market within the framework provided by private law provisions, the legislator decided to adopt additionally the TPA, which sets out a general regime relating to all residential tenures other than ownership. Pursuant to art. 3(3) TPA, this special regime is to be applied without prejudice to other provisions of law, as long as the latter are more favourable to the tenant.

Before the enactment of the TPA, tenant rights had been laid down in the Civil Code and the Residential Tenancies and Housing Benefits Act 1994 (RTHBA) as well as a number of other statutes, for instance the Military Accommodation Act 1995.[347] Position of cooperative rights holders was handled in the HCA. Rules on other tenures (e.g. usufruct, loan for use, life estate) were dispersed over the Civil Code. Because of their varying character (obligational or proprietary) and functions, these regulations had to be preserved, however, the legislator decided to top these discrepancies with a uniform regime of protection for all occupiers other than owners. The Act replaced the fragmentary protection offered by the RTHBA. Under the previous legislative framework certain groups of tenants had remained markedly disadvantaged. This referred primarily to tenants occupying a unit under a lease contract for specified period of time. Such persons were protected only by Civil Code provisions.[348]

Protection afforded by the RTHBA in the mid nineties was necessary in the difficult economic situation. In order to mitigate arduousness of this condition, the legislator preserved rent control, still applicable to the major part of the rental stock. A tenant remained protected in such manner, although he had to pay more than it had been the case in the previous political system, and could apply for a housing benefit if it was possible to document low household incomes. Rent control was only a temporary mechanism. In the end, the market was to take over.[349]

The most important goals set for the TPA were to abolish differences concerning legal protection of tenants under various legal regimes, establish standards binding for all tenures, which was accomplished with success, bearing in mind the general scope of application of the Act defined in art. 1. From the economic point of view, the most vital objective was to lift the rent control system or mitigate its detrimental

[347] Military Accommodation Act of 22 June 1995, Official Law Journal 2010, no. 206, item 1367.
[348] E. Bończak-Kucharczyk, *Ochrona praw lokatorów, najem i inne formy odpłatnego używania mieszkań w świetle nowych przepisów*, (Warszawa: Twigger, 2002), 14.
[349] Ibid., 19.

results to landlords who had been unable to bear essential repair and maintenance costs.[350]

The definition of tenant used in this overarching piece of legislation is much broader than the concept of lessee used in the Civil Code. Pursuant to art. 2(1) item 1) a tenant should be understood as a lessee of a unit or any such person who occupies a unit under any valid tenure other than ownership. This general grasp of the notion had to lead to many practical doubts which had to be dispersed by judicial decisions. On many occasions, the Supreme Court had to explain statutory provisions and decide whether or not the concept of lessee includes certain categories of occupiers.

The Court oftentimes contemplated admissibility of eviction and the right to a social unit. In such context, the Court ruled that the definition extends over former tenants, i.e. occupiers whose entitlement to remain in the premises is no longer valid,[351] persons who occupy the unit under a loan for use agreement or art. 28^1 of the Family and Guardianship Code (where an occupier's spouse is the rightful tenant). A relative of a deceased cooperative member who enjoyed the unit in pursuance of a lending contract (loan for use) with the deceased is also a tenant in the understanding of the discussed provision. So is a sublessee in relation to the principal tenant.[352] The concept involves as well holders of a freehold cooperative right to a unit, even though the latter is classified as a proprietary rather than merely obligational tenure.[353] The legislator saw the need to protect also this group from their cooperative landlords. Nevertheless, among academics there are serious dissenting voices. Some writers postulate that freehold cooperative right holders be exempt from the regime because proprietary rights are apparently different and, accordingly, should be treated differently.[354]

The main practical consequence of their protection boils down to the question of applicability of art. 14 TPA. This provision envisages a court's obligation or possibility to adjudge the right to a social unit while evicting an occupier. The Supreme court decreed in one of its judgments that while determining the scope of the statutory definition of a tenant, interpreters should in each case take into account if the individual of unclear status is threatened by eviction set out in art. 14 TPA or the determination serves other relevant purposes.[355] Wide understanding of the concept of tenant in eviction cases is entrenched in the framework of constitutional rights of individuals, in particular art. 75 of the Polish Constitution,[356] pursuant to which public authorities pursue policies suited to fulfilment of citizens' housing needs, in particular by combating homelessness, supporting development of social housing and citizen initiatives on the housing market. In a well established line of jurisdiction, the Court has narrowed the catalogue of persons to be awarded a social unit. This

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[350] Ibid., 20; for more detail see Part 1 of this Report.

[351] SC resolution of 15 November 2001, III CZP 66/01, OSNC 2002, no. 9, item 109.

[352] A. Doliwa, *Prawo mieszkaniowe.Komentarz,* (Warszawa: C.H.Beck, 2012), 148.

[353] SC resolutions of 13 June 2004, III CZP 36/03, OSNC 2004, no. 4, item 52, of 13 June 2003, III CZ 40/03, OSNC 2004, no. 6, item 89, of 23 September 2004, III CZP 50/04, OSNC 2005, no. 9, item 154.

[354] R. Dziczek, *Ochrona praw lokatorów. Dodatki mieszkaniowe. Komentarz. Wzory pozwów,* (Warszawa: LexisNexis, 2010), 34, 38.

[355] SC resolution of 4 October 2002, III CZ 60/02, OSNC 2003, no. 9, item 118; R. Dziczek, *Ochrona praw lokatorów...,* 34.

[356] R. Dziczek, *Ochrona praw lokatorów...,* 36.

encompassed tenants who had a valid tenure in a unit, even if that tenure had terminated,[357] but did not refer to squatters without any previous title.[358]

From the generally functional perspective of the TPA regulation, it is not easy to classify definitively the freehold cooperative right to a unit. On one hand, it involves enjoyment of cooperative property. On the other one, the bunch of entitlements of the holder approximate those of an owner. The semblance has been affirmed in the judgment of the Constitutional Tribunal of 30 March 2004,[359] in which the Tribunal declared certain HCA provisions unconstitutional. In consequence of that ruling, cooperative freehold right does not expire if its holder ceases to be a member of the cooperative. The right is freely alienable and devisable. After demise of the holder, it becomes a part of the hereditary property on general terms - according to art. 922 CC. By comparing the freehold cooperative right and ownership of a unit, the Tribunal pointed out that a land register may be established as well for the former, which may be likewise mortgaged.[360] Both in the case of freehold cooperative right and ownership where the unit belongs to the stock managed by a cooperative, maintenance costs borne by the occupier are roughly the same. The Tribunal concluded that it is not advisable for the legislator to institute legal condition in which it is difficult to tell any meaningful substantive differences between ownership and some other proprietary right, and at the same time offer differing legal protection for both categories of entitled persons. In fact, it seems curious that a holder of the freehold cooperative right should be treated more favourably than an owner of a unit - especially that in the latter case the cooperative is only a manager of the common property in the light of the Unit Ownership Act 1994. Yet, such is the case under the rule of the Tenants Protection Act. As long as the tenant is understood as any person who has a tenure other than ownership in a unit, there are no grounds to exclude freehold cooperative right holders.[361] It can only be added that under arts. 9(7) and 7^1 HCA such "tenants" may freely let the unit or deliver it for gratuitous enjoyment lest such an act should entail modification of use of the unit. A single holder of the freehold cooperative right might, thus, be both a tenant and landlord (in relation to a subtenant) at the same time in the light of the Tenants Protection Act.

Such doubts are missing in the case of the tenancy cooperative right to a unit. A cooperative member who exercises this entitlement is undoubtedly and deservedly a tenant in the understanding of art. 2(1) item 1 TPA. Also other members of his household enjoy a derivative title enforceable against the cooperative landlord to occupy the unit. According to the Supreme Court judgment of 24 October 2002,[362] also cohabitant of the holder of that right should be protected as tenant within the broad concept envisaged in the Act.

As already pointed out, a specific legal basis for considering a person a tenant can be found in art. 28^1 of the Family and Guardianship Code. This provision refers to spouses. If one of the spouses has whatever tenure in a housing unit - be it

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[357] SC resolution of 22 May 1996, III CZP 51/96, OSNC 1996, no. 9, item 120; of 30 April 1997, III CZP 16/97, OSNC 1997, no. 8, item 105.
[358] SC resolution of 20 May 2005, III CZ 6/05, OSNC 2006, no. 1, item 1.
[359] K 32/03, OTK ZU 2004, no. 3A, item 22.
[360] CT judgment of 29 June 2001, K 23/00, OTK ZU 2001, no. 5, item 124.
[361] R. Dziczek, *Ochrona praw lokatorów...,* 40.
[362] I CKN 1074/00

ownership, lease, cooperative rights, servitude, etc. - the other one is authorized to enjoy the premises likewise. Consequently, this other spouse is to be regarded as a tenant in the light of the TPA.[363] If the spouses should, by mischance, divorce, further enjoyment of the unit is decided by court in the divorce judgment.[364]

In addition, the concept of household has been defined in the statutory dictionary of art. 2. The legislator refers at this point to art. 4 of the Housing Benefits Act 2001 in which the notion is understood as household run by a single occupier, the tenant's spouse and other persons who live with him permanently, sharing the common budget, whose rights to enjoy the premises derive from the direct tenant. Apart from spouses or cohabitants, this refers to children, both minor and major, other members of the tenant's family and individuals not akin to the tenant who share the home budget. The decisive factors are permanence of accommodation and contributions to common maintenance.[365] In the end, however, it is the tenant, and not the landlord, who decides which persons from among this group should live in the unit.[366]

As far as the other party is concerned, art. 2(1) item 2 defines a landlord, just as widely as in the case of tenant, as lessor or any such person who has entered with the lessee in a legal relationship which empowers the latter to occupy a unit. Apart from actual owners of the premises, this includes anyone bound by a contract with a tenant under which the latter is authorized to enjoy the premises for residential purposes. A lessee who sublets a unit is also viewed as a landlord in the relation with his sublessee.[367] As a result, obligations following from the TPA regime attach to this other party, regardless of his tenure in the unit.[368]

Concept of housing unit and habitability

The TPA does not introduce general standards all units should meet in order to become eligible for lease. The statutory definition covers housing units, as well as artist studios. Art. 2(1) item 4 excludes premises intended for short-term stay of individuals, such as boarding-houses, dormitories, guest-houses, hotels, resort homes or other buildings used for tourism and leisure. Such places simply do not fit in the protective framework of the statute, because the purpose here is not to provide permanent, or even durable, accommodation.

Among housing units, only social units have been defined. This category, in pursuance with art. 2(1) item 5, refers to a unit fit for accommodation in terms of furnishing and technical condition. The usable floor area per one household member should not be lesser than 5 m^2. Where the whole unit is to be occupied by a single person, it must not be smaller than 10 m^2. In such a case, lower standards of furnishing and technical equipment are allowed. In addition, a special provision of the Act relates to temporary (replacement) premises. These should be fit for accommodation and have access to running water and toilet, even if these facilities are situated outside the building. Electric and natural light (external windows) should

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[363] SC judgment of 21 March 2006, V CSK 185/05, Biul. SN, no. 6 (2006), item 8.
[364] T. Smyczyński, *Prawo rodzinne i opiekuńcze*, (Warszawa: C.H.Beck, 2005), 138.
[365] R. Dziczek, *Ochrona praw lokatorów...,* 48.
[366] judgment of the Administrative Court in Wrocław of 19 July 1988, SA/Wr 925/87, ONSA 1988, no. 2, item 78.
[367] M. Nazar, 'Ochrona praw lokatorów, cz. 1', *Monitor Prawniczy,* No. 19 (2001), 96.
[368] SC judgment of 19 January 2006, IV CK 336/05, Biul. SN, no. 4 (2006), item 10.

also be available. The same refers to heating facilities. Installation of an cooker must be possible. As far as dimensions are concerned, the standard of 5 m^2 per person (and 10 m^2 for a sole tenant) provided for social units is to be kept also in this case.

Although it may be presumed that private tenancies should offer a tenant more advantageous living conditions than the regulated public types, the rest is a question generally open for the operation free market principles. Although there are certain construction law enactments concerning fitness of a unit for housing purposes, they do not translate in any direct way in the context of tenancies and application of the TPA. However, this signifies no more than affirmation that tenants are still protected by the regime laid down in the statute even if they occupy substandard premises - a unit which does not meet necessary technical requirements or whose floor area does not allow for comfortable living.[369]

Obviously, such an approach does not exclude generally applicable remedies for injury caused to the tenant, his family or property as a result of poor technical condition of the premises. Technical standards imposed by law in such cases help to determine the landlord's guilt and wrongfulness of his omission to assure proper condition of the premises. In the case of a lease contract defined in the Civil Code, the tenant may, in accordance with art. 682 PCC terminate the contract without notice if the unit's defects pose danger to the health of a tenant, members of his household or employees. Such termination is possible even where the tenant had been aware of the defects at the time of contract conclusion. Applicability of this provision has been retained under art. 3(2) TPA, since the rule is generally more favourable to the tenant than the TPA regulation. Art. 682 is a mandatory rule which cannot be stricken out by will of the parties to a lase contract.[370] As explicated by the Supreme Court,[371] a situation of impending danger to life or property of individuals occupying a building does not merely involve threat to the building as such and its integrity. The notion encompasses as well deplorable sanitary conditions, such as dampness or mould which had not been remedied by the landlord for a couple of years. Additionally, civil liability attaches to the contractor who utilized materials hazardous to human health in the construction of the building. Respective claims can be asserted by occupiers of the premises erected with the use of dangerous substances even if the use of hazardous materials had not been banned by law in express way.[372]

If a unit is evidently substandard, and its deficiencies confine its fitness for the agreed use, they still do not endanger health of the household members, the tenant may assert adequate rent reduction in pursuance of art. 664(1) PCC. Under art. 664(2) PCC, such tenant may terminate the contract without notice if the object of lease is entirely unfit for the agreed use and the lessor fails to remove the defects before the deadline set by the lessee. However, if the latter had known about the deficiencies at the time of entry into the contract, the possibility of termination or rent reduction is deemed to be forfeited under art. 664(3) PCC. The discussed article is also applicable by analogy in the relation between cooperatives and their tenants. Holders of tenancy cooperative rights may assert reduction of the elements of their fee

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[369] A. Doliwa, *Prawo mieszkaniowe...,* 151.
[370] A. Doliwa, *Prawo mieszkaniowe...,* 95-96.
[371] SC judgment of 21 May 1974, II CR 199/74, OSP 1975, no. 3, item 67.
[372] SC judgment of 1 December 1986, II CR, 362/86, OSNC 1998, no. 7-8, item 98.

payable for running maintenance and consumption of water, gas or electricity on account of the cooperative's omissions. Deficiencies, however, may not refer in this case to the condition of the unit itself.[373]

Landlord duties imposed by art. 6a TPA do not require that a unit should have particular utilities or installations. Rather than that, obligations relating to maintenance and assurance of proper operation refer only to existing installations and equipment enabling consumption of running water, fuels, electricity, elevators and other equipment of the building. The express formulation of the discussed provision has been supplemented by the Supreme Court. In the opinion of the judges,[374] the landlord is under the obligation to assure the unit's fitness for the agreed purpose, which involves in each case the tenant's access to running water. The Court held that a unit cannot be deemed fit for residential use without running water.

If the unit had been vacated by a another tenant, the landlord is obliged to replace equipment warn and torn during that previous tenancy (art. 6a(2) TPA). Other responsibilities of the landlord involve maintenance of the unit in proper condition, necessary repairs and restoration of previous condition of a defective building, as long as the defects have not been inflicted by the tenant.

There are many remedies available to tenants willing to enforce these obligations of the landlord. Where necessary, a tenant whose corresponding rights have been infringed may assert performance of relevant repair works, specific acts, including but not limited to conclusion of a contract for these repair works or invalidation of such agreements.[375] In order to exercise these rights the tenant is in a position to sue his landlord under art. 64 PCC, demanding that the court make a declaration of intent in lieu of the hesitant landlord.

It might be assumed that nowadays, on the free market of tenancies, such claims are rather exceptional. Yet, they are raised particularly with regard to municipalities and their stock, especially in the light of long waiting lists of candidates for a social unit, landlords try to adjust to the requirements of contemporary occupiers. Both expectations and available offer as regards the standard of newly built residential houses have evolved in recent decades. Standards generally kept in the 70's and 80's are no longer acceptable in the second decade of the XXI Century, particularly in the face of growing wealth of the society, but also technological progress relating to electrical installations, which formerly were not properly adjusted to simultaneous operation of multiple domestic appliances. Nowadays, new residential premises are frequently equipped in sharp-edge devices and installations similar to ones found in "intelligent" commercial buildings.[376]

Apart from the market itself, there are several legal regulations which define the concept of housing unit. These, however, do not refer to tenancies in a strict sense, but rather conditions which have to be met if particular residential premises are to be put into use. Art 7. of the 1994 Construction Law Act (CLA) provides the ground for delegated legislation setting technical standards for housing premises. Consequently,

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[373] SC judgment of 6 February 1979, IV CR 491/78, OSNC 1979, no. 10, item 194.
[374] SC judgment of 7 March 1997, II CKN 25/ 97.
[375] R. Dziczek, *Ochrona praw lokatorów...,* 74.
[376] I. Foryś, M. Nowak, *Spółdzielnia czy wspólnota? Zarządzanie zasobami mieszkaniowymi,* (Warszawa: Poltext, 2012), 53.

these questions are laid down in more detail in the Regulation of the Minister of Infrastructure of 12 April 2002 on the technical conditions of buildings and their location.[377] Notably, paragraph 3 item 9 of this Regulation defines a housing unit in a rather laconic manner - as a set of living and auxiliary rooms with a single entry, separated by walls from the rest of the building. As to the space between the walls, the enactment requires in very general terms that the set of rooms abide by conditions suitable for permanent human accommodation in which a household may be properly run.

With regard to units held under cooperative rights, art. 2 of the Housing Cooperatives Act sends back to the regulation of UOA, which defines a housing unit in art. 2(2) in a way identical to the CLA provision quoted above. As is the case in the Tenants Protection Act, art. 2(2)HCA puts an equation mark between a housing unit and artist studio.

In practice, the absence of any precise legal definition seems rather bothersome. It gives rise to a number of practical questions, some of which concern tax law regulations.[378] Nevertheless, the need to protect households who do not live in their own dwelling prevailed. Adequate protection had to be afforded to the categories of tenants most vulnerable to abuses. This refers especially to households living in the social municipal stock, unable to cater for their needs themselves on the free market. For such groups, protective mechanisms of the Tenants Protection Act are at play.

Guarantees shielding tenant rights are manifold. They comprise in particular: protection from disadvantageous or abusive contract provisions, unexpected or unjustified forfeiture of a tenure, sudden or excessive increase of rent and other fees for use of a unit, sidewalk eviction referring to certain classes of individuals, and homelessness, obligation of municipalities to manage their stock so as to assure social and replacement units and provide for the needs of low income families.[379]

As regards the public housing stock in general, which has been defined in the statutory dictionary of art. 2 TPA as units owned by municipalities, other self-government units, or juridical persons controlled by such entities, State Treasury or state run juridical persons, art. 7 lays down special terms of rent calculation. By determining the rates, public authorities should take into consideration: building's location, unit's placement within the building, furnishing of the building and unit with technical equipment and installations, as well as general technical condition of the building. Although the legislator enumerates conditions to be taken into account, art. 7 TPA does not exclude regard to other factors which might affect the value in use of a unit.[380] Municipalities generally rent what they have in their ageing stock, which refers especially to social and replacement premises.

- *To what extent is current tenancy law state law or infra-national law (if legislative jurisdiction is divided: what is the allocation of competencies and for which subject matters)*

[377] Official Law Journal 2003, no. 75, item 690.
[378] I. Foryś, M. Nowak, *Spółdzielnia czy wspólnota?...,* 55.
[379] E. Bończak-Kucharczyk, *Ochrona praw lokatorów...*, 51.
[380] R. Dziczek, *Ochrona praw lokatorów...,* 80.

As pointed out in the first part of the report, the concept of infra-national law in the area of housing refers predominantly to ordinances issued by municipal authorities. Regional (voivodeship) strategies are only indirectly related to housing. The same refers to competences of local self-government of the higher rank (poviats). Questions of housing policy are thus split between central stakeholders and the local level on which it is possible to pinpoint and adequately address problems of the local community. Under art. 4(2) of the Tenants Protection Act, municipalities are obliged to cater for the needs of low income families within the statutory framework, in particular assure social and replacement units. This statutory rule adds a new dimension to municipality obligations. According to art. 4(1) TPA, a municipality's own task is no longer - as was the case under the Residential Tenancies and Housing Benefits Act 1994 - to meet the housing needs of its inhabitants. Rather than that, municipalities are now to create preferable conditions in order to reach that goal. Under the current regime, only situation of the underprivileged is to be addressed directly. In order to create generally preferable conditions, municipalities have to adopt zoning plans (allot plots suitable for different types of development), utilize instruments of property management (join or split building plots, and make them accessible to investors), improve that land (for the needs of standards of housing development) and realize building investments.[381] In accordance with art. 4(4) TPA, municipalities may be subsidized from the state budget to effectively work towards the goals set out in art. 4(1) and (2) TPA.

In order to pursue the objectives outlined above, a municipality, pursuant to art. 4(2) may utilize its own housing stock or other instruments, e.g. by renting units owned by third parties and making them accessible to low income households.[382] Such procedures may be followed in order to cut investment and maintenance costs, however, in the long run, it is necessary that municipalities develop and maintain their proper stock.

Pursuant to art. 21 TPA, municipal councils enact multi-annual management programs for the municipal housing stock and general rules governing residential rentals, including housing units allocated to municipality employees if such practice has developed in a given locality. Another type of ordinance issued by municipal councils lays down the terms under which municipal premises are let, as well as criteria of employee allocation to a unit where a such possibility has been envisaged in a given place.

Under art. 8 TPA, rent payable in units belonging to the stock owned by a unit of self-government is determined by respective local authorities. In municipalities, it shall be a mayor, following the directives set forth in the municipal council resolution defined in art. 21 TPA and specific statutory provisions of art. 7 TPA.

- *Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?*

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[381] E. Bończak-Kucharczyk, *Ochrona praw lokatorów...*, 48.

[382] Lately the Ministry of Transport, Construction and Maritime Economy was planning to implement legislative devices to institutionalize that type of social lease allowing tenants to preserve accommodation in units for which they were unable to pay rent.

As pointed out above, from the point of view of the protective TPA regime, it is irrelevant whether the tenure held by the rightful occupier is classified in terms of obligational or proprietary rights, as long as he is not an owner-occupier, in which case protective measures are deemed unnecessary. The Civil Code contract for lease of a unit gives rise to an obligational relationship. Incidental lease regulated in the TPA only modifies this regulation, without introducing any new contract type.[383] As regards tenures within a cooperative, tenancy cooperative right is obligational, while freehold cooperative right is proprietary (for their development see Part I of the Report). Nevertheless, in respect of certain tenures, the lawmaker extends legal protection generally enjoyed only by owners to their rightful holders.

Such is the case with the Civil Code tenancy. According to art. 690 PCC, provisions regulating protection of ownership apply as appropriate to protection of tenant's right to enjoy a rented unit. This refers to remedies available to an owner *erga omnes.* Art. 140 CC, setting forth the scope of ownership requires that third parties respect one's property. Protection of the tenant's occupancy right against third parties does not extend to other objects of lease, such as movables. Appropriate applicability of remedies available to an owner is also limited in scope to instances of disturbed enjoyment. Other rights of a tenant are only relative (operate *inter partes*). This refers for instance to claims of proper maintenance of a unit.[384]

Extended protection covers as well nuisance claims defined in art. 144 PCC. Consequently, a tenant may sue his neighbour from the same building for onerous, behaviour e.g. excessive noises.[385] By determining the acceptable level of annoyance, regard should be had to objective conditions of a given neighbourhood rather than subjective impressions of the allegedly injured party.[386] Such remedies, as well as the claim for vacating the premises asserted against third parties, work to the extent in which the protection is justified on account of the object of lease and its purpose (art. 690 PCC refers as well to commercial leases).[387]

Extended protection following from art. 690 PCC is available also against the owner, regardless of other, regular remedies under the lease contract. The wording of the discussed provision does not allow for the owner's exclusion from the circle of persons obliged to respect the right of undisturbed enjoyment.[388] This provision, however, does not authorize the tenant to assert eviction claims against his co-tenant, since the latter is likewise in the right to occupy the unit.[389]

Under art. 343^1 PCC, provisions on the protection of possession are to be applied as appropriate as far as enjoyment of a unit is concerned. This provision was one of the Civil Code amendments under the TPA. It supplements the protection offered to a tenant by art. 690 PCC.[390] Under art. 344, possessory protection makes any

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[383] Most basically, allowing the lessor to evict a tenant who pledged to voluntarily undergo execution and improve lessor's position in the legal relationship.

[384] F. Zoll, *Najem lokali mieszkalnych,* (Krakóin: Zakamycze, 1997), 227.

[385] SC resolution of 4 March 1975, III CZP 89/74, OSNC 1976, no. 1, item 7.

[386] A. Doliwa, *Prawo mieszkaniowe...,* 390.

[387] A. Doliwa, *Prawo mieszkaniowe...,* 124.

[388] SC judgment of 28 November 1975, III CRN 224/75, as cited in A. Doliwa, *Prawo mieszkaniowe...,* 125.

[389] SC judgment of 20 November 1996, II CKU 36/96, *Prokuratura i Prawo*, no. 4 (1997), 25.

[390] A. Doliwa, *Prawo mieszkaniowe...,* 127.

violations actionable, regardless of the rightful title to the object possessed unless a court or administrative decision should ascertain that the situation resulting from the violation is rightful. Possessors are also entitled to self-defence, restoration of the previous condition shortly after the violation (art. 343).

Similar provision can be found in the Housing Cooperative Act 2000. Pursuant to art. 9(6) HCA, provisions on the protection of ownership apply as appropriate to the protection of a tenancy cooperative right to a unit. Yet, before the enactment came into force, remedies normally available to an owner were afforded to a cooperative tenant in accordance with art. 690 PCC. Such was decreed by the Supreme Court under the previous legislative framework.[391]

Since the enactment of the TPA the catalogue of remedies *erga omnes* has been open for all tenants within the understanding of art. 2(1) item 1. This found manifestation in art. 19 TPA. Not only the wording is the same as in art. 960 but also all the remarks concerning the Civil Code tenant (unit's lessee) retain validity for the broad category of tenants known to the TPA.[392] In light of the above, protection is afforded for example to life annuitants or persons to whom a flat is gratuitously lent. As regards usufructuaries or freehold cooperative right holders, such provision seems superfluous since ownership protection is appropriately extended as well to proprietary right holders under 251 PCC.

It can only be added that the extended protection is supplemented by the possibility to enter such personal (rather than proprietary) rights in land registers. Under art. 16 LRM this refers to various types of lease. In pursuance of art. 17 LRMA, a personal right or claim entered in the register becomes effective in relation to holders of rights acquired at a later date. This means, for example, that a buyer may not argue that he bought a property not knowing of any tenancy rights attached. The purchaser of a housing unit let to a third party may not terminate the tenancy on special terms if the lease has been displayed in the land register.[393]

Otherwise, the Civil Code provisions on lease regulate scrupulously the position of such new buyers. On general terms, in accordance with art. 678 PCC, the buyer automatically becomes the new landlord. He may, however, terminate the contract at a notice period set out in legal provisions. The buyer's right to terminate does not apply where the tenancy had been entered into for a specified period at an officially certified time (by a notary or other officials under art. 81 PCC) and the object of lease has already been delivered to the lessee. However, distinctiveness of tenancies (lease of a unit) has again been spotted by the legislator. Under art. 692 PCC the possibility of early termination by the buyer is narrowed down in the case of residential leases to instances in which the unit has not yet been delivered to the tenant. Where a tenant had received the unit before it was sold, the new landlord may terminate the tenancy if the contract was for unspecified duration and one of the reasons for termination specified in the TPA has been fulfilled.[394] Other than that, the buyer may terminate tenancy under art. 673(3) in special circumstances, as long as they have been expressly stated in the contract.[395] As the TPA fails to account in any

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[391] e.g. SC judgment of 22 November 1985, II CR 149/85, OSNC 1986, no. 10, item 162.
[392] See also R. Dziczek, *Ochrona praw lokatorów...,* 134-135.
[393] A. Doliwa, *Prawo mieszkaniowe...,* 133.
[394] SC judgment of 22 May 1973, III CRN 95/73, OSP 1974, no. 5, item 93.
[395] A. Doliwa, *Prawo mieszkaniowe...,* 133-34.

way for the situation of the unit's sale, in tenancies governed by its regime the buyer may exercise no special rights. Under art. 11 of the Act, termination is admissible only in the instances set out in the TPA.

- *To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?*

Regardless of its classifications, a contract for non-gratuitous enjoyment of a housing unit may, under art. 5 TPA, may be concluded for specified or unspecified period, however tenancies in the municipal housing stock (and other self-government levels) may only be granted permanently (in the form of lease), except leases of social and staff units or cases in which it is the tenant that wishes to enter into a contract of specified duration (art. 5(2) TPA). In the last case, the owner may not make the contract conclusion dependent on the expression of such wishes by the tenant. This article does not introduce much modification to specific regulation of different contract types, and refers predominantly to lease contracts, since rights held within a cooperative are always permanent.

In pursuance of the Civil Code general regulation of lease (including lease of movables), by the contract a lessor commits to deliver a thing for lessee's use for a specified or unspecified period, in exchange of which the lessee commits to pay the lessor the agreed rent. Contract for tenancy (whether residential or commercial unit lease) should be in writing if concluded for a period longer than one year. It is the landlord who should care to ensure the written form, since when the form is omitted the contract is deemed to have been entered into for unspecified duration.

The rights and obligations of both parties to a tenancy contract are framed in much detail in art. 6a-6g TPA, added by the amendment of 17 December 2004.[396] Previously, the Civil Code regulation applied extensively. In the present legislative framework, both acts are to be applied, since the TPA regulation is still rather rudimentary. In addition, according to art 3(3) TPA no article of the Act shall affect other provisions as long as they are more advantageous to tenant. This refers both to existing and future enactments. The only exception is made by art. 9a TPA which determines the amount of rent payable in Social Building Associations. This special provision allows for application of less favourable rules than those included in the TPA, by stating expressly that rent due for a unit belonging to an Association is governed by separate regulation.[397]

- *What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?*

Most definitely, tenancy contracts establish civil law relationships. In consequence, nowadays bodies of public administration have no jurisdiction to decide disputes in

[396] Official Law Journal 2004, no. 281, item 2783 as amended.
[397] R. Dziczek, *Ochrona praw lokatorów...,* 51.

this area even in the case of municipal landlords. As ruled by the Supreme Administrative Court in Gdańsk, a unit belonging to municipal stock may be let solely on the basis of a civil law contract. Any possible disputes between a tenant and a landlord are to be resolved by general courts of law (unless the parties themselves should submit potential disputes e.g. to arbitration).[398]

This also refers to claims asserted by persons awaiting for a social unit, since such lodgings are no longer allocated by way of administrative decisions. The Supreme Court held in 2002 that where a dispute concerns establishment of a tenancy relationship, the case at hand is always a civil law case in the understanding of art. 1 of the Polish Code of Civil Procedure 1964 (PCCP).[399]

The Court structure in tenancy cases does not stray from the general regulation. Under art. 1 of the System of Common Courts Law Act 2001,[400] in Poland there are district courts, circuit courts and courts of appeal. There is also the Supreme Court, which carries out review functions, interprets legal provision so as to assure uniform lines of jurisdiction. Although its case-law is in no way officially binding on regular courts, SC interpretations are generally followed.

There are two court instances in Polish procedure. Where a district court examines a case in the first instance, the possible appeal is decided by a circuit court. Where a case is heard by a circuit court in the first instance, appeal, if lodged, is adjudicated by a court of appeal. Cassation, in which the Supreme Court reviews final judgments, is an extraordinary review measure, which means that it is only eligible in exceptional cases. Under art. 398^2(2) item 1 PCCP, cassation is not available in cases concerning the payment of rent. This does not mean, however, that cassation appeals are always precluded in cases concerning lease. It is for instance possible (as long as the amount in controversy exceeds PLN 50 thousand) in actions for an order substituting lessor's consent to sublease.[401]

Since tenancy cases have a specific value, the query which court is competent in the first instance (district or circuit) shall depend on that value. Where it oversteps PLN 75 thousand, competence is vested in a district court. In cases beyond that value circuit courts are competent. In practice, nearly all cases concerning rentals will fall into the former category.

As far as horizontal jurisdiction is concerned, in cases referring to lease of immovable property, plaintiff may choose whether to issue the lawsuit before the court of the defendant's domicile or property location. However, where the dispute is over ownership or other proprietary right (e.g. freehold cooperative right or usufruct), exclusive jurisdiction is vested in the court of the property's location.

In pursuance of art. 505^1 PCCP, disputes concerning rents and fees payable by cooperative rights holders are, regardless of their value, resolved in a summary process. In principle, such mode of proceedings is to be more convenient to the plaintiff. However, it should be borne in mind that summary process is highly formalized and requires the plaintiff to file most of the pleadings, including petition itself, on official forms. Only in the rare cases where the dispute value exceeds PLN

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[398] SAC judgment of 15.10.1998, II SA/Gd 286/97.
[399] SC ruling of 18.5.2001, III KKO 3/01, OSNiAP 2002, no. 7, item 173.
[400] Act of 27 July 2001, Official Law Journal 2001, no. 98, item 1070 as amended.
[401] SC decision of 17 February 1999, II CN 174/98, OSNC 1999, no. 9, item 151.

75 thousand, and the case is heard by a circuit court, is the summary procedure omitted.[402]

- *Are there regulatory law requirements influencing tenancy contracts*
- *E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)*

The duty to register residents follows from public law regulation of the Registration of Population and Identity Cards Act 1974 (RPICA).[403] Registry includes records on whereabouts of individuals. Each person residing in Poland is obliged to be registered in accordance with the Act.

Registration is not correlated to any type of tenure. It neither gives rise to any rights or obligation nor states existence of such rights. For instance, de-registration of a tenant does not affect the tenancy and the ensuing legal protection. The obligation is thus purely administrative. It has been preserved mainly for statistical purposes, which is stated expressly in art. 10(2) RPICA.

Under art. 10(1) RPICA, all persons staying in a given locality for a period longer than 3 months should register for permanent or temporary residence within 30 days from arrival. Pursuant to art. 6(1) RPICA, the notion of permanent residence refers to a stay at a particular address with the intention to abide there permanently. Art 7(1) defines temporary residence as a stay in another locality or at another address without the intention to change permanent residence.

Statutory obligations comprise as well de-registration from one of the places discussed above, notices about a newly born child, a change in marital status or demise of an individual.

Issue concerning habitability and legal definitions of a housing unit have been outlined above as crucial for the general legislative framework and tenant protection system.

- *Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings etc.*

Issues of habitability have been referred to above while discussing the core principles of the Polish system along with definitions provided in the Tenants Protection Act.

- *Regulation on energy saving*

There is no particular energy saving regulation. Issues connected with thermal modernization have been discussed in the first Part of the present Report. Experts from the Ministry of Transport, Construction and Maritime Economy have been working on a draft of an act on energy performance of buildings, which is to

[402] A. Zieliński, *Postępowanie cywilne. Kompendium,* (Warszawa: C.H. Beck, 2012), 281.

[403] Act of 10 April 1974, consolidated text: Official Law Journal 2006, no. 139, item 993 as amended.

implement the Directive 2010/31/UE of the European Parliament and the Council of 19 May 2010.[404] The Directive enacts that before 2021 all newly erected houses be nearly zero-energy buildings. This requires state authorities to prepare relevant technical enactments defining specific requirements for particular types of buildings. On 16 April 2013, the Council of Ministers adopted the targets to be pursued in the final statute. The preliminary draft prepared by the Ministry's Department of Spatial Development and Construction covers as well the issues of preparation of statements of energy performance of buildings along with principles of control referring to heating and air-conditioning systems.[405]

6.2. Preparation and negotiation of tenancy contracts

Example of table for b) Preparation and negotiation of tenancy contracts

	Lease in Municipal (including social stock)	Social Building Association stock	Private rental sector	Incidental lease
Choice of tenant	Standards set in municipal board resolutions. Long waiting lists - supply lesser than demand	Statutory limits of income reference against statistical salaries	Free market basis, sometimes with the aid of real estate agents	Free market basis, sometimes with the aid of real estate agents
Ancillary duties	Income statements required	Income statements required Possible contracts for participation in construction costs (up to 30%)		Lessee's statement to voluntarily undergo execution, designation of a unit to go and declaration of the other unit's holder to accept the evicted lessee

- *Freedom of contract*

In the Polish legal system, freedom of contract has been guaranteed in art. 353^1 PCC. In accordance with this provision, parties to a contract may arrange their legal relationship at their own discretion, as long as its content and purpose are not contrary to the nature of the type of contract, statutory provisions or principles of social coexistence. It has been well accepted in the judicature of the Supreme Court that the principle of contractual freedom denotes that the parties to a contract:

a) are entirely free to decide if they want to establish a legal relationship, i.e. whether to enter into the contract,

b) are free to choose the counter-party,

[404] OJ L 153/13.

[405] Draft guidelines are available at: http://bip.transport.gov.pl/.

c) arrange the content of the contract in their own discretion and create a relationship which suits their interests,

d) are free to reach the agreement in any form, lest statutory provisions impose special formal requirements.[406]

Against the backdrop of art. 353^1 PCC, the Supreme Court held that since the freedom of contract makes one of the fundamental principles of the law of obligations, just as party autonomy makes an essential characteristic of a contract, it is impossible to assert that a lease contract could be concluded without lessor's consent.[407]

Obviously, freedom of contract is not absolute. Just as in any other legal system, certain limitations have been provided both in terms of content and purpose of the contract. Article 353^1 PCC enumerates three restrictions on general freedom: provisions of law, nature of a given type of contract and principles of social coexistence. Apart from these three factors, the Civil Code does not introduce any elements which would delimit contractual freedom, hence, contracting parties are not bound by any other restraints. They may, for instance, opt out of generally accepted customs.[408]

Certain forms of tenant protection are to be found outside the Civil Code. The TPA institutes a system of protection afforded not only to lessees in the strict sense of the word, but all individuals who occupy housing units under all tenures other than ownership.[409]

Owing to the need to ensure protection to all tenants, the legislator decided to limit certain facets of contractual freedom. Restrictions concern the content of tenancy contracts, as well as the form and freedom to choose the counter-party

Since the TPA applies to the subject matter covered in the Act, it seems necessary to discuss provisions of the Act which determine the object and the parties to contractual relations covered therein. These rules define the notions of a "unit" as well as "tenant" and "landlord." These concepts prove decisive in determining whether a tenure is governed by the TPA, which entails respective limitations to freedom of contract.

As regards the definition of a "unit," the TPA applies if the object of lease is a unit to be used for residential purposes. In consequence, it can be said that apart from certain exclusions, a unit in the understanding of the TPA corresponds to any lodging fit for accommodation, including e.g. a room which makes a part of an apartment. Moreover, the protective function of the Act suggests application of its provisions where a building put into use comprises a unit intended for residential use.[410] On the other hand, the TPA term "unit" does not extend to rooms destined for short-term accommodation, in particular lodgings in dormitories, guest and resort houses, hotels, or other buildings which serve tourist or recreational purposes. Since the statutory enumeration is non-exhaustive, it is presumed that the exemption applies as

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[406] Resolution of full panel of the SC of 28 April 1995, III CZP 166/94, OSNC 1995, no. 10, item 135, Prok. i Pr.-wkł. no. 11-12 (1995), 31, Wokanda no. 11 (1995), 1.

[407] SC judgment of 12 May 1999, II CKN 320/98, LEX no. 528161.

[408] SC judgment of 19 March 2003, I CKN 174/2001.

[409] Z. Radwański, J. Panowicz – Lipska, *Zobowiązania – część szczegółowa,* 8 ed., (Warszawa: C.H. Beck,2011), 114.

[410] M. Nazar, 'Ochrona praw lokatorów, cz. I', *MOP,* no. 19 and 20 (2001), 962

well to other premises, e.g. where rooms are rented to holiday-makers and tourists by an owner of a residential house.[411] Also premises let as so called student digs, usually under regular lease contracts, are considered lodgings intended for short-time accommodation. Consequently, they fall outside the concept and the TPA provisions do not relate to such leases.[412]

A "tenant" in the understanding of the TPA is a lessee of a unit or any such person who enjoys a unit under a tenure different from ownership. The term "co-tenant" refers to an individual authorized to occupy a unit jointly with another person. It may be concluded that the TPA category of tenant extends to all persons who hold a tenure in a unit other than ownership. As a result, the TPA regime pertains not only to a lessee, but also sub-lessee and occupier under a loan for use.

As pointed out above, "landlord," on the other hand, is a lessor or any such person who entered into a contract with the tenant authorizing the latter to enjoy the unit. In the understanding of property law, this concept is broader than that of an owner. In particular, the TPA provisions on the landlord refer to every lessor, regardless of whether or not he owns the unit or only lets it, as long as he delivered the whole unit or its part to a third person for sublease or gratuitous enjoyment.[413]

If all above premises are fulfilled, the tenure is going to be governed by the TPA which, as indicated above, imposes far-reaching confinements on the freedom of contract.

As regards the first type of limitation, one should indicate that on general terms the lessor is not bound in his choice of tenant. Practically, any individual or entity has the capacity to become a lessor or lessee. This refers to natural and juridical persons, as well as entities without legal personality but awarded with legal capacity under special enactments.[414]

Landlord's freedom has been confined in the TPA regime, especially when it comes to residential leases in the municipal stock. This is connected with the tasks that fell to municipalities in accordance with art. 4 TPA, which involve creation of conditions required to cater for the housing needs of the local population. In pursuance of this aim, municipalities must provide – in situations laid down in the statute – social and replacement units, and fulfil residential needs of low income families. In doing so, a municipality must follow the rules established by its municipal council. Among the tasks of a municipality, one should additionally point to arrangement of temporary premises, shelters, or other places offering overnight stay whenever a bailiff enforces the duty to vacate a unit under art. 1046(4) PCCP. A proper municipality council should, among other things, determine the income threshold and other conditions which have to be met by households applying for a rental in the municipal stock, criteria of precedence among prospective tenants, procedures of receiving and deciding applications for lease, and the mode of social control. Relevant statutory provisions stipulate that municipal housing units may only be let to natural persons. In order to comply with the tasks laid down in art. 4 TPA, municipalities employ their

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[411] J. Panowicz – Lipska in: *System Prawa Prywatnego, Chapter I, vol. 8, Prawo zobowiązań - część szczegółowa, (*Warszawa: C.H. Beck, 2011), 75-76.

[412] A. Mączyński, 'Dawne i nowe instytucje polskiego prawa mieszkaniowego', KPP no. 1 (2002), 97.

[413] J. Panowicz–Lipska in: *System Prawa Prywatnego, Chapter I, vol. 8, Prawo zobowiązań - część szczegółowa,* (*Warszawa:* C.H. Beck, 2011), 76--77.

[414] Ibid., 11.

housing stock and may rent units from other landlords in order to sublet them to low income households.

A special regime has been provided for lease of social units whose administration and assignment are tasks entrusted to municipalities on statutory terms. Social units are to be rented to:

- persons without any other tenure in a housing unit if the household income does not overstep the amount determined in the respective municipal council resolution, which must be lower than the general income threshold for households applying for rentals in the municipal stock.

- persons entitled to a social unit based on a court's judgment decreeing eviction of a previous unit after cessation of that person's tenure.

- exceptionally, to squatters evicted in pursuance of a judicial decision from the lawlessly occupied unit if the court considers it particularly justified in the light of principles of social coexistence.

When it comes to the pool of municipal units intended to accommodate staff for the period of their employment, these units are let in accordance with the principles and criteria established by resolution of the municipal council. In such cases, the financial and housing situation of an applicant for a municipal lease may prove irrelevant.

Provisions of the TPA concerning leases in the municipal housing stock are appropriately applicable to housing stocks of other self-government levels, with the exclusion of rules on renting social and replacement units, as well as temporary premises.

As regards housing rentals out of the stock of the Social Building Associations, units may be rented "exclusively" to natural persons without tenure in any other unit placed in the same locality whose household's income does not outdo the limit envisaged in legal provisions. In the current legislative framework, lease to natural persons has ceased to be the only way of putting housing units into use by Social Building Association's. This follows from the 2006 reform to the Act on Certain Forms of Support for the Building Industry 1995 (ACFSBI). It became an option for the Social Building Association's to let their units to municipalities or unions formed by local self government in order to sublet the premises to natural persons.

With a view to pursuing that end, the indicated self-governmental entities may enter into agreements with Social Building Associations committing themselves to participate in construction costs of the housing stock to be transferred to them as lease. Sublease offered by such self-governmental entities does not require consent from the Social Building Association. Moreover, art 30a ACFSBI provides for the possibility allowed to Social Building Association to sublet housing units to non-governmental organizations acting in the public interest. [415]

A lessee may also become a lessor when he sublets the agreed object to a third party under a sublease contract (art. 668, 688^2 PCC). The lessee, however, is not entirely free to decide about subletting the object of lease. In addition, sublease remains ancillary in relation to the principal lease relationship, since it terminates at the latest upon termination of the principal lease.[416]

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[415] J. Panowicz–Lipska in: *System Prawa Prywatnego...*, 86.
[416] Ibid., 12.

The Civil Code does not provide for any special form in which a contract for lease is to be concluded. Form, however, has been correlated to certain specific consequences of the contract.

Pursuant to art. 660 PCC, written form has been restricted for contracts for lease of an immovable property or premises for period longer than one year. Its non-observance causes that the contract is deemed to have been entered into for unspecified duration. Absence of the form prescribed as necessary for a short duration lease (*ad eventum*) does not impair the parties' freedom to adduce evidence, which generally follows from non-compliance with the requirement of the written form *ad probationem* (for evidence purposes) (defined in art. 74 PCC).

Adherence to the qualified written form (with certified date) makes a prerequisite of tenant protection from termination at a statutory notice period by the buyer of the unit who substitutes the former lessor in the tenancy relation (art. 678(2) PCC. Exclusion of the buyer's right of termination depends on whether the object of lease has been delivered to the lessee before it was sold. Other enactments as well provide exceptions to the rule enabling the buyer to terminate the contract at a statutory notice period, which lessens significance of the form mentioned above as an instrument guaranteeing effectiveness of tenant rights against the buyer of the object of lease. The principle does not apply to lease of units unless the lessee has not yet received the unit (art. 692 PCC). Where the lease is governed by the TPA regime, the rule has been entirely excluded. The TPA allows termination by the landlord only for reasons indicated in its articles (art. 11 TPA). These provisions fail to account for any consequences of a unit's sale.

Additionally, full effectiveness of lease against the buyer of the contractual object is assured by the possibility to display the right in a land register. Contractual form is of major significance on the occasion of entry into the land register. In order to effectuate it, the parties have to employ the special type of written form - with signatures certified by a notary (so called *ad intabulationem* form).[417]

Departure from the principle that a contract for lease may be concluded in any form makes one of the distinctive features of incidental lease. For successful conclusion of an incidental lease contract, art. 19a(6) TPA requires written form. Such contracts must be executed in writing under the pain of nullity. What is more, this provision, although superfluous in light of art. 77(2) PCC, requires that written form be employed in the case of amending the incidental lease contract. Non-observance of this requirement precludes incidental lease. In such situations, however, it cannot be accepted that an informal contract be null and void. The legal relationship of lease may indeed be instituted, yet it shall be neither qualified as incidental lease nor governed by its special regulation.[418]

Special tenant protection intended to guarantee durability and stability of existing legal relationships is afforded in particular by instruments limiting the general freedom to enter into a contract for a specified period. Parties' choice in respect of contracting for specified or unspecified duration has been confined in pursuance of the Civil Code and TPA rules.

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[417] J. Panowicz–Lipska in: *System Prawa Prywatnego...*, 24-25.
[418] Ibid., 79.

As far as leases for specified duration are concerned, their maximal period has been laid down in art. 661 PCC. It may not be longer than 10 years, however, where the contract holds between professionals, the maximal duration has been extended to 30 years. Any contract concluded for a longer period is deemed to have been signed for unspecified duration once the statutory maximum has elapsed.

Further restrictions are related to the requirement of written form for contracts of lease concerning immovable property for a period longer than year. In the absence of writing, the contract is treated under art. 660 PCC as a contract for unspecified duration.

The TPA framework, on its part, frustrates the freedom of choice between a specified and unspecified duration if the lease refers to units belonging to the municipal stock or resources of other self-government levels. In pursuance of art. 5(2) TPA, such units, with the exemption of social units and premises attached to the legal relationship - may only be let for unspecified duration unless it is the lessee who wishes that the contract be made for a specified period. Social premises, as well as staff units are granted for lease of specific duration.

Incidental lease as such may only be concluded for a determined period. Such contracts are entered into for periods no longer than 10 years. The admissible object and parties to occasional tenancies have been determined in art. 19a(1) TPA – this type of lease takes as its object only units employed for residential purposes. If a given lease is to be considered occasional, it is necessary to follow the terms detailed in the cited Act.

Moreover, it has been argued that admissibility of attachment of a resolutive condition would undermine the protection of lease stability. Such stipulation could lead to violation of this fundamental TPA principle concerning termination of tenancy. In light of the above, any resolutive condition should be regarded as a device selected for the avoidance of law and, accordingly, void (art. 94 PCC).[419]

Legal protection of tenants, as *ratio legis* of substantial restrictions to contractual freedom, has also an impact on the content of legal relationships, predominantly with regard to lease of housing units. Parties may not freely, to the exclusion of the Civil Code provisions and the TPA, include arbitrary provisions on widely conceived payments owed under the contract from a tenant to the landlord.

In accordance with art. 6(1) TPA, inception of tenancy may be made contingent on the advancement of a housing deposit to secure debts owed under the tenancy which are mature and payable to the landlord at the unit's vacation date. Where a deposit has been stipulated by the parties, the contract contains a suspensive condition. Commencement of tenancy depends on the payment of the deposit.

Tenant dues under the lease of a unit secured by the deposit include the outstanding rent and other charges attached to lease, as well as compensation for any damages to the unit inflicted by tenant's culpable conduct.[420] However, lease of a social or replacement unit cannot be made contingent on advance of a deposit. The same refers as well to contracts between parties exchanging units.

For the sake of protecting tenant interests, art. 6(1) TPA determines the maximal amount of deposit. Pursuant to this provision, it may not exceed the equivalent of

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[419] J. Panowicz–Lipska in: *System..,*17.

[420] E. Bończak–Kucharczyk, Ochrona praw lokatorów..., 58.

twelve monthly rent instalments for a given unit, binding at the date of contract inception.

Deposit is admissible also in the case of incidental leases. In such situation, it is to secure not only the dues owed on the vacation date, but also any possible costs of executing the vacation. The amount of deposit admissible in incidental leases may not overstep the equivalent amount of six monthly rent instalments for a unit, calculated according to the rent rate binding on the date of contract conclusion.

In accordance to the principle of contractual freedom, deposit may be stipulated also in other types of rentals. On such occasions it is the will of the parties that decides about the amount and repayment date. The TPA regime relating to a number of material elements of this security, affords protection to particular groups of tenants.[421]

Moreover, the lawmaker has distinctly limited contractual freedom with regard to fees that can be levied by the landlord and settled types of situations in which the charges may be increased.

Under the legislative framework of the TPA, a landlord may charge two types of fees, the principal rent and "charges independent of the landlord" – bills for supply of energy, gas, water, sewage, refuse and liquid waste disposal. Charges or bills "independent of the landlord" are generally not levied by the lessor. This category makes a provision owed by a tenant, yet, different from rent. The landlord may levy them unless the tenant is in a respective contractual relationship with a provider or supplier of such services and pays for them on his own. Provisions of art. 8a(4a) and (4b) point precisely to situations which allow for rent increase. Pursuant to these provisions, rent should be sufficient to assure expenses connected with unit maintenance, return on capital and fair profit. Where these elements fail to translate in the amount of rent, the increase is justified.

Direct limits concerning the value of rent apply when the units let belong to the public housing stock. By determining the rate of rent payable for 1 m^2 of usable floor area in the stock belonging to a municipality, the mayor is bound by the principles of rental policy enacted by the municipal council. Scholars refer to this rent as "limited."[422]

As a consequence of the specific "limitation" of rent in the municipal housing stock, it is inadmissible to freely fix the rent for social units. Its rate may not overstep half of the lowest rent payable in general municipal rentals.

Apart from situations of special limitation, rent determination at the inception of lease is left to the parties' discretion, which does not mean, however, that the amount may be arbitrary, particularly when it is imposed by the landlord. A tenant may question rent which is on the high side, by filing a suit against the tenant. In doing so, he may adduce general institutions of civil law, which serve as background for the judicial review of juridical acts and their performance.[423]

Regardless of the manner of rent determination, any increases may be effected in observance of restrictions envisaged in the TPA for all leases governed by this enactment.

Under art. 685^1 PCC, introduced in pursuance of the TPA, it is now admissible for lessors to increase the previous rate of rent by one month's notice, at the end of a

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[421] J. Panowicz–Lipska in: *System...,* 83 - 84.

[422] M. Nazar, 'Ochrona praw lokatorów, cz. 1 and2', MOP no. 19 and 20 (2001), 965.

[423] J. Panowicz–Lipska in: *System...,* 104 - 105.

calendar month. The TPA includes as well rules concerning the frequency of increases. This, however, refers to units exempted from the TPA regime (e.g. commercial leases).[424]

Under art. 8a TPA, a tenant may change the previous rent rate by giving three months' notice at the latest before expiry of a calendar month unless the parties had envisaged a longer period in the contract. Such modification must be notified in writing in order to be valid.

The same Act restricts the frequency of rent increases. According to art. 9(1b) TPA, they may not be effectuated more often than once in six months. This interval starts running at the date when the increase became effective.

Increase which leads to transgression of 3% of the replacement value per annum or any growth of rent already above that level may take place only in justified instances explicated in art. 8a(4a) and (4)e TPA. The lessor is then obliged to notify in writing to the tenant the cause and calculation of new rent at written request of the latter, within 14 as of reception of the request. Otherwise, the increase is deemed invalid.

In reply to the increase of rent, the tenant may refuse to accept the modification in writing, within 2 months from the date when he received the increase notice, which results in termination of lease at the applicable notice period. Before the cessation date, the previous rate is preserved.

Special increase admissible in justified cases (where new annual rent quota is to exceed the 3% replacement value threshold) may be questioned within 2 months as of the date of modification notice, by commencing an action before the court which is to ascertain whether the increase itself and its amount was justified.[425]

- *Are there cases in which there is an obligation for a landlord to enter into a rental contract?*

The basic way to create the legal relationship of lease is to enter into a contract. In special situations, lease may originate by operation of law.

Such is the consequence of recognizing spouses' position as co-tenants, regardless of their marital property regime. The above applies where lease commenced during matrimony with the view to fulfilling the housing needs of the family founded by the spouses (art. 680^1 PCC). It follows from the cited provision that the spouses are going to be lessees in the rented unit (more strictly, co-lessees) even where the contract had been signed by one of them.[426]

Another relevant situation involves the transformation of a cooperative tenancy cooperative right into lease (art. 16 TPA) as a result of liquidation within or outside official insolvency proceedings or execution concerning immovable properties, when the buyer of the building is an entity other than housing cooperative. Inception of lease by operation of law, regulated under art. 30(1) TPA, relates to individuals who occupied housing units without a valid tenure for at least 10 years before entry into force of the TPA (10 July 2001). Tenant rights were granted on the expiry of twelve

[424] A. Doliwa, *Prawo mieszkaniowe...,* 107.
[425] J. Panowicz–Lipska in: *System...,* 114.
[426] Ibid., 87.

months as of that date unless the owner managed earlier to bring a lawsuit asserting eviction claims or demanding ascertainment of non-existence of the lease.

- *Matching the parties*
- *How does the landlord normally proceed to find a tenant?*

In Poland, landlords in search of a suitable candidate for lessees are driven not only by the will to guarantee quick and undisturbed inception of the contract, but also, and foremost, the urge to ensure that the contract is going to be duly performed by the prospective tenant. For that reason, pursuit of the most suitable counter-party is not limited to announcements in generally available media, even though press announcements are a normal practice. Currently, it is common for owners willing to let to use assistance of real estate agents.

- *What checks on the personal and financial status are lawful and usual?*
- *particular: May the landlord ask for a salary statement? May he resort to a credit reference agency and is doing so usual?*

Before the entry into lease contract, a landlord willing to verify if the pre-selected tenant-to-be is going to discharge duly all contractual duties may avail of the resources of the National Criminal Record (Krajowy Rejestr Karny - KRK). This institution was established in pursuance of the National Criminal Record Act 2000.[427] Its mission is to keep a constantly updated database concerning criminal convicts. The National Criminal Register gathers data on persons finally convicted for crimes or tax offences.

Motions for information from the National Criminal Register are filed with the Information Centre of the KRK or local information points (there are 32 of them functioning at selected courts. Supply of information by the institution is charged with fees. Their amount is determined in the Regulation of the Minister of Justice of 14 August 2003 (presently the cost for information about an individual is PLN 50).

A landlord may also check the financial standing of a potential tenant. For this purpose, he may request a statement on the candidate's credit history from the Credit Information Bureau (Biuro Informacji Kredytowej - BIK). Such data is open to general public. Everyone may access it in the Customer Service Center of the Bureau. The Credit Information Bureau S.A. was founded by banks and the Polish Bank Association in pursuance of art. 105(4) of the Banking Law Act 1997.[428] Its responsibilities comprise collection of data concerning credit history of bank and para-bank clients. The Bureau cooperates with all commercial and cooperative banking institutions in Poland. The access to such database helps lenders in making decisions concerning potential loans. Information on client liabilities helps evaluate an applicant's position and predict if he is going to discharge the instalments timely.

[427] Act of 24 May 2000, Official Law Journal 2000, no. 50, item 580 as amended.
[428] Act of 29 August 1997, consolidated text: Official Law Journal 2002, no. 72, item 665, as amended.

Another institution which might prove helpful for a landlord was established under the Disclosure and Exchange of Commercial Information Act 2010. It is the National Debt Register - Bureau of Commercial Information S.A. Its statutory tasks comprise collection, storage and divulgation of commercial data and information. It operates via internet, which makes the database accessible 24 hours a day. Data on debtors is provided by businesses trading in all sectors of economy regardless of size and legal form, natural persons, municipalities and institutions. Providers of information are receivers at the same time, which means that debtors displayed in the National Debt Register cease to be anonymous and lose credibility in commercial dealings. In consequence, if a landlord has access to the register, he can verify the financial condition of a potential lessee.

- *How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of "bad tenants"? If yes, by whom are they compiled? Are they subject to legal limitations e.g. on data protections grounds?*

Currently, in Poland there are no legal blacklists of "bad tenants." Entities named above are the only legal sources of information about prospective counter-parties. The access to those databases is wide enough to enable verification of lessees-to-be. The access is qualified by formal or financial restrictions (the need to pay a fee in order to obtain full report from the National Debt Register).

- *Services of estate agents (please note that this section has been shifted here)*
  - *What services are usually provided by estate agents?*
  - *To what extent are estate agents regulated? In particular: are there rules on how an agent should present a house, i.e. on the kind of information which needs to be given?*
  - *What is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?*

The concept of real estate agency involves activities leading to conclusion of contracts between third parties pertaining to purchase and sale of immovable property. Between 2002 and 2013 the profession was practiced solely by licensed agents. Practicing without license was punishable by arrest or fine up to PLN 5 thousand.

The basic role of a real estate agent consists in provision of necessary and useful information to persons willing to buy, sell, rent or let a property so that the latter could enter into a respective contract on most suitable terms.[429] Apart from informing the parties, an agent arranges their transactions. For their services, agents charge commissions. Commission is generally dependent on completion of the transaction, which makes the agent strongly induced to achieve that end. It would be against the law to stipulate that agent remuneration will still be payable if the client manages to enter into a contract by himself, without any third party broking. However, advance payments are also charged upon inception of preliminary contracts. As regards the

[429] Ibid., 119.

value, commission for a tenancy contract makes usually an equivalent of one monthly rent instalment.[430]

The scope of activities of a real estate agent is considerable. Such person gathers information, negotiates and arranges contracts, provides opinion, e.g. concerning the possibility of repairing a property's legal defects.

On 19 April 2013 the Sejm (lower chamber of the Parliament) adopted the Act Amending Regulatory Legislation on Certain Professions. The lawmaker's intent was to deregulate a number of professions, including real estate agents. As regards amendments to the RPMA, its entire chapter devoted to this profession was repealed, which means that legislator left real estate agency open to the market. The future is yet unknown.

- *Ancillary duties of both parties in the phase of contract preparation and negotiation ("culpa in contrahendo" kind of situations)*

Before the parties express the final intention to be bound by lease, they may enter into an *ad referendum* contract (*pactum de contrahendo*) in which one of the parties promises to the other, or both of them exchange promises, to sign in the future the final contract.

An ad referendum contract is an option when the parties, because of legal or factual hindrances or for other reasons, may not or do not want to enter into the final contract (e.g. by reason of insufficient funds, absence of administrative permission expected by one of the parties) – and, yet, are willing to bind themselves with a promise to make such contract in future. As indicated in doctrinal writings, the aim of an *ad referendum* contract is to guarantee conclusion of the promised covenant.[431] An *ad referendum contract* makes a preparatory stage and warrant inception of the final contract, a fact already decided by the parties (having reached consensus on its essential conditions). Preliminary agreement brings a condition of certainty that the contract outlined and prepared by the parties is going to be finalized.[432] An *ad referendum* contract may also have a monitory and securing function on the property market. It is the case if a claim following from the preliminary agreement becomes displayed in the land register, e.g. a claim for transfer of an immovable property or creation of a limited proprietary right.[433] For the validity of an *ad referendum* contract, it is necessary that such agreement contain essential clauses of the final contract. Parties to the preliminary agreement may fix a period for the conclusion of the final contract, either in the *ad referendum* contract or separate accord, precedent or subsequent to the preliminary agreement. It is assumed equivalent to a direct stipulation of such period if the parties provide for an objective mechanism enabling determination of such period. The absence of the time limit in a *ad referendum* contract does not produce any negative consequences. In this sort of situation the

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[430] B. Skarul, ' Prowizja dla pośrednika przy wynajmie mieszkania', <http://regiodom.pl/portal/porady/nieruchomosci/prowizja-dla-posrednika-przy-wynajmie-mieszkania>, April 2013.

[431] A. Ohanowicz, *Zobowiązania – cz. szczegółowa*, (Poznań: PWN, 1959), 139.

[432] W. Popiołek in: *Kodeks cywilny. Komentarz,* (Warszawa: C.H.Beck, 2011)..., 831; the same conclusion has been reached by the Court of Appeal in Poznań in its judgment of 5 June 2008, I ACa 204/08, LEX no. 465083.

[433] C. Żuławska (in): *Komentarz do kodeksu cywilnego,* Księga trzecia. vol. 1, (Warszawa: LexisNexis 2006), 155.

party entitled to assert conclusion of the promised contract may appoint a term "pertinent" for the counter-party In this way, the lawmaker introduced – as pointed out in by academics – a specific mode for determining the time limit if it is absent in the preliminary contract.[434] Under art. 390 PCC, a party may claim damages where the other transactor breaches his obligation and declines to enter into the promised contract for the loss suffered in hope of inception of the final contract. Parties to an *ad referendum* contract may envisage liquidated damages. However, as long as the *ad referendum* contract meets all requirements set by law for the final contract, in particular as to form, the entitled party may file an action for inception of the promised contract. Claims under an *ad referendum* contract are barred after one year as of the date of the promised conclusion of the final agreement. If a court dismisses the claim for inception of the promised covenant, claims following from the preliminary contract are barred after one year as of the date in which the judicial decision became final. The latter may, for example, refer to a situation where an occurrence awaited by the parties has not yet happened.

The scope of contractual freedom is limited by provisions on impossibility to perform (art. 387 PCC). These general norms are applicable also to a contract for lease of a housing unit. In consequence, where a landlord entered into a lease contract referring to a non-existent unit or undertook to deliver a unit in which he had no valid title, the contract is void. Assuming that it would not be expedient to try and perform any obligations which cannot be carried out, the legislator has introduced in art. 387(1) PCC a general principle that a contract for an impossible rendition be void. This qualification, however, refers only to situations in which the rendition had been impossible *ab initio,* at the time of contract inception (so called precedent or primary). Quite conversely, where the rendition became possible at a later date (so called sequent impossibility), the contract retains validity, yet, it cannot be duly performed. As a result, in such cases provisions on the results of non-performance are to be applied. If one of the parties knew at the time of contract inception about the impossibility to perform and failed to notify the counter-party about such condition, it is assumed that such disloyal conduct calls for a sanction. This corollary is manifest in the obligation of the disloyal party to redress the loss suffered by the other party and attributable to the conclusion of the contract, not knowing about the impossibility to perform (art. 387(2) PCC) Liability envisaged in art. 387(2) PCC is justified by culpable conduct of the other party at the pre-contractual stage, so called *culpa in contrahendo*. The guilt consists in disloyal and dishonest - from the point of view of commercial custom - behaviour during negotiations leading to conclusion of the contract.[435] Contractual loyalty requires that the other party be notified of circumstances which may influence his decision about conclusion of the negotiated transaction. Since the other party realizes impossibility before the agreement is reached, he should loyally inform about that condition. Otherwise, the disloyalty may be sanctioned by the charge of culpa *in contrahendo,* which gives rise to civil law liability.[436] The duty to compensate has been limited to the so called negative contractual interest. he Polish legal system adheres to the conception of delictual character of claims for redress under the doctrine of *culpa in contrahendo*. From this,

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[434] M. Krajewski (in: *System prawa prywatnego* t. 6: Prawo zobowiązań - część ogólna, E. Łętowska (ed.), (Warszawa: C.H. Beck, 2007), 747.

[435] W. Popiołek in: *Kodeks*..., 823; A. Rembieliński in: *Kodeks*..., 334; Z. Radwański, Zobowiązania..., 122.

[436] C. Żuławska in: *Komentarz*..., 149; P. Machnikowski in: *Kodeks*..., 629.

it ensues that in matters unregulated by special enactments it should be the general rule to recourse to the delictual regulation of art. 415 PCC and following provisions.[437]

There are two types of impossibility to perform. One is objective and the other one subjective. Rendition is objectively impossible if it may not be performed not only by the debtor but any other person. On the other hand, objective impossibility is the case where it may not be performed only by the debtor.[438]

Subjective impossibility has no influence on validity of the contract, since the debtor has undertaken to perform, and performance is related only to himself. Unless the subjective impossibility should drop later in time, the duty to perform either transfers into the duty to indemnify loss or expires (art. 471 et seq. PCC).[439]

Impossibility to perform, which triggers invalidity of the contract in pursuance of art. 387(1) PCC, however, must be permanent.[440] Impossibility to perform is deemed permanent (invariable) unless, according to reasoned human expectations, the rendition becomes feasible in near future. The relevant period that is to be taken into account shall depend on the type of rendition and purpose to the obligation.[441] Commitment to deliver a unit made at the construction stage is not going to be, in light of the above, objectively impossible. Such an arrangement generally leads the obligor's answerability for delay in the unit's delivery, until its completion, unless the parties have expressly settled this question otherwise (e.g. by stipulating the lessor's obligation to make necessary construction works needed to make the unit fit for its proper use).

Performance is objectively impossible when it cannot be delivered for factual reasons (so called factual impossibility). One classic example would be the absence (non-existence) of an individually designated object of rendition. Likewise, performance is deemed objectively impossible where it is barred by obstacles insuperable as such or only according to the latest scientific and technical findings.[442] As regards lease contracts, this might be the case for a technical defect to the unit which is impossible to remedy in accordance with the current developments in construction sciences.

Academic writings qualify as impossible performance not only instances of factual and legal impossibility, but also situations in which rendition might in fact be feasible but it is reasonable from the economic perspective to regard it as impossible.[443] As a consequence, insuperable obstacles (responsible for the impossibility to perform) are considered to include in practice such hindrances which are indeed surmountable from the technical point of view, but whose overcoming proves entirely unjustified in the light of economic rationality, because of the need to sustain high costs and put in much effort. On such occasions, lawyers speak of so called economic (practical)

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[437] Z. Radwański, A. Olejniczak, *Zobowiązania – część ogólna* (Warszawa: C.H. Beck, 2008), 134-135.

[438] SC judgment of 20 March 2009, II CSK 611/08, LEX no. 527123; SC judgment of 8 May 2002, III CKN 1015/99, LEX no. 55497; W. Czachórski, A. Brzozowski, M. Safjan, E. Skowrońska-Bocian, *Zobowiązania. Zarys wykładu* (Warszawa: LexisNexis, 2009), 71.

[439] F. Błahuta in: *Kodeks*..., 925; W. Popiołek in: *Kodeks*..., 820.

[440] SC judgment of 12 August 2009, IV CSK 81/09, LEX no. 530575.

[441] P. Machnikowski in: *Kodeks*..., 628; P. Machnikowski in: *System*..., 515.

[442] W. Popiołek in: *Kodeks*..., 820; A. Rembieliński in: *Kodeks*..., 333.

[443] C. Żuławska in: *Komentarz*..., 148.

impossibility.[444] In consequence, if the attempts to comply with the obligation were unreasonably disproportionate in relation to the expected effects – then very severe hardships concerning performance should be treated as insuperable obstacles.[445]

In a body of court rulings, claimant's foreign citizenship and absence of permanent residence permit have not been considered an example of preliminary impossibility of performance resulting in contract invalidity, as, in the view of the Court of Appeal before which the case was pending, the impossibility was of the subjective type. It related to the debtor exclusively. In comparable situations, the contract for sale of a cooperative housing unit would be effective if the buyer was a Polish citizen, since he would become a member of the cooperative to which the unit belongs. [446]

Impossibility to perform subsisting at the time of contract conclusion prevents the contract from producing legal effects which would otherwise reflect the declarations of intend exchanged between the parties. Contract invalidity based on the impossibility to perform forestalls the freedom to enforce liquidated damages envisaged under the contract, as well as other claims provided for therein.[447]

Scholars point to three requirements that have to be satisfied if the obligation to indemnify the damage is to arise – one of the parties knows about the impossibility to perform, the knowing party fails to notify the counter-party about such impossibility, and the counter-party itself is not aware of the impossibility to. [448]

It is assumed that redress is to cover the damage sustained by the party who entered into contract without knowing about the impossibility to perform. Indemnity should cover costs relating to preparation and conclusion of the contract, e.g. costs of drawing up the offer, costs of transport to the place where the contract is signed, costs of legal advice, costs linked to contract conclusion and other expenditures which are causally linked to the party's conviction that the contract is binding. Scholars maintain that the obligation to indemnify the damage is to put the party in a position in it would be if the contract would have been concluded. [449] More recently, it has been added that it may also refer to lost profits (*lucrum cessans*).[450]

The mode of contracting has not been determined by law in any specific way. As a result, it is legitimate a conclusion that it is admissible to conclude contracts for lease in all possible manners: by offer and acceptance, negotiations, auction or tender. Naturally, in practice the most frequent way to enter into the contract will be by negotiations.

The way of conducting negotiations, their scope and duration, means of communication used depend on the will of the parties. However, the type of contract which is to be signed after negotiations is also of significance, as well as its complexity and conflicting interests of the parties to be reconciled. Provisions of law fail to provide for the procedure and organization of negotiations as such, and the parties may agree on these matters in their own discretion. By this kind of arrangement, most frequently known under the name of negotiation agreement,

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[444] W. Popiołek in: *Kodeks*..., 820.

[445] W. Czachórski, A. Brzozowski, M. Safjan, E. Skowrońska-Bocian, *Zobowiązania*..., 72.

[446] judgment of the Court of Appeal in Poznań of 27 May 1992, I ACr 162/92, OSA 1992, no. 12, item 90.

[447] judgment of the Court of Appeal of 21 January 2005, I ACa 1313/04, LEX no. 147135.

[448] W. Popiołek in: *Kodeks*..., s. 822.

[449] F. Błahuta in: *Kodeks*..., s. 925; W. Popiołek in: *Kodeks*..., 822; A. Rembieliński in: *Kodeks*..., 334.

[450] judgment of Court of the Appeal in Katowice of 3 February 2005, I ACa 1342/04, LEX no. 147139.

parties pledge to carry on negotiations under specific terms. They are concluded by exercise of the principle of contractual freedom (art. 353^1 PCC), and their infringement gives rise to contractual liability (art. 471 et seq. PCC).[451]

The freedom to decide about a contract is subject to certain limitations. The parties are obliged to conduct negotiations following best practices. Refusal to conclude the negotiated contract should thus be viewed through the prism of best practices. Depending on the circumstances, such refusal may be considered contrary to best practices pursuant to art. 72(2) PCC. This provision provides for accountability of the parties for commencing or carrying on negotiations in violation of best practices. Commencement of negotiations is to be understood as any activities or statements of a party which are to incline the other party to enter into negotiations or lead to their opening, in particular an invitation to sign the contract or invitation to treat. Negotiations, in turn, encompass all activities engaged in the course of treatment in relation to the other party which amount to mutual interaction and refer to the bargain. Art. 72(2) PCC provides ground for actions in *culpa in contrahendo* cases.[452]

The sanction for infringement of best practices at the start or in the course of negotiations is the duty to indemnify damage inflicted as a result of infringement, still, art. 72(2) PCC refers to damage sustained by the other party who acted in confidence that the contract is going to be concluded. This means that the sanction does not apply only where, in spite of commencement or continuation of negotiations in violation of best practices, the contract has actually been concluded. However, in a situation where, in consequence of such infringements, the contract has been concluded with delay, the duty to indemnify may refer to the damage inflicted on the other party which hoped to enter into the contract within specific time-frame where the contractor prolonged negotiation dishonestly.

Indemnification payable under art. 72(2) PCC does not account for the total amount of damage actually suffered, but only provides compensation up to the value of the so called negative contractual interest. In other words, with regard to liability under art. 72(2) PCC, compensation may not be derived from the fact that the contract has not been put into effect. Instead, it should refer to all outlays made on the occasion of negotiations even if they could not be attributed directly to the contract and the benefit expected of the transaction. In other words, indemnification reflecting the negative contractual interest should cover whatever the aggrieved party would have gain if he had abstained from negotiations, and not what that party could have gain if the contract had been finally put into effect.[453]

6.3. Conclusion of tenancy contracts

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[451] S. Włodyka in: *Prawo umów w obrocie gospodarczym*, S. Włodyka (ed.), (Kraków: Wydawnictwo IPSiZP, 1993), 142-143; Z. Radwański in: *System prawa prywatnego*, vol.. 2 (Warszawa: C.H. Beck, 2008), s. 356.

[452] D. Rogoń, 'Problemy negocjacyjnego trybu zawarcia umowy po nowelizacji kodeksu cywilnego', *PPH* no. 10 (2003), 6; P. Sobolewski, 'Culpa in contrahendo - odpowiedzialność deliktowa czy kontraktowa', *PPH* no. 4 (2005), 23.

[453] judgment of the Court of Appeal in Szczecin of 31 October 2012, I ACa 446/12, LEX no. 1237853.

Example of table for c) Conclusion of tenancy contracts

	Municipalities (including social stock)	Social Building Association stock	Private rental sector	Incidental lease
Requirements for valid conclusion	No special regulation regarding form, although in practice contracts are concluded in writing. Municipal rentals other than social must be for unspecified duration. In social leases this must be always specified	No special regulation of form, although in practice contracts are concluded in writing.	No particular formal requirements. Contracts for specified duration longer that year should be made in writing lest their duration be deemed indefinite	It is necessary to enclose to the contract a number of notarial deeds: - lessee's statement of voluntary submission to execution - designation of lessee's place to go in case of eviction -consent of the other unit's holder to accept the lessee after eviction
Regulations limiting freedom of contract	Deficiency of municipal stock, no new investment	Regulated rent, income thresholds	Extensive tenant protection (TPA)	Confinement to natural person lessors

- *Tenancy contracts*

Under a contract of lease, as defined in relation to all leases in art. 659 PCC, a lessor commits to deliver a thing for lessee's use for a specified or unspecified period, in exchange of which the lessee commits to pay the lessor the agreed rent. This relationship is obligational, as the contract of lease gives rise to a tenant's claim for temporary use of the object of lease, whether an independent thing/property or its part.[454] The lessee's position is that of a dependent possessor. This construction follows from art. 336 PCC, the possessor of a thing is a person who actually controls it, like the owner (owner-like possessor), or a person who actually controls it as a usufractuary, pledgee, lessee or holder of some other right conferring on him a certain degree of control over another person's thing (dependent possessor).[455] The contract is thus binding *inter parties*, however, in regard to tenancy contracts, the legislator granted the tenant under art. 690 PCC with legal protection equal to an owner. Regardless of the object to the contract, lessee is always protected as a

[454] Z. Radwański, J. Panowicz-Lipska, *Zobowiązania - część szczegółowa,* (Warszawa: C.H.Beck, 2005), 95.
[455] E. Kucharska (translator), *The Civil Code. Kodeks cywilny,* (Warszawa: C.H. Beck, 2001), 145.

possessor under arts. 344-346 PCC and 478 PCCP. In pursuance of this regulation, the court does not generally examine whether the possessor had been in the right before his control of a thing was infringed, but restores him in his possession unless the violator can prove his rights to the thing by a final decision of a court or other state authority.

Although the Civil Code tenancy is a contractual relationship, there are instances where it is created on non-consensual basis. The polish legal system knows two such situations. The first is referred to in art. 16 HCA and relates to transformation of tenancy cooperative rights. In accordance with this provision, where a housing cooperative is liquidated (whether in bankruptcy proceedings or outside the courtroom), a tenancy cooperative right to a unit switches *ex lege* to a tenancy relation between the present tenant and the new owner of the premises. The second case triggers validation of an illicit state of affairs and follows from art. 30 TPA, which introduces a construction similar to usucaption or positive prescription. Pursuant to this provision, a person who had occupied a housing unit for the minimum period of 10 years before the entry into force of the Act becomes by operation of law a rightful tenant unless the owner sues him for eviction or ascertainment of tenancy non-existence. The calculation of rent here is also automatic. Its annual value makes an equivalent of 3% of the unit's replacement value. The rule reflects the urge of the legislator to stabilize housing relationships on one hand, and on the other it makes a corollary of art. 75 of the Constitution which prescribes that the state cater for the housing needs of the citizens. In practice, the analysed enactment refers basically to municipal or other public housing stock.[456]

Tenant rights may as well be acquired in a non-contractual manner in the specific case of succession set out in art. 691 PCC. Under this enactment, after the death of a tenant in a housing unit, the deceased is succeeded by his spouse (if the spouse has not been a co-tenant already), children (including stepchildren), other persons entitled to alimony from the deceased, as well as a cohabitant.[457]

- *Tenancy distinguished from functionally similar arrangements (e.g. licence; real right of habitation; Leihe, comodato)*

Tenancy may be entered into for specified or unspecified period. The period of a lease may be measured in hours, days, weeks, months or years. The ending date may as well be determined by indication of a future event whose occurrence seems fairly certain.[458] It is noteworthy that a specific type of temporary leases corresponding to the term license (not known under that name in Polish jurisdiction), where the unit let is located in a dormitory, hotel, boarding or guest house is treated differently under the Civil Code rules on tenancy and the TPA. Such leases, just like contracts for more permanent accommodation, fall under the Civil Code regulation of tenancy, as art. 680 PCC makes no exclusions in this respect. The latter provision refers both to residential and commercial premises, not necessarily "independent

[456] R. Dziczek, *Ochrona praw lokatorów...,*, 174.
[457] This special form of succession is described in more detail in section e) of this report.
[458] SC judgment of 30 August 1990, IV CR 236/90, OSNC 1991, no. 10-12, item 125.

units" in the understanding of art. 2 OUA. The Civil Code regulation thus encompasses rooms rent to students or guests.

On the contrary, lodgings in dormitories, boarding houses, hotels, guest houses and other buildings used for tourist and recreational purposes are expressly exempt in art. 2(4) TPA from application of the statute. Short-term stays have not been included as the Act is related to housing purposes and, consequently, housing units (or artist studios) whose enjoyment is to be more or less permanent.

One special type of lease concluded for specified and generally limited duration is occasional lease defined in arts. 19a-19e TPA. By a contract of occasional tenancy a non-professional natural person landlord who lets the unit for a period no longer than 10 years enjoys benefits of a legal relationship which is easier to terminate, or where it is much easier to evict the tenant. A willing tenant-to-be must execute a statement as notarial deed in which he commits to submit to any future execution and vacate the unit on the date specified in the notice (no longer than 7 days as of the notice delivery). In addition, the tenant has to name another unit where he may stay upon termination of the contract and present a statement of its owner or rightful holder allowing the tenant to stay in case of such termination. The landlord may terminate the contract before the specified date at statutory notice if any of the circumstances set forth in art. 11 and 13 are the case. The tenant may be contractually obliged to put down deposit to secure payment of rent and other charges. The deposit may not exceed the value of 6 monthly rent instalments In a situation in which new apartments are scarce, it is generally not a problem to find a willing tenant. Extensive tenant protection laid down in the TPA made a serious obstacle for individual landlords who feared the virtual impossibility to regain the let premises for their own use. In consequence, much of the fear was abated as the new construction was introduced in 2009 (see Part I of the Report). Another merit of the new system pertains to tackling the grey market of rentals in the non-professional sector. Pursuant to art. 19b, the landlord is to notify proper Tax office of a contract within 14 days of its inception.

Due to exemption under art. 19e of the extensive TPA tenant protection with regard to rent increase or eviction makes this type of rentals substantially different from other types of tenancy in the broad understanding of the word defined in art. 2 TPA.[459] From the formal point of view this might seem strange, because the broad definition, as has been discussed above in more detail, encompasses not only Civil Code lease and other obligational tenures but also proprietary rights to a unit. As a result, a situation ensues in which a holder of a freehold cooperative right (formally tenure closest to ownership[460]) is protected more comprehensively against the cooperative "landlord" than a proper but occasional tenant.

- *Specific tenancy contracts, e.g. contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well. Please describe the legal specificities in these cases.*

[459] R. Dziczek, *Ochrona praw lokatorów...*, 146.
[460] Ibid., 39.

Other arrangements similar to Civil Code tenancy (lease of units) which are covered in full by the overall TPA regulation involve: loan for use, usufruct, personal servitude, annuity and cooperative rights.

Loan for use can be granted under art. 710 PCC. This obligational right is created through a contract in which the lender allows the borrower to gratuitously use a thing delivered to him for that purpose. This contract may relate to both movables and immovables.

The right may be created for a specified or unspecified duration. If the contract had been made for unspecified period, the lending ends once the borrower has made use of the thing in question in accordance with the arrangements or when the time during which he could have made such use has lapsed (art. 715 PCC).

Unlike tenancy, loan for use is always gratuitous. Furthermore, unlike a lease, to creation of which an agreement between the parties is sufficient, loan for use requires delivery of the thing in question. Although the contract for loan for use makes a source of obligational rights only, just like leases it may be entered in the land register under arts. 16,17 and 31 LRMA.

The construction of loan for use is commonly employed for immovable property used for residential purposes. In the housing context, this may refer in particular to the relation between a tenant and his family members. It is possible to create a variation of this right, in which the borrower is not required to pay rent, but otherwise has to cover expenses relating to maintenance and management associated with ownership.

Usufruct defined in art. 252 makes a relationship by virtue of which an encumbrance is created over a chattel or immovable property. The entitled person may use the agreed thing and gather its fruits.

The right is a limited real right created through contract and it may relate to movables, immovables and rights which bring fruits. It may be gratuitous or non-gratuitous, specified or unspecified in time.

The content of the right resembles fruendi lease (which is not suitable for residential purposes because lodgings bring no fruits to a tenant) but, unlike the latter, usufruct is a proprietary right and may be gratuitous. In addition, it is generally possible to transfer rights under fruendi lease, whereas usufruct is non-transferable and non-hereditary. It is, however, possible for the entitled person to authorize another's exercise the right, e.g. under a lease or loan for use contract. It terminates with the death of a natural person or liquidation of a legal entity. Therefore, unlike fruendi lease, which is aimed at satisfying commercial or economic needs, the purpose of usufruct is to satisfy needs of more personal type, maintenance of a family in particular. It is often related to land, particularly agricultural farms.

In order to found the tenure, it is necessary that the owner's declaration of will take the form of notarial deed, whereas the other party’s consent is not required to be in any particular form (art. 245§2 PCC). In practice, however, both parties appear before a notary and the whole contract is executed as notarial deed.

Usufruct may, but does not have to be registered. If it is, it will be effective against future purchasers of land, who will be unable to argue that they were in good faith and unaware of the right’s existence.

Personal servitude is established to fulfil personal needs of a specified individual, therefore it is not transferable and may not be exercised by anyone other than the entitled person (art. 300 PCC). Under art. 299 PCC, it expires at the latest upon his demise.

One special type of a personal servitude is the servitude of habitation, regulated in art. 301 PCC. There is no clear definition of this servitude, therefore one must assume that it empowers a particular person to occupy a specified housing unit. The tenure is proprietary rather than obligational. According to art. 301(1) PCC, the entitled person may bring in to the dwelling his spouse and minor children. He may take other persons with only if they are maintained by him or are needed for running the household. Children who lived with this type of tenant before coming to age may also stay in the dwelling as adults.

Notably, art. 301(2) envisages that parties may agree that upon death of the entitled person, the servitude of habitation shall pass to his children, parents and spouse. Without such agreement, the servitude shall expire.

As in the case of usufruct, servitudes may, but do not necessarily have to be, registered. However, once they have been, then they are effective against future purchasers of the land, who are not in a position to argue that they were in good faith, not knowing of the right's existence.

Another type in the gamut of obligational rights is annuity. This tenure is created on contractual basis. Under such contract, one person transfers ownership of a real estate to another, in return of which the latter is obliged to take the seller to his home and provide him with food, clothes, accommodation, energy and heating, care in the event of illness, and to pay for the annuitant's funeral. Additionally, the person who acquired the property may be contractually obliged to create the right of usufruct, servitude of habitation, provide money or things designated in kind.

Since the above mentioned contract contains the obligation to transfer an immovable, in each case it must be executed as notarial deed (art. 158 PCC).

The right of lifetime habitation is strictly personal, therefore neither alienable nor hereditary.[461]

It is regarded as encumbrance of the immovable property and, consequently, provisions on limited real rights are to be applied accordingly under art. 910 PCC. It may, but does not have to be registered. Even without registration it will be effective against a purchaser of the immovable property who acted in good faith in pursuance of art. 7 item 2 LRMA.

Cooperative rights have been broadly discussed in Part 1 o this report. Cooperative rights are still quite popular alternatives to unit ownership and lease.

- *Requirements for a valid conclusion of the contract*

- *Formal requirements*
- *Is there a fee for the conclusion and how does it have to be paid? (e.g. "fee stamp" on the contract etc.)*

[461] Z. Radwański, J. Panowicz-Lipska, *Zobowiązania...*, 285.

- *registration requirements; legal consequences in the absence of registration*
- *Note: If relevant, please distinguish the various existing registers, e.g. land register, tax register, register of domicile.*

As regards formal requirements, these were codified in art. 660 PCC. According to this enactment, a contract for lease of an immovable property or a lodging for a period shorter than year is to be made in writing. The written form has been defined in art. 78(1) PCC. Under Polish law it is thus required that the parties sign a document which embodies their intentions. It is sufficient that the parties exchange documents embracing their will and each of such letters bears a handwritten signature of the issuer. Contracts concluded orally are still valid. The consequences to non-observance of the required form concern contract duration. In the absence of a written agreement, the contract is deemed to have been concluded for unspecified period.[462] If the parties elect that the contract be entered into for specific duration, there is no lower limit to the period of tenancy. It is also possible to correlate the date of expiry to a future event or include a valorisation clause.[463] Naturally, all this is possible only within the statutory framework of the PCC and TPA. This means, for example, that even in short-term leases the legislative framework still makes it difficult to evict an unwanted occupier once the contract has expired. The only exception is the incidental lease discussed above.

According to art. 6 TPA, inception of tenancy may be contingent on the payment of a housing deposit by the tenant. This type of warranty is to secure payment of rent and other debts payable on the date of vacating the unit. The deposit may not be higher than twelvefold of the monthly rent instalments for a given unit. In occasional tenancy this amount has been reduced under art. 19a(4) to six instalments Also municipalities may demand a deposit in their stock other than social premises. Similar exemption has been envisaged for replacement units. The deposit is to be paid back within one month starting from the unit's vacation.

The instalment coefficient is determined by the landlord. In municipal premises it is affixed by resolution of a municipal council. If the statutory limit of twelve instalments is exceeded, the deposit clause will be void.[464]

Since rentals in Poland are usually quite stable relationships, the lawmaker had to regulate under art. 36 TPA repayment of deposits put down under the RTHBA 1994 and before. In the latter case, there are no special legal grounds for valorisation of the deposit, however a tenant may invoke art. 358^1(3) PCC, the general private law provision on valorisation.[465] Deposits paid under the rule of the RTBA are valorised, taking as a basis the percentage of the replacement value advanced at the contract inception. Even in cases of accelerated depreciation, however, the returned sum may not be lower than the originally paid deposit. In the RTBA legislative framework deposits could not be higher than 3% of such replacement value.

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[462] A. Doliwa, *Prawo mieszkaniowe...,* 21-22.
[463] Ibid. 167.
[464] R. Dziczek, *Ochrona praw lokatorów...,*, 70.
[465] SC resolution of 26 September 2002, III CZP 58/02, OSNC 2003, no.9, item 117.

There is no registration obligation. Only in the case of incidental lease, discussed in other parts of the Report, it is necessary to report the contract to tax authorities under the pain of loss of the landlord's preferential position.

Lease may optionally be entered in land register under art. 16 Land and Mortgage Register Act (LMRA),[466] which creates the legal fiction that a third party buyer of the premises knows about tenancy rights attached to the acquisition.

- *Restrictions on choice of tenant - antidiscrimination issues*

- *EU directives (see enclosed list) and national law on antidiscrimination*

In accordance with art. 32 of the Constitution of the Republic of Poland[467], all men are equal before the law and ought to be treated equally by public authorities. No one may be discriminated against in political, social or business life for whatever reason.

1 January 2011 saw entry into force of the Anti-Discrimination Act (ADA), or, to be more precise, the Act Implementing Certain EU Enactments Concerning Equal Treatment of 3 December 2010.[468]

This statute transposes, inter alia, provisions of the Directive 2000/78/EC and 2000/43/WE.[469] It ensures protection against discrimination in the fields of: housing, education, social security, health care.

The Act defines problem areas and methods of combating infringements of the principle of equal treatment based on sex, race, ethnic origins, nationality, religion, faith, believe, disability, age or sexual orientation.[470] It is applicable to natural and juridical persons as well as other entities without legal personality but equipped in legal capacity by statutory provisions (art. 2 ADA). Art. 6 ADA prohibits unequal treatment of natural persons based on sex, race, ethnic origin or nationality in regard to access to and conditions of availing of social security, services, including housing services, goods, acquisition of rights or energy - as long as they are offered publicly Pursuant to art. 5 item 1 ADA, the new regime is not applicable to private and family life or any juridical acts related to this sphere. Likewise, it does not affect the freedom

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[466] Official Law Journal 1982, no. 19, item 147.

[467] The Constitution of the Republic of Poland of 2nd April, 1997, as published in *Dziennik Ustaw* No. 78, item 483; English version available at http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.

[468] Act of 3 December 2010 Implementing Certain European Union Provisions Concerning Equal Treatment (OJ 2010, no. 254, item 1700); Polish version available at: *isap.sejm.gov.pl/Download?id=WDU20102541700&type=2.*

[469] 'Dyrektywy Unii Europejskiej dotyczące równego traktowania bez względu na rasę, jako instrument zmiany prawa polskiego.' Conference materials. Warszawa 2004.

[470] More on the Act; 'Ustawa o równym traktowaniu', Monitor Prawniczy no. 1 (2011); D. Pudzianowska, A. Śledzińska-Simon, 'Efektywność europejskiego systemu ochrony praw człowieka. Problemy skutecznego zwalczania dyskryminacji w świetle polskiej ustawy o równym traktowaniu', in: *Ewolucja i uwarunkowania europejskiego systemu ochrony praw człowieka*, J. Jaskiernia (ed.) (Toruń, Wydawnictwo Adam Marszałek, 2012),725-742; B. Banaszak, 'Projekt ustawy o równym traktowaniu. Opinia Prezydium Rady Legislacyjnej', *Prz. Legisl.* no. 1/2 (2009), 187-201; E. Marszałkowska-Krześ, 'Projekt ustawy o równym traktowaniu. Opinia Rady Legislacyjnej', *Prz. Legisl.* no. 4 (2007), 104-110; C. Mik, 'Projekt ustawy o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania. Opinia Rady Legislacyjnej', *Prz. Legisl.* no. 3/4 (2009), 184-191.

to choose the counter-party as long as the choice is not motivated by sex, race, ethnic origin or nationality (item 3).[471]

One of possible doubts relating to lease of a housing unit refers to whether an offer meets the requirement of being addressed to the "public?" As far as it has been published in a newspaper, internet or some other place, and thus addressed to a wide range of potential lessees, the answer to that query should be positive. Generally, most controversies as regards equal treatment concerning access to housing services are excited in situations relating to rental of private units. So far, the question of discrimination by lease of private lodgings has not been inquired into in academic literature.[472] In practice, landlords might refuse to rent the unit to a person of different skin colour, e.g. immigrants from Africa or large families coming from Chechnya. It happens as well that a landlord who hears a foreign accent in the telephone receiver might inform the caller that the offer is no longer valid while an NGO employee inquiring about the same unit is invited to inspect the premises. There are cases in which higher deposits are asked of foreigners, because landlords are anxious about the possibility of such persons' insolvency injury to property.[473]

In the context of housing rentals, a basic question arises: whether such contract is to be regarded as covered by the ADA statutory regime? In other words, does a landlord who declines to let a bachelor unit to a black person commit a discriminatory act within the meaning of the Act? On one hand, the appropriate provision reads clearly about "access to and conditions of use of services, including housing services, things and acquisition of rights and energy, where they are offered to general public." On the other hand, the statutory framework does not refer to the spheres of private and family life and juridical acts related to these areas. So the question arises whether lease of a unit counts as a matter of private and family life? In a way it does, since it is affects "private ownership." It is fitted to every individual's right to freely dispose of his own property. However, it should be considered if such ought not to be restricted by the prohibition of discrimination applicable to provision of or access to services.

Notably, the Race Directive declares to be valid to "all persons, both in the private and public sector, including public institutions." In effect, also natural persons who provide services of renting housing units are bound by the regime, even in situations of incidental lease by natural person lessor. The requirement of "public" offering is generally met in the form of a generally accessible press or internet announcement. This does not refer to instances in which the owner wishes to let the unit to a family member or acquaintance. Non-discrimination regime would merely extend to publicly made offers of lease to which indeterminate offerees are free to respond.

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[471] See also Z. Niedbała (ed.), *Prawo wobec dyskryminacji w życiu społecznym, gospodarczym i politycznym*, (Warszawa: Difin, 2011); P. Filipek, Ł. Połatyński, N. Żytkiewicz, *Równe traktowanie w życiu społecznym. Wybrane zagadnienia prawa europejskiego i polskiego* (Kraków: Ośrodek Praw Człowieka Uniwersytetu Jagiellońskiego, 2008).

[472] More abort the general problem of ethnic discrimination in Poland A. Mikulska, *Ksenofobia i dyskryminacja na tle etnicznym – zarys sytuacji* (Warszawa: Helsińska Fundacja Praw Człowieka, 2008), Ł. Łotocki, *Sąsiedzi czy intruzi? Punkt widzenia praktyków oraz ekspertów,* (Warszawa: Instytut Spraw Publicznych, 2010).

[473] K. Wencel, Report 5/2011 'Dyskryminacja cudzoziemców w dostępie do usług w Polsce', <www.interwencjaprawna.pl/docs/ARE-511-dyskryminacja-mieszkaniowa.pdf>.

At this point, the relation between anti-discrimination law and property law regulation of real estate ownership should be discussed. Pursuant to art. 64(1) of the Constitution of the Republic of Poland, each citizen is entitled to ownership, other economic rights, as well as succession. These rights are protected equally in relation to everyone (art. 64(2)). Ownership may be restricted only by statutory provisions and only to the extent which does not encroach on the essence of the right (art. 64(3) of the Constitution). In light of the prohibition of discrimination concenring access to housing services, the problematic issue would be the relatively broad protection afforded to owners in Polish law. Notably, owners are in a position to dispose of their immovable property (e.g. own housing unit) – they are free to sell, rent, use or devise the property as they please. Correspondingly, they should, at least in theory, be able to decide to whom they wish to let or sell the housing unit. In case-law of the Constitutional Tribunal, ownership is treated as the widest subjective right in terms of content and – in comparison with other entitlements – as the strongest right to a thing.[474] However, the Tribunal has pointed out that it is not an absolute: limits to ownership are marked by three elements: statutory provisions, principles of social cooperation and socio-economic purpose of the right.[475] The Anti-Discrimination Act may likewise limit proprietor's prerogatives. By such restriction, the owner willing to rent his housing unit may not refuse to enter into a contract of lease e.g. with a person of different ethnic origin if the sole motivation for such refusal was a legally relevant characteristic of the lessee-to-be.

The answer to the question has been expressly provided in the Anti-Discrimination Act. Art. 5(3) envisages that the statutory regime shall not apply to freedom to choose the counter-party as long as selection is not based on gender, race, ethnic origin or nationality. This means that a person who enters into a contract is not entirely free to decide about the other party. Where refusal to rent a housing unit is induced by nationality, race or ethnic origin, such conduct is deemed unlawful. True instances of discrimination are not easy to evidence. As a consequence, from the point of view of a victim to discrimination it is important that courts should embark on the principle of reversed burden of proof which facilitates litigation, or even guarantees success in court. In accordance with that principle, it is sufficient to substantiate (rather than prove) a situation of discrimination. Then, it is up to the respondent to demonstrate that he was not driven by discriminatory grounds or that discrimination could be objectively justified. The Anti-Discrimination Act does indeed shift the burden of proof. This means that a person who asserts discrimination in a legal suit is only obliged to substantiate that the principle of equal treatment has been encroached upon. Once it is done, the one alleged to have violated the standard is to provide evidence to the contrary. In practice, substantiation means presentation of a probable course of events, evidencing would normally involve e.g. calling a witnesses of the discriminatory event.

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[474] Constitutional Tribunal judgment of 20 April 1993 r., OTK I/93, item 8.

[475] More to be found in: S.Jarosz-Żukowska, *Konstytucyjna zasada ochrony własności* (Kraków: Zakamycze, 2003); M. Jagielski, 'Regulacja własności w Konstytucji RP' in: *Państwo i prawo wobec współczesnych wyzwań. Zagadnienia prawa konstytucyjnego. Księga jubileuszowa Profesora Jerzego Jaskierni*, R.M. Czarny, K. Spryszak (eds) (Toruń, Wydawnictwo Adam Marszałek, 2012), 681-703; K. Skotnicki (ed.), *Własność - zagadnienia ustrojowo-prawne. Porównanie rozwiązań w państwach Europy Środkowo-Wschodniej* , (Łódź, Łódzkie Towarzystwo Naukowe 2005).

An example of indirect discrimination concerning access to housing services might be the practice of the Municipal Council in Pruszków which involves an unlawful criterion of selection among persons applying for housing units in the municipal stock[476]. Under paragraph 2 of the municipal council resolution no. XLV/508/2002 of 23 May 2002 concerning the terms of lease of units belonging to the housing stock of the municipality,[477] "lease contracts are to be concluded exclusively with inhabitants of Pruszków," by which the Council understands persons permanently registered in the town. At this place, it is worth mentioning a ruling of the Voivodeship Administrative Court in Gorzów of 23 February 2011 relating to introduction of the minimal income criterion in the procedure of allocation of units by the municipality. Households earning below the minimum would be automatically excluded from the procedure. The Court held that criteria adopted by the Municipal Council and the new category of financial standing of applicants for a municipal lodging lead to a situation in which these are not the lowest income families that enter into rental contracts with the municipality. Low income households as such have scant means to satisfy their housing needs on their own. The solution adopted by the municipality arouses doubts related to the constitutional principle of equality of all citizens before the law. In consequence, it cannot be accepted under the current legislative framework requiring municipalities to cater to specific social needs of the population.[478] The Court pointed out that, by delimiting the range of persons entitled to a housing unit from the municipal stock, a municipal council must remember not to impose terms discriminatory against particular groups of inhabitants.

In Warsaw, the municipal council adopted the Resolution no. LVIII/1751/2009 of the of 9 July 2009 on the terms of renting units belonging to the municipal housing stock. Under this enactment, refugees and persons granted subsidiary protection are to be allocated with up to 5 municipal units per annum, as a result of competition organized by the Warsaw Family Support Center (Warszawskie Centrum Wspierania Rodziny - WCWR). Within the competition, once a year a special committee selects 5 families from among all foreigners applying for housing aid, taking into consideration the following criteria: family status, housing and health situation, financial standing, duration of stay in Poland and efforts made to integrate into society.[479]

Once the selection is made, the WCPR refers the case to the Housing Policy Bureau in the city hall of the capital city of Warsaw so that the latter could prepare lease contracts with the selected individuals. "As long as the foreigner meets income and current housing criteria and resides in Warsaw, he or she may apply for a housing unit from the municipal stock." Moreover, "the element of residence in Warsaw is not prejudged by any specific permit to stay in the Republic of Poland."

A victim to unequal treatment may claim indemnification from the party answerable for discriminatory behaviour. Compensation is awarded by court adjudicating in pursuance of the Civil Code.

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[476] W. Klaus, K. Wencel, 'Dyskryminacja cudzoziemców w Polsce w latach 2008-2010' in: *Sąsiedzi czy intruzi? O dyskryminacji cudzoziemców w Polsce,* W. Klaus (ed.) (Warszawa: Stowarzyszenie Interwencji Prawnej, 2010), 84.

[477] According to K.Wencel (report 5/2011);

[478] judgment of the Voivodeship Administrative Court in Gorzów of 23 February 2011 (IISA/Go 1/11).

[479] K. Wencel, (Report 5/2011).

The provision of art. 13 ADA envisages that each individual in relation to whom the principle of equal treatment has been violated may claim indemnification under the Polish Civil Code. This means that a person discriminated against in a manner covered by the Anti-Discrimination Act is free to assert compensation before a civil court having jurisdiction over the respondent's place of residence.

The Anti-Discrimination Act has ordained protection from retaliatory measures. Exercise of rights under the regime of equal treatment protection cannot provide grounds for unfavourable treatment, or cause any other negative consequences in relation to the person who sought remedy. This protection refers as well to individuals who lent support in any way to the claimant asserting discrimination claims.

The statute allows for so called countervailing actions. These are the case inn a situation of special measures being adopted to the benefit of an underprivileged social group in order to ease their situation or simply facilitate access to certain goods or services. Such steps are not contrary to law, they do not discriminate against the "majority." They only serve to countervail poorer conditions of life of members of the group discriminated against. Such measures, however, should be administered with caution and for limited duration.

As of 1 January 2011, the authority competent to combat violations of the principle of equal treatment became the Ombudsman who, in accordance with art. 8 of the amended Ombudsman Act, is to undertake proper actions once he obtains information suggesting infringement of human rights and freedoms, including the principle of equal treatment In relation to private entities the Ombudsman may, but does not have to, take actions described below (so called discretionary powers of the Ombudsman):

1. analysis, monitoring and support of equal treatment of all persons,
2. carrying out independent research on discrimination,
3. preparation and publication of independent reports,
4. delivery of recommendations concerning problems related to discrimination.

In a Polish case heard by the European Court of Justice referring to impossibility to inherit from a homosexual partner, the Court ascertained a breach of the European Convention on Human Rights[480]

The applicant, Piotr Kozak lived with his partner in municipal premises. After the death of the latter, he filed a motion with respective authorities for recognition of his succession as lessee. The applicant contended that as "close relation" to the deceased partner he deserves to obtain the tenure in the unit.[481] Municipal authorities in Szczecin denied him the right to such succession. Eventually, the ECtHR held that Poland has infringed the right to respect for private and family life in this case. In the view of the Court, "the State's narrow margin of appreciation in adopting measures that result in a difference based on sexual orientation, a blanket exclusion of persons living in a homosexual relationship from succession to a

[480] *Kozak v. Poland* (application no. 13102/02). The judgment is available in English at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97597.

[481] Which is formally allowed by Polish law, see B. Kordasiewicz (ed.), *System Prawa Prywatnego*, vol.10, ed.2 (Warszawa: C.H. Beck, 2013), 87.

tenancy (in a municipal unit following partner's death) cannot be accepted by the Court as necessary for the protection of the family viewed in its traditional sense."

Nevertheless, the district court for Warszawa-Mokotów dismissed the action in the belief that succession involves only heterosexual cohabitants. The court tried whether the current legislative framework provides any foundations to extend the notion of "factual cohabitation" to homosexual couples. The court ruled that existing case-law of the Supreme Court gives rise to the conclusion that the term should be interpreted as "cohabitation analogical to marital," which unequivocally disqualifies same-sex relationships. In the opinion of the court, there are hardly any Supreme Court rulings pointing to the need to approach homosexual relationships as "durable factual cohabitation." In the justification of the judgment, the court omitted to account for the ECtHR ruling in the case *Kozak v. Poland*.

- *Limitations on freedom of contract through regulation*

- *mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract*

The minimal content of lease agreements should specify when and where the contract has been concluded, its parties, subject matter, quantum of rent. The parties may also include more specific clauses concerning termination of the contract, distribution of repair costs, improvements to the rented unit and lessor's reimbursement of outlays made by the lessee. Moreover, the parties may determine in the contract whether rent is to be monetary or take the form of other provisions. The contract may decide on whether the lessor allows for sublease to or gratuitous use of his property, whether in whole or in part, by a third party. In the absence of such detailed specifications, provisions of the Polish Civil Code are to be applied.

- *Control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms*

The question of review of contractual clauses, especially with regard to standard terms has been regulated within the Civil Code as amended by the Protection of Certain Rights of Consumers Act of 2 March 2000.[482] Ascertainment of the abusive character of a contractual clause is possible under the general clause of art. 385^1(1) PCC and the catalogue of possible stipulations included in art. 385^3 PCC.

On the former basis, it is assumed that terms of a contract made with consumer which have not been individually negotiated are not binding on the consumer if they frame his rights and obligations in a manner contrary to moral principles, infringing flagrantly consumer interests. However, this does not relate to contractual provisions setting out the parties' main obligations, including price or remuneration, as long as they have been formulated unambiguously.

[482] The Act on Protection of Certain Consumer Rights and Liability for Damage Inflicted by Dangerous Goods, Official Law Journal 2000, no. 22, item 271 as amended.

Incidental review of abusive clauses refers solely to consumer transactions and in relation to consumers who were not in a position to negotiate individually the contract's terms. In particular, this refers to model terms used and offered to the consumer by professional. Consumer's awareness of clauses falling beyond actual negotiations or possibility to access them before entry into contract in no way exclude the conclusion that a particular clause has not been individually negotiated. The burden of proof that the clause has in fact been negotiated rests on the party who bases his assertions on such a circumstance. Where a contractual provision turns out not to be conclusive on the consumer because of its abusive character, the parties are bound by all the remaining terms and conditions falling within their agreement. As a rule, review encompasses specific standard terms. Where abusive, they cease to be binding on the parties. In the remaining scope, the legal relationship retains its validity. It is important that ascertainment of a clause's abusiveness does not lead to invalidity of the contract in its entirety.

Any clause deemed abusive ought to be treated as though it had not been included at all. It is struck out as a whole rather than "confined" to admissible contents. Control of a standard term proceeds in three stages: with regard to its incorporation into the agreement (art. 384 PCC), transparency (art. 385(2) PCC) and, finally, its subject matter (art.385^{1PCC}).

Incidental review falls under the jurisdiction of common courts. Litigation in this respect relates to particular standard terms. It seems that such review may not end up in declaration of invalidity of the whole standard contract. It should be differentiated from abstract review, which is carried out, under present legislation, by the Circuit Court in Warsaw – Court for Competition and Consumer Protection.[483]

The *locus standi* to bring an action for abstract review of a standard contract is vested in every person who, in light of the potential respondent's offer, could enter with him into contract containing the clause whose validity is to be evaluated. Alternatively, action may be brought by non-governmental organizations established to protect consumer interests, poviat (municipal) ombudsman for consumers, as well as President of the Office for Competition and Consumer Protection. The claim for declaring a standard contractual term invalid may be asserted even if the respondent has already ceased to apply it - before the lapse of six months as of the withdrawal from application.

Where the action is allowed by the court, the operative part of the judgment quotes the invalidated term and prohibits its application[484]. Final judgment is effective towards third parties as of the date of the entry of the invalidated clause in the register of standard contractual terms deemed inadmissible held by President of the Office for Competitions and Consumer Protection. Once the Court ascertains a

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[483] More E. Łętowska: *Prawo umów konsumenckich,* (Warszawa: C.H. Beck, 2002); E. Łętowska: *Komentarz do ustawy o ochronie niektórych praw konsumentów,* (Warszawa: C.H. Beck, 2001); E. Łętowska: *Europejskie prawo umów konsumenckich,* (Warszawa: C.H. Beck, 2004); A. Świstak, 'Abstrakcyjna kontrola wzorców umownych w praktyce', *PiP*, no. 5 (2003); A. Kadzik, 'Postępowanie w sprawach o uznanie postanowień wzorca umowy za niedozwolone (abstrakcyjna kontrola wzorców umownych)', *Radca Prawny*, no. 4 (2003).

[484] More in: M. Śmigiel, 'Wzorce umów jako czynnik kształtujący zobowiązaniowe stosunki prawne – ewolucja instytucji' in: *O źródłach i elementach stosunków cywilnoprawnych. Księga pamiątkowa ku czci prof. Alfreda Kleina*, E. Gniewek (ed.) (Kraków: Zakamycze, 2000), 360; W. Popiołek, *Komentarz...*, (Warszawa: C.H. Beck,.2006); M. Jagielska, 'Niedozwolone klauzule umowne' in: *Europejskie prawo konsumenckie a prawo polskie*, P. Cybula (ed.) (Kraków: Zakamycze, 2005).

clause to be inadmissible, it ceases to be conclusive on the parties and becomes ineffective against third parties.[485] Judicial decision in this respect does not directly render all analogical clauses included in contracts with other consumers invalid. The Supreme Court is of the view that legal protection following from such decisions extends to so called similar clauses[486].

Clauses of lease contracts are rarely found in the register kept by the Office for Competition and Consumer Protection. Most frequently, they refer to agency contracts where the agent is to mediate in the conclusion of lease. The Court for Competition and Consumer Protection has thus far questioned only a single clause strictly connected with the content of a lease contract (entry number: 342, judgment date: 2004-12-29, Municipality: Sosnowiec). The clause was of the following content: "The lessee shall carry out all repair, conversion and modernizing works at his own cost, having obtained prior consent of the lessor and without the right to have the outlays reimbursed upon termination of lease."

- *Statutory pre-emption rights of the tenant*

Municipalities sell their housing units in accordance with provisions of the Real Property Management Act 1997 (RPMA), Unit Ownership Act 1994 (UOA), Municipal Self-Government Act 1990 and specific resolutions adopted by municipal councils. Such local ordinances are crucial, since it is the municipality that develops its own housing policy and decides whether and which units in its stock are to be sold. Should municipal authorities decide to sell some of the stock, present tenants may exercise pre-emption right in pursuance of art. 34(1) RPMA. If the council wishes to promote private ownership, it is free to introduce considerable price discounts which may in practice exceed 90% of the market value. Pursuant to art. 68(1) the discount

[485] This issue seems rather problematic, see M. Bednarek, *Wzorce umów w prawie polskim*, (Warszawa: C.H. Beck, 2005); K. Gajda-Roszczynialska, *Sprawy o ochronę indywidualnych interesów konsumentów w postępowaniu cywilnym*, Warszawa: Wolters Kluwer, 2012); M. Jagielska,' Skutki wpisu postanowienia wzorca umownego do rejestru niedozwolonych postanowień – glosa do postanowienia Sądu Najwyższego z 13.07.2006 r. (III SZP 3/06)', *EPS,* no. 5 (2007); A. Kołodziej, 'Charakterystyka cywilnoprawnej sankcji niedozwolonych postanowień w umowach z konsumentami', *Rej*. no. 12 (2008); A. Kołodziej, 'Kontrowersje wokół cywilnoprawnych skutków abstrakcyjnej kontroli wzorca umowy konsumenckiej' in: *Prace z prawa cywilnego. Dla uczczenia pamięci Profesora Jana Kosika*, AUWr, No 3161, Prawo CCCVIII, P. Machnikowski (ed.) (2009); M. Michalska, M. Wojewoda, 'Kilka uwag o rozszerzonej mocy wiążącej wyroków uznających postanowienia wzorca umowy za niedozwolone', R.Pr. no. 4-5 (2008); M. Rejdak, *Postępowanie w sprawach o uznanie postanowień wzorca umowy za niedozwolone. Komentarz*, (Warszawa: C.H. Beck 2009); M. Rejdak, 'Powództwo o uznanie postanowień wzorca umowy za niedozwolone i zakazanie ich wykorzystywania', *KPP* no. 1 (2009); M. Rejdak, M. Romanowski, 'W sprawie charakteru i skutków abstrakcyjnej kontroli niedozwolonych postanowień wzorców umownych stosowanych przez przedsiębiorcę', SPP no. 3 (2010); R. Trzaskowski, 'Przesłanki i skutki uznania postanowień wzorca umowy za niedozwolone (art. 479^{36}–479^{45} KPC)', *Prawo w działaniu,* no. 6 (2008); R. Trzaskowski, 'Wpływ uznania postanowienia wzorca umowy za niedozwolone (art. 479^{42} k.p.c.) i zakazu jego stosowania na indywidualne stosunki prawne kształtowane z wykorzystaniem tego postanowienia wzorca' in: *Aurea praxis Aurea theoria*. *Księga pamiątkowa ku czci Profesora Tadeusza Erecińskiego,* vol. II, J. Gudowski, K. Weitz (eds) (Warszawa: LexisNexis, 2011)

[486] SC judgment of 20 June 2006, III SK 7/06.

may be granted by the mayor within the framework established by resolution of the municipal council.[487]

As regards housing cooperatives, he lawmaker introduced legal provisions which facilitate converting both the tenancy and the proprietary co-operative rights into proper ownership of units. In accordance with art. 12 a holder of the tenancy cooperative right may acquire the title on demand if he pays a certain fraction of the construction costs corresponding to his unit. Very often, this can be done for a token price. Conditions set out in the cited provision are binding on the cooperative, which means that a tenant willing to buy may not be refused.[488] Also in the case of a freehold cooperative right, its holder has a similar claim to convert the tenure into ownership. Such transactions may be effected provided that the legal status of the land on which the cooperative buildings were erected is clear. Unfortunately, the legal status of a number plots of land on which cooperatives had erected buildings has remained uncertain.

It is also possible for a lessee in the Social Building Association stock to purchase the occupied unit,[489] although contract terms in this case are not as beneficial for the buyer as in the cooperative or municipal housing. That is why this new possibility remains, for most part, a dead letter. The price of the unit is diminished only by the tenant's valorised contribution to its construction cost. As a result, for many Social Building Association lessees willing to become owners it is more profitable to withdraw the contribution and buy a new dwelling on developer market.

- *Are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?*

In Polish law, there are no legal provisions to the effect that a mortgagor would not be allowed to lease a dwelling charged by mortgage or any similar restrictions.

6.4. Contents of tenancy contracts

Example of table for d) Contents of tenancy contracts

	Municipal stock (including social units)	Social Building Association	Private rental sector	Incidental lease
Description of dwelling	No specific regulation	No specific regulation	No specific regulation	No specific regulation
Parties to the tenancy contract	Municipality and lower income lessees	Social Building Association and lower income lessees	No restrictions	Only natural person lessors

[487] Municipal authorities exercise discretionary powers in this respect. The price does not have to be discounted, c.f. judgment of the Voivodeship Administrative Court in Łódź of 8 December 2009, II SA/Łd 634/09.

[488] A. Stefaniak, *Prawo spółdzielcze oraz ustawa o spółdzielniach...,* 257.

[489] As a result of the adoption of the Act of 19 August 2011, Official Law Journal 2011, no. 201, item 1180.

Duration	Unspecified in the general stock and specified in social premises	Generally unspecified	Specified/unspecified	Specified - up to 10 years
Rent	Determined by municipal authorities, taking into account statutory criteria	determined by the Social Building Association in accordance with statutory provisions (regulated rent)	Free - with restrictions on increases	Free - with restrictions on increases
Deposit	Usual - up to 12 x monthly rent	Usual - up to 12 x monthly rent	Usual - up to 12 x monthly rent	Usual - up to 6 x monthly rent
Utilities, repairs, etc.	Civil Code and TPA distribution of responsibilities between the lessor and lessee	Civil Code and TPA distribution of responsibilities between the lessor and lessee	Civil Code and TPA distribution of responsibilities between the lessor and lessee	Civil Code distribution of responsibilities between the lessor and lessee

- *Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)*

Provisions of the Civil Code fail to define the notion of unit. The PCC regime of lease referring to units may thus cover rentals of residential and other premises. This refers both to independent units in the understanding of art 2(2) UOA and their parts, e.g. rooms, as follows from art. 2(1) item 4 TPA. Residential premises subject to lease may comprise a room, or set of rooms demarcated by permanent walls, located in a building and destined for regular habitation with a view to fulfilling housing needs.

There is no template regulation concerning description of a dwelling. Such specification is left to the parties. Usually, address is given along with the storey, number and specification of rooms (living, kitchen, bathroom, etc.), as well as usable floor area. If the unit makes a separate property under the Unit Ownership Act, respective number of land register is also frequently given. Contracts generally catalogue equipment left over to lessee together with the lodging (furniture, TV equipment, etc.). Such lists may be enclosed to the principal agreement.

As far as equipment and overall condition of the premises is concerned, so called protocols of transfer and receipt are in widespread use. These documents, signed by both parties upon delivery of the unit, name all pieces of equipment to share the lodging's lot and specify its technical condition, current value of water, gas and electricity gauges. Templates of lease contracts and protocols of transfer and receipt can be easily found over the internet.

Apart from the unit itself, it is crucial that the parties are named correctly along with specific personal data (ID number, place of residence or registered office in reference to juridical persons). Incorrect specification of the parties may spawn disputes whether the contract has been concluded with an existing entity. Remedies under the

contract may be sought against existing persons. In addition, possible litigation is much easier if their whereabouts are known.

Provision of wrong data may hinder the dispute, however, it does not preclude proceedings. In the absence of a written contract, the parties as well as other actors with legal interest may file an action for ascertainment of subsistence (or absence) of the tenure under art 189 PCCP. Even where the contract was made in writing, such suit is possible if content of the parties' obligations proves indeterminate or uncertain, e.g. as to specification of the agreed object and rent, or where the contract was formally concluded with a non-existent entity. Where the parties fail to define these elements, the contract - even though the parties expressly called it "contract of lease" - may be classified as another contract type, e.g. as loan for use where the parties fail to fix the rent - the latter type is gratuitous and regulated by separate provisions: art. 710 et seq. of the Civil Code.[490]

- *Allowed uses of the rented dwelling and their limits*

- *In particular: to what extent are mixed (residence/commercial) contracts lawful and usual (e.g. having a shop, a legal office or a doctor's studio in the dwelling)*

In each case, lessee willing to run business in the rented unit needs consent from the lessor. Under art. 666 PCC, lessee should use the rented thing in the manner set out in the contract throughout the period of lease, and – if the contract does not envisage the manner of use – in a manner corresponding to properties and purpose of the thing. Where the contract is silent in the discussed matter, the cited provision definitely excludes commercial activities which would pose threat to the substance of the rented unit. In a typical rental relationship, it is expected that the thing is going to be returned in good condition, save the normal wear and tear, and that the lessor, upon expiry of the contract, will be able to enjoy the thing himself or deliver it to another party.[491] In addition, art. 683 requires that the lessee observe house rules and regulations subject to express provisions of the contract. Lessee should as well have regard to the needs of other tenants in the house and neighbours

Whenever a potential lessee wishes to carry on business in the unit, the owner should be informed about that fact before inception of lease. This is important from the point of view of tax regulations. The surface area on which commercial activity is run is charged with a higher rate of property tax. While actual rates are determined by municipal councils, the Minister of Finance settles by way of delegated legislation annually upper brackets municipal authorities may not transgress. In 2013 maximal yearly value of property tax per $1m^2$ amounted to PLN 0.73 for housing premises and PLN 22.82 for commercial space.[492] Where the unit is not used in whole for business activities, its status as such does not change to commercial. Technically, it remains residential, although its relevant part becomes classified as commercial premises

[490] W. Czachórski, A. Brzozowski, M. Safjan, S. Skowrońska-Bocian, *Zobowiązania...*, 445.
[491] A. Doliwa, *Prawo mieszkaniowe...,* 38.
[492] Notice of the Minister of Finance of 2 August 2012 concerning upper brackets for local taxes and fees in 2013, Official Journal of the Republic of Poland, 14 August 2012, item 587.

(higher tax is levied only on that part). Omission by the owner to report that fact to municipal authorities could produce fiscal consequences (overdue tax with interests) and criminal penalties (fine) to the owner of premises, who, in turn, has a recourse claim against the lessee. Bearing the above in mind, a landlord aware of the business being conducted in the rented unit should notify the floor area destined for commercial activities to the municipal office.

Under art. 70(1) of the Tax Ordinance Act, tax liabilities become time-barred after 5 years as of the end of the calendar year in which the tax was to be paid. This means that lessor may be charged with the outstanding amounts even five years later, with lease long terminated. Consenting lessor, once informed, will generally name higher value of rent so as to account for higher property tax. In addition, should the commercial activity prove burdensome to other tenants in the building (commercial premises generally trigger higher costs, e.g. related to waste disposal), the landlord may respectively adjust charges levied from the lessee. The situation looks analogical in cooperatives, which have to be informed of any business based in their stock and may alter respective fees payable by the member.[493]

- *Parties to a lease contract*

- *Landlord: who can lawfully be a landlord?*

There are no restrictions other than the general concept of legal capacity concerning the catalogue of potential lessors. Capacity to become a party to a lease contract depends on the general civil law concept of legal capacity, which makes a feature of natural and juridical persons. Also entities without legal personality, yet endowed with legal capacity under special provisions of law (e.g. partnerships or common associations), may be lawful parties to lease (or other types of tenancy) contracts.

Even if all natural persons enjoy legal capacity, not all of them have the capacity to juridical acts, which means that some individuals, while well capable of being parties to civil law relationships, may not act on their own and need to be represented by parents or other statutory representatives. Polish law distinguishes between full and partial capacity to juridical acts. The former is held by majors who have not been incapacitated. Partial capacity is a feature of minors between 13 and 18 years of age or adults incapacitated partially. Younger children and fully incapacitated persons have no capacity to juridical acts, which must be concluded on their behalf by statutory representatives.

As regards individuals with partial capacity to juridical acts, their entry into the contract of lease requires consent of such representative under art. 17 PCC. Validity of a juridical act involving disposal of assets or creating liabilities, if made by without such consent, may be retrospectively validated by the representative's endorsement.[494]

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[493] M. Magros, 'Firma w wynajętym mieszkaniu', < http://dtp-24.pl/porada-1,509> (July 2013).

[494] That is why this type of sanction is frequently referred to in academic literature as suspended invalidity, cf. A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej,* (Warszawa: LwxisNexis, 2001, 331-332.

Apart from the general civil law requisites, there are no subjective restrictions concerning the capacity to be or become a lessor.

- *does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?*

Rules of the Civil Code on lease regulate scrupulously succession of lessors. On general terms, in pursuance of art. 678 PCC, a buyer becomes the new landlord by operation of law. In reference to objects other than units (whether commercial or residential), he may, however, terminate the contract at statutory period of notice. The buyer's right to terminate is excluded where the tenancy had been entered into for a specified period at officially certified date (usually by a notary; see art. 81 PCC) and the object of lease has already been delivered to the lessee.

However, special character of lease of a unit has called for specific legislative solutions. Under art. 692 PCC, early termination by the buyer is only possible with regard to residential leases in instances where the unit has not been delivered to the tenant. If a lessee had received the unit before it was sold, the new landlord may terminate the tenancy where the contract was for unspecified duration,[495] and, naturally, under the general prerequisites for termination specified in art 11 TPA. Other than that, the buyer may terminate tenancy under art. 673(3) in the event of special circumstances as long as they have been expressly stated in the contract.[496] As the TPA does not account in any specific way for the situation of the unit's sale, in tenancies governed by this regime, the buyer may not terminate the contract on exceptional terms. Under art. 11 of the Act, termination is admissible only in the instances set out in the TPA.

In addition, the legal regulation concerning land and mortgage register (arts. 16 and 17 of the Land and Mortgage Register Act 1982[497]) prevents tenancies from termination by the buyer as long as the tenure has been displayed in the register.

In cooperatives, however, the problem of sale becomes an issue, since it may lead to a change of tenure. Art. 16 HCA envisages that where in the course of liquidation, official insolvency or execution proceedings referring to cooperative property the buyer is an entity other than another housing cooperative, tenancy cooperative rights to a unit are transformed by operation of law into regular lease. As regards the lot of freehold cooperative rights in the same circumstances, this tenure transforms into ownership under art. 17^{18}(1) HCA.

- *Tenant*

- *Who can lawfully be a tenant?*

There are no subjective restrictions related to lease contracts as such. Every subject of civil law may become lessee. This involves natural, juridical persons and other entities with legal capacity. The same holds true in reference to the specific

[495] SC judgment of 22 May 1973, III CRN 95/73, OSP 1974, no. 5, item 93.
[496] A. Doliwa, *Prawo mieszkaniowe...,* 133-34.
[497] Official Law Journal 1982, no. 19, item 147.

regulation of lease of units. Since tenancy contracts of various types are concluded with a view to satisfying residential needs of families and individuals, the (TPA) tenants protection regime refers only to natural person tenants.

As far as specific tenures are concerned, restrictions have been imposed for social types lease. More on that subject can be found in sections of Part I of this Report devoted to tenures with a public task. As regards social premises in particular and the municipal stock in general, under art 21(1) item 1 TPA, the municipal council adopts a resolution setting terms of renting units belonging to the municipal housing stock. The council's latitude in this respect is, however, limited by statutory rules. Art. 21(3) TPA envisages that the resolution is to cover the upper limit of income in a household which allows for lease respectively in a social unit and the general municipal stock, as well as incomes justifying reduction of rent. The same article in (3) item 3 instructs the municipal council to determine in the same resolution priority criteria concerning allocation of municipal and social units. Pursuant to art. 23(2) TPA, contracts for lease of a social unit may only be concluded with a person without any valid tenure, whose household's incomes fall within the limits set by the municipal council.

Under arts. 25c and 25d TPA, contracts for lease for temporary premises organized by municipalities are concluded with persons to be evicted under a court decision which does not award a social or replacement unit unless eviction has been adjudged on account of domestic violence, obstinate and blatant encroachment on house regulations.

With regard to cooperative tenancy rights, they may only be vested in cooperative members (art. 9 HCA). In addition, cooperative tenancy right may be acquired only by a natural person, even where that person does not have the capacity to juridical acts. This follows from art. 3(1) HCA, pursuant to which membership in a cooperative may be obtained by any natural person, even without or with limited capacity to juridical acts. Fairly speaking, it is possible as well for juridical persons to become cooperative members, however, without the right to acquire a tenancy cooperative right (art. 3(3) HCA. This restriction does not apply to the freehold cooperative right, which can be freely disposed of and devised as per art. 17^2 HCA. Holder of a freehold cooperative right does not even have to be a member of the cooperative. This does not refer only to acquirers of such tenure but also its original holders. The tenure and membership rights are no longer aligned.[498]

- *Which persons are allowed to move in an apartment together with the tenant (spouse, children etc.)?*

Although art. 2 TPA defines household by reference to HBA provisions, it is the tenant, and not the landlord, who decides which persons among the ones belonging to that circle should live in the let unit.[499]

As per art. 4 HBA, household should be understood as referring to a single occupier, or the tenant with family, his spouse or other individuals dwelling permanently with the tenant and sharing his budget. Members of the household other than tenant

[498] Supreme Court judgment of 22 January 1986, IV CR 35/85, OSNC 1986, no. 12, item 208.

[499] judgment of the Administrative Court in Wrocław of 19 July 1988, SA/Wr 925/87, ONSA 1988, no. 2, item 78.

derive their right to live in the rented unit from his tenure. Although the exact choice belongs to the tenant, the above category might refer to his spouse (or cohabitant), minor or major children (studying or already working), other family members (e.g. grandchildren), or even persons unrelated to him but living together and sharing one budget. It is the durable character of residence and common budget that decide as to the household's shape.[500]

As pointed out above, tenant's spouse enjoys an independent protection as tenant (under the TPA regime) following from art. 28^1 of the Family and Guardianship Code. In addition, it must be remembered that tenants as spouses are legally obliged to cater for the needs of their family under art. 27 of the Code, which entails the obligation to care for children. In addition, the Civil Code rules on lease contain a similar enactment in art. 680^1 PCC, under which spouses are considered co-tenants of a unit if the lease (concluded during the matrimony) was meant to satisfy the housing needs of their family took place during their matrimony. Under paragraph (2) of this article, even dissolution of the joint marital property during the marriage does not annul the joint character of lease.

There are no legal restrictions concerning contracts with many co-lessees. The same holds true in relation to cooperative co-tenants (e.g. spouses) under art. 9 HCA, as long as they are cooperative members. Pursuant to art. 14 HCA a spouse of the deceased cooperative tenant succeeds from the former. A successor who is not a member of the cooperative may, within one year, apply for membership, which cannot be denied. In the absence of such application, the spouse will be given additional period of 6 months and notified about the danger of termination of the tenancy cooperative right upon ineffectual expiration of that deadline (art. 13(2) HCA).

- *Changes of parties: in case of divorce (and equivalents such as separation of non-married and same sex couples); apartments shared among students (in particular: may a student moving out be replaced by motion of the other students); death of tenant*

In general, lease does not terminate as a result of lessee's death. Rights of the deceased are subject to succession, yet rules of successions are specific Under the previous statutory regime, the situation was not entirely clear. Although this did not follow directly from RTHBA 1994, the Supreme Court held in the resolution of 16 May 1996[501] that in the absence of persons entitled to accede to the contract under art. 8 RTHBA, lease was inherited on general terms. It was concluded that this judgment imposed excessive burden landlords. In light of the above, the legislator decided to step in and enact the amendment of the RTHBA and LCA of 21 August 1997.[502] The legislative intervention was simple. Art. 8 RTHBA was supplemented by paragraph (2) which provided that in the absence of persons entitled to accede to the legal relationship following the lessee's death, or where such persons existed but renounced succession, the lease should expire. Currently, analogous provision has

[500] R. Dziczek, *Ochrona praw lokatorów...,* 48.
[501] III CZP 46/96, OSNC 1996, no. 7-8, item 104.
[502] Official Law Journal 1997, no. 111, item 723.

been included directly in the Civil Code – in art. 691 PCC. It is now clear that general succession law provisions do not apply to lease of housing units, which means as well that lease of a housing unit may not be lawfully devised. The only possibility to succeed a deceased lessee follows from art. 691 PCC.

As regards the catalogue of persons capable of accession to the contract as lessees upon death of the previous lessee, these include the spouse of the deceased, his (and his spouse's) children , other persons entitled to alimony from the deceased, as well as a cohabitant. Under art. 691(2), out of the this group, only the ones who lived in the unit with the deceased tenant before his death may come into the position of a (co-)tenant. In accordance with art. 691(4), persons who acceded to the tenancy may terminate it by notice at the period prescribed by statute even if the contract had been concluded for specified period. Termination by only some of the successors does not extinguish the tenure. In such cases, the remaining beneficiaries hold the right jointly. In the absence of such individuals, the tenure does not make a part of the inherited estate anyway, based on the norms of succession law.[503] Although tenancy as a right has an economic value and, consequently, would otherwise be inherited, the special provision of art. 691(3) bars succession on general terms.

The deceased person's grandchildren fall outside the scope of successors under the said provision, even if they lived in the common household and remained in close relations with the lessee, which has been confirmed by the Supreme Court in the resolution of 21 May 2002.[504]

Before the entry into force of the RTHBA on 2 July 1994, special succession by a person who provided care to the lessee on contractual basis was permitted. If such contract for provision of care had been concluded before the cited date, succession would still be possible. The decision to preserve previous lawfully acquired rights was first made by the Supreme Court,[505] then the legislator included analogous transitional provision in art. 31 TPA. Based on art. 691(1) PCC, it is impossible to succeed from a late lessee in a social unit rented by municipality.[506]

Subjective changes are generally left to the will of the parties. In divorce cases, under art. 58(2) of the Family and Guardianship Code, it is the court's obligation to rule about the use of the housing unit jointly occupied by the ex-spouses for the period of further common occupancy. Should one of the spouses blatantly disenable common living by reprehensible conduct, the court may order eviction at the other spouse's request. On their joint motion, the court may also include in the divorce judgment a resolution concerning division of the lodging or its award to one of the spouses if the other one declares to voluntarily move out, as long as such decision seems feasible.

In accordance with art. 61^3 of the Family and Guardianship Code, art. 58 applies accordingly to decisions concerning separation (which is an alternative to divorce).

As regards tenancy cooperative rights, according to art. 14 HCA, upon death of one of the spouses entitled to the unit, the tenure is retained by the other one without the need to conclude a separate contract. This right is shared by the spouses as long as they acquired the tenure during the marriage, even if only one of them was named in the initial contract.

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[503] A. Doliwa, *Prawo mieszkaniowe...,* 129.
[504] III CZP 26/02, OSNC 2003, no. 2, item 20.
[505] SC judgment of 29 April 1997, I CKU 47/97, Prok. i Pr., no. 10 (1997), 36.
[506] SC resolution of 23 September 2010, III CZP 51/10, OSNC 2011, no. 3, item 25.

In cases where the deceased holder of the tenancy cooperative right had no living spouse or the tenure was not jointly vested in the couple (e.g. the right was established before the matrimony), the tenant's spouse, children and other close relations have the claim for accession to the cooperative and establishment of a tenancy cooperative right to their benefit. They should apply within one year from the tenant's death for admission to the cooperative and declare willingness to enter into the contract.

As opposed to special succession rules relating to lease, it is not necessary that the successors actually live with the deceased relative or spouse. Should more than one entitled party assert the claim, it is the court that decides whom to award the cooperative ight. It is generally contended that priority should be given to inmates who actually dwelled with the late tenant.[507]

- *Subletting: Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?*

As regards sublease (consent in different tenures), the TPA does not differentiate in art. 2(1) item 2 between the principal lessor and sublessor when defining the notion of landlord. In the tenant protection regime, a landlord is the owner or any other person being a party to any legal relationship with the tenant under which the latter holds the right to occupy the unit. As a result, a landlord may even have no formal title to the premises as long as he acts as owner-like possessor.[508]

In accordance with art. 9(7) and (7^1) HCA, a holder of the tenancy cooperative right is free to sublet the unit or surrender it for gratuitous use without consent of the cooperative. Such consent is only required if sublease is to trigger changes to the current use of the unit or its part (e.g. where commercial purpose is involved). The absence of cooperative approval does not nullify the sublease contract, although it may produce negative consequences to the cooperative member following from the cooperative statute and the HCA. Where sublease is likely to affect the amount of fees payable to the cooperative, the member is required to notify the cooperative in writing.[509] Analogical rules for freehold cooperative rights can be found in art. 17^{16} TPA.

Sublease contracts with a cooperative right holder expire at the latest upon termination of the principal cooperative tenure. This refers as well to regular subleases (between a Civil Code lessee and sublessee). This illustrates clearly that the TPA notion of landlord is not geared to any actual tenure known to private law in Poland. The TPA regulation applies only to the relation between landlord and tenant, that is the protected party whose basic housing needs need to be catered to. Sublessor, just like any landlord, must observe the TPA regulation,[510] still the tenant protection regime cannot undermine the title structure following from the system of

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[507] A. Doliwa, *Prawo mieszkaniowe,...* 417, 418.
[508] R. Dziczek, *Ochrona praw lokatorów*..., 41.
[509] Ibid.
[510] SC judgment of 19 January 2006, IV CK 336/05, Biul.SN 2006, no. 4, item 10.

law as a whole. This means that each time sublease automatically terminates along with termination of the principal tenure. Since the tenant protection regime covers both principal lease and sublease, it would be difficult to circumvent the law by subletting rather than regular lease, which is the case, for instance, in Slovakia.

As regards the general regulation of lease, lessee may sublet the rented object or hand it over to a third party for gratuitous use in whole or in part unless the contract should expressly forestall such option (art. 668 PCC). This general rule is, however, supplemented by regulation of lease of units. Under art. 688^2 PCC, sublease or gratuitous use by third party are excluded in the lack of lessor's consent. Where the unit has been sublet without his consent, the lessor may terminate the principal contract. This follows expressly from art. 11(2) item 3 TPA. In such situations, one month period of notice is required. This period starts running at the end of the month in which the intention to terminate was notified to the lessee (art. 11(1) TPA. Approval does not need to be express. It may as well be implied by conduct.[511]

Such consent is unnecessary only in relation to persons entitled to alimony from the lessee under family law provisions. In accordance to art. 128 of the Family and Guardianship Code, the obligation to provide livelihood and upbringing, if needed, (alimony obligation) rests on lineal relatives and siblings. In pursuance of art. 130 PCC, this obligation holds as well between spouses and even precedes duties stemming from blood relations. This is the case even after dissolution of marriage or legal separation. Nonetheless, lessor's approval is required where the unit is to be sublet to lessee's cohabitant.[512]

Lessee denied consent may bring his case before a court. Should the court find the refusal ungrounded, it may order the lessor to give consent. The final judgment may directly substitute approval.[513] The Supreme Court ruled in a judgment of 15 November 1984[514] that where the lessee sublet the rented thing against contractual prohibition, and has not abandoned such use of the agreed object, the lessor may terminate the contract without notice under art. 667(2) PCC. Before exercising this right, however, the lessor must rebuke the lessee and call him to desist unauthorized use.

Subletting or transferring the agreed thing for free use to a third party does not make the sublessor cease to be lessee in the principal relationship. In addition, it would be illegitimate to speak of any actual relationship between the principal lessor and the sublessee. The TPA regime refers to both these relationships separately. As regards specific tenure regulation, the relationship between lessee and sublessee is treated just as any other type of lease, whereas the regulation of loan for use (art. 710 PCC and following).[515] The latter situation is not to be confused with joint enjoyment of the unit, e.g. with family members or employees.[516]

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[511] judgment of the Court of Appeal in Warsaw of 21 April 1999, I ACa 1460/98, OSA 2000, no. 7-8, item 28.
[512] SC resolution of 5 May 1999, III CZP 7/99, OSP 2000, no. 4, item 299.
[513] SC judgment 0f 26 January 1999, III CKN, 127/98, OSNC 1999, no. 6, item 122.
[514] III CRN 215/84, Legalis internate databese.
[515] A. Doliwa, *Prawo mieszkaniowe...,* 43.
[516] K. Pietrzykowski, *Kodeks cywilny. Komentarz,* vol. 2 (Warszawa: C.H. Beck, 2000), 240.

Court's duty to award or deny a social unit mentioned in art. 14 TPA, and the obligation to adjudge such lodging to groups of tenants listed in art. 14(4), covers as well evicted sublessees (e.g. upon expiry of the principal relationship).[517]

- *Is it possible, and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?*

There are no legal contradictions to letting the unit to a group of individuals to be regarded as co-tenants. There are no specific requirements with regard to this type of arrangement. Spouses are co-tenants *ex lege* If the contract is concluded by one of them during the matrimony.

- *Duration of contract*
- *For limited in time contracts: is there a mandatory minimum or maximum duration?Other agreements and legal regulations on duration and their validity: periodic tenancies ("chain contracts", i.e. several contracts limited in time among the same parties concluded one after the other); prolongation options; contracts for life etc.*

As this issue is generally considered of major importance by the legislator, it has been addressed in the tenants protection regime. In accordance with art. 5(1) TPA, a contract for chargeable enjoyment of a housing unit may be concluded for specified or unspecified duration. Art. 5(2) imposes in this respect limitations on units in the municipal housing stock or housing resources of other units of self-government. With the proviso of social premises and units associated to lessee's employment, municipal housing may be rented only for indefinite period unless otherwise requested by tenant.

In the case of incidental lease, the law stipulates that it must always be concluded for a fixed duration not longer than 10 years (art. 19a TPA). The above enactment is correlated to art. 661 PCC according to which lease contracts concluded for a period longer than 10 years are afterwards deemed to have been entered into for unspecified duration.[518] Under another provision touching upon the question of duration, namely art. 660 PCC, a contract for lease of premises (whether residential or commercial) or immovable property is to be made in writing. In the case of non-observance of this requirement, the contract is considered to be concluded for indefinite period.

The period of lease as to its ending date may be determined by reference to a specific event. However, only such events may serve as reference whose occurrence in the future looks fairly certain.[519]

Under art. 23 TPA, municipalities may rent social units only for specified duration. The contract for lease of such lodging may be prolonged on expiry for another fixed term if the lessee remains in the situation which justified inception of the contract.

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[517] SC judgment of 27 June 2001, III CZP 28/01, OSNC 2002, no. 2, item 17.

[518] A. Doliwa, *Prawo mieszkaniowe...,* 252.

[519] SC resolution of 30 August 1990, IV CR 236/90, OSNC 1991, no. 10-12, item 125.

Municipality's choice concerning duration of such contracts has not been legally restricted. It is asserted in academic writings that it is the general situation of the applicant that should be the decisive criterion as regards the period's length.[520]

Under art. 365^1, continual obligations of unspecified duration may be terminated by either the debtor or creditor at contractual, statutory or customary notice periods. Where such periods are missing, termination is effective right after its notification to the other party. With regard to housing rentals, however, notice periods have been meticulously defined in the Civil Code and the TPA.

Cooperative rights are in every case established for indefinite duration.

- *Rent payment*
- *In general: freedom of contract vs. rent control*

Rent makes consideration for lessee's enjoyment of the rented thing. As per the definition of the contract from art 659 PCC, lease is always a chargeable contract.

According to the Court of Appeal in Warsaw,[521] in gratuitous juridical acts, one of the parties confers a benefit on the other without any mutual material increment in exchange. The mutual increment in mutual contracts does not necessarily need to be economic in the strict sense, however, contracts for lease can never be gratuitous.

Rent may be designated in money or renditions of some other type. It is thus admissible to honour rent e.g. by provision of a specific service (e.g. repair, retrofitting), or transfer of a given object (e.g. TV equipment, household appliances, a car).

Most generally, rent takes the form of periodic renditions paid at specific intervals. If the term to pay rent has not been fixed in the contract, payments should be made in advance: if the duration of lease is no longer than one month - for the whole period, and if the duration is to be longer than month - monthly within the tenth day of a month (art. 669(2) PCC).

Contract of lease does not have to indicate expressly the amount of rent to be paid. It is sufficient that it points to the way of its determination. It is possible for instance to agree that the rent is to cover outstanding instalments of a mortgage credit drawn for construction of the let premises in the amount set by the bank.[522]

Where rent assumes, as is most frequently the case, monetary form, interests accrue for delay in payment (art. 481 PCC). The interest rate may either be agreed by the parties to the contract or follow from statutory provisions. Late payment of rent provides as well foundations for lessee's liability for loss incurred by lessor (under arts. 471 and 491 PCC).[523]

Should lessee's arrears stretch over two full periods of payment, lessor may terminate rent without a notice period (art. 672). This provision, relating to lease in general is superseded with regard to housing rentals by art. 11(1) and (2) item 2

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[520] A. Gola, J. Suchecki, *Najem i własność lokali. Przepisy i komentarz* (Warszawa: Wydawnictwo Prawnicze, 2000), 91.

[521] judgment of 3 November 1995, I ACr 801/95, OSA 1995, no. 11-12, item 74.

[522] judgment of the Court of Appeal in Lublin of 25 September 1992, I ACr 384/92, OSA 1993, no. 9, item 64.

[523] A. Doliwa, *Prawo mieszkaniowe*..., 48.

TPA. Under the tenant protection regime, where tenant is authorized to use the unit for consideration, termination by landlord (which must be notified to the tenant in writing, including justification) may be effected at one month's period at the end of a calendar month if the tenant defaults with rent or other fees charged for unit's occupancy due for at least three full periods of payment, having been notified in writing about the landlord's intention to terminate the legal relationship and given additional monthly deadline to clear all outstanding liabilities. As held by the Supreme Court,[524] art. 11(2) item 2 TPA applies as well to leases of fixed duration, even if concluded before entry into force of the present tenant protection regime, where such contract does not provide by itself for early termination in situations of rent arrears.

- *Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent*

Under art. 28 ACFSBI,[525] the institution of regulated rent has been preserved in the stock of Social Building Associations where rates of rent for $1m^2$ of usable floor area of a unit are set by the general meeting of the Social Building Association's shareholders so that the aggregate of rental incomes in the Association should allow to cover maintenance and repair costs relating to the stock, as well as refund of the credit drawn for construction. Paragraph (2) of the same article provides that rent calculated in accordance with the method laid down in paragraph (1) may on no account exceed in a single year the amount of 4% of replacement value of the rented unit, as estimated in pursuance of the TPA.

Art. 9a, allowing for differences in terms of rent regulation in the Social Building Association stock makes a special provision in relation to art. 3 of the same Act, because it allows for less favourable treatment of a tenant than under the general tenant protection framework. The departure from the TPA regime relates to rent in general, not just to its amount. This would mean that in respect of Social Building Associations tenants protection from unexpected charges independent from landlord, such as bills for supply of energy, gas, water, disposal of sewage or solid and liquid waste (see art. 9(6)TPA), has also been lifted.[526] Most academics, however, are of the opinion that TPA rules restricting the landlord in respect of levying excessive charges for utilities are also binding on Social Building Associations.[527] As a result, in accordance with art. 9(5) TPA, apart from rent itself, the lessor may charge only bills which are independent of him - unless the lessee should have himself signed contracts with respective utility providers.[528] Likewise, Social Building Associations are bound by limitations on rent increase introduced in the TPA.

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[524] SC resolution of 7 June 2006, III CZP 30/06, Biul. SN 2006, no. 6

[525] The Act on Certain Forms of Support for the Building Industry supersedes TPA provisions on rent. The latter Act itself declares in art. 9a that rent in the Social Building Association stock is governed by special provisions of law.

[526] A. Mączyński, 'Dawne i nowe instytucje polskiego prawa mieszkaniowego', *KPP,* no. 1 (2002), 100.

[527] F. Zoll, M. Olczyk, M. Pecyna, *Ustawa o ochronie praw lokatorów, mieszkaniowym zasobie gminy oraz o zmianie kodeksu cywilnego*, (Warszawa: Dom Wydawniczy ABC, 2002), s. 295.

[528] A. Doliwa, *Prawo mieszkaniowe...,* 859.

When it comes to usable floor area as basis for calculation of rent (art. 2(1) item 7 TPA), it should be understood as surface of all spaces in the unit, in particular rooms, kitchens, pantries, antechambers, alcoves, halls, corridors, bathrooms and other areas designed to meet housing and economic needs of the tenant - with the exclusion of balconies, terraces, loggias, entresols, wardrobes and wall clipboards, laundries, driers, attics, cellars or cubbyholes for wood or coal.

The same basis of measurement ($1m^2$) applies to principles of rent calculation in rentals belonging to the municipal stock. Again, it is the owner of the units (mayor within the limits set by resolution of the municipal council adopted under art. 21 TPA) that designates the rate of rent per one square meter, taking into account: location of the building, location of the unit within the building, the unit's or building's furnishing with technical equipment and installations, their condition and general technical standard of the building. The statutory list of criteria envisaged in art. 7(1) TPA does not cross out other factors increasing or decreasing the unit's value in use.[529]

Under art. 7(2) TPA, it is possible to reduce rent based on household income criteria, if the respective municipal council provides for such option in the resolution concerning rent calculation. Reductions may be granted for 12 month periods, although their prolongation for following yearly periods is not excluded.

- *Maturity (fixed payment date); consequences in case of delayed payment*

In the absence of party agreement to the contrary, as long as the lease contract is concluded for unspecified duration or period longer than one month, the rent is payable in monthly instalments within tenth day of each month (art. 669(2) PCC). In shorter arrangements, rent is paid in advance.

In the event of arrears the landlord may claim interests, whether directly stipulated in the agreement or statutory. Under art 11(2) item 2, termination is possible only when the tenant is in arrears for three full monthly payments.

- *May the tenant exercise set off and retention rights over the rent payment? (i.e. the tenant withholding the rent or parts of it when the landlord does not respect his contractual duties, e.g. does not repair a defect);*

Landlord may set off the unpaid rent against the deposit, if such deposit has been advanced in accordance with art. 6 TPA by will of the parties. The lessor's statutory lien under art 670 PCC has been discussed above. In pursuance of this rule, to secure the rent and additional performances in which the tenant defaults for no longer than one year, the landlord has a statutory pledge on the tenant's moveables brought in the rented object unless the things cannot be subject to attachment.

- *Does the landlord have a lien on the tenant's (movable) property in the house (Vermieterpfandrecht as in § 562 BGB, which functions as a*

[529] R. Dziczek, *Ochrona praw lokatorów...,* 80.

guarantee for the payment of the rent by the tenant)? If yes, what is the scope of this right? How is it enforced?

In accordance with art. 670 PCC, to secure the rent and other renditions in which the lessee defaults for no longer than one year, the landlord has statutory pledge on the tenant's movables brought into the rented object unless the things are exempt from attachment. Statutory pledge refers to chattels, whether owned or co-owner by the lessee.

Pursuant to art. 671 PCC, the statutory pledge is extinguished when the pledged things are removed from the rented object. The lessor may object to such removal and retain the chattels at his own risk until the overdue rent is paid and secured. By doing so, the lessee might become exposed to compensatory liability towards the lessee.[530] If the pledged things are removed under an order issued by a state authority, the landlord still retains his statutory right of pledge if, within three days, he reports it to the authority that ordered the removal (art. 671(3) PCC).

Assignment of claims from rental agreements to third parties is admissible on general terms.

According to art. 4 HCA, holders of cooperative rights and owners of units in the stock managed by cooperatives are to pay monthly fees covering current expenditures connected with use and maintenance of their units, maintenance of common properties in which the unit is situated, preservation of cooperative belongings, compensation of employees, administration and governance of the cooperative. Fees may only be spent on the purposes defined in the HCA (art. 4(6) of the Act). The duty to pay fee commences upon delivery of the unit to a cooperative tenant. Payments are to be made in advance on monthly basis within the 10th day of each calendar month.

The HCA provides for joint and several liability for fee instalments of the tenant and adult members of his household (art. 4(6) and (6^1) of the Act, yet accountability of such inmates has been limited to cover only the period of their actual occupation of the unit.

When it comes to unit owners and holders of freehold cooperative rights who decided not to be cooperative members, their fees are generally higher. This is the case, as only members may participate in fruits reaped by the cooperative, e.g. from commercial leases or bank deposits.

- *Clauses on rent increase*
  - *Open-ended vs. limited in time contracts*
  - *Automatic increase clauses (e.g. 3% per year)*
  - *Index-oriented increase clauses*

Where a contract contains valorisation clause, lessee is obligated to pay rent for particular periods in the amount designated or determined in accordance with this

[530] R. Doliwa, *Prawo mieszkaniowe...*, 51.

arrangement. Valorisation clause may appear in contracts of all types. Similar agreements may also refer to non-contractual obligations. Such clause is especially important for continual obligational legal relationships, such as lease.

Valorisation clauses are to protect contracting parties against changes of purchasing power of money. Contractual valorisation clauses should indicate measurement other than cash and its conversion rate in relation to money (e.g. particular percentage of average monthly wages, price of specific amount of gold, other commodities or services, or combination of such factors).

Other than that, rent may be unilaterally changed by the lessor, on justified grounds and within the limits set in art. 8a the TPA, as discussed in other parts of the Report.

- *Utilities*
- *Describe the usual kinds of utilities (e.g. basic utilities like the supply of water, gas and electricity vs. additional utilities, i.e. services such as waste collection) and their legal regulation*
- *Responsibility of and distribution among the parties:*
- *Does the landlord or the tenant have to conclude the contracts of supply?*

Decision as to types of utilities supplied to a unit depends on the provisions of construction law which define conditions to be met by housing premises, as well as usages followed in a given region, access of the property to particular supply lines and, finally, needs of the lessee himself.

The general rule following from legal enactments on the conditions that should be met by buildings adjusted for human accommodation[531] is that there must be a possibility to connect the building to water supply, sewage and heating systems. It is deemed equivalent to access to heat networks if individual sources of heat are operative in the building. In the absence of the sewage system, the owner should assure that sewage be disposed of in septic tanks. In effect, in certain areas it is impossible to supply hot running water, and residents must heat water in their units (e.g. with gas or electric heaters). In some cases gas supply has been entirely replaced by electric energy. Most definitely, a housing unit must be connected to electricity, water supply and sewage disposal lines. Depending on local situation, it is possible to supply gas (connection to gas line) and heating (access to central heating rather than individual facilities).

In regard to rental housing, it is admissible to embark on one out of the following two solutions:[532]

a) contract for supply of utilities is concluded between the lessor and the provider - on such occasions, the lessee enjoys the unit supplied with respective utilities;

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[531] See Section 26 of the Regulation by Minister of Infrastructure of 12 April 2002 on technical requirements for buildings and their location (Official Law Journal 2002, no. 75, item 690 as amended).

[532] G. Matusik, 'Problemy prawne związane z najmem powierzchni', *MoP*, no, 13 (2013); J. Górecki, G. Matusik, 'Komentarz do art. 684 k.c.' in: *Kodeks cywilny. Komentarz*, K. Osajda, (ed.) (Legalis on-line, C. H. Beck, ed. 5, 2012), § 1.1; S. Brzeszczyńska, 'Przychody i koszty z najmu powierzchni komercyjnych', *Nieruchomości,* no. 2 (2010), 23. See also art. 9(6) TPA.

b) contract for supply of utilities is concluded between the lessee and the provider. In such instances, the lessor provides access to the unit under the lease contract, and the issue of utilities is regulated by individual arrangement between the lessee and the provider.

The entry into contracts for supply of utilities, types of such contracts and their elements have been governed in much detail by: the Energy Law Act 1997[533] and the Collective Water Supply and Sewage Disposal 2001.[534]

The above principles and both types of contracts for supply of utilities are applicable as well to incidental lease (art. 19c(1) TPA) and tenures other than lease.

- *Which utilities may be charged from the tenant?*

Where the option is chosen in which it is the lessor that enters into the contract for supply of utilities, such lessor is in a position to charge the lessee with payments referred to in the TPA as bills independent of the lessor. In pursuance of art. 2(1) item 8 TPA, these comprise payment for supply of energy, gas, water and disposal of sewage, solid and liquid waste. Bills independent of the lessor are charged in such cases along with rent, however, principles governing their increase have been relaxed. Notably, these charges are levied for utilities supplied directly to a unit, and not to common parts of the building. The catalogue of charges independent of the lessor is exhaustive.[535]

On the other hand, in the variation in which lessee is to enter into a contract with the provider, the lessee disburses charges for the utilities directly to their provider. It is up to lessee whether or not he elects to connect the unit e.g. to telecommunications network.

In both options lessee pays for utilities according to a tariff or price-list of the provider. The lessor has no right to collect additional charges for "agency" in the transmission.

Lessor may not bother lessee with "charges independent of the lessor" if they are not mentioned in art. 2(1) item 8 TPA.[536] As far as common parts of the property are concerned (e.g. supply of electricity in order to light the staircase), such dues may only be included in principal rent.[537] Nonetheless, the amount of rent payable and its increase have been regulated in the TPA, which prevents arbitrariness of lessor's decisions in matters crucial to tenants.

- *What is the standing practice?*

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[533] Act of of 10 April 1997, consolidated text, Official Law Journal 2012, item 1059. See arts. 5 and 7 of thereof.

[534] Act of 7 June 2001, consolidated text, Official Law Journal 2006, no. 123, item 858. See art. 6 of thereof.

[535] E. Bończak-Kucharczyk, *Ochrona praw lokatorów i najem lokali mieszkalnych. Komentarz,* (Warszawa: LexisNexis, 2011), 61-62.

[536] Such opinion is represented e.g. by M. Olczyk, *Najem lokalu mieszkalnego*, (Warszawa: LexisNexis, 2008), 46; E. Bończak-Kucharczyk, Ochrona…, 61-62.

[537] M. Olczyk, Najem…, 47.

In practice, both variants can be encountered. In long-term leases or contracts concluded for unspecified duration, lessors usually leave the matter of the discussed supplies open to lessees.

In many situations, however, lessors decide to enter into contracts with providers out of the fear of passivity on the part of lessees and consequences of illegal consumption of utilities. It becomes particularly significant if the housing unit is permanently connected to the supply system (energy grid, pipelines, etc.), and services are provided continually. Absence of another contract for supply of utilities may result in their illegal consumption, which leads to specific consequences in the area of civil and criminal law.

- *How may the increase of prices for utilities be carried out lawfully?*

If the landlord collects from the tenant the charges for supply as payments independent of himself (where contracts are signed between the lessor and the provider), increases of such charges are approached quite liberally by the TPA. Pursuant to art. 9(2) TPA, in a situation of increase of charges independent of the landlord, the latter is obliged to exhibit to tenants in a written breakdown of new bills along with their justification. Tenants are required to pay the increased charges only to the amount necessary to cover the landlord's costs of utilities supply to their units.

Frequency of increases concerning charges independent of the landlord is not specifically restricted. The landlord does not have to impose a new rate by notice, as is the case with rent.[538] Tenants, however, are under the duty to pay higher charges independent of the landlord only to the amount necessary to cover costs actually payable by the latter starting at the date when the increased rates become binding on the landlord[539].

Above, the terms landlord and tenant (general TPA terminology) have been used, because these principles apply as well to tenures other than lease. Although the rule of art. 9 TPA is excluded in cases of incidental lease, it should be deemed that the lessor may not introduce higher rates of such independent charges than values displayed in the provider's tariffs, and price-lists. Disapplication of art. 9 TPA results predominantly in the absence of the lessor's obligation to present a breakdown of charges and substantiate the increase, thus, formal activities generally required on the occasion of increase. One may reach the conclusion that the admissibility and terms of increase of charges independent of the landlord should be stated manifestly in the contract for incidental lease.[540]

In the variant in which it is the lessor to enter into the contract for supply with the provider, increase of charges is admissible in accordance with principles following from the supply contract and public law regulations relating to provision of specific utilities. Such enactments refer to all receivers and impose no special regime for residential tenants.

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[538] e.g. A. Doliwa, commentary to art. in: *Najem lokali. Komentarz*, (Warszawa: C.H. Beck, 2010), § 13, 268.

[539] J. Chaciński, 'Komentarz do art. 9 uopl' in: *Ochrona praw lokatorów. Komentarz*, (Warszawa: C. H. Beck, 2009), § 36, 99-100; E. Bończak-Kucharczyk, *Ochrona…*, 264-265.

[540] E. Bończak-Kucharczyk, *Ochrona…,* 295.

- *Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?*

In the case of non-performance or default in performance of the supply contract (especially disruptions in the supply of utilities), it is important to determine which of the two above options has been selected by the parties.

As regards contracts for supply of utilities made between the lessor and providers, the lessee has indemnification claims under the warranty for defects of the housing unit against the lessor.[541] It is not excluded that the lessee might become authorized to terminate the contract instantly without notice if the problems with supply of utilities pose danger to the tenant's or his family's life or health (art. 682 PCC). Irrespectively, he may claim redress on general terms (art. 47 et sec. PCC).

In contracts concluded between the lessee and provider of utilities, lessee's claims related to non-performance or default in performance may be asserted directly against the provider. Any possible claims may be raised against the lessor if the supply installations in the unit are defective so as to disenable proper provision of utilities.

- *Deposit*
- *What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?*

Deposit advanced in connection with conclusion of a housing lease contract makes a specific security.[542] Lessor claims against the lessee may be satisfied from the advanced sum on the terms laid down in contractual and legal provisions. In Polish law there is no comprehensive and general regulation governing security deposits. Instead, one has to resort to sectoral enactments approaching the matter from more specific perspective.[543] Particular attention from the point of view of security deposits in the tenancy context should be paid to the rules of arts. 6 and 19a(4-5) TPA. Provisions articulated in art. 6 TPA refer to deposit payable under a residential lease contract on general terms set out in the statute, whereas enactments of art. 19a(4-5) TPA concern deposit advanced in the case of incidental lease. Under this specific regulation:

a) it is admissible in certain situations for the tenant to require a deposit;

b) maximal deposit value has been fixed;

c) principles of repayment have been determined.

In addition to the above enactments, art. 36 TPA was introduced - setting forth the terms of refund of deposits collected in accordance with earlier provisions which have been repealed by now.

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[541] J. Górecki, G. Matusik, 'Komentarz do art. 684 k.c.' in: *Kodeks…,* § 1.2.

[542] E. Bończak-Kucharczyk, *Ochrona…*, 203; F. Zoll, M. Olczyk, M. Pecyna, *Ustawa o ochronie praw lokatorów, mieszkaniowym zasobie gminy oraz o zmianie kodeksu cywilnego* (Warszawa: Dom Wydawniczy ABC, 2002), 97.

[543] See in particular art. 32 ACFSBI (consolidated text, Official Law Journal 2013, item 255); art. 48, as well as HCA, arts. 7 and 9 of the Act of 12 October 1994 Act on Conveying Staff Housing units to Municipalities and Housing Cooperatives (Official Law Journal 1994, no. 119, item 567); arts. 6, 19a, 36 TPA.

The construction of deposit under the TPA (defined both in art. 6 and art. 19a(4-5) TPA) has been based on six fundamental principles.

In the first place, it is possible to lay down deposit only in lease contracts.[544] As regards other residential tenures, whether gratuitous or not, admissibility to collect deposit has been excluded.

Secondly, inception of lease may be made dependent on advancement of deposit. This means that after conclusion of the contract, it is not possible for the lessor to demand deposit, or spread out its payment.[545]

Thirdly, deposit is put down as a single pecuniary payment. Current legislative framework does not allow to advance deposit in the form of proprietary security (lien rights) or negotiable instruments.

Fourthly, deposit is not payable where the contract refers to lease of replacement or social units and if lease is formed as a result of unit exchange, and the lessee was returned previous deposit without its valorisation.

Fifthly, with the view to the fact that it is the lessor, as the disposer of the unit, that determines the amount of deposit, the upper limit has been introduced by law, to cut out arbitrariness and protect the weaker party.

Sixthly, deposit is to be returned to the lessor within one month as of the date of vacating the unit or acquisition of ownership by the lessee, after deduction of outstanding debts following from the lease. The returnable sum of deposit must be valorised in pursuance of the TPA regime.

In summary, under the TPA regulation, deposit is not rent paid in advance. Rather than that, it makes a separate onefold monetary provision, which cannot be spread over time. It is to be paid before inception of lease. Its function is to secure lessor claims relating to the contract of lease (and only lease). In addition, it must be remembered that arrangements concerning deposit, although agreed within the lease contract itself, make a separate agreement.

- *What is the usual and lawful amount of a deposit?*

The legislator has introduced the upper bracket for deposit securing lessor's claims. For the general type of lease following ordinary TPA requirements, this limit amounts to twelvefold value of monthly rent for a particular unit, calculated according to the rent rate subsisting at the date of the contract (art. 6(1) sentence 2 TPA). With regard to incidental lease, this limit is lesser and has been set at six times the amount of monthly rent in a given unit, calculated in accordance with the rent rate effective on the date of incidental lease inception (art. 19a(4) sentence 2 TPA). In both cases, rent instalment is the basis for determination of the upper limit, which means that proper calculations may not take into consideration charges independent of the lessor (accrued for supply of utilities)[546].

[544] See e.g. E. Bończak-Kucharczyk, *Ochrona…,* 203; A. Doliwa, commentary to art. 6 TPA in: *Najem…,* § 6, 242; F. Zoll, M. Olczyk, M. Pecyna, *Ustawa…*, 96.
[545] E. Bończak-Kucharczyk, *Ochrona…*, 204.
[546] F. Zoll, M. Olczyk, M. Pecyna, *Ustawa*…, 98.

In practice, the amount of deposit is generally nearing the upper bracket specified in the statute. Deposit is computed as the product of monthly rent and the specified number of months. The upper limit is set at 12 (which represents the annual value of rent). There is no lower limit of deposit, however, in practice it will be a single monthly instalment. It is possible to fix the deposit at lower level than the monthly rent rate, yet, on such occasions it would be necessary to determine the percentage (fraction) of the monthly instalment to be deposited, e.g. 0.5 or 0.25. This determination is crucial from the point of view of subsequent valorisation of deposit on its return.

Transgression of the statutory limit of deposit leads to invalidity of the deposit clause in full, and not only in regard to the value above the admissible maximum.[547]

- *How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)*

Provisions of the TPA omit to envisage the duty to transfer the deposit to a bank account. Decision as to the method and place of payment has been left to the parties of the agreement, in practice, the parties to the lease contract.[548] For the lack of respective contractual clauses, the method of safekeeping the deposited sum depends on the discretion of the lessor.[549]

An issue closely connected with the above is the question of interest on the deposit accrued while the advanced sum is kept in the lessor's hands. In the absence of any agreement to the contrary, the lessor is not bound to invest the deposited amount or pay any interest on capital while in possession of the money.[550] The problem, however, is not purely academic, since the deposit may be kept for many years. As a result, the legislator has provided for specific methods of deposit valorisation while it is returned to the lessee.

In the first place, deposit is to be returned within one month from the date of vacating the unit or its purchase by an ordinary or occasional lessee, following the offset of dues owed to the lessor under the lease contract (art. 6(4) and art. 19a(5) TPA). Under art. 6(3) TPA, valorised deposit is returned in the amount of monthly rent payable on the date of such return multiplied by the coefficient (number of instalments) chosen when the deposit had been initially made. Such mechanism of valorisation is straightforward enough for every lessee to calculate the refundable value by recourse to rudimentary mathematical operations.[551] At the same time, lessors have been protected from possible devaluation in value of the deposit in case of rent increase during the period of lease.[552] The minimal value of deposit returnable to the lessee is the amount he had actually paid himself (nominal value principle). The above principles of valorisation are applicable to lease on general terms framed by the TPA and under the incidental lease regulation (see art. 19e TPA).

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[547] R. Dziczek, *Ochrona praw lokatorów. Dodatki mieszkaniowe. Komentarz* (Warszawa: LexisNexis, 2012), 75; F. Zoll, M. Olczyk, M. Pecyna, *Ustawa…,* 99.

[548] A. Damasiewicz, *Najem i wynajem lokali komercyjnych* (Warszawa: LexisNexis, 2010), 91.

[549] Ibid.

[550] Ibid.

[551] More on that issue in: M. Olczyk, *Problematyka…,* 21; A. Doliwa, 'Komentarz do art. 6 uopl' in: *Najem…,* § 10, 243-244.

[552] Opinion adhered to by E. Bończak-Kucharczyk, *Ochrona…,* 207.

In relation to deposits advanced before the entry into force of the TPA, applicable rules have been laid down in art. 36 of the said Act in the following way:

a) if the deposit had been paid during the term in which the RTHBA was effective, it is refunded in the valorised amount corresponding to the percentage of the replacement value specified at the time when the advancement had been made and calculated as on the date of return. The refund may on no account be lower than the deposit actually rendered by the lessee. The deposit ought to be returned within one month from vacation of the unit or its purchase by the lessee (art. 36(2));
b) where the deposit had been put down before the entry into force of the RTHBA (that is before 12 November 1994), it is returnable within one month as of vacation of the unit or its acquisition by the lessee (art. 36(1) TPA). Such deposit is valorised on general civil law terms envisaged in art. 358^1(3) PCC, which has been met with approval both by academics[553] and the Supreme Court.[554] The cited provision sets out a general principle for valorisation of monetary renditions. It prescribes that a court, having tried the interests of both parties is authorized, in accordance with principles of social coexistence, to modify the amount and method of performance if the purchasing power of currency should change substantially.

If, however, the deposit had been paid by the lessor on a bank account and brought certain profits, or if the lessor has successfully invested the money, he is under no obligation to hand over the profits (proceeds) to the lessee to the excess of the amount determinable by valorisation discussed above.[555]

- *What are the allowed uses of the deposit by the landlord?*

As regards admissible means of employment of the deposit, two questions need to be discussed. The first of them is the freedom to dispose of the deposited sum during the term of lease. The second problem refers to the extent of security, that is what receivable debts can be set off against the deposit.

As far as the former issue is concerned, regardless of the conception adhered to, unless the parties to deposit agreement should specify that the money put down as deposit be frozen on bank account, the lessor may dispose of it at his discretion.[556] There is no statutory prohibition to operate the funds. It is thus legitimate to infer that, in the absence of appropriate contractual provisions, overall circumstances and the legal character of deposit suggest the right to dispose of the funds in deposit during the lease period. Even if there were a duty to keep the deposited money intact, their alienation would be effective anyway. It could only lead to adverse tax consequences

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[553] Por. M. Olczyk, *Problematyka…*, 19-21; R. Dziczek, *Ochrona…*, 76; J. Panowicz-Lipska, 'Najem' in: *System…*, 85.

[554] See in particular the SC resolution of 26 September 2002, III CZP 58/02, OSNC 2003, no. 9, item 117, in which the Court held that art. 36(1) TPA does not preclude application of art. 358^1(3) PCC with regard to valorisation of deposit paid by lessees before 12 November 1994.

[555] Opinion shared by F. Zoll, M. Olczyk, M. Pecyna, *Ustawa…,* 101.

[556] F. Zoll, M. Olczyk, M. Pecyna, *Ustawa…*, 98; J. Skąpski, Rzeczowe…, 142. Opposite opinion accodring which the deposit should be blocked is ventured by A. Grzywacz in: *Najem…*, 126; E. Bończak-Kucharczyk, *Ochrona…*, 203.

to the lessor[557]as well as a possibility of civil law liability. It would, however, be difficult on the part of the lessee to evidence loss. As a result, it is crucial that the lessor pay the sum equal to the original deposit when the claim for refund becomes mature.

Another problem relates to defining the lessor's claims secured by the deposit advanced by the lessee, namely the scope of security. In the case of deposit paid on general terms at the start of lease (under art. 6 TPA), it secures dues arising out of the contract owed to the lessor on the date of unit vacation. Deposit paid in regard to incidental lease of a unit (art. 19a(4) TPA) secures receivable debts payable to the lessor on the date of vacation of the premises and costs associated with possible eviction.

As a result of the statutory determination of the scope of security, the statutory expression "dues arising from lease of the unit owed to the lessor on the date of vacation." This expression is conceived broadly. In consequence, deposit secures receivable debts involving outstanding rent (with interest), overdue charges independent of the lessor, and indemnification for any damage to the unit.[558] One may assume that housing deposit secures as well claims for remuneration for unauthorized unit enjoyment by former tenant (after expiry of lease).[559] Deposit secures as well other claims arising out of the contract, both pecuniary and non-pecuniary.[560] It seems crucial that during the lease the lessor may not satisfy his claims under the contract (e.g. unpaid rent).[561] Such possibility opens up only at the stage of refund, when the lessor may set off his receivable debts against the lessee's claim for repayment of deposit.

As far as incidental lease is concerned, the legislator points to two categories of dues secured by deposit. The former refers to debts owed to the lessor under the contract on the date of vacation. The extent of debts covered by the security remains the same as in the case of lease concluded on general terms. The latter category comprises costs of execution of the duty to vacate the unit, that is eviction. It should be added that execution of the obligation to vacate the unit takes place in the case of incidental lease under an extra-judicial execution title. In pursuance of art. 19a(2) item 1 TPA, a contract for incidental lease ought to be supplemented by the lessee's declaration executed as notarial deed to voluntarily undergo execution and pledge to empty and vacate the unit at the appointed date.[562] Costs of such execution are covered from the deposit. If, for some reasons, it becomes necessary to bring an action before the court, the owner will not be in a position to set off the costs of litigation against the deposit.

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[557] A. Damasiewicz, *Najem*…, 91.

[558] A. Doliwa, commentary to art. 6 TPA in: *Najem*…, § 8, 243; E. Bończak-Kucharczyk, *Ochrona…*, 206; F. Zoll, M. Olczyk, M. Pecyna, *Ustawa*…, 97.

[559] F. Zoll, M. Olczyk, M. Pecyna, *Ustawa…,* 97; M. Olczyk, *Najem*…, 83.

[560] Zob. A. Damasiewicz, *Najem*…, 92.

[561] Zob. J. Panowicz-Lipska, 'Najem' in: *System*…, s. 84.

[562] Notarial deed in which the debtor voluntarily submits to execution based directly on the deed makes in Polish law (see art. 777 § 1 pkt 4-6 k.p.c.) w writ of execution to which the court appends an enforcement clause. Because of such possibility, the creditor may skip court proceedings and urgently enforce obligations under the notarial deed. More on that subject can be found in M. Walasik, *Poddanie się egzekucji aktem notarialnym*, (Warszawa: Wolters Kluwer, 2008).

- *Repairs*
- *Who is responsible for what kinds of maintenance works and repairs? What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)*

Distribution of responsibilities concerning repairs and outlays on the unit is subject to special statutory regulation. This issue has been addressed both in the Civil Code (in particular arts. 662(1-2), 663, 666, 681) and the TPA (specifically arts. 6a and 6b of the Act).[563] It should be pointed out that TPA provisions on the distribution of responsibilities regarding repairs and outlays between the parties do not apply to incidental lease contracts (see art. 19e TPA which precludes, among other provisions, the application of arts. 6a-6f TPA).

The Civil Code regulation is supplemented by general rules of the TPA (other than those governing incidental lease). Pursuant to art. 662(1) PCC, the lessor should deliver the agreed thing to the lessee in a condition fit for the agreed use and keep it in such condition throughout the term of the contract. In accordance with art. 662(2) PCC, minor outlays connected with ordinary enjoyment of the thing burden the lessee. Under art. 681 PCC, in turn, such minor outlays to be borne by the lessee occupying the unit include in particular: minor floor, door and window repairs, painting of walls, floors and the inner side of the entrance door, as well as minor repairs to installations and technical equipment ensuring lighting, heating, water supply and discharge. As regards the tenants protection regime, art. 6b(1) TPA requires that the tenant maintain the unit along with its appurtenant spaces in proper technical, as well as hygiene and sanitation, conditions set out in specific legal provisions and abide by house rules and regulations. The lessee is also bound to care for and protect from damages and devastation the parts of the building intended for common use, e.g. elevators, staircases, corridors, chutes with adjacent spaces and other utility rooms, as well as the building's vicinity.

Art. 6b(2) TPA, provides a list of repairs and outlays which burden a lessee of a housing unit, supplementing in that matter the provisions of art. 662(2) PCC as well as arts. 681 PCC and art. 6b(1) TPA. In consequence, lessees have been encumbered with repairs and maintenance of:

1) floors, flooring, carpets, ceramic tiles, glass tiles, and other wall covers;
2) windows and doors;
3) built-in furniture, including their exchange;
4) kitchen stoves, cookers and water heaters (gas, electrical and coal powered), boilers, washing tubs, shower bases, toilet bowls, sinks and washbasins together with taps, mixer taps, water valves and other sanitary installations in the unit; repairs refer as well to their replacement;
5) accessories, fittings and insulation of electrical wiring, to the exclusion of replacement of wires and diversity antenna fitting;
6) coal and heat accumulation stoves, including replacement of their worn elements;

[563] J. Górecki, G. Matusik, commentary to art. 663 PCC in: *Kodeks…*, § 11.

7) floor central heating, also its replacement where it has not been mounted at lessor's cost;
8) waste conduits of sanitary installations up to the main vertical sewer, including removal of their blockage;
9) other furnishings of the unit and appurtenant spaces by:
    a) painting or hanging wallpaper, repair of damaged plaster in walls and ceilings,
    b) painting of doors and windows, built-in furniture, kitchen tools, sanitary and heating equipment.

The legislator has also rendered in a similar casuistic way the scope of repairs and outlays imposed on the landlord. There is, however, one notable difference. The list of lessee's obligations is deemed exhaustive whereas the catalogue referring to landlord is open.[564] Particular items are exemplary. Pursuant to art. 6a(1) TPA, the landlord is obliged to assure smooth operation of installations and equipment connected with the building which enable the lessee's access to running water, gaseous and liquid fuels, heating, electricity, elevators and other installations and equipment in the unit and the building, as defined by separate legal provisions. In accordance with art. 6a(3) TPA, obligations of the landlord comprise especially:

1) maintenance in due condition, assurance of order and cleanliness to spaces and equipment in the building destined for common use of all occupiers, as well as the building's vicinity;
2) repairs to the building, its spaces and equipment referred to in item 1, restoration of previous condition if the building is damaged, regardless of cause to the damage; the lessee, however, is obliged to indemnify losses inflicted by his culpable behaviour;
3) repairs to the unit involving maintenance or replacement of installations and elements of technical furnishings to the extent that they do not encumber the lessee, in particular:

a) repairs to and replacement of internal installations of running water, hot water and gas supply - without fittings and accessories, as well as repairs to and replacement of the internal sewage system, central heating together with radiators, electrical wiring, and diversity antenna,
b) replacement of heaters, window frames and door joinery, floors, flooring, carpets and plaster.

The distribution of responsibilities between landlord and tenant as depicted above does not give rise to the corollary that the latter is required to undertake all repairs and outlays which refer to the unit and its equipment, whereas the landlord is encumbered with outlays and repairs outside the unit. The casuistic method applied by the legislator to distinguish between both parties' responsibilities should be met with approval.[565] Before, most practical questions were spawned by the need to classify a given repair. Presently, in case of doubt as to the person responsible for a

[564] J. Górecki, G. Matusik, commentary to art. 681 PCC in: *Kodeks…*, § 1.1; A. Doliwa, commentary to art. 6b TPA in: *Najem…*, § 2, 247; M. Olczyk, *Najem…*, 99; E. Bończak-Kucharczyk, *Ochrona…*, 217.
[565] See especially J. Panowicz-Lipska, 'Najem' in: *System…*, § 147, 122.

repair or outlay, it should be clear that it burdens the lessor – unless listed expressly in the catalogue of art. 6b(3) TPA (presumption of lessor's responsibility)[566].

Another important question would be to determine the scope of contractual freedom as regards possible consensual shifts of certain (or all) elements of one catalogue to the other, modifying the statutory distribution of obligations. In general, according to art. 6f TPA a contract of lease relating to a unit from outside the public housing stock may contain provisions, with regard to the parties' respective rights and obligations, which are different from statutory stipulations of arts. 6a-6b. The public housing stock does not include premises (see art. 2(1) item 10-11 TPA):

a) which do not belong to a municipality, municipal juridical persons or commercial companies with participation of the municipality, apart from Social Building Associations,

b) which are not in owner-like possession of entities indicated in indent (a),

c) which are not owned by other units of self-government, self-governmental juridical persons established by such units, the State Treasury or state run juridical persons.

As regards private housing stock, there is general freedom to designate rights and responsibilities relating to repairs and outlays on a housing unit in a manner differing from the statutory regime. The limits to contractual freedom are the nature (essence) of the legal relationship of lease, statutory provisions and principles of social coexistence. In legal literature, one can encounter the opinion that even necessary outlays on the object of lease may be borne by lessee.[567] Enactments of arts. 6a-6b TPA apply only for the lack of contrary arrangement agreed by the parties in the contract for lease of a unit which does not belong to the public housing stock.[568]

It can be added that in the case of a residential tenure other than lease, whether gratuitous or not, the extent of outlays and repairs has been defined in the provisions of law which govern a particular tenure and frequently specified in the contract subsisting between the parties.

- *Connections of the contract to third parties*
- *rights of tenants in relation to a mortgagee (before and after foreclosure)*

The circumstance that the immovable property in which the leased unit is located is mortgaged does not affect the binding character of residential lease or specific rights and obligations of the lessee. Mortgage, as a limited right in rem referring to immovable property, is thus neutral from the point of view of housing lease arrangements (referring to a separate property or its part).

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[566] R. Dziczek, *Ochrona*…, 80.

[567] The problem has been widely discussed in J. Górecki, G. Matusik, commentary to art. 662 PCC in: *Kodeks*…, § 5; SC judgment of 12 November 1982, III CRN 269/82, Legalis, and contrary stance of the Supreme Court expressed in the judgment of 19 November 2003, V CK 457/02, Legalis. As regards lease of a housing unit, reversal of the burdens on the lessee may be considered an abusive clause in accordance of enactments of consumer protection law (art. 385^3 PCC). See M. Olczyk, *Najem*…, 94-95, 104.

[568] R. Dziczek, *Ochrona*…, 82.

In Polish law, mortgage creditor may be satisfied from the mortgaged asset, but only with recourse to the provisions on judicial execution proceedings.[569] The creditor must procure an enforceable instrument (e.g. judgment appended with enforcement clause) against the owner of the immovable property. Only then may the enforcement procedure commence.[570] By applying rules concerning execution against real estate, the creditor effectuates sale by auction of the mortgaged property. The last stage of execution on that property consists in adjudging ownership to the auction buyer (following the so called knockdown). The award assumes the form of a court ruling which results in primary acquisition of the property by the highest bidder who met all requirements imposed by law.[571] The property may thus be purchased in the execution proceedings by a third party or the mortgage creditor himself.

From the point of view of present investigations, the enactment of art. 1002 PCCP seems specifically crucial. In accordance with this provision, once the award of the property becomes final and binding, the buyer acquires the debtor's rights and obligations (previous owner's) following from tenancy relationships as per legal provisions governing particular tenures and instances of alienation of the housing unit. In this respect, art. 1002 PCCP refers to art. 678 PCC. However, the procedural rule modifies additionally the Civil Code regulation as regards admissibility of termination of lease by the buyer. Where the contract for lease of immovable property had been concluded for specified duration longer than two years, the buyer may terminate such contract within one month as of the date when the award becomes final and binding at monthly notice period unless the contract itself should provide for a longer period of notice, even where the contract was executed in writing with officially certified date and the thing has already been delivered to the lessee.[572]

One may surmise, however, that art. 1002 PCCP shall not be applicable to housing tenancies governed by the regulation of the TPA. In accordance with art. 11(1) sentence 1 TPA., if a tenant occupies the unit for consideration (non-gratuitously), termination of the legal relationship by landlord may take place exclusively for reasons laid down in the TPA.[573] This rule leads to the conclusion that the special procedural law provision for extraordinary termination by an execution buyer. Nonetheless, this solution is still dubious, since both rules, i.e. art. 1002 PCCP and art. 11(1) TPA are special enactments (*leges speciales*). Because of the need to cater for housing needs of the population, it seems that precedence should be given to the principle of protection of tenant rights.

As a result of the above, execution sale of immovable property in which the rented unit is located or analogical sale of a unit constituting separate property rented to a third party does not entitle the buyer to terminate the tenancy. Accordingly, art. 11

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[569] This principle follows from art. 75 LMA. See J. Pisuliński, 'Hipoteka' in: *System Prawa Prywatnego. Prawo rzeczowe*, vol. 4, ed. E. Gniewek, (Warszawa: C. H. Beck, 2012), 692.

[570] judgment of the Court of Appeal in Warsaw of 18 July 1998, I ACa 436/98, Biul. Inf. Pr. no. 2 (1999), 7; judgment of the Court of Appeal in Lublin of 7 April 1994, I ACR 77/94, Wok. no. 12 (1994), 55.

[571] G. Tracz, J. Pisuliński, 'Zabezpieczenie wierzytelności umownych w obrocie gospodarczym' in: *System Prawa Handlowego. Prawo umów* handlowych, vol. 5, S. Włodyka (ed.) (Warszawa: C. H. Beck, 2011), 206.

[572] Doubts concerning fairness of this regulation are raised by J. Wszołek, 'Najem i dzierżawa po nowelizacji k.p.c.', *Nieruchomości* no. 7 (2012), 18 ff.

[573] Exhaustive character of the catalogue of cases envisaged in art. 11 TPA is emphasized in the literature. See e.g. J. Panowicz-Lipska, 'Najem' in: *System*..., 25; E. Bończak-Kucharczyk, *Ochrona*..., 94-95; A. Doliwa, 'Komentarz do art. 11 uopl' in: *Najem*..., 282-283.

TPA, which omits to account for the depicted situation, makes an exhaustive catalogue of causes justifying termination.[574]

6.5. Implementation of tenancy contracts

Example of table for e) Implementation of tenancy contracts

	Municipal leases (including social units)	Social Building Association	Private rental sector	Incidental lease
Breaches prior to handover	General PCC regime	General PCC regime	General PCC regime	General PCC regime
Breaches after handover	General PCC regime	General PCC regime	General PCC regime	General PCC regime
Rent increases	Possible within TPA statutory regime	Possible in compliance with the ACFSBI regime of rent regulation; where tenant fails to meet income criteria, free rent may be introduced.	Possible within TPA statutory regime	Possible under contractual terms
Changes to the dwelling	Possible. Lessor's consent required	Possible. Lessor's consent required	Possible. Lessor's consent required	Possible. Lessor's consent required
Use of the dwelling	Specified in the contract, reflecting unit's properties and purpose	Specified in the contract, reflecting unit's properties and purpose	Specified in the contract, reflecting unit's properties and purpose	Specified in the contract, reflecting unit's properties and purpose

- *Disruptions of performance (in particular "breach of contract") prior to the handover of the dwelling*

Apart from its *essentialia negotii*, a contract for lease of a housing unit may, within the contractual freedom afforded by law, contain other provisions important to the parties. Provisions characteristic of lease impose, e.g., the requirement to pay deposit, make particular outlays on or improvements to the unit, duty to purchase furnishing of specific type, or clauses which might not be characteristic of lease as such but have been placed among other contractual stipulations because such was the parties' intention, e.g. the duty to obtain particular permits (e.g. permanent residence permit may be required from a foreigner–lessee. Breach of the contract by any of the parties

[574] Similarly, it is not admissible to apply to lease of a housing unit falling under the TPA regime the possibility of rent termination on general terms by a purchaser of the unit (not in execution proceedings). See J. Górecki, G. Matusik, commentary to art. 692 k.c.' in: *Kodeks*…, § 4; J. Panowicz-Lipska, 'Najem', in: *System*…, 132.

is to be evaluated through the prism of the regime of contractual liability (art. 471 et seq. PCC). The parties may mutually claim redress of any damage sustained as a result of non-performance or default to the obligation following from the legal relationship. Withdrawal from the contract by one of its parties is also possible.[575] The admissibility to reach for general provisions on withdrawal from contract (effective *ex tunc*) does not stir much doubt in this context.[576]

- *In the sphere of the landlord:*
- *Delayed completion of dwelling*
- *Refusal of handover of the dwelling by landlord (in particular: case of "double lease" in which the landlord has concluded two valid contracts with different tenants over the same house)*

Contract for lease of a housing unit is effected by exchange of declarations of will. It is not required to deliver the thing to the lessee. Consequently, lease is not a real contract. Rather than that, it makes a consensual juridical act imposing on a lessor the duty to deliver the object of lease for lessee's use.[577]

Delivery of the thing to the lessee has been defined in art. 662(1) PCC as handing it over in a condition fit for the agreed purpose. Vacation and delivery of a unit make a rendition relevant from the viewpoint of civil law.[578]

Delivery of a thing to the lessee enables its enjoyment, thus, it is of fundamental importance in light of the economic function to be fulfilled by the transaction. In consequence, it is necessary that the lessor should act in a way which leads to actual surrender of control over the thing to the lessee unless at the time of contract conclusion the thing was already held by the lessee. To achieve that end, cooperation of the parties is needed, however, only the lessor has been burdened with the duty to deliver the thing (art. 662(1) PCC). Correspondingly, the lessee may demand its delivery and has the right to collect it. From this point of view, delivery by the lessor creates a situation in which the lessee is free to pick the thing or, in more precise terms, assume actual control over the thing.[579]

Compliance with the obligation to deliver the thing requires that it should be made accessible to the lessee in the specified time, place and condition fit for the agreed purpose. Delivery date may be determined in the contract of lease. If, however, it was not determinable either in that way nor by reference to nature of the obligation, lessor is to deliver the thing immediately after being called on to perform by the lessee (art. 455 PCC). As in the case of specification of time, the place of delivery is, in the first place, sought in the contract. For the lack of such stipulation, one should recourse to the general rule of civil law concerning disbursement of monetary renditions (art. 454(1) PCC), which points respectively to place of residence or registered office of the lessor at the time of when the obligation becomes due.

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[575] judgment of the Court of Appeal in Katowice of 12 August 2004, I ACa 299/04, OSA 2004, no. 4, item. 3.

[576] J. Namitkiewicz, *Kodeks zobowiązań, Komentarz dla praktyki*, vol. II, (Łódź: Kolumna, 1949), 149.

[577] J. Panowicz – Lipska in: *System...,* 10

[578] Supreme Court decision of 5 August 1999, II CKN 659/98, LEX no. 1216201.

[579] L. Domański, *Instytucje Kodeks Zobowiązań, Komentarz teoretyczno – praktyczny, Część szczególna*, (Warszawa: Martin Ginter, 1939), 197.

Delivery of a thing to a lessee makes a factual (rather than juridical) act enabling the latter to take control of the thing (transfer of possession of the object of lease). It does not, however, transfer ownership. Where a unit or other place of accommodation is let, delivery may involve e.g. handing over keys to the unit, to the building and facilities appurtenant to the unit, delivery of the password to an automatic lock and door-phone, key to the mailbox, etc. As a result of delivery, the lessee becomes a dependent possessor in the understanding of art. 336 PCC).[580]

Obligation to deliver the object of lease to the lessee refers as well to its appurtenances (apart from the unit itself, lessee is to be given control of spaces appurtenant to the unit, e.g. a cellar) unless the contract provides otherwise. According to art. 52 PCC, juridical act relating to the principal thing is effective as well in relation to appurtenances – unless the contract for lease or special provisions of law provide otherwise.[581]

Should the lessor be in delay with the delivery of the thing in proper condition, the lessee may seek remedies envisaged in the legal provisions on non-performance of contractual obligations (art. 471 et seq. PCC). The lessee may, in particular, assert the claim to make the lessor surrender the let thing, he may also demand that the loss sustained in consequence of non-performance be redressed (arts. 491, 492,494 PCC). It is also admissible at this stage to apply enactments on withdrawal from the contract[582] since at that point the dispute refers to a single action (delivery of the thing) and, accordingly, there is no reason not to enable the lessee to withdraw from the contract where the failure to deliver was attributable to acts or omissions of the other party.

Lessee of a housing unit, irrespective of the mode in which the contract had been concluded, may file an action for delivery of the unit against any person unauthorized to occupy the unit pursuant to art. 222(1) PCC in conjunction with art. art. 690 PCC. These enactments empower the lessee to demand that any person holding the object of lease surrender it – unless the latter should be otherwise authorized to enjoy the unit under a tenure effective against the lessee.[583]

The lessor is obliged to deliver the object of lease in a condition fit for the agreed use (art. 662(1) PCC), i.e. fit according to the manner and purpose of use specified in the contract. In the absence of express provisions in this respect, the thing delivered should be apt for the normal use determined in accordance with its standard properties and purpose. It is common to apply this criterion to the lessor's obligation, and take recourse in statutory principles of contract interpretation (art. 65 PCC).[584] It is understandable that, in the absence of specific indications by the parties, such enjoyment makes an implied object to lease.[585] Delivery of the object of lease in the condition fit for the agreed use is not, however, a mandatory term implied by law. The parties may decide that the thing could be delivered in a worse condition or leave it for the lessee to restore the thing to usability. On such occasions, the lessee should

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[580] E. Bończak-Kucharczyk, *Komentarz - ochrona praw lokatorów i najem lokali mieszkalnych*, (Warszawa: Wolters Kluwer, 2010), 131

[581] Ibid., 132.

[582] J. Namitkiewicz, *Kodeks zobowiązań...,* 149.

[583] judgment of the Supreme Court of 2 October 1986, III CZP 69/86, OSNC 1987/10/153.

[584] Z. Radwański, in: *System*..., vol. III, part. 2, 268.

[585] W. Czachórski, *Zobowiązania – zarys wykładu*, (Warszawa: PWN, 1968), 503.

take effort to document the actual condition of the thing delivered, since the lessor is the beneficiary of the presumption that the thing had been delivered in good condition and fit for the agreed use (art. 675(3) PCC). This presumption seems important because of the duty to return the thing on the expiry of lease in the same condition, save its normal wear and tear (art. 675(1) PCC). [586]

Art. 662(1) PCC contains a default rule, which means that the parties are free to specify their rights and obligations otherwise in the contract, e.g. by providing that the lessee himself is to make the object of lease fit for the agreed purpose. They may, for example, stipulate that in exchange of repair carried out by the lessee, the rent is going to be reduced (by values equivalent to outlays incurred by the lessee). Necessary outlays may also be reimbursed in another way. [587]

An object of lease is unfit for the agreed purpose if it has a legal or physical defect. Moreover, as indicated in a body of rulings, delivery of the thing in a condition posing danger to the lessee or other individuals authorized (invited) by the lessee to sojourn in the let unit gives rise to the lessor's liability for the failure to ensure safe use of the thing.[588]

In legal literature, it is pointed out that mutual character of obligations arising out of lease contracts accounts for a kind of strict liability of a lessor, which follows merely from the defect. Defects upset the balance between renditions of the parties, since the lessee does not receive adequate provision from the lessor. Such situation amounts to default in performance of the lessor's obligations, which exposes the latter to liability on general terms (art. 471 PCC) as long as the defect which caused damage was a result of circumstances for which the lessor was accountable, especially if one can speak of his guilt. This does not, however, suffice to ensure to the lessee protection according to reasoned expectations which may be held by a party to mutual contract. For that reason, irrespective of contractual liability, protection of lessee interests is afforded by a separate system of lessor accountability for defects of the rented thing, known as warranty against defects (art. 664 PCC). This construction provides for strict liability of the lessor, detached from guilt as regards origination and lessor's knowledge of the defect. The liability is based on risk. In comparison with the general legal regime, this regulation confers specific claims on the lessee, which are suited to the characteristic features of lease.

The lessee may rely on this statutory warranty when the leased thing turns out to be defective in a way which confines its usefulness for the agreed purpose or entirely disenables this agreed use. Such definition of defects in art. 664(1) and (2) PCC allows to conclude that provisions on lease warranty account for both physical and legal defects of the object of lease. Both types may limit or preclude the lessee's use of the thing.[589]

More precise formulation of defects could be found in art. 375(1) of the pre-war Code of Obligations. It accounted for such features of things which impeded their use or decreased their usefulness.

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[586] J. Panowicz–Lipska in: *System...,* .25–26.

[587] Justification of the judgment by the Court of Appeal in Łódź of 24 February 1993, I ACr 48/93, OSA 1993, no. 7, item 50.

[588] Court of Appeal in Katowice in the judgment of 7 October 1992, I ACr 498/92, OSA 1993, no. 6, item 38.

[589] G. Domański, 'Rękojmia przy najmie', *Nowe prawo* (1967), 351.

Since the defect must be of a type which confines or excludes the possibility to use the thing in a manner envisaged by the parties, specific consequences ensue as regards the understanding of a legal defect of a rented thing. Presence of such a defect is not yet decided by the fact that the object of lease belongs to a third party, and not the lessor, or that a third party holds another title to the thing (e.g. usufruct). The object of lease does not have to be the lessor's property, and the existence of other rights (proprietary or obligational) does not yet mean that the lessee's use has to be disturbed. In consequence, a legal defect in the understanding of the lease warranty regulation is present only when a third party exercises his rights in a way which deprives the lessee, even in part, of the possibility to enjoy the thing. It does not matter, by the way, if the entitled party has retrieved the thing as a result of judicial proceedings or self-help. Moreover, it seems that not only retrieval of the object of lease by a third party triggers responsibility of the lessor for legal defect but also obstacles concerning the use of the thing caused by third party rights.

The lessor's liability under the warranty, based on his risk, is not absolute accountability. It is excluded where, at the moment of contract conclusion, lessee was aware of the defects (art. 664(3) PCC), thus, the quality of the object of lease was actually known to the lessee, and not merely noticeable. Since he has decided anyway to enter into the contract being aware of the defects, the lessee may then demand that the lessor comply with the duty to repair the thing and remedy the defects (unless the lessee undertook this task himself) He may not, however, exercise special rights following from the statutory warranty.

Additionally, lease warranty does not cover cases when the defect has originated by circumstances for which the lessee is accountable, particularly if his guilt comes into question. Provisions of the Civil Code omit to regulate that matter expressly, which can be explained by the absence of such need. Exclusion of lessor's liability seems obvious in such instances.

Warranty liability is related to presence of defects at the time of delivery of the thing to the lessee or their emergence later during the lease period. Where the lessee learns about a defect already after conclusion of lease but before delivery of the thing, he may not yet raise claims under warranty, because of the possibility open before the lessor to remove the defect before the thing is surrendered to the lessee.

Among the premises of liability of the lessor for defects of the rented thing one cannot, in principle, list his notification by the lessee of a spotted defect. However, a breach of the duty to report the defect may possibly result in liability for damages on general terms (art. 471 PCC) for the damage inflicted by the absence of notification. Only if the lessee intends to terminate lease without notice because of a defect (art. 664(2) PCC), and the defect which disenables use of the thing is removable, it is necessary to report it to the lessor. Admissibility of termination is dependent on the failure to cure defects in due time on the part of the lessor despite due notification.

Remedies under the warranty depend on seriousness of the defect. They depend primarily on the division of defects into ones which decrease usefulness of a thing to the agreed purpose and ones which forestall the use of the thing as agreed in the contract.

When it comes to a defect that limits usefulness of the thing, lessee may demand adequate decrease of rent for the period of the defect (art. 664(1) PCC). Defects as serious as to preclude the agreed use of the thing undermine the economic purpose

of lease. On such occasions, the lessee is entitled to terminate the contract without notice (with immediate effect, art. 664(2) PCC).

Defects which confine usefulness of the thing for the agreed purpose trigger a disproportion between mutual renditions of the parties, which justifies proper modification of rent. Its amount is to be decreased according to the reduction of usefulness of the object of lease. Disputes concerning the scale of decrease may be resolved in court as a result of an action for its ascertainment or a lawsuit for payment of overdue rent. Payment of rent before removal of the defect may not in itself be regarded as a proof of renunciation by the lessee of the claim for rent reduction because of the damage.[590]

Rent reduction may be pursued for "the duration of the defect." Should one or more instalments be paid in the agreed amount before appearance of the defect or while it is manifest, lessor may claim repayment of adequate proportion of the rent paid. The claim for return of the overpaid rent is time-barred after one year as of the date of the thing's return.

Regardless of the claim for rent decrease enabled by defects of the rented thing under art. 664(1) PCC, the lessee may demand that the lessor comply with the statutory duty to make relevant repairs in order to cure the defects. The lessee may as well have his loss arising out of the defects remedied on general terms.

It follows from art. 664(1) PCC that more far reaching disturbances of the agreed use, namely defects which make it impossible, provide yet firmer grounds for claims leading to an adequate rent decrease. On such occasions the lessee is entitled to exemption from rent for the period of defect, and if the payment had already been made, he may demand refund of the disbursed sum. In the case of defects which precluded enjoyment of the let thing at the time of delivery, as well as those which have emerged later, lessee may also, as pointed out above, terminate lease without notice (art. 664(2) PCC). Lessee is in a position to exercise this entitlement where the lessor has not, despite proper notification, cured the defect in due time, or the defects are not removable. The necessary condition for termination without notice is to report the noticed defect to the lessor and wait for the period needed to cure the defect, unless it is impossible to remedy the defect, when notification is not required.

It seems that the concept of incurable defect which justifies termination of lease under art. 664(2) PCC refers to situations in which, for reasons objectively ascertainable in the circumstances of the case, it is completely infeasible to remove the defect, and when it cannot be done within the reasonable time-frame taking into consideration the specific situation of lease, particularly its duration and purpose to the contract.

Provisions on warranty for defects of a rented thing do not preclude liability for non-performance or default in performance of obligations on general terms (art. 471 PCC). Under the warranty regime, the lessee may also claim remedies for loss suffered in effect of the defects. If he elects not to terminate the lease, he may claim repairs by the lessor or have the object of lease repaired at the cost of the latter. According to the currently prevalent opinion, application of the withdrawal regime has

[590] L. Domański, *Instytucje...*, 204.

been forestalled by legal provisions on lease warranty,[591] although there are academic statements to the contrary.[592] While assuming that the warranty framework allows for lessee's withdrawal from the contract on general terms, one should distinguish between two situations. As regards defects of the rented thing which reduce its usefulness for the agreed use, the lessee might withdraw from the contract pursuant to art. 491 PCC, however, withdrawal shall be effective *ex nunc* where such possibility has been employed after a period of the thing's use. In the case of defects which make the agreed use impossible, under the circumstances which allow for contract termination in accordance with art. 664(2) PCC, and at the same time enable withdrawal in pursuance of arts. 491 or 493 PCC, lessee shall have a choice between termination and withdrawal. Election of the latter in the course of enjoyment of the thing would produce effects *ex nunc*, by analogy to termination.[593]

Among legal scholars, the opinion prevails that art. 664 PCC on the lease warranty for defects is only a default provision. Consequently, the parties may, in their contract, lay down differently (in a broader or narrower manner) the principles of responsibility on that account or exclude it entirely.[594]

The confinement of contractual freedom pertaining to principles of social coexistence necessitates that the rule of art. 682 PCC be considered mandatory. This provision sets forth warranty for defects of the rented unit posing threats to lessee's health, his house-mates or employees. Because of the protective *ratio legis*, the enactment of art. 682 PCC is generally deemed mandatory in the legal doctrine.[595]

The provision of art. 664(2) PCC precludes application of the general regime on withdrawal from contracts binding on both parties, as lease makes an example of a continuous obligation. Termination of such relationship may be effectuated *ex nunc* (and not *ex tunc*, as in the case of withdrawal from a contract). For the above reason, withdrawal from a lease contract is only admissible before the lessor delivers the agreed object to the lessee. [596]

An example from court judicature which amounts to a defect of the object of lease in the understanding of art. 664(1) PCC, and justifies lessee claims for rent reduction, is delivery of a unit of usable area lesser than specified in the contract. [597]

Another example of legitimate claim by the lessee for the reduction of charges levied under a lease contract has been provided in a judgment by the Supreme Court which pointed out that a partial reduction of bills for central heating is justified where the lessee can substantiate that the unit is not heated sufficiently and evince limited usefulness of central heating. However, this condition does not yet make the unit entirely useless from the point of view of the lessee's needs. On the other hand, if the

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[591] W. Czachórski, *Zobowiązania...* (1968), 507-508; H. Ciepła, in: *Komentarz do KC* , Book III, vol. II, (Warszawa: LexisNexis, 2002), 211-212

[592] Z. Radwański, in: *System*..., vol. III, part 2, 274.

[593] J. Panowicz – Lipska in: *System...,* 30 - 35

[594] G. Domański, 'Rękojmia przy najmie', *Nowe prawo* (1967), 352; Z. Radwański, in: *System*..., vol. III, part 2, 275.

[595] F. Błahuta, in: *Komentarz KC*, vol. II, (Warszawa: Wydawnictwo Prawnicze Warszawa, 1972), 1479

[596] judgment of the Court of Appeal in Katowice of 12 August 2004, I ACa 229/04, OSA 2004, no. 4, item 3.

[597] judgment of the Court of Appeal in Wrocław of 8 February 2012, I ACa 8/12 LEX no. 1120018.

unit is heated so poorly that it proves completely unfit for its purpose, the lessee is exempted in whole from the obligation to pay charges for central heating. [598]

- *Refusal of clearing and handover by previous tenant*

Another reason for delay in unit delivery may be the previous lessee's default to vacate this unit. In order to keep the lessor's rendition within the time-frame provided in the contract, legal provisions impose specific duties on the creditor. For example, the lessee, upon termination of lease, is under the obligation to return the rented thing. The lessor has a claim for surrender of housing unit once the lease relationship has expired, whether or not he is the owner himself. The lessor may assert delivery even where the lessee is the owner, as long as the former has been lawfully authorized to enjoy the thing, e.g. as usufractuary. Where the lessor is the actual owner of the let thing, regardless of the claim for return the object of lease at the end of the lease, he has a vindicative claim (art. 222(1) PCC). [599]

The next lessee, in a situation of his predecessor's default to surrender the rented unit, may pursue claims analogical to those described above, with the proviso that the claim for delivery of the unit (art. 222(1) PCC in conjunction with art. 690 PCC) is effective against the previous lessee who fails to vacate the object of lease.

One special situation of violation of contract between is a situation in which the lessor enters into two binding contracts referring to the same unit and the same period of lease. The Supreme Court took stance in respect of such condition. In its judgment of 19 April 2001, the Court held it possible that within a single housing unit comprising several rooms a part of them - provided they are separated permanently by walls - should make an object of lease concluded with one lessee, and the remaining part be rented to another lessee, while auxiliary facilities are subject to common use. It would, however, be difficult to consider admissible in light of the RTHBA enactments (apart from a number of exceptions set out in arts. 7 and 8, as well as art. 55), that the same unit should as a whole be subject to two simultaneous contracts signed with different lessees. Regard ought to be had to the obligation following from art. 9 RTHBA that lessor deliver to the lessee the agreed unit in the condition fit for the agreed purpose, namely accommodation. That requirement is not fulfilled when the unit remains occupied by another rightful lessee. Just for that reason it should be deliberated if the contract made between the lessor and new lessee may at all be considered valid in the light of provisions of the cited statute.[600]

As a consequence, it may not be questioned that the lessee has a legal interest referred to in art. 189 PCCP, understood as the need to be delivered a court decision of specific type caused by an actual infringement of his legal sphere. Even though the Residential Tenancies and Housing Benefits Act of 2 July 1994 failed to expressly envisage the prohibition to let the same unit to two or more lessees, it does not denote accord to such acts. Such conclusion may be drawn indirectly from art. 4 RTHBA, as rightly indicated by appellants in the case tried by the Supreme Court cited above. The said provision makes catering for housing needs of inhabitants an

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[598] SC judgment of 14 December 1965, II CR 470/65, OSNC 1966/11/192.
[599] SC judgment of 14 December 1965, II CR 470/65, OSNC 1966/11/192.
[600] judgment of the Supreme Court of 19 April 2001, IV CKN 326/00, LEX no. 52537.

own task of a municipality. The norm as such does not afford any subjective (direct) rights to members of the local community, yet conclusion of lease contracts referring to the same unit with different lessees cannot be considered as satisfaction of housing needs of the local population. Pursuant to the provision of art. 1(1) RTHBA, the regime covers leases of independent housing units intended as permanent rentals. What sort of unit may be considered independent, has been defined in art. 3(1) item 1. Such unit makes a room or set of rooms separated by permanent walls from the rest of the building and has been intended for permanent human accommodation.

The question of the binding character of lease contracts in a situation of lessor bankruptcy has been covered in art. 107 of the Bankruptcy and Restructuring Law Act of 28 February 2003. In accordance with the cited provision, a lease of a bankrupt's immovable property is binding on the parties if its object had been delivered to the lessee. Advance payment of rent for at least three months, counting from the date of bankruptcy announcement, as well as any acts of disposal of the said rent, does not relieve the lessee from the obligation to pay due rent to enrich bankruptcy assets.

- *Public law impediments to handover to the tenant*

One of practical public law obstacles which impede unit delivery to the lessee is the necessity to obtain by lessor (unit owner) an occupancy permit allowing for use of the unit for residential needs of future tenants. If the parties make an agreement already before completion of construction or modification of the unit's use, and delivery of the unit is to take place in the future at the time of its completion and formal entry into use, administrative obstacles to such decision may significantly impede delivery of the unit to the lessee in the agreed time.

Absence of such permit may trigger serious difficulties in the future. In the first place, it should be indicated that the Act of 16 April 2004 amending the Construction Law Act imposed pecuniary sanctions for illegal use of a building - without valid notification about completion of the construction and procurement of occupancy permit. Pursuant to that Act, sanctions for illegal use of a building may be imposed only where ascertainment of this circumstance by proper authority has taken place after 1 January 2005. Introduction of sanctions of that type was to cure the situation which is frequently encountered nowadays. Thousands of buildings are long in use while still under construction. In such cases building supervision authorities are obliged to impose fine on the occupier, calculated analogically as in the case of obligatory inspections, yet the regular fine is multiplied by ten.

Moreover, where valid occupancy permit has not been issued, the owner of a unit may encounter formal difficulties, e.g. connected with the refusal to certificate independent character of the unit, which in turn makes a necessary condition for successful completion of the process of establishment of a separate unit property. In pursuance of art. 2(2) second sentence UOA, an independent housing unit is a room or set of rooms destined for permanent human accommodation, separated by permanent walls. These rooms, along with appurtenant spaces are to satisfy housing needs of individuals. This provision applies as appropriate to independent units used for purposes other than residential. Fulfilment of requirements set out in art. 2(2) UOA must be ascertained by proper authorities in the form of certificate (art. 2(3) of

the cited Act). In case law, it is indicated that construction authorities may launch investigation before issuing the certificate.[601] In light of art. 2(2) second sentence UOA, the proper indicator of unit independence is its separation within the building by permanent walls and, depending on the type of unit (housing or commercial), its use for the intended purpose. For units located in buildings under construction, that purpose follows from the building permit and approved building project. This does not mean, however, that the permit may be granted solely in reliance on the above documents. Determination whether the units listed in the application for certification of their independence actually meet the criteria set forth in art. 2(2) UOA may be based on preliminary investigation described in art. 218(2) of the Polish Code of Administrative Procedure. Under this final provision, proper authorities may precede issuance of a certificate by preliminary investigation. By doing so, the administrative body may base its findings on all types of evidence known to the Code. In some cases inspection of the building comes in question. According to the Voivodeship Administrative Court in Gdańsk, apart from the building documentation mentioned above, which allows to determine unit's purpose, the administrative body is to ascertain if units located in the building have proper window joinery, walls and flooring prepared for finishes, as well as basic utilities: plumbing, heating and electricity. It is, however, unnecessary that units be furnished with all fittings. Having determined that units separated from the rest of the building by permanent walls are in a sound condition, the administrative body should award a certificate of independence. Such conclusion can be supported by the argument that presently it is impossible to put an equation mark between independence of a unit and actual fulfilment of housing needs on the date of certification. It should be emphasized that in new housing constructions, as soon as the occupancy permit has been issued, units are delivered to buyers in the so called developer condition. Units in such shape are not suitable for instant occupancy because of the missing furnishing, e.g. sanitary, electrical and floor fittings. Such units still require finishing works. Moreover, it should be pointed out that issuance of independence certificates relating to units located in a building which has not yet been authorized for occupancy by administrative decision allows the owner only to undertake earlier preparatory activities before creating separate unit properties in the future. This does not involve the danger of putting into use units before procurement of the occupancy permit for the building. If the latter was the case, the developer would face the risk of fine for illegal use of the premises.[602]

- *In the sphere of the tenant:*
- *refusal of the new tenant to take possession of the house*

The basic duty of the lessee arising out of the contract is, primarily, to make due payments of rent to the lessor. As pointed out above, contracts for lease of a unit are consensual. It is thus not necessary that the object of lease be delivered. Delivery as such requires the lessor's active conduct leading to transfer of the agreed thing's

[601] judgment of the Voivodeship Administrative Court in Poznań of 9 November 2006, III SA/Po 250/06; judgment of the Voivodeship Administrative Court in Gdańsk of 23 October 2008, III SA/Gd 318/08.

[602] judgment of the Voivodeship Administrative Court in Gdańsk of 20 January 2011, III SA/Gd 543/10, LEX.

possession to the lessee, unless the object of lease has already been in lessee's hands at the time of contract conclusion. Cooperation between the parties is required, yet, only the lessor has been imposed with the duty to deliver the agreed thing (art. 662(1) PCC). The lessee, on his part, may demand delivery of the thing, but does not have to. He is not obliged to receive the object. For this reason, delivery of the thing by the lessor consists in creating an opportunity for the lessee to receive the agreed thing, or, in more precise terms – to assume its control.[603] Since delivery of the object of lease requires cooperation between the parties to the contract, the lessor may not coerce his lessee to collect the agreed thing. Where the lessee refuses to receive the unit or falls in arrears with such reception, he is still bound to perform under the contract, especially to pay rent instalments and other charges related to ordinary use of the unit. As pointed out above, however, there is case-law which allows lessors to withdraw from the contract in a situation of lessee's delay in receipt of the unit.

Financial position of lessees is generally worsening on the property market, which may lead in extreme cases to declarations of their bankruptcy. Legal consequences of going bankrupt are laid down in the Bankruptcy and Restructuring Law Act of 28 February 2003. As a rule, declaration of lessee's bankruptcy may be followed by several types of consequences: first, the parties may withdraw from the contract. Second, the official receiver, and in certain cases also the lessor, may terminate the contract. Finally, the contract may continue to subsist despite lessee bankruptcy.

Where a unit has not been taken over by the lessee, both parties may withdraw from the contract within two months from the lessee's declaration of bankruptcy. The deadline to withdraw, which can be neither restituted nor prolonged, starts running at the date of declaration of bankruptcy.

Withdrawal from contract made in accordance with the statutory framework does not entail the obligation to indemnify by any of the parties. The lessee may, however, claim repayment of rent paid in advance. If neither party decides to withdraw from the contract before the statutory deadline or where the object of lease has already been handed over to the lessee, contractual freedom becomes distinctly limited. The official receiver of the lessee's assets may withdraw at six months' period of notice if the contract relates to immovable property in which the bankrupt's business was run. Where rent has been paid in advance and in the lack of the parties' resolve to the contrary, the official receiver may in principle terminate the contract effectively only on expiry of the period for which the rent has been paid. Without regard to the above timeframe, withdrawal is possible only at judicial consent. Such consent is generally issued at the request of the receiver when further persistence of the contract would impede the course of official insolvency proceedings, and, most importantly where it could increase the costs of these proceedings. Where the receiver should terminate the contract before expiry of the lease period, the lessor is entitled to indemnification for a period not longer than two years starting from the date of termination. Such claim is pursued as a part of the bankruptcy proceedings, which means that, as a rule, the lessor has slim chances to enforce the full indemnification owed by the insolvent debtor.

As a result of withdrawal from the contract by official receiver, the lessor faces the problem of the lessee's chattels remaining in the unit. In such a situation, the lessor

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[603] L. Domański, *Instytucje*..., 197

may enter into a contract with the official receiver for payable storage of these movable things. However, where the lessor is determined that the unit should be emptied as soon as possible, he may call the receiver to pick the movables and assign appropriate deadline. Such claim may be asserted by the lessor on general terms.

On the other hand, as long as the proceedings are pending (before its discontinuation or arrangement with creditors), or on the occasion of procedural switch from bankruptcy proceedings involving the possibility to make an arrangement to in-court liquidation, the lessor may, in principle, terminate the contract for lease of the premises in which the insolvent debtor's business is based (a shop, office or depot) only at the consent of the board of creditors. What is more, the arrangement with creditors may restrict the freedom to terminate the contract until complete performance of the arrangement. In the situation depicted above, lessor may terminate the contract on the terms specified in the lease contract and general terms envisaged in the Civil Code.

If the contract of lease has not been terminated by either party during the official insolvency proceedings, it continues to bind them. However, official insolvency of the lessee, whether leading to liquidation or reorganization, involves in each case the lessor's risk that the official receiver should fail to discharge the lessee's obligations following from lease or discharge them with delay. One should as well emphasize that in a pending insolvency involving the possibility to make arrangements, crucial role is played by the board of creditors, which may bring the risk that the arrangement might prove unfavourable to the lessor.

How can a lessor guard himself against negative effects of lessee's insolvency? As mentioned above, all contractual provisions allowing to dissolve the contract on the account of the lessee's bankruptcy are deemed invalid. One of solutions which could improve the lessor's position, especially in the time directly preceding declaration of the lessee's bankruptcy, would be to adequately secure the lease contract, both in terms of payment of rent and lessor's smooth enforcement of the unit's eviction. Another factor that cannot be stressed enough is early procurement of information on the worsening financial condition of the lessee, which allows the lessor to take adequate measures before commencement of the lessee's official insolvency proceedings.

- *Disruptions of performance (in particular “breach of contract”) after the handover of the dwelling*

Typical forms of non-performance or default in performance of a residential lease contract following delivery of the unit to the lessee comprise:

a) On lessor's part:

- failure to maintain the unit in appropriate condition, particularly omission to implement repairs or make outlays for which the lessor is responsible;
- failure to cure patent defects in the unit;
- failure to ensure unit's undisturbed enjoyment;

b) On lessee's part:

- failure to pay rent or its untimely disbursal;
- payment of rent lower than agreed;
- violation of house rules and regulations (rules governing the use of the unit and common parts of the building), e.g. by excessive noises, possession of animals, leaving of one's personal items of property in common parts of the building, failure to keep appropriate cleanliness in the room causing, e.g., appearance of insects in the premises;
- use of the unit in a manner contrary to the contract or its normal purpose (e.g. running a business in the unit);
- enjoyment of the unit and common property in a way causing damage (e.g. serious damage to the unit, devastation of the common parts);
- sublease unauthorized by the contract and legislation, or its delivery for use under a different tenure, whether gratuitous or for consideration, to a third party;

- *Defects of the dwelling*
- *Notion of defects: is there a general definition?*

Neither provisions of the TPA nor the Civil Code provide legal definition of a defect in a housing unit or, in yet broader terms, a defect in the object of lease. In spite of this shortcoming, the legislator invokes that notion in arts. 664 and 682 PCC. Both of the adduced provisions (especially art. 664 PCC) apply as well to residential leases.[604]

In effect of legislative shortcomings following from the missing definition of a defect to the leased thing, scholars propose to apply the concept of defect known to the regulation of sales.[605] Under art. 556(1) PCC a physical defect of a thing is a shortcoming which lessens its value or usefulness with regard to the thing's purpose agreed by the parties or following from the circumstances or its normal use, or deficiency in the thing's properties about which the seller had assured the buyer, or, finally, where the thing was surrendered to the buyer in incomplete condition. Pursuant to art. 556(2) PCC, a thing is affected by legal defect if it belongs to a third party or has been charged with a right of such third party. This grasp of the concept of defect in an object of sale may be applied to lease contracts only with certain modifications. A defect (whether physical or legal) to a housing unit does not have to be inherent in the lodging before its delivery. It may emerge as well at a later stage. Besides, the defect is to reduce the usefulness of the housing unit for accommodation or disenable it entirely.[606] In reference to legal defects, this means that mere existence of third party rights as such does not yet make a defect of the unit as long as the lessee may anyway enjoy it.[607]

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[604] See e.g. J. Górecki, G. Matusik, commentary to art. 664 PCC in: *Kodeks…*, § 13; J. Panowicz-Lipska, 'Najem' in: *System…*, § 148, 123.

[605] G. Kozieł, commentary to art. 664 PCC in: *Komentarz do kodeksu cywilnego,* vol. III, A. Kidyba (ed.)(Warszawa: Wolters Kluwer, 2010), § 2, 367.

[606] J. Górecki, G. Matusik, commentary to art. 664 PCC in: *Kodeks…*, § 1 and literature cited therein. See also J. Panowicz-Lipska, 'Najem' in: *System…*, § 35, 30; E. Bończak-Kucharczyk, *Ochrona…*, 137.

[607] A. Grzywacz in: *Najem…*, 49; M. Olczyk, *Najem…*, 51; J. Panowicz-Lipska, 'Najem' in: *System…*, 30-31.

- *Examples: Is the exposure of the house to noise from a building site in front of the house or are noisy neighbours a defect? What about damages caused by a party or third persons? Is the occupation of the house by third parties such as squatters considered as a defect in the legal terms?*

Among the most frequent defects of housing units, one can point to the following:
- delivery of unit of floor area smaller than agreed;[608]
- inordinate noise in the unit created by neighbours or coming from outside;[609]
- absence of or inadequate heating;[610]
- leakiness of window joinery causing breeze;
- mould or dampness of the unit's walls;[611]
- defective sewage system or missing sewage outflow;
- nasty smell;[612]
- malfunction or irregular parameters of installations situated in the unit;[613]
- vibrations, emission of hazardous substances or waste[614];
- danger of collapse of the building or abruption of its part;[615]
- inoperative elevator;[616]
- rightful tenure in the unit held by a third party which makes the unit's enjoyment under the lease contract impossible - the third party occupies the lodging continually or only periodically, even if the occupancy refers merely to the unit's part (e.g. one of the rooms).

- *Discuss the possible legal consequences: rent reduction; damages; "right to cure" (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third parties) what are the relationships between different remedies; what are the prescription periods for these remedies*

The lessee's rights arising out of appearance of a defect in the housing unit are primarily defined in arts. 664 and 682 PCC. The liability for physical and legal defects based on the construction of warranty is structurally based on lessor's risk.[617] As provided in art. 664(1) PCC, where the object of lease has defects which reduce its

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[608] judgment of the Court of Appeal in Wrocław of 8 February 2012, I ACa 8/12, Lex no. 1120018; A. Damasiewicz, *Najem*…, 187.
[609] e.g. J. Górecki, G. Matusik, 'Komentarz do art. 664 k.c.' in: *Kodeks*…, § 1.1.
[610] M. Olczyk, *Najem*…, 54.
[611] SC judgment of 21 May 1974, II CR 199/74, OSP 1975, no. 2, item 6.
[612] A. Grzywacz in: *Najem*…, 46.
[613] SC resolution of 19 April 1988, III CZP 25/88, OSNCP 1989, no. 9, item 139.
[614] J. Górecki, G. Matusik, 'Komentarz do art. 682 k.c.' in: *Kodeks*…, § 2.
[615] A. Grzywacz in: *Najem*…, 46.
[616] SC judgment of 6 February 1979, IV CR 491/78, OSNCP 1979, no. 10, item 194. See also M. Olczyk, *Najem*…, 53-54.
[617] See e.g. A. Doliwa, 'Komentarz do art. 664 k.c.' in: *Najem*…, § 1, 31.

fitness for the agreed use, the lessee may claim proportional rent decrease for the duration of the defects. Additionally, in accordance with art. 664(2) PCC, where at the time of delivery to the lessee the thing was defective in a way which precluded its use as agreed by the parties, or if such defects emerged at later time and the lessor, although duly notified about that fact, failed to cure the defects in due time, or where defects are irremovable, the lessee may terminate the contract immediately. None of the entitlements mentioned above (either claim for rent reduction or right to terminate the contract) have been vested in the lessee if he knew about the defects at the time of entry into contract (art. 664(3) PCC).

Taking into consideration regulations of arts. 663 and 666(2) PCC, one may differentiate between the following model situations.[618]

a) The unit has a curable defect which confines its enjoyment. In such situation, the lessee may notify the lessor about the defect and appoint the period in which the lessor ought to remove it. On ineffective expiration of this term, the lessee may have the defect repaired at the lessor's cost (substituted performance). The rent payable for the duration of defect is duly decreased.
b) The unit has an incurable defect which confines its enjoyment. In such situation, the lessee may claim rent reduction. One cannot exclude as well compensation for default in the contract's performance.
c) The unit has a curable defect which disenables its occupation. In such circumstances, the lessee should assign a period to the lessor for the defect's removal under the pain of the contract's immediate termination. Instead of terminating the contract, however, the lessee may have the defect removed at the lessor's cost.
d) The unit has an incurable defect which prevents its occupancy. On such occasion, the lessee may terminate the contract without notice. Indemnification for its non-performance would make an alternative option.

Irrespective of the above, pursuant to art. 682 PCC, if the defects of the leased unit should pose danger to health of the lessee or his household members, the lessee may terminate the contract without notice, even if he had known about defects while entering into contract. This special regulation provided for residential tenancies seriously modifies the rules of art. 664 PCC.[619] Materialization of a curable defect hazardous for the lessee's life or health does not require that the lessor be called on to remove it, or given a deadline to act. The lessor may not assert the defence of the lessee's knowledge of the unit's condition.

These claims, following primarily from arts. 664 and 682 PCC, relate to physical and legal defects of a housing unit. One should also mention detailed protection of the lessee's rights to the housing unit following from arts. 690 and 19 TPA. In accordance with these provisions, owner protection is afforded to lessees. The scope of art. 19 TPA is broader than art. 690 PCC because it relates not only to residential leases but

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[618] J. Górecki, G. Matusik, commentary to art. 664 PCC in: *Kodeks*…, § 4; J. Panowicz-Lipska, 'Najem' in: *System*…, § 38-39, 32-33 and K. Pietrzykowski, 'Komentarz do art. 664 k.c.' in: *Kodeks cywilny. Komentarz*, vol. II, ed. K. Pietrzykowski, (Warszawa: C. H. Beck, 2011), § 3-8, 474-475.

[619] J. Górecki, G. Matusik, 'Komentarz do art. 682 k.c.' in: *Kodeks*…, § 3; E. Bończak-Kucharczyk, *Ochrona*…, 172.

all tenures other than ownership.[620] In practice, this means that if, during the lease period, the unit were captured by a third party, the lessee may sue the third party intruder on the same legal basis (and assert identical claims) as owner. Moreover, the lessee may initiate action for an injunction in the case of nuisance (indirect interferences such as noise, smell, disturbance of TV signal) originating in neighbouring units or even other buildings.[621]

Since a lessee is a dependent (as opposed to owner-like) possessor of a property (or its part), he enjoys legal protection of his possession on terms specified in art. 344 PCC in conjunction with art. 343^1 PCC. Respective claims may be pursued before the court only within the time limit of one year from the violation of possession (art. 344(2) PCC). In the special type of proceedings, the court examines only the previous possession and its infringement, abstaining from examining the rightful title or good faith of the sued intruder (art. 478 PCCP).

- *Entering the premises and related issues*
- *Under what conditions may the landlord enter the premises?*
- *Is the landlord allowed to keep a set of keys to the rented apartment?*

Although the lessor is usually the owner of the premises, as a result of the entry into the lease contract, he forfeits the right to enjoy the unit. He cannot stay in the rented premises. The lessor is authorised to enter the rented dwelling only in extraordinary situations, e.g. when it is necessary to make a repair for which the lessor is responsible. In case of a defect in the object of lease which causes or threatens loss, the lessee is obliged to provide access to the unit in accordance with art. 10 TPA. The lessor may also enter the premises to make an overview of its general condition and technical outfit, or carry out works encumbering the lessee if the latter omits to fulfil his or her obligations. On such occasions the date of entry should be negotiated between the parties (art. 10(3) TPA).

The question of spare keys has not been expressly regulated. however, art. 690 PCC provides the lessee with owner-like protection against any third parties, including the landlord.[622] This means that lessee might sue the latter in case of unjustified use of such hidden set of keys.

- *Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?*

Even the fact of irregular payment of rent may not justify any impediment by the lessor regarding the lessees enjoyment of the rented thing. In the cases indicated in the TPA, lessor may only terminate the contract at respective periods of notice. It

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[620] J. Jezioro, 'Komentarz do art. 690 k.c.' in: *Kodeks cywilny. Komentarz*, (Warszawa: C.H. Beck, 2011), ed. E. Gniewek, Nb 5, s. 1184; J. Górecki, G. Matusik, 'Komentarz do art. 690 k.c.' in: *Kodeks…*, § 2; A. Doliwa, 'Komentarz do art. 19 uopl' in: *Najem…*, § 1, 319.

[621] J. Górecki, G. Matusik, 'Komentarz do art. 690 k.c.' in: *Kodeks…*, § 4; K. Pietrzykowski, 'Komentarz do art. 690 k.c.' in: *Kodeks…*, § 3, 523.

[622] A. Doliwa, *Prawo mieszkaniowe...,* 125; SC judgment of 28 November 1975, III CRN 224/75.

should be remembered that the lessor has statutory lien on the movables brought into the unit by the lessee (art 670 PCC).

- *Rent regulation (in particular implementation of rent increases by the landlord)*
- *Ordinary rent increases to compensate inflation/ increase gains*
- *Is a rent increase after renovation measures, e.g. upgrading the energy performance of the house, or similar lawful and dealt with in a special procedure?*
- *Rent increases in "housing with public task"*
- *Procedure to be followed for rent increases*
- *Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel [= rent statistics for a certain area])?*

Specific provisions restrain the landlord's freedom to arbitrarily increase rent. This refers in particular to art. 8a and 9 TPA. This regulation is a reminiscence of former rent control introduced in the Residential Tenancies and Housing Benefits Act 1994. Both enactments were multiply amended and interpreted by the Constitutional Tribunal. Even though tenancy terms are now agreed on a free market basis, institutional intervention still seems necessary in order to protect lower income households. The scope of intervention is gradually reduced as the overall economic situation and population prosperity no longer requires strict regulatory devices.

Rent increases should always be notified to a landlord in writing. This refers as well to fees paid by cooperative rights holders. A landlord inclined to increase rent should notify the tenant before the end of a calendar month and comply with the statutory or contractual notice period no shorter than 3 months (art. 8a(1-3)).

Any increase of the annual rent rate beyond 3% of the replacement value of a unit may be effectuated only in justified cases set out in art. 8a(4a). These involve situations in which the owner cannot receive incomes from rent which would allow for proper maintenance of the premises along with additional return, which is also calculated meticulously, taking as the basis the landlord's expenses connected with the unit's construction, purchase and repairs. Pursuant to art. 8a(4b) item 2, profits reaped by the landlord should be reasonable. On tenant's demand, the landlord should present precise calculations substantiating legitimacy of such an increase. Tenants dissatisfied with an excessive increase have a cause of action which can be brought before a court. In such cases, it is the court that decides whether or not the questioned increase is justifiable. Under art. 9(1b) TPA, rent increases may not be ordained more often than once in six months.

The principles discussed above do not apply to modifications concerning charges which are not dependent on the landlord.[623] This category comprises bills for electricity, gas, water, waste and effluent sewage disposal. As the services are provided to the benefit of a tenant, it is him who should bear their cost. Nevertheless, in the event of their increase, the landlord is still obliged under art. 9(2) TPA to present a detailed breakdown of specific charges owed to third party providers.

[623] A. Doliwa, *Prawo mieszkaniowe...,* 191.

Where such itemization is exhibited, the landlord may encumber the tenant with charges in the new amount without compliance with any period of notice.[624]

Art. 8a(4c) makes an interesting provision imposed primarily on housing cooperatives. According to this rule a landlord other than lessor in the PCC tenancy relationship should also follow the above principles. He may not, however, include his own profits in the calculation of fees payable by tenants. Additionally, no profits may be reaped by municipalities from tenants in the social stock.

In the municipal stock, the principles of unilateral rent increase by the landlord are roughly the same. It must be remembered, however, that the municipality, when determining the rent, must take into account location of the building and unit within the building, outfit of the premises as regards technical and sanitary equipment, as well as the general technical condition of the building (art. 7 TPA). As far as the stock of Social Building Associations is concerned, it must be kept in mind that under art. 28(2) ACFSBI the annual value of rent may not be higher than 4% of the unit's replacement value.

- *Possible objections of the tenant against the rent increase*

As pointed out above, tenants dissatisfied with an excessive increase have a cause of action which can be brought before a court (art. 8a(5) item 2 TPA. In such cases, it is the court that decides whether or not the questioned increase is justifiable. Alternatively, the tenant may refuse to accept the increase, which results in termination of the contract as a whole (art. 8a(5) item 1 TPA). Under art. 9(1b) TPA, rent increases may not be introduced more often than once in six months.

- *Alterations and improvements by the tenant*

    - *Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?*
    - *Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?*
    - *Is the tenant allowed to make other changes to the dwelling?*
    - *in particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc.)?*
    - *fixing antennas, including parabolic antennas*

The legislator has provided in art. 667(1) PCC that the lessee may not make changes to the rented thing which would stand in conflict with the contract or the purpose of the thing without consent of the lessor. Paragraph (2) of the aforementioned article sets forth the consequences of enjoyment of the thing which transgresses contractual stipulations or ignores the thing's purpose. If the lessee's wrongful conduct proves persistent, i.e. he would not stop to enjoy the agreed object in a manner contrary to

[624] E. Bończak-Kucharczyk, *Ochrona...,* 101.

the above criteria, or where the lessee neglects the thing to an extent which threatens its loss or damage, the lessor may terminate the contract without notice.

The lessee's basic duty is to use the rented thing in a due manner throughout the lease period. In particular this obligation implies that all improvements in the leased unit which would normally be considered contrary to the contract or purpose of the premises require lessor's consent. By changes contrary to the leased thing's purpose one should understand modifications which disenable or impair its previous use (from before the changes).[625]

Apart from termination, the lessee has a claim for restitution of the previous condition, and where it is impossible to restore that condition, the lessee may claim compensation for the damage sustained on general terms (art. 363 PCC).

As regards other improvements, they are admissible and generally unproblematic. Notably, problems may appear in connection with any conceivable reimbursement. This issue has been addressed by the lawmaker in art. 676 PCC. In pursuance of this provision, if the tenant improves the rented thing, the lessor may, in the absence of any arrangements to the contrary, at his own discretion either retain the improvements against the sum corresponding to their value at the time of return or demand that the previous condition be restored. This article makes a default rule, which means that the parties are free to regulate the matter otherwise.[626]

Improvements as such can be defined as outlays on the rented thing which improve (on the date of the thing's return) the value or utility of the object of lease. These are not to be confused with minor repairs and outlays related to maintenance which should be borne by lessee under art. 662(2) PCC.[627] The discussed provision is applicable only to modifications upgrading the thing. Reimbursement for the outlays may be claimed during the period of lease.[628] The lessee, on the other hand, is not in a position to set off his expenses against rent instalments, even when the lessor declares his will to preserve the modifications.[629]

The lessee who has improved the object of lease may not claim return of the expenses incurred under the unjustified enrichment regime. Civil Code provisions on lease provide the exclusive legal basis in this respect.[630]

Finally, art. 684 PCC governs installations of certain specific pieces of equipment by the lessee. Under this provision, the lessee may install electrical lighting, gas, telephone, radio and similar facilities in the rented premises unless the manner in which they are installed should be contradictory to applicable provisions or pose danger to safety of the immovable property. If the lessor's cooperation is required in order to install the equipment, the lessee may demand such cooperation against reimbursement of the related costs.

Equipment named in the quoted provision - as long as installed by the lessee - makes the leased thing's improvement in the understanding of art. 676 PCC[631] In consequence, no legal provision provides grounds to conclude that the costs of such

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[625] H. Ciepła, in: *Komentarz do KC , Book III*, vol. II (2002), 213.
[626] SC judgment of 9 November 2000, II CKN 339/00, Legalis.
[627] K. Pietrzykowski, *Kodeks cywilny. Komentarz,* vol. 2 (Warszawa: C.H. Beck, 2000), 252.
[628] SC judgment of 30 December 1971, III CRN 375/71, Legalis.
[629] judgment of the Court of Appeal in Lublin of 3 July 1997, I ACa 137/97, OSAL 1998, no. 2, item 8.
[630] A. Doliwa, *Prawo mieszkaniowe...,* 72.
[631] K. Pietrzykowski, *Kodeks cywilny...,* 267.

installations may not be imposed on the lessee.[632] If the lessee should replace a fit piece of equipment with lessor's consent, such intervention does not constitute improvement and does not need to be reimbursed.[633]

There are no special provisions referring to improvements by handicapped tenants. Also the question of parabolic antennas should be analysed on general terms.

- *Maintenance measures and improvements, in particular upgrading the energy performance of the house by the landlord*
- *What kinds of maintenance measures and improvements does the tenant have to tolerate?*
- *What conditions and procedures does a landlord who wants to make renovations need to respect (e.g. giving adequate [i.e. sufficiently long] notice; offer an alternative dwelling; offer a rent reduction to compensate for disturbances)?*

These issues have been basically discussed in Part II d) of the present Report.

As regards procedural aspects of repairs and maintenance, these have been covered in art. 10(4) TPA. The need to temporarily vacate the unit occupied by lessee does not necessitate termination of contract. Instead, the lessee may be moved for a period not longer than one year to another location. Replacement premises have to be arranged by the lessor, who incurs as well all necessary costs of removal, extending to carriage of furniture and equipment of the temporarily vacated unit. Rent for the replacement unit may on no account be higher than for the premises occupied thus far. This does not, however, guarantee that other charges, especially those independent of the landlord, are not going to be higher.[634]

- *Uses of the dwelling*

- *Keeping animals; producing smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.*
- *Is there an obligation of the tenant to live in the dwelling? Are there specificities for holiday homes?*

Art. 666(1) PCC provides that during the lease period the lessee should use the rented thing in the manner set forth in the contract, and if the contract does not set specify the manner of use - in a manner corresponding to the properties and purpose of the thing. The ratio legis behind this provision is to preserve the object of lease. The thing is, naturally, subject to normal wear and tear. Otherwise, however, upon return the thing's its value should be substantially adequate to the circumstances. Typically, it is assumed that after the contract's expiry the lessor will still be able to

[632] SC judgment of 25 June 1971, III CRN 111/71, OSP 1972, no. 2, item 29.
[633] SC judgment of 14 September 2000, V CKN 8/00, OSNC 2001, no. 6, item 84.
[634] R. Dziczek, *Ochrona praw...,* 100.

make use of the object or rent it to another party.[635] If the unit is not fit for use once the contract expires, general remedies encompass as well compensation for the temporary impossibility to let the defective premises.[636]

The lessee of a unit should abide by the house rules if they are not contradictory to his rights under the contract. He should also take into account the needs of other residents and neighbours (art 683 PCC). As stated in the quoted enactment, express contractual stipulations supersede any house rules issued by the lessor.

Another provision referring to manner of the dwelling's enjoyment has been inscribed in the tenant protection regime. Pursuant to art. 6b(1) TPA, a tenant is under the obligation to maintain the leased unit in appropriate technical, hygiene and sanitation condition and obey house rules, and to preserve parts of the building which are intended for common use, such as elevators, staircases, corridors, chutes, or other utility rooms.

The consequences of blatant misconduct of a tenant can be far reaching. As set out in art. 13(1) TPA, where a tenant encroaches flagrantly or persistently on the house rules and impairs enjoyment of other units in the building by doing so, another tenant or unit owner in the building may file an action for judicial termination of the tenure held by the troublesome tenant and his eviction.

Apart from the legislative framework sketched above, the question of animals kept at home remains a matter of agreement between the landlord and tenant. Similarly, there are no specific rules concerning prostitution. There is no legal obligation that the tenant should actually live in the unit.

As regards tenants who do not live in the rented unit, there is no direct obligation to occupy the rented premises. However, where the tenant does not occupy the dwelling for a period longer than twelve months, the landlord becomes free to terminate the contract at six month notice period (art. 11(3) item 1).

6.6. Termination of tenancy contracts

Example of table for f) Termination of tenancy contracts

	Municipal leases (including social units)	Social Building Association	Private rental sector	Incidental lease
Mutual termination	Generally possible by agreement (actus contrarius)	Generally possible by agreement (actus contrarius)	Generally possible by agreement (actus contrarius)	Generally possible by agreement (actus contrarius)
Notice by tenant	PCC regulation and party agreement	PCC regulation and party agreement	PCC regulation and party agreement	PCC regulation and party agreement

[635] A. Niżankowska, F. Wejman, *Rękojmia za wady przy leasingu, TPP*, no. 1-2 (2000), 125 ff.; A. Doliwa, *Prawo mieszkaniowe...,* 38.
[636] SC judgment of 17 October 2000, IV CKN 111/00

Notice by landlord	Further TPA restrictions	Further TPA restrictions	Further TPA restrictions	TPA regime mitigated
Other reasons for termination	Termination without notice possible for default relating to basic party obligations (PCC regime)	Termination without notice possible for default relating to basic party obligations (PCC regime)	Termination without notice possible for default relating to basic party obligations (PCC regime)	Termination without notice possible for default relating to basic party obligations (PCC regime)

- *Mutual termination agreements*
- *Notice by the tenant*
  - *Periods and deadlines to be respected*
  - *May the tenant terminate the agreement before the agreed date of termination (in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?*
  - *Are there preconditions such as proposing another tenant to the landlord?*

In pursuance of the general provision of art 673(1) PCC), where the period of lease is indeterminate, both lessor and lessee may terminate the contract by complying with the agreed notice period, or, in the absence of accord in this regard, in accordance with statutory periods. Art. 688 ordains that lease may be terminated at three months' notice given at the end of a calendar month as long as the duration of lease is unspecified and rent is paid monthly. This provision is not applicable where the parties provided for other intervals between consecutive rent instalments. In such cases, one has to take recourse to art. 673(2), which also stipulates statutory notice periods depending on the intervals at which rent is payable. Where this term is longer than one month, termination is permissible at three month notice given at the end of a calendar month. If it is shorter than month, the notice period amounts to three days. Where rent is paid daily, notice is to be given one day in advance.

Art. 688, referring specifically to lease of residential and commercial premises, is a semi-imperative provision. This means that the parties to a contract providing for monthly rent may agree on a period of notice longer than three months, but on no account shorter than that.[637] Leases concluded for definite periods may not be terminated earlier unless statutory conditions for immediate termination are met.

Incidental lease contracts as such are concluded for a definite period. As a result, it may not be normally terminated by tenant unless such right has been provided for by the parties or the landlord's faulty conduct should provide grounds for termination without notice. Obviously, the parties themselves may account for the possibility of termination in specific situations, including the vague, but popular, specification "for important reasons." In the case of contractual regulation of termination, periods of

[637] K. Pietrzykowski, *Kodeks cywilny...,* 270.

notice elected by the parties may not be shorter than the semi-imperative statutory standards discussed above.

The tenancy cooperative right cannot be terminated. Expiration of that right is to be associated with the loss of membership by the tenant (art. 11(1) HCA), which is a consequence of the direct linkage between cooperative right of this type and cooperative membership. Membership, in turn, extinguishes upon death of a cooperative member, his exclusion from the cooperative or resignation on membership.[638] Pursuant to art. 22 LCA, a cooperative member may resign membership by notice which, under the pain of nullity, should be given in writing. The period of notice should be specified in each cooperative's statute. Resignation is effective on the expiration date of the period of notice. Because of the semi-imperative character of the TPA, termination may always be effectuated in compliance with the three months' notice period.

As regards termination without notice, the lessee may exercise such entitlement if, at the moment of delivery of the leased thing, the contracted object has defects forestalling its agreed use and these defects have not been cured in due time despite the lessee's admonition (art. 664(2) PCC). However, this right is barred if the lessee knew of the defects at the inception of the contract. Termination is also possible if the defects emerged at a later date, and the lessor has not repaired them in due course, despite notification, and where their repair is impossible.[639]

In accordance with art 682 PCC, where the premises are defective in a way which poses a threat to health of the lessee, his household members or employees, the lessee is free to terminate the contract without notice even if he knew the defects at the time of its conclusion. Such defects may include: abnormal moisture of the unit, mould on walls or ceilings, impending danger of collapse of any of the walls or the whole building, emission of toxic substances from the materials used for the unit's construction, emission of allergens, or excessive noise from neighbouring dwellings or properties.[640] The lessee may exercise this right once the danger to the unit occupiers' health or life has been ascertained. It is not necessary that the threat actually leads to any health problems. On such occasions, the lessee is not required to call on the lessor to remove the defects.[641]

- ***Notice by the landlord***
    - *Ordinary vs. extraordinary notice in open-ended or time-limited contracts; is such a distinction exists: definition of ordinary vs. extraordinary (= normally related to fundamental breaches of the contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)*
    - *Statutory restrictions on notice:*

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[638] A. Doliwa, *Prawo mieszkaniowe...,* 338-339; R. Dziczek, *Ochrona praw lokatorów. Dodatki mieszkaniowe, Komentarz, wzory pozwów* (5 ed.), (Warszawa: LexisNexis, 2012), 104.

[639] 'Wypowiedzenie umowy najmu bez zachowania terminów wypowiedzenia' <http://www.przewodnikprawny.pl/wypowiedzenie-umowy-najmu-bez-zachowania-terminow-wypowiedzenia/> November 2013.

[640] SC judgments of 21 May 1974, II CR 199/74, OSP 1975, no. 3, item 67, and 1 December 1986, II CR 362/86, OSNC 1988, no. 7-8, item 98.

[641] A. Doliwa, *Prawo...,* 95.

- *for specific types of dwellings, e.g. public dwellings; rental dwellings recently converted into condominiums (if there exists a special form of protection in this case as in German law) etc.*
- *in favour of certain tenants (old, ill, in risk of homelessness)*
- *for certain periods*
- *after sale including public auction ("emptio non tollit locatum"), or inheritance of the dwelling*
    - *Requirement of giving valid reasons for notice: admissible reasons*

The provisions of arts. 673 and 688 PCC discussed above refer not only to instances of termination by tenant, but also by the landlord. The latter, however, is faced with additional restrictions. First of all, in the light of art. 11(1) TPA, where the tenant is entitled to enjoy the rented dwelling for consideration, termination by landlord may take place only for reasons specified in art. 11(2-5) as well as art. 21(4-5) TPA. Under the pain of nullity, the landlord's termination must be notified in writing. The letter must specify the reason for exercise of the landlord's right.

In compliance with art. 11(2) TPA, the landlord may terminate the legal relationship at monthly notice given at the end of a calendar month if the tenant:

1) continues to use the unit in a manner contrary to the agreement or the unit's purpose despite an earlier written admonition, neglects his obligations inflicting in the same way damage to the premises, damages equipment intended for common use of tenants residing in the same building, or transgresses blatantly or insistently against house rules and regulations in a way which impairs enjoyment of other apartments in the house;[642]

2) defaults with rent or other charges accrued for enjoyment of the unit for at least three full periods of payment in spite of having been admonished in writing about the landlord's intent to terminate the contract and given additional monthly term to pay his outstanding and current liabilities;

3) has let, sublet or transferred for non-gratuitous use the unit in whole or its part without written consent of the owner; or

4) occupies the unit which has to be vacated because of the need to demolish or restore the building with the proviso of art. 10(4) TPA, which means that on such occasions the landlord must assure replacement premises, and that restoration may not take longer than a year.

By virtue of art. 19e TPA, the first three points on the list above do not apply to incidental lease. Instead, arts. 685 and 687 provide legal grounds for termination without notice. Where such procedure is justified by rent arrears, an incidental lessee must be in default for two full payment periods and given additional admonition. Apart from the above circumstances, the incidental lessor may terminate without notice if the lessee fails to indicate spare premises as long as the previously specified alternative is no longer attainable to him (art. 19d TPA)

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[642] This rule makes lex specialis with regard to art. 685 PCC, belonging to the general regulation of lease, under which enables the lessor in the corresponding circumstances to terminate the legal relationship without notice.

Legitimate reasons for termination may also be related to the fact that the tenant's housing needs are already catered for in another way. Under art. 11(3) TPA, the landlord of a unit in which yearly rent is lower than 3% of its replacement value is free to terminate the lease:

1) at 6 months' notice if the tenant fails to occupy the unit for a period longer than twelve months;

2) at monthly notice at the end of a calendar month if the tenant has a legal title to enjoy other premises located in the same city, town or village, and the tenant may use that other lodging, which, in addition, must comply with all requirements provided for a replacement dwelling.

Polish law is very restrictive on the landlord and protective for the tenant even if the former needs the rented dwelling for himself or his major descendants, ascendants, or persons entitled to alimony against the landlord. Pursuant to art. 11(4) TPA, the landlord may terminate the contract at six months' notice given at the end of a calendar month if he wishes to live in the unit or pass it over to one of the persons mentioned above, and the tenant is authorized to use another unit which meets the minimal requirements of replacement premises. Rent payable in that other dwelling must at least be roughly proportional to the amounts remitted in the vacated one - bearing in mind its floor area and equipment.[643]

The three year notice period has been provided in art. 11(5) TPA for the owner who intends to occupy the unit by himself or provide accommodation to his relations indicated above, and does not have any replacement premises to offer the current tenant who is unable to enjoy any other lodging which could meet the criteria established for replacement units. In addition, art. 11(12) TPA stipulates with regard to tenants aged over 75 years that termination may only be effective after their death unless there are persons obliged to provide them with alimony.

Tenants evicted in pursuance of the above by a landlord willing to occupy the formerly rented unit by himself gain certain claims against the landlord who does not bring his intentions to inhabit the lodging into practice. Under art. 11(6), the tenant may in his discretion either return to the vacated unit or claim compensation for the difference in rent and bills paid at the new place and corresponding amounts previously paid to the landlord. Costs of the possible removal are to be covered in whole by the landlord.[644]

Landlord may bring an action for contract rescission against the tenant where the parties failed to agree on the terms of termination.[645] Additionally, in the stock of Social Building Associations, termination is possible if the tenant fails to submit at all or submits an untrue declaration on household incomes (art 30(5) ACFSBI).

As pointed out above, tenancy cooperative rights as such are not terminable. Instead, under art 11(1^1) item 1 HCA, cooperative may adopt a resolution excluding its member if, despite previous written admonition, the latter keeps enjoying the unit in a manner conflicting with its purpose and inflicting loss on the cooperative, or damages equipment destined for shared use of the premises' occupiers or transgresses blatantly or insistently against house rules and regulations, which

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[643] A. Doliwa, *Prawo mieszkaniowe...,* 117.
[644] Ibid.
[645] Ibid., 118.

impedes enjoyment of other units in the building. The same procedure applies if a member is in default with payment of due charges for the period of six months (11(1[1]) item 1).

- *Objections by the tenant*

Direct objections do not produce any legal effects. Since the TPA regime defines strictly grounds for termination, the tenant who does not agree with the landlord's understanding of a statutory provision providing foundation for termination may always have recourse to court.

- *Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?*

As pointed out above, the bailiff must withhold eviction if the debtor has been awarded the right to a social unit – until the respective municipality carries out its obligation to provide such lodging. Where the court decides not to adjudge such entitlement, the bailiff must still wait for the period of six months in which the debtor is to be assured replacement premises. In this additional period the rental contract is already terminated and the occupier enjoys no particular tenure in the unit, still, he or she may not be ousted from the premises. The same refers to the protection period between 1 November and 31 March in which eviction has been precluded.

The above restrictions do not refer to perpetrators of domestic violence and individuals flagrantly transgressing house rules and regulations in a way which impairs units enjoyment by other tenants in the same building, as well as squatters (art. 17 TPA). Designation by municipality of a place in a shelter makes on such occasions a more humane version of pavement eviction.[646]

- *Challenging the notice before court (or similar bodies)*

Since termination by landlord may occur solely in situations envisaged in the TPA (and art 11 TPA in particular), and TPA provisions are interpreted and applied by common courts, contestation of termination in the courtroom is always possible.

- *in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law*

The court may not grant any special grace period. Instead, the most important form of protection ruled by courts is the right to a social unit. Discretion is left to the court only in cases where the law does not prescribe the duty to award it under art. 14 TPA. Leeway is thus excluded in reference to pregnant women, minors, disabled, incapacitated and bedridden persons, pensioners, individuals entitled to social benefits, as well as the unemployed – if they are tenants in the public housing stock

[646] R. Dziczek, *Ochrona praw...,* 132.

or premises belonging to a cooperative or Social Building Association. Whenever one of such persons is to be evicted, the court must adjudge the right to a social unit.

- ***Termination for other reasons***

- Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)

When the leased thing is sold, the buyer enters into the lease contract in place of the previous lessor. In general, where the lease does not involve housing premises, the buyer may terminate the contract at statutory notice periods. The opportunity to terminate has been limited in the case of specified duration of a contract concluded at officially certified date (art. 678(2) PCC in conjunction with art. 81 PCC). As regards the actual transfer of lessor rights, rent is payable to the buyer as of the moment of succession (when the decision awarding property to the buyer becomes final and binding).[647]

The special buyer's opportunity to terminate is, however, excluded in relation to housing rentals. It is the case, as the tenants protection regime provides that landlords may terminate the contract only in situations directly envisaged in the TPA. Landlord succession has not been indicated among the admissible legal bases for terminating the tenancy contract.

- *Termination as a result of urban renewal or expropriation of the landlord, in particular:*
- *What are the rights of tenants in urban renewal? What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?*

In situations of expropriation to the benefit of the Treasury or a self-government unit, obligational rights to the property, such as lease, are extinguished by operation of law. Under art. 123(3) RPMA, lease terminates *ex lege* after three months following the date on which the expropriation decision became binding. The lessee is not in a position to claim damages against the expropriated lessor. At the same time, there is no specific legal basis for compensating his loss from public funds. While the Treasury as such may only be sued for unlawful acts of its officers, it would be difficult to consider expropriation unlawful. The only exception to this rule, found in art. 417^2, refers solely to bodily injury and as such cannot provide grounds for any indemnification to the lessee.

Nevertheless, tenants in expropriated premises may always hope for replacement units (art. 116 RPMA). Similarly, tenants are authorised to obtain replacement units in the case of the building's demolition or repair (art. 11(2) item 4 TPA). The obligation to provide replacement units and cover the costs of removal has been imposed on

[647] M. Konarski, 'Wejście w stosunek najmu przy egzekucji z nieruchomości', <http://lexplay.pl/artykul/Postepowanie-Egzekucyjne/Wejscie-w-stosunek-najmu-przy-egzekucji-z-nieruchomosci2> November 2013.

the municipality. In other words, this type of termination of a tenancy contract does not deprive the tenant of the place to go.[648]

6.7. Enforcing tenancy contracts

Example of table for g) Enforcing tenancy contracts

	Municipal stock (including social units)	Social Building Associations	Private rental sector	Incidental lease
Eviction procedure	Uniform regime 1046(4) PCCP	Uniform regime1046(4) PCCP	Uniform regime1046(4) PCCP	Uniform regime1046(4) PCCP
Protection from eviction	art. 14 TPA (obligatory and optional award of the right to social unit) Winter ban on eviction (November - March)	art. 14 TPA (obligatory and optional award of the right to social unit) Winter ban on eviction (November - March)	art. 14 TPA (optional award of the right to social unit) Winter ban on eviction (November - March)	art. 14 TPA (optional award of the right to social unit) Winter ban on eviction (November - March)
Effects of bankruptcy	Possible loss of tenure	Possible loss of tenure	Possible loss of tenure	Possible loss of tenure

- *Eviction procedure: conditions, competent courts, main procedural steps and objections*

The eviction procedure may be initiated where the lessee is in default with rent for at least three full periods of payment, which usually are defined in months. In such circumstances, the debtor is called on to pay the whole debt along with the currently accruing liabilities. The request for payment must, under the pain of invalidity, be made in writing, name the amount of debt and deadline in which it is to be paid. In the written request, the landlord must also warn the tenant that in the absence of timely payment the contract may be terminated.

Should the lessee fail to pay off the arrears, the lessor may terminate the contract on the terms specified in section (f) above (or cooperative may deprive a cooperative tenant of its membership). Respective notification of termination should at the same time call on the debtor to voluntarily vacate the leased premises before a specific deadline. The debtor ought to be given a month to comply with this request.

Official proceedings are to be brought against the tenant who continues to occupy the unit despite expiration of the term assigned for vacation. In such cases, the landlord files a suit before a district court having jurisdiction over the area where the premises are located, seeking eviction order against the tenant and his household members. Landlord petitions most frequently include additionally a motion for hearing

[648] R. Dziczek, *Ochrona praw...,* 109-110.

the case and passing eviction judgment despite the possibility of the lessee's absence at the trial.[649]

Eviction judgments are enforced by bailiffs. This does not happen instantly. The bailiff must first send another written request to the debtor and call on the latter to voluntarily move out. Where the tenant fails to yield within the term assigned, the bailiff is free to act and coerce vacation of the housing unit. The bailiff removes the tenant's furniture, radio, TV and other household equipment and articles, along with any other movable property belonging to the debtor.

In the eviction judgment, the court is to specify which of the evicted individuals have the right to a social unit, and which do not. With regard to the former category of tenants, the municipality is obliged to assure a social lodging. The court's duty to decide on that matter does not refer to tenants under the contract of incidental lease (art. 19e) or squatters.[650] Under art. 17(1) TPA, this procedure does not apply with regard to persons whose cause of eviction was domestic violence or persistent transgressions against house rules and regulations which interfere with normal enjoyment of units by other occupiers. This implies as well that persons living in the public or semi-public housing stock expressly named in art. 14(4), generally entitled to social units by operation of law (including pregnant women and old age pensioners), cannot be awarded a municipal dwelling if the cause of their eviction was conduct stipulated above.[651]

- *Rules on protection ("social defences") from eviction*

Previously, sidewalk eviction was generally limited to domestic violence perpetrators. Currently, however, such procedure is also possible in relation to individuals not entitled to social housing if temporary premises are not afforded to them within 6 months as of the date of submission of the bailiff's motion for designation of a temporary lodging. On expiry of that deadline, in accordance with the present wording of art. 1046(4) PCCP, the bailiff shall evict the debtor to a hostel, shelter or other centre offering overnight accommodation to the homeless – indicated by the home municipality. The number of temporary premises is always deficient in municipal resources. In consequence, evicted persons often remained in the units occupied without any valid tenure. The legislator reduced the protection to the 6 month period, as the previous burden to landlords seemed excessive.[652] Certain academics, however, express doubts as to constitutionality of the new solution.[653]

Notwithstanding these doubts, tenants which have not been awarded the right to a social unit, regardless of whether the landlord is a public or private entity, may stay in the previously rented premises only for 6 months. Then, the bailiff is in a position to evict them to a shelter, hostel or similar facility indicated by the municipality.

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[649]K. Piojda, 'Eksmisja za zadłużenie mieszkania. Jakie są procedury', <http://regiodom.pl/portal/porady/nieruchomosci/eksmisja-za-zadluzenie-mieszkania-jakie-sa-procedury>.

[650]R. Dziczek, *Ochrona...* (2002), 117; in the case of squatters the issue was settled in the SC resolution of 20 May 2005, III CZP 6/05 (OSNC 2006, no. 1, item 1).

[651]R. Dziczek, *Ochrona...* (2002), 118.

[652]Act of 31 August 2011, Official Law Journal 2011, no. 224, item 1342.

[653] R. Dziczek, *Ochrona...* (2002), 122.

As regards awards of the right to a social unit, art. 14 TPA leaves discretion to the court only in cases where it does not impose the duty to award it. Such award is obligatory only in reference to pregnant women, minors, disabled, incapacitated and bedridden persons, pensioners, individuals entitled to social benefits, as well as the unemployed – as long as they are tenants in the public housing stock or premises belonging to a cooperative or a Social Building Association.

Under art. 1046(5) PCCP, the bailiff shall also carry out eviction if a replacement lodging which meets the requirements provided for temporary premises is designated by the debtor himself or the creditor landlord. Pursuant to paragraph 1 of the Regulation of the Minister of Justice of 22 December 2001,[654] on expiration of the period assigned to the debtor for voluntary vacation of the unit, the bailiff is to examine ex officio if the debtor has a tenure in another housing unit in which he could live and determine his family status. Should such tenure be affirmed, the bailiff does not have to submit any application for municipal temporary premises.

Temporary premises are small and generally fall short in terms of standard (5 m^2 of floor area must suffice per one evicted individual). They fulfil the function of a house until the evicted tenant manages to find proper accommodation. Most frequently, such premises are afforded by municipalities for the period of six months.

Most municipalities are faced with the problem of deficiency in the social stock, which – in the case of eviction from the general municipal, cooperative of Social Building Association stock or even private stock, where award of a social unit is optional – may protract the procedure over years. This involves high costs for the landlord unable to get rid of an non-paying tenant. As a result, the landlord may claim indemnification from the municipality for its failure to provide any alternative lodging to the tenant. Such indemnification is to reimburse losses suffered in connection with the tenant's continuing accommodation in his premises while the tenant himself avoids due payments. It covers lost profits from lease to any prospective diligent lessee. Under art. 18 TPA, anyone who occupies another person's premises without a valid tenure is obliged to pay monthly indemnification to the landlord, however, it is difficult to enforce this duty against a person without sufficient funds to cover overdue charges. As regards persons entitled to a social or replacement unit pay, the amount of indemnification equals the previously paid rent.

The procedure of eviction has been simplified in respect of incidental lease. If the lessee fails to vacate the leased unit of his own will once the contract expires or terminates, lessor may serve on him a written request to empty the premises. As regards the form, the lessor's signature on the letter must be officially certified (usually by a notary). The request should, in particular, specify the parties to the contract of incidental lease, indicate the contract itself and set out reasons for its termination. In the said notification, the lessor should give the lessee a deadline not shorter than seven days of its delivery to vacate the premises together with household members. In the case of defiance on the part of the lessee, the owner should file with a court a motion for affixing the enforcement clause to the notarial deed under which the lessee pledged to voluntarily submit to execution and vacate the rented unit upon expiration or termination of the incidental lease contract.[655]

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[654]Official Law Journal 2012, item 11.

[655]R. Rodzeń, 'Eksmisja przy najmie okazjonalnym', <http://www.sprawnik.pl/artykuly,10223,19325,eksmisja-przy-najmie-okazjonalnym>.

- *May rules on the bankruptcy of consumers influence the enforcement of tenancy contracts?*

31 March 2009 was the date of entry into force of the Act Amending the Bankruptcy and Reorganisation Law Act (BRLA) of 28 February 2003[656] and the Act on Judicial Costs in Civil Matters of 28 July 2009.[657] The Bankruptcy and Reorganisation Law was supplemented by Title V, regulating in arts. 491^{1} – 491^{12} bankruptcy of consumers – individuals carrying on no business activity.

These amendments were to be beneficial to persons unable to pay credit instalments, cooperative or condominium debtors, as well their creditors. Not every debtor, however, has a chance to be officially declared insolvent. Under art. 491^{3} (1) BRLA, capacity to become bankrupt is enjoyed by debtors whose insolvency arouse without any fault. Because of this major restriction, courts only rarely grant the status of bankrupt to a consumer. It is estimated that in 2009 only about 1% of all applications were allowed. In 2010 this figure made 2.3%, to drop in 2011 to 1.7%.[658] Where the liability was incurred by an individual who had already been insolvent, or where the applicant lost employment for reasons for which he or she is to be blamed, the court has no choice but dismiss the application. At the same time, only the debtor himself may file the application for bankruptcy, and the period between consecutive bankruptcies may not be shorter than ten years. Upon announcement of bankruptcy, the consumer's assets are turned into so called bankruptcy estate from which creditors are to be satisfied. The consumer should hand over to the court-appointed syndic all documents relating to his property and the prospective financial clearance.

If the bankruptcy estate includes a housing unit or detached house occupied by the bankrupt consumer, pursuant to art. 491^{6} BRLA the sum obtained from sale of the unit or detached house, which is to be distributed among creditors, is decreased by the amount corresponding to average rent for the housing unit within the period of the last12 months. This sum is left to the debtor to enable him or to cater for residential needs of himself and his household.[659]

There are no specific provisions relating to tenancies in the course of realisation of the plan for repaying creditors.

6.8. Tenancy law and procedure "in action"

Preliminary notice: To the extent that scientific sources are lacking, reporters are welcome to use any evidence (also newspaper articles, online sources, private interviews or even their own experience and opinion) in this section.

The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in this field ("tenancy law in action") is taken into account:

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[656] Official Law Journal 2003, No. 60, item 535.

[657] Official Law Journal 2005, No. 167, item 1398.

[658] P.Puchalski, 'Dla kogo upadłość konsumencka?' <http://www.finanse.egospodarka.pl/66469,Dla-kogo-upadlosc-konsumencka,1,48,1.html>.

[659] 'Upadłość konsumencka' <http://www.pip.org.pl/publikacje/upadlosc-konsumencka/>

- *What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?*

As pointed out in Part I of the present Report, there are 85 active tenant associations. None of them functions as a registered lobbyist within the meaning of the Lobby Activities in the Legislative Process Act 2005.[660] Since the public rental sector has been left to municipalities, most of the existing organizations operate on regional and local scale. There are, however, nationwide organisations, such as the Polish Association of Tenants (member of the International Union of Tenants). Apparently, the most active ones are local, particularly in Warsaw and Cracow.

Tenant organisations try to influence public opinion and provide assistance to tenants in their disputes with landlords. In particular, they focus on issues of tenant exploitation, eviction and reprivatisation, and support the idea of public rental housing.[661]

On the other hand, private landlords are slowly beginning to associate as well. The Polish Residential Landlords' Association "Mieszkanicznik" is a new initiative on national scale, formed in 2012.[662] Members of this organization try to introduce uniform standards for all residential leases, standards of landlord conduct, and establish a court of arbitration for tenancy disputes.

- *What is the role of standard contracts prepared by associations or other actors?*

It is not uncommon for individual landlords to make use of readily available contract patterns published on internet portals related to legal issues. Such patterns are then modified to suit each individual case. This type of standard contract may for instance be found on the website of the Federation of Consumers.[663]

As regards Social Building Associations, they apply standard contracts for all their tenants so as to avoid any allegations concerning discrimination.

As regards landlord organisations, the Polish Residential Landlords' Association "Mieszkanicznik" publishes on its website a list of necessary, recommendable and prohibited contract clauses.[664]

- *How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?*

In the first place, the catalogue of typical disputes relating to lease of housing units should be determined. In courtroom, two types of matters are frequently encountered,

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[660] Act of 7 July 2005, Official Law Journal 2005, no. 169, item 1414.
[661] See e.g. website of the Warsaw Tenants Association <http://wsl.lokatorzy.pl/>.
[662] <http://mieszkanicznik.org.pl/> January 2013.
[663] <http://www.federacja-konsumentow.org.pl/>
[664] <http://mieszkanicznik.org.pl/kem/standardy-umowy>.

i.e. eviction cases (vacation of a unit by its previous occupier) and actions for payment of overdue rent along with other chargeable fees. Apart from these two key types of disputes, one could easily notice the cases relating to:

- return of deposit paid by the lessee, however, such disputes do not generally relate to the refund as such, but rather grounds and manner of valorisation of the deposit made;

- disputed legitimacy of rent increase in a housing unit;

- return of outlays on the unit made by the buyer and repair of damage inflicted by the lessee in the leased premises;

- prohibition of indirect nuisance involving noise, littering, animal husbandry, etc. in the unit.

All the types of cases set out above are examined in civil litigation. Non-litigious proceedings, generally reserved for matters expressly named by the legislator, do not apply in the mentioned cases. Within the litigious mode, some cases are heard under the so called summary procedure. In the area of housing law cases this mode refers to cases examined by district courts pertaining to:

1) claims arising out of lease contracts if the value in dispute does not exceed ten thousand PLN,

2) payment of rent for enjoyment of the unit and related charges, regardless of the value in dispute (essentially, up to the amount of PLN 75,000 (approx. EUR 18,000), as disputes concerning higher amounts are heard by circuit courts).

As follows from the above, summary proceedings are not suitable for eviction cases,[665] matters relating to payment of rent where the value in dispute surpasses PLN 75.000, as well as other cases if the value in dispute oversteps PLN 10.000 (approx. EUR 2409).

Summary proceedings are characterised by far reaching informalisation in comparison with ordinary proceedings. Some pleadings are to be filed on official petition forms. In many cases, this neither facilitates nor simplifies the procedure. Requirements in respect of the most rubrics are too general, and allow for substantial differences both as regards the level of detail and precision of expression. In summary proceedings, it is inadmissible to make use of the evidence of expert opinion, make auxiliary[666] or main[667] intervention, third party notification.[668] There is an interdiction on cumulating claims.[669] Tentative actions[670] and claim modifications

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[665] See especially SC decision of 22 July 2005, III CZP 39/05, Biul. SN 2005, No. 11.

[666] This relates to accession of a new litigant to a party in order to support the latter in the pending procedure if the acceding litigant has legal interest in favourable resolution of the case to the acceded party, art. 76 and following PCCP).

[667] Within the framework of Polish civil procedure, main intervention (art. 75 PCCP) makes an action against the parties to litigation which is already pending for a thing or right claimed as well by the main intervenor.

[668] Third party notification in the Polish Code of Civil Procedure is effected via court intercession (on initiative of the claimant or redpondent) and consists in notification of a third party about the pending proceeding, so as to enable the latter accession to the litigation as auxiliary intervenor (arts. 84-85 PCCP).

[669] Unless varying claims should arise out of the same contract or contracts of the same type.

[670] This means that where the claimant asserts only a part of the claim, summary proceedings are instituted only where such mode is proper for the whole claim which follows from the facts adduced by the claimant.

are not allowed. Appeal proceedings have also been essentially simplified in such cases by allowing the court composition of one judge.[671] In addition, the legislator limited and simplified procedures to be implemented between specific instances.[672] As revealed in practice, in spite of many defects, provisions on summary proceedings materially contribute to acceleration of judicial proceedings.

Cases to which summary proceedings do not apply are heard in ordinary litigation. The lawmaker did not decide to introduce any special procedures with regard to housing law issues.

It is worth considering in more detail eviction cases, that is claims for vacation and emptying of housing units by the previous occupier (previous tenant). Actions in this case are chargeable with a fixed fee of relatively small value (PLN 200 – approx. EUR 50)).[673] Such disputes are tried by district courts. Jurisdiction is established on general terms (competence is vested in the court in whose area the respondent resides), however, where the evicted party is the owner of the premises, which happens only sporadically, sole jurisdiction is vested in the court in whose area the immovable property (unit) is located. Eviction cases have an economic value, hence the admissibility of cassation appeal is dependent on whether the value in appeal surpasses applicable thresholds . As a rule, cassation is allowed where the value in dispute surmounts PLN 50,000 (approx. EUR 12048).[674]

One specific feature of eviction proceedings is the obligatory notification by the court of a pending procedure to the municipality competent on the grounds of location of the unit to be evicted, which may join the proceedings and become a party. Participation of the municipality is governed as appropriate by provisions on auxiliary intervention, excluding the possibility of submitting opposition by litigants. The municipality is not obligated to give its legal interest. It accedes to the claimant's suit. This solution is should be understood as specific warning of the municipality that it might become obliged to provide social premises to the evicted persons.

The obligatory component of an eviction judgment is the decision concerning award of social unit to the respondent. Even in situations in which the case refers to eviction from social premises, the court is obliged to decree in respect of the right to another social unit or its absence.[675]

Frequently, respondents are passive in eviction processes, which results in entrance of default judgments. There are no specific contradictions to passing eviction judgments by default.

When an eviction judgment in which the respondent has been given the right to a social unit becomes final, the court orders to withhold execution of the eviction itself until the respective municipality provides an offer of a contract for lease of a social lodging. Suspension of enforceability of the judgment follows directly from its operative part. No further rulings are necessary to this end. In the event of absence of the entitlement to a social unit, the claimant may initiate execution on the terms set out in the Polish Code of Civil Procedure.

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[671] Second instance courts examine appeals in panels of three professional judges.

[672] E.g. it is conceivable to apply for justification of the judgment verbally, following directly its announcement. Such motion is recorded in the minutes.

[673] Under art. 27 item 11 of the Judicial Costs in Civil Proceedings Act. Equivalent of about EUR 50.

[674] See SC decision of 9 December 2010, IV CZ 105/10.

[675] See SC resolution of 5 April 2013, III CZP 11/13, Biul. SN 2013, No. 4.

The second most frequently encountered type of cases involves suits for rent arrears. Such cases are, for the most part, examined in summary proceedings. Because of that, cassation appeal against the second instance court judgment is not allowable. In the course of litigation for the payment of rent, the most frequent controversies relate to legitimacy of an increase introduced by lessor.

In the area of housing law, the legislator has not provided for obligatory mediation or other conciliatory procedure. Instead, general regulation included in the Polish Code of Civil Procedure applies. In light of the above, it depends on the parties if they are willing to reach for mechanisms of amicable dispute resolution. Among all conceivable modes of amicable dealing, regard ought to be had to two specific forms.

In the first place, a prospective claimant may initiate judicial conciliation.[676] This procedure is instituted by motion for conciliation filed in each case with a district court (regardless of the value in dispute) in whose area the respondent resides (court exercising general jurisdiction in litigation). The court acts in this proceeding as a body inducing the parties to settle the case by themselves. It does not resolve the dispute authoritatively. If the opponent turns out to be unwilling to settle, conciliation usually concludes with a ruling concerning its costs. One crucial advantage of the motion for conciliation is the fact that it interrupts the course of limitation of claims to which it refers. As turns out in practice, this procedure is applied exceptionally rarely in housing law disputes.

Secondly, the parties may resort to mediation.[677] The most pronounced characteristic of mediation is its voluntary character. Mediation is carried out based on an agreement for mediation or a court ruling which refers the parties to mediation. In this agreement, the parties specify in particular the object of mediation, the mediator or the manner of his choice. As a rule, mediation is commenced before the action is brought to court, but it is also admissible to refer the case to mediation in the course of pending proceedings.

- *Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?*

Litigation in housing law cases is not particularly complicated both in terms of law and facts. Typical actions for payment or eviction do not raise any major legal doubts.

Certain complications in eviction cases are triggered by situations in which there is a bigger number of occupiers in a housing unit. If it turns out that there will be additional individuals obliged to leave the unit, and such persons do not act as respondents in the pending case, the court is obliged to call on the claimant to name these individuals in a manner which allows to summon them. The court is under the obligation to summon the designated parties who join the case as respondents.

In summary, court litigations in housing law cases usually proceed smoothly and efficiently. Any possible protraction does not take roots in the specific character of housing cases, but may follow from circumstances of a given case or civil procedure

[676] See arts. 184 – 186 PCCP.
[677] See arts. 183^{1} – 183^{15} PCCP.

as such (e.g. necessity to stay the proceedings in the event of a party's death or adjourn trial sessions because of defective service of court papers, etc.).

Once the enforcement clause is granted, the judgment is considered to make a so called execution title. In accordance with the amended art. 791(1) PCCP, the enforcement title obligating to vacate premises makes grounds for execution against everyone who has gained control of the premises after commencement of the proceeding in which the enforcement title was issued. This regulation facilitates considerably enforcement procedures, as in fact it allows for eviction of particular individuals without naming them in the judgment. This gives rise to doubts as to constitutionality of the enactment. Similar doubts arise from the provision of art. 791(2) PCCP in pursuance of which an enforcement title obligating a party to deliver immovable property or vacate premises entitles the bailiff to carry on execution not only against the debtor, but also his household members, relatives and other persons. As far as the discussed enactment is concerned, there is no need to name such persons both in the operative part of the judgment (the case does not have to be decided against them) or enforcement clause. If a tenant informs the bailiff about a valid tenure in the unit occupied, the bailiff will sustain eviction and appoint weekly deadline for filing an anti-execution suit.

As signalled above, the most burning issue in the procedure of eviction is the absence of social units. Still, the same problem refers to temporary premises, although their standard is much lower than usually seen in social dwellings. In practice, execution is prolonged by the omission on part of the municipality to provide temporary premises. Expiration of the 6-month period to provide the dwelling is, thus, generally ineffective.

- *Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?*

As regards access to court, doubts may be harboured with respect of the provisions of arts. 791(1-2) PCC, which allow to implement eviction proceedings even in relation to individuals not named in the judgment or enforcement clause. The controversial enactments were introduced only lately, with a view to accelerating the procedure. Tenants' access to court is safeguarded in these two situations by the entitlement to bring an anti-execution suit within the deadline assigned by court. Such a solution gives a bonus to the creditor, as the burden of instituting the lawsuit rests in this case on the tenant.

In the Polish system of civil procedure, a party may apply for exemption from judicial costs and appointment of court-assigned attorney. As revealed by legal practice, the procedure of exemption from judicial costs functions properly. Less affluent litigants are exempted from judicial costs in whole or in appropriate proportion. It is sometimes asserted that exemption from costs is afforded too often. Obviously, exemption from judicial costs does not cover costs of the process incurred by the opponent. This means that where the party exempt from costs loses the case, the losing party is obliged to refund costs of the process to the adversary. Fees in housing law cases are not particularly high. Most definitely, they cannot be said to bar access to court.

- *How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc.?)*

Since most legislation of major importance was enacted more than one decade ago, there is considerable body of case law of the Supreme Court on housing law issues. The same may be said about judicature of the Constitutional Tribunal, especially that many legal questions relating to the relationship between landlord and tenant touch upon human rights.

There is abundant specialist literature on the market. Practically, each year at least one commentary to the Tenants Protection Act[678] or housing law in general is published. Cooperative law is usually subject to separate commentaries.[679] Housing law disputes may practically refer to each citizen, hence the interest both on the part of practising lawyers and publishers seems rather intense.

- *Are there "swindler problems" on the rental market (e.g. flats fraudulently advertised on the internet as rental offers by swindlers to whom the flats do not belong)?*

Proliferation of knowledge regarding housing tenancy law among population makes it uncommon for housing units to be let by a person whose legal position does not entail the right to independently dispose of the premises. This situation is related to the wide access to excerpts from land registers kept for immovable properties. A lessee entering into a lease contract with an individual who declares to be the rightful owner is free to verify on the basis of the land register whether the unit's ownership is truly vested in the counter-party. More and more often, lessees request landlords to disclose relevant permits and agreements which certify their legally valid title enabling them to enter into a lease contract. Still, there are cases in which lessees acting in good faith and confidence to lessors make deals with persons unauthorised to make such arrangements.

In Polish law, the problem of rentals by unauthorised parties has many aspects, depending on the lessor's legal situation.

The first type of situation has far reaching consequences. It concerns rentals by persons without any right to dispose of the unit, unrelated to its owner by any type of legal bond related to the premises, who nevertheless purport to be the rightful owners. From the point of view of the legal situation of lessee, the lessor's performance under a lease contract should not be impaired by the fact that the latter is not the owner of the object of lease. If the non-proprietor lessor fulfils his contractual commitments, the lessee may not withhold his mutual provision for the mere reason that the lessor has not been entitled to dispose of the premises let. The lessor is in the position to claim performance owed to him under the contract. In the same way, the lessee may not avoid liability for damage inflicted to the object of

[678] E.g. R. Dziczek, *Ochrona praw lokatorów. Dodatki mieszkaniowe,* (Warszawa: LexisNexis, 2012), E. Bończak-Kucharczyk, *Ochrona praw lokatorów i najem lokali mieszkalnych. Komentarz,* (Warszawa: Wolters Kluwer, 2013); A. Doliwa, *Prawo mieszkaniowe. Komentarz* (Warszawa: C.H.Beck, 2012).

[679] E.g. E. Bończak-Kucharczyk, *Spółdzielnie mieszkaniowe. Komentarz,* (Warszawa: Wolters Kluwer, 2013)

lease. As regards the lessor's underlying title, the lessee is obligated to inform the lessor if a third party should assert claims against himself (the lessee) pertaining to the leased thing (art. 665 PCC).

As regards the owner of premises let to a third party, he may claim, under art. 59 PCC, that the illegitimate contract be judicially held invalid in relation to him. In such event, the owner may claim compensation from the party who occupied the unit without legal basis effective against him as the true proprietor in pursuance of art. 18(1) TPA. In light of the cited provision, persons occupying a housing unit without a valid tenure are obliged to pay monthly compensation up to the date of vacating the premises.

According to art. 18(2) TPA, compensation envisaged in paragraph (1) is equal to the amount of rent that could be charged by the owner under another tenancy contract. Where the compensation fails to cover the loss incurred, the owner may claim residual compensation from the person defined in paragraph (1). Individuals entitled to a replacement or social unit, as long as the court ordered suspension of eviction until such premises are provided, must pay compensation corresponding to rent or other charges which would be collectible if the legal relationship had not extinguished (art. 18(3)).

The Supreme Court ruled that indemnification for non-contractual use of a housing unit by a former lessee who forfeited the right to further occupation of the dwelling should be equal to amounts receivable for lease of a unit. While defining criteria based on which such indemnification is to be calculated, one can only agree with opinions expressed in legal literature that the amount of such compensation should not be based on losses actually suffered by the owner and benefits actually reaped by the unlawful possessor. The decisive role should be attributed to the objective criterion of respective market prices – amounts charged for use of things of the same kind.

Another example of lease by unauthorised party may be, for example, entry into a contract with a person who does not purport to be the unit's owner as such, but the latter's agent, even though in reality no power of attorney has been given. On such occasions, the false proxy acts ultra vires, outside the power conferred by the principal (owner of the premises) as *falsus procurator*. In such cases, validity of the contract depends, under art. 103 PCC, on its confirmation by the principal.

Another example of a lease contract defective from the subjective point of view might be a situation in which the lessor is merely a co-owner of the premises. In accordance with art. 201 of the Civil Code, ordinary management of a common thing requires consent of the majority of owners. In the absence of such consent, each of the co-owners may apply for judicial authorisation to perform a specific act. Majority of co-owners is calculated in proportion to their shares. This means that a co-owner whose share is ½ is not entitled to independent acts of ordinary management (this category encompasses in principle rental of units held as common marital property). As a result of the above, a lease contract concluded by an unauthorised party (co-owner holding ½ share in the real estate) is invalid. From the point of view of lessee, the situation looks similar to the one described above, with the proviso that consent of the other co-owner validates retroactively the rental contract. When analysing the whole situation from lessor's perspective, it ought to be pointed out that, pursuant to art. 209 PCC, each co-owner may perform all acts and assert all claims which lead to

preservation of the common title. This implies that a co-owner of a unit may seek full compensation.

The problem of missing consent to let a housing unit appears as well in the context of a housing sublease. Under art. 688^2 PCC, without the lessor's consent, the lessee may not sublease or deliver a unit for gratuitous use. Sublease of a unit without the necessary consent will constitute a breach to the principal lease contract. In accordance with art. 11(2) item 3 TPA, the owner may terminate the contract at monthly notice where the lessee has sublet or delivered the unit for gratuitous use, in whole or in part, without the required owner's consent. Naturally, the above deliberations refer to a situation in which parties decide not to agree to the contrary in their contract. Termination of the principal contract triggers automatic termination of any sublease arrangement. At the end of the day, entry into a sublease agreement with a person who has not obtained the principal lessor's consent to such an arrangement is going to lead to termination of both the principal and sublease contract of the housing unit.

Lessees who have signed a lease contract with an unauthorised party have a claim for compensation against the other contracting party. Obviously, good will of the rightful owner may cause that another, valid rental contract will be signed. In the absence of such new agreement, the owner may demand vacation of the premises, and sue for evicting the illegitimately occupied premises (under art. 222 PCC).

- *Are there areas of "non-enforcement" of tenancy law (such as legal provisions having become obsolete in practice)?*

The lawmaker introduced incidental lease in the TPA regime mainly with a view to protecting landlords from dishonest tenants. In situations of successful termination of contracts where the tenant fails to vacate the premises, the landlord can make a written demand with officially certified signature. Contracts for incidental lease give the lessor a possibility to considerably reduce the risk faced in the case of traditional lease arrangements.

However, a lessor who wishes to let his property on the terms prescribed for incidental lease reduces the scope of potentially interested lessees. The category of persons unable to enter with into incidental lease arrangements comprises, inter alia, persons without any alternative place of residence to which they could be evicted, persons reluctant to resign on the protection afforded by the TPA regime, individuals interested in lease for unspecified duration.

The reasons set out above, as well as other circumstances, such as the absence of lessor knowledge of the discussed institution and unwillingness to bear additional costs connected with notarial fees for execution of respective attachments to the contract are the reasons for the fact that so far the institution of incidental lease has not attracted broader interest.

- *What are the 10-20 most serious problems in tenancy law and its enforcement?*

Protection of tenant rights is so extensive that from the point of view of landlords it might be considered excessive.

In the first place, the problem affects termination by lessor. Under art. 11. 1 TPA, as long as a tenant is entitled to non-gratuitous use of a unit, such termination may be effected only for reasons set out in art. 11(2-5) and art. 21 (4 i 5) TPA. Termination should, under the pain of nullity, be made in writing and stipulate its cause. In practice, the most problematic ground for termination has been incorporated in art. 11(2) item 2 TPA, that is rent arrears for three full periods of payment. There are cases in which the tenant might default with rent or other liabilities for a longer period of time, yet, as long as the debt remains smaller than the rent payable for three full payment periods, the lessor will not be in a position to terminate.

Most burning practical problems, however, refer to execution of judgments obligating tenants who act in defiance of the contract to leave the rented unit. Most often, a judgment in which the court imposes the obligation to leave housing premises marks the beginning of a long and winding road before the landlord willing to regain the unit. Unfortunately, subsequent amendments to legislation on housing lease put much more emphasis on tenant than landlord protection.

Initially, it seemed that the Act of 2 July 2004 amending the Polish Code of Civil Procedure, which entered into force on 5 February 2005, reconciled the need for eviction from housing units with constitutional human rights. This end was to be achieved by adoption of a rule providing for the right to temporary premises for individuals to whom the court has not awarded a social unit. This, however, proved an excessive burden on the part of landlords who could not simply get rid of an unpaying tenant. Eventually, the 2011 reform of art 1046 PCCP, as discussed above, introduced the possibility to evict the tenant to a shelter designated by the municipality if the temporary premises have not been offered to the evicted person within 6 months from the moment of validation of the eviction order.

Municipalities have insufficient numbers of social and temporary units to assure timely realisation of eviction judgments. As a rule, occupiers without a tenure are obliged to pay reimbursement to the landlord. However, such occupiers most frequently fail to comply with this obligation and the landlord must maintain the premises on his own.

As a result, the TPA regime has been appended by art. 18(5), giving the landlord a claim against the municipality which failed to provide a social unit to the evicted person entitled by court judgment. Such claims are asserted in pursuance of art. 417 PCC.

Pursuant to art. 417 PCC, damage caused by unlawful act or omission in the course of exercising public authority should be remedied by the State Treasury, local self-government unit or other juridical person wielding such authority under provisions of law. The cause of action in this case is provided by the omission to assign a social unit to the entitled party. It is, thus, unnecessary to evince culpable conduct of municipal authorities. Redress of loss in accordance with the Civil Code will in such cases cover both the loss sustained and profit that could have been obtained by the landlord if the loss had not been inflicted.

The necessity to repair damage suffered by the lessor owing to municipality delay in provision of a social unit is generally accepted in case-law. The Constitutional Tribunal, while affirming in the judgment of 8 April 2010 (P1/08)[680] constitutionality of

[680] CT judgment of 8 April 2010, P1/08, Official Law Journal 2010, No. 75, item 488.

art. 18(5) TPA, held that, *de lege lata*, responsibility of a municipality towards the landlord follows from the fact of omitting to ensure a social unit in a situation in which the right to it has been awarded in a court decision. The choice of art. 417 PCC as the legal basis signifies that the prerequisite of liability is ascertainment that the respective municipality has not met its obligation, regardless of reasons for such state of affairs. In accordance with art. 361(2) PCC, Compensation covers both the loss suffered and profits lost by the landlord. There are no specific provisions which would restrict the amount of compensation. The Supreme Court pointed out in the resolution of 16 May 2012 (III CZP 12/12)[681] that compensation owed to the landlord in pursuance of art. 18(5) TPA may cover charges related to enjoyment of the unit.

The above may justify assertion of claims in full amount, not only in respect to the loss incurred by the owner in connection with the need to maintain the unit in the period when he was deprived of its possession but also pertaining to profits lost in consequence of non-payment of due rent. It seems possible to additionally assert claims based on the detriment to the unit's condition.

In light of the above, one may legitimately state that with regard to practical problems with execution of eviction judgments, legal situation of lessors is still less favourable than tenants', who preserve the right to enjoy the unit even in the event of failure to provide any consideration.

- *What kind of tenancy-related issues are currently debated in public and/or in politics?*

Political debate with regard to rental housing is not particularly intense. The government concentrates on questions related to property market as such and dwellings to be owned by young couples. This refers primarily to the program “Housing unit for the Young,” discussed in above sections in more detail. This leaves the future of the rental market, including the public rental sector, uncertain. Social housing remains the concern of municipalities, which may apply for the State Treasury funds for new residential investments, yet, their existing stock increasingly grows older. As pointed out above, the future of Social Building Associations is still unsure. Apparent overprotection of tenants is gradually lifted as the society grows richer and unit ownership becomes an affordable option for many young families.

Al these phenomena take place without much attention from central stakeholders or any specific medial coverage.

7. Analysing the effects of EU law and policies on national tenancy policies and law

[681] SC resolution of 16 May 2012, III CZP 12/12, OSNC 2012/12/13.

7.1. EU policies and legislation affecting national housing policies

The EU policies and legislation affect national housing policies and legal acts in some extent but not so intensely as in other areas (for example, consumer law). This influence is rather general. It is predominantly due to the fact that the EU legislation on tenancy is not as ample as in other branches of law. Naturally, EU regulations on specific issues like energy or heating affect national law on tenancy, but only partially.

The EU policies of anti-discrimination and protection of a weaker party are factors which do influence national tenancy law quite strongly. These issues have been discussed at length above in the Report in section 2c.

As noted in Part I of the Report, housing policies in Poland are far from consistent. Some major decisions have long been neglected and have to wait until the end of the economic crisis.

- *tax law*

The system of VAT and introduction of refunds in place of former direct allowances has been discussed in Part I of this Report. Rather than tenancies in particular, the issue concerns building investments and repairs of the existing stock. In 2006, housing VAT deductions were replaced by the system of refunding a part of expenditures incurred for the purchase of construction materials - which had been taxed with a lower VAT rate before 30 April 2004.[682]

Since the problems concerning the Value Added Tax and its application in the housing sector have for many years remained high on the EU agenda, any direct modifications in this respect could not be introduced on the national level. Bearing in mind the origins of the adopted solutions and the amount of subsidization, the present program is colloquially referred to as "VAT return." It has been structurally correlated with tax provisions. Currently, funds for such returns make 125% of the annual sum of all expenditures provided for housing support in the central budget.[683]

As income taxation is not directly affected by European regulation, it suffices to remind the reader that PIT and CIT issues were discussed in Part I of the Report.

- *energy saving rules*

There is no special energy saving regulation. Issues related to thermal modernization have been discussed in the first Part of the present Report. Experts from the Ministry of Transport, Construction and Maritime Economy have been working on a draft of an act on energy performance of buildings, which is to implement the Directive 2010/31/UE of the European Parliament and the Council of 19 May 2010.[684] The Directive ordains that until 2021 all newly erected houses be nearly zero-energy

[682] Act of 29 September 2005, Official Law Journal 2005, no. 177, item 1468.
[683] 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa...', 35.
[684] OJ L 153/13.

buildings. This requires state authorities to prepare appropriate technical enactments defining specific requirements for particular types of buildings. On 16 April 2013, the Council of Ministers adopted the targets to be pursued in the final statute. The preliminary draft prepared by the Ministry's Department of Spatial Development and Construction covers as well preparation of statements of energy performance of buildings along with principles of control heating and air-conditioning systems.[685]

Effects of EU policies and legislation on other aspects of national housing policies seem rather scant. The future of social housing in Poland is unclear. The question of social tenancies has been practically left over to the local, municipal level. The role of the state on the housing market is presently limited to assistance to young families in the purchase of a first housing unit.

7.2. EU policies and legislation affecting national tenancy laws

- *EU social policy against poverty and social exclusion*

Under The TPA, issues of social housing have been left over by the state to municipalities. The role of municipalities has been described in much detail in the above sections of the Report. At this point, a few words could be added about protected housing, since this phenomenon demonstrates growing activeness of NGO's, whose role is generally promoted by the EU, in the social housing sector.

As regards tenancy arrangements that can be analysed in terms of social exclusion, such questions have been dealt with in the Social Welfare Act of 22 March 2004[686] Protected housing units are provided as non-pecuniary form of social assistance. Tenancy in such places may be offered to a person who needs support in everyday affairs on account of his or her difficult life situation, age, disability or sickness, but does not require to be placed in a nursing centre.

As provided in the Social Welfare Act, residence in a protected lodging may be awarded, *inter alia*, to: persons with mental disorders, individuals leaving foster families, educational and care facilities, youth education centres, reformatories, as well as foreigners awarded the status of a refugee or subsidiary protection in Poland.

These special dwellers are being prepared, under the supervision of specialists, to independent life. Protected units are to assure conditions of independent subsistence in the surrounding environment and integration with the local community.

Housing assistance of this type may be provided by every social welfare centre or third sector public benefit institution. Provision of protected housing units makes an obligatory task of each municipality. However, these are social welfare institutions, and NGO's that fulfil these objectives on behalf of municipalities.[687]

- *consumer law and policy*

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[685] Draft guidelines are available at: http://bip.transport.gov.pl/.

[686] Official Law Journal 2004, No. 64 item 593.

[687] A. Puszkarska, 'Dla kogo mieszkania chronione?' <http://www.niepelnosprawni.pl/ledge/x/27901>.

Issues of consumer protection in the area of tenancy regulation has been discussed in much detail in Section 2c of this Report.

- *competition and state aid law*

This branch of EU legislation and policies does not directly translate in tenancy law or governmental policies in Poland.

- *tax law*

The issues of tax law in Poland refer generally to housing law and policies rather than tenancy regulation. There are hardly any taxes payable by tenants. Most of fiscal levies are covered by landlords as owners or persons receiving income from rental transactions.

- *private international law including international procedural law*

Poland belongs to the majority of EU countries in which Brussels I and Rome I Regulations are directly applicable. Therefore, all the rules provided in these pieces of legislation which deal with tenancy are also binding in Poland.

- *anti-discrimination legislation*

The Anti-Discrimination Act and issues of implementation of EU policies and legislation in this respect have been discussed at length in section 2c of the Report.

- *constitutional law affecting the EU and the European Convention of Human Rights*

Protection of tenants is guaranteed by the Polish Constitution of 1997. According to art.76 of the Constitution, "public authorities shall protect consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices. The scope of such protection shall be specified by statute."[688]

The ECtHR exerted direct influence on Polish tenancy law when by the decision in the Kozak case, discussed above in section 2c of this Report.[689]

[688] Full translation of the Constitution is available at the address: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

[689] See Section 2c. of this Report, where anti-discrimination issues are discussed along with implementation of EU Directives.

- *harmonization and unification of general contract law (sources such as the Common European Sales Law, the Common Framework of Reference or the Principles of European Contract Law may be considered here)*

Although model regulations as well as the proposal for the Regulation of the Parliament and the Council on a Common European Sales Law are known to Polish lawyers and official factors, there are hardly any direct inspirations to be found in Polish legislation for the time being.

- *fundamental freedoms*
- *e.g. the Austrian restrictions on the purchase of secondary homes and its compatibility with the fundamental freedoms;*
- *cases in which a licence to buy house is needed – is this compatible with the fundamental freedoms?*

It does not seem that Poland has any major problems with conformity of its tenancy legislation with the fundamental freedoms regime.

7.3. Table of transposition of EU legislation

Table: European Directives Affecting Leases

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT
CONSTRUCTION		
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJEU 30.4.2004 No. L 134/114	Public Procurement Law Act of 29 January 2004 (Official Law Journal of 2010, No. 113, item 759, as amended)	art..34 - rules about ascertainment of the price
Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJEC 11.02.1989 No. L 40/12)	Construction Products Act of 16 April 2004 (Official Law Journal of 30 April 2004)	General rules on placement of construction products on the market, review procedures and competent bodies

TECHNICAL STANDARDS		
Energy efficiency		
Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJEU 14.11.2012 No. L 315/1).	Not yet implemented	Energy saving targets imposed on the State. It also refers to public administration buildings and others that require greater energy savings.
Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 No. L153/13).	Not yet implemented, the Polish government has adopted the general legislative assumptions on this matter on 16th April 2012	Energy efficiency of new and existing buildings.
Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 No. L 153/1).	Act of 14 September 2012 on duties relating to information on Energy Consumption by Products Utilising Energy (Official Law Journal 2012, item 1203)	Labelling and basic information for users of household electrical appliances.
Commission Delegated Regulation (EU) No. 874/2012 of 12 July 2012 supplementing **Directive 2010/30/EU** of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires (OJEU 26.9.2012 No. L 258/1).	Direct applicability	
Commission Directive 98/11/EC of 27 January 1998 implementing Council Directive 92/75/EEC with	Act of 14 September 2012 on duties relating to information on Energy Consumption by Products Utilising Energy (Official Law Journal 2012,	

regard to energy labelling of household lamps (OJEC 10.3.1998 No. L 71/1).	item 1203)	
Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJEU 5.6.2009 No. L 140/16).	Not yet fully implemented. Poland was sued before CJ EU Partial implementation was effected by the Amendment of 11 September 2013 to the Energy Law Act of 10 April 1997 (Official Law Journal 2012 item 1059)	Promotion of use of renewable energy in buildings.
Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (DOCE 14.8.2009 No. L 211/55).	Not yet implemented	Basic standards for the electricity sector.
Heating, hot water and refrigeration		
Commission Delegated Regulation (EU) No. 626/2011 of 4 May 2011 supplementing **Directive 2010/30/EU** of the European Parliament and of the Council with regard to energy labelling of air conditioners (OJEU 6.7.2011 No. L 178/1).	Direct applicability	Labelling and information to be provided concerning air conditioners.
Commission Delegated Regulation (EU) No. 1060/2010 of 28 September 2010 supplementing **Directive 2010/30/EU** of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances (OJEU	Direct applicability	Labelling and information to be provided about household refrigerating appliances.

30.11.2010 No. L 314).		
Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJEU 14.8.2009 No. L 211/94).	Energy Law Act of 10 April 1997 (Official Law Journal 2012 item1059); Regulation of the Minister of Economy of 6 February 2008 on specific principles of determining and calculation of tariffs for gaseous fuels and clearance on the gaseous fuel market (Official Law Journal No. 28, item 165); Resolution of the Minister of Economy of 2 July 2010 on specific conditions of operation of the gas system (Official Law Journal No. 133, item 891; Official Law Journal 2012, item 968)	Basic legislation on natural gas in buildings and dwellings.
Council Directive 1982/885/CEE of 10 December 1982 amending Directive 78/170/EEC on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings (OJEC 31.12.1982 No. L 378/19).	???	Legislation concerning heating and hot water in dwellings and buildings.
Household appliances		
Commission Delegated Regulation (EU) No. 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household tumble driers (OJEU 9.5.2012 No. L	Direct applicability	Labelling and information to be provided about tumble driers.

123/1).		
Commission Delegated Regulation (EU) No. 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household dishwashers (OJEU 30.11.2010 No. L 314/1).	Direct applicability	Labelling and information to be provided about dishwashers.
Commission Delegated Regulation (EU) No. 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines (OJEU 30.10.2010 No. L314/47).	Direct applicability	Labelling and information to be provided about washing machines.
Commission Delegated Regulation (EU) No. 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJEU 30.11.2010 No. L 314/64).	Direct applicability	Labelling and information to be provided about televisions.
Commission Directive 2003/66/EC of 3 July 2003 amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJEU	Regulation of the Minister of Economy and Labour of 20 May 2005 concerning requirements provided for technical documentation, application of labels and technical specification and patterns of labels for appliances (Official Law Journal	Labelling and information to be provided about household electric refrigerators and freezers.

09.07.2003 No. L 170/10).	of 6 June 2005).	
Commission Directive 2002/40/EC of 8 May 2002 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric ovens (OJEC 15.05.2012 No. L 128/45).	Act of 14 September 2012 on duties relating to information on energy consumption by products utilising energy (Official Law Journal 2012, item 1203)	Labelling and information to be provided about household electric ovens.
Commission Directive 96/60/EC of 19 September 1996 implementing Council Directive 92/75/EEC with regard to energy labelling of household combined washer-driers (OJEC 18.10.1996 No. L 266/1).	Act of 14 September 2012 on duties relating to information on energy consumption by products utilising energy (Official Law Journal 2012, item 1203)	Labelling and information to be provided about household combined washer-driers.
Lifts		
European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJEC 07.09.1995 No. L 213).	Regulation of the Minister of Economy of 8 December 2005 on essential requirements for lifts and safety elements (Official Law Journal of 30 December 2005)	Legislation concerning lifts.
Boilers		
Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJEC 22.06.1992, No. L 167). Amended by Council Directive 93/68/EEC of 22 July 1993 (BOE 27.03.1995 No. 73).	Energy Law Act of 10 April 1997 (Official Law Journal 2012 item 1059)	Legislation concerning boilers.
Hazardous substances		

Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJEU 01.07.2011 No. 174/88).	Regulation of the Minister of Economy of 8 May 2013 on essential requirements relating to restriction of use of certain hazardous substances in electrical and electronic equipment (Official Law Journal of 10 May 2013)	Legislation on restricted substances: tin organ pipes and lead alloys.
CONSUMERS		
Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJEU 22.11.2011 No. L 304/64).	Not yet implemented. The draft is now debated by Polish Parliament	Information and consumer rights. Legislation referring to procurement of services, car parks. Immovables are excluded. The directive covers lease of premises, but not for residential purposes.
Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJEU 18.12.2009 No. L 337/11).	Telecommunication Law Act of 16 July 2004 (Official Law Journal of 3 August 2004)	Consumer protection in the procurement of communication services.

Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJEU 01.05.2009, No. 110/30).	Competition and Consumers Protection Act of 16 February 2007 (Official Law Journal of 21 March 2007)	Collective injunctions infringements of Directives Annex I.
Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJEU 03.02.2009, No. 33/10).	Timeshare Directive of 16 September 2011 (Official Law Journal of 27 October 2011)	
Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJEU 27.12.2006, No. L 376/21).	Prevention of Unfair Market Practices Act of 23 August 2007 (Official Law Journal 20 September 2007)	Misleading advertising and unfair business-to-consumer commercial practices.
Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council (OJEU 01.6.2005 No. L 149/22).		
Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of	Act of 2 March 2000 on the Protection of Certain Consumer Rights and Liability for Damages Caused by Hazardous Product	Contracts relating to immovables are excluded, except for lease.

distance contracts (OJEC 04.06.1997 No. L 144/19).	(Official Law Journal 2012 item 1225)	
Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEC 21.04.1993 No. L 095).	Polish Civil Code of 23 April 1964 (Official Law Journal 18 May 1964)	Unfair terms
Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJEC 31.12.1985 No. L 372/31).	Act of 2 March 2000 on the Protection of Certain Consumer Rights and Liability for Damages Caused by Hazardous Product (Official Law Journal 2012 item 1225)	Information and consumer rights. Legislation relating to procurement of services. Contracts on immovables are excluded.
HOUSING-LEASE		
Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations - Rome I (OJEU 04.07.2008 No. L 177/6).	direct applicability no transposition	Law applicable (arts. 4.1.c and d and 11.5)
Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEC 16.01.2001 No. L 12/1).	direct applicability no transposition	Jurisdiction (art. 22.1)
Commission Regulation (EC) No. 1920/2001 of 28 September 2001 laying down detailed rules for the implementation of Council Regulation (EC) No. 2494/95 as regards minimum standards for the treatment of service	direct applicability no transposition	CPI harmonization. Art. 5 includes estate agents' services related to lease transactions.

charges proportional to transaction values in the harmonised index of consumer prices and amending Regulation (EC) No. 2214/96 (OJEC 29.9.2001 No. L 261/46).		
Commission Regulation (EC) No. 1749/1999 of 23 July 1999 amending Regulation (EC) No. 2214/96, concerning the sub-indices of the harmonized indices of consumer prices (OJEC 13.8.1999 No. L 214/1).	direct applicability no transposition	CPI harmonization. Subscript 4: Lease, housing preservation and repair, water and other services.
Council Regulation (EC) No. 1687/98 of 20 July 1998 amending Commission Regulation (EC) No 1749/96 concerning the coverage of goods and services of the harmonised index of consumer prices (OJEC 31.07.1998 No. L 214/12).	direct applicability no transposition	
Commission Regulation (EC) No. 2214/96 of 20 November 1996 concerning harmonized indices of consumer prices: transmission and dissemination of sub indices of the HICP (OJCE 21.11.1996 No. L 296/8).	direct applicability no transposition	
Recommendation 65/379/EEC: Commission Recommendation of 7 July 1965 to the Member States on the housing of workers and their families moving within the Community (OJEC 27.07.1965 No. L 137/27).	soft law - no transposition	Discrimination on grounds of nationality. Equality in granting housing, aids, subsidies, premiums or tax advantages to workers who have moved within the EU.
DISCRIMINATION		

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJEU 21.12.2004 No. L 373/37).	Act of 3 December 2010 Implementing Certain Provisions of the European Union Concerning Equal Treatment (Official Law Journal of 30 December 2010)	Discrimination on grounds of sex.
Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC 19.07.2000 No. L 180/22).	Act of 3 December 2010 Implementing Certain Provisions of the European Union Concerning Equal Treatment (Official Law Journal of 30 December 2010)	Discrimination on grounds of racial or ethnic origin.
IMMIGRANTS OR COMMUNITY NATIONALS		
Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJEU 18.06.2009 No. L 155/17).	Foreigners Act of 13 June 2003 (Official Law Journal 2011 No. 264, item 1573); Promotion of Employment and Labour Market Institutions Act of 20 April 2004 (Official Law Journal 2013 item 674)	Equality of treatment with housing (art. 14.1.g.) However, Member States may impose restrictions (art. 14.2).
Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC,	Act of 14 July 2006 on Entry, Residence and Departure from the Territory of the Republic of Poland of EU Member States Nationals and Their Family Members (Official Law Journal of 11 August 2006)	Discrimination on grounds of nationality. Free movement for European citizens and their families.

73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJEU 30.04.2004 No. L 158/77)		
Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJEU 23.01.2004 No. L 16/44).	Foreigners Act of 13 June 2003 (Official Law Journal 2011 No. 264, item 1573)	Equal treatment in housing (art. 11.1.f.)
Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJEU 03.10.2003, No. L 251/12).	Foreigners Act of 13 June 2003 (Official Law Journal 2011 No. 264, item 1573)	The reunification applicant shall prove to have a habitable and large enough dwelling (art. 7.1.a).
Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJEC 17.04.1964 No. L 257/2).	direct applicability no transposition	Equal treatment in housing and access to lists of housing applicants (Art. 9 and 10.3).
INVESTMENT FUNDS		
Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010 (OJEU 01.07.2011, No. L 174/1).	Not yet implemented	Real estate investment funds

Annex 1.
Ten hypothetical cases

1) 10 typical national cases (with short solutions) to be proposed by each team in the following structure:

name of typical case (e.g. “extra costs”, “ liability for damages”) ,

brief sketch of typical case

solution

Case 1. Succession of leases

Mr. X was a tenant. What will happen to his tenancy right after his death if:

1. He died without making his will

2. He had made a will before he died

3. He lived in a flat alone

4. He lived in a flat together with his wife/children/ foster child/ concubine/ same-sex partner

5. Does it make difference whether the owner of a flat was a private person or a public one (like municipality)?

Answer

According to the existing Polish law, lease cannot be inherited. It does not form a part of the mass of the succession. Nevertheless, by operation of law, it passes to certain groups of persons. Article 691 of the Polish Civil Code reads:

Article 691(1) Where the lessee of residential premises has deceased, the relationship of lease of residential premises shall be entered into by: the spouse not being a co-lessee of such premises, children of the lessee and of the lessee's spouse, other persons the lessee was obliged to maintain or pay alimony dues to, and the person the lessee actually cohabited with.

(2) The persons referred to in paragraph 1 shall enter into the relationship of lease of residential premises if they inhabited the premises together with the lessee until his death.

(3) Where there are no persons referred to in paragraph 1, the relationship of lease of residential premises shall expire.

(4) Persons who, under paragraph 1, entered the relationship of lease of residential premises may terminate the relationship with the observance of statutory periods of notice, even if the contract was concluded for a specified duration. Where the relationship of lease of residential premises is terminated by a notice by some of such persons, the termination shall be valid with respect to the persons who gave an appropriate notice.

(5) The provisions of paragraphs 1 to 4 shall not apply in the case of death of one of the co-lessees of residential premises.

Q1 and Q2

According to Polish law, existence of a will does not affect lease. They do not belong to the mass of the succession, either on the basis of law or on the basis of testament. Notwithstanding, regardless of who the heirs are and whether the property is inherited by operation of law or by will, the lessee's right is transferred independently to the circle of persons prescribed by law.

Q3

If a late tenant lived alone and there are no persons belonging to the group set out in art. 691 PCC, the tenancy expires. This consequence has been expressly stipulated in art. 691 (3) PCC.

Q4

Only some categories of persons can enter into a tenancy relationship after the tenant's death. Their list is exhaustive. As regards cohabitants, both different- and same- sex partners can succeed the deceased as tenants. This last issue was arguable before the relevant ECtHR judgment (case Kozak v. Poland 13102/02, 2 march 2010 r.) in which it was concluded that the same-sex partner is entitled to succeed as lessee.

Q 5

The issue of property ownership is of no legal significance to this case. The rules on tenancy rights in case of death of a tenant (art. 691 PCC) are valid for all the situations, irrespective of who the owner of the leased property is.

Case 2. Tenants as consumers

X concluded a tenancy contract with a Social Building Association using standard contract terms. Is it possible for him to rely on unfair contract terms regime if the clauses contained in a contract were unfair (for example in respect of payments)? Would the situation be different if:

X concluded the contract with a private owner (A)

X concluded the contract with a public entity (like municipality) (B)

X is a self-employed plumber making repairs at houses, who formally registered the seat of his enterprise in his flat (C)

Would it be possible for all the tenants in the block at stake to bring a collective consumer action against the owner?

Answer

According to Polish law there are no restrictions for a tenant to rely on consumer protection rules as long as all the prerequisites of consumer protection are met. A tenant may claim a contract term unfair if: she/he can be classified as consumer (art. 221 PCC), concludes the contract with an entrepreneur, and the unfairness tests has been passed (art. 385 et seq. PCC).

As "the consumer shall be deemed to be any natural person who performs juridical acts which are not directly connected with his economic or professional activity," X can base his claim on consumer protection rules if the tenancy contract was concluded only to cover his personal/private needs or if it was not indirectly related to his professional activity. In my opinion, X can be considered consumer not only when he concludes the tenancy agreement to fulfil his housing needs, but also in the case described under the letter C.

A tenant may rely on consumer law protection only if he concludes a contract with a person conducting such transactions professionally. So she/he cannot embark on the regime in a situation covered by letter (A), but may do so in the situation (B).

There are no contradiction for tenants to bringing a collective claim, for example, against the municipality (cases judged by a civil court in Szczecin in March 2012).

Case 3. leases of spouses after divorce

A and B were married but are now divorced. The lease contract had been concluded during their marriage, when they were under the statutory matrimonial property regime (i.e. property acquired during the matrimony is their common property). The premises were to satisfy the residential needs of the spouses and their son.

Currently the X spouses are dividing their common property in court proceedings. May this division include the lease? May the court award the lease to one spouse exclusively? If so, how should its value be determined in order to decide how much of the common property the other spouse should receive? Does it make any difference if the lease concerns property of a public entity and the rent is regulated/limited and/or the tenant has the option to purchase the unit on preferential terms?

Answer

The district court in K. held that the common property of the petitioner and participant[690] in the proceedings included, inter alia, lease of a housing unit in a building belonging to the housing stock of the municipality K. The lease contract was concluded under the marital regime of statutory community of property, and the unit was to serve needs of the petitioner, participant and their common son. In the proceedings for division of the common property (arts. 566 and 567 PCCP), the court may decide about the right of lease of a unit which falls under the common property.

Is the value of the right of lease of a municipal housing unit, for which the legislator provided regulated rent (art. 8 item 1 of the Tenants Protection Act of 21 June 2001 – Official Law Journal 2005, no. 31, item 266 as amended) measurable, and if the question is answered in the affirmative: based on what criteria should the value of this right be assessed and should the court, and to what extent, take into consideration the possibility of preferential purchase of the unit by the lessee?

The right of lease of a municipal unit for which the rent is payable in the amount determined in a resolution of the municipal council adopted in pursuance of art. 8 item 1 of the Tenants Protection Act of 21 June 2001 (consolidated text: Official Law Journal of 2005, no. 31, item 266 as amended) makes an asset belonging to the common marital property which should be cleared upon division of this property. Its value corresponds to the difference between the rent actually paid and free rent, taking into account, as circumstances of the case require, the period of probable remaining duration of the lease relationship. For the sake of determination of its value, the possibility of preferential purchase of the unit by lessee should not be taken into consideration.[691]

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[690] If not within the divorce proceedings, division of common marital property is effected in a separate non-litigious proceeding. On such occasions, one should speak of participants rather than a claimant and a respondent.

[691] SC resolution of 9 May 2008, III CZP 33/08, OSNC 2009/6/86, Biul.SN 2008/5/4.

As regards justification of the above stance, it ought to be pointed out that the Supreme Court held in one of its previous resolutions that the value of a municipal unit's lease should be calculated as the difference between free and regulated rent, in light of the circumstances of the case, accrued in the remaining period of lease.[692] The value of the right of lease should correspond to the benefit enjoyed by the lessee deriving from the possibility to use the object of lease. Such amount may not be calculated by reference to market value, since the right of lease referring to a municipal unit is not destined for commercial transactions. In consequence, regard should be had to average market rent the lessee would have to pay for use of the same unit. This value should be decreased by the rent actually paid for enjoyment of the municipal unit, since the obligation to pay rent makes consideration for the unit's use; consequently, the relevant value is the difference between “free” rent and rent payable by the lessee of the municipal unit.

There is no regulated rent in the current legislative framework. The Tenants Protection Act 2001 does not use the this term, however, when the owner of a unit is a municipality, the rent rates are specified in a resolution of the municipal council (under art. 8 in conjunction with art. 21(2) item 4 TPA). In consequence, as a rule, rent payable by the lessee of a unit which belongs to the municipal housing stock is lower than rent payable for an analogical unit on the so called free market (“free” rent).

Adherence to the principle that the value of the right of lease of a unit falling under marital community of property which subsequently becomes divided makes the difference between the rent determined on the terms provided in the Tenants Protection Act and “free rent,” with regard to specific circumstances of the case, may also lead to situations in which this right has a “zero" value,” as it might be the case that rent payable in a municipal unit actually equals “free” rent.

In the Real Property Management Act of 21 August 1997, it has been pointed out that a lessee of a housing unit may exercise the pre-emption right in relation to the unit if the lease has been entered into for unspecified duration (art. 34(1) item 3 RPMA. At the same time, the statute provides for reduction of the price for such unit. The discount is afforded, in principle, in accordance with principles determined in resolutions of self-governmental authorities. Sometimes, it is the central legislator to fix directly in statutory provisions the terms governing price reduction for particular premises.[693] The currently binding regulations allow to draw the conclusion that the central lawmaker or proper self-government authority make decisions which partly frame the terms of the contract to be concluded. This refers to determination of price to be paid by the buyer for acquisition of ownership of a previously rented unit. The parties lose the opportunity to freely negotiate the price. Instead, they must observe principles directly specified in statutory law or following from resolutions of self-governmental authorities. A lessee who purchases the premises has every right to demand that the seller (owner of the unit) should act in observance of these norms.

The possibility to buy the rented unit on preferential terms does not mean, however, that one of the elements of common marital property is an asset which could be called preferential pre-emption right because this entitlement does not qualify as

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[692] SC resolution of 24 May 2002, III CZP 28/02, OSNC 2002/12/150, Prok.i Pr.-wkł. 2002/10/40.

[693] e.g. in the Act of 8 September 2000 on Commercialisation, Restructuring and Privatisation of the State Enterprise "Polskie Koleje Państwowe," Official Law Journal No. 84, item 948 as amended).

subjective right. It only provides for the opportunity to buy the title to the unit for discount price, which should not be accounted for because of insufficient degree of likelihood of actual purchase.

Additionally, the point of view outlined at the beginning is supported by practical reasons. The question appears what happens if one of the ex-spouses is awarded the right of lease whose value is decreased by the amount corresponding to the opportunity of preferential purchase, and yet, for whatever reasons, this opportunity is not grasped (e.g. the lessee does not decide to buy the unit or doubts emerge as to the building's ownership structure, which precludes sale of a unit). It seems fair to settle possible disproportions relating to assets awarded to each spouse. Such clearance, when made after delivery of the final judgment on division of the common property – could trigger a number of problems. There is no legal basis for such corrections.

Case 4. family violence and leases

Spouses A and B live in leased, residential premises. Spouse B is physically and psychologically abusive towards his spouse A and his child. May spouse B be evicted from the premises:

a) While he is still married to spouse A

b) During the divorce proceedings?

Answer

a) Under art. 11a. of the Domestic Violence Prevention Act (DVPA),[694] where a family member sharing a unit, makes common dwelling particularly burdensome on grounds of domestic violence, the person affected by violence may demand that the court oblige the wrongdoer to vacate the premises.

The obligation to leave the lodging may be imposed on a family member, a person covered by statutory definition of art. 2(1) TPA. This does not refer exclusively to a spouse but also – for example – a factual cohabitant, ascendant or descendant, other close relations and members of the common household. The requisite for the judicial order of vacation against a family member is the latter's conduct, meaning acts of domestic violence and making the common dwelling particularly burdensome. The expression "domestic violence" has been defined in art. 2 item 2 (DVPA). The requirement of domestic violence should thus be examined through the prism of he definition, without analysing such acts in terms of the Polish Penal Code. The claim for evicting an individual may be asserted by person affected by domestic violence regardless of whether the wrongdoer may be charged with any criminal offence. The applicant may be a victim to domestic violence. The initiative has not been conferred on a mere witness to such violence or any other party having knowledge about relevant acts. Another requirement that must be ascertained is the fact that domestic violence makes common dwelling particularly burdensome.

[694] Domestic Violence Prevention Act of 29 July 2005, Official Law Journal of 20 September 2005.

Interpretation of the phrase used in art. 11a(1) DVPA referring to the shared lodging should head in the direction of inclusion of any type of dwelling shared by family members, i.e. premises they occupy and enjoy.[695] The order of vacation of a unit in such cases is dependent on whether the family member makes "common dwelling" particularly burdensome. In addition, the "shared housing unit" (art. 11a(1) DVPA) is not the same as "commonly occupied unit" in the understanding of art. 58(2) of the Family and Guardianship Code, and the obligation to vacate the premises is not the same as eviction, in the strict sense of the word.[696] On the other hand, doubts may arise when the tenure in the lodging jointly occupied by family members is vested solely in the perpetrator of violence, although it should be stressed that the order to vacate does not lead to forfeiture of the tenure. The order is issued for a specific period of time, as it may be modified or remanded if the circumstances of the case should change. The DVPA does not, however point to maximal duration of the obligation imposed.

Such cases are examined under provisions of the Polish Code of Civil Procedure on non-litigious proceedings, which means in accordance with art. 606 et seq. of the Code. The order is delivered after a trial, which should be held within one month as of submission of the application, and the order becomes enforceable on its announcement.

b) One of the spouses may participate in separate proceedings relating to eviction of the other from the shared housing unit based on art. 13(2) TPA, also in the course of a pending divorce case in which the eviction claim has not been brought.[697]

The provisions indicated above contain legal rules of varying objective and subjective scope, although prerequisites of eviction award are similar; art. 58(2) second sentence of the Family and Guardianship Code in conjunction with art. 58(1) FGC provides that where the spouses occupy a shared lodging, the court may on exceptional basis, when one of the spouses disables common dwelling by his or her grossly reprehensible conduct, adjudge in the divorce judgment his or her eviction at the request of the other spouse. In addition, pursuant to art. 13(2) TPA, a flatmate may bring a case for judicial order of eviction against a spouse, ex-spouse or other co-tenant in the same unit if the latter disables common dwelling by his or her grossly reprehensible conduct.

Undoubtedly, the subjective scope of art. 13(2) TPA is much wider that art. 58(2) FGC, which is applicable only in divorce cases and only where divorce is adjudged. In consequence, it refers merely to eviction of one spouse on the motion of the other. Such request may be allowed only in the event of delivery of a divorce judgment and only against a spouse. On the other hand, eviction under art 13(2) TPA may be sought by either spouse or ex-spouse or other household members.

Additionally, the scope of regulation of both provisions differ. While art. 13(2) applies only to units jointly occupied by spouses as tenants in the understanding of art 2(1) item 1 TPA, which means that the spouses enjoy the unit as lessees or under a tenure other than ownership, the second sentence of art. 58(2) FGC is applicable to

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[695] SC resolution of 13 January 1978, III CZP 30/77, OSNC 1978, No. 3, item 39.

[696] S. Spurek, Commentary to art. 11a DVPA, LEX.

[697] Supreme Court resolution of 12 July 2008, III CZP 41/08, OSNC 2009/7-8/94, Biul.SN 2008/6/7, the thesis is partly outdated.

any unit occupied by spouses under any type of tenure, or even without a valid legal basis

Prerequisites which justify eviction awards are likewise not synonymous, even though similar. In both provisions, the basis for eviction is provided by grossly reprehensible conduct of the other spouse which disables common occupancy, yet, eviction under art. 58(2) FGC may be adjudged only in exceptional situations. The doctrine of law and case-law evince exceptional character of this provision, which contains specific regulation limiting its applicability to extraordinary instances of particularly reprehensible conduct of a spouse.[698] It is accepted that inclusion of the eviction order in a divorce judgment relating to a unit in which both spouses share a common tenure is not conclusive with respect to the tenure's lot, which is yet to be resolved in the proceedings for division of common marital property.

The provision of art. 3(3) TPA ordains to apply regulation most favourable to tenant, which refers, in eviction cases, to norms more favourable to the evicted tenant or co-tenant. Art 58(2) FGC is more favourable to a spouse since it allows for eviction only in exceptional cases, whereas art. 13(2) TPA does not contain such stipulation. In case of eviction order within a divorce case, the court shall apply art. 14 TPA which covers the decision as to a social unit. Art. 58(2) FGC cannot be said to be more favourable to the evicted tenant in this respect, as it does not provide for the possibility to award the right to a social unit. As a result, it ought to be underlined that in situations of co-tenant eviction under both statutory regimes, despite differing legal bases of the resolution, legal protection afforded to the evicted spouse under art. 14 TPA shall apply.

It should be added that although the scopes of applicability of both discussed provisions differ, their concurrence if conceivable. There are, however, no legal grounds to deny a spouse's right to file a separate suit for eviction of the other spouse in accordance with art. 13(2) TPA also in the course of a pending divorce case in which the eviction claim has not been pursued. The legislator has deliberately included in art. 13(2) a similar regulation, yet subjectively and objectively varying from art. 58(2) FGA, and allowed in art. 13(2) TPA an eviction claim against a spouse or ex-spouse, regardless of whether the matrimony subsists or has been dissolved.

As pointed out above, in the case of concurrence of legal bases for the eviction claim, its assertion in a separate suit filed under art. 13(2) TPA may assure faster and more effective protection to the spouse prejudiced by grossly reprehensible conduct in the shared unit. In a divorce case, the spouse demanding eviction will be awarded such remedy only in the divorce judgment and on the condition of proving extraordinary circumstances which justify eviction. Should the divorce action be dismissed, the eviction claim, even though well substantiated, may not be allowed.

The need to explain all circumstances necessary for a divorce judgment to be adjudged may considerably delay eviction, which certainly may be considered anything but the will of the lawmaker in situations of domestic violence. According to art. 17 TPA, in such instances arts. 14 and 16 TPA concerning award of social units and ban on execution of eviction judgments in winter do not apply. This sheds light on the legislator's intention to assure immediate execution of eviction in situations of

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[698] see e.g. resolution of full composition of the Civil Chamber of the Supreme Court of 13 January 1978, III CZP 30/77, OSNCP 1978, no. 3, item 39 and resolution of the Supreme Court of 20 September 1990, III CZP 53/90, OSNCP 1991, no. 4, item 43.

domestic violence and timely delivery of the respective ruling, which is easier to achieve in a separate suit, brought under art. 13(1) TPA. It is also vital that by bringing the case in accordance with this provision a spouse may obtain not only eviction of the other spouse but also persons who derive their right to occupy the unit from that spouse.

This demonstrates that when spouses share a unit as tenants in the understanding of art. 2(1) item 1 TPA, the will of the legislator is to give the spouse injured by grossly reprehensible conduct of the other spouse the decision whether to pursue the claim for eviction of the other spouse within pending divorce proceedings, under art. 58(2) FGC, or file a separate suit in accordance with art. 13(2) TPA.

Case 5. Eviction

The owner of the real estate in question wants to remove an x-tenant from his property.

1. May he enter the premises, remove the tenant's belongings and then change the locks?

2. Does he need special permission to do so: administrative decision/court judgment and what is the procedure of obtaining it?

3. How is an eviction order implemented/carried out?

4. Do local authorities have obligations with respect to parties being evicted?

5. Is it possible to evict a person who has no place to go?

6. What happens if the premises were used for residential purposes not only by the tenant but also by other persons (friends, members of family, etc.) who were not listed in the claim brought before the court?

7. What is to be done with chattels of the tenant?

Answer

"A" intends to have a housing unit emptied of movables and handed over to him by "B," the unit's occupier.

- What should "A" do to achieve the intended end (should he apply for an official decision such as court ruling or administrative act);

The precondition of vacation of the premises and its repossession by "A," as long as the occupier "B" opposes to such claim, is that "A" should procure an enforcement title. An enforcement title is an execution title appended with an enforcement clause (art. 776 PCCP). In the analysed situation, two types of enforcement titles come in question: either a court judgment (art. 777(1) item 1 PCCP) or notarial deed in which the tenant "B" submitted to voluntary vacation and delivery of the unit (art. 777(1) item 4 PCCP). In the former case, it is necessary to institute judicial proceedings. In the latter, the creditor "A" is only obliged to go through the enforcement clause procedure, in which the clause is appended to a notarial deed (this is the case with regard to incidental lease). In such cases, the court confines itself to try the formal requisites (in particular whether the obligation is enforceable or if the enforcement title meets all the requirements imposed by law).

- are there any special principles, exceptions to general rules, governing proceedings before a court or other tribunal for award of eviction (judgment/decision);

Eviction proceedings are carried on as ordinary litigation. The Polish Code of Civil Procedure does not provide for any variances in this respect. However, it must be remembered that certain modifications have been envisaged by the Tenants Protection Act. The first basic adjustment refers to court obligation to resolve in respect of the evicted person's right to a social unit (art. 14 TPA). The court is obliged to examine if the tenant is entitled to social premises. Once the court ascertains that the tenant should embark on the right to a social unit, eviction will be withheld until the municipality makes an offer of a lease concerning such a lodging. Should the court determine that such right has not been vested in the defendant, it will include this fact in the operative part of the judgment so as to enable a possible appeal by the defendant. The second modification is the requirement to obligate the claimant to name within the appointed deadline all individuals to be evicted apart from the persons already sued. Once these individuals have been named, the court is under the duty to summon them to join the defendant (art. 15(1) TPA). Another peculiarity concerning eviction cases pertains to the obligation to notify about the pending proceeding the municipality in which the disputed premises are located (art. 15(2)). The municipality may join the case as litigant of similar position to an auxiliary intervenor. In addition, it is not possible to enter a default judgment without having heard evidence.

- in what ways is the “eviction title” (judgment/decision) executed and who performs the duty;

Once the enforceable title is there, procedures relating to its execution are implemented. The principal actor is the bailiff. Eviction proceedings are implemented in pursuance of provisions governing execution of non-monetary obligations (art. 1046 PCCP). In order to enforce the obligation to vacate the unit, the bailiff of the court in whose jurisdiction the premises are situated calls on the debtor to comply with the adjudged duty on his own accord before a specific deadline. Upon expiry of that deadline, the debtor shall carry out actions necessary to transfer possession of the unit to the creditor. When evicting a unit which serves the housing needs of the debtor under an enforceable title which does not provide for the debtor's right to social or replacement dwelling, the bailiff removes the debtor to another unit or lodging in which the debtor has a tenure and where he may stay. If the debtor has been granted the right to a social unit, the eviction procedure may not be initiated at all.

- do units of self-government or the state have any specific duties in eviction procedures;

If the debtor has no tenure in any other unit or lodging in which he or she could stay, the bailiff shall sustain eviction until the municipality in which the unit is located designates, at bailiffs request, temporary premises, in no case, however, longer than for the term of 6 months. Upon expiry of that period, the bailiff is free to remove the debtor to a shelter, hostel or other facility providing overnight accommodation indicated by the respective municipality. By evicting the debtor to a shelter or similar facility, the bailiff is to report to the municipality the need for ensuring temporary premises to the debtor.

- is “sidewalk” eviction permissible;

Polish civil law generally precludes pavement eviction, meaning eviction without providing any alternative lodging, even of the lowest standard. Proscription of “sidewalk” eviction refers as well to those tenants who have not been awarded the right to a social unit.

- what happens if it turns out that the unit is occupied by additional individuals other than the person actually sued once the judicial/administrative proceeding has already been concluded;

If, following rendition of a verdict by court in which eviction has been adjudged, it becomes apparent that there are other persons residing in the unit, not named directly in the eviction order, in accordance with art. 791(1) PCCP, the judgment with an enforcement clause attached obliging the debtor to leave the premises is effective against any person who acquired control of these premises once the eviction suit has been filed. In addition, under art. 791(2) PCCP, the enforceable title obligating its addressee to vacate the unit entitles the bailiff to carry on execution not only against the debtor named in the ruling but also his or her household members, relatives and other individuals who make use of his or her rights.

- what should be done with chattels (movables) left by the tenant

When carrying out eviction, bailiff removes chattels which are not subject to execution and returns them to the debtor. In the event of the debtor's absence, such things are left over to an adult household member. If this proves impossible as well, he appoints a custodian, instructs the latter about his rights and obligations, and delivers to him the removed items for deposit at the debtor's expense. If the debtor fails to pick the chattels at the request of the custodian within the assigned deadline, not shorter that 30 days, the court, on the motion of the custodian and having heard the debtor, orders sale of the chattels. If the movables are of no market value or the attempts to sell prove ineffective, the court will decree an alternative manner of the things' disposition, which may even imply their destruction.

- are there any special rules of conduct in the event of eviction in cases of domestic violence or transgression of house rules and regulations

Should the tenant grossly or persistently infringe on house rules and regulations in a manner which makes enjoyment of other units in the building bothersome, another tenant or owner of another unit in the same building may bring and action for dissolution by court of the legal relationship empowering him or her to enjoy the unit and ordering his or her eviction.

A co-tenant may file a suit for an order of eviction referring to his or her spouse, ex-spouse or other co-tenant in the same unit if the latter precludes common dwelling with his or her grossly reprehensible conduct.

The court may deny the right to a social unit, especially if the order of eviction is being issued on grounds of transgressions against house rules and regulations.

The provisions on award of a social unit and the so called winter moratorium are not applicable where the cause for eviction is domestic violence or gross or persistent transgression against house rules and regulations or improper conduct which makes enjoyment of other units in the same building bothersome. The same applies to instances of occupancy without a valid tenure.

Case 6. Rent increase

A wants to increase the rent of residential premises. How can this be done and does the tenant have any special rights once a rent increase is implemented?

Answer

- how does the unilateral rent increase procedure look like?

“A” may increase the rent or other fees for use of the unit, by giving respective notice at the latest at the end of a calendar month, in observance of statutory or contractual notice periods. The period of notice regarding rent increase or other fees for enjoyment of the premises (generally classified as partial termination of the agreement) is generally 3 months unless the parties have provided for a longer term in their contract. It is not possible to shorten this minimal duration. Partial termination of this type must, under the pain of nullity, be made in writing. For evidential purposes, “A” should obtain a certificate of delivery of the notification to the tenant.

The value of rent increase may not be arbitrary. It is generally not admissible that the yearly amount of rent should overstep 3% of the unit's replacement value. Only in so called justified cases may this ceiling be exceeded. Under the term "justified cases" the following is understood:

A) Situation in which “A” does not receive income from rent or other fees for use of premises at the level which would allow to cover expenses connected with the unit's maintenance and assure profit. Any increase which allows to attain such level of proceeds is considered justified, as long as the rent is kept within the limits allowing for:

a) return on capital at the annual rate lower than:

- 1.5% of outlays made by the owner on the construction or purchase of the unit; or

- 10% of expenses sustained by the owner on permanent improvements of the unit which increase its value in use.

b) reasonable profit; the notion of “reasonable profit” is evaluative, and actualisation of the concept has been left over to courts and the legal doctrine;

B) Increase of rent or other fees for unit enjoyment which does not surpass in a given calendar year the average annual increase of the Consumer Price Index for the previous calendar year; the average annual increase of the Consumer Price Index for the previous calendar year is announced as communication by the President of the Central Statistical Office in the Official Journal of the Republic of Poland "Monitor Polski."

At the tenant's written request, the owner has to present him or her with a written justification of the increase, setting out its reasons and calculation, within 14 days of service of the request, under the pain of invalidity of the increase.

- does the tenant have any other rights in relation to rent increases?

Within 2 months as of the date of increase of rent or other corresponding fees, the tenant may:

1) decline in writing to accept the increase, which results in termination of the contract under which the tenant occupies the premises upon expiry of the period of notice; or

2) question the rent increase by bringing an action for ascertainment that the increase is not legitimate, at least not in the actual amount; the burden of proof concerning legitimacy of the increase rests on the landlord “A.”

Case 7. Squatters

A has moved into a shed located in an allotment garden with without B’s (the owner’s) knowledge or permission. May such a shed qualify as residential premises and A be treated as a tenant?

Answer

“A” occupies a shed located on a garden plot without the owner's consent.

- what conditions should be met by premises to be considered a housing unit?

Under art. 2(1) item 4 TPA, a housing unit has been defined as a unit which serves residential needs, as well as a unit used as a studio in which cultural or artistic activity is carried on. In the understanding of the TPA, a lodging destined for short-term stay is not a housing unit. In particular, the latter refers to premises located in the buildings of boarding-houses, dormitories, guest-houses, hotels, resort homes or other buildings used for tourist or recreational purposes.

In case law, it is generally stressed that a shed cannot be classified as a housing unit in the understanding of the TPA, even if the occupier intends to live in such conditions. Garden sheds as such are understood to fulfil tourist and recreational needs of the population.

- is “A” classified as tenant and should all provisions on tenant protection covering eviction procedures apply in such situation?

“A” is not deemed to be a tenant and, consequently, does not enjoy the privileged position offered by the TPA statutory framework, not only because of the fact that a shed is not a housing unit in the understanding of the Act but also with a view to the fact that the tenant protection regime does not apply to so called squatters.

Case 8. Short leases

A (lessor), who is a natural person and does not conduct any business activity has entered into a lease contract of residential premises with B (tenant), who is also a natural person. The contract was signed for the term of 2 years, and A has reported it to the tax office.

Answer

- is “A” protected in any special way

The contract concluded between the parties makes a so called occasional lease arrangement. The lessor “A” gains, upon fulfilment of a number of additional

requisites, much more preferential position in respect of repossessing the unit once the lease expires.

If the incidental lease contract of the unit has been appended with:

1) a statement of the lessee “B” executed as notarial deed in which the lessee submits to voluntary vacation and delivery of the unit within the deadline determined in the request for vacation. In such instances, the lessor “A,” having obtained the enforcement clause attached to the notarial deed may at once start the formal execution of the duty to hand over the premises;

2) designation of another lodging by the lessee where he or she will be able to stay in the event of execution of the duty to vacate the unit. This is to assure smooth run of execution without the need to wait for assignment of temporary premises by the municipality. This statement should be supplemented by the declaration of the owner of the alternative unit or another holder of tenure in that lodging of consent to accommodate the lessee along with his or her household members.

If, upon expiry of the contract, lessee “B” continues to occupy the unit, it is necessary to deliver to the tenant a written demand to vacate the premises in order to initiate the simplified procedure of eviction. The Landlord's (A's) signature on the notification ought to be officially certified.

- is it possible to identify any subtypes of housing lease, and what differences can be spotted among such subtypes?

One ought to distinguish between two basic types of housing leases: lease on general terms and incidental lease. Incidental lease is characterised in particular by far reaching simplification of the eviction procedure, absence of the right to a social unit of the incidental lessee, no limits with regard to admissibility of rent increase or more straightforward mode of contract termination for reasons specified in the agreement.

Case 9 – sale of an apartment building

A owns an apartment building in which all the apartments are rented housing units. A sells the building to B, who would like to terminate all leases and remove all tenants.

1) Can B terminate the leases by giving notice within statutory notice periods?

2) Is the situation different if some leases concern retail premises or offices?

3) B is unsure if he can terminate leases but proceeds to shut off water and electricity supplies claiming the installations are hazardous and need major repairs, thus hoping to drive the tenants away.

Answer

The purchaser of leased residential premises has no rights to terminate them by virtue of the fact that he is a new landlord. On general terms, he does have such a right with respect to non-residential leases. As regards residential lease, however, the tenant protection regime steps in. In reference to leases falling under the TPA regulation, unilateral termination is possible only in situations expressly provided for in the Act, predominantly in art. 11 TPA. Landlord succession has not been considered among permissible grounds for termination.

General terms referring to lessor succession in all non-unit leases have been set forth in art. 678 PCC. By operation of law, the buyer becomes the new lessor, and may terminate the contract at a statutory notice period. The buyer's right to terminate has been excluded where the tenancy had been entered into for a specified duration at an officially certified date (such contracts are generally executed by a notary; see art. 678(2) PCC), and the object of lease has already been delivered to the lessee.

However, the special character of units (whether residential or commercial) called for specific legislative solutions. Under art. 692 PCC, early termination by the buyer is only possible with regard to housing leases in instances where the unit has not been yet delivered to the tenant. If a lessee had received the unit before it was sold, the new landlord may only terminate the tenancy if the contract was for unspecified duration[699] and in the event of fulfilment of one of the prerequisites for termination specified in art 11 TPA. Other than that, the buyer may terminate tenancy under art. 673(3) in the case of special circumstances as long as they have been expressly stated in the contract. Yet, as pointed out above, the TPA provisions envisage no grounds for termination in situations of landlord succession.

Consequently, in practice, landowners attempt to drive the tenants away by imposing conditions impossible to live in or by drastically increasing rents which used to be regulated. This can be done only within the frames of art. 8a TPA. It is difficult to find an appropriate solution in such situations because in the case of older buildings it is fairly easy to prove that old installations are hazardous and need to be shut down, even if this is done in bad faith. On the other hand, tenants usually expect the owner to fully repair the building, but without any rent increases.

Case 10 – registration of tenants as residents

A is a tenant of residential premises and would like B, the owner, to allow him to register the address of the leased premises as his place of residence. This is helpful and sometimes necessary for certain official documents, court proceedings, a bank loan, etc. B refuses to do so, because he is afraid that the registered tenant will not be willing to deregister once upon moving out. Who decides on registration?

Answer

Technically, registration, as such, is not correlated to any type of tenure. It neither gives rise to any right or obligation nor certifies existence of such rights. If certain officials are prone to enforce civil law “rights” following from registration of tenants, it is due to their ignorance of the currently binding legal regulation. For instance, de-registration of a tenant does not affect the tenancy itself, along with the ensuing legal protection. The obligation to register a tenant, which encumbers the landlord, is thus purely administrative. It has been preserved mainly for statistical purposes, which has been expressly stated in art. 10(2) RPICA.

Registers are kept by municipal authorities. Registration is permissible only at the consent of the premises' owner. However, deregistration takes place only if the tenant consents. Although registration does not entail any right to occupy premises, it

[699] SC judgment of 22 May 1973, III CRN 95/73, OSP 1974, no. 5, item 93.

is not uncommon to find police officers who still think that it does. Therefore, a tenant who left and failed to deregister may return and attempt, with the help of the police, to enter the premises.

Additionally, the sale of units with virtual "tenants" who have not been deregistered is practically impossible.

In fact, the law allows the owner to deregister a tenant if the owner manages to prove that the tenant no longer occupies the premises. In practice, however, many local authorities would not allow owners to do so.

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Annex 4.
List of Abbreviations

TPA	–	Tenants Protection Act
RTHBA	–	Residential Tenancies and Housing Benefits Act
PCC	–	Polish Civil Code
PCCP	–	Polish Code of Civil Procedure
RPMA	–	Real Property Management Act
HCA	–	Housing Cooperatives Act
UOA	–	Unit Ownership Act
ACFSBI	–	Act on Certain Forms of Support for the Building Industry
LMRA	–	Land Register and Mortgage Act
LCA	–	Law of Cooperatives Act
CLA	–	Construction Law Act
HBA	–	Housing Benefits Act
SWA	–	Social Welfare Act
HULA	–	Housing Units Law Act
MSGA	–	Municipal Self-Government Act
RPICA	–	Registration of Population and Identity Cards Act
SC	–	Supreme Court
CT	–	Constitutional Tribunal
SAC	–	Supreme Administrative Court
MoP	–	Minitor Prawniczy (journal)
Prok. i Pr.	–	Prokuratura I Prawo (journal)
KPP	–	Kwartalnik Prawa Prywatnego (journal)

PPH	–	Przegląd Prawa Handlowego (journal)
OJ	–	Official Journal
Przegl. Legisl.	–	Przegląd Legislacyjny (journal)
PiP	–	Państwo i Prawo (Journal)
EPS	–	Europejski Przegląd Sądowy (journal)
Rej.	–	Rejent (Journal)
SPP	–	Studia Prawa Prywatnego (journal)
TPP	–	Transformacje Prawa Prywatnego (journal)
Biul. SN	–	Biuletyn Sądu Najwyższego (journal)
OSN	–	Orzecznictwo Sądu Najwyższego (journal)
BGK	–	Bank Gospodarstwa Krajowego (journal)
ADA	–	Anti-Discrimination Act
BRLA	–	Bankruptcy and Reorganisation Law Act
DVPA	–	Domestic Violence Prevention Act