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De Lege Ferenda Problems of Rights to Premises in Housing Cooperatives in Poland and Comparative Legal Perspective

Abstract

As a rule, the countries of „old Europe" have general regulations on cooperatives, which usually do not include specific regulations on housing cooperatives. In the aforementioned countries, members may most often be entitled to tenancy of premises, although this is not always explicitly stated. In some countries, members are also explicitly allowed to own premises. In post-communist countries, members of cooperatives are usually entitled to ownership of premises, less often to lease of premises with the possibility of conversion to ownership.

In the case of Poland, *de lege ferenda* urgently require a solution to the problem of those housing cooperatives that have erected buildings on land to which they have no legal title. It is necessary to return to the concept from more than 30 years ago of *ex lege* transformation of the cooperative ownership right to premises as a limited right *in rem* into the right of separate ownership of premises. The cooperative tenant right to housing should become a limited right *in rem*, with the possibility of its transformation into the right of separate ownership of premises. In Poland, in addition to housing cooperatives, there are housing communities (condominiums), which bring together owners of premises, but they are not legal entities, and their legal structure raises serious doubts. This raises the question of whether it makes sense to maintain the dualism of the legal regulation of separate ownership of premises in the Law on Ownership of Premises and on Housing Cooperatives. In Poland, in addition to the Law on Housing Cooperatives (*ustawa o spółdzielniach mieszkaniowych*), there is the Law of 2022 on Housing Cooperatives (*ustawa o kooperatywach mieszkaniowych*), which allows at least three persons to carry out a housing project involving the acquisition of undeveloped or developed land for the purpose of establishing separate ownership of premises or transferring

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ownership of single-family houses. However, serious doubts are raised by the adoption of the unfortunate name „housing cooperative" (*kooperatywa mieszkaniowa*) in the law, which irresistibly implies „housing cooperative" (*spółdzielnia mieszkaniowa*).

KEYWORDS: cooperative ownership right to premises, cooperative tenancy right to housing, housing cooperative (kooperatywa mieszkaniowa) housing cooperative (spółdzielnia mieszkaniowa), lease of a apartment, ownership of premises

1 Comparative legal remarks[1] (countries of „old" Europe)

In France, cooperatives, or more precisely, cooperative companies (*sociétés coopératives*), operate primarily under the provisions of the Law of September 10, 1947 on the status of cooperation (*loi portant statut de la coopération*) and the Commercial Code of 1807 (*code de commerce*). Decree No. 2004-1087 of October 14, 2004 on cooperative limited liability companies engaged in the production of low-rent housing and cooperative limited liability companies of collective interest in low-rent housing (*décret relatif aux sociétés anonymes coopératives de production d'habitations à loyer modéré et aux sociétés anonymes coopératives d'intérêt collectif d'habitations à loyer modéré*) amended the Construction and Housing Code of May 31, 1978 (*code de la construction et de l'habitation*) introducing the said low-rent housing cooperatives (HLM cooperatives; Articles L422-3, L422-3-1 and L422-3-2 of the code). The Law on Access to Housing and Renewed Urbanism of March 24,

1 In compiling the comparative legal remarks, I used the texts of normative acts available on the Internet and the following studies: Profiles of a Movement: Co-operative Housing. Around the World. April 2012 (French version: Profils d'un mouvement: Les coopératives d'habitation dans le monde. Avril 2012); Danuta Adamiec, Justyna Branna, Dobromir Dziewulak, Natalia Firlej, Kamila Groszkowska, Marta Karkowska, Łukasz Żołądek, „Rozwiązania prawne dotyczące lokatorskich spółdzielni mieszkaniowych, kooperatyw mieszkaniowych oraz form własności warunkowej w Czechach, Danii, Francji, Niemczech, Szwajcarii i Szwecji" *Zeszyty Prawnicze Biura Analiz Sejmowych Kancelarii Sejmu*, No. 4 (2021): 258-288.

2014 (*loi pour l'accès au logement et un urbanisme rénové*) introduced provisions on housing cooperatives (*les sociétés coopératives d'habitants*; Articles L201-1 – L201-13 of the Code) into the Construction and Housing Code. Based on contracts with the cooperative, members acquire rights to use housing (L201-8). These rights are subject to inheritance (L201-9).

In Germany, the Act on Cooperatives of May 1, 1889 (*Genossenschaftsgesetz*) is in force. Members of housing cooperatives (*Wohnungsbaugenossenschaften*), are entitled to housing rental rights. These are non-transferable, but they are subject to inheritance. Until 1990, the non-profit housing law of 1940 (*Wohnungsgemeinnutzigkeitgesetz*) was in effect. A new law is currently being drafted in this area (*neue Wohnungsgemeinnutzigkeitgesetz*).

In Austria, the Act on Cooperatives of April 9, 1873 (*Genossenschaftsgesetz*) is in effect. In addition, the non-profit housing law of March 8, 1979 (*Wohnungsgemeinnutzigkeitgesetz*) is in effect. According to Section 13(1) of this legislation, a cooperative is entitled to transfer the right of use of a dwelling under a lease or other contract and to grant ownership of the dwelling.

In Switzerland, cooperatives operate under the provisions of Articles 828 – 926 of the Code of Obligations of March 30, 1911 (code des obligations). Housing cooperatives (*les coopératives d'habitants*) provide members with the right to lease housing, which is generally subject to inheritance (Article 266i of the Code of Obligations).

In Belgium, cooperatives operate under the Code of Companies and Associations of March 23, 2019. (code des sociétés et associations). Housing cooperatives are also governed by the Walloon sustainable housing (housing) code of October 29, 1998 (*code wallon de l'habitation durable* [*logement*]), the Brussels housing code of July 17, 2003 (*code bruxellois du logement*), and the Flemish housing code of July 15, 1997 (*decreet houdende de vlaamse wooncode*). Cooperatives provide members with housing rental rights. These rights are typically subject to inheritance.

In the Netherlands, cooperatives operate under Articles 53-63k of Book II of the Civil Code (*burgerlijk wetboek*). A housing cooperative (*woningcorporatie, woningbouwcorporatie or wooncorporatie*) operates on a non-profit basis and rents housing to its members. The lease of cooperative housing on a general basis is subject to inheritance.

In Luxembourg, cooperatives operate under the provisions of Articles 137.1 to 137.10 of the Law of August 10, 1915 on Commercial Cooperatives as amended by the Law of June 10, 1999. The introduction of cooperatives organized in the form of limited liability companies (*loi du 10 juin 1999 modifiant la loi modifiée du 10 août 1915 concernant les sociétés commerciales par*

l'introduction des sociétés coopératives organisées comme des sociétés anonymes). Housing cooperatives, as non-profit legal entities, are permitted do build housing for sale or rent under the August 7, 2023 law on affordable housing (*loi relative au logement abordable*).

Spain has a July 16, 1999 law on cooperatives (*ley de cooperativas*), in which Articles 89 to 92 deal with housing cooperatives (*las cooperativas de viviendas*). Members may have ownership or use and enjoyment of houses and premises (Article 89, paragraph 3). In a housing cooperative, a member who intends to transfer *inter vivos* their rights to a house or premises must, before the expiration of five years or such other longer period as may be provided by statute, which may not exceed ten years from the date of issuance of the occupancy permit for the house or premises or the document legally replacing it, or, if there is no such document, from the date of transfer of possession of the house or premises, be made available to the cooperative. The cooperative will then offer applicants for admission as members in order of seniority (Article 92, paragraph 1).

In Portugal, the Cooperative Code of August 31, 2015 is in effect (*código cooperativo*), which does not contain special provisions on housing cooperatives. Members of a housing cooperative (*cooperativa de habitação*) can acquire either ownership or rental rights to apartments.

In Italy, cooperatives operate under the provisions of 2511-2548 of the Civil Code of March 16, 1942 (*codice civile*). In Italy there are two types of housing cooperatives (*cooperativa edilizia*): conventional and social. In a conventional cooperative, members own the apartments (see the law of August 2, 2004 – delegation to the government on the protection of property rights of purchasers of property to be built [*legge 2 agosto 2004 – delega al governo per la tutela dei diritti patrimoniali degli acquirenti di immobili da costruire*]; legislative decree of June 20, 2005 – regulations for the protection of property rights of purchasers of buildings to be built [*decreto legislativo 20 giugno 2005 – disposizioni per la tutela dei diritti patrimoniali degli acquirenti di immobili da costruire*]). In a social cooperative, the members are the tenants of the apartments (see the law of November 8, 1991 – regulation of social cooperatives [*legge 8 novembre 1991 – disciplina delle cooperative sociali*]).

There is no general law on cooperatives in Greece. A building cooperative operates under Law No. 1667/1986 – municipal cooperatives and other regulations (*νόμος 1667/1986 – αστικοί συνεταιρισμοί και άλλες διατάξεις*) and Articles 124 – 149 of the Code of Basic Municipal Planning Regulations of July 14, 1999 (*κωδικασ βασικησ πολεοδομικησ νομοθεσιασ*) stipulates that, depending on the type of cooperative and the provisions of the statute,

members are entitled to ownership of houses or apartments, or to lease apartments.

Finland has a law on cooperatives dated June 14, 2014 (*osuuskuntalaki*). There is no separate law on housing cooperatives. A housing cooperative (*asunto-osuuskunta*) provides housing to its members on a rental basis, and less frequently on an ownership basis.

Sweden's Economic Associations Act of May 31, 2018 (*lag om ekonomiska föreningar*), which came into effect on January 1, 2021, regulates cooperatives. Special provisions apply to tenant cooperatives (*kooperativ hyresrättsförening*), which provide rental housing to its members under the Cooperative Tenancy Act of March 7, 2002 (*lag om kooperativ hyresrätt*). Further special provisions are found in the Housing Rights Act of May 30, 1991 (*bostadsrättslag*), which provides for both the leasing of housing to members and the transfer of ownership.

In Denmark, cooperatives are governed by the Act on Certain Commercial Enterprises of June 15, 2006 (*lov om visse erhvervsdrivende virksomheder*). The Act on Housing Cooperatives and Other Housing Communities of June 8, 1979 (*lov om andelsboligforeninger og andre boligfællesskaber*) provides for the possibility of granting members lease and ownership rights to housing units.

Norway has an Act of June 29, 2007 on cooperatives (*lov om samvirkeforetak*), which does not apply to housing cooperatives. Instead, the issues of housing cooperatives are regulated in the Housing Cooperatives Act of August 15, 2005 (*lov om burettslag*). Members are entitled to ownership of premises.

In Ireland, cooperatives operate under the Industrial and Provident Societies Acts of September 12, 1893 (Industrial and Provident Societies Acts). In 2022, the government drafted a bill pertaining to Co-Operative Societies. The Housing (Miscellaneous Provisions) Act of July 23, 1992 (Housing [Miscellaneous Provisions] Act) provides for the rental of units to members of housing cooperatives. The Residential Tenancies Act of July 19, 2004 also applies here.

It is standard practice in countries of "old" Europe to have general regulations on cooperatives, with no specific regulations on housing cooperatives.

In the aforementioned countries, members may most often have the right to lease premises, which is not always called that, e.g., such terms as the right to use or enjoy the premises appear. In the countries of „old" Europe, it is often emphasized that tenancy in housing cooperatives is an intermediate category, a „third way" between traditional tenancy and

ownership. While members are entitled to tenancy rights, they are also economically co-owners of the cooperative.

Some countries also explicitly permit members to own premises. This is particularly the case in Austria, Luxembourg, Spain, Portugal, Italy, Greece, Finland, Sweden and Denmark. An original solution was adopted in Norwegian law, which provides only for ownership of premises in a housing cooperative.

The aforementioned countries also usually have laws on housing communities (condominiums), in which members have ownership of premises. For example, the German Law on the Ownership of Housing Communities and the Right of Permanent Residence of March 15, 1951 (*Gesetz über das Wohnungseigentum Und das Dauerwohnrecht – Wohnungseigentums Gesetz*) primarily regulates legal relations related to the ownership of apartments and the operation of housing communities. Furthermore, § 31 – 42 outlines the transferable and heritable rights of permanent residence, (*Dauerwohnrecht*) and the right of permanent occupancy (*Dauernutzungsrecht*), which are transferable and heritable rights.

2 Comparative legal remarks (post-communist countries)

The activities of housing cooperatives in the Czech Republic are regulated by Sections 727-757 of the Law on Commercial Cooperatives and Cooperatives (*zákon o obchodních společnostech a družstvech*) of January 25, 2012. The primary property right of a member of a housing cooperative is the lease of a cooperative apartment (Section 741 of the Act). A housing cooperative may transfer ownership of a cooperative apartment to a member of the cooperative who is its tenant (§ 751 of the Act). Provisions for allowing cooperative members to redeem their units were introduced in the December 21, 1991 Act on the Regulation of Property Relations and Settlement of Property Claims in Cooperatives (*zákon o upravě majetkovych vztahů a vypořadani majetkovych naroků v družstvech*). According to Section 24 of this law, members of housing cooperatives who are tenants of apartments and non-residential premises may, within six months of the effective date of this legislation, invite the housing cooperative to conclude

a contract under which the cooperative will transfer ownership of the apartment and non-residential premises to them free of charge. This right will expire at the end of the aforementioned period.

The activities of cooperatives in Slovakia are regulated by the Commercial Code (*obchodný zákonník*) of November 5, 1991 (§ 221-260), which does not include any special provisions for housing cooperatives. The basic property right of a member of a housing cooperative is the lease of a cooperative apartment. This is governed by numerous provisions in the Civil Code (*občiansky zákonník*) of February 26, 1964 on leases. Of particular importance here is §685(2), according to which a contract for the lease of a dwelling may be concluded under the terms of the housing cooperative's charter. The Law of July 8, 1993 on the Ownership of Dwellings and Non-Residential Premises (*zákon o vlastníctve bytov a nebytových priestorov*) contains numerous provisions on the transfer of ownership of a cooperative apartment to the tenant of such an apartment in a housing cooperative. Of particular importance here is Section 28, according to which a tenant of a cooperative housing unit who is a member of a housing cooperative has the right to transfer ownership of the unit under this law if he has not applied for transfer of ownership of the unit under a special provision. Similarly, Section 29, § 1, according to which, if the tenant of a cooperative garage or studio apartment has applied to the housing cooperative for transfer of ownership of the apartment, garage or studio, in accordance with special provisions, the housing cooperative is obliged to transfer ownership of the apartment, garage or studio within two years of the effective date of this law. The special provisions – as in the Czech Republic – can be found in the Law of December 21, 1991 on the Regulation of Property Relations and Settlement of Property Claims in Cooperatives as amended (*zákon o úprave majetkových vzťahov a vyporiadaní majetkových nárokov v družstvách v znení neskorších predpisov*).

Hungary had an Act on Cooperatives of January 20, 1992 (*törvény a szövetkezetekről*), which also included special provisions on housing cooperatives (§ 92-111). The current legislation in effect is the Act on Cooperatives of January 4, 2006 (*törvény a szövetkezetekről*), however, according to § 2(2) of this law, housing cooperatives are regulated by a separate law. This is the Housing Cooperatives Act of December 2, 2004 (*törvény a lakásszövetkezetekről*). According to § 10, housing cooperative apartments are owned by members, non-member owners or the housing cooperative. According to § 12, apartments may also be owned by a housing cooperative if the statute so provides. In such a case, the member is entitled to

the permanent use of a specific apartment. The right to use an apartment is transferable and inheritable. The conditions for the use and transfer of the right are determined by the statute of the cooperative. In the event that the right is transferred for a fee, the housing cooperative shall have the right of first refusal.

Lithuania has a law of June 1, 1993 on cooperative societies (cooperatives; *Lietuvos Respublikos kooperatinių bendrovių* [*kooperatyvų*] *įstatymas*), which does not contain special provisions on housing cooperatives. The Law of the Republic of Lithuania of October 16, 1990 on housing cooperatives (*Lietuvos Respublikos įstatymas dėl gyvenamųjų namų statybos kooperatyvų*) stipulates that a member of a housing cooperative who has paid in full the installments for a dwelling unit (living space) becomes the owner of the dwelling unit (living space) and ceases to be a member of the cooperative (Article 1). According to Article 2, the incompletely paid-up share of a deceased cooperative member is inherited by his heirs in accordance with the general procedure established by law. In such a case, the right to join the cooperative is acquired by the heir regardless of whether they cohabited with the testator during the testator's lifetime. In the event of the death of a cooperative member, priority for joining the cooperative is given to heirs who cohabited with the deceased and do not have their own apartment (living quarters). Article 4 obliged the Government of the Republic of Lithuania to amend and supplement the model statutes of housing cooperatives, further democratizing the rights of cooperative members. The realization of the common partial ownership rights of owners of apartments and other premises is regulated by Article 4.85 of the Civil Code of the Republic of Lithuania of July 18, 2000 (*Lietuvos Respublikos civilinis kodeksas*). The Housing Code of the Lithuanian Soviet Socialist Republic of December 2, 1982 (*Lietuvos Tarybų Socialistinės Respublikos butų kodeksas*) has not been in effect since July 1, 1998.

The Latvian Law on cooperatives, in effect as of April 26, 2018 (*kooperatīvo sabiedrību likums*) does not contain special provisions on housing cooperatives. The Law of the Republic of Latvia of December 4, 1991, on the privatization of cooperative housing (*Latvijas Republikas likums par kooperatīvo dzīvokļu privatizāciju*) introduced the privatization of apartments in multi-unit residential buildings owned by housing cooperatives for the benefit of housing cooperative members who have paid in full or in part their share in the apartments given to them for use and have been accepted as members of the cooperative. Members who had not paid their shares by the specified deadlines were subject to eviction along with all persons living with them.

Decision of the Council of Ministers of the Republic of Latvia No. 1307 of August 4, 1992 on housing owners' cooperatives (*Latvijas Republikas Ministru Padomes lēmums Nr. 1307 par dzīvokļu īpašnieku kooperatīvajām sabiedrībām*) established that housing cooperatives would be transformed into housing owners' cooperatives and introduced a model statute for such a cooperative. The Housing Management Act of June 4, 2009 (*dzīvojamo māju pārvaldīšanas likums*) applies to apartment owners' cooperatives.

In Estonia, the Law of November 24, 2008, on Cooperatives of the Republic of Estonia (Eesti Vabariigi ühistuseadus), which does not contain special provisions on housing cooperatives, applies. On April 23, 1992, the Housing Act (*elamuseadus*) was enacted, which (still in partial force, by the way) contained provisions in Sections 14-27 on housing cooperatives. The Housing Privatization Law of May 6, 1993. § 218 addresses the privatization of housing in housing cooperatives. Housing cooperatives are currently covered by the Law of February 19, 2014 on Apartment Ownership and Housing Cooperatives (*korteriomandi- ja korteriühistuseadus*). This law had a very long *vacatio legis* (it came into force on January 1, 2018). As of the date of its entry into force, the existing housing cooperatives and apartment owners' associations were transformed into housing cooperatives operating under the new law, which bring together apartment owners.

In Slovenia, the Law of March 11, 1992 on cooperatives (*Zakon o zadrugah*), which does not contain special provisions on housing cooperatives, is in force. There is also the Law of October 11, 1991 on Housing (*stanovanjski zakon*), in which Articles 1-110 have been repealed. On June 19, 2003, the Law on Housing (SZ-1; *stanovanjski zakon* [SZ-1]) was enacted, which contains numerous regulations on housing ownership and housing rental. The aforementioned laws do not apply to housing cooperatives, where members have rental rights.

In Croatia, the Act on Cooperatives (*Zakon o zadrugama*) was passed on March 11, 2011. It includes special provisions on housing cooperatives. According to Article 61(1) of this law, the tasks of cooperatives include renting out built or purchased single-family houses, apartments or buildings with the option of repurchase (purchase).

Bulgaria has the Act on Cooperatives of December 16, 1999 (*закон за кооперациите*), which does not contain special provisions on housing cooperatives. Such provisions were included in the Law on Housing Cooperatives of July 14, 1978 (*закон за жилищностроителните кооперации*). According to Article 17(1) of this law, every member of a housing cooperative has the

right to acquire ownership of a dwelling or other property built by the housing cooperative.

In Romania, there is the Law of February 21, 2005 on the Organization and Functioning of Cooperatives (*lege privind organizarea şi funcţionarea cooperaţiei* sets forth general provisions on cooperatives. Article 4(e) of that law mentions cooperative housing societies (*societăți cooperative de locuințe*), which are associations of individuals set up to build, buy, maintain, renovate and manage houses for cooperating members.

According to Article 35(1) of the Moldovan law of January 16, 1992 on cooperation (*lege cu privire la cooperaţie*), citizens are entitled to establish, on the basis of voluntary consent, cooperatives for the construction of housing, the operation of housing, the construction of garages, single-family houses, and other consumer cooperatives for the satisfaction of their housing and living needs. In addition, two general cooperative laws are in effect: the September 28, 2000 law on consumer cooperation (*legea cooperației de consum*), which regulates consumer cooperatives, and the April 12, 2001 law on entrepreneurial cooperatives (*lege privind cooperativele de întreprinzător*). Neither of these directly applies to housing cooperatives. The July 14, 2022 law on condominiums (*lege cu privire la condominiu*) transformed housing cooperatives and housing cooperatives into condominiums (Article 87).

In Ukraine, the Law of July 10, 2003 on Cooperation (*закон України про кооперацію*) regulates cooperatives. Pursuant to Article 19, paragraphs 1 and 2 of this law, a member of a housing and building cooperative, summer house construction, garage construction, housing, bungalow, garage or other relevant cooperative has the right to own, use and with the consent of the cooperative, and dispose of an apartment, bungalow, garage, other building, structure or premises of the cooperative, provided that the member has not purchased the property. In the event of the purchase of an apartment, bungalow, garage, other building, structure or premises, the owner becomes a member of a housing cooperative, summer house, garage and building, housing cooperative, bungalow, garage cooperative or other relevant cooperative of this property. The ownership of such property of a member of a cooperative arises upon state registration of this right in accordance with the law.

In Slovenian housing cooperatives, members are granted rental rights to the premises. In the Czech Republic, Slovakia and Croatia, cooperative members may have both rental and ownership rights to premises. In other countries, namely Hungary, Lithuania, Latvia, Estonia, Bulgaria

and Ukraine, members have ownership rights to premises. It is unclear what housing cooperative property rights exist in Romania. Some countries have adopted privatization laws for housing cooperatives (Czech Republic, Slovakia, Lithuania, Latvia, and Estonia). The original solution in this regard is contained in the Estonian law, which transformed existing housing cooperatives and associations of apartment owners into housing cooperatives operating under the new law. A somewhat opposite solution was adopted in Moldova, where the law transformed housing cooperatives and housing associations into condominiums.

3 Rights to premises in housing cooperatives in Poland (historical notes)

The first housing cooperatives on Polish soil began to be established rather late in the 19th century. In 1890, such cooperatives were established in Bydgoszcz and Poznań[2].

Significant development of housing cooperatives, both tenant-owned and proprietary, took place after Poland regained independence. The legal basis for the creation of new cooperatives, including housing cooperatives, was the Act on Cooperatives, passed on October 29, 1920[3].

From the beginning, housing cooperatives operated in two forms: tenant-owned and proprietary. However, a major shortcoming was the lack of legal regulation of housing rights in housing cooperatives. Thus, the generally applicable property and bond laws inherited from the partitioners were applicable in this regard, which, moreover, varied in the western, central, eastern, and southern provinces. In this situation, the types of rights to premises were decided by the statutes of cooperatives. These rights were variously termed: lease, use, usufruct, enjoyment. This was a matter

2 Iwona Foryś, „Spółdzielczość mieszkaniowa w Polsce po transformacji gospodarczej" *Studia i Prace Wydziału Nauk Ekonomicznych i Zarządzania Uniwersytetu Szczecińskiego*, No. 1 (2017): 33.

3 Journal of Laws, No. 111, item 733; Journal of Laws 1934 No. 55, item 495; Journal of Laws 1950 No. 25, item 232.

of concern, as neither the provisions of cooperative law nor common civil law provided for the proper resolution of the doubts that emerged[4].

This situation partially changed with the entry into force of the Decree of the President of the Republic of Poland of October 24, 1934, on the ownership of premises[5], which allowed the separation of ownership of premises in housing cooperatives. However, even before the this ordinance came into force, there were cases in Warsaw of the separation of ownership of premises in such cooperatives on the basis of Article 664 of the Napoleonic Code, which allowed for the separation of ownership of a floor in a building[6].

After World War II, the communist authorities in Poland were not interested in solving the problem of housing rights in housing cooperatives, in particular, for ideological reasons, they were opposed to members being entitled to ownership of apartments. The Resolution of the Council of Ministers No. 81 of March 15, 1957, on State aid for housing construction from the people's own funds[7] introduced three types of housing cooperatives: tenant cooperatives[8], ownership cooperatives[9] and cooperative associations for the construction of single-family houses. However, it did not specify the rights to housing vested in members.

The legal status changed significantly with the entry into force of the Act of February 17, 1961, on cooperatives and their associations[10]. The Act maintained three types of housing cooperatives and clearly defined and regulated the rights of members. In housing cooperatives, these were tenants' rights – obligatory, non-transferable and not subject to inheritance[11]. In housing construction cooperatives, members held ownership rights in rem, which were transferable and subject to inheritance, though with significant limitations. Finally, in cooperative housing construction associations, members held ownership rights.

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4 Jerzy Ignatowicz, „Spółdzielnie budownictwa mieszkaniowego w świetle projektu ustawy o spółdzielniach i ich związkach" *Państwo i Prawo*, No. 11 (1958): 762-763.

5 Journal of Laws No. 94, item 848 as amended.

6 See Ryszard Strzelczyk, *Ewolucja odrębnej własności lokalu w prawie polskim (doctoral dissertation, unpublished)* (Uniwersytet Warszawski, 2005), 58 et seq.

7 Polish Monitor No. 22, item 157.

8 Or more precisely: housing cooperatives.

9 Or more precisely: building and housing cooperatives.

10 Journal of Laws No. 12, item 61 as amended, hereinafter: the „1961 Act.".

11 However, with protection for relatives living together with the deceased member, who were given priority to join the cooperative – Article 145 of this Act.

The 1961 Act did not contain transitional provisions concerning the rights of separate ownership of premises established under the Premises Ownership Ordinance. However, it was assumed that these rights remained intact, since the aforementioned ordinance was still in effect. Paradoxically, this was confirmed by the disgraceful Resolution No. 311 of the Council of Ministers, dated December 18, 1965, on the taking over of certain buildings of housing cooperatives for state ownership, the principles of settlements on this account, and the regulation of certain other matters in the field of housing cooperatives[12]. The resolution, firstly, contained a list of cooperative buildings, seized by the communist authorities in 1945, which, due to public needs, could not be returned to the cooperatives or were subject to seizure into the ownership of the State Treasury (14 buildings belonging to 10 cooperatives). Secondly, the resolution ordered members of cooperatives that had transferred separate ownership of premises built before November 21, 1945, to transfer ownership of the premises to the cooperative in exchange for cooperative rights to the premises within two years of the effective date of the resolution, under the sanction of the premises passing to the State. However, this only applied to premises located in 16 buildings belonging to 12 cooperatives[13].

Article V(1) of the Act of April 23, 1964 Introductory Provisions to the Civil Code[14], revoked the Premises Ownership Ordinance. Instead, the original version of the Civil Code of April 23, 1964, included three articles (135 – 137) on separate ownership of premises. Initially, these provisions were applied almost exclusively to those rights that had been established prior World War II. The Law of July 6, 1972, amending the Law on the Management of Land in Cities and Settlements and the Law on the Exclusion of Single-Family Houses and Premises in Housing Cooperative Houses from the Public Management of Premises, among other things, made it possible to separate independent premises in multi-apartment houses owned by the State and sell them to tenants as the subject of separate ownership. At the same time, the State practically ceased the construction of apartments for rent (so-called „quaternity apartments") and transferred these tasks to housing cooperatives. On the basis of Article 135 § 5 of the

12 Polish Monitor No. 71, item 406.

13 Krzysztof Pietrzykowski, „Przekształcenia spółdzielczych lokatorskich i własnościowych praw do lokali w prawa odrębnej własności", [in:] *Współczesne problemy prawa prywatnego. Księga pamiątkowa ku czci Profesora Edwarda Gniewka* (Warsaw. C.H. Beck, 2010), 459-460.

14 Journal of Laws No. 16, item 94 as amended.

Act on Cooperatives and their Associations, the Council of the Central Association of Housing Cooperatives adopted Resolution No. 6 on April 10, 1972, on the organization of tenant-owner housing cooperatives and on the principles to which the statutes of housing cooperatives should conform[15]. Tenant-owner cooperatives (so-called mixed cooperatives) became the predominant type of housing cooperatives, which allocated housing units both tenant-owner and owner-occupied, and converted tenant rights into ownership rights[16]. At that time, housing cooperatives took a quasi-monopoly position in meeting housing needs in Poland. At that time, housing cooperatives were no longer considered the „third way" (after tenancy and ownership), but the first way in meeting the housing needs of the population.

The Act of September 16, 1982 – The Cooperative Law[17] introduced the unified concept of a housing cooperative, which included tenancy and ownership rights, as well as ownership rights to single-family houses. In addition, the legislation permitted the division of ownership of units in small residential buildings, i.e., those with a maximum of four units, in favor of members.

Subsequent decrees from the Council of Ministers on the principles of granting bank credit for housing purposes[18] regulated the financing of cooperative housing. In the case of a tenant apartment, the cooperative member covered, in different years, from 50% (initially) to 70% (in 1989) of the construction costs attributable to the unit assigned to him. The member made an advance payment of 10% of the construction costs. For 40% to 60% of the construction costs the state bank gave the cooperative an interest-bearing loan at a rate of 1% per annum, the repayment of which was spread over 40 years, while the remaining part of the construction

15 Informacje i Komunikaty CZSBM 1972, No. 7-8, item 24. See Jerzy Ignatowicz in: Mirosław Gersdorf, Jerzy Ignatowicz, *Prawo spółdzielcze. Komentarz* (Warsaw: Wydawnictwo Prawnicze, 1985), 343; Krzysztof Pietrzykowski, „Spółdzielcze prawo mieszkaniowe – dawniej i obecnie", [in:] *Rozprawy z prawa cywilnego, własności intelektualnej i prawa prywatnego międzynarodowego. Księga pamiątkowa dedykowana Profesorowi Bogusławowi Gawlikowi* (Warsaw: LexisNexis 2012), 528.

16 Wiesław Chrzanowski, *Spółdzielcza forma zaspokajania potrzeb mieszkaniowych (studium prawno-społeczne)* (Warsaw: Zakład Wydawnictw CZSR: Spółdzielczy Instytut Badawczy, 1981), 26-27.

17 Journal of Laws No. 30, item 210 as amended, hereinafter: the „1982 Act.".

18 The last was the Decree of the Council of Ministers of December 30, 1988, on general rules for granting bank credit for housing purposes, Journal of Laws 1989 No. 1, item 1.

costs allocated to the apartment (from 50% to 30% in individual years) was amortized on a one-time basis[19]. In the case of a proprietary apartment, the cooperative member made an advance housing contribution of at least 20% of the construction costs, for the remainder of the construction costs the state bank gave the cooperative an interest-bearing loan at 2% per annum, the repayment of which was spread over 40 years. If the member repaid the entire loan at once before occupying the apartment, 30% of the loan used would be forgiven. The Council of Ministers Ordinance of April 5, 1989, on amending the implementing regulations on the rules for granting and interest rates on loans for housing construction purposes[20] changed the interest rate on credit extended to housing cooperatives to 3% for tenant apartments and 6% for ownership apartments.

Such low interest rates on loans to housing cooperatives, coupled with the country's poor economic situation, caused the waiting period for cooperative housing to extend to several decades. The legal status in this regard was already modified after the change of the political system in Poland following the 1989 elections. On January 1, 1990, the Act of December 28, 1989, on the Ordering of Credit Relations[21], which repealed the obligations imposed on banks to provide privileges and preferences in loan interest rates and repayment terms, and established that loan interest rates for 1990 were subject to repayment at 40% of the interest amount. Members who had not repaid their loans by the end of 1989 found themselves in a situation known as a „credit trap". Despite the implementation of several measures by the Polish authorities with the aim of alleviating this phenomenon, the issue remains unresolved to this day.

Despite several amendments to the 1982 Act, the types of members' rights to premises in housing cooperatives remained unchanged.

19 Krzysztof Pietrzykowski, Spółdzielnie mieszkaniowe. Komentarz, 9 wyd., Warszawa 2018, pp. 156-157; see also Małgorzata Bednarek, *Prawo do mieszkania w konstytucji i ustawodawstwie* (Warsaw: Wolters Kluwer, 2007), 756-758.

20 Journal of Laws No. 22, item 118.

21 Journal of Laws No. 74, item 440.

4 Rights to premises in housing cooperatives in Poland (Act on Housing Cooperatives)

The parliamentary bill on regulating ownership relations in housing cooperatives and amending certain acts[22] proposed radical changes to ownership relations in housing cooperatives. First, the bill provided for the *ex lege* acquisition by a housing cooperative of the right of perpetual usufruct of state or municipal land on which the cooperative had constructed buildings without legal title to the land. Second, the law provided for the *ex lege* acquisition by a housing cooperative of the right of perpetual usufruct of land other than state or municipal land on which the cooperative constructed buildings without legal title to such land, as well as the *ex lege* acquisition of ownership of such land by the State Treasury. Third, it provided for the *ex lege* transformation of the cooperative ownership right to premises into the right of separate ownership of premises. Fourth, the bill provided for the *ex lege* conversion of a cooperative tenant right to premises into a cooperative tenancy right.

The parliamentary bill on housing cooperatives of May 7, 1998[23], provided, among other things, for the enfranchisement of those housing cooperatives that, as of December 5, 1990, had constructed buildings on land to which they had no legal title in the form of ownership or perpetual usufruct, the *ex lege* conversion of the cooperative ownership right to premises into the right of separate ownership of premises, and the conversion of the cooperative tenant right to premises into a cooperative right to housing. Housing cooperatives could establish cooperative rights to residential premises and rights to separate ownership of premises in favor of members[24]. The draft Act adopted by the parliamentary committee[25] differed slightly from the original parliamentary draft but retained its basic constructs. The government took a critical stance towards the draft law on housing cooperatives with regard to the proposed ownership conversions by operation of law itself. The Sejm, responding positively to

22 Second parliamentary term paper, No. 663.

23 Third parliamentary term paper, No. 407.

24 See Krzysztof Pietrzykowski, „Projektowane zmiany w spółdzielczym prawie mieszkaniowym" *Przegląd Legislacyjny*, No. 1 (2000): 59-78.

25 Third parliamentary term paper, No. 1589.

the government's comments, passed the Act on Housing Cooperatives on December 15, 2000[26], which came into force on April 24, 2001.

The basic tenets of this law with regard to members' housing rights were as follows. First, solutions were introduced to allow cooperatives that built on other people's land to acquire ownership or perpetual usufruct of that land. However this was done in an extremely inept and ineffective manner. Second, a housing cooperative could establish two types of housing rights for its members: tenant ownership and separate ownership of premises. Third, the existing cooperative ownership right to a residential unit became a transitional category, which meant that after the law came into effect, housing cooperatives could not establish such a right for the benefit of their members. Fourth, members of cooperatives with cooperative housing rights were granted a claim to transfer their ownership, in the case of ownership rights free of charge, and in the case of tenancy rights partially against payment. Fifth, the previous regulations applied to the so-called cooperative right to a single-family house until their ownership was transferred to members.

The 2000 Act was amended several times. Both this law and the earlier 1982 Act were impacted by over a dozen decisions of the Constitutional Court[27] and numerous decisions of the Supreme Court[28]. In spite of this, the construction of housing rights for cooperative members remained intact.

When it comes to the amendments to the Act of 2000, particularly noteworthy is the Act of July 20, 2017, amending the Act on Housing Cooperatives, the Act – Code of Civil Procedure and the Act – Cooperative Law[29]. This amendment introduced the principle of linking membership in a housing cooperative with cooperative rights to premises was introduced, as a consequence of which the rule is that membership arises and ceases *ex lege*[30].

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26 Journal of Laws 2001 No. 4, item 27, Journal of Laws 2023 item 438, hereinafter: the „2000 Act.".

27 See Krzysztof Pietrzykowski, „Spółdzielcze prawo mieszkaniowe w orzecznictwie Trybunału Konstytucyjnego", [in:] *Podstawowe konstrukcje i tendencje rozwojowe prawa spółdzielczego* (Lublin: Wydawnictwo KUL, 2014), 121-135.

28 See Krzysztof Pietrzykowski, „Spółdzielcze prawo mieszkaniowe w orzecznictwie Sądu Najwyższego (wybrane zagadnienia)", [in:] *Spółdzielczość mieszkaniowa w Polsce wobec wyzwań współczesności* (Bielsko-Biała: Wyższa Szkoła Administracji, 2014), 21-34.

29 Journal of Laws 2017, item 1596.

30 See in more detail Katarzyna Królikowska, *Zasada związania praw do lokalu z członkostwem w spółdzielni mieszkaniowej* (Warsaw: C.H. Beck, 2009); Krzysztof

The introduction of this change deserves strong approval. However, the current regulation applies only to those who have tenant or ownership rights, and those who apply for the establishment of tenant or separate ownership rights to premises. What is completely incomprehensible, however, is the omission of people who already have separate ownership rights to premises in a housing cooperative. After all, the association of membership with rights to premises was undoubtedly modeled on the Act of June 24, 1994, on ownership of premises[31], and there it is precisely the rule that *ex lege* members of a housing cooperative are all owners of premises in a given property.

5 *De lege ferenda* conclusions

Firstly, there is still unresolved the problem of those housing cooperatives that erected buildings on land to which they did not have legal titles. Appropriate drafts of the law enfranchising such cooperatives *ex lege* have been ready for 30 years, it is enough only to use them[32]. Maintaining the current legal status also raises doubts about whether and what rights are vested in cooperative members whose premises are located in buildings erected on other people's land. The Supreme Court, in a resolution of a panel of seven judges on May 24, 2013, III CZP 104/12[33], adopted that a cooperative ownership right to premises established in a building located on land to which the cooperative is not entitled to ownership or perpetual usufruct, constitutes an expective right; the establishment of a land and mortgage register to disclose it is impermissible.

Secondly, the problem of ownership conversions of cooperative ownership rights to premises also remains unresolved. Such transformations can be either voluntary or compulsory (*ex lege*).

Pietrzykowski, „Nowa formuła stosunku członkostwa w spółdzielni mieszkaniowej", [in:] *Prawo prywatne w służbie społeczeństwu. Księga poświęcona pamięci Profesora Adama Jedlińskiego* (Sopot: Spółdzielczy Instytut Naukowy, 2019), 263-278.

31 Journal of Laws 2021 item 1048.

32 See, for example, Pietrzykowski, *Spółdzielcze prawo mieszkaniowe w orzecznictwie Sądu Najwyższego*, 21-34.

33 Orzecznictwo Sądu Najwyższego Izba Cywilna 2013, No. 10, item 113.

Voluntary conversions are regulated in Article 17^{14} of the 2000 Act with regard to ownership rights. This concerns the transformation of the cooperative ownership right to premises into the right of separate ownership of premises[34]. In particular, against the background of the application of these provisions, the problem arose as to whether the transformation is to be free of charge or at least partially chargeable. The Constitutional Court, in its December 17, 2008, P 16/08 ruling[35], found that Article 17^{14}(1) of the 2000 Act, to the extent that it obliges a cooperative to conclude an agreement to transfer ownership of an apartment after a member of the cooperative or a non-member of the cooperative has made only the payments referred to in points 1 and 2 of that provision, is inconsistent with Article 64(2) and (3) in conjunction with Article 21(2) of the Constitution. The aforementioned provisions were amended as a consequence of this judgment by the Law of December 18, 2009, amending the Law on Housing Cooperatives and amending certain other acts[36]. However, the previous gratuitous nature of voluntary ownership conversions was preserved[37].

As already mentioned, the legislator left the cooperative ownership right to premises as a transitional category, since it did not allow the establishment of new such rights, but allowed the transformation into separate ownership of those rights that had already been created. Thus, at present, two types of transferable and inheritable rights to premises coexist in housing cooperatives in Poland: the cooperative ownership right to premises and the right to separate ownership of premises. The differences between these rights used to be very clear, primarily for the reason that, although the cooperative ownership right to premises was transferable and subject to inheritance and it could be held jointly by spouses, but at the same time there were far-reaching restrictions on the inheritance of the right to premises (Article 150 of the 1961 Act, Article 228 of the 1982 Act), the consequences of termination of membership in a cooperative for reasons other than the death of a member (Article 149 of the 1961 Act, Article 227 of the 1982 Act, Article 178 of the 2000 Act), transferability of the right to the premises (Article 147 of the 1961 Act, Article 223 of the 1982 Act, Article 17^{2} of the 2000 Act), belonging of the right to the premises to

34 Katarzyna Królikowska in: *System Prawa Prywatnego*, t. XXI, *Prawo spółdzielcze*, ed. Krzysztof Pietrzykowski (Warsaw: C.H. Beck, 2020), 640 et seq.

35 Orzecznictwo Trybunału Konstytucyjnego – A 2008, No. 10, item 181. See also the judgment of the Supreme Court of July 8, 2010, II CSK 3/10, Legalis, Lex.

36 Journal of Laws 2009 No. 223, item 1779.

37 Pietrzykowski, *Spółdzielnie mieszkaniowe*, 153-154, 235-239.

the joint property of the spouses (Article 138 of the 1961 Act, Articles 215 and 216 of the 1982 Act), and the ability of members to rent their apartments (Article 143.5 of the 1961 Act, Article 217 of the 1982 Act, Article 1716 of the 2000 Act). The aforementioned restrictions were gradually removed from the Polish legal order by the Constitutional Court, first with regard to the inheritance of property rights. In its judgment of February 25, 1999, K. 23/98[38], the Constitutional Court declared that Article 228(3) of the 1982 Act was incompatible with Article 64(1) and (3), in conjunction with Article 21(1) and Article 31(3) of the Constitution, and with Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms[39]. In its judgment of May 21, 2001, SK 15/00[40], the Constitutional Court found that Article 228(1) of the 1982 Act was inconsistent with Article 64(1) and (3), in conjunction with Article 21(1) and Article 31(3) of the Constitution, but not inconsistent with Article 64(3) of the Constitution. Subsequent Constitutional Court rulings have lifted further restrictions on property rights. In its judgment of June 29, 2001, K. 23/00[41], the Constitutional Court declared that Article 215(1) of the 1982 Act was inconsistent with Article 32 in conjunction with Article 2 of the Constitution and with Article 64(1) in conjunction with Article 31(3) of the Constitution, Article 216 of the 1982 Act was inconsistent with Article 64(2) in conjunction with Article 31(3) of the Constitution, and Article 217(1) and (2) of the 1982 Act was inconsistent with Article 64(2) in conjunction with Article 31(3) of the Constitution. In its judgment of March 30, 2004, K 32/03[42], the Constitutional Court ruled that Article 17^8(1) of the 2000 Act is inconsistent with Article 64(2) in conjunction with Article 31(3) of the Constitution, and that Article 17^2(2) of the 2000 Act is inconsistent with Article 64(1) in conjunction with Article 31(3) of the Constitution. In its judgment of December 11, 2008, K 12/08[43], the Constitutional Court found that Article 227(1) of the 1982 Act, as in effect prior to January 15, 2003, is inconsistent with Article 64(2) in conjunction with Article 31(3) of the Constitution. The Constitutional Court ruled on November 9, 2005, P 11/05[44], that Article 223(2) of the 1982 Act, repealed by

38 OTK 1999, No. 2, item 25.
39 Journal of Laws 1995 No. 36, item 175.
40 OTK 2001, No. 4, item 85.
41 OTK 2001, No. 5, item 124.
42 OTK-A 2004, No. 3, item 22.
43 OTK-A 2008, No. 10, item 176.
44 OTK-A 2005, No. 10, item 113.

Article 3(3) of the 2002 Amendment Act, is inconsistent with Article 64(1) in conjunction with Article 31(3) of the Constitution.

As a result of changes in Polish law, resulting mainly from the aforementioned judgments of the Constitutional Court, the legal construction of the cooperative ownership right to premises has become closer to the ownership right to premises in a housing cooperative[45]. From an economic and sociological point of view, these two legal constructions are in principle no different. However, from a legal point of view, they are still two separate constructions: a limited right in rem and ownership. The cooperative ownership right to housing still suffers from restrictions on the leasing of cooperative housing by cooperative members to others. Pursuant to Article 17^{16}, paragraph 1 of the 2000 Act, the leasing out or giving into free use by a member or a non-member of a cooperative, to whom the cooperative ownership right to premises is vested, of all or part of the premises does not require the consent of the cooperative, unless it would be connected with a change in the use of the premises or the purpose of the premises or part thereof. This is a relic of the old legal regulations, which should be removed from the legal order. In addition, it should be emphasized that the establishment of a land and mortgage register for a cooperative ownership right to premises is not mandatory (Article 1, paragraph 3 of the Act of July 6, 1982 on Land and Mortgage Registers and Mortgages [46]). This makes that in the case of the sale of a cooperative ownership right to premises, which is not disclosed in the land and mortgage register, the purchaser does not benefit from the protection provided by the provisions on the warranty of public credibility of land and mortgage registers (Articles 5 – 9 of the Act on Land and Mortgage Registers and Mortgages). Therefore, this is buying the proverbial „cat in the bag", as there is a certain risk that the seller does not have the right to the premises, while the good faith of the buyer is not protected.

The clear similarity between the cooperative ownership right to premises and the right of separate ownership of premises means that members of a housing cooperative do not have sufficient incentive to convert the former into the latter[47]. Therefore, it is necessary to return to the concept from more than 30 years ago of *ex lege* transformation of the cooperative

45 Strzelczyk, *Ewolucja odrębnej własności lokalu*, 239 et seq.

46 Journal of Laws 2023 item 146.

47 Andrzej Mączyński, Dawne i nowe instytucje polskiego prawa mieszkaniowego" *Kwartalnik Prawa Prywatnego*, No. 1 (2002): 65 et seq.

ownership right to premises as a limited right in rem into the right of separate ownership of premises[48]. This is because the cooperative ownership right to premises is a construction typical of communist law, which, like the right of perpetual usufruct of land, should have disappeared long ago. This is a relic typical of Polish law, that no longer exists in other post-communist countries, where there is generally a strong tendency for members of housing cooperatives to have ownership rights to premises. For historical reasons, this is fully understandable, since before the change of regime in these countries, private ownership basically did not exist (with the exception of Poland and the former Yugoslavia). Besides, also in some countries of „old" Europe, members of housing cooperatives have or may have ownership rights to premises.

Thirdly, the cooperative tenancy right to housing units occurs in practice either as a right formerly established under the provisions of the 1961 and 1982 Acts, or as a right established under the current 2000 Act as an alternative to separate ownership. However, the establishment of this right requires assistance from the public authority. The amount of the housing contribution made by a member of a cooperative corresponds to the difference between the cost of construction attributable to his premises and the assistance obtained by the cooperative from public funds or other funds obtained to finance the cost of construction of the premises (Article 10, paragraph 2 of the 2000 Act), including repayable financing (Articles 9^1 and 9^2 of the 2000 Act). State aid for the realization of cooperative tenant housing is clearly insufficient, with the result that only a few housing cooperatives choose to build tenant housing.

Voluntary conversions have been regulated in the provisions of Article 12 of the 2000 Act with regard to the tenant's right that can be converted into the right of separate ownership of an apartment. Also against the backdrop of the application of these provisions, a problem arose as to whether the transformation was to be essentially gratuitous or at least partially gratuitous. The Constitutional Court, in its judgment of December 17, 2008, P 16/08, found that Article 12(1) of the 2000 Act was incompatible with Article 64(2) and (3) in conjunction with Article 21(2) of the Constitution

48 Krzysztof Pietrzykowski, Spółdzielcze prawo do lokalu mieszkalnego de lege ferenda", [in:] *Z zagadnień współczesnego prawa cywilnego. Księga pamiątkowa ku czci Profesora Tomasza Dybowskiego* (Warszawa: Wydawnictwa Uniwersytetu Warszawskiego, 1994), 129-137; Józef Skąpski, „O stanie i potrzebach prawa cywilnego – uwag kilka" *Przegląd Sądowy*, No. 7-8 (1992): 13.

to the extent that this provision obligates the cooperative to conclude a contract for the transfer of ownership of the premises after the cooperative member has made only the repayments referred to in items 1-3 of the provision. The provisions of Article 12 of the 2000 Act were amended as a consequence of this judgment by the Law of December 18, 2009, amending the Law on Housing Cooperatives and Amending Certain Other Laws, which, however, aptly preserved the previous, essentially gratuitous nature of voluntary ownership conversions.

The cooperative tenant right to housing is a corporate bonded right, non-transferable and not subject to inheritance or execution (Article 9 (3) of the 2000 Act)[49]. However, the housing contribution is inheritable (Article 14 (2) of the 2000 Act). Upon the death of one of the spouses, the cooperative housing right to which both spouses were entitled falls to the other spouse (Art. 14 (1) of the 2000 Act). In the event that the cooperative tenant's right to a dwelling unit expires as a result of the death of the entitled person or in the cases referred to in Article 11, claims to conclude a contract for the establishment of a cooperative tenant's right to a dwelling unit accrue to his relatives[50] (Article 15 paragraph 2 of the 2000 Act). For the protection of the cooperative tenant's right to a dwelling unit, the provisions on the protection of property shall apply accordingly (Article 9, paragraph 6 of the 2000 Act)[51].

The cooperative tenant right to housing should de lege ferenda become a limited right in rem, with the possibility of its transformation into the right of separate ownership of premises. Consequently, this right would be transferable and subject to inheritance and execution. However, in the event of a sale, the housing cooperative would have the right of first refusal.

Fourth, the right of separate ownership of premises in a housing cooperative could have been created in the following cases: under the provisions of the Presidential Decree of October 24, 1934 on the ownership of premises, which is no longer in force, or Articles 135-137 of the Civil Code, as a result of the transformation of a tenant's or owner's right under Article 12 or 17^{14} of the 2000 Act, *ex lege* under Article 17^{18} of the 2000 Act in connection with

49 Piotr Zakrzewski in: *System Prawa Prywatnego*, 472-531.

50 The definition of relatives is provided in Article 2, paragraph 5 of the Act of 2000.These are descendants, ascendants, siblings, children of siblings, spouse, adoptee and adopted person, and a person who is actually in common life with a cooperative member.

51 These are the provisions of Article 222 et seq. of the Civil Code of April 23, 1964 (Journal of Laws 2023 item 1610).

the acquisition of a building or an interest in a building by an entity other than a housing cooperative in the course of liquidation, bankruptcy or foreclosure proceedings against the cooperative's property, and on the basis of a contract for the construction of premises regulated by the provisions of Article 18 et seq. of the 2000 Act. The application of the aforementioned provisions of Article 18 et seq. of the 2000 Act[52] is generally not in doubt, so in principle they do not require amendment.

Fifth, in Poland, separate ownership of premises can exist both in buildings of housing cooperatives and in buildings of housing communities. This is not some peculiar phenomenon, as housing cooperatives and condominiums (housing communities) operate in parallel in many European countries. In Poland, the first legal regulation of separate ownership of premises appeared in the Presidential Decree on Ownership of Premises of October 24, 1934, which initially applied in principle only to housing cooperatives. At the time, there was no concept of a housing community, because there was no need for it, since the ownership of premises was vested in members of housing cooperatives. The situation changed in 1994, when the Law on Premises Ownership introduced the concept of a housing community and granted such a community legal capacity and judicial capacity (Article 6 of the Law). A housing community, however, is not a legal person, but at most a so-called „legal disability". Its legal construction raises serious doubts, as evidenced by the appearance in the Polish literature of several monographs on its subject[53]. It is undisputed that it cannot conduct business and has no bankruptcy capacity. The expression of doubts about the legal nature of the housing community is especially the erroneous resolution of a panel of seven judges of the Supreme Court of December 21, 2007, III CZP 65/07[54], according to which the housing community, acting within the legal capacity granted to it, can acquire rights and obligations to its own property. This raises the question of whether it makes sense to continue the dualism of the legal regulation of separate ownership of premises in the Laws on Ownership of Premises and Housing Cooperatives. It may be advisable to consider converting a housing community *ex lege* into a housing cooperative, as has been done in Estonia?

52 Jerzy Pisuliński in: *System Prawa Prywatnego*, 585-630.

53 Katarzyna Malinowska-Woźniak, *Cywilnoprawny status wspólnoty mieszkaniowej* (Warsaw: C.H. Beck, 2016); Aleksander Turlej, *Wspólnota mieszkaniowa* (Warsaw: C.H. Beck, 2005).

54 Orzecznictwo Sądu Najwyższego Izba Cywilna 2008, No. 7-8, item 69, with my dissenting opinion.

Sixth, on November 4, 2022, the Act on housing cooperatives (*ustawa o kooperatywach mieszkaniowych*) and the rules for the disposal of real estate belonging to the municipal real estate stock to support the implementation of housing projects was passed[55]. The idea itself was not bad. Namely, the idea was to allow at least three individuals to carry out a housing project, connected with the acquisition of undeveloped or developed land for the purpose of establishing separate ownership of premises or transferring ownership of single-family houses. Serious doubts are raised, however, by the law's adoption of the unfortunate name „housing cooperative" ("*kooperetywa mieszkaniowa*"), which is irresistibly associated with „housing cooperative" ("*spółdzielnia mieszkaniowa*"). If we translate these terms into any foreign language, the same thing will always come out: „housing cooperative," or „housing cooperative." It should be added that in the past in Poland cooperatives were called, among other things, cooperatives (*kooperatywy*). This raises a question, why were two laws adopted in Poland (on housing cooperatives (*spółdzielniach mieszkaniowych*) and housing cooperatives (*kooperetywach mieszkaniowych*) that mean the same thing? Meanwhile, a housing cooperative (*kooperatywa mieszkaniowa*) is something completely different from a housing cooperative (*spółdzielnia mieszkaniowa*) under the Act. A housing cooperative (*kooperatywa mieszkaniowa*) is a contractual legal relationship, similar to that of a civil partnership (Article 860 et seq. of the Civil Code), while a housing cooperative (*spółdzielnia mieszkaniowa*) is a legal entity. Or perhaps it was enough to amend the Law – Cooperative Law or the Law on Housing Cooperatives (*ustawa o spółdzielniach mieszkaniowych*) by adopting that the minimum number of members of a housing cooperative is three?

55 Journal of Laws 2023 item 28. See *Ustawa o kooperatywach mieszkaniowych oraz zasadach zbywania nieruchomości należących do gminnego zasobu nieruchomości w celu wsparcia realizacji inwestycji mieszkaniowych. Komentarz*, ed. Bogusław Lackoroński (Warszawa: Wolters Kluwer, 2023).

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