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Housing Law in Poland—From the Cooperative Model to Flat Ownership

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Abstract

In Poland, the housing system is currently based on cooperative apartments and the ownership of premises. This is due to historical conditions, because in the post-war period it was decided to foster cooperative housing; while the development of private property was impeded. After 1989, there were rapid economic and social changes, which also affected the real estate sector. It became possible to buy cooperative flats for ownership. The construction of new apartments was rapidly started and a development market was established. The owners of tenement houses made efforts to return the taken property, many of them regained the buildings, although their technical condition was very bad. There is a shortage of apartments in Poland, both available for purchase and for rent. In this chapter, I intend to present the current ownership status of apartments in Poland and the process of changes that took place, but did not solve the problems.

Keywords: cooperative housing, ownership of premises, flat, polish law, housing law, development system

1. Introduction

The rapid development of cities in Poland began with the beginnings of industry, at the end of the 19th century, when the country was under partitions. The inter-war period, i.e. the years from 1918 to 1939, was the time of the formation of the real estate market in Poland and of intense changes in the housing market. The shortage of flats continued throughout that time, and many of the rental flats available on the market were of a very low standard [1]. In the literature on the subject, attention was drawn to the very poor housing conditions of a large part of the society [2]. The influx of people from rural areas to cities in search of work increased the shortage of flats. The emerging cooperative movement became one of the pillars of the development of the housing sector. On October 29, 1920, the act on cooperatives was passed (Journal of Laws of 1920, No. 111, item 733), which created the legal basis for the establishment of housing cooperatives. Pursuant to that regulation, cooperative construction was initiated as part of housing and ownership-construction cooperatives. During the existence of the Second Polish Republic, housing cooperatives built about 100,000 flats. Importantly, the activities of the cooperatives were aimed at the needs of poorer people, who had been exploited by the owners of tenement houses. The estates were to meet high social standards, include playgrounds, schools, recreation places, cultural centers, cooperative shops

and bars, or canteens. There were also cooperatives providing housing for intellectuals (officials, teachers) [3]. An alternative idea for the development of housing in Poland was the adoption of the concept of the legal separation of premises. On October 24, 1934, the Ordinance of the President of the Republic of Poland on the ownership of premises was issued (Journal of Laws of 1934, No. 94, item 848). It made it possible to separate premises within buildings and sell them freely, resulting in the creation of housing communities. However, the lack of wide access to loans meant that until the end of the interwar period, separate ownership of premises remained a sporadic phenomenon [4].

After the Second World War, the reconstruction and development of the housing stock were the basic challenges for the liberated country. The destroyed buildings were rebuilt and new ones were built. In Poland, called the Polish People's Republic (PRL), a vision of a socialist state was implemented, in which private property was treated as a relic of the pre-war system. For this reason, the owners of tenement houses that had survived the war or were rebuilt after the war, were deprived of the possibility of renting them freely. The institution of rental control was introduced as part of the public housing economy [5]. It consisted in the fact that the state authorities decided who was to occupy premises in private tenement houses, without the will of their owners. The tenant received an administrative decision, under which he was allocated an flat or a part of the flat, e.g. one room only. In this way, two or even three families were often accommodated in large flats. This system of administrative lease regulation was maintained in Poland for a very long time, and even in the 1990s, many premises were occupied by council tenants.

The people's authority fought against private property and legal regulations introduced control of real property transactions. In the nineteen sixties, control was focused on the development of cooperatives, recognizing that this was the right way to increase the number of flats on the market. Housing cooperatives were established in each locality and only they were permitted to build multi-family buildings with the help of state-owned construction companies. Private construction companies did not exist at that time. The free market did not exist and construction processes were centrally controlled within the model of the command-and-control economy. Anyone who wanted to get an flat had to join a housing cooperative and wait, sometimes for many years, for the flat to be allocated. The final cost of building flats was borne by their tenants - members of housing cooperatives, who had to pay for the so-called housing contribution (key money). This shifted the burden of financing the construction of new buildings from the state to members of housing cooperatives [6]. In the nineteen seventies, more than 123,400 cooperative flats were completed [7], which was a record number. The cooperative housing estates built in different towns looked very similar: the same technology and uniform designs were used. The socialist states at that time adopted the large slab (a method of constructing buildings, consisting in assembling them on the construction site from large-size prefabricated concrete or reinforced concrete elements) as the basic form of housing construction [8]. During that period, numerous prefabricated buildings were erected in Poland and the number of flats increased quite significantly, although there were still too few of them in relation to the needs. Individual construction was marginalized, only repetitive designs with specific parameters were allowed. The area of the house could not exceed 110 m².

Company flats were a characteristic element of the housing reality of the Polish People's Republic. They were built close to workplaces, and the assignments were usually given to employees with long-term employment. They were part of the property of a given workplace. They were, depending on the size of the enterprise, single blocks of flats or even entire estates built up with residential buildings and infrastructure. A company flat was usually the only alternative to a cooperative flat.

2. Changes after 1989 in Poland and their impact on the housing market

After 1989, Poland underwent a political, economic, and social transformation. The command-and-control economy model was replaced with the free market economy model. Legal solutions were introduced that allowed the running of a business by private persons without restrictions. The possibility of creating commercial companies, and freedom of trade and services were restored. The process of privatization of enterprises which until then had been uniformly owned by the state was initiated. The banking sector was commercialized and the centralization of the economy was abandoned [9]. Restrictions on land ownership were lifted, and it became possible to acquire freely real estate and recover plots of land and buildings taken over by the state in the past. The rules of lease control were abandoned, but the privileges of tenants who, in the previous period, obtained the right to premises on the basis of housing decisions were retained, which significantly limited the owners of tenement houses in exercising their ownership rights.

The restoration of local government, in which local authorities were the basic units, was a very important element of the changes. Municipalities were equipped with land, including that built up with residential buildings. As a result of this process, known as communalization, municipalities became the owners of numerous residential buildings, taken over from workplaces or from the state, together with tenants. The buildings were very often in a very poor technical condition as a result of many years of neglect.

The transformation of the 1990s also had its negative side - bankruptcy of many enterprises, loss of jobs by part of society, and the rise of record breaking unemployment and hyperinflation. Many buildings built by state-owned enterprises were sold to other entities with tenants, or transferred in various forms, to local authorities, or housing cooperatives. There was still a shortage of flats on the market in Poland, both for sale and for rent.

The legal system in Poland was completely rebuilt, and over the years, all important legal acts have either been amended or enacted anew. In the field of civil law, private property has regained its prominent place. Modern construction law regulations and provisions regulating the rules of spatial development and real estate management have been developed. Real estate began to be perceived, not only in terms of utility for meeting the housing needs of the family, but also in terms of investment. On June 24, 1994, the Act on the ownership of premises was passed (Journal of Laws No. 85, item 388), which regulated, inter alia, the institution of a housing community, the construction of the right to separate ownership of premises, and the rights and obligations of owners of premises. Pursuant to this act, it became possible to separate premises in all multi-family buildings, both those newly built and those that existed at the time of entry into force of this act. A market of flats purchased as investment has emerged, and not only for satisfying one's own housing needs. This act initiated the growth of the development market in Poland, which was quickly gaining in importance. In this way, the monopoly of housing cooperatives for the construction of multi-family buildings was abolished.

3. Changes concerning cooperative housing

Until the 1990s, housing cooperatives played a dominant role in meeting housing needs in Poland. They functioned on the basis of the Act of September 16, 1982, Cooperative Law (Journal of Laws No. 30, item 210). It was not until December 15, 2000 that the act on housing cooperatives was passed (Journal of Laws 2001, No. 4, item 27), the aim of which was to create separate legal rules

for the functioning of housing cooperatives, providing cooperatives with greater control of the cooperative's management.

The main goal of the operation of housing cooperatives is to satisfy the housing needs of members of the cooperative and their families. Setting up a cooperative is simple - the minimum requirement is ten founders. A housing cooperative is a legal person, and within it there is a general meeting of members of the cooperative as the highest body, as well as the supervisory board and management board that conducts the day-to-day affairs of the cooperative. The members of the cooperative acting jointly form the general meeting of cooperative members, which must be convened at least once a year. The equality of its members is the principle of the cooperative.

Currently, Polish regulations distinguish two types of rights to cooperative premises that may be granted to members of a cooperative: cooperative tenant rights to a dwelling and cooperative ownership right to a dwelling [10]. Previous regulations also concerned the right to a single-family house in a housing cooperative. The statutes of each cooperative indicate what types of rights the cooperative offers to its members. Each of these rights arises under an agreement concluded by the cooperative with its member. Membership in a housing cooperative is currently granted by law to everyone who is entitled to use the cooperative rights to the premises.

A co-operative tenant right to a dwelling is a right similar to tenancy. A contract specifies the amount of the housing contribution to be made by a member of the cooperative. Only one person may be entitled to it, with the exception of spouses. The cooperative remains the owner of the flat, and the tenant is entitled to use the premises and is obliged to pay the fees. This right is not transferable and not enforceable. In the event of the tenant's death, this right expires, in some cases it is possible for a relative (spouse, children) to enter into the right.

The cooperative ownership right to the premises is included in the category of limited property rights. This right is similar in content to ownership, although the housing cooperative remains the owner of the flat. It may belong to several people. This right is transferable and hereditary, and can also be enforced. A land and mortgage register may be established for such premises, and it may be the subject of collateral in the event of taking out a mortgage. Housing cooperatives are required to keep a register of premises for which a land and mortgage register has been established. Most of the cooperative flats are still operating in the legal form of the cooperative ownership right to the premises, despite the fact that since 1997 its creation has no longer been possible.

The cooperative ownership right to a dwelling was a surrogate for the ownership of a dwelling at a time when the provisions of Polish law did not provide for the legal structure of separate ownership of premises in multi-family buildings. Currently, the legislator considers the cooperative ownership right to the premises to be a redundant form in view of the most powerful form of holding the premises, which is the ownership of the premises. At the same time, the legislator does not interfere with existing rights, and does not force cooperative members to transform them into ownership, but provides such a possibility. Pursuant to the provisions of the Act on Housing Cooperatives, at the request of the entitled person, the housing cooperative is obliged to separate the premises and sell the right to ownership. A member of the cooperative is obliged to pay all fees related to the maintenance of such flat, as well as to reimburse the costs of building the flat, if they have not been covered yet. In addition, the housing cooperative is not allowed to charge any fees for the conversion of rights to the premises. In this way, a housing community may be established in a building previously managed by a housing cooperative, and a departure from the cooperative management regime to the rules of the Act on the

Ownership of Premises may occur. The trend is noticeable of the loss of management over some buildings by housing cooperatives. This is owing to the separation of the ownership of the premises in them and the decision to entrust management to an entity other than a housing cooperative. Thus, in the resources of housing cooperatives there may be separate premises, which have been created either as a result of the transformation of cooperative rights to premises, or as a result of the construction activity of the housing cooperative after 1997, i.e. when the possibility of creating cooperative ownership rights was abolished.

The number of cooperative flats made available for use in Poland is gradually decreasing. In 2000 there were 24,400 of them, and in 2010 only 5,025 [11]. According to the data as of December 31, 2018, there were 2,030,000 cooperative flats in total (out of a total of 14,615,000 flats in Poland) [12], which means that the number of cooperative flats is still very large. Large housing cooperatives operate in many Polish cities, managing housing estates built in the 1970s and 1980s. Currently, they focus on maintaining the good condition of buildings that require renovation, so their activities are limited to management only. In addition to large cooperatives, there are also small ones that have one or several buildings in their resources. Housing cooperatives in Poland may still carry out construction investments, and the premises may be handed over for use either on the basis of a cooperative tenant's right to a dwelling, or sold as a separate ownership of the premises. Currently, however, the activity of housing cooperatives in the area of erecting residential buildings is small.

4. A new trend - ownership of premises

The beginnings of the free market in the area of housing in Poland were characterized by dynamic processes consisting in the starting of activities in the area of housing construction by entities other than housing cooperatives. The construction of buildings for the purpose of creating company flats was stopped, as most of the workplaces were undergoing a deep restructuring and were getting rid of their property, or went bankrupt. In response to the needs of the housing market, a category of entrepreneurs which we call developers was created dealing with the construction of buildings and the sale of flats. They carried out the entire investment and construction process, partially from their own funds in conjunction with investment loans, and partially from the funds paid in by flat buyers, also from mortgage loans. The number of flats put into use in the developer system grew very rapidly. In 1995 it was 2,800 flats, in 1998–9,000 flats, and in 2004 - as many as 24,300 flats [11].

Many people in the late 1990s and early 2000s decided to buy a flat in the development system, either to meet the housing needs of their own family, or for investment purposes. At that time, the demand for new flats was huge, and it was considered that those built by developers were more attractive. This was owing to the fact that multi-family buildings were erected by developers using modern technologies, according to individual designs in the shaping of functional and spatial layouts of flats. As a result, they differed significantly from the uniform, repeatable shapes of blocks of flats erected earlier by housing co-operatives.

However, the lack of appropriate legal regulations, in particular in the area of consumer protection, sometimes resulted in negative phenomena, which entailed the loss of funds paid by those interested in buying flats. There were cases of bankruptcy of developers and other cases of failure to perform contracts owing to the fault of the developer, and the financial loss was suffered by people waiting for flats, which was a serious problem in the early period of growth of the development

market in Poland. The imposition of contract templates by developers was an important problem, which resulted in a worse position of the consumer [13]. In this case, the free market led to behavior prejudicial to the weaker party to the contract, which was the buyer of the premises, and there was no legal regulation to protect the contractor.

The problem of the protection of flat buyers has been discerned in the literature [14] and in the jurisprudence of courts. On September 16, 2011, the act on the protection of the rights of buyers of a flat or a single-family house (Journal of Laws No. 232, item 1377), in Poland commonly known as the Developer Act, was passed. This regulation appeared relatively late, as appropriate legal provisions were already in force in other European Union countries. This act applies to the primary housing market. Its main purpose is to protect the rights of buyers of flats or single-family houses as part of legal relations with entrepreneurs professionally involved in erecting buildings. Before concluding a contract with a potential buyer of premises, the developer is obliged to provide the buyer with full information on its legal status, a history of completed investments, and details of the planned investment. The regulations impose an obligation on the developer to prepare a prospectus in accordance with the template specified by the legislator. The standard of performance of the flat and its price must be agreed at the stage of concluding the developer contract. This means that the buyer of the premises, even before the construction of the building, receives information about how the building was constructed, its interior and knows the price for which the apartment is to be purchased. Another example of securing the rights of the buyer of premises is the statutory definition of the minimum content of the development contract, which must be concluded in the form of a notarial deed. The claim to build the premises and transfer its ownership to the buyer is entered in the land and mortgage register. Another important factor is the obligation for developers to set up special bank accounts dedicated to a specific investment, the funds from which cannot be allocated to other projects. Owing to the introduction of this Act, the buyers of premises gained effective legal protection in their relations with developers. Currently, the developer construction market in Poland continues to grow, with 130,900 flats delivered for use in 2019 [11].

In April 2021, a new developer act was adopted - the act on the protection of the rights of buyers of a flat or single-family house and on the Development Guarantee Fund, which is to replace the 2011 Act. The purpose of introducing the new act is to increase the protection of buyers of premises, improve the security of legal transactions, and increase the level of acceptance of the regulations by entrepreneurs. The range of the act was extended to the purchase of garages and commercial premises. The new act provides for the establishment of a Development Guarantee Fund, to which developers will pay contributions. Guarantees of payment from this Fund will cover all contracts concluded by the developer with the buyer of premises. Raising the standards of protection of the flat buyer will make the purchase transactions of flats or premises for other purposes on the primary market safer for buyers.

Housing communities are established by law in multi-family buildings where the premises are separated for ownership. Polish law distinguishes between small and large housing communities. According to the current regulations, a small community has up to 3 separate premises, so there are few of them and they do not play a significant role at present. Housing communities in Poland do not have legal personality, but have been endowed with legal capacity, so they are entities separate from their members [15]. Their basic role is to manage the common property, i.e. to maintain the building and the area around the building in a proper condition, and conclude appropriate contracts with service providers. The owners of the premises are obliged to bear the costs of maintaining the common property by making advance payments to the bank account of the housing community. A share in the

communal areas is a right related to the ownership of the premises, which means that the sale of these rights is only possible jointly.

The management regime in large housing communities is based on the distinction between essential activities, which are decided jointly by all owners of premises by a majority of votes, and ordinary activities, where the management decides [16]. The owners of the premises or people from outside the group of owners may be elected to the community board. The community board conducts current affairs and represents the housing community. In a housing community, a manager may be appointed under a contract, then the community board is not elected. Each owner has the right to share control of the activities of the board, which includes inspection of the community records and the right to know all relevant information. Voting in the housing community is proportional to the shares in the communal areas, which means that the person who has a larger flat has more votes. The same rules apply to the costs of the communal area - in proportion to the size of the share.

The functioning of housing communities in Poland is based on simple and clear rules. It works perfectly in the case of small and medium-sized communities, as it provides real influence on the part of each owner of the premises on the decisions made by all owners. Sometimes, however, housing communities have several hundred flats which, with such a large number of owners, may cause practical problems related to the management of the real property.

Flats in housing communities are very popular, especially in new buildings, in newly built housing estates. Buyers of flats very often use mortgage loans, thanks to which they can afford to buy a flat. In 2018, there were already more flats in housing communities in Poland than in housing cooperatives, the statistical data indicate the number of 2,967,000 flats [12].

5. The current status - the path to sustainable housing

After thirty years of development of the housing sector in Poland in free market conditions, it should be stated that it is very diverse and is constantly changing. The housing situation was undoubtedly culturally determined, but most of all it resulted from the adopted social policy and economic development strategy. The housing shortage turned out to be an inherent feature of Polish reality, characteristic of both the extreme inequalities of the interwar period, the egalitarianism of the Communist system, and the new economic situation [17]. The period of cooperative construction has irretrievably passed, but a huge number of flats still remain in the cooperative stock. In addition to modern, comfortable housing estates in many cities, there are districts with neglected buildings that require enormous expenditure on insulation or renovation. Housing estates erected by housing co-operatives in the 1960s and 1970s require a special renovation effort. Actions are required in the technological and architectural sphere, as it is necessary to improve the functional quality of flats, and sometimes to add balconies or lift shafts. It was only in 1997 that Polish law introduced an obligation to take into account the needs of disabled people when designing and constructing buildings. However, most multi-family buildings built before that year have not been adapted to the needs of disabled people, and their adaptation is often impossible because of narrow staircases or corridors inside the premises, or a very small size of the rooms.

For years, various types of instruments have been introduced to improve the housing conditions and the condition of buildings erected in the pre-war period, or in the times of the Polish People's Republic. Such instruments include bank loans granted on preferential terms to housing communities or housing cooperatives for renovation purposes, and renovation bonuses granted to tenement house

owners who carry out their renovation. The problem concerns not only the flats and buildings in which the flats are located, but also the surroundings. The priority is to restore the balance in towns and cities so that they provide good conditions, not only for housing, but also for spending leisure time. Social expectations are growing not only with regard to the standard of the dwelling itself, but also the standard of the living environment.

Poland's accession to the European Union, which took place on May 1, 2004, caused changes also in the housing market. Numerous legal acts had to be adapted to the standards in force in the member states. Thanks to various types of aid programmes, it has become possible to restore valuable historic buildings, and the beneficiaries of the aid include municipalities and religious associations.

The condition of the historic parts of cities is currently very different, apart from the restored tenement houses, there are also some that require thorough renovation. Therefore, on October 9, 2015, the Revitalization Act (Journal of Laws 2021, item 485) was adopted, the purpose of which is to provide a legal framework for the processes of renewal of cities and smaller towns. These processes are carried out by the relevant municipalities, on the basis of communal revitalization programmes, and they consist in removing dilapidated areas from their critical condition through integrated activities concentrated territorially for the local communities, space and economy. The participants of the revitalization processes are residents of the revitalization areas as well as owners, perpetual usufructors of real estate and real estate managers located in that area, including housing cooperatives, housing communities, as well as the local and public authorities. As part of revitalization programmes, damaged city areas, such as postindustrial sites, are restored.

Gradually, measures are also taken to improve the air quality in cities. For years, subsidy programmes have been in place for individual building owners to replace coal stoves with other heating systems. From 2020, there is an obligation in Polish law to connect newly built buildings to the municipal heating network in order to avoid equipping new or renovated buildings with systems emitting exhaust fumes.

In many places, on the initiative of local authorities, numerous measures are taken to improve the quality of life, increase the amount of green areas, and build or restore areas for recreation. In the development programmes of numerous municipalities, the improvement of living conditions in cities is an important goal for the implementation of which various activities are undertaken. Parks, squares, and riverside areas, which for years have remained neglected and unused by the inhabitants, are being revitalized. Much emphasis is also placed on expanding telecommunications networks to ensure universal access to the Internet.

The development market is growing, but the demand for new flats is not weakening. According to the data from 2018, 84% of Poles live in their own flats, and only 16% in rented premises [11]. This proves that the ownership of a flat is of great importance as a right that ensures financial stability and the security of the family's existence. As it seems, for people born before 1980, this may be the result of experiences from before the transformation period, when house ownership was unavailable and housing cooperatives or work establishments remained almost the sole suppliers of housing. The Polish housing market still remains a market in a period of growth, which will probably take place until the housing needs of the society are met.

6. Summary

The history of housing law in Poland has resulted in numerous changes in order to search for solutions that would ensure an increase in the number of flats.

Concepts changed as the socio-economic system changed. After the Second World War, the cooperative model was dominant, assuming obligatory membership in housing cooperatives. Until the 1990s, housing cooperatives played a dominant role in meeting housing needs in Poland. After 1989, Poland underwent a political, economic, and social transformation. The command-and-control economy model was replaced with the free market economy model. In response to the needs of the housing market, a category of entrepreneurs which we call developers was created dealing with the construction of buildings and the sale of flats. Then, legal regulations relating to the activities of developers were developed. Housing communities are established by law in multi-family buildings where the premises are separated for ownership. The period of cooperative construction has irretrievably passed, but a huge number of flats still remain in the cooperative stock. After thirty years of development of the housing sector in Poland in free market conditions, it should be stated that it is very diverse and is constantly changing. The housing situation was undoubtedly culturally determined, but most of all it resulted from the adopted social policy and economic development strategy. The housing market in Poland is still in a phase of dynamic growth and ways are being sought to increase the number of housing units available for purchase or rent.

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