

IV. LEGAL FRAMEWORK

A. General

An adequate legal system is a prerequisite for a sound transition from a centrally-planned to a market economy. For the housing sector this means:

- (a) Basic constitutional rights of residents to own and inherit land and buildings, freedom of contract and the right to privacy;
- (b) The division of power and competence between central, regional and local levels and an independent judiciary, linked with the individual right of recourse to the courts;
- (c) Legislation on real-estate ownership;
- (d) Legislation on public and private rental housing;
- (e) Legislation on condominiums and housing cooperatives;
- (f) Legislation on financing and credits in relation to housing;
- (g) Legislation on housing subsidies; and
- (h) Procedural legislation.

B. Constitutional framework and constitutional rights

On 25 May 1997 Poland got a new Constitution. It confirms the separation of powers. The independence of the judiciary is safeguarded via tenure and immunity for the judges and their exclusive "subordination" to the Constitution and the Law. Citizens' right to challenge constitutionality has been added to the Constitution to safeguard the rule of law and the rights of citizens.

The legal relations between municipalities and the State have already been changed with the introduction of the principle of local self-government, as part of the constitutional amendment of March 1990 and the Statute on Territorial Self-Government of 8 March 1990. Local self-government is regarded as the main organizational form of local public life. Local self-government is part of the public power (art. 16 of the Constitution) and is endowed with a separate legal identity as well as with the right to own property and other assets. The municipalities are given their own sources of income and have the right to participate in the public revenues according to the tasks they perform.

The Constitution established a number of basic rights: economic freedom, guarantee of private property and

equality of private and public property (expropriation is possible only according to legal proceedings and for compensation).

The right to fully exploit one's property is given only to Polish citizens and local authorities. Foreigners need a special permit to acquire land (and buildings). Acquisition in this context means purchase, exchange, donation, tendering. In all such cases ministerial permission is needed. According to the latest amendment, foreign companies are allowed to acquire *municipal* property without such ministerial permission. The same is true for foreign individuals who want to buy a condominium flat. However, they must have a residence permit for more than five years. Chapter II of the Constitution guarantees civil and citizens' rights, including personal freedom in regard to housing, economic freedom to own property and other valuable assets and the right to inherit. Restrictions are allowed only if specified by law.

C. Developments in housing-related legislation in 1990-1996

During the first years of transition, most attention was paid to the transformation of the principles of economic life, like the Commercial and Civil Codes, reforms of the banking, the taxation and the institutional systems. After these economic reforms, a number of laws regarding housing were enacted or amended:

- (a) Real Estate Act (1996), dealing with the regulation of real property owned by central and local governments, with real-estate market professions, national cadastre valuation and expropriation processes;
- (b) Income Tax Act (1991), allowing for tax deductions for housing purposes;
- (c) Housing Condominium Act (1994), defining the status of condominiums and housing communities;
- (d) Residential Lease and Housing Allowance Act (1994), setting the framework for rent calculation by municipalities and introducing housing allowances;
- (e) Building Law (1994), simplifying construction regulations to eliminate some redundant cost-increasing norms;
- (f) Physical Planning Act (1994), introducing a more flexible physical planning system by giving local authorities more leeway in land allocation matters. The building permit procedure was simplified and shortened;

(g) Cooperatives Act (1994), defining the operation of cooperatives, including housing cooperatives;

(h) Contract Savings and Non-Profit Rental Housing Act (1995), introducing the contract savings system;

(i) Act on Certain Forms of Support for Housing Construction (1995).

D. Ownership and tenure structures

Ownership of land and buildings

Property rights (ownership and leasehold tenure) are defined and governed by the Civil Code. Ownership is a transferable and inheritable right and a person possessing that right may dispose freely of the object involved, limited only by the principles of community life. This property right is safeguarded and guaranteed by the Polish Constitution: according to its article 7, Poland safeguards the property and the right of inheritance and guarantees the comprehensive protection of personal property. Expropriation is possible only when required to meet public goals and only in exchange for fair compensation.

Individual ownership of premises has been known since pre-war times, but did not play an important role until the transition process started. Amendments to legislation in 1990 (related to the limitation of the size of rooms and houses eligible for establishing individual property ownership) were not deemed sufficient, hence the *Act on Ownership of Premises* (24 June 1994). The Act regulates the establishment of individual ownership of dwellings and/or units serving other purposes, determines the rights and duties of owners as well as the management of jointly owned property. Ownership title can be established by means of a contract, a unilateral decision of the owner—both in the form of a notarial deed—or a court decision ruling on the partition of joint property, distribution of an inheritance or dissolution of co-ownership.

A new means of establishing individual property is the contractual (notarial deed) *obligation to build*—on one's own property—dwellings designed for individual ownership. All the above-mentioned forms of establishing individual property need to be entered in the land and mortgage register. As a result, an investor is able to collect advance payment from future users, thus limiting the principal of the loan to be obtained from a bank for construction purposes. Buildings erected by the owner or already existing belong to the person who possesses the land. It goes without saying that the owner of this interest may, to the exclusion of others, enjoy and exploit the fruits of the property, but that he may do so only "in accordance with the principles of social cooperation". The right of ownership is subject to the limits prescribed by statute, as in all legal systems. Thus, for example, the owner is subject to town-planning legislation.

Leasehold tenure is similar to ownership: it is a transferable and inheritable right, normally granted for 99 years for which a yearly fee (first fee 15-25 per cent of the value) has to be paid. After its expiration, the buildings belonging to the user have to be compensated (at least 25 per cent of their value). The existence of leasehold tenure enables the State and the local authorities to allow their lands to be used for social needs, in particular for construction.

Rules on rental housing

Lease is the most widespread form of using land and/or buildings. The basic definition of the Civil Code states the tenant's right to use an object (including dwellings) for either a specified or an unspecified time against the payment of an agreed rent to the owner. The freedom to choose the contractual partner, i.e. the tenant, and to agree on a rent has long (since 1919) been heavily restricted by the administrative control of housing allocation, the so-called *kwaterek*.

Due to the housing shortage and the lack of funds for construction or reconstruction, the State continuously had to make (minor) exemptions, thus freeing, for instance, five-room owner-occupied single-family houses and cooperative dwellings from administrative control. Rent regulations, setting rents at a very low level, and insufficient State funding of construction and renovation led to a continuous deterioration of the technical and functional state of the housing stock. The cooperative stock, not being subject to administrative control and regulated rents and being financed by the cooperative's members, is in a much better condition.

Currently, the *Residential Lease and Housing Allowance Act* (2 July 1994) is the main legal basis for renting out residential dwellings, multi-storey houses, single-family houses and co-op dwellings. Although the Act exempts a large share of the stock from administrative control, it is still based on the principles of housing allocation. Dwellings in these exempted categories that had been allocated under administrative control, can be vacated, provided that the tenant is offered alternative housing. The provisions of the Civil Code apply to all housing categories not regulated by the Act, i.e. temporary lease, occasional lease, lease of parts of a property and sublease of dwellings. The Civil Code, however, constitutes the basis for general rules on the contractual relation between tenant and owner, on termination of contracts, on sublease, on the owner's obligations to deliver the property in a condition fit for the agreed use and to keep it in such condition during the tenancy.

The *Residential Lease and Housing Allowance Act* responds to practical problems that have emerged in recent times:

- Specification of reasons for terminating the lease;
- Evictions following a court ruling are legal and enforced (no longer by the housing agency but by court executive officers);

- The former prerequisite of providing alternative accommodation for evicted tenants no longer exists;
- Rents are still regulated until 2004 (at the latest). Rent levels are set by the municipal authorities; and
- The division of maintenance and repair works between owners and tenants is regulated in detail.

Finally, the Act outlines the local authorities' responsibility for housing policy, i.e. establishing rent levels, keeping up the municipal housing stock, supplying social housing and paying housing allowances (a major part of the Act). The State's financial contribution in accordance with the Budgetary Act is also mentioned in the Act.

The cooperative sector

Housing cooperatives operate on the basis of the Cooperatives Act, which has undergone substantial changes in the last few years. The right to premises—either a tenancy or an ownership right—is linked to membership of the given cooperative. There is no forced membership: cooperatives decide on applications. As in other west European countries, Polish housing cooperatives finance, construct, maintain and administrate their own stock for their own members. Tenancy rights, i.e. permanent lease, fall within the scope of application of the *Residential Lease and Housing Allowance Act*, which also regulates the rents of cooperative dwellings.

The Cooperatives Act offers three major categories of cooperative rights:

- Tenancy right—the right to use the dwelling, to pass it on to a spouse or another close relative, to transfer the tenancy into an ownership right. The dwelling share, a financial contribution to the cooperative, which is a prerequisite for obtaining a dwelling, covers only part of the total construction costs of the dwelling involved;
- Ownership right—the right to use, to transfer and to inherit the dwelling, to own jointly the common property (land). The ownership share, the corresponding contribution for acquiring ownership right to a cooperative dwelling, covers the full costs of construction;
- Ownership of a single-family house can be obtained before or after construction. It is tantamount to full ownership.

All transfers, acquisitions and divisions of cooperative estates and property require a notarial deed and registration in the land and mortgage register.

Condominiums and condominium administration

As part of the legal reforms, the Housing Condominium Act was introduced in 1994. This law was seen as a step forward towards a clear definition of the rights and obligations of condominium owners, although the hous-

ing community, the proposed association of co-owners, was not defined as an independent legal person. Individual property and jointly owned property of the plot of land are connected with each other and cannot be dissolved as long as the individual property exists. The Act spells out the duties of owners, for instance to bear the common costs related to maintenance, repair and management. Management can be contracted out or can be carried out by an appointed co-owner. For the time being, the former municipal maintenance units continue to do the management. Although the housing community is not a legal person, obligations related to the jointly owned property are carried out jointly by the co-owners according to each owner's share in the common property. The housing community may also sue or be sued in a legal procedure. Owners who persistently disregard their obligations can be forced—by a court ruling—to sell the dwelling. The first experiences with the new Act indicate that complex legal problems can arise from partly privatized municipal or enterprise apartment buildings where the new co-owners cannot bear the cost of maintenance and improvements.

E. Title registration, land register and mortgage system

Mobilizing private investment for urgently needed new construction and modernization of the housing stock requires clear and safe mechanisms. The typical instrument, the real-estate mortgage, is well known and has a long tradition in Poland. Although in substance the mortgage law meets European standards, foreclosure is very ineffective (mainly for private banks), due to poor ranking of the real-estate mortgage and the time-consuming execution of foreclosure.

Closely related with the mortgage system is the title registration and the keeping and updating of the land registers. For the time being the transfer of property, i.e. the registration of the (new) owner of real property, is not a prerequisite. However, land registers exist, and investors can demand registration of the real estate and the mortgage. The old and incomplete land register is being updated: a central court registration is being established. It will consist of a commercial register, a pledge register (for the registration of security rights in personal property) and a land register.

F. New developments in housing-related legislation since 1996

Amendments to existing acts

The Act of 1 August 1997 amends the Act on Certain Forms of Support for Housing Construction. The Act defines principles relating to savings and the provision of contractual loans for housing, the operating principles of the national housing fund and of social housing associations and of the official body dealing with housing and urban development. The funds available to the national housing fund are allocated for granting loans on

preferential terms to social housing associations and housing cooperatives for the construction of dwellings destined for lease. These loans finance not more than 70 per cent of the cost of the project. Ten per cent of the costs of the project is amortized after its completion and settlement. A social housing association may lease a dwelling to an individual person, only if: (a) the individual and the members of his household on the day they take up the dwelling do not have legal title to another dwelling; and (b) the household income on the day of conclusion of the lease does not exceed 1.3 times the average monthly salary in the province plus:

- (i) 20 per cent in a single-person household;
- (ii) 80 per cent in a two-person household;
- (iii) by a further 40 per cent for every additional person in a larger household.

In dwellings built with credits from the national housing fund by housing cooperatives or social housing associations in which most of the shares are owned by a housing cooperative, preference is given to those members of the housing cooperatives who became members before 29 November 1991 and have been on a waiting list for a dwelling and to candidate members of housing cooperatives.

The Act of 21 August 1997 amends the Residential Lease and Housing Allowance Act and the Cooperatives Act. The Act governs the regular leasing of separate dwellings and the principles of housing benefits. It introduces 35 changes. The most important are:

(a) Housing deposits have been restored. In particular, it has been decided that a lease, except for social and substitute dwellings and exchanges of dwellings, may be conditional on the lessee paying a deposit securing the payment of the rent due to the lessor when the former vacates the dwelling. The deposit is returned if the tenant fulfils his obligations upon vacating the dwelling;

(b) The circle of close relatives who can take over the lease of a deceased lessee has been extended. Now his descendants, parents, adult siblings, adopted children and his spouse or partner, living with him up to his death, can take over the lease and acquire his rights and obligations with regard to the dwelling, unless they waive these rights in relation to the lessor;

(c) If no one is entitled to take over the lease or if those who are entitled waive their rights, the lease expires;

(d) The removal of unauthorized occupants has been regulated in a new way. In case of unauthorized occupation of a dwelling, the person whose rights have been infringed may remove the perpetrators with the help of the police or communal guard. If they are not removed within three months from the date of the dwelling being illegally occupied, the person whose rights have been infringed may apply for the occupants to be evicted by way of recourse to the law;

(e) New principles for notices of termination have been introduced. Notice of termination is obligatory only if there is an increase in the freelease rent. A resolution

of the Commune's Council determines the amounts of the rent for the next 12 months. Such a resolution comes into force after at least one month from the day of its announcement, from the beginning of a calendar month. The house administrator or other person authorized to collect rents is obliged to notify the lessee in writing about the new rent, not later than seven days before the resolution comes into force;

(f) The right of eviction has been extended. So far, only the lessor had such a right. At present, if the lessee blatantly or persistently contravenes the order in the house, making it difficult for others to use other dwellings in the building, an action to terminate the lease and an order to vacate the premises can be brought before a court of law by another lessee, by the holder of cooperative title to the dwelling or by the owner of another dwelling in the same building. A co-lessee may bring an action before a court of law to evict a spouse, a divorced spouse or another co-lessee, if he/she makes cohabitation impossible;

(g) Fines on people who occupy dwellings without legal title have been mitigated. Compensation for occupation without legal title equals 200 per cent of the rent. At present, this regulation is not applied if the occupant is entitled to a substitute or social dwelling. When such a person is given a substitute or social dwelling he/she pays compensation for the use of the dwelling, but only an amount equivalent to the normal rent.

The Act of 22 August 1997 amends the Act on Housing Unit Ownership. It defines individual ownership titles to independent dwelling units, the rights and obligations of the owners and common property management. It introduces 10 changes, of which the most important are:

(a) Any spaces attached to a separate housing unit and constituting part of it have been defined in a different way. Other spaces may now be attached to a dwelling unit, even if they are not directly adjacent to it, especially a cellar or a loft, unless a legal act or a court ruling stipulates otherwise;

(b) Owners have been given the right to grant permission for the construction of an additional storey or the conversion of common real estate, to establish an individual ownership right to the dwelling unit created as a result and to dispose of such a dwelling unit as well as to change the proportion of shares as a result of this new ownership;

(c) Owners of dwelling units have acquired the right to appeal to a court against a resolution of the owners if it does not comply with the law or does not have the owner's agreement, or if it infringes the rules of proper management of common real estate or infringes their interests in any other way. The lawsuit can be brought against a housing unit community within six weeks from the date of adoption of the resolution at a meeting of all the owners or from the date on which the plaintiff is informed about the contents of the resolution adopted by way of individual collection of votes;

(d) The owners have been given management control. The new regulation stipulates that every owner has the right to control the management.

New legislation

The Act of 20 December 1996 on municipal economy defines the principles and tasks of the municipalities to satisfy the collective needs of the self-governing community, such as providing public services.

The Act of 5 June 1997 on savings systems and State support to savings for housing purposes defines the principles of saving for building purposes, and mortgages. The savings systems are run in the form of banks established as joint stock companies. The savings banks exclusively take deposits from individuals for special savings accounts and grant them mortgages.

The Act of 21 August 1997 on real-estate economy defines principles for:

- (a) Management of real estate owned by the State Treasury and municipalities;
- (b) Partition of real estate;
- (c) Integration and partition of real estate;

- (d) Right of pre-emption;
- (e) Expropriation and restitution of real estate;
- (f) Participation in the costs of construction of technical infrastructure;
- (g) Valuation of payment for real estate; and
- (h) Professional real-estate management.

Professional activity in real-estate management is understood as property expertise, real-estate trade brokerage and real-estate management. The Act defines the requirements for professional certification and licences for real-estate experts, real-estate brokers and real-estate administrators.

Municipal boroughs have begun work on local housing strategies without sufficient experience in that field. Advice is obtained from organizations representing foreign funds. The Housing Research Institute was commissioned by the Housing and Urban Development Office to carry out a study entitled "The Housing Strategy of a municipal commune". The study has been disseminated to all towns with more than 20,000 inhabitants. The Housing Research Institute also organizes regular training for local housing staff. But there are still many financial barriers to housing development at the local level, particularly in view of the municipalities' increasing tasks.