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PROTECTION OF TENANTS IN THE SECOND POLISH REPUBLIC ON THE BASIS OF THE PROVISIONS ON PREMISES RENTAL IN THE CODE OF OBLIGATIONS AND PARTICULAR ACTS

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1. INITIAL REMARKS

In the common legal transactions, rental agreements are concluded commonly among various categories of people, namely both entrepreneurs and people not conducting business operations. This agreement was regulated as early as in district regulations[1], then in the Second Polish Republic law. Despite the fact that general regulations concerning rent included protection of both parties of this legal relationship, additional protection of the tenant was provided by the detailed Acts. Regulations concerning protection of tenants were one of the first ones which were introduced after gaining independence by the Republic of Poland. They show the way of Polish legislation aiming at removal of discrepancies between different legal systems resulting from separate district regulations and then also typical of the Second Polish Republic separate law of the Silesian province. Rich legislation of the housing law resulted directly from the then difficult housing market situation and common lack of access to living quarters for large population of the country. Therefore, these provisions tried to regulate the housing market and provide the fullest protection to tenants, both with

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[1] See: F. Zoll, *Prawo cywilne dzielnic polskich w zarysie. Prawo cywilne część wschodnich*. Part IV, F. Bossowski (ed.), Warszawa-Kraków 1922, p. 208-214.

regard to the amount of rent payment and protection of durability of the tenancy relationship. Therefore the detailed acts constituted important supplement of regulations of the code governing mutual rights and obligations of the tenancy relationship parties.

2. TENANCY OF PREMISES IN THE CODE OF OBLIGATIONS

According to the Code of Obligations[2] by rental agreement the lessor is obliged to give the tenant the use of things throughout definite or indefinite time for payment of the agreed rent[3] Rental could apply to chattels and real estate, that is also premises and rooms[4]. The tenancy agreement is a consensual agreement and for it to arise it is enough to have unanimous statement of two parties[5]. With regard to the form of concluding a rental agreement, as a principle it was free. However, rental agreement of real estate or rooms, concluded for a definite time longer than one year should be in writing. The rental of real estate concluded for a time longer than twenty-five years and rent of rooms for a period longer than ten years were regarded after these time limits as concluded for indefinite time.

In the event when a third person caused a situation when a tenant had obstacles in use of the leased property, the tenant could, even without notifying the lessor, place claims on his own behalf against this person which were entitled to the owner of the thing, namely protection of disturbed or restoration of lost possession, as well as compensation[6].

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[2] Regulation of the President of the Republic of Poland of 27 October 1933 – Code of Obligations, Journal of Laws 1933, No. 82, item 598.

[3] On rental agreements in Commercial Code see: M. Kornreich, *Kodeks najmu mieszkań i lokali*, Kraków 1934, p. 21-22.

[4] F. Zoll, *Zobowiązania w zarysie według polskiego Kodeksu zobowiązań*, Warszawa 1948, p. 332-333.

[5] I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks zobowiązań. Komentarz*, Kraków 1936; see also: J. Namitkiewicz, *Kodeks zobowiązań. Komentarz dla praktyki. Tom I. Część ogólna art. 1-293*, Łódź 1949, s. 73-75.

[6] I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 974; R. Longchamps de Berier, *Zobowiązania*, Lwów 1939, p. 492.

With regard to responsibilities of a lessor he/she should give the object of the rent in a condition suitable for the agreed use and maintain it in such condition for the time of rent duration[7]. In the case of premises and rooms they had to be suitable for residence. However, minor repairs and expenses, related to regular use of things, were borne by the tenant[8]. The tenant was obliged to use the leased property with all due diligence, in manner specified in the agreement, and when the agreement did not define the method of use, in accordance with the intended use of things[9]. If the object of the rent was a room, the tenant should comply with household order, if the order was not contradictory to rights of the tenant arising from the agreement[10]. He/she should also take into account the needs of other inhabitants and neighbours. Rental is a mutual agreement, and thus an important element of this agreement was to define the rent[11]. The rent could be stated directly, or implied, it could be marked as amount in cash, an obligation to work, or in a different form[12].

The parties of the rental agreement had the right to withdraw from the agreement before the time for which it was concluded only because of specified reasons[13]. And so the tenant could terminate the rental agreement if the leased thing had defects which made use provided in the agreement impossible. Termination in this case was possible if defects existed already at issuance of the property, and if they were created later, only if these defects were not removed by the lessor in due time or if their removal was impossible. The tenant could relinquish the right to withdraw from the agreement in this case, but if the agreement was concerned with rental of rooms, and the defects were such that they threatened the health of the tenant or his/her other household members, termination of the agreement was

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[7] F. Zoll, *Zobowiązania...*, p. 334.

[8] R. Longchamps de Berier, *Zobowiązania...*, p. 493.

[9] *Ibid*., p. 492.

[10] M. Kornreich, *Kodeks...*, p. 41.

[11] I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 950; on mutual obligations see: L. Domański, *Instytucje Kodeksu zobowiązań. Komentarz teoretyczno-prawny. Część ogólna*, s. 106-115.

[12] I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks....*, p. 950.

[13] F. Zoll, *Zobowiązania...*, p. 340.

effective. The right to terminate the agreement was given also in the event when, because of rights of third party, the leased thing was taken from the tenant or when, due to these rights the tenant encountered an obstacle in use of the object of the rent, in accordance with the use agreed in the agreement[14]. The tenant could also withdraw from the rental agreement of rooms if the building required repairs, and in the time of their execution the room was unfit for use specified in the agreement.

The lessor could terminate the agreement if the tenant used property in a way inconsistent with its intended use or the agreement and in spite of a reminder did not stop using it in such a way[15]. Such a right was granted in addition in the event when the tenant neglected the property in such a way that the property was exposed to substantial damage. In the case of rent of rooms, the lessor had the right to withdraw from the agreement when the tenant grossly or persistently went beyond household order or by indecent behaviour caused depravation of other inhabitants or neighbours. The lessor could also withdraw from the rental agreement when the tenant is in arrears with payment of rent at least for two payment periods. In order to protect the rent, being behind no longer than a year, the lessor was given statutory right of pledge on chattels brought into the object of tenancy of the tenant and their family members living together with him/her[16].

In the event when rental agreement was concluded for indefinite time, it could be terminated by notice of termination with maintaining notice periods, which could be defined contractually or customarily[17]. If these dates could not be determined in this way, statutory terms were applied which amounted to three months in advance at the end of the calendar quarter if the rent was paid in time intervals longer than a month, a month in advance at the end of calendar month if the rent was paid monthly and 3 days if the rent was paid in shorter intervals and one day in advance,

[14] *Ibid.*, p. 336.

[15] I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks...*, p. 981.

[16] R. Longchamps de Berier, *Zobowiązania...*, p. 495.

[17] It means that rent has the character of a temporary agreement, see: E. Till, R Longchamps de Berier, *Polskie prawo do zobowiązań. Część szczegółowa. Projekt wstępny z motywami*, Lwów 1928, p. 140.

if the rent was daily[18]. The lessor could not terminate rent concluded for a period of life of the lessor or tenants.

It should be emphasized that rent was not terminated because of death. This applied both to the lessor and the tenant. In the case of death of the tenant of an apartment their spouse, ancestors, descendants, adopted and siblings, living with them permanently until his or her death, entered into the rental agreement[19]. They could terminate the rental agreement maintaining statutory dates.

In the case of disposal of the leased property during the rent the buyer entered by law into tenancy relationship to the place of the seller, and could terminate rent maintaining statutory dates.

3. PROTECTION OF TENANTS ON THE BASIS OF SPECIFIC PROVISIONS

In the period of the Second Polish Republic the problem of protection of tenants was the subject of several legal acts, even before the effective date of the Code of Obligations[20]. Protection of tenants was already included in the Decree of 16 January 1919 on protection of tenants and prevention of lack of apartments[21]. Provisions of the decree forbade the owners of the house to give notice to tenants, except for termination of tenancy agreement by fault of the tenant on the basis of provisions of the Civil Code[22].

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[18] In case of a dispute concerning termination of the lease relationship the decision has declaratory nature, see: decision of the Supreme Court of 13.10.1938 (2 C 572/38), acc. to: F. Zoll, *Zobowiązania*..., p. 341.

[19] This applies only to apartment namely premises used for satisfying housing goals, and not business premises, I. Rosenblüth, [in:] J. Korzonek, I. Rosenblüth, *Kodeks*..., p. 1009; see also E. Till, R Longchamps de Berier, *Polskie prawo*..., p. 141.

[20] L. Myczkowski, *Wprowadzenie*, [in:] *Prawo mieszkaniowe i inne teksty prawne*, Warszawa 2007, p. VII.

[21] Journal of Laws 1919, No. 8, item 116; the decree related to all cities and settlements of the former Kingdom of Poland, previously the temporary act was binding issued by the Regency Council for Warsaw, Łódź, Pabianice and Zgierz; see: M. Grzegorczyk, *Ochrona lokatorów według nowej ustawy*, Warszawa 1924, p. 121.

[22] During this period initially four were binding: Civil Code of The Kingdom of Poland, Bürgeliches Gesetzbuch, Austrian Civil Code and Russian law, see: L. Mycz-

This normative act specified in addition the maximum amount of rent, which, as a principle, should correspond to amounts collected in 1914. The decree also introduced a system of supervision over local residence relations and protection of tenants. It was supposed to be executed by the council management. However, in larger cities local housing offices were supposed to be established with a housing inspector. Control and supervision over these offices were performed by the Ministry of Public Health. At housing offices, arbitration offices could be established, being under supervision of the Ministry of Justice. President, vice-presidents, chairpersons and jurors were appointed by the Minister of Justice at the request of the municipality of the city. Arbitration office examined cases in a set consisting of a chairman and two jurors. Jurors came in equal number from among tenants and owners of houses. Judgments of offices had the final power and could be subject to inspection of the Supreme Court.

Another normative act regulating the issue of protection of tenants is the Act of 28 June 1919 on protection of tenants[23]. It was applicable to the area of the former Russian partition territory. This act repealed most regulations of the decree, except for those related to housing offices and supervision. Also this act specified the maximum amount of rent and defined it at the amount of rent in 1914. Higher rent could be agreed for large apartments. Agreements that predicted rent higher than acceptable were invalid. This act also introduced some limitations in termination of rental agreements. Termination of such an agreement could take place only because of important reasons, particularly in the case of being in arrears with payment after setting an additional time limit, no consent of the tenant to compliant with the law increase of rent by the lessor, persistent or gross crossing the binding household order, subleasing premises for remuneration excessively high as compared to rent paid by the main tenant.

Arbitration offices for the rental cases had to be obligatorily established for larger cities. The chairman and the deputy were appointed by the President of the District Court. The rest of members were also appointed by the President of the District Court, but at the request of the head of (mayor) district, and half of the members had to be appointed from among owners

kowski, *Wprowadzenie...*, p. VII.

[23] Journal of Laws 1919, No. 52, item 335.

of houses, and half from among tenants. The office resolved cases during the hearing in three-person teams – a chairman and one juror from the circle of owners of the houses and tenants. Arbitration offices gained the possibility of deciding on acceptability of the amount of rent payments.

A separate act concerned the former Prussian partition area[24]. It is about the Act of 18 December 1919 on protection of tenants in the former Prussian District[25]. On the whole, to these lands were applied provisions of the Act of 28 June 1919 with amendments introduced by this Act. With regard to changes, they were mostly of technical character, adjusted names, for example instead of arrest (*areszt*), prison (*więzienie*) was introduced. It did not introduce any significant changes.

Another normative act that concerned already nearly the whole territory of the Second Polish Republic was the Act of 18 December 1920 on protection of tenants[26]. It was valid in the area of former Russian and Austrian partition, and in some range and with some modifications also within the former Prussian partition area[27]. The Act introduced the notion of basic rent which was rent from June 1914. Higher rent could be agreed only for large apartments (more than 6 rooms), for furnished rooms, as well as for premises meant for stores and other sales or industrial outlets. In the event when the rent exceeded acceptable norms, the agreement in the part regarding the height of rent was invalid. The lease could be resolved because of fault of the tenant or important reasons that were very close

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[24] Initially in these areas announcement of Chancellor of the German Reich of 23 September 1918 was valid, supplemented with the Regulation the National People's Council of 31 May 1919, see: M.Grzegorczyk, *Ochrona...*, p. 121.

[25] Journal of Laws 1919, No. 98, item 516.

[26] Journal of Laws 1920, No. 4, item 19; see also: D. Tomaszewski, *Zakończenie najmu lokalu*, Zakamycze 1999, p. 12.

[27] It replaced in the area of the former territory of Austria previous regulations, namely Austrian regulation of 26 October 1918 for Lesser Poland and regulation of the Temporary Ruling Committee Rządzącego of 25 December 1918 for Lvov, and under the power of the Regulation of the Council of Ministers of 26 May 1922 – also regulations binding within the area of eastern lands namely regulation of the Chief Commissioner Of Wołyń Lands and Podolski Front of 17 April 1920. Therefore a separate regulation remains only in Silesia and the area od Wilno (the decree of the Supreme Command of Central Lithuania Army of 15 November 1921), see: M.Grzegorczyk, *Ochrona...*, p. 121.

to the ones specified in the Act of 28 June 1919 on protection of tenants. A new premise included in this folder was making available the right to rental to another person without permission of the lessor.

As in the previous acts establishment of arbitration offices for large cities was planned (above 20,000 inhabitants). Offices were similarly regulated as in the Act of 28 June 1919. If the office resolved case concerning industrial or commercial premises, the juror from the circle of tenants should be a person from among merchants, entrepreneurs or craftsmen.

In any cases resolved by the arbitration office, if both parties submitted them for decisions of office they were final and did not undergo suing. Decisions issued on the application of one party could be repealed by a competent court upon request of an interested party by way of suit submitted within two weeks from the date of settlement (in the Prussian area from such settlement one could appeal to the District Court, unless the Office settled the case with approval of both parties).

Another act on protection of tenants was the Act of 11 April 1924 on protection of tenants[28]. This act was extremely important as it was in force within almost the whole country, except for the Silesian province, and introduced important changes in relation to the Code of Obligations[29]. This act was subject to amendment many times, but was valid until 1 September 1948[30]. It was in force simultaneously with the Code of Obligations, and its provisions were specific regulations and had priority before code regulations[31].

Also this act arranged the basic rent in the amount of rent from June 1914[32]. However, if the object of tenancy was not rented then or the current rent could not be proved, the court determined the basic rent according to the then average prices.

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[28] Uniform text: Journal of Laws 1924, No. 39, item 406; see. J. Chaciński, *Ochrona praw lokatorów. Komentarz*, Warszawa 2006, p. 31.

[29] F Zoll, *Zobowiązania*...., p. 334.

[30] L. Myczkowski, *Wprowadzenie*..., p. VIII; thus the act did not have application to rental agreements concluded after 31 December 1937, F. Zoll, *Zobowiązania*..., p. 347.

[31] A. Mączyński, *Dawne i nowe instytucje polskiego prawa mieszkaniowego*, KPP 2002, No. 1, p. 68.

[32] F. Zoll, *Zobowiązania*..., p. 347; L. Myczkowski, *Wprowadzenie*..., p. VIII.

House owners could not collect as rent from tenants additional fees caused by expenses on communal fees regarding supply of water and channels, for cleaning chimney ducts, supplying light to common rooms, such as rocks or corridors, waste removal or remuneration for house caretakers. They could collect remuneration for lighting, heating and hot water supplied to rooms from own central devices according to real costs. A similar case concerned remuneration for the use of lifts (elevators). The lessor could terminate the rental agreement only if important reasons existed to which the act classified, among others, delay in payment at least for two following one after another rent instalments, unless arrears were created from the lack of work or just out of exceptional poverty, renouncement of the governor or administrator of the house of the position or his removal because of his fault, persistent or gross crossing the binding household order[33], giving the rights from the lease agreement to another person without permission of the lessor, tenant's possession of another apartment in the same town[34]. If the ancestor, descendant, spouse and siblings who permanently lived with the tenant who died did not have another apartment, they entered into the rental agreement[35].

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[33] With regard to going beyond household order, the tenant is also responsible for behaviour of other persons e.g. invited guests, see: ruling of the Supreme Court of 2 September 1933, (I C 432/33), of 8 September 1932 (I C 1304/32), text after: R. Baranowski, *Ochrona lokatorów. Uzupełnienie pierwsze komentarza do ustawy o ochronie lokatorów z 11.4.1924 Dz. U. NR. 39, POZ. 406, wydanie drugie z roku 1933*, Poznań 1935, p. 33-34.

[34] This folder was open, R Longchamps de Berier, *Zobowiązania*..., p. 500; the Supreme Court dealt with this problem. In the decision of 13 September 1927 (3 1620/27) indicated that "it shall not constitute an important cause of termination that the owner needs necessarily the apartments in order to leave their previous and harmful to health (mouldy) apartment if for this purpose purchased the feasibilty of property to remove a tenant from this apartment and obtain it for themselves". On the other hand, in ruling of 20 April 1928 (3 703/28) indicated that "Heart disease of the house owner, occupying in their house an apartment on the third floor, does not provide the basis for giving a notice to a tenant occupying an apartment in this house of the second floor", text after: W. Dbałowski, J. Przeworski, *Przepisy o ochronie lokatorów (wraz z ustawą śląską)*, Warszawa 1928, p. 132-133.

[35] M. Bednarek, *Prawo do mieszkania w konstytucji i ustawodawstwie*, Warszawa 2007, p. 87.

The Act stipulated in addition an institution of housing moratorium[36]. And so, in cases concerning eviction the court could, taking into consideration business relations of the defendant, in particular being unemployed, defer ex officio or on the application the defendant the date of emptying the object of tenancy to six months, and in the case of when the cause was delay in payment of the rent for next six months[37]. By law, eviction for this reason was withheld for one and two-room apartments. For other reasons eviction from such apartments could be withheld, if the unemployed person was given work and paid apart from current rent, also the overdue rent in instalments amounting to 25% of the current one. The tenant could submit to court an application for deferment for definite time of the payment date of future rent or for deferment of the payment date or distribution into instalments repayment of overdue rent, if the tenant had income only from work, and monthly earnings did not exceed 80 PLN for living alone or 120 PLN for one maintaining the family.

Within the province of Silesia the Act of 16 December 1926 on protection of tenants was binding[38]. With regard to basic rent it was determined just as in the previous acts. The Act accepted voluntary agreement of a lessor and tenant with regard to the amount of rent. However, it had to be contained in writing and for a period not shorter than one year. This applied however only to at least five-room apartments. In other cases exemplary rent amounted to 70% of basic rent for apartments up to two rooms or 80% for three-room apartments. Additionally, the owner could collect a fee for supplying water and remuneration for heating and hot water and for using lifts (elevators).

With regard to causes of withdrawal and termination of rental agreements, these were very close to the ones binding across the whole country.

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[36] J. Chaciński, *Ochrona...*, p. 31; R. Longchamps de Berier, *Zobowiązania...*, p. 502, see also: A circular of the Minister of Justice of 30 November 1935 r., text after: S. Kowalski, *Ustawa o ochronie lokatorów*, Lwów 1936, p. 132-133.

[37] F. Zoll, *Zobowiązania...*, p. 347-348.

[38] Journal of Silesian Regulation 1926, No. 29, item 54, text after: W. Dbałowski, J Przeworski, *Przepisy...*, *op. cit.*, p. 95-118, see also: Regulation of the Silesian Voivode of 21 January 1926 in order to perform the Act of 16 December 1926 on protection of tenants, Journal of Silesian Regulation 1926, No. 2, item 2, text after: R. Kornreich, *Kodeks...*, p. 205-211.

Similarly, also arbitration offices operated on such terms as those in other provinces. Provided that they had to be established in cities that were County Courts headquarters. Lawful rulings of these arbitration offices constituted executive titles.

Also provisions concerning housing moratorium did not introduce larger changes to these regulations.

In the period of World War II housing crisis occurred again and consequently many detailed normative acts in this respect were issued[39].

4. CONCLUSIONS

Protection of tenants was the subject of numerous legal acts binding within the Second Polish Republic. The Code of Obligations itself provided protection both to the tenant of the premises and rooms as well as the lessor. Apart from these regulations there were also other special normative acts containing protection of tenants against excessive rent or against free termination of rental agreements by the lessor. These acts increasingly extended the protection narrowing the catalogue of reasons because of which termination of the agreement could take place and, in the end, planning housing moratorium that was supposed to protect tenants against eviction. These acts also predicted out-of-court mode for the resolution of disputes resulting from the rental agreement. These disputes were supposed to be settled by specially established arbitration offices.

A typical thing for these acts was that initially separate regulations existed for different partition areas and then for the Silesian province. These provisions did not contain sufficiently significant differences to significantly differentiate between situations of tenants on particular Polish lands.

[39] The decree of the President of the Republic of Poland of 3 September 1939 on terminating rental agreements and eviction from apartments of people appointed for military service, Journal of Laws 1939, No. 89, item 572; and other normative acts issued during the period of German occupation: e.g.regulation of 4 October 1940 on dates of emptying apartments, Journal of Regulation. No. 16, page 75 and regulation of 20 March 1941 on the amount of rent payment for apartments and residential premises, Journal of Regulation. No. 23, page 110, after: F. Zoll, *Zobowiązania*..., p. 348.

SUMMARY

The subject of this article is the protection of tenants on the basis of the provisions on premises rental in the Code of Obligations and particular legal acts. Firstly, the author describes provisions of the rental agreement under the most important legal act, which takes effect during the Second Polish Republic – the Code of Obligations. Then the paper concerns the other acts linked with the rights and obligations of tenants.