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Poland: Gradual Growth Across Barriers

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Introduction

To this day, the private rental sector (PRS) seems to be burdened by the legacy of Poland's socialist past. Throughout the country a large share of renters are tenants (or their descendants) who obtained the right to rent the dwelling they live in based on an administrative decision to allocate the dwelling made within the country's system of public management of housing (Central Statistical Office 1991, 2013). Transition in the housing sector was slow compared to other countries in the region: while major reforms were adopted in 1994, a 10-year transition period was set for liberalising rents in the existing, mostly pre-war rental stock, and some measures that strongly hindered the sector's development remained in place even after 2004. The liberalisation of rents and allocation was a lengthy process in Poland, and the related legislative steps are accordingly presented in the

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chapter. Notably, the case of *Hutten-Czapska versus Poland* that went before the European Court of Human Rights in 2006 spurred rent deregulation not only in Poland but in other countries in Central and Eastern Europe (CEE) as well. Pararely, since 1988 the newly opened PRS lease contracts were based on negotiations of rent level.

There are a number of difficulties to analysing the PRS in Poland from 1945 to the present day owing to the lack of literature on the subject, the evolving terminology related to the changing principles of housing policy pertaining to tenancy, and the lack of reliable statistical data. There are significant uncertainties regarding statistics on the rental housing market, owing in part to the existence of a strong tradition of informal leasing in the country and the evolving criteria used to collect information on rental housing over time. Existing data on the PRS in Poland, provided by the experts not public statistics, only really covers major urban areas; information is often missing for small local markets. Available information therefore typically concerns large urban areas and especially the 'big six' markets: Warsaw, Wrocław, Kraków, Poznań, Łódź, and Gdańsk (together with the 'Tricity' agglomerations of Gdynia and Sopot), along with other university centres.

In the history of housing policy on private rental housing, it is possible to distinguish at least four distinct periods in terms of the government's policy towards tenant allocation and rent-setting rules:

1. Private renting under socialist rule: in the immediate post-war period and the early years of communism, between 1944 and 1955, there was strong ideological opposition to private ownership, despite the drastic housing shortage that existed as a result of damage from the war and a strict rental policy.
2. Between 1956 and 1988, stern regulations were in force concerning rent levels and the allocation of rental dwellings. Private renting did exist throughout this period, but it remained on the fringes of housing policy and the housing economy, and unchecked, untaxed, informal leases were the norm.
3. Between 1989 and 2004, a series of reforms targeted 'old' rental agreements and a gradual introduction of market rules in residential renting in new leases (granted after 1988), with a history of seeking a balance between owner interests and adequate levels of tenant protection.

4. The year 2005 marked the introduction of full market rules in the sector, private renting slowly gained impetus, and in the most recent years even some institutional investors have emerged.

Currently, the sector is gradually but steadily growing, but the share of privately owned dwellings used for rental purposes under a lease agreement remains low. Under socialist rule, private renting was tolerated, although mostly ignored; it is surprising though that the current policy environment seems to reflect nearly the same level of disinterest on the part of most decision-makers. However, recent years have seen important developments, even though reforms for a truly well-functioning sector are still in order. The potential role of private rental dwellings in social housing provision using innovative measures has also recently surfaced in public discussions.

The Socialist Legacy: Rent Regulation and Informal Private Renting

Under socialism, owner-occupied housing was a relatively strong segment of the housing market in Poland and remained so even during the more oppressive periods of communist ideology. Social housing, intended to satisfy the housing needs of the working class, enjoyed ideological priority, but, as in many socialist countries, state resources were insufficient to fully respond to demand; it was thus inevitable that the private rental market would continue to operate on some level. State policy regarding private renting was passive, but generally unfriendly (unsupportive); the private rental market was 'pushed into a corner'.

The position of the communist authorities towards this sector was uneven, but in any case unfriendly. Nevertheless, in Poland, with the exception of the territory of the capital city of Warsaw, despite many restrictions, the private ownership of pre-war rental residential buildings survived.

In Poland despite the change in political system after World War II, housing was never formally nationalised. A system of so-called public management of housing was set up so that housing could be forcibly allocated to people at a time when there was a drastic shortage of housing

as a result of the war damage. Initially the public management of housing was stringent, and it included rent-setting, management rules, and the allocation of housing to individual tenants, including dwellings with a larger floor area that were already occupied by the owners (*forced rental*). The owners of apartment buildings were required to appoint joint boards of management of rental houses. State interference in rental relations in the private sector in Poland was long-lasting and severe. Private pre-war rental housing was gradually released from state control, including state control over rent-setting, in a process that lasted until the end of 2004. In 1957 a decree was issued that excluded single-family homes and cooperative flats from the system of public management of housing (Andrzejewski 1987). Later on, this system of allocation was replaced by the 'special lease scheme'. These dwellings, although private, were regulated and controlled by the state in the sense of granting tenants the indefinite right to reside in the dwelling and in terms of rent-setting. Rents were kept artificially low, at the same as in the public stock. It was not until 1988 that private owners regained the right to freely rent their dwellings, although the right could only be applied to newly built units or to units that tenants had willingly vacated (Hegedüs and Tosics 1998).

Only property in the area of the pre-war territory of the capital city of Warsaw was subject to formal nationalisation (after initial communalisation). To allow massive redevelopment of the city after the damage caused by the war, a decree on the communalisation of the private property was edited in 1945. During communism it was practically impossible to regain the property. Many owners had difficulty collecting all the documents necessary to confirm the property title. After 1990 there were several attempts to pass a law on restitution, some referring to the general reprivatization of all properties seized illegally by the regime, and some exclusively referring to the 'Warsaw properties' as a special case.

Housing cooperatives operated since 1956 and since 1972 there were two forms of them: the cooperative proprietary title to use the dwelling and tenement-type use. The former entailed freedom of disposal of the property, including inheritance and sale, but the member of the cooperative had to cover the full costs of the dwelling's construction. In the tenement form of cooperative, members paid a kind of down-payment (usually 30 per cent of construction costs). Most cooperative members would repay

the construction costs of the dwelling and then became cooperative owners; some even obtained full ownership of the property in the course of reforms made to the law on housing cooperatives. In the 1970s and 1980s cooperatives were the sole investors in multifamily housing and were completely dependent on state policy in the field of building materials production and preferential financing of construction. As housing policy shifted drastically during the transition, the construction of multi-unit buildings by cooperatives ceased entirely.

The privatisation of state-owned multifamily housing started in Poland as early as in 1972. The public rental sector offered the property title to the sitting tenants with heavy discounts, including bonuses for those paying one-time payment of the full price. The revenues from the sale of apartments were supposed to be used to finance new public rental stock. But in fact, this did not happen. In 1976 the public construction of housing units was completely cancelled. It was reactivated in 1990 after the local self-government reforms, but the scale of new communal housing investment is low and in general does not satisfy basic social needs.

The Dynamics of the PRS After 1989

The privatisation of public housing resources has significantly increased in the transition to market economy. In 1995 municipal rental stock was 1,732,900 dwellings. By 2000, it dropped to 1,371,400, and by 2013, to 934,900 (Central Statistical Office 2016). The privatisation of communal rental stock was the main, though not the only, reason for the decrease in municipal rental housing. Initially, after 1994, the financial conditions for purchasing their dwelling were very attractive for sitting tenants. In some cases, discounts amounted to as much as 95 per cent of the property's market value. The discount was calculated based on the length of the lease, the quality of the dwelling (the poorer the quality, the higher the discount), and local preferences—for example, if the unit sold was the last for sale in a multi-unit building. Nowadays the local authorities practise a policy of selected privatisation of the rental stock, and there are a variety of local schemes and programmes, which usually offer much less favourable financial conditions (Muzioł-Węclawowicz 2015).

The terms of private renting were set under socialism, and the reforms were gradual, with previous rent-setting and tenant protection to be phased out by 2004. During the socio-economic transformation, a law on leasing residential units and on housing allowances was passed in 1994 and it established a 10-year transition period (until the end of 2004), during which in the old, generally pre-war private rental stock, old rules of rent-setting in private rental property inhabited by sitting tenants were to be applied.

Several norms were introduced to secure the interests of the tenants 'inherited' from the socialist past. First, all leases that had been formed on the basis of an administrative decision or some other type of public allocation of dwellings were transformed into open-ended leases. There were only a few circumstances in which the owners were allowed to terminate a lease, such as an undeniable need to renovate the property or the need to satisfy housing needs of the owner's family. Second, the regulated rents introduced were also applicable to lease contracts in private dwellings concluded before 1988. The local authorities set the rent level in a given municipality, but the maximum level of rent was equal to 3 per cent of the reconstruction value per year. In practice the vast majority of municipalities practised a policy of slow rent increases (Ministry of Transport, Construction and Maritime Economy 2012).¹ Private owners had to apply the same rent level as the local authority, without any support for financing the gap between rent revenues and maintenance costs, while at the same time they were charged with maintenance duties. The estimated number of such units was 600,000 dwellings in the late 1980s.² In turn, the process of setting rents freely in the old forced rentals, which started in early 2005, led to very different scales of increases—from minor adjustments for poor-quality dwellings and small markets, to more significant increases in the prestigious stock.

The debate on what legal action to take concerning 'Warsaw properties' is still under way, the main obstacle to resolving the issue being a dispute on the amount of compensation. The local government of Warsaw began restitution procedures on an individual case-by-case basis, reviewing applications from former owners, their heirs, or 'buyers of the titles'. The Office of Real Estate Management in Warsaw City Hall reported

that between 1990 and 2014 more than 3,500 restitution claims were approved, granting the right to perpetual lease of the restituted property to the former owners (Górczyńska 2015). At the beginning of the transformation it was estimated that around 6,000 buildings in Warsaw could be subject to restitution. Local media recently reported that in 2015 more than 300 properties had been returned, but the list of properties for restitution remains long as there are still 2,000 properties that may be subject to restitution claims (Gazeta Wyborcza 2016). Unresolved claims place a heavy burden on the municipal authorities of Warsaw, but social problems like the fluctuating rules of renting and property management issues seem to take precedence. The physical condition of the restituted pre-war residential buildings varies considerably (Górczyńska 2015).

Policy Environment and Social Acceptance

At the beginning of the transformation, housing reforms focused on the marketisation of housing construction and adjusting prices for public services. That a private rental market should exist and that the market would need to grow were considered obvious. However, the policy towards the rental sector was ambiguous. Protracted legal disputes in the courts between landlords and tenants and strong legal protections for tenants earned private renting a reputation as a profitable but legally risky business. The 1994 Residential Lease and Housing Allowance Act allowed rent regulation to apply not only to the public stock but also to all leases created on the basis of an administrative decision or some other type of public allocation of dwellings concluded in the past, even when the leased dwellings were owned by private persons. New leases in the private market relate in practice almost exclusively to units owned by physical persons. Only recently, since 2010, have institutional landlords entered the private rental market, as after the global economic crisis and the years of low inflation in Europe the yields achievable on Polish residential rental housing market became attractive for investors (REAS 2016).

Owner-occupied housing seems gradually to be receiving increasing support through interest rate cuts, a well-developed mortgage system,

and government subsidies for people buying their first dwelling. Two mortgage subsidy programmes called 'Family on Their Own', which ran from 2006 to 2012, and 'Housing for the Young', running from 2014 to 2018, consumed and consume more than half of the annual central budget spending on housing. At the same time, budgetary support for the public rental sector amounts to a mere 5 per cent of budgetary spending; and there is only one programme, with an annual budget about PLN 20 million (1.2 per cent of the state housing budget), that provides landlords with support to repair private rental housing.

The Polish government's attitude towards the PRS in the market economy seems to be unclear in terms of policy priorities. All the housing policy programmes of successive governments of Poland declared that balancing the development of rental and owner-occupied sectors and supporting the public and private rental developments are strategic priorities. But legislation and financial decisions in the field of direct or indirect public funding to support housing investments were allocated virtually exclusively for promoting housing ownership, or, to a smaller scale, public rental. The sole exception was the system of tax deductions that can be applied to personal income tax paid by physical persons. The 'housing construction deduction' in the tax code in 1992–1996 allowed the purchase of apartments for lease or land for rental development to be deducted by investors as expense, within certain cost limits and provided that they maintain the rental status of dwellings for at least 10 years. For the years 1997–2000 the tax incentive took the form of a tax relief. Both tax incentives nonetheless were available at a time that was economically unfavourable for housing investment: incomes were low and the mortgage lending system was underdeveloped because of high inflation. It is estimated that between 1992 and 2000, about 60,000 rental dwellings were financed with the help of the tax relief schemes. Critics pointed out that tax incentives primarily support the wealthy, which was one of the reasons the whole personal tax incentive for rental housing was finally cut. In sum, nine years of tax relief for rental housing investment during the years of transition did not contribute in any significant way to the development of the PRS.

Regarding constraints on the growth of private renting, it is possible to identify psychological, economic, legal, and formal barriers to

this growth. Decades of socialist rule, followed by a prolonged period of uneven housing policies in the market economy, Poles have adopted the tradition of solving their housing situation often in the form of individual construction of single-family homes in rural areas, small towns, and suburbia, or by buying an apartment in a multifamily building. As a household's home is typically its most valuable asset, it is socially highly regarded. Furthermore, the unreliable regulation and enforcement of private rental contracts, and the difficulties in managing conflicts in private rental dwellings, led to landlords being colloquially viewed as greedy profit-seekers who do not respect the rights of tenants, while tenants came often to be associated with irresponsibility, damaging someone else's property, and delays in rent payments.

Small-scale limitations related to tenant protection in the PRS, like the restrictions on demand market rent, were and still are accompanied by a small number of abuses, which have nonetheless been heavily aired in the media and strongly influence public opinion. These cases primarily include unethical behaviour towards tenants, drastic and unjustified rent increases, and preventing standard use of the property, for example, by cutting off heating or access to water, leaving dwellings in a state of chronic disrepair, and so forth. In practice, the typical private lease contract can easily cause discomfort for both parties. Legal restrictions currently seem to be procedural in nature. Eviction procedures are lengthy, costly, and tedious; this continues to deter many owners from leasing their homes. The economic factors are highly volatile; yet the rate of market rent is high in relation to social rents and to average earnings. In recent years, rent levels soared, often irrespective of the quality of a dwelling. Although that period seems to be over, even today private residential renting seems to be predominantly considered only a short-term, temporary housing solution.

The Evolution of Rent Regulation

The development of the rental market must be supported by legal provisions that adequately balance the rights of the landlord and those of the tenant of a residential unit. Although there are many issues that can

be examined in this context, the most fundamental one, particularly for post-communist countries of CEE, concerns rent levels. It was not until 1988 that private owners regained the right to freely rent their dwellings and not have the tenant selected and given possession of it by the public authorities; however, this right could only be exercised on units newly offered on the market or that tenants had willingly vacated. Stringent restrictions on the landlord's right to terminate a lease or set the rent continued to apply in the case of sitting tenants with running leases. Regulated rents were too low, and did not come close to meeting the expenses of the maintenance and repair of buildings, which then typically fell into disrepair (Panowicz-Lipska 2011: 73).

After the 1990 reforms, owners of buildings with rental flats had great expectations regarding the new Residential Lease and Housing Allowance Act of 1994 (LRU, Act of 2 July 1994, Journal of Statutes 1994, no. 105, item 509) hoping that regulated rents would no longer apply to privately owned rental flats. At first sight Articles 25 and 26 of the Act did limit the application of regulated rents to the housing stock of local governments and other (semi-)public bodies, like the state, state juridical persons, and other not-for-profit juridical persons. However, regulated rents continued to be applied widely, since according to Article 56 of the LRU they also applied to all leases created on the basis of an administrative decision or other type of public allocation of dwellings, even when the leased dwellings were owned by private persons (Chrościelewski and Tarno 1995: 66). In Article 56 it was further specified that regulated rents in dwellings owned by private, physical persons were to be liberalised after 31 December 2004, but in dwellings owned by private juridical persons no such time limit was introduced (Podrecka 1996: 21 et seq.). Moreover, all fixed-term leases created on the basis of an administrative decision or other type of public allocation of dwellings were transformed into open-ended leases when the LRU came into effect, which meant that it was very difficult for landlords to terminate a lease except in situations specifically stipulated in the LRU. Little room was left then to introduce freely negotiated rents when they could only be applied to newly concluded leases in the very limited, vacant private housing stock (Z. Radwański and J. Panowicz-Lipska 1996: 122–123). Consequently, private owners with tenants from the previous political

era had to charge regulated rents that were far below the level of cost rent, even though from 1995 onwards regulated rents did increase significantly when compared to the pre-1995 levels (Hegedüs and Tosics 1998: 663–666). Nonetheless, the situation remained too onerous for private owners who were burdened with various obligations under public law to maintain their buildings in a safe and habitable condition but were deprived of adequate rental income.

The Polish Constitutional Tribunal was faced with the dilemma of deciding whether Articles 56 and 57 of the LRU on tenant protection together with Articles 25 and 26 on easing rent regulation were in violation of the Constitution's provisions concerning the protection of ownership and its admissible limitations.³ In an extensive justification to its judgement in 2000 (P11/98, OTK 2000/1/3), the Tribunal noted that most municipalities set regulated rent levels at an average of 1.3 per cent of the unit's annual reconstruction value, which covered only about 60 per cent of maintenance costs. The costs not covered by rental income had to be borne by private owners exclusively. Such rents applied to approximately 600,000 dwellings in privately owned buildings, so the scale of the phenomenon was significant. The Constitutional Tribunal underlined the importance of the ten-year transitional period until the end of 2004, as an immediate adjustment of rents to market levels would have caused great social harm; however, it was ruled that the costs of protecting tenants should not have been borne solely by private owners. In the Tribunal's judgement, Article 56 of LRU violated the Constitution as well as Article 1 Protocol 1 of the European Convention of Human Rights (ECHR) on the right to property. The loss of the LRU's binding force, effectively meaning that private housing stock would not be subject to rent regulation, was postponed until July 2001 to give the legislator time to introduce solutions compatible with all related legal sources.

The solutions aimed at executing the Constitutional Tribunal's requirements were introduced in the Act of 21 June 2001 on the protection of tenants, the municipal housing stock and the amendment of the Civil Code (TPA, act of 21 June 2001 consolidated version: Journal of Statutes 2014, item 150), which superseded the LRU. However, provisions on admissible levels of rent in the private housing stock remained controversial for two main reasons: the long-lasting restrictions on the right

to freely negotiate rents in privately owned housing, and the stringent restriction on possible rent increases even after rent levels were nominally liberalised.

First, the Constitutional Tribunal's support for the 10-year transitional period was expressed in the decision that regulated rents in leases concluded before the TPA came into force in 2001 could be increased above 3 per cent of the unit's annual reconstruction value annually before the end of 2004. While freely negotiated market rents were allowed starting from 1 January 2005, they were only permitted in the case of new leases concluded after this date. Second, when the TPA came into force in 2001, a separate provision under Section 3, Article 9 regulated the rent increases, concerning sitting tenants whose rents did not exceed the 3 per cent limit of the unit's annual reconstruction value set by the TPA. Rent reviews could not be effectuated more often than once every six months, and the raise could not exceed levels calculated with reference to the inflation rate, the unit's reconstruction value, and the then current actual rent. In practice this meant that raising rents to at least cost level would take an unreasonable amount of time, because the starting points were the very low, regulated rents and inflation was steadily falling (Panowicz-Lipska 2011: 108–109).⁴ Dybowski (2001) calculated that at the rate permitted by the TPA, obtaining cost rents from tenants within the regulated rent regime could take up to 200 years. Similarly, landlords who were able to conclude new leases with market rents would not be able to sustain a fair yield due to the stringent limitations on rent increases (Nazar 2001: 960, 966).

The revised legislation therefore did not fully reflect Constitutional Tribunal judgements, and the resulting legal framework remained tenant-friendly to the extent that it still placed disproportionately onerous conditions on private landlords. It was, accordingly, questioned by the Polish Human Rights Defender (Ombudsman) in 2002 on the basis that even after the proposed liberalisation in 2004, landlords could not attain cost rent within their lifetimes. In 2005 the Constitutional Tribunal ruled that the public allocation of dwellings for decades brought about a serious pathology on the rental market, and reversing its negative effects would require a careful balancing of the rights of tenants and landlords; however, the latter have been consistently neglected by the legislator. While previous judgements gave reason to citizens to be convinced that from 2005

onwards, at the end of ten-year transition period, rents and rent reviews would be subject to freedom of contract, more recent provisions created new restrictions, which violated essential principles of the Constitution. The Tribunal also made reference to the case law of the European Court of Human Rights (ECtHR), namely *Mellacher and Others v. Austria* (Applications no. 10522/83; 11011/84; 11070/84) and *Hutten-Czapska v. Poland* (Application no. 35014/97), where it was emphasised that the control mechanisms in place violate Article 1 Protocol 1 of the ECHR, as all or much of the burden attached to achieving social housing goals is placed on landlords. Another Constitutional Tribunal judgement in 2006 (K 33/05, OTK-A 2006/5/57) repealed further provisions on rent reviews of the TPA, partly due to their obscurity and subsequent legal uncertainty.

Currently, after years of struggling against onerous restrictions, which are also inconsistent with both the Constitution and the ECHR, rent increases are subject to the following control mechanisms: (1) they cannot be introduced more often than once every six months; (2) notice must be made in writing at least three months in advance; (3) an increase of the yearly rent above 3 per cent of the dwelling's reconstruction value annually must be justified by conditions set out in the TPA. These conditions largely refer to the landlord's ability to achieve profits that allow adequate maintenance of the dwelling and obtaining a fair return on capital. However, for this latter the legislator does not provide a percentage rate, so in cases of disputes it is decided based on the given case (K. Zdun-Załęska 2014: 88). A tenant may demand that the landlord presents a calculation of the rent increase in writing (see Supreme Court resolution of 5 Feb. 2010, III CZP 130/09, OSNC 2010/7-8/109, and Łoboz 2014: 294); and tenants dissatisfied with the rent increase may bring an action to court. This regulation on rent increase mechanisms has been in force since 2007, and it seems that the legislator has finally struck a satisfactory balance between the proprietary interests of landlords, and tenants' need for predictable and justified rent increases that may be reviewed by courts. The proportionality principle has been observed, and the Constitutional Tribunal concluded in 2012 (SK 25/09, OTK-A 2012/1/1) that rent increases in accordance with the revised TPA are consistent with the PC (Doliwa 2014: 276); the requirements of the Constitutional Tribunal in its previous judgements have thus been properly accounted for in legislation (Wyrwińska 2007).

Eviction and the Incidental Lease

One of the most contentious issues when balancing the rights of tenants and landlords is the question of eviction, which is only permitted when a lease contract is terminated (through termination by notice, the expiry of a fixed-term contract, or termination of a lease by a court), or under particular circumstances allowing for eviction (such as extremely reprehensible behaviour on the part of the tenant). There are, however, two main issues that are seen as risk factors by landlords: (1) the possibility of terminating an open-ended lease, and (2) the actual ability to lawfully evict a tenant. As far as the former is concerned, the legislator does not allow the termination of an open-ended lease for reasons other than listed in the TPA, which includes mainly a breach of contract, the tenant's prolonged absence, their legal title to a comparable dwelling within the same municipality; court termination may be available when irreconcilable conflict arises. If there is a dispute as to whether these conditions have actually taken place, the landlord has to instigate court proceedings to prove the legal grounds for termination. As there are no special, simplified proceedings concerning residential lease disputes, the landlord faces incurring substantial costs in connection with lengthy court proceedings. Concluding fixed-term contracts is a possibility, and a lease contract may also be terminated for reasons that the parties agreed to and specified in the lease contract. The maximum fixed term may not exceed ten years, after which the contract is deemed to be open-ended. Termination of the lease contract implies the tenant's obligation to vacate the dwelling. If this is not done voluntarily, the landlord will need to initiate eviction proceedings.

According to the TPA, in the case of a standard lease (an open-ended market lease with no specially agreed provisions), the court may award a social dwelling to a tenant on the grounds of a difficult family or economic situation; the tenant cannot be evicted to a place other than a social dwelling provided by the municipality. Owing to the shortage of municipal housing, the tenant awaiting social housing can continue to reside in the dwelling indefinitely; and while the municipality is liable for damages and the remaining tenant must continue to pay the rent that is due under the expired contract, the landlord is, in the meantime, unable to recover the property. In addition, evictions from

regular leases are suspended in the winter period, from 1 November to 31 March each year.

Eviction procedure is significantly easier and faster if the landlord concluded a special type of a lease called the ‘incidental lease’, which is always concluded for a fixed term that may not exceed 10 years. Its appeal lies mainly in the lower taxation rate on the landlord’s income from rent, exemption from the otherwise binding rules that apply to rent reviews and to the termination of leases, and the simplified eviction proceedings (Doliwa 2015: 279). Upon concluding the contract, the lessee agrees to vacate the premises after the termination of the lease and indicates a place they can be evicted to, should they end up subject to eviction, with the written consent of the dwelling’s owner. If the lessee does not vacate the dwelling, the landlord presents the notarial deed, which serves as an execution title, the court issues a performance clause, and the bailiff commences the actual eviction within a relatively short timeframe. Originally introduced in 2010,⁵ this form of lease could only be concluded between non-professional landlords (physical persons) and private individual tenants. The incidental lease was introduced as a measure to curtail informal leases, as it is only possible to benefit from its provisions if the landlord declares the taxable incomes from rent. In order to make the incidental lease available to potential professional landlords (like real-estate developers), the TPA was amended in 2013,⁶ which, of course, means that the lease is no longer ‘incidental’ since it can also be used by real-estate and rental market professionals.

Snapshot Analysis: Private Renting in the Present Day

The Size of the Private Rental Market

The results of the last National Census in 2011 in Poland show the structure of households according to type of tenure (Table 11.1). Although census data refer to the number of households, which may be different from the number of utilised dwellings, that information is the only formal statistic on the structure of rental sector in Poland. In this context, the PRS in

Table 11.1 Households by tenure type (National Census 2011)

	Households	
	Number	%
Households living in the dwellings on the basis of:		
Ownership	7,509,019	55.3
of the building	5,122,479	37.8
of the dwelling	2,386,540	17.6
Cooperative right	2,180,825	16.1
Homeowner cooperative	1,830,414	13.5
Rental cooperative	350,411	2.6
Renting the property of:	2,258,078	16.6
a physical person who is:	575,466	4.2
the owner of the building	229,643	1.7
a co-owner of the building	345,823	2.5
a housing cooperative	67,636	0.5
a municipality	1,029,103	7.6
the State Treasury	183,916	1.4
companies	191,435	1.4
Social Building Associations	84,396	0.6
other entities	47,694	0.4
no data	78,432	0.6
Sublease	37,100	0.3
Family connection	1,282,865	9.5
Other	62,316	0.5
Not established	237,796	1.8
Total	13,567,999	100.0

Source: 'Housing conditions of households and families', National Census of Population and Dwellings (2013)

2011 amounted to 643,100 units, or 4.7 per cent of the stock, including cooperative members as landlords (Central Statistical Office 2013).

The housing stock rented on private, commercial rental market is not covered by public statistics, but various estimates are made about its size. To assess the size of the PRS, it is necessary to decide whether to include cooperative flats in the calculation, and also to estimate the number of informal leases. The vast majority of cooperative flats are used on cooperative proprietary right to the dwelling, which is a limited real right within a housing cooperative. Black market deals also should be included, but existing estimations vary greatly. Augustyniak et al. (2013: 17) stated that in 2011, about 82 per cent of housing was owner-occupied, while approximately 18 per cent of the housing stock was rented (including

approximately 14.5 per cent rented at a preferential, lower rate). Muziol-Weclawowicz (2013: 197) estimated that in 2009, 10 per cent of privately owned dwellings (about 1,000,000 units) were rented, as well as 5 per cent of cooperative housing (approximately 100,000 units). The association *Mieszkanicznik*, set up in 2012 by Polish residential landlords with the aim of making the PRS more modern and formal, estimated the number of privately rented dwellings as 660,000, of which approximately 70,000–100,000 were let informally. The two main rationales for presuming that the PRS is larger than suggested by both official statistics and existing estimates is (1) the lack of information and estimates of the market in small towns and rural areas, and (2) the very dynamic growth in the number of apartments purchased for investment purposes in major cities, especially in the capital Warsaw. According to the real-estate advisory agency REAS, for the first time since the launch of market economy reforms, institutional investment in the PRS is currently becoming a major factor, with both domestic and foreign institutional investors (REAS 2016). Another source of information on part of the PRS is the Ministry of Finance's reports on lump-sum taxation. In 2009, amendments to the legislation on tenant protection were accepted, and the occasional lease of dwellings was introduced, with the aim of increasing the number of legal rental contracts in exchange for lower taxes and certain limitations to tenants' rights. According to the ministerial report (Ministry of Finance 2015), in 2014 taxpayers filed 416,000 declarations in which they chose a lump-sum taxation on revenues at a rate of 8.5 per cent on rental income as part of their non-agricultural activities. This meant an increase in the number of claimants by nearly 41,000 compared to 2013. Despite the lack of any further details about the objects being rented, the vast majority of these sources of rental income are likely to be dwellings. As 'occasional landlords' (private individual landlords for whom renting is only a secondary income source) may choose, instead of the lump-sum tax, to pay the standard income tax (18 or 32 per cent on income, not revenues) there are more landlords using the scheme of 'occasional lease'. But the data on number of individual taxpayers obtaining revenues from lease of dwellings, are not published by the Ministry of Finance. Also, while it is difficult to estimate the exact number of informal—unregistered and untaxed—leases, housing market

actors and researchers believe that there are a substantial number of them. Considering these factors and the recent boom in property investment, it is possible to estimate that the number of privately rented dwellings can range between 800,000 and 1.2 million units. Some experts claim that in Warsaw and the other major cities, 17–20 per cent of dwellings constructed by developers were bought for investment in 2015 (REAS 2016). One of the biggest real-estate agencies reported that while lease transactions amounted to 0.5 per cent of agency activities, they currently account for up to 13 per cent of their deals.

Growth of the Polish rental market can be associated with two major factors: changes in the legal provisions governing landlord-tenant relations and economic changes. Other factors that encourage the private rental market include, in addition to solving the difficulties in the social housing sector and owner-occupied housing market, changing the attitudes of young professionals to favour rental housing and sustained immigration to the largest cities, which are attractive labour markets. In recent years the five biggest housing markets have recorded increases in population, including an influx of students.⁷ Students constitute a key group of clients who rent dwellings. Medium-term prognoses expect an increase in the number of students in Poland, including not only locals but also students from abroad. Poland is popular as a place to study among Ukrainians, Belarusians, and people from other former Soviet Republics. Poland is becoming a popular destination for economic migrants from countries outside the EU, especially Ukraine. According to estimates by the Institute of Public Affairs, legally employed non-EU foreign nationals make up approximately 0.3 per cent of the total working population in Poland,⁸ who constitute an important base of the growth of the rental market, both legal and illegal. The inflow of workers has increased from 2014, when 43,700 work permits and 387,400 temporary work permits were issued; 60.3 per cent of permits and 96.3 per cent of temporary permits were issued to Ukrainian citizens (Ministry of Family, Work and Social Policy 2016). Finally, besides students and migrant workers, a third group of market tenants, smaller in number but very influential, is made up of young professionals who prefer renting an apartment over owner-occupation in order to avoid being tied to a single location and a mortgage.

Economic Conditions

After the Global Financial Crisis, macroeconomic conditions and state housing policy steered citizens towards owner-occupancy. A well-developed mortgage market also makes purchasing a dwelling easier, although since the crisis the approach to underwriting and credit risk assessment has become more conservative. Also, many housing investments made by private individuals are still paid in cash. Nonetheless, in the post-crisis years housing investments have been benefitting from slow but stable economic growth, as well as from historically low inflation and interest rates: in 2012 the basic mortgage interest rate was 4.75 per cent; in early 2016 it was 4.58 per cent. Recent regulatory changes have also helped to stabilise the housing market, such as the recommendations of the Committee of Financial Supervision, which proposed that homebuyers make a solid minimum down-payment of 15 per cent in 2016, and 20 per cent in 2017; and legal protection of the deposits of future owners in their contracts with real-estate developers. According to the periodic report *Information on house prices and the residential and commercial property market Q1 2016* of the National Bank of Poland, the housing market remained balanced in the first quarter of 2016 (Łaszek et al. 2016). Residential real-estate sales and rent prices were stable, with prices on the secondary market lower than on the primary one. At the same time, average rent levels and average house prices rose slowly but steadily.

Relatively inexpensive mortgages combined with high rents in the private rental markets in the larger cities mean that the cost-effectiveness of purchasing a dwelling is greater than renting: monthly instalments on the most popular small units are very close to market rent levels. Still, this also favours investment in rental housing, as a section of the population is unable to afford to take on a mortgage with stricter conditions—whether temporarily or for a prolonged period—and having witnessed the consequences of the crisis, there is a growing number of young people who are more sceptical about taking on long-term debt. Natural persons who buy dwellings for their own use are, to some extent, being replaced by other natural persons—residential investors who buy dwellings to lease them.

Nonetheless, professional investment is also gradually gaining ground. The low cost of credit and the very low interest rates on deposits stimulate real-estate investments, and while the demand for retail or office property seems to be diminishing, interest in residential property is stable. Buying an apartment to rent in an urban centre can yield an annual profit of 4–5 per cent, or as much as 8.5 per cent according to some experts (REAS 2016), although residential leasing is recognised as a risky and time-consuming business.

Warsaw is the leader in the Polish housing market in terms of developer activity, the size of the mortgage market and rental market, and the demand for owner-occupied and rental housing. In the first quarter of 2016, 40.98 per cent of all new mortgages were for real estate in Warsaw and its metropolitan area (Union of Polish Banks 2016). This development was buttressed by market optimism fuelled by low overall unemployment (4.3 per cent in 2014), decreasing youth unemployment, and rising salaries. The strong demand was driven not just by Warsaw citizens and the influx of migrants, but also by a growing supply of rented apartments of diverse standards, locations, and prices, and by the very limited availability of rentals in the public housing sector. Despite a growing body of information on the PRS in Warsaw, no estimates exist on the share of privately rented housing (formal and informal) within the stock. Evidence of the market's development is nonetheless provided by the professionalisation of rental services and the recent emergence of institutional investors. The professional management of rental units has also become the activity of property managers and estate agents.

The first major corporate investment in the rental sector was Holland Park, of the company Keen Property Partners in 2006. It consisted of two buildings with 64 rental units in a central location in Warsaw. The sale of individual units in the buildings began in 2009. City Life PCC Limited, registered in Guernsey, set up a fund in 2006 called Poland Geared Growth to invest in packages of rental dwellings (PwC-REAS-CMS 2013). Besides these funds investing in buy-to-let schemes, there are several investment funds operating in Poland that have invested in residential development projects or housing development companies, two of which are of particular interest. The Mzuri Group is a private company that specialises in investment into and the management of rental housing.

The company manages over 2000 dwellings throughout the country in almost 20 cities. Mzuri Crowdfund Investing (Mzuri CFI) is in fact based on crowdfunding to invest in real estate, and it is also open to small-scale investors. One can invest as little as PLN 10,000 (approximately EUR 2300) in rental homes. One of the company's strategies is to purchase and renovate old rental units in attractive locations and to let them on market terms. So far the company has purchased over 500 units for individual investors. The company also actively promotes private renting and strives to set standards and good practices in the Polish market.

A state-led commercial initiative, the Rented Dwelling Fund (Fundusz Mieszkań na Wynajem—FMW), launched by the National Economy Bank (Bank Gospodarstwa Krajowego—BGK) has been operating since 2015. Its aim is to increase the size of the rental housing market in the largest Polish cities by practising/promoting professionalism, stability, and predictability for the owners of rental property. By early 2016 the Fund acquired 2430 dwellings in apartment buildings in Poznań, Piaseczno (near Warsaw), Gdańsk, and Kraków. Out of the contracted dwellings 425 have been rented, 1463 purchased, and transactions concerning the remaining 542 units are being finalised. In the long run, the Fund intends to rent dwellings at rates slightly below market rents and plans to operate 20,000 units by 2020 (Fundusz Mieszkań na Wynajem *n.d.*; Łaszek et al. 2016).

Future Prospects: On the Road to Professionalisation

Regarding Poland's PRS, more detailed information is only available on the biggest local markets, especially that of Warsaw. While the sector does operate in smaller markets as well, there is no information on these markets at all. Local municipalities are expected to produce a 'rent mirror' on local average market rents. Many of them do not do this, alleging that the data are impossible to collect. But some do produce rent mirrors, and they show that in small localities the market rent in an average dwelling is not much higher than in an average municipal dwelling. Under these conditions, this market segment is unattractive for investors.

In the big rental markets in Poland, the current rents being collected by individual owners and emerging institutional investors are yielding higher rates of return than investments in bonds or bank deposits and are similar to the returns in commercial real estate, although to some extent this may be offset by the lower liquidity and higher transactional costs in the rental market. Economic profitability is a major factor generating interest in this type of investment, and after stagnating for two decades after 1989 the PRS market is now showing slow but stable growth. Still, the negative image of the sector is only changing slowly. The sector remains hobbled by slow eviction procedures, lengthy litigation, and the shortage of social dwellings, all of which strongly affect private renting in Poland due to the strong tenant protection measures. Nonetheless, incidental lease as a form of renting that can now be offered even by professional landlords holds open the possibility that this image may change.

The housing market in Poland has its specificities, and the lack of experience of large rental portfolios is one of them. It is likely that the perception and development of Poland's institutional rental sector will depend on initial investors who build up the first rental portfolios. They run higher risk, and expect higher yields, and if they prove successful, they will pave the way for more risk-averse investors to enter the market. So far, the PRS is based on small-scale private individual landlords. In their case, too, purchasing dwellings to invest in and lease is growing in popularity.

The social significance of private rental investments has also for the first time come up in the public discourse. The popular image of the landlord as exploiter seems to be giving way to thinking about landlords in terms of the social role they play by providing housing to tenants who either choose to rent or have no other option (for the time being). The concept of involving privately owned housing to expand social housing provision is also gaining ground. Habitat for Humanity Poland has been carrying out research on the applicability of social rental agencies in Poland.

Ultimately, however, the PRS in Poland has begun to grow largely thanks to its increased profitability, which in turn attracted institutional investment and contributed to the sector's professionalisation. State-led initiatives, like the Rented Dwelling Fund or incidental leases, are important,

but are limited in their effect. A coherent revision of related policies would be required to support the development of the sector, which would include giving significant support to current and prospective landlords and to some tenants in commercial rentals, especially if the goal is to mobilise the private sector to supplement social housing provision. Given that the PRS also depends on the availability of social housing because of the strong tenant protection measures in place, investment in social rental housing is also necessary if the PRS is to function better.

Notes

1. According to a questionnaire study conducted by the ministry in charge of housing policy in 2011, the average level of rent as a percentage of the reconstruction value was equal to 1.22 per cent, and on average the lowest rents were observed in small municipalities, the highest—at 1.67 per cent of the reconstruction value—in the biggest municipalities with over 200,000 inhabitants (Ministry of Transport, Construction and Maritime Economy 2012).
2. Source: Materials presented by the government of Poland in the European Court of Human Rights (case *Hutten-Czapska v. Poland*). The number of dwellings—600,000—is frequently quoted, but it should be noted that the process of ending special rent leases due to demographic and technical reasons continually diminished this subsector of PRS.
3. Art 21 PC: The Republic of Poland protects ownership and the right to inherit (s. 1). Expropriation is allowed only for public purposes and with just compensation (p. 2).
4. Panowicz-Lipska, 'Najem', 108–109.
5. Act of 17 December 2009, Journal of Statutes 2010, no. 3, item 13, effective 28 January 2010.
6. Journal of Statutes 2013, item 1304, effective 23 November 2013.
7. Warsaw, Kraków, Wrocław, Poznań, Gdańsk (and their agglomerations); only Łódź has recorded a loss of the total population as well as of students.
8. There is no estimate of the number of illegal foreign workers, but this phenomenon is important, especially for temporary jobs in construction, agriculture, and house-cleaning.

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