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Development of the housing market in Poland and potential for rentals

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

The most burning problem regarding the housing situation in Poland is the scarcity of residential units. The number of units per 1000 citizens is, following Albania, the second lowest in Europe.¹ This problem and its scale has multiple grounds and needs much time, as well as political attention to be properly addressed. In 2008, the proportion of houses constructed 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 to a satisfactory level. The increase in the number of permanently occupied units was actually lower between 1989 and 2002 (8.5%) than in the years 1979-1988 (14.9%).³ In mid nineties, nearly 30% of units in municipal buildings in the cities still came from before 1918, with only every tenth constructed after 1970. Staff units owned by companies are much younger. Almost half of their total located in the cities derive from the period following 1970. Before the political transformations, all residential units in private tenement houses came from before 1945.⁴

The condition of private tenements has also been quite severe because of formerly regulated rents which may not be freely raised even now that they finally became negotiable.⁵ It must be admitted, though, that certain state interventions were justified by plain necessities. Apparently, not only communist authorities were not particularly fond of landlords. Already in 1919 the government froze rents at the 1914 rates.⁶ As another war was coming to an end, in 1944 the communists only followed the same pattern, affixing rents at pre-war values.⁷ Unfortunately, this time devastations were more widespread, and such measures did not

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).
⁵ Following the enactment of the Tenants Protection Act of 21 June 2001.
⁷ PKWN Decree of 7 September 1944 on housing commissions, Official Law Journal 1944, no. 4, item 18.
facilitate necessary restorations of the aging tenements in private hands. In practice, they ousted - not without actual intention 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 position of landlords, who could not duly exercise their ownership rights, was not enviable 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 make a fair profit on their own property.\(^9\)

Before World War II, the government spent less than 1% of the central budget on the 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 latter half of the 20'th Century and still take up a considerable portion of the market.\(^11\) In 1938 in the whole country there were 189 construction and housing cooperatives with 10,3 thousand members. According to legislation binding at that time, they would became owners of the erected premises. In additional 50 housing cooperatives of another type in which the ownership was retained by the cooperative, whose members became tenants vested with a \textit{sui generis} tenure.\(^12\)

Scarcity of housing premises was already noticeable at that time. Shortly before the war a statistical unit was occupied by 4.83 persons. The situation was particularly difficult in rural areas in the Eastern Poland. In 1938, shortly before the war, a statistical 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 tenants already exceeded the number of accessible rooms.\(^13\)

The years 1944-49 were a period of intense construction and repairs. The following stagnation in the early 50's was attributable to unnecessary centralization. In 1957 a new policy was developed. Once again, the state began to support initiatives of the local administration, co-operatives and, predominantly, rapidly developing industrial employers.\(^14\)

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\(^8\) M. Frąckowiak, \textit{Ekonomiczne i społeczne problemy...}, 15, 136.  
\(^10\) M. Frąckowiak, \textit{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, \textit{Ekonomiczne i społeczne problemy...}, 19.  
\(^13\) M. Frąckowiak, \textit{Ekonomiczne i społeczne problemy...}, 22-23.  
\(^14\) M. Frąckowiak, \textit{Ekonomiczne i społeczne problemy...}, 22-33.
Despite the decentralization, most of the housing stock in Poland could be categorized as "social ownership." This type of proprietorship was subject to special legal protection. Assets in that category were held not only by the state, but also cooperatives and other non-governmental organizations in pursuance with art. 126\textsuperscript{15} of the 1964 Civil Code. Tenements could be subject to individual property, yet, rental housing was organized by a system of administrative decisions rather than freely negotiated contracts.

After the political transformations of 1989, the legislator had to find a way to make 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 out the interests of landlords, co-operatives and tenants, find the optimal proportion between the urge to introduce free rent and financial standing of the society, between the necessity to restore proper attributes of ownership and the preservation of legitimate tenant necessities, and finally between the calls for switching to market housing economy and the social and political conditions of that time (social awareness and habits which derived from the long-standing system of administrative management in the housing sector).\textsuperscript{16}

In 1988 the deficit of units in the whole country reached the level of 1295 thousand.\textsuperscript{17} In the early nineties, the problem pertained in particular to cities. By 1995 the shortfall increased to 1.4 million.\textsuperscript{18} Citizens’ wealth was even lower and crediting mechanisms were gravely underdeveloped. This had to translate to the general standard of accommodation. Households were sizable, frequently formed by 2 or 3 generations. 12% of urban and 24% of rural population lived in conditions of severe overcrowdedness (3 and more tenants per room).\textsuperscript{19} Surface area of 28.7% urban and 15.8% rural units were not bigger than 40 m\textsuperscript{2}. Also, the quality of the stock was rather poor. It was estimated that at least 33.6% of households lived in substandard conditions.\textsuperscript{20} In 1995 units with basic amenities made for 84% of the urban and 56% of the rural stock.\textsuperscript{21} Housing law amendments adopted in the late 80’s soon proved to be inefficient.

\textsuperscript{15} This provision was repealed in 1990 (Official Law Journal 1990, no. 55, item. 321).
\textsuperscript{17} H. Kulesza, Sytuacja mieszkaniowa w pierwszych latach transformacji w województwach (Warszawa: PAN, 1995), 16.
\textsuperscript{19} H. Kulesza, Sytuacja mieszkaniowa..., p. 17.
\textsuperscript{20} Ibid., 19.
\textsuperscript{21} H. Kulesza, Prognoza mieszkaniowa..., 12. Basic amenities include: running water, bathroom and toilet.
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 framed by the supply of new residential units, which depended on budgetary funds allocated to new investments. Already at the turn of 1992 and 1993, however, the overall change of the economic system in the country resulted in 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 market. At that time, housing premises ceased to be treated as welfare goods and became marketable. Among features particularly relevant to marketability, one can point to their durability, location and costs of maintenance. High prices of such properties outreached financial capacities of many families. As a result, early nineties brought real stagnation to the construction market. Even though the real slump took place in mid-nineties, the decrease in the number of residential units put into use could be already dated back to the eighties. In the early eighties the number of new units would annually total 190 thousand and in 1996 this figure was 62,1 thousand.

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 where 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.

In many ways, the Residential Tenancies and Housing Benefits Act 1994 prescribed compromise solutions which were called for since long. The statute finally lifted the administrative system of allocating units to tenant candidates, setting at the same time restrictions on the maximal value of rent. It 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.

The ownership structure of the housing stock at the beginning of the nineties reflected the policies of previous governments. Private ownership become the preferred form of catering

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24 T. Marszał, 'Zróźnicowanie i kierunki rozwoju...', 8.


26 T. Biliński, H. Kulesza, Czynsze i Dodatki mieszkaniowe..., 15.
for housing needs of the population. Out of necessity, the dominant form of proprietorship in
the cities remained the so called social ownership. This means that the title was held by a
collective entity, most frequently a cooperative. In addition to that, individual ownership
always took a significant portion of the market. In 1988, 32% of urban residential units was in
the hands of private individuals. Including residential units bought out for preferential prices
by their tenants, together with holders of a specific freehold cooperative right, this figure grew
to 45% by 1994.27 For many cooperatives and municipalities, privatization of residential units
was a means to reduce their debt and get rid of unnecessary burden.

In the older stock, where unit size was generally larger, municipal and private ownership
prevailed. Newer units were most often 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 reduced almost to zero. The same
applied to constructions undertaken by state enterprises for their staff/employees.28

Housing cooperatives played a major role in construction investments since the early
seventies. At the turn of the centuries cooperative premises made up nearly 1/3 of the entire
residential stock in Poland. Once unrivaled, the role of these corporate investors began to
degrade already in the eighties, mainly for economic reasons. At that time, the cooperative
sector was responsible for about 50% of new investments (80-100 thousand of units per
annum). In 1998, cooperatives put into use 28 thousand units, which corresponded to over one
third of the construction market.29 Position of the cooperative sector was weakening for yet
another reason. Since the start of economic transitions, a vast majority of tenants have bought
the residential units they occupied or transformed their cooperative tenancies into cooperative
freeholds30 which make a sui generis proprietary right, practically equal to ownership in terms
of content.31

Throughout the nineties, the private construction sector was slowly growing in importance
to become 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 50%.32 Residential units funded by private persons have usually been much

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27 H. Kulesza, Prognoza mieszkaniowa..., 13.
28 H. Kulesza, Prognoza mieszkaniowa..., 15.
29 T. Marszał, 'Zróżnicowanie i kierunki rozwoju...', 10.
30 A. Stefaniak, Prawo spółdzielcze oraz ustawa o spółdzielniach mieszkaniowych. Komentarz,
grzecznotwo (Warszawa: AJP Partners s.c., 2002), 259.
32 T. Marszał, 'Zróżnicowanie i kierunki rozwoju...', 10.
bigger in size than cooperative or municipal units. For instance, in 1997 the surface area of an average apartment built by natural persons equaled to 130.5 m², which doubled the comparable figure for cooperative investments (60.6 m²), and drastically surpassed the average size of municipal units (49.3 m²).33

Since the mid-nineties the portion of developer investments has also gradually grown. Initially, the volume of constructions completed by developers in comparison with the Western Europe was low. Already in 1998, however, these new entities put into use 9 thousand 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. Many of them, however, suffered from constant shortage of equity and hardly met requirements imposed by crediting banks.34 The developers' legal position has not been entirely clear, since up to the present day vital questions regarding essential elements of development agreements on sale of units have not been properly addressed, although the contract as such is now provisionally defined in the Developers Act 2011.35

Municipal, as well as staff housing and investments were in deep recess. The most significant decline concerned employee housing. The number of newly built units in this sector made 1.6 thousand, while in 1998 the same figure amounted to 1.4 thousand, which was more than 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 lodgings for their staff. Quite conversely, they were willing to grant their holdings to other entities and get rid of the financial burden.

Also the municipal stock was gradually shrinking. On average, in 1997 each municipality in Poland built only one residential unit. In the following year the situation improved, although municipalities put into use only 4% of the annual housing 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 and serious repairs have become a necessity, because the aging municipal stock must be slowly replaced in order to maintain the current municipal market share. It should be added that self-governmental property extends not only over assets owned by municipalities, but also the

33 T. Marszał, ‘Zróżnicowanie i kierunki rozwoju...’, 12.
36 T. Marszał, ‘Zróżnicowanie i kierunki rozwoju...’, 11.
37 T. Marszał, ‘Zróżnicowanie i kierunki rozwoju...’, 11.
other two levels of self-government operating in Poland since 1998. Self-governemental housing, however, rests predominantly in the hands of the former. In particular, municipalities have been burdened with the duty to provide residential units to their poorest inhabitants whose income precludes any chances to obtain credit for the own residential unit.38

One of the goals embraced by the legislator in the early nineties was to pass the general tasks related to securing and satisfying the residential needs of the society over to municipalities.39 Units of self-government were thought to be more likely than the State Treasury to reasonably manage the public stock. Municipalities tackled this task by way of successive privatization.40 This process progressed smoothly already in the first years of economic transformations. Rather than whole buildings, municipalities were selling single units. The process was economically justified, because it allowed to cut public spending on housing. Already by the end of the 20'th Century, privatization of the municipal share had led to the emergence of 66,4 thousand condominiums, which in Polish conditions refer to communities of owners managing the common property (e.g. land, staircase, common facilities, etc.).41

In the case of the public stock owned by state enterprises, there was no other way but privatize. Such premises made an excessive financial burden which required constant subsidies. This burden weakened the already meager financial condition of many enterprises. Only in the period 1995-1997, while the Act on Conveying Staff Residential Units to Municipalities and Housing Cooperatives 199442 was in force, 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 residential units in the hands of state owned employers.43

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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.


41 T. Marszał, 'Zróźnicowanie i kierunki rozwoju...’, 16.


43 T. Marszał, Zróźnicowanie i kierunki rozwoju...’, 16.
In 1995 a new form of tenancy for households of low income was introduced by the Act on Certain Forms of Support for the Building Industry 1995.\textsuperscript{44} Social Building Associations (Towarzystwo Budownictwa Społecznego - TBS) are specific entities which may operate as companies limited by shares or cooperatives established by juridical persons. Proceeds from their activity are not to be distributed among their shareholders or members, but invested for statutory purposes. According to art. 27 of the cited Act, the objects of the activity of the Associations encompass construction of housing premises and rental. The rent is calculated in such a way as to cover maintenance and repair costs referring to the stock in possession of the Associations. The terms and conditions of their lease contracts are different from those provided in the Tenants Protection Act 2001,\textsuperscript{45} which (along with the Polish Civil Code) sets out the general legislative 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, however, tenants may have to cover a part of the construction costs (up to 30%). If the income of a particular household should grow and surmount the statutory quota, the tenancy agreement either terminates or the tenants lose the privileged position in terms of rent.

In the early nineties the housing policy and scarcity of residential premises frustrated the mobility of younger generations. Already late eighties saw the process of conveying residential units from the older generation to their children.\textsuperscript{46} The absence of an efficient and transparent tenancy market has only added to the disadvantage of curbing labor mobility across regions. In turn, this leads to the persistence of sizeable discrepancies in regional unemployment.\textsuperscript{47} Even if the labor market has evolved and grown, particularly around major urban centers, the housing market has absorbed such changes much slower. Some of the centers 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 residential stock remaining from the previous decades where industrial activeness has plummeted. This type of discrepancy triggers local and regional price differences. The price for purchasing 1 m\textsuperscript{2} of residential floor area in Warsaw averages PLN 7,626 (approx.


\textsuperscript{46} H. Kulesza, Prognoza mieszkaniowa..., 15.

\textsuperscript{47} R. Kierzenkowski, 'Bridging the Housing Gap...', 6.
EUR 2000), while in the post-industrial Łódź the comparative figure makes PLN 4,900 (approx. EUR 1200).48

II. Social rental housing

Public task is definitely detectible in regard to all municipal tenancies. According 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 terms provided by law.

Social premises as such make a part of the municipal housing stock destined for the poorest households living in harsh conditions, in particular those evicted from other places, e.g. for irregular defrayal of rent. As opposed to the remaining municipal housing resources, in which it is generally inadmissible to make contracts for specified duration, tenancy contracts are in this case concluded for a fixed term, and renewed only where the tenants continue to meet the criteria set by a municipality (predominantly in terms of income). According to the latest available 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 awaiting a municipal unit made approximately 190 thousand. This figure included 90 thousand families awaiting the allocation of a social unit.49

Tenants in municipal lodgings other than social enjoy special protection in the sense that the tenancy contract may not be concluded for a definite period as long as the rented units are not social premises or employee units (art. 5(2) and 20(2) TPA). In addition, rent payable in municipal units is notably lower than by other owners. Oftentimes, income from rent is 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 provided in 2005 for the possibility to introduce 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, especially that there exists an operative system of housing benefits described above, addressed to households in need.50

50 'Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa...', governmental program accessible at http://bip.transport.gov.pl/, 42.
Allocation of a social unit may not only result from the criteria set by the municipal council, but most importantly from judicial decisions. Pursuant to art. 14 of the Tenants Protection Act 2001, in the eviction judgment a court may oblige the municipality to provide a social unit for the evicted debtors, taking into account their enjoyment of the previous premises, as well as their financial standing and family situation. In addition, the cited statute names several categories of persons to whom the court must award the right to social units. These comprise: pregnant women, minors, persons disabled, incapacitated or bedridden, pensioners, the registered unemployed and individuals who meet the criteria set out in the respective resolution of a municipal council (art. 14(4)). This 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.\(^{51}\)

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 study, the housing resources altogether increased only by 816 newly built units, which made for only 3.5% of the overall demand. The number of households applying for a municipal unit totaled 23,293. As a result of long waiting lists, the waiting period in the reviewed municipalities varied between 1 month and 18 years.\(^{52}\) Insufficient state subsidies for municipal housing activities and scarcity of funds at the disposal of self-governments not only entrench housing problems of the inhabitants, but also lead to dilapidation of the existing stock.\(^{53}\) The problem seems most burning as regards 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% of the whole.\(^{54}\)

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

\(^{51}\) ‘Głowne problemy, cele i kierunki programu wspierania rozwoju budownictwa...’, 42.
\(^{52}\) Supreme Audit Office, ‘Realizacja zadań...’, 14.
\(^{53}\) Supreme Audit Office, ‘Realizacja zadań...’, 16.
\(^{54}\) Supreme Audit Office, ‘Realizacja zadań...’, 14.
Apart from municipal holdings, also Social Building Associations fall under the category of social rental housing. In accordance with statutory requirements, rent in their stock is 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 economic dimension in this case is multifold. The TBS stock is characterized by low parameters of heat penetration and frugal consumption of energy needed to heat the premises. This enables precise metering of consumption and individual allocation of the central heating and hot water costs. Bills for central heating and hot water were lower than similar costs incurred in municipal and cooperative units. The survey of the Institute for Urban Development shows that in 2010 total charges for a 50 m² residential unit in the Social Building Association stock occupied by three persons were similar to average bills in municipal premises. However, it is not necessarily the case that the TBS offer is addressed to the poorest tenants. Notably, the value of housing benefits granted in the TBS stock declined, which, by the way, was also the case in municipal and cooperative holdings. This might be due to the observable long term growth in household incomes.55

For many years Social Building Associations proved to be active investors in the social tenancy sector. Even though new constructions were practically brought to a halt after the liquidation of the National Housing Fund, currently there are 79 thousand housing units in their stock. This number seems low as compared to 1063 thousand municipal units, but unlike the TBS resources, the municipal stock consists mainly of old buildings. In order to become a TBS tenant, an individual may have no tenure in any other unit located in the same city. In addition, the monthly income of the household applying for a unit may not exceed the statutory maximum. Pursuant to art. 30 of the Act on Certain Forms of Support for the Building Industry 1995, this income should not overstep the basic quota of 1,3 of an average monthly salary in a given voivodeship - announced before contract conclusion - by more than 20% in a single-person household, 80% in a two-person household and 40% for every additional person.

Liquidation of the National Housing Fund, the former source of funding for social rental construction, drastically changed the scope of TBS investments. Under the current legislation, Bank Gospodarstwa Krajowego, which is a state institution acting on more commercial basis, is to award directly preferential credits to Social Building Associations and cooperatives. The

present statutory framework envisages, however, that proper regulations be issued by the Council of Ministers concerning the entry conditions and proceedings of awarding credit within the governmental aid for social housing. The missing regulations (as they have not been delivered until the present day) are to set, in addition, vital requirements regarding the units and buildings financed by the credits. The lack of respective delegated legislation brought social housing construction to a deadlock, while already in 2008 the demand was estimated to surmount 90 thousand housing units.

Currently, Social Building Associations manage their existing stock. The rules of unit allocation and tenancy conditions are a little different than the general Civil Code regulation. As mentioned above, the advantage of preferential tenancy may be enjoyed only by lower income families. The TBS management are entitled to verify their tenants' income. Every two years before 30 April, each tenant is obliged to submit a written statement reporting the monthly incomes in the household and declare that he has not acquired a tenure in another unit.

Overrunning the maximal income threshold, acquisition of a title to other premises or untimely submission of the financial statement may result in a rent increase notice. In such cases, the Association may introduce free rent, which exceeds 4% of the replacement value. Where the information provided by tenant in the statement turns out to be false, the Association may instantly terminate the tenancy, and if the tenants fail to empty the premises, the Association may claim compensation for wrongful enjoyment of the residential unit in the amount of 200% of the normally payable monthly rent.

Currently, rents in the stock controlled by Social Building Associations are 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 obtained for the construction. Two years ago the government proposed to lift all preferences and introduce the general terms of the Tenants Protection Act 2001. If the proposals succeeded, Associations would be able to apply varying rents in accordance with the type of premises. Moreover, the limitation on the maximal rent value would no longer be applicable. At the same time, tenants would have the opportunity to question increases of rent increases and file lawsuits to have it judicially reviewed. These ideas have not been put into practice so far. It seems that decisions concerning the future of

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56 Official Law Journal 2009, no. 65, item 545; see art 15b of the Act.
58 ‘Główne problemy, cele i kierunki programu wspierania rozwoju budownictwa…’, 50.
the Social Building Association stock will have to wait for the end of the crisis, when more funds to allocate may come into question.

Despite the uncertainty as to their future, 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 situation of general deficit on the market and poor condition of the aging municipal stock. Unfortunately, the number of new units did not live up to the expectations, even if those expectations were overstated by political actors. Although certain scholars claim that it would be unwise to develop the new social tenancy stock to 100 thousand in 2020, as it was planned at the outset of this Century, it seems that the potential of these specific entities has not been entirely realized.

III. Tenancy contracts

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

The Civil Code regulates the lease contract 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 period of time and the lessee commits to pay the agreed rent. The contract may refer both to movable and immovable property. Under art 660, the 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 the lease of premises (both residential and commercial), yet the real protective measures have been established under the TPA. Rather than confine its applicability 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 residential unit or any other person whose enjoyment of the unit follows from any other tenure - set aside

ownership. As a consequence, legal protection is granted to a broad category of individuals, irrespective of the specific type of title and the question of ownership of the occupied unit.

In addition to sui generis cooperative rights, still popular in Poland, and the TBS subtype of lease, as well as certain idiosyncrasies of social tenancies, the Civil Code regulation of lease and the TPA statutory regime are generally applicable for the vast majority of tenements in private hands. Legal guarantees concerning 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 connected with a unit, sidewalk eviction referring to certain classes of individuals, and homelessness. This extensive tenant protection repels willing landlords from making written lease contracts and registering incomes from tenancies with the revenue office.

In order to stimulate tenancy market, the legislator introduced in 2009 the so called occasional lease. This institution lifts certain instruments protecting the tenant. Its benefits may be enjoyed by owners who are natural persons. Basically, it is easier to terminate the lease and evict the tenant. If the new construction is to be applied, the tenancy period must not overstep 10 years. Notably, this new instrument is to help reduce the gray market, since the advantages available to owners are contingent upon registration of the tenancy at the revenue office. Currently, the Ministry is considering broadening the scope of landlords entitled to conclude contracts on such preferential terms to legal persons. This is to aid developers left with unsold units. Thus far, it has been available only to natural person lessors. This new construction allows for termination on much more endurable terms for the landlord, as the tenant is to point in advance to a replacement lodging he can go to in such case and declare the intention to willfully submit to execution.

IV. Issues of price and affordability

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 for 2010, the average rent in the private housing stock for a 60 m² residential unit was low and amounted to PLN 412.2 (approx. EUR 100) in 2010, yet the research was carried out also in less populous cities whose situation is much different from Warsaw. This figure does not comprise charges

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60 E. Bończak-Kucharczyk, Ochrona praw lokatorów, najem i inne formy odpłatnego użycia mieszkań w świetle nowych przepisów, (Warszawa: Twigger, 2002), 51.
independent of the lessor, such as electricity or water supply bills. In addition, average rents were significantly raised in 2011. This was a response to stricter credit policies of commercial banks, which shifted the unsatiated demand from the property market to rentals. According to independent Home Broker data, average rents are currently almost twice as high as in Germany and correspond to as much as 30% of family budgets.\footnote{\textquote{Najem w Polsce dwa razy droższy niż w Niemczech'}, <http://wyborcza.biz/finanse/1,105684,11200924,Najem_w_Polsce_dwa_razy_drozszy_niz_w_Niemcezech.html> January 2013.} Rents are particularly high in Warsaw - approx. PLN 1,600 (EUR 380) for a single room residential unit, PLN 2,300 (EUR 548) for two, approx. PLN 3,350 (EUR 798) for three rooms.\footnote{Ober Haus, 'Raport z rynku...', 4.} In Cracow average rents are generally lower, ranging between approx. PLN 900-1,200 (EUR 214-286) for one room, approx. PLN 1,100-1,800 (EUR 262-429) for two, approx. PLN 1,500-2,200 (EUR 357-524) for three. Rents for a 70 m\textsuperscript{2} residential unit Katowice span between approx. PLN 2,200 and PLN 2,970 (EUR 524-707).\footnote{Ibid., 13.} In Northern Poland, in Gdańsk, along with the neighboring Gdynia and Sopot, rents for one-, two- and three-room residential units make respectively PLN 700-1,200 (EUR 167-286), PLN 800-2,200 (EUR 190-524), PLN 1,200-3,000 (EUR 286-714).\footnote{Ibid., 17.} Comparable amounts are charged in Poznań.\footnote{Ibid., 21.}

As reported by the Institute for Urban Development, in December 2010, the average monthly basic fee in cooperatives (a cooperative equivalent for rent) amounted to PLN 2.77 (EUR 0.66) per 1 m\textsuperscript{2},\footnote{Informacje o mieszkalnictwie. Wyniki monitoringu za rok 2010', 54.} which gives PLN 166 (approx. EUR 40) for a typical 60 m\textsuperscript{2} unit. Although this figure could have and has indeed grown as well over the last two years, it shows that cooperatives remain an attractive alternative to ownership and rentals. In the light of information provided by the Central Statistical Office, average monthly bills for water, electricity, gas and other amenities totaled PLN 210.34 (approx. EUR 50). The highest costs of such type were borne by retirees and pensioners (PLN 269.07 - approx. EUR 64). This may be caused by the poorer technical condition of the older housing stock. The lowest bills were paid by farmers (PLN 132.52 - approx. EUR 32).

Even if the average salary does not seem critically low, in reality many households are not in a position to cover the habitation costs. Apparently, these are holders of the cooperative rights that fall behind with installments. It is estimated that cooperatives on annual basis fall short of about 8 to 10% of due rents. Nearly half of the cooperative members fail at some point to pay timely. Fortunately, in most cases arrears relate to a single 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, that is Mazovia and Silesia, where over 30% of all debtors live. For the whole Poland, the average amount of debt for one cooperative member in arrears is PLN 10,000 (EUR 2,380). The most frequent debtors are persons aged between 46 and 55 (28% of all). Naturally, the problem definitely refers as well to the municipal stock and private rentals, but it is more difficult to draw any generalizations about tenement owners in the absence of such specific data.

V. Tenancy contracts and investment

Commercial rental investments are scarce. Developers generally construct residential units for sale. In theory, the unsold stock could be simply leased, however, developers are reluctant to do so. They prefer more secure funds from mortgage credits extended by commercial banks to unit buyers. Individual landlords are financially barred from new investments on the tenancy market because of lacking funds. Private tenements are usually old and in poor condition. After the liquidation of the National Housing Fund, there are practically no new investments by Social Building Associations.

In such circumstances, the only significant investors in the rental sector are municipalities. Although their output is still moderate, they have to replace their old and dilapidating tenements with new premises in order to meet their statutory duties.

The rate of return on investment averages 5.5% in the whole country. It amounts to 4.5% in Warsaw, 6.5% in Katowice and Gdańsk, 5.5 in Poznań.

VI. Effects of the current crisis and prospects for the future

The financial crisis in 2008 and 2009 brought the previous boom in construction of new houses to a halt. Demand fell significantly. Due to more stringent income requirements imposed by commercial banks granting mortgage credit, this demand switched partly to the tenancy market. Notably, differences in commercial bank requirements are immense. Bank Pocztowy is willing to grant a PLN 300,000 (EUR 71.5 thousand) credit to a household earning no less than PLN 3,852 (EUR 917). At the same time, SGB Bank requires monthly

69 Ober Haus, ‘Raport z rynku...’, 4, 13, 17, 21.
income higher by PLN 2,000 (EUR 476). Apart from the requirements regarding earnings, there are also thresholds regarding the necessary own participation. Certain banks expect even PLN 60,000 (EUR 14,286).\(^{70}\)

It would seem, however, that in 2010 economic growth started to speed up once more. This tendency is also reflected in the number of new constructions and 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 0.7% increase.\(^{71}\)

According to governmental strategies, the state policy in the next ten years is supposed to focus on the removal of deficiencies of units with a social purpose, support for investment and supply of affordable residential units on both tenancy and property markets, elimination of the basic types of risk attached to the development of the private sector in the housing industry, reduction of construction costs, spatial and functional rationalization of new housing units by improvement of land for building purposes, and, finally, streamlining of management of the public housing stock. Higher rents relieved from the current remnants of the control system (although previous rent regulation has long been abandoned, there have remained some restrictions on rent increase) in the private tenement sector are to allow for necessary renovations.\(^{72}\)

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\(^{72}\) 'Główne problemy, cele i kierunki...' (governmental strategy), 15.