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The Origins and Shape of the Institution of Separate Ownership of Premises in the Second Polish Republic

1. Introduction; 2. The Concept of Ownership in the Interwar Period; 3. Genesis of the Institutionalization of Separate Ownership of Premises in Poland; 4. The Construction of Separate Ownership of Premises as Shaped by the Premises Ownership Ordinance; 5. Summary.

1

Separate ownership of premises was institutionalized in Poland by the Presidential Ordinance of 24 October 1934 on the Ownership of Premises, which came into force on 28 October 1934.¹ This Ordinance regulated not only the possibility of establishing separate ownership of premises, but also the concept and the management of the joint property of premises owners.

The provisions of the Ordinance initially applied to buildings owned by natural persons and legal entities and erected after the Ordinance (Art. 21) came into

¹ Rozporządzenie Prezydenta Rzeczypospolitej z 24 października 1934 r. o własności lokali, Dz.U. z 1935 r. nr 94, poz. 848 [the ordinance of the President of the Republic of Poland of 24 October 1934 on the ownership of premises, Journal of Laws 1934 no 94, item 848]. This was an act of statutory rank, as it was issued under the Act of 15 March 1934. Ustawa z 15 marca 1934 r. o upoważnieniu Prezydenta Rzeczypospolitej do wydawania rozporządzeń z mocą ustaw, Dz.U. z 1934 r. nr 28, poz. 221 [the act of 15 March 1934 on the authorization of the President of the Republic of Poland to issue provisions with the force of law, Journal of Laws 1934 no 28, item 221].

force.² However, by virtue of the Decree of the President of the Republic of Poland of 14 January 1936 on the Amendment of the Ordinance on the Ownership of Premises³, the scope of influence of the Premises Ownership Ordinance was also extended to buildings which, prior to its entry into force, were owned by legal persons and had been subdivided into individual premises, if the agreements under which separate ownership of premises was created agreed with the provisions of the Ordinance.

The date of entry into force of the Premises Ownership Ordinance thus inaugurated a new institution in the Polish legal system, shaping the concept of the owner of premises, but also, at the same time, the co-owner of the joint property of the owners of premises. In addition to the content of the Premises Ownership Ordinance, this study will also present the reasons why the Polish legislator decided to introduce this institution into the legal order. In addition, the socio-economic background of the interwar period in Poland will be described, which enabled the introduction of an institution based on private property.

Due to the length of the study, the arguments contained in it are limited to presenting the form of the institution of separate ownership of premises, present in the Polish legal system in the period from 1934 to the end of World War II.⁴ In fact, the Ordinance on the Ownership of Premises of 1934 operated for longer, until the Civil Code came into force in 1964.⁵ However, after World War II, the public housing management introduced in Poland resulted in the form of the institution of ownership of premises contained in the Ordinance of 1934 being

² This Ordinance ceased to have legal force pursuant to Art. 92, Pt 5 of the Act of 30 January 1959 Premises Law. Ustawa z 30 stycznia 1959 r. Prawo lokalowe, Dz.U. z 1959 r. nr 10, poz. 59 [the act of 30 January 1959 premises law, Journal of Laws 1959 no 10, item 59].

³ By the Decree of the President of the Republic of Poland of 14 January, added Art. 21, Sec. 2, which expanded the impact of the Premises Ownership Ordinance. Dekret Prezydenta Rzeczypospolitej z dnia 14 stycznia 1936 r. w sprawie zmiany rozporządzenia Prezydenta Rzeczypospolitej z dnia 24 października 1934 r. o własności lokali, Dz.U. z 1936 r. nr 3, poz. 21 [the decree of the President of the Republic of Poland of 14 January 1936 amending the decree of the President of the Republic of Poland of 24 October 1934 on the ownership of premises, Journal of Laws 1936 no 3, item 21].

⁴ According to Ryszard Strzelczyk, even during World War II, despite exceptionally difficult circumstances, the provisions of the Ordinance on the Ownership of Premises were implemented sporadically and separate ownership of premises was established. R. Strzelczyk, *Prawo obrotu nieruchomościami*, Wydawnictwo C.H.Beck, Warszawa 2010, p. 48.

⁵ The Ordinance on the Ownership of Premises was repealed only by Art. 5, item 1 of the Act of 23 April 1964. Ustawa z dnia 23 kwietnia 1964 r. Przepisy wprowadzające kodeks cywilny, Dz.U. z 1964 r. nr 16, poz. 94 [the act of 23 April 1964 provisions introducing the Civil Code, Journal of Laws 1964 no 16, item 94]. The Civil Code came into force on 1 January 1965.

modified, which also contributed to its gradual disappearance.⁶ This modification was a consequence of the political changes in Poland after World War II, which had an impact on the legal provisions introduced at that time, permeated with the state's reluctance regarding the institution of individual ownership.⁷ The provision of the institution of separate ownership of premises in the Civil Code of 1964 (Art. 135–139) was an ideological continuation of the marginalization of the importance of private property in the history of the development of this institution.⁸ A new perspective on separate ownership of premises was brought about only by the amendment to the Civil Code in 1990⁹, and then by the introduction of the Act on the Ownership of Premises in 1994.¹⁰ However, an analysis of the institution of separate ownership of premises in each of these periods should be the subject of a separate study.

2

After regaining independence in 1918, the Polish legislature faced the task of unifying the law.¹¹ However, this was not carried out in the field of property law,

⁶ J. Skąpski, *Własność lokali w świetle ustawy z 24 czerwca 1994 r.*, "Kwartalnik Prawa Prywatnego" 1966, no 2, p. 197.

⁷ The modification of the form of the institution of separate ownership of premises after World War II resulted primarily from numerous provisions introduced in administrative acts as part of the management of public housing that affected this institution.

⁸ The structure of separate ownership of premises was regulated in the Civil Code fragmentarily. This structure was supplemented by numerous legal acts of an administrative nature, mostly introduced as part of housing policy.

⁹ Ustawa z dnia 28 lipca 1990 r. o zmianie ustawy Kodeks cywilny, Dz.U. z 1990 r. nr 55, poz. 321 [the act of 28 July 1990 on amending the Civil Code, Journal of Laws 1990 no 55, item 321].

¹⁰ Ustawa z dnia 24 czerwca 1994 r. o własności lokali, Dz.U. z 1994 r. nr 85, poz. 388 [the act of 24 June 1994 on the ownership of premises, Journal of Laws 1994, item 1688].

¹¹ In 1919, a special body called the Codification Commission of the Republic was set up and tasked with drafting laws. In the field of civil law, among the first to be enacted were the law of 29 October 1920 on cooperatives, the law on the protection of tenants of 18 December 1920, followed by the Protection of Tenants Act of 11 April 1924. Ustawa z dnia 29 października 1920 r. o spółdzielniach, Dz.U. z 1920 r. nr 111, poz. 733 [the law of 29 October 1920 on cooperatives, Journal of Laws 1920 no 111, item 733]; Ustawa z dnia 18 grudnia 1920 r. o ochronie lokatorów, Dz.U. z 1921 r. nr 4, poz. 19 [the law on the protection of tenants of 18 December 1920, Journal of Laws 1920 no 4, item 19]; Ustawa z dnia 11 kwietnia 1924 r. o ochronie lokatorów, Dz.U. z 1924 r. nr 39, poz. 406 [the protection of tenants act of 11 April 1924, Journal of Laws 1924 no 39, item 406]. In 1926, private international law and inter-divisional law were introduced in order to remove the conflict of the laws of the partitioned states. Ustawa z dnia 2 sierpnia 1926 r. o prawie właściwym dla stosunków prywatnych wewnętrznych (Prawo prywatne mię-

and legal and material relations were still regulated by provisions from the period of partitions. As far as property law was concerned, the principle was adopted that rights in rem (in addition to the acquisition, modification or cancellation of rights in rem in immovable property, as well as obligations arising from legal transactions under which such rights are to be acquired) were governed by the law of the place where their object is located (*lex rei sitae*). This was related to the recognition that the need for unification in the field of property law was not very urgent¹², as the partition legal codes in force on the territory of the Polish state were based on private property in the field of property law, which fully corresponded to the social and economic system of Poland.

The Constitution of the Republic of Poland of 17 March 1921¹³ addressed the issue of property on several different levels. Firstly, it introduced a guarantee of re-

dzdzielnicowe), Dz.U. z 1926 r. nr 101, poz. 580 [the act of 2 August 1926 on the law applicable to private internal relations (inter-district law), Journal of Laws 1926 no 101, item 580]; Ustawa z dnia 2 sierpnia 1926 r. o prawie właściwym dla stosunków prywatnych międzynarodowych (Prawo prywatne międzynarodowe), Dz.U. z 1926 r. nr 101, poz. 581 [the act of 2 August 1926 on the law applicable to private international relations (private international law), Journal of Laws 1926 no 101, item. 581]. By 1939, the following had been promulgated: Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 października 1933 r. Kodeks zobowiązań, Dz.U. z 1933 r. nr 82, poz. 598 [the ordinance of the President of the Republic of Poland of 27 October 1933 Code of Obligations, Journal of Laws 1933 no 82, item 598]; Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 czerwca 1934 r. Kodeks handlowy, Dz.U. z 1934 r. nr 57, poz. 502 [the ordinance of the President of the Republic of Poland of 27 June 1934 Commercial Code, Journal of Laws 1934 no 57, item 502]; Ustawa z dnia 28 kwietnia 1936 r. Prawo wekslowe, Dz.U. z 1936 r. nr 37, poz. 282 [the law on bills of exchange of 28 April 1936, Journal of Laws 1936 no 37, item 282]; Ustawa z dnia 28 kwietnia 1936 r. Prawo czekowe, Dz.U. z 1936 r. nr 37, poz. 283 [the cheque law of 28 April 1936, Journal of Laws 1936 no 37, item 283]; and the laws on intangible property rights.

¹² For Poland of the interwar period, it was important, first of all, to unify the provisions on trade in goods and the organization and activities of enterprises. S. Szer, *Prawo cywilne. Część ogólna*, Państwowe Wydawnictwo Naukowe, Warszawa 1967, pp. 42–43; A. Stelmachowski, *Modele własności i ich uwarunkowania społeczno-ustrojowe* [in:] *Prawo rzeczowe*, ed. T. Dybowski, Wydawnictwo C.H.Beck, Warszawa 2007, p. 92.

¹³ Ustawa z dnia 17 marca 1921 r. Konstytucja Rzeczypospolitej Polskiej, Dz.U. z 1921 r. nr 44, poz. 267 [the act of 17 March 1921 Constitution of the Republic of Poland, Journal of Laws 1921 no 44, item 267]. The earlier ones: Uchwała Sejmu z dnia 20 lutego 1919 r. o powierzeniu Józefowi Piłsudskiemu dalszego sprawowania urzędu Naczelnika Państwa, Dz.Pr.P.P. z 1919 r. nr 19, poz. 226 [the resolution of the legislative Sejm of 20 February 1919 on entrusting Józef Piłsudski with continuing to hold the office of the Chief of State, Dz.Pr.P.P. 1919 no 19, item 226] (Small Constitution) and Ustawa Konstytucyjna z dnia 15 lipca 1920 r. zawierająca statut organiczny Województwa Śląskiego, Dz.U. z 1920 r. nr 73, poz. 497 [the constitutional act of 15 June 1920 containing an organic statute of the Silesian Voivodship, Journal of Laws 1920 no 73, item 497], omitted the issue of property, but did so on the basis of the principle that property matters belong to ordinary legislation.

spect for all property (Art. 99), secondly, the principle of protection of life, liberty and property of citizens without distinction of origin, nationality, language or religion (Art. 95), thirdly, the principle that the disposal or encumbrance of real estate of state property shall be based on the law (Art. 6) and fourthly, the principle of the inviolability of the home (Art. 100). Of primary importance here was Art. 99. This stipulated that the personal property of citizens as well as the collective property of associations of citizens, institutions, self-governing bodies or the State, constituted one of the most important bases of the social system and legal order, and was protected by the State. The guarantee of ownership contained in the wording of this provision was upheld by Art. 81, Sec. 2 of the Constitution of 23 April 1935.¹⁴

The content of Art. 99 of the March Constitution was therefore of fundamental importance for the foundations of the state system with regard to the treatment of property rights. The concept of property was unitary in nature, which meant that the right to property was treated equally – irrespective of the object of the right and to whom it belonged. This view of property rights corresponded to capitalist economics because, by equating all goods, property was treated as a commodity and thus served to facilitate circulation.¹⁵ Such an understanding of the role of ownership favoured the introduction of the institution of ownership of premises into the legal system.¹⁶

As was mentioned, the partition codes in force on the territory of Poland reflected such an understanding of property, which resulted in the fact that the problem of property law was not a priority of the Codification Commission, although

¹⁴ Ustawa Konstytucyjna z dnia 23 kwietnia 1935 r., Dz.U. z 1935 r. nr 30, poz. 227 [the constitutional act of 23 April 1935, Journal of Laws 1935 no 30, item 227].

¹⁵ J. Ignatowicz, *Prawo rzeczowe*, Państwowe Wydawnictwo Naukowe, Warszawa 1976, pp. 40–41.

¹⁶ During the inter-war period, there were also certain restrictions on the right to property, introduced by the provisions of the 1924 law on the protection of tenants. The ability of the state to dispose of privately owned premises was particularly intrusive. Art. 29, Ustawa z dnia 11 kwietnia 1924 r. o ochronie lokatorów, Dz.U. z 1924 r. nr 39, poz. 406 [the protection of tenants act of 11 April 1924, Journal of Laws 1924 no 39, item 406]. This concerned premises occupied on the basis of the Act of 27 November 1919. Ustawa z dnia 27 listopada 1919 r. o obowiązku zarządów gmin miejskich dostarczania pomieszczeń, Dz.U. z 1919 r. nr 92, poz. 498 [the act of 27 November 1919 on the obligation of municipalities to provide premises, Journal of Laws 1919 no 92, item 498]. They were most often occupied in order to be delivered to tenants removed from state buildings and to state officials and officers. The State Board, therefore, had the right, without the consent of the owner, to cede these premises to the persons indicated above. In such a case, the owner of the premises was only entitled to object to the change of use of the premises in a situation in which he was able to demonstrate that his interest was seriously prejudiced. The merits of the objection were decided by the arbitration court.

this did not mean that no steps were taken in this field.¹⁷ However, they were primarily related to the state's housing policy, the main tasks of which concerned meeting the housing needs of the population and the development of housing. They resulted from the situation created after World War I, which manifested itself in a chronic housing shortage, a situation which forced the legislatures of many countries to pay attention to the institution of separate ownership of premises.¹⁸

3

The genesis of the introduction of the institution of separate ownership of premises into the Polish legal system can also be seen in the desire to implement the state's housing policy strategy. It is submitted that the concept of separate ownership of premises, including the provisions regulating the management of the common property of the owners of premises, was introduced primarily with housing cooperatives in mind¹⁹, although the scope of the provisions regulating it was not limited to cooperatives only. Undoubtedly, however, it was housing cooperatives that were beginning to play an increasingly important role in the construction and operation of housing in a devastated country.²⁰ Municipalities were to be primarily involved in the construction of new housing, although they were not allocated the funds to achieve this goal.²¹ High hopes were therefore associated with the devel-

¹⁷ A draft substantive law was published in 1937, but it did not become a law, having failed to pass all the legislative stages. "Kwartalnik Prawa Prywatnego" 1993, no 4, pp. 520–567.

¹⁸ See Z. Radwański, *Funkcja społeczna, treść i charakter prawny odrębnej własności lokali*, "Studia Cywilistyczne" 1968, vol. 11, p. 45; R. Strzelczyk, *Prawo nieruchomości*, Wydawnictwo C.H.Beck, Warszawa 2024, p. 51.

¹⁹ Z. Radwański, *Funkcja społeczna...*, *op. cit.*, pp. 46–47; A. Mączyński, *Dawne i nowe instytucje polskiego prawa mieszkaniowego*, "Kwartalnik Prawa Prywatnego" 2002, no 1, p. 80; *idem*, *Pojęcie i zakres działalności spółdzielni mieszkaniowej*, "Rejent" 2003, no 12, p. 20.

²⁰ Between the two world wars, cooperatives set up to solve the housing problems of the middle-income strata of the population introduced for the first time. In 1921, for example, Warsaw Housing Cooperative, which specified in its statutes that it would provide its members with cheap and comfortable housing through collective self-help and with the support of state and municipal institutions. In 1938, there were 189 registered building and housing cooperatives with 10,300 members and 50 housing cooperatives with 12,900 members. D. Jarosz, *Mieszkanie się należy. Studium z peerelowskich praktyk społecznych*, Oficyna Wydawnicza ASPRA-JR, Warszawa 2010, p. 22.

²¹ Investment activities were to be supported by the state. The planned measures in this regard were normalized by the Acts: Ustawa z dnia 1 sierpnia 1919 r. w przedmiocie utworzenia Państwowego Funduszu Mieszkaniowego, Dz.U. z 1919 r. nr 72, poz. 424 [the act of 1 August 1919 on the creation of a State Housing Fund, Journal of Laws 1919 no 72, item 424]; Ustawa z dnia 29 lipca 1921 r. w przedmiocie przeznaczenia terenów za cytadelą oraz pasa ziemi wzdłuż ulicy

opment of housing co-operatives, the seeds of which already existed before 1918.²² Construction was to be financed from the State Economic Fund, the State Urban and Rural Development Fund and the sale of mortgage bonds and bonds. Builders were allowed to borrow up to 90% of the construction costs (excluding the value of the site). Many entities took advantage of this opportunity, including housing associations, which, by bringing together and organizing the interaction of those seeking housing, began to develop rapidly.²³ Matters concerning the rules for the use of dwellings by cooperative members as well as members' rights to dwellings were regulated by the cooperative's statutes under Art. 6 of the Act on Cooperatives. With that said, until 1934, co-operative members enjoyed co-operative housing on the basis of rental rights under the terms of the Code of Obligations.

The rapid development of housing co-operatives was halted by the crisis of the 1930s, which meant that, in addition to demands for construction, the drive to change the financing conditions for housing construction also began to gain importance. This concerned increasing construction loans, and therefore the mass debt relief of borrowers. Housing cooperatives were increasingly forced to raise

Górnej w Warszawie pod budowę domów, Dz.U. z 1921 r., nr 69 poz. 448 [the act of 29 July 1919 on the allocation of land behind the Citadel and the strip of land along Górna Street in Warsaw for the construction of house, Journal of Laws 1921 no 69, item 448]; Ustawa z dnia 26 września 1922 r. w przedmiocie rozbudowy miast, Dz.U. z 1922 r. nr 89, poz. 811 [the act of 26 September 1922 on urban development, Journal of Laws 1922 no 89, item 811].

²² The co-operative movement developed most rapidly in the Wielkopolska region, and it was there that the first housing co-operative was established on 27 March 1890 in Poznań, registered as Towarzystwo Pomoc, spółka budowlana. Its founders included Helena Modrzejewska and Stefan Cegielski, son of Hipolit Cegielski. At the time of the end of the World War I, there were 17 building and housing cooperatives in Wielkopolska, with resources in 18 towns.

²³ Although housing cooperatives operated during the inter-war period on the basis of provisions relating to cooperatives in general, two types of housing cooperative emerged during this period: housing and housing-construction cooperatives. In the 1920 Co-operative Societies Act, there were no provisions at all for housing co-operatives. Ustawa z dnia 29 października 1920 r. o spółdzielniach, Dz.U. z 1920 r. nr 111, poz. 733 [the law of 29 October 1920 on cooperatives, Journal of Laws 1920 no 111, item 733]. It was not until the 1923 and 1934 amendments, in the consolidated text of the Journal of Laws 1934, no 55, item 495, that there appeared a few provisions relating to housing associations. For example, Art. 3 of the articles of the association stipulated that the articles of the association of a cooperative, with the purpose of providing housing for its members, should provide for the creation of a building fund, regulate the rights of members to housing, determine the rules for the use of the housing, and the rules for the payment and reimbursement of building contributions. In contrast, the terms housing cooperative and housing and building cooperative only became legal concepts when the Presidential Decree of 22 April 1927 came into force. Rozporządzenie Prezydenta Rzeczypospolitej z 22 kwietnia 1927 r. o rozbudowie miast, Dz.U. z 1927 r. nr 42, poz. 372 [the presidential decree of 22 April 1927 on urban development, Journal of Laws 1927 no 42, item 372].

rents, and consequently tenants moved to smaller flats or started to leave the cooperative.²⁴ As the right of use of the premises by the cooperative members was ineffective against third parties, the effects of the insolvency of the cooperative were borne by all its members. Cooperative statutes provided for the surrender of premises “for ownership”, but the lack of a statutory basis meant that this “ownership” was not effective against the person acquiring the property from the cooperative.²⁵

The full individualization of the individual cooperative member’s liability could only be ensured by the institution of separate ownership of premises. It is therefore argued that this was probably the most direct motive for the legislator to regulate the institution of separate ownership of premises.²⁶ It is also emphasized that the idea of establishing the institution of separate ownership of premises was related to the idea of social solidarity.²⁷ The reasoning behind the establishment of this institution was seen in socio-economic conditions.²⁸

4

The concept of separate ownership of premises, as shaped by the Premises Ownership Ordinance of 1934, was based on the classical (dualist) model. According to this, the owners of the separate premises became at the same time co-owners of the land and all parts of the building intended for common use – the common property of the owners of the premises, referred to in the Ordinance as common property. The characteristic feature of joint ownership thus created was that it could not be abolished as long as there was separate ownership of at least one premises.²⁹ Each owner of the premises was required to participate in the joint

²⁴ B. Petz, *Próby rozwiązywania kwestii mieszkaniowej w dwudziestoleciu międzywojennym – podstawowe kierunki działań*, Kancelaria Sejmu Biuro Studiów i Ekspertyz, Warszawa 1994.

²⁵ A. Mączyński, *Dawne i nowe...*, *op. cit.*, p. 80.

²⁶ Z. Radwański, *Funkcja społeczna...*, *op. cit.*, p. 47.

²⁷ Z. Fenichel, *Własność lokali*, “Głos Prawa” 1935, no 3–4, p. 144. Socio-economical background of this institution was also mentioned by J. Liberman, *Własność mieszkania*, “Nowe Prawo” 1961, no 4, p. 481.

²⁸ R. Jackowski, *Prawo o własności lokali. Wstępne uwagi społeczno-gospodarcze*, “Przegląd Notarialny” 1934, no 5, pp. 3–4.

²⁹ Orzeczenie SN z dnia 5 stycznia 1962 r., III CR 920/61, OSNC 1963, nr 3, poz. 62 [the Supreme Court ruling of 5 January 1962, III CR 920/61, OSNC 1963, no 3, item 62]. However, the inadmissibility of abolishing co-ownership of real estate, from which separate ownership of premises was excluded, did not exclude the possibility of separating a separate plot of land from this property, which would not be related to the use of the building, abolishing co-ownership of such a separated plot and selling it by all co-owners. The disposal of the physical part of the property so separated did not violate the essence of separate ownership of the premises. See Wy-

ownership and his share in the common property constituted an appurtenance of the premises (Art. 14 and 15 of Premises Ownership Ordinance) and shared the legal fate of the premises, with the exception of the possibility of separately encumbering the common property with land easements.³⁰ The relationship between the ownership of the premises and the share in the joint ownership of the common property is defined in the Ordinance in the wording of Art. 14, Sec. 1, where the right to property is given the nature of a superior right.³¹

The common property of the unit owners came into existence when the first separate ownership of a unit in a property was established. To be more precise, it should be noted that the Premises Ownership Ordinance allowed for the possibility of establishing separate ownership rights on individual premises, but also on floors and parts of floors located in one building, recognized by the competent building authority³² as an independent premises.³³

rok SW w Bydgoszczy z dnia 15 kwietnia 1965 r., II CR 278/65, OSPiKA 1965, nr 11, poz. 236 [the judgment of the SW in Bydgoszcz of 15 April 1965, II CR 278/65, OSPiKA 1965, no 11, item 236]. Such a disposal had to be made by all co-owners, as under the structure adopted in the Ordinance they did not jointly form some separate organizational unit (separate from the co-owners).

³⁰ J. Liberman, *op. cit.*, p. 483.

³¹ The jurisprudence clearly emphasized that the participation of the owner of the premises in co-ownership is a right related to the ownership of the premises as the main right and therefore, as long as the separate ownership of the premises continues, the abolition of co-ownership of real estate cannot be demanded. See: Uchwała SN z dnia 11 listopada 1963 r., III CO 34/62 OS-NCP 1965, nr 12, poz. 199 [the resolution of the Supreme Court of 11 November 1963, III CO 34/62 OSNCP 1965, no 12, item 199].

³² Rozporządzenie Prezydenta Rzeczypospolitej z 16 lutego 1928 r. o prawie budowlanem i zabudowaniu osiedli, Dz.U. z 1928 r. nr 23, poz. 202 [the ordinance of the President of the Republic of Poland of 16 February 1928 on building law and development of settlements, Journal of Laws 1928 no 23, item 202], defined the local and material jurisdiction of the competent building authorities. This Ordinance was amended several times and was finally repealed by Art. 96 of the Building Law. Ustawa z 31 stycznia 1961 r. Prawo budowlane, Dz.U. z 1961 r. nr 7, poz. 46 [the act of 31 January 1961 Building Law, Journal of Laws 1961 no 7, item 46].

³³ By the way, a certain terminological inconsistency of the Ordinance can be observed. In the text of Art. 1 Pt 1 refers to the fact that premises, floors and parts of floors located in a single building and recognized as independent premises by the competent building authority could be the subject of separate ownership. Therefore, contrary to the literal wording of the title of the Ordinance, the subject of separate ownership could be independent “rooms”, and the title of the act should be the ordinance on the ownership of rooms. However, in view of the fact that in the subsequent wording of the Ordinance only the term “owners of premises” is used, it can be assumed that, on the one hand, the concept of premises was singled out (without defining it at the same time) and, on the other hand, it was used collectively to refer to the separate premises.

The Ordinance did not impose any restrictions on the use of the premises and it was therefore possible to separate both residential and commercial premises. Separate ownership of premises could be established either by establishing separate ownership of all premises at the same time or by successive separation of premises. The establishment of separate ownership of premises could occur both between co-owners of the property and between the owner/co-owners and a third party. There was also no restriction on the size of the premises that were to be subject to separate ownership. Separation of ownership of premises could also take place in any house situated on a property belonging to both an individual and a legal entity. However, the condition for establishing a separate ownership of premises was that the premises (floor, part of the floor) had to be recognized by the competent construction authority as an independent room and that the room was entirely located in one building. The legislation therefore did not allow rooms located outside the building to be considered as constituent parts of the premises, even if they were located within the boundaries of the land property.

The establishment of separate ownership of premises could only take place by virtue of a legal transaction which, on pain of nullity, had to take place in the form of a notarial deed.³⁴ This deed was required to specify the type, location and size of the individual premises, the proportional share of the owners in the joint ownership of the property and the proportional share of the common expenses and costs related to the management and maintenance of the joint property.³⁵ In the jurisprudence shaped at the time when the Ordinance was in force, the view was represented that the establishment of separate ownership of premises cannot take place on the basis of a court decision in proceedings for the dissolution of co-ownership or in proceedings for the division of the estate.³⁶ Since pre-war law was not famil-

³⁴ Orzeczenie SN z dnia 29 września 1959 r., I CR 289/59, LEX nr 1633036 [the Supreme Court ruling of 29 September 1959, I CR 289/59, LEX no 1633036]. In order to prepare a deed establishing separate ownership, it was necessary to present a certificate drawn up by the relevant construction authority stating that the premises in the building constituted independent premises, as well as plans with descriptions of the entire building and individual premises. See S. Cichosz, T. Szawłowski, *Ustanowienie odrębnej własności lokali*, "Palestra" 1958, no 3–4, p. 87.

³⁵ In the literature, this deed was referred to as the statute of the institution of separate ownership of premises or a form of the institution's provisions. See R. Jackowski, *Prawo o własności lokali. Komentarz artykułowy*, "Przegląd Notarialny" 1934, no 22, pp. 4–9; J. Liberman, *op. cit.*, p. 491.

³⁶ These were Supreme Court judgments that were issued after World War II, but the reasoning of their decisions also referred to the principles of establishing separate ownership of premises in the interwar period. See Wyrok SN z dnia 5 stycznia 1962 r., III CR 920/61, OSNCP 1963, nr 3, poz. 6 [the judgment of the Supreme Court of 5 January 1962, III CR 920/61, OSNCP 1963, no 3, item 6]; Uchwała SN z dnia 11 listopada 1963 r., III CO 34/62 OSNCP 1965, nr 12, poz. 199 [the resolution of the Supreme Court of 11 November 1963, III CO 34/62 OSNCP

iar with the procedure for establishing separate ownership of premises by virtue of a unilateral legal act by the owner of the property, the only permissible way of establishing separate ownership of premises was therefore to conclude a contract in the form of a notarial deed under pain of nullity.³⁷

Under Art. 15, Sec. 1 of the Ordinance, the right of separate ownership of the premises together with the share in co-ownership belonging to it was subject to disclosure in the mortgage (land) books.³⁸ However, since it was only in 1946³⁹ that

1965, no 12, item 199]; Postanowienie SN z dnia 18 listopada 1965 r., I CR 456/65, OSNC 1966, nr 9, poz. 153 [the resolution of the Supreme Court of 18 November 1965, I CR 456/65, OSNC 1966, no 9, item 153]. Firstly, this resolution, which was entered into the book of legal principles, indicated in support of this thesis that the provision that introduces an institution constituting an exception to the principle of *superficies solo cedit*, which additionally regulates only the possibility of establishing separate ownership of premises by means of an agreement concluded in the form of a notarial deed, as an exceptional act should be subject to a restrictive interpretation. Secondly, it was emphasized that the establishment of separate ownership of premises does not fully liquidate the co-ownership relationship because it continues in relation to the common property, and therefore the establishment of this right does not liquidate co-ownership but only transforms it into a different type of co-ownership.

³⁷ This rigour resulted from the content of Art. 2, Sec. 1 of the Premises Ownership Ordinance, as well as from the general principle expressed in Art. 82, Sec. 2 of the Law on Notaries. Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 października 1933 r. Prawo o notariacie, Dz.U. z 1933 r. nr 84, poz. 609 [the ordinance of 27 October 1933 law on notaries, Journal of Laws 1933 no 84, item 609]; Rozporządzenie Prezydenta Rzeczypospolitej z dnia 24 października 1934 r. o własności lokali, Dz.U. z 1934 r. nr 94, poz. 848 [the ordinance of the President of the Republic of Poland of 24 October 1934 on the ownership of premises, Journal of Laws 1934 no 94, item 848]. It should be noted, however, that in the literature one can find a statement that until the Civil Code came into force, the admissibility of establishing ownership of all premises by a unilateral declaration of the owner (co-owners) of the property before the sale of the first premises, as well as the submission of such a declaration in a notarial deed covering the sale of the first premises, did not raise any objections. See T. Dobaczewski, *Wyodrębnienie własności lokali w domach wielomieszkańczych stanowiących własność osób fizycznych*, "Nowe Prawo" 1983, no 9, pp. 102–111.

³⁸ The obligation to disclose the right of separate ownership of premises together with the share belonging to them also resulted from Sec. 1 of the Minister of Justice Ordinance. Rozporządzenie Ministra Sprawiedliwości z dnia 28 października 1934 r. o sposobie ujawniania w księgach hipotecznych prawa odrębnej własności lokali i innych praw rzeczowych na tych lokalach, Dz.U. z 1934 r., nr 94, poz. 853 [the Minister of Justice Ordinance of 28 October 1934 on the manner of disclosing in mortgage books the right of separate ownership of premises and other rights in rem on these premises, Journal of Laws 1934 no 94, item. 853]. This Ordinance was issued under Art. 22 Pt 2, Sec. 2 of the Premises Ownership Ordinance and came into force on 28 October 1934. The Ordinance set out the rules for keeping books for premises, the so-called premises books, throughout the country, retaining the post-partition terminology.

³⁹ The constitutive nature of the registration of separate ownership of premises in the land and mortgage register was introduced by the disposition of Art. XVI of the Decree of 11 October

a provision was introduced shaping the constitutive nature of such an entry, the entry in the mortgage book was declaratory in nature during the inter-war period. The separate ownership of premises, as well as common property, therefore came into existence when it was established, i.e. when the notarial deed was signed. This act constituted *titulus et modus acquirendi domini* and exerted obligatory and material effects. It was at this point that the purchaser became the owner of the premises and a co-owner of the common property. Under Art. 1, Sec. 2 of the Ordinance, this property consisted of the land on which the building was situated, courtyards, gardens, foundations, external walls, structural walls and walls separating the individual premises excluded from joint ownership. This also included roofs, chimneys and all parts of the building and all facilities for the use of all owners of the premises or certain groups of owners, such as attics, cellars, stairwells, corridors, gates, communal lavatories, communal bathrooms, laundries, dryers, lifts, sewerage facilities, water supply, central heating, lighting, etc.

The Premises Ownership Ordinance did not introduce any model for determining the size of shares in the common property, leaving the parties entirely free to do so.⁴⁰ The relative share of the owner of the premises was determined by the parties in the notarial deed establishing separate ownership of the premises. The shares of the owners of the individual premises in the joint ownership of the common property were also subject to disclosure in the book kept for the common property from which the premises were separated. Two separate books were therefore kept. One was established for each separate premises, which included a description of the premises and information on the associated share of ownership in the common property. The second ledger, known as the parent or legacy ledger, was kept for the common property. This ledger disclosed the shares of each unit owner in the property. This disclosure stated the numbers of the ledgers established for the separated premises. Therefore, the names and surnames of the owners of the shares in the joint property were not entered in this book. This impersonality of the ledger allowed for changes to owners' entries in the premises ledgers without having to change the entries in the ledger kept for the common property.⁴¹

1946. Dekret z dnia 11 października 1946 r. Przepisy wprowadzające prawo rzeczowe i prawo o księgach wieczystych, Dz.U. z 1946 r. nr 57, poz. 321 [the decree of 11 October 1946 provisions introducing the property law and the law on land registers, Journal of Laws 1946 no 57, item 321].

⁴⁰ These shares did not have to correspond to the surface area of the premises. This was due to the fact that in many cases the shares were established in relation to the location of the premises on individual floors, at the front or in the outbuilding, or with the sunlight of the premises or the view from the windows. See J. Liberman, *op. cit.*

⁴¹ R. Strzelczyk, *Prawo nieruchomości...*, *op. cit.*, p. 57.

The co-owners of the common property were obliged to bear the expenses and costs necessary for its maintenance as well as the costs related to the remuneration due to the members of the management board. The share of the owners of the individual premises in bearing these common expenses and costs was determined, in the deed establishing separate ownership of the premises, as part of the determination of the rights and obligations of the owners of the premises. This share did not have to be determined in proportion to the share in common ownership. This was evident from the juxtaposition of the content of Art. 2, Sec. 2 and Art. 18, Sec. 2 of the Premises Ownership Ordinance. In the first of these provisions, it is indicated that the mutual rights and obligations of the owners of the premises, and in particular the relative share of the owners of the individual premises in bearing the common expenses and costs connected with the management and maintenance of the common property, are determined by the act establishing separate ownership of the premises. In contrast, the wording of Art. 18, Sec. 2 of the Premises Ownership Ordinance, the amount of the share of expenses was clearly defined, namely, in the event of damage to the building, the compensation due under the insurance was to be paid to the management, which was to use it to restore the building to its proper condition and, in the event of a shortfall, it was to be paid by all the owners of the premises in proportion to the share of each of them in the common property. The share of expenses and costs could therefore be determined in accordance with the will of the parties and could also be changed during the course of the joint ownership by a unanimous resolution of the assembly of owners.

Due to the particularly conflicting nature of joint ownership of common property, great importance was attached in the Ordinance to defining the rules for the management of the common property. In regulating this issue, the co-owner's rights under the law to decide on matters concerning the subject matter of the property were preserved. On the other hand, taking into account the complexity of coercive neighbourhood relations, norms were introduced to allow decisions to be made, assuming the possibility of multiple landlords.

The owners of the premises did not act as a separate legal entity but they all acted as co-owners – a group of entities connected by joint ownership and the goal of managing this ownership in the common interest. This characteristic feature of joint ownership based on the organizational bond between the co-owners acting to achieve a common goal became the basis for defining the legal nature of the institution of separate ownership of premises.⁴²

⁴² Zygmunt Fenichel states that the owners of premises constitute a *sui generis* company. See Z. Fenichel, *op. cit.*, p. 151–152. Rudolf Jackowski indicates that this relationship constitutes a kind of legal person. See R. Jackowski, *Prawo własności lokali. Komentarz...*, *op. cit.* According to Seweryn Szer, all the owners constituted a compulsory statutory *sui generis* organization.

The model of communal property management (joint ownership) was based on the concept of the coexistence of the owners' meeting, the management board appointed to manage the communal property and the Audit Committee as the control body.⁴³ A clear distinction is made between the concept of management (subject side) and governance (object side) by stating that a management board should be appointed to manage.⁴⁴ This management board (of one or more persons) should have been appointed by the assembly of owners on the basis of a resolution adopted by an absolute majority of the shares represented, unless otherwise specified in the deed establishing the separate property.⁴⁵ The term of office of the board was three years. It was possible to dismiss the board earlier by a resolution of the assembly of owners by the majority necessary for his or her appointment, provided that a new management board was appointed at the same time.⁴⁶ The management board, here, did not constitute an organ of the legal subject, as the co-owners of the joint property remained only a collection of co-owners, and the legislator did not jointly ascribe them the status of a separate legal subject.

The management board was entitled to perform ordinary management activities, handle the day-to-day affairs regarding the property of the joint owners of the premises and represent all the owners before third parties and courts.⁴⁷ The

See S. Szer, *Własność lokali. Przyczyunki do wykładni prawa z 24.X.1934*, "Przegląd Notarialny" 1934, p. 246.

⁴³ The audit committee was mandatorily appointed in the case of co-ownership belonging to more than ten separate premises. Art. 4, Sec. 3 of the Rozporządzenie Prezydenta Rzeczypospolitej z dnia 24 października 1934 r. o własności lokali, Dz.U. z 1934 r. nr 94, poz. 848 [the ordinance of the President of the Republic of Poland of 24 October 1934 on the ownership of premises, Journal of Laws 1934 no 94, item 848].

⁴⁴ The management board performed its function for remuneration. Both owners of the premises and entities outside of this group could be appointed to the board. The Ordinance also did not place a restriction on the appointment of only natural persons to the board.

⁴⁵ In a situation where the assembly of owners did not appoint a management board, the management board would be established by the municipal court of the place where the property is located at the request of the interested party in accordance with the provisions on the procedure for the appointment of an arbitral judge by a state court. At the same time as the establishment of the board, the court determined the remuneration of the board members.

⁴⁶ This principle also applied to court-appointed management.

⁴⁷ In a situation where the management board was not a single person, joint representation by two members of the management board was necessary to make declarations of intent on behalf of all co-owners. However, this was a rule that applied only if the deed establishing separate ownership of the premises did not provide otherwise. By contrast, with regard to declarations of intent made to all co-owners, the rule was that a declaration of intent addressed to all co-owners and made to one member of the management board (as well as service) had legal effect against all co-owners.

powers of the board, which could not be reduced by a resolution of the owners, were regulated by Art. 3, Sec. 3 of the Premises Ownership Ordinance.⁴⁸ Decisions to undertake activities beyond ordinary management were made by the co-owners.⁴⁹

The correct convening of the assembly was very important.⁵⁰ Indeed, if the assembly had been duly convened, it could have adopted resolutions regardless of the number of shares in the joint property represented at the assembly. However, such a rule applied only if the deed establishing separate ownership of the premises did not provide otherwise. Resolutions could therefore be passed in the absence of some of the owners, as long as they were properly notified of the meeting to be held. In a situation where one premises belonged to several owners, they were

⁴⁸ As stated in Art. 3, Sec. 3 of the Rozporządzenie Prezydenta Rzeczypospolitej z dnia 24 października 1934 r. o własności lokali, Dz.U. z 1934 r. nr 94, poz. 848 [the ordinance of the President of the Republic of Poland of 24 October 1934 on the ownership of premises, Journal of Laws 1934 no 94, item 848], the management board was entitled to carry out the management of the joint property to the fullest extent, in particular to undertake urgent works and repairs, to allocate costs with the concomitant right to pursue them in court against individual co-owners. The board also had the power to take out insurance for the entire building including the separate premises and to represent the entire co-owners in court and out of court in matters concerning the board. It was also the board's responsibility to prepare an accounting report for each year of operation, which was subject to approval by the owners' meeting.

⁴⁹ As stated in Art. 5, Sec. 1 of the Rozporządzenie Prezydenta Rzeczypospolitej z dnia 24 października 1934 r. o własności lokali, Dz.U. z 1934 r. nr 94, poz. 848 [the ordinance of the President of the Republic of Poland of 24 October 1934 on the ownership of premises, Journal of Laws 1934 no 94, item 848], matters relating to the maintenance and use of the common property belonged to the meeting of the unit owners. The following were submitted as exclusively subject to the resolutions of the meeting: consideration and approval of the management accounts for the previous year, acknowledgement of the management board's performance of its duties, adoption of annual estimates of income and expenditure, election of the management board and the audit committee, amendment of the proportional share of the owners of individual premises in the common expenses and costs connected with the management and maintenance of the common property, amendments to the mutual rights and obligations of the owners of individual premises.

⁵⁰ Assemblies of owners were convened by the board with the exception of the first one, at which the board was to be elected. Meetings were required to be convened by the board at least one week before the meeting. In the notice of the planned meeting, the board was required to state the time, place as well as the agenda. Where the subject of the meeting would be an intended change in the mutual rights and obligations of the owners of the individual premises, which were originally laid down in the deed establishing ownership of the premises, the notice was required to indicate the content of the intended changes. Ordinary meetings were required to be convened annually by the board. Extraordinary meetings were called by the board in two situations. Firstly, in the cases provided for in the deed establishing separate ownership of the premises. Secondly, at the request of the owners of premises representing at least 1/10th of the shares in the common property or the audit committee (if one had been appointed).

obliged to select a person (with appropriate legal capacity) who was to represent them at the assembly of owners and before the management board. Accordingly, it was to this person that the board was obliged to serve notice of the meeting to be held.

The Premises Ownership Ordinance did not provide for any other procedure for the adoption of resolutions by the owners other than at a convened meeting, the minutes of which were drawn up. Nevertheless, it allowed the owners to choose the conditions necessary for the effective adoption of resolutions. These conditions were supposed to be stated in the deed establishing separate ownership of the premises. However, if no corresponding provision was made, resolutions were adopted, as a rule, by an absolute majority of the shares represented. At the same time, resolutions regarding a change to the relative share of the owners of the individual premises in the payment of common expenses and costs related to the management and maintenance of the common property required the unanimity of all the owners of the premises. Unanimity was also required for resolutions regarding the sale of the physical part of the common property. This is because the divestment had to be carried out by all co-owners. The adopted resolutions were entered into the book of protocols.

The Ordinance also provided for the possibility of challenging resolutions adopted at an assembly of owners. The legislation provided for three grounds for challenge. Firstly, there was such a possibility if the resolution adopted was contrary to the law or the provisions of the deed establishing separate ownership of premises. Secondly, if the resolution harmed the interests of the individual unit owners or was contrary to good morals. Thirdly, if the resolution was intended to harm any of the owners of the premises.⁵¹

This Ordinance also standardised two control institutions for the activities of the management board as well as the assemblies of owners. Firstly, the right

⁵¹ The right of action was available to any unit owner who voted against the resolution at the meeting and objected to it in the minutes after it was passed. It also granted rights to an owner of the premises who was not present at the meeting, if he was unlawfully not admitted to the meeting or if a resolution was adopted on an item not on the agenda.

In addition, the right to bring an action also served the management board and the audit committee (if one had been formed). In such a situation, the overall co-owners were represented by a guardian appointed by the court. The action had to be brought before the court of the place where the common property was located, against the entirety of the owners within six weeks from the date of receipt of knowledge of the resolution, but no later than three months from the date of its adoption. When adjudicating in cases between owners, the court was obliged to reconcile the common interest with respect for the rights of individual owners.

of control served each of the co-owners.⁵² Secondly, this Ordinance provided for the establishment of an audit committee.⁵³ In the case of properties with more than ten separate premises, the appointment of an audit committee was mandatory.⁵⁴ In buildings with fewer separate premises, the appointment of the committee was optional and depended on the provisions of the deed establishing separate ownership of the premises.

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By the Premises Ownership Ordinance of 1934, the legislator formulated in the Polish legal system the rules for establishing ownership of premises which are linked to the share in the joint ownership of the common property of the owners of the premises. It also determined the rules for the management of joint property, closely linking them to the rights of the co-owners associated with the right of ownership. The provisions of the Premises Ownership Ordinance applied to every case of establishing separate ownership of premises, regardless of which entity carried out the separation. This was essential, given that the Ordinance was issued with housing cooperatives in mind. Indeed, the institution of separate ownership of premises played a particularly important role precisely in those activities of housing cooperatives whose aim was to build, for the ownership of their members, single-family houses and premises located in larger residential houses. Co-operatives, as legal persons, could therefore, in addition to natural persons, establish separate ownership of premises, and the issues concerning its establishment and the management of the common property were subject to a single legal regime regulated by the Premises Ownership Ordinance. Until 1934, co-operative members enjoyed co-operative housing on the basis of the right of lease under the terms of the Code of Obligations and, from 1934, also on the basis of the right of separate ownership of the premises.⁵⁵ The provisions on separate ownership of premises

⁵² They could have demanded the removal of the management board by a resolution passed at the meeting as well as challenging the resolutions of the meeting.

⁵³ The audit committee consisted of at least three members appointed for a minimum period of one year from among the co-owners. The members of the audit committee, unlike the members of the management board, did not perform this function for remuneration. As already mentioned, the powers of the audit committee included i.a. the right to request the convening of an extraordinary meeting of owners or the right to challenge resolutions adopted at meetings.

⁵⁴ The appointment was made by virtue of an act establishing separate ownership of the premises.

⁵⁵ A. Mączyński, *Najem lokalu w budynku spółdzielni mieszkaniowej* [in:] *Prace z prawa prywatnego. Księga pamiątkowa ku czci Sędziego Janusza Pietrzykowskiego*, ed. Z. Banaszczyk, Wydawnictwo C.H.Beck, Warszawa 2000, p. 165; E. Koszel, *Uchylenie zasady jednopodmiotowości*

were *iuris cogentis*, and therefore the content of the right of separate ownership of premises could not be regulated differently in the cooperative's statutes. They could only lay down rules for its establishment.⁵⁶

The content of the Ordinance thus introduced a single model of the institution of separate ownership of premises, shaping in the same way the rights and obligations of the owners of premises, as owners of premises and as co-owners of the common property, regardless of in whose building the premises were separated and regardless of how many premises were in a given building. The principles according to which the co-owners of the common property were to co-exist were therefore the same in each case. The only distinction between buildings with up to ten units and buildings with more than ten units related to the issue of control of activities concerning the common property of the unit owners.

The rights of individual apartment owners in the exercise of their authority over the ownership of the premises included the right to possess, use and dispose of the premises. The entitlements of individual unit owners in terms of their share of the common were specified. Under the rules of the Ordinance, each co-owner retained the right to co-own, co-use and co-determine the common right.

Bibliography

Legal acts

Uchwała Sejmu z dnia 20 lutego 1919 r. o powierzeniu Józefowi Piłsudskiemu dalszego sprawowania urzędu Naczelnika Państwa, Dz.Pr.P.P. z 1919 r. nr 19, poz. 226 [the resolution of the legislative Sejm of 20 February 1919 on entrusting Józef Piłsudski with continuing to hold the office of the Chief of State, Dz.Pr.P.P. 1919 no 19, item 226].

Ustawa z dnia 1 sierpnia 1919 r. w przedmiocie utworzenia Państwowego Funduszu Mieszkaniowego, Dz.U. z 1919 r. nr 72, poz. 424 [the act of 1 August 1919 on the creation of a State Housing Fund, Journal of Laws 1919 no 72, item 424].

Ustawa z dnia 27 listopada 1919 r. o obowiązku zarządów gmin miejskich dostarczania pomieszczeń, Dz.U. z 1919 r. nr 92, poz. 498 [the act of 27 November 1919 on the obligation of municipalities to provide premises, Journal of Laws 1919 no 92, item 498].

Ustawa Konstytucyjna z dnia 15 lipca 1920 r. zawierająca statut organiczny Województwa Śląskiego, Dz.U. z 1920 r. nr 73, poz. 497 [the constitutional act of 15 June 1920

spółdzielczego własnościowego prawa do lokalu, "Rejent" 2002, no 6, pp. 72–73. Before the Ordinance came into force, it was accepted that separate ownership of premises could be established on the basis of Art. 664 of the Napoleonic Code, with the establishment of separate ownership of premises by housing cooperatives occurring sporadically. See W. Chrzanowski, *Prawo do domu jednorodzinnego w spółdzielniach budownictwa mieszkaniowego*, ZW CZSR Warszawa 1977, pp. 33–34.

⁵⁶ A. Jedliński, *Prawo do lokali w spółdzielniach mieszkaniowych*, Arche, Gdańsk 2005, p. 19.

- containing an organic statute of the Silesian Voivodship, Journal of Laws 1920 no 73, item 497].
- Ustawa z dnia 29 października 1920 r. o spółdzielniach, Dz.U. z 1920 r. nr 111, poz. 733 [the law of 29 October 1920 on cooperatives, Journal of Laws 1920 no 111, item 733].
- Ustawa z dnia 18 grudnia 1920 r. o ochronie lokatorów, Dz.U. z 1921 r. nr 4, poz. 19 [the law on the protection of tenants of 18 December 1920, Journal of Laws 1920 no 4, item 19].
- Ustawa z dnia 17 marca 1921 r. Konstytucja Rzeczypospolitej Polskiej, Dz.U. z 1921 r. nr 44, poz. 267 [the act of 17 March 1921 Constitution of the Republic of Poland, Journal of Laws 1921 no 44, item 267].
- Ustawa z dnia 29 lipca 1921 r. w przedmiocie przeznaczenia terenów za cytadelą oraz pasa ziemi wzdłuż ulicy Górnej w Warszawie pod budowę domów, Dz.U. z 1921 r., nr 69 poz. 448 [the act of 29 July 1919 on the allocation of land behind the Citadel and the strip of land along Górna Street in Warsaw for the construction of house, Journal of Laws 1921 no 69, item 448].
- Ustawa z dnia 26 września 1922 r. w przedmiocie rozbudowy miast, Dz.U. z 1922 r. nr 89, poz. 811 [the act of 26 September 1922 on urban development, Journal of Laws 1922 no 89, item 811].
- Ustawa z dnia 11 kwietnia 1924 r. o ochronie lokatorów, Dz.U. z 1924 r. nr 39, poz. 406 [the protection of tenants act of 11 April 1924, Journal of Laws 1924 no 39, item 406].
- Ustawa z dnia 2 sierpnia 1926 r. o prawie właściwym dla stosunków prywatnych wewnętrznych (Prawo prywatne międzydzielnicowe), Dz.U. z 1926 r. nr 101, poz. 580 [the act of 2 August 1926 on the law applicable to private internal relations (inter-district law), Journal of Laws 1926 no 101, item 580].
- Ustawa z dnia 2 sierpnia 1926 r. o prawie właściwym dla stosunków prywatnych międzynarodowych (Prawo prywatne międzynarodowe), Dz.U. z 1926 r. nr 101, poz. 581 [the act of 2 August 1926 on the law applicable to private international relations (private international law), Journal of Laws 1926 no 101, item. 581].
- Rozporządzenie Prezydenta Rzeczypospolitej z dnia 22 kwietnia 1927 r. o rozbudowie miast, Dz.U. z 1927 r. nr 42, poz. 372 [the presidential decree of 22 April 1927 on urban development, Journal of Laws 1927 no 42, item 372].
- Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 lutego 1928 r. o prawie budowlanem i zabudowaniu osiedli, Dz.U. z 1928 r. nr 23, poz. 202 [the ordinance of the President of the Republic of Poland of 16 February 1928 on building law and development of settlements, Journal of Laws 1928 no 23, item 202].
- Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 października 1933 r. Kodeks zobowiązań, Dz.U. z 1933 r. nr 82, poz. 598 [the ordinance of the President of the Republic of Poland of 27 October 1933 Code of Obligations, Journal of Laws 1933 no 82, item 598].
- Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 października 1933 r. Prawo o notariacie, Dz.U. z 1933 r. nr 84, poz. 609 [the ordinance of 27 October 1933 law on notaries, Journal of Laws 1933 no 84, item 609].

- Ustawa z dnia 15 marca 1934 r. o upoważnieniu Prezydenta Rzeczypospolitej do wydawania rozporządzeń z mocą ustawy, Dz.U. z 1934 r. nr 28, poz. 221 [the act of 15 March 1934 on the authorisation of the President of the Republic of Poland to issue regulations with the force of law, Journal of Laws 1934 no 28, item 221].
- Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 czerwca 1934 r. Kodeks handlowy, Dz.U. z 1934 r. nr 57, poz. 502 [the ordinance of the President of the Republic of Poland of 27 June 1934 Commercial Code, Journal of Laws 1934 no 57, item 502].
- Rozporządzenie Prezydenta Rzeczypospolitej z dnia 24 października 1934 r. o własności lokali, Dz.U. z 1934 r. nr 94, poz. 848 [the ordinance of the President of the Republic of Poland of 24 October 1934 on the ownership of premises, Journal of Laws 1934 no 94, item 848].
- Rozporządzenie Ministra Sprawiedliwości z dnia 28 października 1934 r. o sposobie ujawniania w księgach hipotecznych prawa odrębnej własności lokali i innych praw rzeczowych na tych lokalach, Dz.U. z 1934 r. nr 94, poz. 853 [the Minister of Justice Ordinance of 28 October 1934 on the manner of disclosing in mortgage books the right of separate ownership of premises and other rights in rem on these premises, Journal of Laws 1934 no 94, item. 853].
- Ustawa Konstytucyjna z dnia 23 kwietnia 1935 r., Dz.U. z 1935 r. nr 30, poz. 227 [the constitutional act of 23 April 1935, Journal of Laws 1935 no 30, item 227].
- Dekret Prezydenta Rzeczypospolitej z dnia 14 stycznia 1936 r. w sprawie zmiany rozporządzenia Prezydenta Rzeczypospolitej z dnia 24 października 1934 r. o własności lokali, Dz.U. z 1936 r. nr 3, poz. 21 [the decree of the President of the Republic of Poland of 14 January 1936 amending the decree of the President of the Republic of Poland of 24 October 1934 on the ownership of premises, Journal of Laws 1936 no 3, item 21].
- Ustawa z dnia 28 kwietnia 1936 r. Prawo wekslowe, Dz.U. z 1936 r. nr 37, poz. 282 [the law on bills of exchange of 28 April 1936, Journal of Laws 1936 no 37, item 282].
- Ustawa z dnia 28 kwietnia 1936 r. Prawo czekowe, Dz.U. z 1936 r. nr 37, poz. 283 [the cheque law of 28 April 1936, Journal of Laws 1936 no 37, item 283].
- Dekret z dnia 11 października 1946 r. Przepisy wprowadzające prawo rzeczowe i prawo o księgach wieczystych, Dz.U. z 1946 r. nr 57, poz. 321 [the decree of 11 October 1946 provisions introducing the property law and the law on land registers, Journal of Laws 1946 no 57, item 321].
- Ustawa z dnia 30 stycznia 1959 r. Prawo lokalowe, Dz.U. z 1959 r. nr 10, poz. 59 [the act of 30 January 1959 Premises Law, Journal of Laws 1959 no 10, item 59].
- Ustawa z 31 stycznia 1961 r. Prawo budowlane, Dz.U. z 1961 r. nr 7, poz. 46 [the act of 31 January 1961 Building Law, Journal of Laws 1961 no 7, item 46].
- Ustawa z dnia 23 kwietnia 1964 r. Przepisy wprowadzające kodeks cywilny, Dz.U. z 1964 r. nr 16, poz. 94 [the act of 23 April 1964 provisions introducing the Civil Code, Journal of Laws 1964 no 16, item 94].
- Ustawa z dnia 28 lipca 1990 r. o zmianie ustawy Kodeks cywilny, Dz.U. z 1990 r. nr 55, poz. 321 [the act of 28 July 1990 on amending Civil Code, Journal of Laws 1990 no 55, item 321].

Ustawa z dnia 24 czerwca 1994 r. o własności lokali, Dz.U. z 1994 r. nr 85, poz. 388 [the act of 24 June 1994 on the ownership of premises, Journal of Laws 1994, no 85, item 1688].

Judicial decisions

Orzeczenie SN z dnia 29 września 1959 r., I CR 289/59, LEX nr 1633036 [the Supreme Court ruling of 29 September 1959, I CR 289/59, LEX no 1633036].

Orzeczenie SN z dnia 5 stycznia 1962 r., III CR 920/61, OSNC 1963, nr 3, poz. 62 [Supreme Court ruling of 5 January 1962 r., III CR 920/61, OSNC 1963, no 3, item 62].

Wyrok SN z dnia 5 stycznia 1962 r., III CR 920/61, OSNCP 1963, nr 3, poz. 6 [the judgment of the Supreme Court of 5 January 1962, III CR 920/61, OSNCP 1963, no 3, item 6].

Uchwała SN z dnia 11 listopada 1963 r., III CO 34/62 OSNCP 1965, nr 12, poz. 199 [the resolution of the Supreme Court of 11 November 1963, III CO 34/62 OSNCP 1965, no 12, item 199].

Wyrok SW w Bydgoszczy z dnia 15 kwietnia 1965 r., II CR 278/65, OSPiKA 1965, nr 11, poz. 236 [the judgment of the SW in Bydgoszcz of 15 April 1965, II CR 278/65, OSPiKA 1965, no 11, item 236].

Postanowienie SN z dnia 18 listopada 1965 r., I CR 456/65, OSNC 1966, nr 9, poz. 153 [the resolution of the Supreme Court of 18 November 1965, I CR 456/65, OSNC 1966, no 9, item 153].

Literature

Breyer S., *Przeniesienie własności nieruchomości*, Wydawnictwo Prawnicze, Warszawa 1966.

Chrzanowski W., *Prawo do domu jednorodzinnego w spółdzielniach budownictwa mieszkaniowego*, ZW CZSR, Warszawa 1977.

Cichosz S., Szawłowski T., *Ustanowienie odrębnej własności lokali*, "Palestra" 1958, no 3–4, pp. 84–89.

Dobaczewski T., *Wyodrębnienie własności lokali w domach wielomieszkaniowych stanowiących własność osób fizycznych*, "Nowe Prawo" 1983, no 9, pp. 102–111.

Fenichel Z., *Własność lokali*, "Głos Prawa" 1935, no 3–4, pp. 144–155.

Ignatowicz J., *Prawo rzeczowe*, Państwowe Wydawnictwo Naukowe, Warszawa 1976.

Jackowski R., *Prawo o własności lokali. Komentarz artykułowy*, "Przegląd Notarialny" 1934, no 22, pp. 4–9.

Jackowski R., *Prawo własności lokali. Wstępne uwagi społeczno-gospodarcze*, "Przegląd Notarialny" 1934, no 20, pp. 3–5.

Jarosz D., *Mieszkanie się należy. Studium z peerelowskich praktyk społecznych*, Oficyna Wydawnicza ASPRA-JR, Warszawa 2010.

Jedliński A., *Prawo do lokali w spółdzielniach mieszkaniowych*, Arche, Gdańsk 2005.

Koszel E., *Uchylenie zasady jednopodmiotowości spółdzielczego własnościowego prawa do lokalu*, "Rejent" 2002, no 6, pp. 110–118.

"Kwartalnik Prawa Prywatnego" 1993, no 4, pp. 520–567.

Liberman J., *Własność mieszkania*, "Nowe Prawo" 1961, no 4, pp. 481–494.

- Mączyński A., *Dawne i nowe instytucje polskiego prawa mieszkaniowego*, "Kwartalnik Prawa Prywatnego" 2002, no 1, pp. 65–85.
- Mączyński A., *Najem lokalu w budynku spółdzielni mieszkaniowej* [in:] *Prace z prawa prywatnego. Księga pamiątkowa ku czci Sędziego Janusza Pietrzykowskiego*, ed. Z. Banaszczyk, Wydawnictwo C.H.Beck, Warszawa 2000, pp. 139–153.
- Mączyński A., *Pojęcie i zakres działalności spółdzielni mieszkaniowej*, "Rejent" 2003, no 12, pp. 19–43.
- Petz B., *Próby rozwiązywania kwestii mieszkaniowej w dwudziestoleciu międzywojennym – podstawowe kierunki działań*, Kancelaria Sejmu Biuro Studiów i Ekspertyz, Warszawa 1994.
- Plebańczyk E., *Własność lokali*, "Nowe Prawo" 1959, no 1, pp. 50–57.
- Radwański Z., *Funkcja społeczna, treść i charakter prawny odrębnej własności lokali*, "Studia Cywilistyczne" 1968, vol. 11, pp. 41–107.
- Radwański Z., *Powstanie odrębnej własności lokali*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1968, no 2, pp. 27–45.
- Skąpski J., *Własność lokali w świetle ustawy z 24 czerwca 1994 r.*, "Kwartalnik Prawa Prywatnego" 1966, no 2, pp. 197–235.
- Stelmachowski A., *Modele własności i ich uwarunkowania społeczno-ustrojowe* [in:] *Prawo rzeczowe*, ed. T. Dybowski, Wydawnictwo C.H.Beck, Warszawa 2007, pp. 71–213.
- Strzelczyk R., *Prawo nieruchomości*, Wydawnictwo C.H.Beck, Warszawa 2024.
- Strzelczyk R., *Prawo obrotu nieruchomościami*, Wydawnictwo C.H.Beck, Warszawa 2010.
- Strzelczyk R., Turlej A., *Własność lokali. Komentarz*, Wydawnictwo C.H.Beck, Warszawa 2010.
- Szer S., *Prawo cywilne. Część ogólna*, Państwowe Wydawnictwo Naukowe, Warszawa 1967.
- Szer S., *Własność lokali. Przyczyńki do wykładni prawa z 24 X 1934*, "Przegląd Notarialny" 1934, pp. 234–256.

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The Origins and Shape of the Institution of Separate Ownership of Premises in the Second Polish Republic

The institution of separate ownership of premises was introduced into the Polish legal system in 1934, during the interwar period. Separate ownership of premises, due to its legal structure and conflict-generating nature, was eliminated from the legal systems of many countries, especially in the 19th century. This article presents the reasons why the Polish legislator decided to introduce this institution into the legal order. The socio-economic background of the interwar period in Poland is also presented, which allowed for the introduction of an institution based on personal (private) property. An important element of

the study is that it describes the nature of this institution and the principles of managing common property in force in the period up until the end of World War II.

Keywords: separate ownership of the premises, common property, ownership, inter-war period, Second Polish Republic

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Geneza i forma instytucji odrębnej własności lokali w II Rzeczypospolitej

Instytucja odrębnej własności lokali została wprowadzona do polskiego systemu prawa w okresie międzywojennym. Ze względu na swoją konstrukcję prawną i konfliktogenność była eliminowana z porządków prawnych wielu państw, szczególnie w XIX w. W artykule przedstawiono przyczyny, dla których polski ustawodawca zdecydował się na wprowadzenie tej instytucji do porządku prawnego. Opisano też realia społeczno-gospodarcze panujące w Polsce w okresie międzywojennym, które umożliwiły wprowadzenie instytucji opartej na osobistej (prywatnej) własności. Istotnym elementem pracy jest omówienie formy uregulowanej instytucji i zasad zarządu nieruchomością wspólną.

Słowa kluczowe: odrębna własność lokalu, nieruchomość wspólna, własność, okres międzywojenny, II Rzeczypospolita

