SOCIALISM UNDER CONSTRUCTION

Law and Ideology in Housing, Construction and Spatial Planning in Poland 1944–1989

Piotr Eckhardt

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1
Purpose, object and methods of the study

1.1. The reasons for undertaking the study and its purpose

During World War II, much of the buildings of Warsaw fell into ruins. However, some houses could be rebuilt. Moreover, their repair was also rational from an economic point of view. Nevertheless, it was decided to demolish most of the buildings in the vicinity of Marszałkowska Street, regardless of the degree of their condition[1]. The Marszałkowska Residential District (Marszałkowska Dzielnica Mieszkaniowa – MDM), designed by Jozef Sigalin's team, was to be built on the ruins of bourgeois houses, described as a "feedground of capitalist exploiters"[2]. The old buildings symbolised the prewar political system that was to depart into history. It produced stylish front houses with commercial premises and comfortable

[1] M. Obarska, *MDM. Między utopią a codziennością* (Warszawa: Mazowieckie Centrum Kultury i Sztuki – Agencja Wydawnicza "Egros", 2010), 54.

[2] "Stolica" 1950, nr 39, p. 2, as cited in: Obarska, op. cit., 80.

apartments above them, and outbuildings erected on their backs, full of cramped, dark, and damp rental rooms, all on the same plot of land. It was basically an allegory of the class divisions that People's Poland wanted to eliminate. That is why rebuilding these buildings in such a shape was out of the question. It was decided to erect a new Socrealist district, in which all housing, intended for the working people, was to be built to the same standard. The socialist state aimed at meeting all the needs of the new, classless society. Accordingly, in addition to residential buildings, other facilities were designed: 12 nurseries, 22 kindergartens, 11 schools, 200 retail and catering units and four health centres[3].

This is an ideal example of shaping the material – architectural and urban – environment of human life in accordance with political ideology. The author of this book, based on a doctoral dissertation in Polish defended at the Jagiellonian University in 2022, in his earlier research, found many examples of influences of this kind, in various periods of the history of People's Poland as well as in the other countries of the socialist bloc[4]. The historian and specialist in architecture, Andrzej Basista, in his introduction to the first monograph on Polish architecture from the socialist period, stated that the legal documents were his main source. He wrote that they were the only objective record of the reality of those times[5]. Therefore, the study of the second direction in this relationship, namely the role of law as a link between the ideology of the People's Poland and the architectural developments of that

[3] A. Lorek, "Marszałkowska Dzielnica Mieszkaniowa i Karl-Marx-Allee. O wartości środowiska mieszkaniowego, głównych założeń śródmiejskich epoki socrealizmu w Warszawie i Berlinie", *Czasopismo Techniczne. Architektura* 1–A (2007), 110.

[4] See: P. Eckhardt, "Przestrzeń i architektura jako obraz doktryny politycznej. Przykład państw socjalistycznych", *Miscellanea Historico-Iuridica* XV (2) (2016), 11–20.

[5] A. Basista, *Betonowe dziedzictwo* (Warszawa–Kraków: Wydawnictwo Naukowe PWN, 2001), 7–8.

period is an important and, at the same time, fascinating task for the historian of law and political and legal thought. Accordingly, the hypothesis reviewed in this work stands as follows: the content of the legislation on construction, housing, and urban planning depended on the political ideology as it was specific to the particular period of the history of People's Poland, and these norms served to shape the aforementioned areas of socio-economic life in accordance with the vision embodied in that ideology.

Verification of the research hypothesis formulated in this way in each case will require an assessment of the limit to which the analysed norm implements certain ideological goals, and to what extent it is just a tool for the implementation of necessary state tasks. This is because it should not be forgotten that legal regulations perform various functions – sometimes several at the same time. In principle, three types of situations may be encountered: (1) when ideology is the reason for the existence of some regulation; (2) when some regulation was necessary for other reasons, but ideological considerations contributed to the choice of one of several possible solutions, and (3) when the use of a particular legal solution was motivated by pragmatic reasons but, at the same time, was in line with the prevailing ideology and contributed to strengthening it.

1.2. Ideology, People's Poland, regulations on construction, housing, and urban planning – object of study

1.2.1. Ideology as an object of inquiry

David McLellan said that *ideology* is the most elusive concept of all those operating within the social sciences[6]. This term was coined

[6] D. McLellan, *Ideology* (Minneapolis: University of Minnesota Press, 1995), 1.

by French philosopher Antoine Destutt de Tracy, who applied it to the science of ideas[7]. As Jerzy Szacki stated, the immense popularity of the notion of *ideology* in the 19th and 20th centuries led to its great ambiguity:

> it is used in dozens of meanings and shades of meaning. In its colloquial uses, it usually means any set of views characteristic of some group, or even an individual, if he considers it appropriate to justify his behaviour more or less systematically [...]. Sometimes any views of the world are called ideologies; it is also spoken of religious ideologies, political ideologies, social ideologies and so on. Indeed, wherever there are any attempts to define what the world, especially the social world, is and should be like, it is possible to find authors describing these attempts with the word *ideology*[8].

Further Szacki states that the term ideology is persuasive in many uses, i.e., it is intended not to delineate the scope of the phenomena under study but to evoke a specific emotional response – "for many authors it denotes biased, one-sided, irrational or illusionary views"[9].

The important development of the concept of ideology took place precisely in those currents of thoughts that are related to the topic of this book, because they theoretically constitute the philosophical basis of the system of socialist countries, and therefore, also of People's Poland, which was the subject of the research whose

[7] G. Lichtheim, "The Concept of Ideology", *History and Theory* 4 (2) (1965), 164–195.

[8] J. Szacki, *Dylematy historiografii idei oraz inne szkice i studia* (Warszawa: Wydawnictwo Naukowe PWN, 1991), 219. All quotations presented in this work have been translated from Polish to English by the author himself, unless stated otherwise.

[9] Ibid.

results are presented in this book. The main focus here, obviously, is the thought of Karl Marx and Vladimir Lenin. A reconstruction of particular concepts of ideology shall not be undertaken here once again, as it has been discussed in the literature thoroughly[10]. However, it is worth pointing out the most important features of these approaches. Marx and Engels considered ideology "false consciousness". Szacki explained their approach as follows:

> to be an ideologue is to perceive the world in a distorted way, to nourish illusions, to take one's own ideas as reality, etc. The source of these distortions of the process of cognition [...] is the social situation of the thinker, limiting his field of vision and producing susceptibility to "ideological" illusions: although he might not want to misrepresent or conceal anything, he cannot avoid it[11].

Overcoming ideology would require revolutionary activity, not just intellectual effort[12]. However, this approach was not the basis of the ideology on which socialist states were built. J. Szacki wrote: "moreover, Marxists themselves departed from Marx's concept, adopting the notion of ideology that even allows to speak of 'scientific' and 'proletarian' ideology (Lenin), which would have been unthinkable for the young Marx, in particular"[13]. This "neutral" notion of ideology, understood as a vision of the world characteristic of a particular class, was the very basis of Marxism-Leninism[14]. Marxism as such was one of these visions, so in this sense, the ideology as a concept itself could not be evaluated negatively. It is

[10] Particular attention should be paid, for example, to: J. Rehmann, *Theories of Ideology. The Powers of Alienation and Subjection* (Leiden: Brill, 2013).

[11] Szacki, op. cit, 223.

[12] Ibid.

[13] Ibid., 222.

[14] Lichtheim, op. cit., 21.

worth mentioning that Leninism was not the only variant of the development of Marxist philosophy. For example, Antonio Gramsci also rejected a negative conception of ideology but instead of a neutral one, he introduced a positive vision, in which ideology was conceived as a "creative activity", a mean of organising the human masses, enabling them to operate and struggle[15]. Later a redefinition of the concept was made by Karl Mannheim[16], and in subsequent years consideration of the concept of ideology was carried out by Michael Oakeshott and Karl Popper, among others[17]. However, their work is less related to the subject of the research covered in this book. For them, socialist ideology was crucial, because, as Jacek Raciborski wrote about it in 1986 – "it has numerous features of the ruling ideology: it is the ideology of the state, the propaganda apparatus is subordinated to it, its content should be taught in school [at least this is the assumption], the political system is organised according to its postulates, etc."[18].

Practical issues related to the research on the ideology of the socialist state have already been discussed in the literature as well. In this regard, the work *Ideology in a Socialist State: Poland 1956–1983*[19] by Raymond Taras proves particularly valuable. This historian, building on the work of Teresa Kwiatkowska and Jerzy Wiatr among others, expanded the methodological model proposed by Martin Seliger. It involves investigating the relationship between fundamental principles (such as Marxist philosophy) and operative

[15] T. Leśniak, "Ideology, Politics and Society in Antonio Gramsci's Theory of Hegemony", *Hybris. Internetowy Magazyn Filozoficzny* 16 (2012), 87.

[16] See: K. Mannheim, *Ideologia i utopia* (Lublin: Wydawnictwo "Test", 1992).

[17] W. Bernacki, "Ideologia", in: M. Jaskólski, ed., *Słownik historii doktryn politycznych* (3rd vol., Warszawa: Wydawnictwo Sejmowe, 2007), 10–11.

[18] J. Raciborski, "Uwagi o praktyce ideologicznej PZPR", *Colloquia Communia* 2–3 (25– 26) (1986), 291.

[19] R. Taras, *Ideology in a Socialist State: Poland 1956–1983* (Cambridge: Cambridge University Press, 1985).

ideology in order to examine ideological continuity and change in a socialist state[20]. The official declarations of the authorities of People's Poland were the research material for Taras. He wrote: "The study is limited to an examination of declarations and pronouncements made at party Congresses, National Conferences, all Central Committee Plenum meetings and articles published in the party theoretical journal, *Nowe Drogi*"[21]. Taras conducted his research on the ideology of People's Poland on the example of several problem areas: the status of the party, industrial democracy, church-state relations, the role of science and culture as well as the general question of perspective societal values[22].

The research whose the results are presented in this book, in some ways is analogous with the work of Taras. They both have the general subject of the research in common, i.e., the ideology of People's Poland. This book analyses also what Taras referred to as operative ideology and looked for in the official announcements of the party authorities, here however, different source material is taken into account, namely, formally binding legal regulations. The research described in this book also focuses on several problem areas. Instead of status of the party or church-state relations, these are housing, construction, and spatial planning. In this case, it belongs more to the history of law than to the history of philosophy or political thought, so the operative ideology found in the analysed legal regulations shall not be considered in terms of the fundamental principles of Marxism so precisely. However, the author hopes that a detailed examination of the content and the evolution of analysed regulations can serve as a starting point for further research in the area of history of ideas, e.g., providing numerous and, hopefully, interesting examples.

[20] Ibid., 32–37.
[21] Ibid., 40.
[22] Ibid., 43.

Additionally, in research involving the search for a particular ideology in specific source material (as in this case the ideology of the People's Poland in the legal regulations governing a distinct sector of life), a simple but very precise three-element definition formulated by Andrew Heywood proves very useful in practice. He understood ideology as:

> a more or less coherent set of ideas that forms the basis of organised political action, whether it is aimed at preserving, transforming or overthrowing the existing system of governance. Thus, all ideologies (a) provide an image of the existing order, usually in the form of a view of the world; (b) promote a model of the desired future, a vision of a good society; and (c) explain how political change can take place, i.e., how to move from (a) to (b)[23].

1.2.2. State socialism in People's Poland

People's Poland is the propaganda name used for the Polish state between 1944 and 1989, suggesting that during this period power belonged to the working people of the cities and countryside[24]. Historiography for years has had a widely accepted periodisation of this era[25]. Almost all authors distinguish periods approximating the following: the reconstruction of wartime damage and the

[23] A. Heywood, *Ideologie polityczne. Wprowadzenie* (Warszawa: Wydawnictwo Naukowe PWN 2008), 25.

[24] See: A. Łopatka et. al., *Słownik wiedzy obywatelskiej* (Warszawa: Państwowe Wydawnictwo Naukowe, 1971), 340. The use of the name Polish People's Republic is correct only to refer to the Polish state from 1952 to 1989, since the entry into force of the 1952 Constitution (Konstytucja Polskiej Rzeczypospolitej Ludowej uchwalonej przez Sejm Ustawodawczy w dniu 22 lipca 1952 r., Dz.U. 1952 nr 33, poz. 232).

[25] H. Słabek, "Najnowsze syntezy politycznych dziejów Polski Ludowej", *Dzieje Najnowsze* 24 (4) (1992), 121.

formation of a new state (from 1944 to about 1947); the peak of Stalinism (until about 1953); the thaw (which lasted until the late 1950s). Then came the persistence of developed socialism and, beginning with martial law in 1981, its slow decline. Differences between particular studies usually consist of more detailed divisions and distinguishing additional periods whose existence began with breakthrough events – such as Edward Gierek's decade after December 1970, or what is called Gomułka thaw, which lasted since October 1956 and differed from the first years of the de-Stalinisation of the state[26]. This means that the concepts adopted do not contradict each other, but differ in detail and in the importance which each author attributes to particular events. From the point of view of this work, it is not crucial to choose a specific variant, but to be aware of the most important events in each period – so as to note their possible impact on the change of legal regulations. In this regard, it is reasonable to adopt a basic periodisation covering the following periods: the formation of the People's Poland system in the postwar period; the culmination of Stalinism; the thaw; the maturation of socialism; the stagnation of this system; attempts to undertake reforms and its final collapse.

Some key events in the political history of People's Poland are presented below in chronological order. The following chapters analyse specific sections of the legal system by topic. Subsequently, they deal with: regulations on postwar reconstruction (Chapter 2); construction law (Chapter 3); spatial planning law (Chapter 4);

[26] See tables of contents of, e.g., A. L. Sowa, *Historia polityczna Polski 1944–1991* (Kraków: Wydawnictwo Literackie, 2011); A. Piasecki, and R. Michalak, *Polska 1945–2015. Historia polityczna* (Warszawa: Wydawnictwo Naukowe PWN, 2016); W. Roszkowski, *Historia Polski 1914–2015* (Warszawa: Wydawnictwo Naukowe PWN, 2017); A. Czubiński *Dzieje najnowsze Polski. Polska Ludowa (1944–1989)* (Poznań: Wielkopolska Agencja Wydawnicza, 1992); J. Eisler, *Zarys dziejów politycznych 1944–1989* (Warszawa: Polska Oficyna Wydawnicza "BGW", 1992).

housing law (Chapter 5); legal regulations on housing cooperatives (Chapter 6), and allotment gardens (Chapter 7). In a concise summary (Chapter 8), the results of the analyses in the previous chapters are compiled chronologically in order to draw generalised conclusions.

The first few years of the People's Poland were marked not only by the reconstruction of the devastation after World War II. From the point of view of political history, the most important process that took place during this period was the establishment of the new state and the gradual formation of its political system. The institutions of the new state were created almost simultaneously with the withdrawal of the Germans and the occupation of further territories by the Red Army. In July 1944, the Moscow-dependent Polish Committee for National Liberation (Polski Komitet Wyzwolenia Narodowego – PKWN[27]) was formed, and in its proclaimed manifesto it made declarations on the future shape of the state. The scope of the announced reforms – as suggested by Joseph Stalin – was small. Formally, the highest body of the legislature was the State National Council (Krajowa Rada Narodowa – KRN)[28]. Initially, the PKWN was its executive body. One of its first projects was to carry out land reform, which did not resemble those in other Eastern Bloc countries, i.e., it did not involve the nationalisation of all farmland. Instead, large farms were subject to forced parcelling out without compensation, and land was given to peasants[29]. The decisions taken already at that

[27] Various institutions in People's Poland were more often referred to by abbreviations rather than full names. Such terminology appears in the literature and, especially in the sources. Therefore, this book adopts the convention of using Polish abbreviations for the names of institutions. The full name, along with an English translation, shall be included the first time a particular institution is mentioned.

[28] Sowa, op. cit., 21–25.

[29] Roszkowski, op. cit., 159–160.

stage, which were important from the perspective of this book, were the issuance of what is called Bierut Decree (analysed in subchapter 2.4.) and the introduction of the first legal instruments related to public management of dwellings (subchapter 5.2.).

In late 1944 and early 1945, PKWN was transformed into the Provisional Government of the Republic of Poland, supervised by the NKVD[30]. However, to keep up appearances, a form of democracy with limited party pluralism was maintained until 1948, on Moscow's orders. One expression of this policy was the fact that the Provisional Government was headed by a socialist, Edward Osóbka-Morawski[31]. In February 1945, the Yalta Agreements were concluded, which determined the final shape of the political map of Europe. According to their content, democratic leaders were to be included in the Provisional Government. Thus, the Provisional Government of National Unity was formed, in which Osóbka-Morawski remained as prime minister, and the post of deputy prime minister and minister of agriculture was given to Stanisław Mikołajczyk[32]. The task of this cabinet was to call elections.

The regime of the emerging state was described as "people's democracy" and it was emphasised that solutions from the Soviet Union could not be directly applied in Poland. The "Polish road to socialism" was to be implemented – a system that was something in between "capitalist democracy" in the West and "socialist democracy" in the USSR[33]. Nevertheless, outposts of the Citizen's Militia and Public Security Offices had already developed strongly by 1945[34]. The Main Office of Press, Publication and Audience Control, a state tool of preventive

[30] Piasecki, and Michalak, op. cit., 11.
[31] Sowa, op. cit., 18.
[32] Piasecki, and Michalak, op. cit., 13.
[33] Sowa, op. cit., 33.
[34] Roszkowski, op. cit., 167.

censorship, also began to function[35]. On the other hand, the opposition, including agrarian Polish People's Party (Polskie Stronnictwo Ludowe – PSL) and the Labour Party, were still able to make attempts at legal and official activity at the time. The Catholic Church also functioned without major obstacles[36]. The socialist system was solidifying in the economic sphere as well. Already at the beginning of 1946, contrary to the declarations in the PKWN Manifesto, the nationalisation of large and medium-sized industry was carried out. A legal framework was created for central economic planning, with which spatial planning was connected (subchapter 4.2.). This period also saw the introduction of a mature form of public management of dwellings[37], which is particularly important for this study (subchapter 5.3.). On the other hand, e.g., at that time the housing cooperatives still enjoyed relative independence and freedom of action (subchapter 6.2.).

A nationwide referendum was held in mid-1946, asking the public whether it supported the abolition of the Senate, land reform, and the fixing of the border on the Oder and Lusatian Neisse rivers. The questions were worded in a way that was inconvenient for the opposition, which could not campaign against land reform, in particular, which enjoyed strong public support. The official results of the vote held on 30 June 1946 did not correspond to the actual will of the voters[38]. It was a general rehearsal before the parliamentary elections. The level of political tension during this period is well illustrated by the history of the Extraordinary Housing Committees (subchapter 5.4.).

Those conducted in January 1947 were also falsified. The PSL won only 28 seats (against 394 for the bloc composed of the Polish

[35] Sowa, op. cit., 37.
[36] Roszkowski, op. cit., 178–183.
[37] Sowa, op. cit., 81.
[38] Roszkowski, op. cit., 184–185.

Workers' Party, the Polish Socialist Party, the People's Party, and the Democratic Party). The new government, dominated by communists, was headed by Józef Cyrankiewicz[39]. The main task carried out under the Economic Reconstruction Plan, commonly referred to as the Three-Year Plan, was not only to eliminate war damage (among other measures, thanks to the various legal tools described in Chapter 2), but also to remodel the country's socio-economic structure[40]. What is called "battle for trade" began, i.e., actions directed at taking state control of this sector of the economy as well[41].

The unification of the Polish Workers' Party and the Polish Socialist Party can be considered the culminating moment of the first period of the history of the People's Poland, in which decisions about the political shape of the nascent state were made in Poland, Moscow, and during international talks. As a result of this merger, the Polish United Workers' Party (Polska Zjednoczona Partia Robotnicza – PZPR) – a "new type" party, in line with Leninist-Stalinist principles was formed in December 1948. Its structure was based exactly on the bodies which were supposed to exercise real power at all levels of the state in the following decades[42].

After the consolidation of power, the Communists, led by the Chairman of the PZPR Bolesław Bierut, hardened their line. The state's attitude toward the church changed. Religion was removed from schools, Caritas and numerous church properties were seized, and an Office for Religious Affairs was established[43]. Economic reforms also accelerated. The aforementioned battle over trade intensified, and in 1950, what is called the currency reform was

[39] Piasecki, and Michalak, op. cit., 24–25.
[40] Roszkowski, op. cit., 216.
[41] Piasecki, and Michalak, op. cit., 25.
[42] Roszkowski, op. cit., 209–211.
[43] Sowa, op. cit., 164–167.

implemented, as a result of which Poles lost most of their savings[44]. Collectivisation of agriculture was intensified and labour unions were centralised. The main objective of the Six-Year Plan, implemented between 1950 and 1955, was the rapid industrialisation of the country. It was not just about economic development. This project had an ideological goal as well. Jacek Raciborski writes:

> The building of socialism was seen in a longer perspective than the Six-Year Plan but the plan was already to finally determine the shape of the social and economic system. [...] The task of radically remodelling the social structure to ensure the leadership of the working class, ideologically called to leadership and constituting the basic base of management, was connected with industrialisation[45].

The central economic planning was supposed to be the tool for achieving this goal. A State Economic Planning Commission was created, headed by Hilary Minc[46]. Industrial expenditures in 1953 doubled the level of 1949, but at the same time, the living conditions of the population deteriorated, creating tensions[47]. The state also took control of all construction industry, and cooperatives lost not only the ability to conduct investment activities, but also the control over buildings they already owned (subchapter 6.3.).

The shape of politics also changed. The Communists no longer had to keep up any appearances. Arrests in the PZPR leadership began, affecting even Marian Spychalski and Władysław Gomułka[48]. At the same time, a cult of the individual developed

[44] Piasecki, and Michalak, op. cit., 26–27.

[45] J. Raciborski, "Przyczynek do ideologii industrializacji w okresie Planu 6-letniego w Polsce", *Ekonomista* 4–5 (1985), 947–965.

[46] Sowa, op. cit., 145–149.

[47] Roszkowski, op. cit., 241–244.

[48] Sowa, op. cit., 135–137.

around Bolesław Bierut, the Polish equivalent of Joseph Stalin[49]. But first and foremost, the years of Stalinism were recorded in Polish history as a period of the most severe repression. With the help of a well-developed institutional apparatus, the state covered by them many social groups. In addition to the Security Office, the Stalinist terror was actively pursued by, among others, the reformed judiciary (especially the secret sections of common courts, where judges obedient to the authorities after fast-track courses sat). Show trials were organised. Among the most notorious cases, known as judicial crimes, was the conviction of underground leaders, including General August Fieldorf "Nil" and cavalry captain (Pol. *Rotmistrz*) Witold Pilecki[50]. The Special Commission for Fighting against Corrupt Practices and Economic Sabotage and the Military Mining Corps, in which politically insecure conscripts were sent to serve, also operated intensively[51]. This was a period when politics clearly prevailed over law – even that already enacted by the authorities of the People's Poland, which can also be seen in the areas of spatial planning (subchapter 4.3.) and construction law (subchapter 3.2.).

The new basic law became the summary of the political changes. The 1952 *Constitution of the People's Republic of Poland* defined the shape of People's Poland and can be regarded as a declaration of its political ideology. According to the text of the discussed act, the People's Republic of Poland was a state of people's democracy (Article 1, Section 1) in which power belonged to the working people of cities and countryside (Article 1, Section 2). Among other things, the People's Republic of Poland secured the power and freedom of the working people against hostile forces (Article 3, Point 1); ensured the growth of the country's productive forces through its industrialisation and the elimination

[49] Ibid., 131.

[50] Piasecki, and Michalak, op. cit., 45.

[51] Sowa, op. cit., 150–155.

of economic, technical, and cultural backwardness (Article 3, Point 2); organised a planned economy based on socially owned enterprises (Article 3, Point 3); as well as limited, displaced, and liquidated the social classes living off the exploitation of workers and peasants (Article 3, Point 4). Chapter 2 detailed the principles of the social and economic system – economic and cultural life in the country was to be developed on the basis of the national economic plan, in particular, through the expansion of state socialist industry (Article 7, Section 1). The state also had a monopoly in foreign trade (Article 7, Section 2). Special state care was declared for national property, which included natural resources, state industry, and state farms (Article 8). At the same time, the state's care for individual farms was emphasised and assistance to them was declared (Article 10, Section 1). The People's Republic of Poland was supposed to give special support to agricultural production cooperatives, which, however, were to be established on a voluntary basis (Article 10, Section 2). The state was also supposed to support various forms of cooperatives (Article 11). The legal protection of individual ownership and the right of inheritance of land, buildings and other means of production belonging to peasants, artisans, and cottagers was reaffirmed (Article 12), as well as the complete protection and right of inheritance of citizens' personal property (Article 13). Above all, it promised to pursue the fullest possible realisation of the principle of "from each according to his ability, to each according to his labour" (Article 14 Section 3).

The new basic law included a broad catalogue of citizens' rights. They had the right to work, based on social ownership of the basic means of production (Article 58); the right to rest (Article 59), health care (Article 60), education (Article 61), or culture (Article 62). Special protection was promised for the creative intelligentsia (Article 65), women (Article 66), as well as marriage and family (Article 67), among others. Equality of citizens regardless of their

race, conscience, and religion was declared (Article 69). Freedom of religion and separation of church and state were stipulated (Article 70, Section 1). Freedom of association (Article 72) and personal inviolability (Article 74) were also promised. In addition to this, the 1952 Constitution, of course, contained provisions for the functioning of the supreme authorities, which were organised on the principle of unity of state power[52]. The practices of Stalinist terror described above show that the catalogue of citizen's rights was of a strictly phoney nature. In this study, more attention will be paid to examining the extent to which declarations regarding the socio-political system were expressed in the content of the legislation regulating the analysed area of life.

Joseph Stalin died on 5 March 1953.The struggle for power in the Kremlin and changes in the Soviet Union began. In People's Poland, liberalisation also started slowly, however, it is impossible to point to any specific event that could be considered its beginning[53]. At the Second Congress of the Polish United Workers' Party, trends were still conservative, although, e.g., adjustments were made to the Six-Year Plan ("economic manoeuvre") redirecting investment expenditures to the production of consumer goods in order to improve supply and ease the aforementioned social tensions resulting from declining living standards[54]. The impetus for greater political change came from broadcasts by Radio Free Europe featuring Józef Światło, a former high-ranking Ministry of Public Security official who fled to the West. Among other things, he talked about the privileges of the communist power elite and the scale of Stalinist repressions[55]. These disclosures caused unrest and criticism not only in society but also in party circles. The authorities responded by abolishing the Ministry of Public Security

[52] Ibid., 178–182.
[53] Ibid., 193.
[54] Roszkowski, op. cit., 249–253.
[55] Ibid., 254.

(MBP) and The Special Commission for Fighting against Corrupt Practices and Economic Sabotage. Some political prisoners began to be released, including Władysław Gomułka[56]. The Fifth World Youth Festival, which took place in Warsaw in August 1955, was one of the symbols of the advancing thaw[57]. For the areas of socio-economic life analysed in this study, the thaw is understood not only as the restoration of state construction supervision and, at least partial, ordering of legal chaos (in virtually all the discussed branches of law) but also as the recovery of housing cooperatives (subchapter 6.4.) or even increased self-governance in allotment gardening (subchapter 7.4. *in fine*).

Another impetus for change in the politics of People's Poland came from the Soviet Union once again. Nikita Khrushchev, at the 20th Congress of the Communist Party of the Soviet Union, criticised in a secret paper the cult of the individual around Joseph Stalin and other distortions of the system at the time. Moreover, the head of the PZPR delegation, Bolesław Bierut, died during this congress. The struggle for his inheritance began in the party, with two factions – the Puławians (more reform-minded) and the Natolinists (supporters of halting the thaw). Edward Ochab became the First Secretary of the Central Committee of the Polish United Workers' Party but factional fighting continued. Liberalisation also progressed, with the announcement of an amnesty, among other things[58]. However, in June 1956, workers' protests erupted, caused by the deteriorating economic situation. They were bloodily suppressed in Poznań. The result of the growing tensions was the Seventh Plenum of the Central Committee of the Polish United Workers' Party in July of that year. It recognised that the fight against what is called the right-nationalist deviation was not legitimate, and that the charges against Władysław

[56] Sowa, op. cit., 201–203.
[57] Piasecki, and Michalak, op. cit., 58.
[58] Roszkowski, op. cit., 258–260.

Gomułka, among others, were false. This opened a way back to power to him, which, however, did not take place peacefully, as Khrushchev himself was against him – the Natolinists, who were losing influence, presented the changes taking place in Poland as anti-Soviet. At one point, a delegation of top USSR politicians showed up in Warsaw, and Soviet troops began making moves toward the Polish border. However, in the end, Gomułka and Ochab managed to convince Khrushchev to retreat[59].

The beginning of Władysław Gomułka's rule marked a further thaw. Among other things, relations with the Catholic Church improved. The Prelate Stefan Wyszyński, who was imprisoned for three years, regained his freedom. The jamming of Western radio stations ceased, and the Polish Scouting Association was reactivated[60]. Still, after the 1957 elections and the stabilisation of the new authorities, the transition came to a halt. Censorship tightened, travels to the West were restricted, and economic plans for 1959–1965 involved rapid industrialisation once again. Some economic changes did take place, however, in 1956, most agricultural production cooperatives dissolved. At first, it was thought to be a temporary pause in the collectivisation of agriculture, but later, as Raciborski wrote,

> there was an erosion of the thesis that collectivisation was necessary to overcome exploitation, which was one of the fundamental theses. In turn, there was a strengthening of the view that small peasant property under the conditions of a socialist state could be incorporated into the socialist economy, thus undergo a kind of socialisation and lose the character of small-capitalist property[61].

[59] Piasecki, and Michalak, op. cit., 61–62.

[60] Sowa, op. cit., 252–258.

[61] J. Raciborski, "Kolektywizacja w Polsce – ideologia a praktyka", *Studia Nauk Politycznych* 3 (93) (1988), 131–158.

It is an example of the evolution of the ideology of People's Poland as its conditions changed. Reforms were also adopted in the area of socio-economic life examined in this work. In the following years, the construction of housing accelerated as well[62]. The final end of the thaw is often associated with the subordination of the workers self-government (which had won its independence barely two years earlier) to the state in 1958 and the formation of the new leadership of the PZPR in 1959, when Józef Cyrankiewicz, Edward Gierek, Edward Ochab, and Marian Spychalski, among others, joined the Politburo alongside Gomułka. Subsequently, the Puławians were removed from their posts and the reinstation of the Natolinists began, which ended the hopes for further reforms[63].

The rule of Władysław Gomułka was a period of economic deterioration. The efficiency of industry and agriculture was low. The growth of standard of living in the society was very slow. There were concerns regarding price increases[64]. Construction with state funds was practically abandoned – the only way to obtain an apartment was to participate in a housing cooperative, which financed construction with member contributions (subchapter 6.5.). The situation in the power camp became more complicated. Contesters of the leadership appeared, such as the "partisans" gathered around Mieczysław Moczar or Kazimierz Mijal, who advocated for the Chinese version of communism. Jacek Kuroń and Karol Modzelewski challenged the authority of the PZPR from Marxist positions[65]. The struggle against the Catholic Church also intensified, waged, among other things, through taxation instruments or through the conscription of clerics[66]. More than a decade of

[62] Roszkowski, op. cit., 271–284.
[63] Piasecki, and Michalak, op. cit., 77–78.
[64] Roszkowski, op. cit., 308–310.
[65] Piasecki, and Michalak, op. cit., 82–85.
[66] Sowa, op. cit., 314–321.

Władysław Gomułka's rule was considered a period of stagnation. However, it was at that time that the legal acts infused with the ideology of People's Poland most strongly were issued, such as the new *Construction Law* (subchapter 3.3.) and the *Spatial Planning Law* (subchapter 4.4.).

In 1967, the situation in the Middle East escalated, forcing a break in diplomatic relations with Israel as the Soviet Union supported Arab states. The anti-Israel turn in politics had far-reaching consequences. At the Fourth Congress of Trade Unions, Władysław Gomułka gave a speech condemning Zionism, which was taken as a signal to start anti-Semitic purges[67]. The actions of censors, who restricted theatrical activities were another source of tension. At the beginning of 1968, there were student protests against the removal from posters of the staging of Adam Mickiewicz's play *Dziady* (*Forefathers' Eve*) directed by Kazimierz Dejmek. Among those detained were Adam Michnik and Henryk Szlajfer, who were later disciplinary expelled from the university. As a result, students organised protests in March 1968 demanding their reinstatement[68]. According to some historians, these events were used by a group of politicians centred around Moczar as an attempt to seize power. This did not succeed, however, Gomułka's power weakened. Moczar was removed from office but the position of Edward Gierek started to strengthen[69].

The crisis came to a climax just two years later, in December 1970, when, as a result of the failure to achieve the objectives of the next five-year plan and the deteriorating economic situation, a decision was made to increase prices of foodstuffs. There were workers' protests in Gdańsk, which were bloodily suppressed. Gomułka, whose mental and physical condition kept deteri-

[67] Ibid., 335–336.
[68] Piasecki, and Michalak, op. cit., 98–100.
[69] Roszkowski, op. cit., 327–332.

orating increasingly, resigned. Edward Gierek took power in People's Poland[70]. He began his rule by consolidating power and eventually sending Moczar into political retirement[71]. He then focused mainly on a new economic policy of rapid economic modernisation using foreign loans and purchased licenses. This was to increase exports, the income from which was to be used to pay off the debt. At the same time, consumption expanded significantly (e.g., in meat or passenger cars), which temporarily improved public sentiment[72]. The state, focused on economic goals, enacted laws less saturated with ideology and more pragmatic than before, such as the 1974 Construction Law (subchapter 3.3.) and the Housing Law of the same year (subchapter 5.7.). At the same time, the bureaucratisation of increasingly inefficient institutions, such as housing cooperatives, continued (subchapter 6.6.).

However, the new economic policy did not yield the expected results, despite the prevailing propaganda of success. At the end of 1975, price increases were announced for fuel, alcohol as well as train and bus tickets. They were to become effective on 28 June 1976, and their level would be severe for the public. For this reason, on 25 June workers' protests broke out in Radom and other cities[73]. After their suppression, massive repression of those involved began. This was the impetus for the development of anti-communist opposition. The Committee for the Defence of Workers, Student Solidarity Committees, the Movement for Human and Civil Rights, the Confederation of Independent Poland, the Young Poland Movement, and other organisations were founded[74]. Public sentiment was also strongly influenced

[70] Sowa, op. cit., 365–378.
[71] Piasecki, and Michalak, op. cit., 121.
[72] Roszkowski, op. cit., 358–363.
[73] Piasecki, and Michalak, op. cit., 139–142.
[74] Sowa, op. cit., 413–428.

by the election of Karol Wojtyła as pope and his first pilgrimage to Poland[75].

In 1980, the same scenario as several years earlier followed. Rising meat prices caused a violent outbreak of strikes in factories across the country. In Gdańsk, the Intercompany Strike Committee (Międzyzakładowy Komitet Strajkowy – MKS) was organised, headed by Lech Wałęsa. Another MKS was also formed in Szczecin, led by Marian Jurczyk. In Gdańsk, 21 demands were presented to the authorities, which included not only economic issues, being the initial reason for the protest but also the establishment of independent trade unions. In the last days of August 1980, an agreement was signed between the authorities and the strikers. A few days later, the Sixth Plenum of the Central Committee removed Edward Gierek, who had suffered a heart attack. The PZPR was headed by Stanisław Kania, who admitted that the strikes were caused by serious errors in the economic policy[76].

On the wave of August 1980, the Independent Self-Governing Trade Union "Solidarity" was registered, and its structures were spontaneously organised throughout the country. There was a renewal in other organisations, including changes in the leadership of the Association of Polish Journalists, the Union of Polish Writers, and the Polish Academy of Sciences[77]. The changes also affected housing cooperatives (subchapter 6.7.) and even the movement associated with allotment gardens (subchapter 7.5.). However, the situation in the country was becoming increasingly tense. In January 1981, General Wojciech Jaruzelski became prime minister. In March, Solidarity abandoned a general strike because of fears of a Soviet invasion[78]. The growing conflict between the PZPR and the opposition led to an inevitable con-

[75] Piasecki, and Michalak, op. cit., 157–158.
[76] Roszkowski, op. cit., 409–412.
[77] Piasecki, and Michalak, op. cit., 167–168.
[78] Roszkowski, op. cit., 418–419.

frontation. The social mood worsened due to the ever-deepening economic crisis[79].

As a result, martial law was imposed throughout Poland on the night of 12–13 December 1981. The authorities imposed numerous restrictions on civil liberties, social organisations were banned, and many opposition leaders were interned. Power was seized by the Military Council for National Salvation, led by Generals Jaruzelski, Kiszczak, and Siwicki. These events bore the features of a military *coup d'état*[80]. The strikes were quickly suppressed, and the opposition went underground. The authorities of People's Poland made attempts at a reform, e.g., the Constitutional Tribunal and the Tribunal of State were created[81]. Martial law was first suspended and lifted on 22 July 1983. The following years passed under the banner of "normalisation"[82]. In spite of this, the crisis of the communist system was still ongoing – and not only in the People's Republic of Poland. The Soviet Union was headed by Mikhail Gorbachev, who launched reforms under the slogan of "perestroika". The Polish United Workers' Party also attempted economic reforms. The role of central planning was weakened, which was evident, among other things, in the new *Spatial Planning Law* (subchapter 4.5.). However, this only resulted in the mobilisation of society, which appeared to have already been completely pacified by martial law in 1985[83]. The last wave of strikes broke out in 1988. It led to a political breakthrough, the Round Table talks and, consequently, the political transformation that brought an end to the existence of People's Poland in 1989[84].

[79] Sowa, op. cit., 502–505.
[80] Roszkowski, op. cit., 429–431.
[81] Sowa, op. cit., 509–526.
[82] Piasecki, and Michalak, op. cit., 207.
[83] Roszkowski, op. cit., 445–448.
[84] Piasecki, and Michalak, op. cit., 221–229.

Having presented how ideology and People's Poland are understood in this work, it is necessary to define how these terms relate to each other. The image of the existing order (picture of the world) in the ideology of People's Poland consisted of criticism of the political, economic, and social system of the Second Republic – called capitalist or bourgeois. Among other things, in order to reconstruct this image, the prewar laws regulating construction, housing, and urban planning, as well as the views on them as presented in the legal literature of People's Poland, were analysed in detail. The practice of using solutions derived from the criticised system after 1945 was juxtaposed with this image. In turn, the model of the desired future (the vision of a good society) was contained, among other things, in the provisions of the Constitution of the People's Republic of Poland discussed above. It was there that the declared values or promised rights and freedoms were indicated as the content of the social system of the People's Republic of Poland – not only in scientific studies[85] but also in textbooks on civic education[86]. Economic planning documents, as well as legal acts, are an important source for learning about the vision of a good society presented by the authorities in relation to the specific areas of socio-economic life analysed in this work. In addition to the content that can be reconstructed by analysing the third, ideological level of legal texts, numerous ideological contents were directly contained in the sources studied, e.g., in the preambles of particular acts. Knowing the (1) image of the existing order (picture of the world) and (2) model of the desired future (vision of a good society) present in the ideology of People's Poland,

[85] See: A. Burda, *Rozwój ustroju politycznego Polski Ludowej* (2nd ed., Warszawa: Państwowe Wydawnictwo Naukowe, 1969).

[86] See: Z. Chrupek, and S. Gebethner, Ustrój społeczno-gospodarczy i polityczny PRL (Warszawa: Wydawnictwa Szkolne i Pedagogiczne, 1968).

it is possible to consider whether the legal tools used were an adequate means of moving from the former to the latter.

In the political science writing, the system that emerged in Poland after 1945 is referred to as state socialism[87]. According to its proponents, it was supposed to be the realisation of Marx's vision of a new social order in the only way possible, i.e., as a result of Lenin's modification of Marx's theory. This was to involve transforming the concept of the conflict-free nature of the social justice system into the idea of the leading role of the Communist Party[88].

Tadeusz Kowalik points out that the most important feature of state socialism was the combination of strictly centralised and hierarchical political power with state ownership of the means of production. It gave the political authorities almost absolute power over the economy. They exercised it through central planning, which was bureaucratic in nature, within a command economy[89]. The state controlled the directions of investment and prices, as well as the general structure of consumption. In this way, it determined the extent of citizens' freedom in terms of their ability to choose the goods they purchased, the occupation they pursued or the place where they worked[90]. Jan Filip Staniłko pointed out several enduring features of state socialism. In the sphere of power, these were the revolutionary legitimacy of power (transferred to Central European countries as a result of the conquest) and the concept of socialist justice, the basis of a progressive state in

[87] See for instance: B. Kaminski, *The Collapse of State Socialism. The Case of Poland* (Princeton: Princeton University Press, 1991), 3.

[88] M. Śliwa, "Realny socjalizm", in: M. Jaskólski, and K. Chojnicka, eds., *Słownik historii doktryn politycznych* (vol. 5, Warszawa: Wydawnictwo Sejmowe, 2012), 60–61.

[89] T. Kowalik, *From Solidarity to Sellout. The Restoration of Capitalism in Poland* (New York: Monthly Review Press, 2011), 26.

[90] Ibid., 27.

which politics stood above the law[91]. In the economic sphere, on the other hand, the features of state socialism were the political nature of ownership (the existence of the various types of property depended on their susceptibility to control, not economic functionality) and the collectivist nature of ownership in the dominant sectors of production, which led to the state acting as a collective capitalist[92]. According to Jadwiga Staniszkis, in state socialism, the relationship between the state and society was reversed as compared to classical liberalism – it was the state that constituted society[93].

As Marek Ziółkowski indicated, economic rationality has been subordinated to the implementation of elements of ideology, such as specifically socialist justice or the primacy of social interest over individual interest[94]. In turn, the social structure was to have three main features. First, the state wanted to employ everyone, either directly or through economically controlled entities, so that all society members would have the same relationship to the (state owned) means of production. Second, there was a dichotomy between society as a whole and the ruling elite, composed of party ideologues, technocrats, and representatives of the power ministries (what is called the nomenklatura). Last but not least, the aforementioned dichotomy did not mean that these two groups were homogeneous[95]. It is worth noting that Ziółkowski, in his sociological work, also

[91] J. F. Staniłko, "O źródłach postkomunizmu", in: M. Kuniński, ed., *Totalitaryzm a zachodnia tradycja* (Kraków: Ośrodek Myśli Politycznej, 2006), 269–270.

[92] Ibid., 269.

[93] J. Staniszkis, *The Ontology of Socialism* (Oxford: Clarendon Press, 1992), 2–3.

[94] M. Ziółkowski, "Social Structure, Interests and Consciousness. The Crisis and Transformation of the System of 'Real Socialism' in Poland", *Acta Sociologica* 33 (4) (1990), 290.

[95] Ibid., 290–291.

pointed out some examples of legal regulations that shaped the social structure described above[96].

1.2.3. Law as an object of ideological instrumentalisation

The ideology of the socialist state described above shall be sought in the regulations belonging to a particular segment of its legal system. It is worth looking at the views of the lawyers who had the greatest influence on the formation of the doctrine of state law during this period, as excerpts from their works reveal views on the relationship of law and ideology.

The theoretician of state and law Stanislaw Ehrlich pointed out that scientists' fears of writing works in the spirit of partisanship (i.e., taking into account the ideology of the then hegemonic Polish United Workers' Party) are completely unjustified. After all, party interest is a class interest because it is the party that represents the working class. In turn, the interests of the working class coincide with the objective regularity of social development. Therefore, socialist scientists do not need to hide their views, unlike bourgeois scientists. If they were to reveal that their beliefs serve the development of the capitalist economic base, one would see their opposition to the aforementioned objective social development. Stanisław Ehrlich stressed that Lenin had already written about the partisanship of philosophy[97] and saw the role of legal doctrine analogously:

> since the Marxist legal sciences, like philosophy, economics and history, serve the interests of the overwhelming majority of society, it is clear that they not only have no reason to conceal their class character but it is simply a necessity that this very character be revealed. For these sciences are, not only an instrument of

[96] Ibid.

[97] S. Ehrlich, "O metodzie formalno-dogmatycznej", *Państwo i Prawo* 3 (1955), 386–387.

> cognition but also of practical revolutionising activity, thanks to which they influence the course of social development[98].

At this point, it is worth signalling that precisely for this reason, one of the main sources used in the research, is the body of legal doctrine of the People's Poland period. Since the researchers were to carry out "practical revolutionising activities", it was necessary and expedient to examine treatises and textbooks on those branches of law that regulated the areas of social and economic life that are of interest in this book.

Returning to Ehrlich, it is important to note the perceived consequences of the aforementioned partisanship of science for the interpretation of the law:

> without an in-depth study of party resolutions and directives that link the theoretical-political assumptions of Marxism to the concrete, practical tasks of socialist construction (by which we mean both state construction and economic construction, as well as cultural construction), there is no way to overcome the formal-dogmatic method[99]. It is necessary to look at party resolutions and directives for the key to the proper evaluation and understanding of normative acts issued on the basis of these documents[100].

Thus, according to Ehrlich, the ideology of the political party representing the dominant social class, as expressed in official documents, is the axiological basis for particular legal regulations and the source of interpretative directives in the process of inter-

[98] Ibid., 387.

[99] The entire cited work of Ehrlich focused on a critique of this research method in legal science, which, according to the author, should be replaced by the method of materialist dialectics.

[100] Ibid., 386–387.

preting the law. This shows the subordination of the law to the then dominant political ideology. The relationship of law and ideology was presented by Ehrlich in his textbook, where he wrote: "the similar wording of laws in capitalist and socialist countries should not be misleading. Regulating fundamentally different social relations, they must function differently, i.e., they must be applied differently and affect the addressees differently, and be obeyed by them differently"[101]. It follows that the prevailing ideology in the socialist state was primary to the law and necessary for the reconstruction of the actual content of legal norms, because the results of simple linguistic interpretation could be similar to those in the capitalist state, namely, wrong. As for other methods of interpretation, Ehrlich wrote that "a great role in the course of the application of purposive interpretation is played by the consideration of class interest as a primary factor"[102].

Ehrlich believed that "Marxist education" is essential for the correct application of the law, and its absence can lead to "formalistic distortion of the law" under the guise of strict compliance[103]. He reckoned that the analysis of legal norms cannot be limited to determining their content by means of the laws of logic. Ehrlich points out that "the lawyer must conduct his research in accordance with the laws of dialectics, and thus must, in the course of the research process, go beyond the normative material to reach its class social content"[104]. Therefore, the subject of the research, the results of which are presented in this book, was not individual pieces of legislation, but the entirety of the laws regulating a selected area of socio-economic life. Only in this way was it possible to study the law as potential evidence of the presence of the political

[101] S. Ehrlich, *Wstęp do nauki o państwie i prawie* (Warszawa: Państwowe Wydawnictwo Naukowe, 1979), 271.

[102] Ibid., 175.

[103] Ehrlich, "O metodzie formalno-dogmatycznej", 402.

[104] Ibid., 384.

ideology of People's Poland in this area of life. In addition, such an approach is consistent with the understanding of the legal system by socialist doctrine, which wrote that

> the legal literature of socialist countries almost unanimously rejects the division between public and private law based on the position of Marx, who saw the source of this dualism in the egoism of capitalist social relations, the directive of which is profit, and on Lenin's well-known statement: "There is nothing private for us, everything in the economic field is a public-legal thing for us, not a private thing"[105].

According to Ehrlich, in a socialist state law was not autonomous. He wrote that

> it seems that a characteristic feature of the legal system under socialism could also be considered its close connection with other normative systems, to which individual legal norms directly refer (principles of social coexistence), or without which certain sections of the law cannot be properly understood. This applies to the normative systems of political parties, especially the Communist Party, and trade unions and other mass organisations[106].

Stefan Rozmaryn went even further. In his work *Państwo i Prawo* ("State and Law"), published at the turn of the 1940s and 1950s, he wrote:

> […] although the state of people's democracy has retained a significant number of laws and other legislative acts, issued in the period preceding the proletarian revolution (and there-

[105] Ehrlich, *Wstęp do nauki o państwie i prawie*, 137.
[106] Ibid., 270–271.

> fore a revolution of the socialist type) carried out in our country, the law of people's democracy as a whole, as a system, constitutes a law of a new type, in its class content fundamentally opposed to capitalist law. Hence, it follows – a matter of course – that in People's Poland, laws incompatible with the class content of the law of the new type ceased to be in force (even without explicit repeal), and that the interpretation of legislative acts upheld must be made in accordance with the essence of this law as the law of the state effectively performing the basic functions of the dictatorship of the proletariat[107].

Rozmaryn believed that the primacy of socialist ideology over the law was, therefore, so great that not only the interpretation of regulations but the very binding of legal acts depended on its content. Regulations dating back to the Second Republic, and incompatible with the currently dominant ideology, ceased to be valid, according to him.

It is worth mentioning that he also believed that the law was not the only factor that modelled the actions of state bodies. He pointed out that a special role is also played by "the normative system of the ruling parties"[108]. According to him, lawmaking was not the entirety of the basic activities of the state, which had the ability to use coercion not provided for in the existing law. He believed that: "coercion used by the state is not limited to sanctioning legal normative statements. The state organisation uses both in internal and international relations extra-legal coercion in acute conflict situations"[109]. It follows that the state, as an entity with a monopoly on lawmaking, was not bound by that law simultaneously.

[107] S. Rozmaryn, *Prawo i państwo* (2nd ed., Warszawa: Wydawnictwo Ministerstwa Sprawiedliwości, 1950), 19.

[108] S. Rozmaryn, *Polskie prawo państwowe* (Warszawa: "Książka i Wiedza", 1951), 61.

[109] Ibid., 61–62.

Already for the classics of the ideology on which People's Poland was built, the law was an instrument for making politics. Lenin wrote that "the law is a political means" and Engels stated that "all legal essence has a political nature from its origin"[110]. Developing this view on the basis of Polish legal doctrine, Ehrlich wrote that there were no legal norms that were devoid of ideological content[111]. Zdzisław Jarosz and Sylwester Zawadzki, in their textbook on constitutional law, wrote that the name "political law", used in the past for this field of law, "on the grounds of the Marxist theory of state and law could not be maintained for methodological reasons. This is because law as an expression of state policy is intrinsically (in its entirety) a political phenomenon"[112]. Rozmaryn in his textbook *Polskie prawo państwowe* ("Polish State Law") emphasised the role of law in building a socialist state: "The socialist state is the most important means of building communism. But the law is also an instrument of great importance in this process, since it secures the performance of state functions at various stages of its development"[113].

Modern analysis of the relationship of the legal system of People's Poland with politics and ideology requires not only reaching back to the views of socialist doctrine but also embedding considerations in the conceptual grid of modern legal theory. After 1989, in conditions of absolute freedom of speech, the legal system of People's Poland was assessed as instrumentalising human behaviour[114]. Rafał Kania, in a contemporary article on the

[110] Cited as in: Rozmaryn, *Polskie prawo państwowe*, 15.

[111] Ehrlich, "O metodzie formalno-dogmatycznej", 380.

[112] Z. Jarosz, and S. Zawadzki, *Prawo konstytucyjne* (Warszawa: Państwowe Wydawnictwo Naukowe, 1987), 10.

[113] Rozmaryn, *Polskie prawo państwowe*, 81.

[114] S. Wronkowska-Jaśkiewicz, "Uwagi o instrumentalności, instrumentalizacji i autonomii prawa", in: J. Zimmermann, ed., *Aksjologia prawa administracyjnego* (vol. 1, Warszawa: Wolters Kluwer, 2017), 25.

legal system of the People's Poland, stated that instrumentalisation was a characteristic feature of the law of the Stalinist period both in terms of its theory and application[115]. Jarosław Kuisz identified the law as one of the most important instruments of the Communists' acquisition of power in Poland after World War II[116]. Since the *instrumentalisation* of law appears in discussions of the law of the People's Poland, it is worth explaining the meaning of that term and the meaning of the related but, importantly, separate notion of the *instrumentality of law* and the difference between these two concepts.

Wiesław Lang began his article published in 1991 by stating that "the instrumental understanding of the law consists in conceiving it as a tool or a mean to achieve goals external to the law"[117]. Relating this definition to the views of socialist doctrine on the role of law and its relationship to political ideology, as recounted above, undoubtedly, it can be said that the approach to law in People's Poland was instrumental.

The instrumental approach to law is the subject of criticism in several fields. On the ground of legal theory, it has been argued that it is a concept that contradicts the principle of the rule of law and the idea of the legal state because instrumentalism of law assumes that the subject using the law as a tool is above the law and is not bound by the law. Political criticism of this concept referred directly to the experience of totalitarian states, including specifically the systems of state socialism, such as People's Poland[118]. Lech

[115] R. Kania, "The Socialist Legal Nihilism in the Polish People's Republic and Paths Overcoming This Concept", *Studia Iuridica Lublinensia* 30 (2) (2021), 213.

[116] J. Kuisz, *Propaganda bezprawia. O "popularyzowaniu prawa" w pierwszych latach Polski Ludowej* (Warszawa: Wydawnictwo Naukowe Scholar, 2020), 19.

[117] W. Lang, "Instrumentalne pojmowanie prawa a państwo prawa", *Państwo i Prawo* 12 (1991), 3.

[118] Ibid., 7.

Morawski called those forms of controlling human behaviour he judged morally unacceptable instrumentalisation[119].

Lang noted that the rejection of the instrumental conception of law is not possible. He wrote that "the recognition of lawmaking activity as an aimless activity would have to be a consequence of this position"[120]. In fact, an instrumental approach to the law is necessary for the very assessment of the law's purposefulness, i.e., what is called complex instrumental assessment consisting in determining whether a legal norm is an appropriate measure for realising a certain state of affairs and that this state of affairs is desirable[121]. Thus, instead of rejecting the instrumental approach to law, Lang pointed out the differences between a totalitarian state and the state under the rule of law. He wrote: "in the light of the conducted analysis of the instrumental understanding of the law, the view linking the instrumentalisation of the law with the totalitarian state and considering the instrumental use of the law in states under the rule of law unacceptable – has no proper justification and is based on misunderstandings"[122]. The legal theorist further explained that:

> in a totalitarian state there is a cumulative destructive instrumentalisation of the law. The legal system of a totalitarian state contains a very poor catalogue of ineffective institutional guarantees of the subjective rights of the addressees of the law, so the instrumental use of the law is practically unlimited. The direct subordination of the law to current politics and the dominant ideology means that the law can be used freely by the law-making and law-applying bodies for any purpose, including for purposes for the realisa-

[119] L. Morawski, "Instrumentalizacja prawa (zarys problemu)", *Państwo i Prawo* 48 (6) (1993), 21.

[120] Lang, op. cit., 7.

[121] Ibid., 5.

[122] Ibid., 11.

> tion of which the law is a technically, functionally or morally inappropriate measure[123].

Finally, he pointed out that "in a state that conforms to the idealistic model of a totalitarian state, the state organs that create and apply the law use the law, but are not themselves bound by the law they make or apply"[124]. Leaving aside the discussion of whether People's Poland was a totalitarian state throughout its existence, or whether, except for the Stalinist period, it would be more accurate to call its system authoritarianism, undoubtedly, it can be said that the relationship of law, state, and ideology described by Lang corresponds to the perceptions of the role of law presented by socialist legal doctrine. This view was explicitly expressed by Morawski, who wrote that:

> there is no doubt about the view that impermissible instrumentalisation was the normal way of exercising power in the states of socialism and other totalitarian states. There the individual was practically a hostage in the hands of the state, or rather the party apparatus, and a tool for the realisation of its goals[125].

In another paper, he argued that instrumental law is very often law based on the ideology of collectivism and solidarism (fascism, socialism, religious law) in opposition to the law derived from the principles of liberalism and individualism[126].

[123] Ibid.

[124] Ibid.

[125] L. Morawski, *Główne problemy współczesnej filozofii prawa. Prawo w toku przemian* (Warszawa: Wydawnictwo Prawnicze PWN, 1999), 74. It is important to note the evolution of the views of Morawski, who in this book wrote about impermissible instrumentalisation, so according to him, instrumentalisation was sometimes permissible, and in the article from 1993 earlier referenced he indicated yet that any instrumentalisation of the law was morally wrong.

[126] Morawski, op. cit., 21.

It is worth adding that the nature of the instrumentalisation of law in People's Poland depended not only on the political system of that state but also on its economic system. Jacek Kaczor wrote:

> under the conditions of a planned economy, there can be no doubt about the instrumental use of law in regulating economic issues. Legislative acts were widely regarded as basic instruments for managing the national economy. The legislature used them as an effective means of directing the behaviour of other entities in order to achieve its own intentions[127].

Morawski indicated the widespread nationalisation of the means of production – the foundation of the economic system of the People's Republic of Poland – as an example of morally unacceptable instrumentalisation[128]. The role of law in People's Poland was typical of the systems of socialist countries and analogous to the situation in the Soviet Union. John Henry Merryman, in the first sentence of his famous work, *The Civil Law Tradition*, distinguished three main legal traditions: civil law, common law, and socialist law[129]. He wrote about this third tradition as follows: "the socialist attitude is that all law is an instrument of economic and social policy"[130]. The handbook *The Law of The Soviet State*, edited by Andrei Vyshinsky, a leading legal theorist of Stalinism, states that: "Marxism teaches the necessities of using law as one of the means of the struggle for socialism of recasting human society on socialist bases"[131].

[127] J. Kaczor, "Prawo a gospodarowanie", in: A. Kozak, ed., *Instrumentalność a instrumentalizacja prawa* (Wrocław: "Kolonia", 2000), 157–158.

[128] Morawski, "Instrumentalizacja prawa (zarys problemu)", 21.

[129] J. H. Merryman, *The Civil Law Tradition* (Standford: Stanford University Press, 1969), 1.

[130] Ibid., 4.

[131] A. Y. Vyshinsky, ed., *The Law of the Soviet State* (New York: Macmillan, 1948), 50.

Lang believed that such instrumentalisation of law is harmful not only to the legal system itself but also to its environment and social bonds[132]. According to this legal theorist, the aforementioned problem, by contrast, does not arise in the state under the rule of law, where the scope of the goals permitted to be realised with the use of the law is limited by the principles of the rule of law. These principles do not exclude the instrumentalisation of the law itself but its destructive variant[133].

Research on the instrumentalisation of law was conducted by the Polish community of legal theory scholars in the 1990s, because of the need to evaluate the legal system of People's Poland[134]. Perhaps the most coherent, comprehensive concept is presented by Włodzimierz Gromski in his treatise *Autonomia i instrumentalny charakter prawa* ("Autonomy and the Instrumental Nature of Law")[135]. He referred there to the concept of instrumentalisation as an aspect of law formulated by Andrzej Bator[136] and the distinction between instrumentality and instrumentalisation of law introduced by Artur Kozak[137]. On this basis, Gromski formulated a concept: "in which the instrumental character of the law [would] be understood only as a certain potential feature (property, value) of the law, which is, at the same time, a necessary prerequisite for all acts of using the law as a measure for achieving certain

[132] Ibid., 10.

[133] Ibid., 12.

[134] Wronkowska-Jaśkiewicz, op. cit.

[135] W. Gromski, *Autonomia i instrumentalny charakter prawa* (Wrocław: "Kolonia", 2000).

[136] See: A. Bator, "Instrumentalizacja jako aspekt prawa", in: L. Leszczyński, ed., *Zmiany społeczne a zmiany w prawie. Aksjologia, konstytucja, integracja europejska* (Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 1999), 93–107.

[137] See: A. Kozak, "Instrumentalność i instrumentalizacja prawa", in: A. Kozak, ed., *Instrumentalność a instrumentalizacja prawa* (Wrocław: "Kolonia", 2000), 96–113.

goals"[138]. These *acts of instrumentalisation* of the law have been defined as "the aiming by certain entities at states of affairs (goals) of their choice using the law as a means or at least one of the means of this realisation"[139]. The act of instrumentalisation is:

> a complex arrangement that always consists of the law (legal institutions, legal norms), the various subjects of this law (the legislator, the bodies applying the law, and the subjects implementing the law), their goals-values, the instrumental assessments of the law made by these subjects, and their concrete actions[140].

As a consequence of the distinction between the instrumental nature of law and acts of instrumentalisation of law, there is, according to Gromski, no reason to distinguish instrumental and non-instrumental law as two separate types. He believes that

> every law, understood as a product of culture, has an instrumental character or otherwise retains instrumentality, because it can be used by members of society as a means of satisfying their various needs. Functionally speaking, in modern societies this is one of the necessary properties of law[141].

The next step after defining the acts of instrumentalisation of the law was to define their limits, i.e., "the permissible, ultimate, impassable scope of such acts"[142]. One of the axiological limits of the acts of instrumentalisation of the law is, in Gromski's opinion,

[138] Gromski, op. cit., 141.
[139] Ibid.
[140] Ibid., 143.
[141] Ibid., 141.
[142] W. Gromski, "Akty instrumentalizacji prawa i ich granice", *Przegląd Prawa i Administracji* 114 (2018), 102.

the autonomy of the law[143], which is formed by "values, norms and directives associated with the law in a given legal culture, affecting the ability of the law to shape the social order and its limited dispensability to the external goals pursued by various subjects"[144]. Such an understanding of the autonomy of law exists only in the Western (European) legal culture, appearing as the culture of *the rule of law*. Gromski writes:

> leaving aside the differences between these forms of European legal culture, which from the point of view of this work [*Autonomy and the instrumental character of law*] are of secondary importance, this culture can be described as a culture of legalism or legalistic culture[145].

Several remarks should be made regarding the relationship of the concept of instrumentalisation of law, assuming the instrumental character of law, which creates the possibility of applying acts of instrumentalisation of law to the subject of research, the results of which are presented in this book, i.e., the presence of the political ideology of socialist People's Poland in selected areas of legal regulation. First, it is not purposeful to study whether the law of People's Poland was instrumental, because, as Gromski has shown, instrumentalism is a feature of any law. Second, because of that the subject of the study shall be the acts of instrumentalisation of law understood as a system consisting of the legal norms in force in Poland during the period under study and affecting the studied part of the socio-economic life; the socialist legislator as the main subject of this law and its values-objectives as potential elements of the ideology of People's Poland. Thirdly, in the absence of the development of the autonomy of law in the

[143] Gromski, *Autonomia i instrumentalny charakter prawa*, 170.
[144] Gromski, "Akty instrumentalizacji prawa i ich granice", 105.
[145] Gromski, *Autonomia i instrumentalny charakter prawa*, 159.

socialist legal culture, i.e., in the absence of the limits of instrumentalisation of law indicated by Gromski, particular attention shall be paid to the scope of instrumentalisation.

Indeed, it can be assumed on the basis of the considerations described above that the criticism of the instrumental approach to law based on the experience of socialist states, was not based on the mere occurrence of acts of instrumentalisation of law (since such can occur in any legal culture), but on their potentially unlimited scope, made possible by the lack of autonomy of law.

When discussing the law of People's Poland as a subject of research, it is still necessary to indicate which part of this legal system is analysed. For obvious reasons, it is not possible to study all the legal acts in force between 1944 and 1989. As indicated in the introduction, the purpose of this study is to examine the role legal regulations played in shaping the material (architectural and urban) environment of human life in accordance with the ideology prevailing in People's Poland. For pragmatic reasons, it was necessary to define the boundaries of the segment of the legal system to be analysed. It was intended to study not a single, traditionally distinguished, branch of law (e.g., civil law, administrative law), but the entire body of laws regulating a selected sector of socio-economic life. Therefore, the starting point was the definition of the housing economy cited by Adam Andrzejewski, who indicated that it is "the totality of administrative, economic, and technical-economic activities aimed at satisfying housing needs, and above all the production, operation, and distribution of housing"[146]. In the legal sphere, construction, housing, and urban planning regulations correspond to that. The related areas are primarily construction law, urban planning law, and housing law. Historical realities dictate that a separate group of regulations

[146] A. Andrzejewski, *Polityka mieszkaniowa* (Warszawa: Polskie Wydawnictwo Ekonomiczne, 1980), 24.

on the reconstruction of the damage done during World War II must be distinguished. In the context of People's Poland, regulations in the area of housing cooperatives were also particularly important. Precisely, these areas of law were covered in this research. Finally, a study of regulations on allotment gardens was added – as confirmation that even such a narrow and seemingly insignificant sphere of law was influenced by all the significant events in the political history of People's Poland.

1.3. Research tools

The fulfilment of the research objective outlined in this book requires the use of tools that allow us to determine whether the political ideology of the People's Poland was present in the legal regulations governing construction, housing, and spatial planning. In the context of such needs, the concept of the levels of interpretation of the legal text developed by Ryszard Sarkowicz should be considered promising.

This legal theorist was inspired by the concept of horizontal interpretation of Holy Scripture developed at the turn of the second and third centuries by Origen, who distinguished three layers of meaning of the Bible: literal (historical), moral, and mystical (spiritual)[147]. In the original[148] variant, Sarkowicz distinguished

[147] R. Sarkowicz, "W duchu Orygenesa: szkic pewnej koncepcji interpretacji tekstu prawnego", in: H. Rot, ed., *Struktura i funkcje teorii państwa i prawa. Materiały Ogólnopolskiej Konferencji Teoretyków Państwa i Prawa, Karpacz 17–18 III 1989* (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 1989), 133.

[148] In later works (especially the monograph: R. Sarkowicz, *Poziomowa interpretacja tekstu prawnego* (Kraków: UJ, 1995) the author of the concept names the highest level of interpretation as the level of presupposition, see: P. Jabłoński, "O ideologicznym poziomie interpretacji tekstu prawnego", *Przegląd Prawa i Administracji* (122) (2020) 39–54.

the following levels of interpretation: descriptive, normative, and ideological[149]. The descriptive level provides information about the world in which the text applies, and the content of the normative level consists of specific norms derived from the text according to the juridical rules of exegesis[150]. Sarkowicz described the ideological level as follows:

> This level of interpretation, corresponding to Origen's spiritual (mystical) level, is also the most important level of text interpretation in legal interpretation. In general, it can be said that the interpreter reaches it when he tries to understand the "spirit" of the text being interpreted, that is, referring to the terminology introduced, when he tries to establish its ideological sense. The question arises what makes up such an ideological sense of a legal text. In the shortest terms, it can be defined as a certain set of views, beliefs, values, judgments about the world, and the laws that govern it. Particularly important are views about society, the laws that govern it and the values and judgments shared in it. Beliefs about man, his nature, desires, values, and goals are equally momentous. For this reason, various concepts, doctrines, philosophical, political, and economic theories are important. All these make up a more or less coherent system[151].

The set of views, beliefs, values and judgments about the world mentioned by Sarkowicz can be considered identical as a view of the existing order, a model of the desired future (a vision of a good society), and a way of transition from one to the other,

[149] R. Sarkowicz, "Levels of interpretation of a legal text", *Ratio Juris* 8 (1) (1995), 106–107.

[150] Jabłoński, op. cit., 43–44.

[151] Sarkowicz, "W duchu Orygenesa: szkic pewnej koncepcji interpretacji tekstu prawnego", 140–141.

i.e., the definition of political ideology according to Andrew Heywood.

The researcher of Sarkowicz's concept, Paweł Jabłoński, in one of his papers noted that the second of the sources of inspiration for the author of the level of interpretation of the legal text's concept was, in addition to Origen, the Critical Legal Studies (CLS) movement[152]. Jabłoński pointed to the following excerpt from Sarkowicz's work which testifies to this:

> Reconstructing a comprehensive picture of a certain socio-political concept can be an arduous and labour-intensive task. An illustration of such an operation can be found in dozens of works published in the 1970s and 1980s in the United States, reconstructing the assumptions of the doctrine of liberalism through the analysis of legal texts. By the way, it is worth noting that this task even led to the creation of a certain movement in American jurisprudence[153].

A research tool inspired by one of the scientific movements with the greatest focus on the study of the relationship between law and politics should be considered particularly useful in the research whose results are presented in this book.

The levels of interpretation of the legal text by Sarkowicz can be used as a basic research tool to determine the presence of the political ideology of the People's Poland in the regulations on construction, housing, and spatial planning. Of course, the focus should be on the third, ideological level of the analysed legal acts. However, the reconstruction of political ideology is the goal of this work, as it is known through numerous studies and sources. The result of interpreting the legislation at the ideological level shall

[152] Jabłoński, op. cit., 42.

[153] Sarkowicz, *Poziomowa interpretacja tekstu prawnego*, 172.

be compared with it. It will be possible to answer the question of whether the analysed regulations were influenced by the political ideology dominant in the People's Poland during the given period of its history.

An auxiliary use was made of the historical-comparative method[154] in the chronological version[155], primarily to examine the differences that occurred between the law of the Second Republic and the new regulations introduced in People's Poland. On the other hand, the historical-comparative method in territorial terms was used to a limited extent[156]. It proved necessary to investigate the legal instruments used in People's Poland and in other countries to organise the reconstruction of the devastation immediately after World War II. Thereafter, the evolution of the Polish political system proceeded in a specific way, at least partially different even from events in other countries on the eastern side of the Iron Curtain. A direct comparison of Polish and foreign laws other than those issued in the first years after the war was beyond the scope of this work – as it would require the involvement of an international team of scholars who could simultaneously study sources in different languages, including Czech, Russian, Hungarian or Romanian. This is undoubtedly a task worth undertaking in the future, as a part of a larger international project.

Finally, it should be noted that, for the reasons mentioned in the introduction, the purpose of the research was to investigate the presence of political ideology in the legislation regulating this particular area of socio-economic life, but nevertheless this work is a kind of case study. Therefore, the pattern of research carried

[154] See: J. Bardach, "Metoda porównawcza w zastosowaniu do powszechnej historii państwa i prawa", *Czasopismo Prawno-Historyczne* XIV (2) (1962), 9–61.

[155] See: J. Topolski, *Metodologia historii* (Warszawa: Państwowe Wydawnictwo Naukowe, 1968), 328.

[156] See: Ibid., 325.

out on the ideology of the People's Poland in the regulations on construction, housing, and spatial planning can be reproduced in reference to other areas of socio-economic life, different countries, historical eras, and political ideologies.

1.4. Literature and sources

No comprehensive study has been written yet on the legal regulations of the People's Poland governing the areas of construction, housing, and spatial planning. Generally, the period of 1944–1989 has not yet received much attention of historians of Polish law. The few works that have appeared are mainly concerned with constitutional issues, alternatively with criminal law and civil law, whereas the history of administrative law, which constitutes the bulk of the research material in this work, has been explored to the smallest extent.

Valuable studies have been produced on postwar reconstruction, housing cooperatives or even allotment gardens. They have been used in this work and are cited in the relevant chapters. However, these books and papers belong to such fields as social history, political history or even history of art but not legal history or history of political and legal thought. Therefore, in the research, the results of which are included in this book, they could only provide additional material and serve as a source of guidance on the directions of appropriate research. An interesting and promising source seems to be the press: both daily newspapers and professional press covering such industries as construction, urban planning, and architecture. However, unfortunately, the analysis of such extensive material was not feasible for the research whose results are presented in this book. They must wait for a larger project on the border of social history. In this case, the focus was placed on the analysis of the legal pro-

fessional press (not only academic papers but also those aimed at legal practitioners).

The legal acts were the primary source and research material. Ninety-one decrees and statutes were analysed. The task of examining the entirety of regulations pertaining to a selected area of social and economic life also required reaching out to executive acts and even the internal regulations of individual ministries. Legal literature from particular periods of the history of People's Poland was also an important source. It provided two types of valuable information. First, it is possible to learn from it how particular legal solutions of that time were justified. Second, often works from subsequent decades included criticism of the regulations and practices of applying the law in earlier periods. This made it possible to trace the evolution of the influence of political ideology on the legal regulations of the People's Poland governing the analysed area of socio-economic life.

2
Regulations on the reconstruction of the damage done during World War II

2.1. Provisions on the organisation of reconstruction

Most of the issues discussed in this book are either not directly dependent on the political and economic system (so they are also present in the legal system of Poland after 1989, as well as in most other countries, e.g., construction law, spatial planning law, housing regulations or housing cooperatives) or are closely related to the state socialism (e.g., regulations related to economic planning or top-down standardisation in architecture). However, a group of regulations of a completely different nature shall be analysed beforehand – those whose necessity arose from the effects of a specific, one-off historical event – the destruction wrought during World War II.

The need for special regulation of this issue was connected with the scale of the problem. According to a report[1] published

[1] Biuro Odszkodowań Wojennych przy Prezydium Rady Ministrów, *Sprawozdanie w przedmiocie strat i szkód wojennych Polski w latach 1939–1945* (Warszawa, 1947).

in early 1947 by the Office of War Compensation at the Presidium of the Council of Ministers, the estimated number of destroyed residential buildings, households, and offices owned by private individuals or associations was 13,589, while 9,689 units were damaged. The destroyed and damaged facilities accounted for 30% of the property substance of 1 September 1939[2]. The destruction included 162,190 residential buildings housing 1,982,048 urban households, 353,876 rural homesteads, 4,880 public schools, and 352 hospitals[3]. The reconstruction of all these buildings was an extraordinary task, which also required a special legal framework. A number of normative acts were issued, which were discussed analysed in this chapter. Special attention was paid to the problem of postwar reconstruction not only by the legislature but also by the legal doctrine. Suffice it to mention that one of the first postwar textbooks on administrative law by Professor Wacław Brzeziński was entitled *Construction Law and Reconstruction of Settlements*[4].

In the analysis of the legislation presented in this chapter, I focused on examining whether the solutions employed were typical tools used in a situation as exceptional as the need to rebuild

[2] Ibid., 31.

[3] Ibid., 32.

[4] W. Brzeziński, *Prawo budowlane i odbudowa osiedli* (Warszawa: Gebethner i Wolff, 1949). By the way, it is significant that this item was not published by any of the state publishing houses but still by the private company Gebethner and Wolff. It confirms the transitional nature of People's Poland of the second half of the 1940s, a country in which the socialist economic system was not yet fully formed: among other things, the nationalisation of many enterprises, such as precisely publishing houses, had not yet been completed. The authorities of People's Poland revoked the publishing license of Gebethner and Wolff a year after the publication of that book, in 1950, see: K. Budrowska, "Nieznane archiwum wydawnictwa Gebethner i Wolff, czyli o pożytkach z przeglądania «Przewodnika Polonisty»", *Pamiętnik Literacki* 4 (2014), 153.

a country devastated by a world war (among other things, compared to the regulations on states of emergency in the Second Republic and after 1989), or whether in the sources of law examined passages can be found that testify to an attempt at the implementation of the political ideology of the People's Poland.

The analysis of the provisions for the removal of wartime damage should begin with a discussion of the institutional solutions used. The issue of postwar reconstruction, in addition to the settlement and development of the western and northern lands[5], was among the problems treated so seriously by the authorities of the People's Republic of Poland that special organisational structures were created for its solution. In addition to the Ministry of Recovered Territories, the Ministry of Reconstruction was also established. According to the decree[6] establishing this institution, its scope of activity included matters of reconstruction, expansion, and construction of urban and rural settlements; reconstruction, construction, and reconstruction of state edifices and their management (with the exception of military facilities); construction policy; land, settlement, and housing policy; state water and sewage plants; war cemeteries; construction supervision; design of typical buildings and standardisation in construction; and, finally, organisation of the production of construction materials; supervision of construction enterprises and the profession of construction manager (Article 1). The Minister of Reconstruction was also to be subordinated to issues of spatial planning (Article 4, Section 1), carried out through the General Office of Spatial Planning (Article 4, Section 2). A Construction Research Institute was also established under the new ministry (Article 5 Section 1).

[5] See: P. Eckhardt, "Separate Regulations Regarding the Recovered Territories in the Law of People's Poland", *Acta Universitatis Lodziensis. Folia Iuridica* (24) (2021), 45–63.

[6] Dekret z dnia 24 maja 1945 r. o utworzeniu Ministerstwa Odbudowy (Dz.U. 1945 nr 21, poz. 123).

The scope of matters to be handled by the Ministry of Reconstruction was, therefore, extremely broad. It encompassed not only undertakings directly focused on the removal of damage but also virtually all issues related to construction. It can thus be seen that this entire sector of the economy was subordinated to reconstruction after World War II. There was no separate Ministry of Construction to deal with, e.g., the construction of new settlements on different locations or other development projects.

Another entity created specifically to deal with the problem of removing war damage was the State National Council's Reconstruction Commission. In the transcripts[7] of the meetings of the ninth session of the National Council, one can read the report of its chairman, Stanisław Tołwiński who reported that the commission held nine meetings, which were attended by the Minister and Deputy Minister of Reconstruction, the Head of the Office of Reconstruction of the Capital, and Marian Spychalski. Issues discussed included reconstruction of Warsaw, reconstruction of the countryside, reconstruction of the state, economic regionalisation, and urban planning. The Reconstruction Commission considered and gave its opinion on a number of draft decrees. Three of these acts, judged by Tołwiński to be of great importance for the reconstruction of the country, managed to come into force before the session of the State National Council[8]. These were:

[7] Krajowa Rada Narodowa, *Sprawozdanie stenograficzne z posiedzeń Krajowej Rady Narodowej w dn. 29, 30 i 31 grudnia 1945 r. oraz w dn. 2 i 3 stycznia 1946 r.* (Warszawa, 1946), 572–574.

[8] In accordance with the provisions of the State National Council Act of 15 August 1944, on the Temporary Procedure for Issuing Decrees with the Force of Law (Ustawa Krajowej Rady Narodowej z dnia 15 sierpnia 1944 r. o tymczasowym trybie wydawania dekretów z mocą ustawy, Dz.U. 1944 nr 1, poz. 3), later binding on the basis of the State National Council Act of 3 January 1945 on the Procedure for Issuing Decrees with the Force of Law (Ustawa Krajowej Rady Narodowej z dnia 3 stycznia 1945 r. o trybie wydawania dekretów z mocą ustawy, Dz.U. 1945 nr 1, poz. 1), decrees

Decree on the Ownership and Use of Land on the Area of Warsaw[9], Decree on the Demolition and Repair of Buildings Destroyed and Damaged by War[10], and Decree on the Right to Build[11]. The first two require a more extensive analysis and separate subsections will be dedicated to them below.

Decree on the Right to Build introduced the possibility for the state or local government associations to establish for another person the right to erect one or more buildings (Article 1, Section 1). Such a right, established by contract (in the form of a notarial deed under pain of nullity – Article 1, Section 3), was subject to certain conditions. Its acquirer had to contractually obligate himself to commence and complete construction on strictly specified dates (Article 2, Section 1, Point a), to construct a building of a certain type in accordance with established technical specifications, and later, to maintain it in a certain condition (Article 2, Section 1, Point b), and even to rebuild that building within a specified period in the event of its demolition or destruction (Article 2, Section 1, Point c). Failure to comply with these terms of the contract resulted in its termination, with no right to compensation for the costs incurred for work already done (Article 2, Section 2). The right to build was limited in time – it lasted from 30 to 50 years (Article 3, Section 1) but could be repeatedly extended for periods not exceeding 20 years (Article 3, Section 2). The building erected on the land covered by the right

with the force of law came into effect as soon as they were signed and were submitted to the State National Council for approval at its next plenary session. Only if the latter did not approve them did they cease to be binding.

[9] Dekret z dnia 26 października 1945 r. o własności i użytkowaniu gruntów na obszarze m. st. Warszawy (Dz.U. 1945 nr 50, poz. 279).

[10] Dekret z dnia 26 października 1945 r. o rozbiórce i naprawie budynków zniszczonych i uszkodzonych wskutek wojny (Dz.U. 1945 nr 50, poz. 281).

[11] Dekret z dnia 26 października 1945 r. o prawie zabudowy (Dz.U. 1945 nr 50, poz. 280).

to build was the property of the holder of this right (Article 1, Section 2). Upon expiration of the term of this limited right *in rem*, ownership of the building passed (for a remuneration specified in the contract) to the state or local government association that owned the land subject to the contract (Article 4). The right to build was transferable and inherited (Article 5).

The life of the discussed decree was not long. It was in effect until the end of 1946[12], when the right to build was replaced by the institution of temporary ownership regulated in Section IV of Title III of the Property Law of 1946[13]. Its provisions did not contain direct references to the issue of repairing the damage caused by the war. However, the document was drafted by the Ministry of Reconstruction, and the Reconstruction Commission of the State National Council considered it important for the realisation of this task. There is no doubt that facilitating access to building land could indeed accelerate the restoration of the prewar housing stock.

It is also worth noting that in the Decree on the Right to Build there is no content whose presence could be linked to the intention to implement the political ideology of People's Poland. On the contrary, the introduced instrument served the purpose of implementing private construction investments. Therefore, there were solutions applied, the genesis of which is neither related to the ideology of state socialism, nor to the situation of postwar reconstruction, because they were already known in countries with other political systems, introduced there in different periods of

[12] Article 2 Section 7 of Decree of 11 October 1946 – Provisions Introducing the Law of Property and the Law on Land and Mortgage Registers (Dekret z dnia 11 października 1946 r. – Przepisy wprowadzające prawo rzeczowe i prawo o księgach wieczystych, Dz.U. 1946 nr 57, poz. 321), which, according to its Article LXV, came into effect on 1 January 1947.

[13] Dekret z dnia 11 października 1946 r. – Prawo rzeczowe (Dz.U. 1946 nr 57, poz. 319).

history[14]. Indeed, as Article 11 of the analysed decree states, it replaces a number of regulations still in force in specific areas of the country as a legacy of the legal systems of the partitioning states.

The Decree on the Right to Build was an example of a piece of legislation whose main purpose was to address the real problems of the shortage of usable housing chambers. Not only did it refrain from using the new legislation to implement the political ideology of the new state, but even used compromise solutions that took into account the participation of the private sector. It is an example of the laws of the transitional period, in which solving real economic problems was the primary task of the People's Poland authorities and strengthening the political system had to temporarily give way.

2.2. Decree on Demolition and Repair of Buildings Destroyed and Damaged by War

The piece of legislation most directly related to the removal of damage caused by World War II was the aforementioned Decree on Demolition and Repair of Buildings Destroyed and Damaged by War, issued in October 1945. It was intended to respond to needs that could not be met by the prewar construction law, which was designed with normal conditions in mind – these current, exceptional needs were related to the need to repair damage when property owners were absent or deprived of the resources necessary to begin reconstruction[15].

The discussed decree applied to buildings in areas of cities and settlements in urban areas (Article 1, Section 1). According to doctrinal views, the applicability of the provisions under review was

[14] K. Lalowicz, "Prawo zabudowy", *Ius Novum* 10 (4) (2016), 237–238.

[15] W. Brzeziński, *Prawo budowlane i odbudowa osiedli* (Warszawa: Gebethner i Wolff, 1949), 79.

determined by the manner in which the settlement was built and the occupation of its residents, and not by the formal classification of the area as a city[16]. Separate regulations have been prepared for two types of objects. The first of these were destroyed buildings – defined as those found in such a condition that, according to the decision of the authority, they should be demolished as a result of warfare or the destructive activities of the occupying forces (Article 1, Section 3). The owner of such a building, at the summons of the building authority or the authority appointed to rebuild the city, was obliged to immediately proceed with the demolition of the building and complete the work within the prescribed period. In addition, she or he should have removed the materials obtained from the demolition from the allotment, unless they were needed for the reconstruction of the building (Article 2). When the owner failed to fulfil the imposed responsibility, the authority that imposed it was entitled to substitute demolition (Article 3, Section 1). In such a situation, the materials obtained from the demolition became the property of that authority (Article 3, Section 2). However, no provision was made for charging the owner for the cost of the demolition work performed.

The part of the discussed decree dealing with destroyed buildings also included Article 4, according to which the building authority or the authority appointed for reconstruction was authorised to collect building materials from destroyed buildings left unattended (Article 4, Section 1). These materials were then passed to their ownership, and the property owner was deprived of the opportunity to claim compensation (Article 4, Section 2). It should be noted that the collection of building materials under Article 4 did not imply carrying out a complete demolition of the buildings in question. The main purpose of the provisions discussed above was to clear the area of ruins and free it for new

[16] Ibid., 80.

construction. Thus, in the case of the buildings towards which they were applied, the location was the most valuable. On the other hand, Article 4 made it possible to obtain valuable materials needed for construction work carried out elsewhere. The land on which collection was carried out in this manner was allowed to remain at least partially occupied by ruins.

The second category of buildings covered by the decree under review are damaged buildings, understood as buildings which, as in the case of destroyed buildings, due to warfare or the destructive activities of the occupying forces, were in a condition that did not allow them to be used in part or in whole, but according to the building authority, there was a possibility of bringing them into a usable condition (Article 1, Section 4). Owners of such buildings could be summoned by the relevant authorities to proceed with repairs. If they failed to undertake the construction work or carried it out in a dilatory manner, there was the possibility of substitute work being carried out at the owner's expense by someone else (Article 7, Section 2). The ordinance[17] implementing the analysed decree specified that a call for repairs and the fixing a deadline for this could be made if a valid development plan was implemented for the district in which the building was located, or at the request of the housing authority (§ 10, Section 2 of the ordinance). It was possible not only to set a deadline for the start and completion of repairs, but also to perform particular stages of construction work (§ 10, Section 1 of the ordinance). Dilatory work was further defined in § 11, Section 1, Point 2 of the discussed executive act as a failure to meet the set deadlines for carrying out the work or the repair in such a way that reasonable doubt arose regarding the timely completion of the repair.

[17] Rozporządzenie Ministrów Odbudowy i Administracji Publicznej z dnia 25 lutego 1946 r. wydane w porozumieniu z Ministrem Sprawiedliwości w sprawie naprawy budynków uszkodzonych wskutek wojny (Dz.U. 1946 nr 10, poz. 72).

In the case of damaged buildings, the catalogue of entities authorised to act in place of the owner was broader than in the case of substitute demolition work. Such buildings could be repaired by the state, the locally appropriate municipality, a state institution, a social institution or a housing cooperative authorised by the provincial general administration authority, or a tenants' association organised on the basis of regulations issued by the Ministers of Reconstruction and Public Administration and authorised to repair a given building by the provincial general administration authority (Article 7, Section 1). The latter type of entities authorised to carry out substitute repair work shall be discussed further in the subchapter.

The cost of substitute repairs was not claimed directly from the property owner. The decree under review provided a mechanism whereby the entity that carried out the work had the right to use the building for a specified period of time. Sums equivalent to rent after deducting administrative expenses, taxes, etc. were subtracted from the total cost. On top of this, the obligation incumbent on the property owner bore interest at a rate of 2% per year. According to Article 9, in the case of substitute repair by public and social institutions, housing cooperatives, and tenant associations, the cost of repair was determined by the building authority, and the management could last no longer than 10 years. Buildings repaired by the state, a state institution or a municipality were not subject to such a restriction.

One type of entity that could substitute the repair of a damaged building with the approval of the competent administrative authority was an associations of tenants (Article 7, Section 1, Item 4). This was a new form of non-centralised social organisation created by the discussed decree[18]. The manner of organisation of these entities

[18] W. Brzeziński, "Podstawy i zagadnienia prawne odbudowy Warszawy", in: J. Górski, ed., *Warszawa, stolica Polski Ludowej* (z. 2, Warszawa: Państwowe Wydawnictwo Naukowe, 1972), 376.

was determined by ordinance of the Ministries of Reconstruction, Public Administration and Recovered Territories[19]. According to § 1 of this executive act, the associations were to be organised as cooperatives of a particular type. They were called administrative and housing cooperatives (§ 8 of the ordinance). The task of these entities was to provide their members with housing by repairing damaged buildings and further managing them (§ 2, Section 1). The duration of this management was determined by the provincial general administration authority (§ 2, Section 2 of the ordinance). The cooperative had the option of repairing one building or several objects "tied in terms of area" (Section 2, Section 3 of the ordinance). The method of financing the repair carried out by the tenants' association was specified in § 3 of the ordinance. According to its wording, at least 50% of the cost of the work had to be covered by members' contributions and housing deposits (in cash or in kind), members' labour and grants from other sources. The remainder could come from loans from state funds or funds from state credit institutions. A member of a cooperative could receive only one apartment, regardless of the number of buildings being renovated by the cooperative (§ 4 of the ordinance).

Attention should also be drawn to Article 1, Section 5 of the discussed decree, according to which the provisions on damaged buildings also applied to unfinished buildings. This indicates that the task of reconstruction was understood by the legislator broadly – it was not just a matter of repairing specific buildings damaged during the war, but essentially, the restoration of the housing stock in the state – using all available means. However, the provision used created a peculiar legal gap. Based on a linguistic interpretation of the legislation, it must be concluded that the regulations for war-damaged buildings, which provided for the possibility of

[19] Rozporządzenie Ministrów: Odbudowy, Administracji Publicznej i Ziem Odzyskanych z dnia 29 marca 1946 r. o zrzeszeniach najemców dla dokonania naprawy budynków (Dz.U. 1946 nr 12, poz. 86).

carrying out construction work in lieu of the owner, applied to unfinished buildings, but could not be used for buildings damaged for other reasons. They did not provide for substitute repair work in buildings rendered unusable by neglect or natural disasters. Unfortunately, the analysis of the discussed decree did not turn up documents that would answer the question of whether an extensive purposive interpretation was applied in such cases.

The Ordinance on Tenants' Associations for the Repair of Buildings mentioned financing construction work with state loans. Indeed, the Decree on the Demolition and Repair of Buildings Destroyed and Damaged by War, in addition to legal solutions to carry out the repair or demolition of a building in substitute for the owner, also offered instruments designed not only to facilitate the owner's ability to carry out the necessary repair work himself but also to encourage him to do so. Article 5, Section 1 of the discussed decree promised that the Minister of Reconstruction, in consultation with the Minister of the Treasury, would determine the type and conditions of state assistance both for owners of damaged buildings and for those entitled to carry out their repairs in substitute. An executive act on the subject, however, did never see the light of day. As late as 1949, Wacław Brzeziński wrote about these regulations in a future manner[20].

The instrument that played a greater role in practice was the possibility of exempting premises brought into service as a result of the thorough repair of a damaged building from the restrictions of the housing management regulations (discussed in chapter 5) provided for in Article 6 of the decree. The details of these exemptions were regulated by the already mentioned ordinance on the repair of war-damaged buildings. Its § 1, Section 2 specified that a thorough repair should be understood as work involving the

[20] Brzeziński, *Prawo budowlane i odbudowa osiedli*, 87.

replacement of all or most of the door and window woodwork as well as the repair of most of the plaster, or the replacement or addition of structural parts of the building or parts of the building, or construction work whose cost exceeded 20% of the total cost of erecting the building. According to § 2, the owner of a building should have applied to the relevant building authority for determining whether the planned project would be a major repair before proceeding with repairs. This was done through a committee inspection. Significantly, renovating the premises without first completing these formalities did not entitle the owner to the exemption from the restrictions of the housing law.

The Decree on Demolition and Repair of Buildings Destroyed and Damaged by War was amended several times. In 1947, it was clarified[21] that in cities where provisions were made for the minimum number of residents per dwelling or chamber, the exemption for owners who made extensive repairs to buildings applied to a maximum of 90 sqm of floor space but no more than four chambers. Individuals and legal entities were provided with opportunity, not previously mentioned in the decree, to repair, and subsequently, use those damaged buildings that were not repaired by the owner, and none of the entities entitled to do so in the first place applied for their allocation for repair. In addition, it was possible for the relevant authorities to require the owner to provide a guarantee to cover the cost of repair if there was a reasonable fear that the repair would not be completed within the prescribed period.

The 1948 amendment[22] adapted some provisions to postwar realities, probably on the basis of experience already gained. The

[21] Dekret z dnia 11 kwietnia 1947 r. w sprawie zmiany dekretu z dnia 26 października 1945 r. o rozbiórce i naprawie budynków zniszczonych i uszkodzonych wskutek wojny (Dz.U. 1947 nr 32, poz. 145).

[22] Dekret z dnia 25 października 1948 r. w sprawie zmiany dekretu z dnia 26 października 1945 r. o rozbiórce i naprawie budynków zniszczonych i uszkodzonych wskutek wojny (Dz.U. 1948 nr 50, poz. 389).

legislator gave the possibility of issuing decisions on buildings whose owner was unknown, without marking the owner's name. Decisions could be served by posting them at the offices of the relevant authorities. The provisions were also extended to users other than owners who repaired buildings before the decree was adopted.

The Decree on Demolition and Repair of Buildings Destroyed and Damaged by War was an ad hoc piece of legislation responding to the urgent needs of the huge losses to Poland's housing stock incurred during World War II. Solutions allowing substitute performance of demolition or repair of a property in the absence of its owner or even in the situation of the owner's overt opposition undoubtedly restricted the right to property. However, in the extraordinary socio-economic situation of the postwar period, they would also have been justified in other political systems. It should be noted that the decree also contained provisions encouraging private owners to invest in their properties. It also did not provide for the nationalisation of properties with damaged or destroyed buildings but only for the seizure of building materials from demolition and the right to temporarily use repaired buildings for those who carried out the renovation work. In conclusion, its content should be assessed as pragmatic rather than ideological.

Before discussing the third of the legal acts identified by the State National Council's Reconstruction Commission as very important for repairing wartime damage, namely, the Decree on the Ownership and Use of Land on the Area of Warsaw, it is necessary to discuss those legal acts that formed the basis of the entire huge project that was the reconstruction of the Polish capital.

2.3. Regulations on reconstruction of the Capital City of Warsaw

Warsaw was destroyed in 70%[23]. In the first days after the Red Army entered the city, its further fate was still undecided. The relocation of the capital to Poznań, Kraków or Łódź was considered. The possibilities of reconstruction were studied by architects from the Operational Group "Warsaw" who arrived in Warsaw on 18 January 1945 – the team included Józef Sigalin, future head of the Office of the Reconstruction of the Capital, and Bogdan Lachert, who later designed the Muranów Housing Estate built on the ruins of the Warsaw Ghetto. The advisability of reconstruction was still questioned at meetings of the Provisional Government in Lublin on 15 and 21 January 1945. The discussions ended with a personal decision of Bolesław Bierut, who stated that the rapid reconstruction of Warsaw would prove the authorities' ability to govern the country[24]. This ambitious project quickly became the subject of separate legislation.

Chronologically, the first of the legal acts from this area of regulation is the Decree on the General Duty of Personal Services for the Reconstruction of the City of Warsaw[25]. In accordance with the title of the discussed act, its Article 1 § 1 established the duty to perform works and services directly or indirectly necessary for the restoration of the capital to its former splendour and to raise it to a level commensurate with the greatness of the reborn democratic Republic. Despite the fact that the forced

[23] Miasto Stołeczne Warszawa, *Raport o stratach wojennych Warszawy*, (Warszawa: Urząd Miasta Stołecznego, 2004), 37. It should be noted that 70% is the extent of damage to the overall volume of the buildings.

[24] B. Chomątowska, *Stacja Muranów* (Wołowiec: Wydawnictwo Czarne, 2012), 9.

[25] Dekret z dnia 12 marca 1945 r. o powszechnym obowiązku świadczeń osobistych na rzecz odbudowy m. st. Warszawy (Dz.U. 1945 nr 8, poz. 39).

labour was to be rendered for the reconstruction of this city alone, the provision under review introduced this responsibility throughout the entire Polish State. It was thus a legal emanation of the propaganda slogan "the whole nation is building its capital" known from posters by, among others, Marian Stachurski, Wiktor Górka, and Roman Cieślewicz, or the inscription on the facade of a tenement house at 16/17 Nowy Świat Street in Warsaw (it can still be seen there today).

It should be noted that the personal services stipulated by the analysed decree applied only to the reconstruction of Warsaw but the responsibility to pay them could be extended to those who met certain requirements (such as age) regardless of their place of residence. Article 5 of the decree stipulated that those called up for personal services would receive food, and those performing them outside their place of residence would also receive housing. Those living farther than 10 kilometres from the place where forced labour was performed were also guaranteed free transportation from the state. This proves that the legislature, also in practice, anticipated the appointment to work under the decree of people not only from Warsaw and its suburbs.

The uniqueness of the Decree on General Duty of Personal Services for the Reconstruction of the City of Warsaw in comparison with other legal regulations on the repair of postwar devastation stemmed from Article 7, § 2, according to which those called up for compulsory work on the reconstruction of the capital were to be considered as mobilised for military service. Moreover, if they committed a crime, they would be liable under the provisions of the Polish Army Criminal Code before military courts. As with the other provisions analysed in this chapter, the implementation of the Decree on the General Duty of Personal Services for the Reconstruction of the City of Warsaw was, according to its Article 8, entrusted to the Minister of Public Administration. The Minister of Reconstruction was not listed

alongside him, because this office had not yet existed at the time. The other minister responsible for implementing the act under review was the head of the Ministry of National Defence. Thus, the legislator created working conditions for the reconstruction of the capital more akin to compulsory military service than to labour in the economy, even forced labour. This is in line with the absence of any remuneration, which was provided for in, e.g., the Decree on the Registration and Forced Employment of Professional Technical Forces in the Area of Construction for National Reconstruction or the Law on Neighbourhood Assistance for Rural Reconstruction.

The Decree on General Duty of Personal Services for the Reconstruction of the City of Warsaw remains a source of knowledge about the presuppositions of the legislator at the time in terms of awareness of the enormity of the needs of postwar reconstruction and convictions about the acceptability of certain methods of meeting them but it did not have socio-economic effects. An ordinance implementing it was issued[26], which stipulated, inter alia, that appointments would be made by county authorities, and that working hours could not exceed three months in any given year. However, in spite of this, in practice, the Decree on General Duty of Personal Services for the Reconstruction of the City of Warsaw remained inactive – the appointments to compulsory labour for which it allowed were not carried out[27]. Perhaps the authorities of People's Poland finally decided that typically administrative tools were sufficient and military measures were no longer necessary in the process of rebuilding the country.

[26] Rozporządzenie Ministra Administracji Publicznej z dnia 19 maja 1945 r. w sprawie wykonania dekretu z dnia 12 marca 1945 r. o powszechnym obowiązku świadczeń osobistych na rzecz odbudowy m. st. Warszawy (Dz.U. 1945 nr 19, poz. 109).

[27] J. Jakubowski, ed., *Dekret o odbudowie Warszawy* (Lublin: Wydawnictwo Lubelskie, 1980), 27–28.

Nevertheless, for the postwar history of Poland's capital, the most symbolic significance lies in a slightly later act – the Decree on the Reconstruction of the City of Warsaw[28], dated 24 May 1945. Its Article 1 was a kind of an ideological declaration, according to which the city was to be rebuilt in accordance with the will of the Polish Nation and to the standard of the reborn Democratic State. The article also indicates the necessity of restoring the splendour of the capital, destroyed in an unprecedented way by the Nazi invaders. The discussed decree is thus a legal expression of the final termination of all discussions over whether Warsaw should be rebuilt. At the same time, it established institutions that took part in another, longer and deeper dispute – over how Warsaw should be rebuilt. The first of these was the Supreme Council for Reconstruction of the City of Warsaw (Naczelna Rada Odbudowy m. st. Warszawy – NROW). According to Article 3 of the discussed decree, it was headed by the President of the State National Council (Boleslaw Bierut). Apart from him, the council's other members were: Chairman of the Council of Ministers (as deputy chairman), President of Warsaw, ministers, a certain number of representatives of various National Councils (National Council, Provincial Councils, Warsaw Council) but also "leading representatives of social, political, and economic organisations" and "outstanding professionals of particular areas of science and art" in an unspecified number. Members of the Supreme Council for Reconstruction of the City of Warsaw belonging to the latter two groups were appointed personally and freely by the President of the State National Council.

Boleslaw Bierut, who held this position, was heavily involved in the issue of postwar reconstruction of the People's Poland capital from the very beginning. In an interview with Teresa

[28] Dekret z dnia 24 maja 1945 r. o odbudowie m. st. Warszawy (Dz.U. 1945 nr 21, poz. 124).

Torańska, Jakub Berman recalled that the matter of rebuilding Warsaw wildly involved Bierut emotionally, and he often spoke up during meetings with architects and even suggested specific solutions to them[29]. The provisions of the discussed decree, placing Bolesław Bierut as the head of the NROW and giving him extensive powers to shape the composition of the Council, framed its operations related to the reconstruction of the capital in a legal framework. Prior to their adoption, that activity had only factual character. Although, as Andrzej Skalimowski aptly noted, the supervision of urban planning work related to the reconstruction of Warsaw was not, formally speaking, part of the tasks of the President of the State National Council as head of the state[30].

The decree of 24 May 1945 also created the Committee for Reconstruction of the Capital, whose task (under Article 4 of the discussed act) was to coordinate the reconstruction of Warsaw, supervise the course of related work and control its results. Its members (according to Article 5 of the decree under review) included the Chairman of the Council of Ministers and the President of the City of Warsaw.

Another institution mentioned by the analysed decree is the Office of Reconstruction of the Capital (Biuro Odbudowy Stolicy – BOS). However, its history is longer than the discussed act. As early as 22 January 1945. The President of the City established the first institution tasked with the postwar reconstruction of Poland's capital (not counting the aforementioned Operational Gorup "Warsaw") – the Office for the Organisation of the Reconstruction of Warsaw, headed by Jan Zachwatowicz. Shortly thereafter, on 14 February 1945, by a resolution of the Presidium

[29] T. Torańska, *Oni* (Warszawa: Agencja Omnipress, 1990), 129.

[30] A. Skalimowski, "«Budowniczy stolicy». Warszawski mecenat Bolesława Bieruta w latach 1945–1955", *Pamięć i Sprawiedliwość*, (2) (24) (2014), 80.

of the Municipal National Council, this proper Office of the Reconstruction of the Capital was established[31]. Article 6 of the discussed decree confirmed the existence and important role of the BOS, entrusting this institution with the work of rebuilding the city of Warsaw. However, the position of the Office changed. With the entry of the decree into force, the BOS ceased to be exclusively a municipal institution. According to its Article 8, expenses related to the Office's operation were to be covered by the budget of the Ministry of Reconstruction. In addition, the minister at the head of that ministry applied to the Committee for Reconstruction of the Capital to approve the organisational statute of the BOS, and (in consultation with the President of the City of Warsaw) applied to the Council of Ministers for the appointment and dismissal of the head of the BOS. The high institutional empowerment of the office, which in accordance with the regulations of the discussed decree ceased to be a purely municipal institution and was linked to both the Ministry of Reconstruction and the Council of Ministers, testifies to its important role on a nationwide scale.

In July 1947, the Law on the Reconstruction of the City of Warsaw[32] was passed. It changed the structure of the institutions described above. Article 1 created the Supreme Council for Reconstruction of the Capital City of Warsaw as a body acting under the Prime Minister. It gained an additional formal competence – it was authorised to adopt spatial plans for the capital and the Warsaw Urban Complex (Article 3, Point a). The Chairman of the Council of Ministers became the chairman of the NROW in its new form (Article 5, Section 1), and its mem-

[31] A. Kączkowska, "Biuro Odbudowy Stolicy", in: J. Górski, ed., *Warszawa, stolica Polski Ludowej* (z. 1, Warszawa: Państwowe Wydawnictwo Naukowe, 1970), 346–347.

[32] Ustawa z dnia 3 lipca 1947 r. o odbudowie m. st. Warszawy (Dz.U. 1947 nr 52, poz. 268).

bership was henceforth to include 30 members appointed by the President at the request of the Minister of Reconstruction from among representatives of the relevant government departments, the Warsaw local government, social activists, and outstanding professionals in the areas of science, technology, and art (Article 5, Section 2). Henceforth, the Office of Reconstruction of the Capital was supposed to focus on the work concerning the drafting of planning acts (Article 6), while supervision and management of executive work related to the reconstruction of the city was entrusted to a new entity, the Warsaw Reconstruction Administration, which was subordinate to the Minister of Reconstruction (Article 7).

The establishment of a separate organisational structure solely for the coordination of the reconstruction of Warsaw shows, on the one hand, how huge and demanding this undertaking was, and, on the other hand, how important it was to the authorities of the time, including image and propaganda matters.

2.4. Bierut decree

The decrees discussed above represent some of the vast number of legal acts approved by the Presidium of the State National Council and signed by its President Boleslaw Bierut. However, another of the sources of legal regulation of the postwar reconstruction of Warsaw had such an impact on the life of the capital that it earned a colloquial term Bierut Decree (this name shall also be used interchangeably in this chapter). The term refers to the Decree on the Ownership and Use of Property in Warsaw, issued on 26 October 1945, which is still present in the public consciousness today. Its consequences, and in particular the efforts to reverse its effects (referred to as reprivatisation), often with numerous violations of the law (what is called the reprivatisation affair),

are still the subject of heated political disputes and have lived to see countless press articles and several books[33].

For these reasons, due to the specific, yet little-known, genesis of the ideas implemented by the Bierut Decree, and because of the doubts about its declared and actual goals, the analysis of this particular act will be broader and more extensive. After an introductory discussion of the legal provisions contained therein, the results of research will be presented[34] in terms of the history of the solutions used and how they reached those responsible for the creation and implementation of the decree. The scholars' views on this legal act formulated during the People's Poland period, various aspects of the practice of its application, as well as the subsequent legislative activity relating to it, shall be analysed as well. These steps will make it possible to establish the relationship between the Bierut Decree and the ideology of People's Poland.

The declared purpose of the Decree on the Ownership and Use of Land in Warsaw was "to enable the rational completion of the reconstruction of the capital and its further development in accordance with the needs of the Nation, and, in particular, the prompt disposition of land and its proper use" (Article 1). Therefore, it can be seen that the legislature's intentions went beyond the mere repair of postwar damage and also included further development thereafter. The means of achieving the decree's

[33] See: J. Śpiewak, *Ukradzione miasto. Kulisy wybuchu afery reprywatyzacyjnej* (Warszawa: Wydawnictwo Arbitror, 2017); M. Bajko, *Reprywatyzacja warszawska: byli urzędnicy przerywają milczenie* (Warszawa: Wydawnictwo Arbitror, 2017); B. Siemieniako, *Reprywatyzując Polskę. Historia wielkiego przekrętu* (Warszawa: Wydawnictwo Krytyki Politycznej, 2017).

[34] See: T. Fudala, ed., *Spór o odbudowę Warszawy. Od gruzów do reprywatyzacji* (Warszawa: Muzeum Sztuki Nowoczesnej w Warszawie, 2016). Research on this issue has already been conducted by the historians of art and architecture. Unfortunately, so far legal science has not benefited from their results.

goal was transferring all land in the Warsaw area to municipal ownership by force of law (Article 1 *in fine*).

At least in the layer of the legislator's official declarations, the purpose of the Bierut Decree was not to actually remove the previous owners from the properties they used. This is evidenced by the inclusion of solutions in the analysed act, the application of which would allow these people to continue to occupy the property taken over by the municipality on a legal basis other than ownership. According to Article 7, Section 1 of the discussed act, the owners were entitled, within six months of the acquisition of the plot by the municipality, to apply for the granting of "the right of perpetual lease[35] with a symbolic rent or the right to build with a symbolic fee" on the property that had been taken from them. Article 7, Section 2 indicated basically one basis for refusing to grant either[36] of these rights. A negative decision could be issued when the previous owner's use of the land was incompatible with the use of the land provided for in

[35] According to Article XXXIX § 2 of the Introductory Provisions of the Law of Property and the Law on Land Registers, as of 1 January 1947, perpetual lease was replaced by temporary ownership. This, in turn, was replaced by perpetual usufruct in 1961, pursuant to Article 40 of the Law of 14 July 1961 on the Management of Land in Cities and Settlements (Ustawa z dnia 14 lipca 1961 r. o gospodarce terenami w miastach i osiedlach, Dz.U. 1961 nr 32, poz. 159). From the perspective of proceedings under the Bierut Decree, the differences between these institutions are not significant. For the sake of order, the terms "temporary ownership" and "perpetual usufruct" shall be used instead of "perpetual lease" to describe situations (decisions, amendments, etc.) that are known to have taken place precisely when the law in question was in operation. The term "perpetual lease" shall be used in general considerations, referring to the entire period of operation of the decree under review.

[36] According to Article 7, Section 3 of the Bierut Decree, it was up to the municipality to decide whether the perpetual lease or the right to build would be granted.

the development plan[37]. However, even if this condition was met, the Bierut Decree did not deprive the owner of all rights. In the event that an application for a perpetual lease or right to build was not granted, he was first entitled to obtain an analogous right on a replacement property of equal use value whenever such property was available (Article 7, Section 4). Finally, in a situation where the previous owner did not apply for the establishment of her or his rights, or for any reason (e.g., the applicant's inability to reconcile her or his continued use of the land with the development plan, the absence of suitable replacement property), the municipality was obliged to pay compensation. According to Article 9 of the Bierut Decree regulating these payments, they were to be the capitalised value of the rent or fee for the right to build. The principles and method of determining compensation, as well as provisions for the issuance of securities earmarked for this purpose, were to be specified in an ordinance issued by the Minister of Reconstruction in consultation with the Ministers of Public Administration and Treasury. However, in practice, this executive act has never been issued, the consequences of which will be discussed in the section on the application of the Bierut Decree.

The theoretical rights of the previous owners of Warsaw land were even greater regarding the objects erected thereon. According to Article 5 of the Bierut Decree, buildings and other objects located on the seized land were to remain the property of the previous owners[38]. However, this did not apply to all buildings.

[37] It was the only condition for rejecting applications from individuals. In the case of legal entities, there was also a requirement that the use of the land be compatible with the legal entity's statutory or regulatory tasks.

[38] It is an exception to the principle of *superficies solo cedit*, however, it should be remembered that the unification of civil law in the Second Polish Republic was not completed, and until 1947 issues of property law were governed by district laws – regulations from the legal systems

Article 6, Section 1 of the discussed act granted the municipality of the City of Warsaw the right to set the owner of objects in the area that the municipality took possession of a deadline for taking them. Upon its expiration, ownership of these items passed to the municipality. Article 6, Section 2 excluded buildings from the disposition of this standard, however, with the exception of "damaged buildings which, according to the ruling of the building authority, due to their state of deterioration, are not repairable and should be demolished". As the Supreme Court noted: "destroyed buildings were therefore equated with 'other objects' (e.g., movable property) and passed into the ownership of the municipality upon the ineffective expiration of the deadline set for their removal"[39].

In practice, the permanence of ownership of buildings on land seized by the municipality under the Bierut Decree depended on the obtaining of the right of perpetual lease or the right to build, since – according to Article 8 of the discussed legislation – in the event that no such rights were granted, ownership of any buildings passed to the municipality. In such a situation, the provision under review stipulated that compensation be paid "for buildings suitable for use or repair". According to Article 9 of the Bierut Decree, this benefit was to amount to the value of the building. Such are the provisions of a concise and essentially simple act, the Decree on the Ownership and Use of Land in Warsaw. However, its genesis turns out to be much more complex.

imposed by the particular partitioners. For Warsaw, the Napoleonic Code was relevant, in which the principle was not absolute – it allowed the acquisition of separate ownership of a building erected on someone else's land. See: W. Białogłowski, and R. Dybka, *Dekret o własności gruntów na obszarze miasta stołecznego Warszawy* (Warszawa: LexisNexis Polska, 2014), 26.

[39] Wyrok Sądu Najwyższego z dnia 29 października1999 r., I CKN 108/99.

The Bierut Decree is now sometimes seen as a Moscow-born expression of Soviet ideology that was to be imposed on postwar Poland. This can even be seen in the titles of numerous press publications[40]. Tomasz Markiewicz, writing about this law, pointed to full state control over citizens and the formation of a "peculiar anti-citizen culture" as an important context for the introduction of the discussed decree[41]. However, the results of research outside the legal sciences show otherwise.

Art historian Małgorzata Popiołek said that the Decree on the Ownership and Use of Land in Warsaw had prewar roots. She points to the political ideas of German merchant Silvio Gessell, propagated on the ground of urban planning by Swiss architect Hans Bernoulli[42]. Gessell's economic concept (the natural order theory) pointed to the possibility of unlimited accumulation and multiplication of capital as the main source of inequality and crises. Its solution was to make money constantly in circulation (it would lose a few percent of its value each year, making saving unprofitable), and – more importantly in the context of urbanism – to nationalise all land (with compensation and without taking ownership of the buildings standing on it) to prevent real estate speculation[43]. Meanwhile, Bernoulli, based on his own experience

[40] See, e.g.: E. Żabolicka, "Grabież w świetle prawa «Warszawski» dekret Bieruta z 1945 r.", *Przystanek Historia*; mb, "Dekret Bieruta – jak odebrać mieszkańcom Warszawę", *Polskie Radio.pl* or M. Grabowski, "Dekret Bieruta, czyli w jaki sposób komuniści ukradli Polakom Warszawę", *Nasza Historia*.

[41] T. Markiewicz, "Dekret Bieruta. Pierwszy krok do stalinizacji Polski", in: A. Hetko, *Dekret warszawski. Wybrane aspekty prawne czyli o uprawnieniach cywilnych dochodzonych w postępowaniu administracyjnym* (Warszawa: Hogan & Hartson, 2006), 17.

[42] M. Popiołek, "«Miastu – grunty, mieszkańcowi – dom». Historia powstania dekretu Bieruta na tle europejskiej myśli urbanistycznej", in: T. Fudala, ed., *Spór o odbudowę Warszawy. Od gruzów do reprywatyzacji* (Warszawa: Muzeum Sztuki Nowoczesnej w Warszawie, 2016), 40.

[43] Ibid., 42.

with designing and erecting affordable housing developments, believed that property relations were a major obstacle to practicing rational urban planning and making public investments. He expanded on Gessell's concept, proposing that the city should make a compulsory purchase of the property, leasing it to investors for 80 years and determining how it should be developed. After this period, the right to use would expire, and the authorities could decide on a different way of development in the following period[44]. Bernoulli visited Warsaw twice: the first time in 1910, when it was still in the Russian partition, and again in 1931[45]. The result of the second visit was his article, published in Polish translation in the journal "Architektura i Budownictwo" ("Architecture and Construction")[46]. In his writings, Bernoulli criticised various aspects of Warsaw's spatial development, pointing out that it was a mistake to sell land in the Żoliborz and Marymont districts to investors instead of leaving them as public property, and only authorising investors to develop them[47]. The desire to put into practice the theoretical concept of urban land management outlined above is evident here. The architect lamented that there was, unfortunately, a lack of sufficient legal solutions to avoid a situation in which "precious public property was stripped of its best values, only to then, through a groundless sale, slip forever out of the hands of the authorities"[48]. He further wrote that the most favourable conditions for the development of new neighbourhoods were when the land remains in public ownership, so that its parcelling and development could proceed in the most planned manner possible. He stated that "all land currently designated for construction should not pass from

[44] Ibid., 44–45.

[45] Ibid., 49.

[46] H. Bernoulli, "Rozwój urbanistyczny Warszawy", *Architektura i Budownictwo* 4 (1931), 138–140.

[47] Ibid., 139.

[48] Ibid.

public hands to individual or collective builders through sale but only as a lease"[49].

Bernoulli's views were consistent with ideas gaining popularity in architectural circles at the time. The planned development of residential neighbourhoods, understood as the conscious shaping of space, was the main way to improve the quality of life and the health of residents according to the pioneers of modernism gathered around the International Congresses of Modern Architecture (Congrès international d'architecture moderne – CIAM). This group, with Le Corbusier as its most prominent figure, formulated the standards for modern architecture and urbanism included in what is called Athens Charter[50]. The Swiss architect's concepts may have been a tool to provide the land necessary for such modern architecture. Bernoulli's views gained recognition among those associated with the Warsaw Housing Cooperative, which included Teodor Toeplitz and Stanisław Tołwiński. During their meeting, the Swiss architect stated that

> capitalist countries only recognise the rights of the dead to eternal rest within their own settlements, and therefore, almost everywhere cemetery administrations have free disposal of burial areas. We must demand the same right for living people, who must be provided – in addition to a place of rest – with healthy living and working conditions. All city land must, therefore, belong to the municipality and as property that must not be disposed of[51].

[49] Ibid., 140.

[50] H. Izdebski, *Ideologia i zagospodarowanie przestrzeni. Doktrynalne prawno-polityczne uwarunkowania urbanistyki i architektury architektury* (Warszawa: LEX a Wolters Kluwer business, 2013), 96–97.

[51] H. Syrkus, *Ku idei osiedla społecznego 1925–1975* (Warszawa: Państwowe Wydawnictwo Naukowe, 1976), 155–156, as cited in: Popiołek, op. cit., 52.

None other than Boleslaw Bierut himself was one of the members of this circle and the co-founder of the Warsaw Housing Cooperative.

The Bierut Decree linked the nationalisation of Warsaw land to the need for postwar reconstruction. However, the topic of taking over the capital's real estate from private hands precisely in the context of the realisation of this goal was already present during the war, and was raised by representatives of the then still non-communist city authorities. Since December 1939, a Commission of Urban Planning Experts, including Jan Zachwatowicz and Tadeusz Tołwiński, had been working at the magistrate's office. Its main task was to give an opinion on the 1938 General Plan of Warsaw[52]. The opinion was written in 1941. The topic of nationalisation was present in this document. Its Chapter I, "Economic Issues of Warsaw", contained a subchapter titled "Land Policy". The members of the Commission highlighted therein the needs of housing, reconstruction and regulation of the city, the realistically limited possibilities of buyout of real estate, and the haphazard distribution of war damage, the full indemnification of which was not expected. For these reasons, it was proposed that, at least during the reconstruction, the capital municipality should be able to take over land with compensation paid in delay, and to some extent, even without compensation[53].

Leftist views were also evident among independent Warsaw architects creating grassroots concepts for rebuilding the capital, and not only in terms of land management. During the German

[52] J. Zachwatowicz, "Komisja Rzeczoznawców Architektonicznych przy Zarządzie Miejskim Warszawy w latach 1939–1944", *Rocznik Warszawski* 17 (1984), 246.

[53] J. Zachwatowicz , "Opinia Komisji Rzeczoznawców Urbanistycznych przy Zarządzie Miejskim Warszawy w latach 1939–1944", *Rocznik Warszawski*, 17 (1984), 260–261.

occupation there was the Architectural and Urban Planning Workshop, initially headed by Szymon Syrkus, who wrote:

> The capitalist city is a reflection of the clash of conflicting forces and conflicting interests, of the oppression of the underprivileged class by the privileged. The estates we design are to create a framework for the harmonious interaction of economic and social forces, forces of nature and technology, a framework for the cooperation, and coexistence of a classless society[54].

Therefore, the architect was proposing measures that went well beyond public land management in order to define the types of permissible development more precisely – the very draft of the new settlements was intended to promote the functioning of a classless society, the creation of which was, after all, one of the main goals of the political ideology that became dominant in Poland after World War II.

Architect Stanisław Dziewulski, who during the war worked on plans for rebuilding the centre of the capital together with Stanisław Skibniewski and Kazimierz Marczewski, wrote bluntly: "we put forward the postulate of carrying out a radical land reform in the cities, aiming at a one-time mobilisation of the city areas and their new division resulting from new social, artistic and technical needs"[55]. Dziewulski did not suggest a specific legal solution, did not decide whether this "mobilisation of land" should take place through buyout or expropriation, and if the latter, whether with or without compensation. However, it is clear

[54] S. Syrkus, *Sprawozdanie i program PAU z dn. 26 IX. 42, Materiały Stanisława Tołwińskiego* (Archiwum Polskiej Akademii Nauk, III-185/82), 32, as cited in: Fudala, ed., op. cit., 68.

[55] S. Dziewulski, *Konieczność reformy terenowej w miastach (na przykładzie Warszawy)* (Archiwum Muzeum Warszawy, A/V/1613/5), as cited in: Fudala, ed., op. cit., 74.

that many architects and urban planners had a recurring desire to carry out the reconstruction of Warsaw "from a clean slate" without the constraints of prewar property relations.

The existence of private ownership of land and the legislation protecting it was seen as an impediment to urban planning already before the war by Marian Spychalski[56], who in the 1930s was employed at the capital's magistrate's office, where he worked at the General Plan Workshop[57] on revising that document. Operating under capitalist conditions, Spychalski with his strong leftist views did not speak openly about nationalisation. However, in his memoirs he wrote:

> the vast majority of architects saw the way out of our backwardness also in the area of urban planning in the development of capitalism in our country. The truth was looked in the eye only by us communists. We knew that only a change of regime provided opportunities for development, including social development of urban planning and bold plans for cities, including the capital[58].

It will be rather reasonable to assume that one of the elements of the regime change desired by Spychalski was precisely the change in property ownership relations.

An architect and member of the Operational Group "Warsaw", Lech Niemojewski, held a slightly different view of the problem of land ownership in the ruined capital. In *Considerations on the Creation of Financial Basis for the Reconstruction of Warsaw*, he referred to the discussed *Opinion of the Commission of Urban Planning Experts*, treating his deliberations as a continuation of its work under new conditions – taking into account the scale of damage caused by the Warsaw Uprising. Unlike the Commission,

[56] M. Spychalski, *Warszawa architekta* (Warszawa: Bellona, 2015), 34.
[57] Ibid., 42.
[58] Ibid., 48.

he began his argument with strongly worded theses, according to which "private property should be respected and restored in its entirety", and

> the reconstruction of private property on the territory of Warsaw should follow the path of reconciliation of the private interest with the public interest in such a way that financial, economic, and technical solutions should be sought that would allow private and public interests to support each other, rather than opposing them, leading to conflicts[59].

He also stated that in terms of rebuilding Warsaw, everything was possible "on one condition, [...] that too radical slogans do not alienate and frighten the most timid creature under the sun, which is private capital"[60].

Niemojewski's positions reveal that he held liberal and pro-capitalist views. Nevertheless, he advocated reforming property rights on land under demolished buildings in downtown Warsaw. He pointed out that the owners of destroyed properties often did not have the resources even to clean up the rubble, and if they succeeded, in many cases there would not have been enough money for proper reconstruction, with the risk that "a Warsaw of half-houses-half-huts would be created"[61]. The architect noted that the sale of dilapidated properties would also be difficult, as they would compete on the market with sites that were clean and ready for development. For this very reason he proposed a reform in which landowners in exchange for rights to dilapidated properties would receive securities entitling them to acquire building

[59] L. Niemojewski, "Rozważania nad stworzeniem podstaw finansowych dla odbudowy Warszawy", in: J. Górski, ed., *Warszawa, stolica Polski Ludowej* (z. 2, Warszawa: Państwowe Wydawnictwo Naukowe, 1972), 244.

[60] Ibid., 245.

[61] Ibid., 247.

allotments once the site was cleaned up and newly subdivided and a development plan was prepared. The new landowner would have to start development within a certain period of time, otherwise she or he would pay a special punitive tax[62].

Niemojewski's position confirms the necessity of reorganising the ownership structure of Warsaw land during the reconstruction of the capital also from the point of view of an advocate of capitalism and the protection of private property. This perspective differed strongly with the ideology of People's Poland so that the editors of "Warsaw Studies", in which Niemojewski's collected writings were published in 1972, had to explain in the introduction that "Niemojewski [was] reasoning [t]here in terms of the old economic system, anticipating the essential role of foreign capital in construction", because "this was a period in which the economic content of the new system was not clearly specified"[63].

Therefore, the acquisition of ownership of land in the city centre for the efficient redevelopment or reconstruction of the area in accordance with a comprehensive plan was not a concept that was born in Moscow, with the participation of Marxism-Leninism ideologues. The idea, which germinated in Western Europe, gained the attention of leftist architects and social activists active in various circles. Its realisation was aided by the fact that some of them succeeded after World War II and held important positions in the structures of People's Poland, e.g., Bolesław Bierut became chairman of the State National Council and president of People's Poland, while Marian Spychalski became the first postwar president of Warsaw, head of the construction and reconstruction ministries, and later also Marshal of People's Poland and Chairman of the Council of State. It is worth mentioning that Spychalski was

[62] Ibid., 249.

[63] J. Górski, "Lech Niemojewski o odbudowie Warszawy", in: J. Górski, ed., *Warszawa, stolica Polski Ludowej* (z. 2, Warszawa: Państwowe Wydawnictwo Naukowe, 1972), 234.

not only positive about the state takeover of Warsaw's land but also regretted that it had not been possible to take over the land surrounding the city's administrative boundaries (as a reserve for future development) and buildings, "although the urban and construction arguments were in favour of it"[64].

It should be noted that Hans Bernoulli himself recognised that the Bierut Decree was the realisation of his ideas. Just as he had advocated, under that act all land within the administrative boundaries of the city was passed to the municipality. Private owners, on the other hand, were to keep their buildings – for a period not exceeding 80 years under the right of usufruct. This solution responded to the ideological needs of state socialism, and later evolved into a perpetual usufruct right unique to that system[65]. At the same time, the usufruct law was very similar to the concept of leasing real estate, and for the same, 80-year periods, with an indication of the permitted method of development proposed by the Swiss architect. Bernoulli visited Warsaw after the war, where, according to his memoirs, he was received very warmly, as "the father of the law on the reconstruction of Warsaw, which was fundamental for the city"[66]. In 1950, he published a German translation of the Bierut Decree in the West – as an example of the implementation of his ideas[67].

At a plenary session of the State National Council, Stanisław Tołwiński stated that the Bierut Decree was as important to the reconstruction of Warsaw as the decrees on land reform and

[64] Spychalski, op. cit., 207.

[65] See: R. Mańko, "Prawo użytkowania wieczystego jako pozostałość po epoce socjalizmu realnego – ujęcie socjologicznoprawne", *Zeszyty Prawnicze* 17 (1) (2017), 37–39.

[66] H. Bernoulli, *So wird Warschau wieder aufgebaut* (Zürich: Liberal-Sozialistische Partei der Stadt Zürich, 1950), 11, as cited in: Popiołek, op. cit., 57.

[67] Popiołek, op. cit.

the nationalisation of industrial enterprises were to the entire country[68]. Also, the assessments and views of the authors of many legal and historical works written during People's Poland were at least in line with the postulates formulated by leftist architects during the Second Polish Republic, and even more radical from some of them. In 1946, Ignacy Chabielski in a scholarly journal *Państwo i Prawo* ("State and Law") negatively assessed the development of prewar Warsaw. He wrote that "an orgy of construction of the shoddiest type, defying elementary construction laws, resulted in the erection of entire districts of tight buildings, devoid of greenery, trees, and air, and unfortunately almost exclusively calculated for the poorest layers of the working population"[69]. Moreover, "hand in hand with the squalor of housing was the filth, sloppiness, and neglect of dwellings accompanied by the charging of high rents." Therefore, the harsh criticism was not only of architecture and urban planning but also, and perhaps above all, of its class context, to which the prevailing property relations of the time were linked. Chabielski wrote of the situation found after the end of warfare as follows: "Today, these houses lie in ruins, and the overriding interest indicates that a return to a similar state is downright criminal and unacceptable"[70]. He judged that the former alliance of foraging capital with the state authorities was unthinkable under the new conditions of the capital's reconstruction. He believed that "considering the existing property relations would have to lead [...] to reproducing all the defects of the former development"[71]. Therefore, the author's statement that "the principle of providing the city with complete freedom to dispose of land by means of transferring it into ownership

[68] Krajowa Rada Narodowa, op. cit., 573.

[69] I. Chabielski, "Odbudowa stolicy w świetle nowych dekretów", *Państwo i Prawo* 4 (1946), 71.

[70] Ibid., 72.

[71] Ibid.

becomes a necessary condition for the reconstruction of the capital" should not come as a surprise[72].

The administrative legal scholar Wacław Brzeziński, in a paper prepared in 1946 for the Congress of the International Federation of Housing and Urban Planning in Hastings, wrote:

> The reconstruction of a city always creates opportunities for amendments to its development plan. In the case of Warsaw, these corrections must be so far-reaching that we have adopted, as a guiding thesis, that Warsaw is to be not only reconstructed but also remodelled. The new plan must level out and rectify the great neglect and mistakes of the entire century[73].

He further stated: "the blind fate of war, destroying buildings that are precious and dear to our hearts, has often spared buildings whose location is contrary to the intentions of the new plan and which will therefore have to be demolished"[74].

Also Bohdan Domosławski, in his historical work *Organizacja i wyniki odbudowy w latach 1944–1948* ("Organisation and Results of Reconstruction in 1944–1948"), stated that the need to efficiently repair the severe damage inflicted on the Polish capital was not the only reason for issuing the Bierut Decree. The idea was to enable the reconstruction of Warsaw in a strictly controlled manner. The author wrote that the need to "secure a free hand in determining plans for future development" arose of a desire to obtain in Warsaw "the possibility of thorough reconstruction, removing the urban and architectural trappings that so hindered its development"[75].

[72] Ibid.

[73] Brzeziński, "Podstawy i zagadnienia prawne odbudowy Warszawy", 369–370.

[74] Ibid., 371.

[75] B. Domosławski, *Organizacja i wyniki odbudowy w latach 1944–1948* (Warszawa: Instytut Budownictwa Mieszkaniowego, 1967), 154.

Therefore, according to the authors cited above, it was clear that the positive assessments of the Bierut Decree came out of the fact that it met the needs not only of the postwar reconstruction but also the thorough rebuilding of Warsaw.

The words of Jan Śpiewak, a Warsaw activist and author of one of the books dealing with the reprivatisation affair, who stated in a press interview related to the topic of the Bierut Decree that "Similar legal acts were also issued in the West at the same time – that is, right after the war" [76] were notorious at the time. It was impossible to verify the accuracy of this claim using a fact-checking website Demagog[77]. However, an analysis of the solutions adopted in various European countries in terms of their application of the institution of expropriation proves possible.

One of the countries where emergency legislation was introduced to repair war damage was the Netherlands. One of the more famous examples of reconstruction was the case of Rotterdam. Luftwaffe bombing in May 1940 destroyed 25,000 homes, 70 schools and 2,400 stores in that city[78]. An entirely new city centre was erected according to a plan presented as early as 1941, thanks to the municipalisation of destroyed properties. It was possible thanks to special decrees dating back to 18 and 24 May 1940, whose purpose, however, was not to permanently seize property by the local government but to re-transfer the properties to private owners after re-dividing them according to the reconstruction plan[79]. Such a prospect, the promise of compensation, and the widespread

[76] W. Głowacki, "Jan Śpiewak: Polska to państwo, które nie radzi sobie z mafią", Polska.

[77] [no author], "Jan Śpiewak o dekrecie Bieruta", Demagog.

[78] B. Chomątowska, "Rozdarte miasta. Powojenna odbudowa na zachód od Odry", in: T. Fudala, ed., *Spór o odbudowę Warszawy. Od gruzów do reprywatyzacji* (Warszawa: Muzeum Sztuki Nowoczesnej w Warszawie, 2016), 119.

[79] J. E. Bosma, "Planning the Impossible: History as the Fundament of the Future – the Reconstruction of Middelburg, 1940-4", in: J. M. Diefendorf, ed., *Rebuilding Europe's Bombed Cities* (New York: St. Martin's Press, 1990), 65.

belief that such measures were necessary, and were supposed to cause that the only one of the thousands of owners opposed to the application of the new law, and eventually this owner was also persuaded[80].

The solution used in France was the system of ISAI – Buildings without Individual Allocation (Fra. *Immeubles Sans Affectation Individuelle*), introduced by a decree of 8 September 1945. It consisted of expropriating the property occupied by a destroyed building and then transferring proportional shares of the land to the future occupants of the new buildings to be built on it. Construction began immediately, before ownership issues were finally settled (hence the programme's name). Tenants in the newly constructed houses could be obtained as a form of settlement of war damage compensation claims[81]. Thus, this was another solution, alongside that of the Netherlands, in which expropriated owners had the opportunity to regain their property, at least partly, in a form transformed by the reconstruction project. For example, the ISAI system was used in Le Havre, where 12,500 buildings were destroyed as a result of RAF carpet raids carried out in May 1944[82]. The reconstruction of the city according to a plan created by a team led by Auguste Perret was such a success that the new centre of Le Havre was listed as a UNESCO World Heritage Site[83].

The rebuilding of British cities, such as Coventry, which was destroyed in the November 1940 bombing, was carried out in accordance with the Town and Country Planning Act of 1944 and its successor of the same name of 1947. Both acts covered

[80] R. Rigby, "Cinderella City", *The Rotarian* 4 (100) (1962), 26.

[81] P. Gourbin, *L'architecture et l'urbanisme de la Reconstruction dans le Calvados. Du projet à la réalisations* (Caen : CAUE, 2011), 17.

[82] B. Chomątowska, "Rozdarte miasta. Powojenna odbudowa na zachód od Odry", 132.

[83] UNESCO, "Le Havre, the City Rebuilt by Auguste Perret", *UNESCO. World Heritage Convention.*

the possibility of compulsory purchase of property necessary to carry out projects related to the repair of war damage[84].

The legal basis for postwar recovery was shaped differently in various parts of divided Germany. In the western part of the country, there was no single law on reconstruction. Particular states introduced different solutions. However, instruments such as compulsory purchase or expropriation were avoided, as memories of the Nazi era, when such institutions were abused, were still vivid. For example, in Lower Saxony, reconstruction laws were enacted, according to which expropriation was possible only in certain situations, and as a rule, local communities were supposed to compromise on changes to property boundaries and compensation, etc.[85] In East Germany, the approach to expropriation was different, although this was not immediately apparent. In various states that were part of the Soviet occupation zone, appropriate laws were adopted as early as 1945. Only those in force in Saxony-Anhalt offered the possibility of expropriation of building plots without adequate compensation, while the remaining solutions were based on indemnity-providing prewar solutions[86]. However, after the establishment of the German Democratic Republic, the *Law on the Reconstruction of Cities in the GDR* (Ger. *Gesetz iiber den Aufbau der Stadte in der DDR*) was passed in 1950, according to which it was possible for the state to take over private property in urban areas destroyed by the war, usually without adequate compensation[87].

[84] T. Mason, and N. Tiratsoo, "People, Politics and Planning: the Reconstruction of Coventry's City Centre, 1940-53", in: J. M. Diefendorf, ed., *Rebuilding Europe's Bombed Cities* (New York: St. Martin's Press, 1990, 1990), 104–107.

[85] T. Greene, "Politics and Planning for Reconstruction in Western Germany", *Urban Studies* 1 (1) (1964), 71–72.

[86] J. M. Diefendorf, "Reconstruction law and building law in post-war Germany", *Planning Perspectives* 1 (1986), 111.

[87] J. Paul, "Reconstruction of the City Centre of Dresden: Planning and Building during the 1950s", in: J. M. Diefendorf, ed., *Rebuilding Europe's Bombed Cities* (New York: St. Martin's Press, 1990), 174.

In cases where it was theoretically available, the former owners often did not receive it anyway, because the taxes and fees charged by the state for cleaning up the ruins exceeded its amount[88]. Another socialist country where expropriations were carried out for centrally planned reconstruction was Hungary[89].

Therefore, it turns out that expropriations were indeed part of the legal solutions created to facilitate postwar reconstruction in many European countries. The Decree on the Ownership and Use of Land in Warsaw was completely original only in the aspect that it applied to a single, selected city. Śpiewak's statement thus turns out to be true. Significantly, not all of these regulations were directed at the permanent deprivation of private property owners. Indemnification was also the rule (at least on the western side of the Iron Curtain), which in theory was also provided for by the Bierut Decree (in this respect, it was more similar to Western European solutions than, for example, to East German law). It was precisely the topicality of the problem of compensation payments that Śpiewak mentioned later in the cited interview. This indicates that the difference between the discussed act and parallel solutions introduced in the West after the war consisted not in the content of the provisions themselves but in the practice of applying the law. The next part of this chapter shall be devoted to an analysis.

Analysis of the reality of the application of the Bierut Decree should begin by noting one of the key circumstances – no ordinances were ever issued on the composition and procedure of the municipal estimating commission, nor on the rules on how to determine the compensation provided for by the decree. In practice, the absence of these executive acts ruled out the possibility of seeking compensation. The unrectified legislative omission

[88] Ibid., 191.

[89] E. C. Harrach, "The Reconstruction of the Buda Castle Hill after 1945", in: J. M. Diefendorf, ed., *Rebuilding Europe's Bombed Cities* (New York: St. Martin's Press, 1990), 158.

in this regard opened a discussion after 1989 on the continued validity of compensation claims under the Bierut Decree[90].

The "taking of possession" described in the analysed decree often did not involve an actual transfer of possession of the building in question to the City of Warsaw, in most cases the actual possession did not change, and therefore, the described measure created a kind of legal fiction[91]. After the new Ordinance on the Taking of Possession of Land by the Municipality of the City of Warsaw of 27 January 1948[92], came into effect, it was not necessary to announce the taking of land or to notify the previous owners of the inspection. According to the new regulations, the land was taken over by the municipality from the date of announcement of this fact in the official gazette. As noted by Łukasz Bernatowicz, "taking possession" became a technical term, having nothing in common with the understanding of the term in the doctrine of civil law[93]. Despite this, the actions of the People's Poland authorities led to a practical limitation of the application of Article 5 of the Bierut Decree, according to which buildings were to remain the property of those whose land had been acquired. First of all, numerous buildings did not remain in private hands because they simply ceased to exist. Artur Bojarski pointed out the practical consequences of Article 6, Section 2 of the Bierut Decree: "This set a precedent for, among other things, large-scale demolitions, as an appropriate document (piece of paper) from the BOS Building Inspectorate was sufficient to demolish a house [...] The owner of

[90] See: A. Hetko, *Dekret Warszawski. Wybrane aspekty systemowe* (2nd ed., Warszawa: Wydawnictwo C. H. Beck, 2012), 286–296.

[91] Hetko, *Dekret Warszawski. Wybrane aspekty prawne…*, 39.

[92] Rozporządzenie Ministra Odbudowy z dnia 27 stycznia 1948 r. wydane w porozumieniu z Ministrem Administracji Publicznej w sprawie obejmowania w posiadanie gruntów przez gminę m. st. Warszawy (Dz.U. 1948 nr 6 poz. 43).

[93] Ł. Bernatowicz, *Reprywatyzacja na przykładzie gruntów warszawskich* (Warszawa: LEX a Wolters Kluwer business, 2015), 142.

a downtown house could expect a raid by the Building Inspectorate at any time ordering the partial or complete demolition of the house because of a threat to public safety, for instance"[94].

Secondly, the very interpretation of the term "building" as used in Article 5 of the discussed act was restrictive. In the provisions of the *Decree on Ownership and Use of Land in Warsaw* was no legal definition of this term. As a result, there was a need to apply subsidiarily an adequate definition from another part of the legal system. The administrative authorities referred to Article 2 of the Law on the Promotion of Construction[95], according to which buildings destroyed by more than 66% were considered new buildings. As a result, more serious damage to the building resulted in deprivation of the owner's rights to it[96]. This interpretation was chosen despite the existence of the already-discussed Decree on Demolition and Repair of Buildings Destroyed and Damaged by War, issued on exactly the same day as the Bierut Decree and remaining in closer connection with it. It should be recalled that according to its Article 1, Section 3, a destroyed building was "a building, due to warfare or the destructive activities of the occupying forces, in such a condition that, according to the judgment of the building authority, it should be demolished". Taking this provision into account, any building whose demolition was not necessary had to be a *contrario* considered a building listed in Article 5 of the Bierut Decree and remained private property. The choice of a less adequate definition, but one that narrowed the scope of property excluded from communalisation, was in line with the general policy of

[94] A. Bojarski, *Z kilofem na kariatydę. Jak nie odbudowano Warszawy* (Warszawa: Wydawnictwo "Książka i Wiedza", 2013), 47.

[95] Ustawa z dnia 3 lipca 1947 r. o popieraniu budownictwa (Dz.U. 1947 nr 52, poz. 270).

[96] I. Orłowska, "Odrębna własność budynków pod warunkami art. 5 Dekretu Warszawskiego", *Nieruchomości* 1 (2007), 5.

applying the provisions of the discussed decree in such a way that limited the rights of prewar owners as much as possible[97].

It was also made difficult to obtain perpetual usufruct on the seized land. The authorities uniformly refused to accept applications in this regard, citing the necessity of relevant land for public purposes[98]. The justifications were laconic (sometimes limited to stating that "the use of the land by the existing owner is incompatible with the plan" or "the land is intended for cooperative residential development"), sometimes the refusals were not justified at all[99]. Proceedings were not conducted efficiently or quickly. Negative decisions were issued as late as the 1970s, and many applications remain unanswered to this day (in 2017, I. Szpala and M. Zubik wrote that 17,000 are still waiting to be processed in the administration offices[100]).

The particularly morally questionable practice of the Warsaw authorities involved encouraging existing owners to quickly rebuild damaged buildings by promising to establish temporary ownership at a later date. The legal tool used for this purpose were the "promises", by which the President of the City of Warsaw pledged to establish temporary ownership of the land on the condition that the building would be rebuilt and put to use by a certain date. The time allotted for the work was usually too short, especially in the context of the difficult access to building materials in the first postwar years. Failure to meet the obligation to reconstruct the building within the prescribed period resulted in a refusal to

[97] Hetko, *Dekret Warszawski. Wybrane aspekty systemowe…*, 122.

[98] E. Stefańska, "Decyzje o odmowie przyznania własności czasowej nieruchomości w trybie dekretu warszawskiego jako przykład w funkcjonowaniu administracji", P. J. Suwaj, D. R. Kijowski, ed., *Patologie w administracji publicznej* (Warszawa: Oficyna a Wolters Kluwer business, 2009), 367.

[99] Hetko, *Dekret Warszawski. Wybrane aspekty prawne…*, 47.

[100] I. Szpala, M. Zubik, *Święte prawo. Historie ludzi i kamienic z reprywatyzacją w tle* (Warszawa: Wydawnictwo Agora, 2017), 45.

establish temporary ownership. As a rule, requests for its extension were denied. However, there were cases in which the deadline was extended, the recipient of the promise fulfilled her or his responsibility to rebuild the house, and the establishment of temporary ownership was refused anyway[101]. Moreover, the very institution of the promise to establish temporary ownership had a dubious legal basis as having no grounds in the decree[102].

The establishment of perpetual leases was also denied in almost all cases of properties on which "reconstruction" contracts were concluded. These were usually signed between the former owner of the property and state-owned enterprises or chambers of industry and commerce. Under such agreements, these legal entities promised to rebuild the property, and in return, could use it free of charge for 10 years. The owner of the seized land hoped that the facility would remain her or his property and that he would be able to use it at the end of the contract period. However, due to negative decisions on the subject of the perpetual lease, it did not happen[103].

The extremely unfavourable practice of applying the Bierut Decree (very low number of positive decisions in proceedings on applications for perpetual lease or the right to build) and the legislative omission of an executive ordinance regulating compensation meant that, in practice, owners of seized land were expropriated without compensation[104]. Thus, the discussed legislation has become

[101] I. Orłowska, "Nieruchomości warszawskie – skutki wprowadzenie Dekretu z 26.10.1945 r.", *Nieruchomości* 7 (2006), 10.

[102] Hetko*, Dekret Warszawski. Wybrane aspekty prawne…*, 47. A different position is expressed by Z. Strus, who believes that such a basis was sufficient for issuing promises as obligations of a public authority to perform actions within the limits of its competence: Z. Strus, "Grunty Warszawskie", *Przegląd Sądowy* 10 (2007), 10.

[103] I. Orłowska, "Nieruchomości warszawskie – skutki wprowadzenie Dekretu z 26.10.1945 r.", 10.

[104] Białogłowski, and Dybka, op. cit., 155.

a tool for changing not only property relations in terms of real estate, but more generally – property relations in society.

The way the Bierut Decree functioned in social and economic reality depended not only on the administrative practice of applying its provisions, but also on related subsequent legislative activity of the People's Poland authorities. The longevity of matters related to its implementation can be seen in the content of legal acts that were still coming into force many years after its issuance. The situation of those still awaiting a decision on the granting of temporary ownership was changed by the 1958 Law on the Principles and Procedure for Expropriation of Real Property[105] (in this chapter also: the 1958 Law). Its Article 51, Section 1 allowed for termination of proceedings by refusal also in cases where the prerequisites of Article 7, Section 2 of the Decree were not met. It was sufficient that the allotment in question was needed for the purposes specified in Article 3 of that law. It stipulated that expropriation was permissible when the property was needed for the purposes of public utility, state defence, and for the implementation of tasks specified in approved economic plans (Article 3, Section 1), and, in the urban area, also "for the planned implementation of city-wide construction and organised housing on [its] territory" (Article 3, Section 2). Therefore, the range of circumstances allowing the denial of temporary ownership became much broader than originally provided for in Article 7, Section 2 of the Bierut Decree, according to which the issuance of a negative decision was possible only if the use of the land by the previous owner could not be reconciled with its use according to the development plan. The 1961 amendment[106] further

[105] Ustawa z dnia 12 marca 1958 r. o zasadach i trybie wywłaszczania nieruchomości (Dz.U. 1958 nr 17, poz. 70).

[106] Ustawa z dnia 31 stycznia 1961 r. o zmianie ustawy z dnia 12 marca 1958 r. o zasadach i trybie wywłaszczania nieruchomości (Dz.U. 1961 nr 5, poz. 32).

added Article 3, Section 3, on the basis of which expropriation, and therefore, the denial of temporary ownership was possible for the needs of cooperative organisations (without limitation to housing cooperatives) and farmer's circles associations.

Moreover, Article 51, Section 2 of the 1958 Law stipulated that the provision of Article 51, Section 1 also applied to cases where the denial of temporary ownership under the Bierut Decree occurred prior to the entry into force of this law. Thus, the legislature decided to sanitise erroneous administrative decisions that unlawfully denied expropriated owners their rights. As a result, the law not only worsened the situation of prewar owners of real estate in Warsaw, but was also contrary to the principle of non-retroactivity of the law[107]. It should also be borne in mind that the compensation specified in the second chapter of the 1958 Law was available only to owners expropriated as part of proceedings initiated under this act. For those whose properties were seized under the Bierut Decree, the new regulation brought only additional grounds for rejecting their applications for temporary ownership. They could still apply for compensation only on the basis of the previous rules. Thus, their situation only deteriorated. The Bierut Decree was even referred to by the Law on Land Management and Expropriation of Real Estate, which was passed four decades after its issuance[108]. According to its Article 89, Section 1 claims for compensation for land and buildings seized under the act (deriving respectively from its Article 7, Sections 4 and 5, and Article 8) were to expire[109].

[107] Hetko, *Dekret Warszawski. Wybrane aspekty prawne…*, 49.

[108] Ustawa z dnia 29 kwietnia 1985 r. o gospodarce gruntami i wywłaszczaniu nieruchomości (Dz.U. 1985 nr 22, poz. 99).

[109] Currently, there are disputes over the legal effect of this provision. According to one view, the extinguishment of claims could not apply to properties on which an application for the right to build or perpetual lease was filed but not processed, see: Hetko, *Dekret Warszawski. Wybrane aspekty systemowe…*, 139–142; Strus, op. cit., 17; according to another view, all claims have been extinguished, see: Białogłowski, and Dybka, op. cit., 158.

An analysis of the Bierut Decree makes it possible to identify two types of objectives that the People's Poland authorities pursued with this legal act. On the one hand, the genesis of the solutions contained therein and the very content of the legal act reveal its declared goals – to make the reconstruction of the Polish capital possible, or alternatively to redevelop it in order to ensure a better standard of living for its residents. However, on the other hand, the practice of applying the Bierut Decree, as well as the legislative activity associated with it, disclose its hidden goals. The expansion of the grounds for denying temporary ownership in 1958 shows that, in reality the discussed act was not treated as a temporary solution, closely related to the enormity of the postwar destruction. The attempt to extinguish compensation claims under the Bierut Decree in 1985 provided evidence that the long-term goal of the legislature was a general change in capital relations beyond the real estate area through expropriation without compensation, and not the expropriation of land itself. Indeed, this was a continuation of a trend started at the very beginning of the decree's existence through the legislative omission to issue an executive ordinance that was supposed to regulate the payment of compensation for seized land and buildings. Further evidence of this hidden purpose of the Bierut Decree was the limitation of the number of buildings that could remain in the hands of private owners based on its provisions (through a narrowing definition of a building and because of numerous demolition orders), and the manner in which applications for the establishment of temporary ownership or the right to build were handled by leaving them unanswered at all or by issuing refusals, with inadequate justification or no justification at all, including situations in which the authorities had previously somehow promised to consider the case favourably.

In summary, the Decree on the Ownership and Use of Land in Warsaw was based on solutions proposed before 1939 in Western

Europe. In its wording, it was also no more radical than some of the solutions introduced after the war. Its declared goals were not unique to socialism. However, the partial practice of its application (covering communalisation but not the establishment of temporary ownership or the payment of compensation) made the act an instrument for implementing the goals of People's Poland's political ideology related to a radical change in property relations.

2.5. Other legislation related to the reconstruction of People's Poland after World War II

In addition to the regulations discussed above, several other pieces of legislation related directly to the repair of postwar damage in the early years of People's Poland were also issued. Two groups of such regulations will be discussed below. The first includes regulations imposing on particular groups of people various duties related to the performance of work for the reconstruction of the country. The second group includes regulations encouraging projects to improve the condition of Poland's housing stock, other than the Decree on Demolition and Repair of Buildings Destroyed and Damaged by War analysed in a previous section.

At the beginning of 1946, a Decree on Registration and Obligation to Work[110], was issued, in whose preamble it was declared that due to the necessity of "hard and fruitful work for the general public" resulting from the "unprecedented devastation of the Country and population by the Nazi invaders and the shifting of national borders" the Polish state would not tolerate "avoiding socially useful work". According to its Section 1, Polish citizens and stateless persons residing in Poland between the ages of 18

[110] Dekret z dnia 8 stycznia 1946 r. o rejestracji i o obowiązku pracy (Dz.U. 1946 nr 3, poz. 24).

and 45 (women) or 55 (men) were required to register with employment offices, failure to do so was punishable by up to three months' imprisonment or a PLN 3,000 fine (Article 8, Section 1). These institutions could appoint registrants to work for a maximum of two years "in accordance with their qualifications" but "in all branches and types of work", in a place that did not have to be related to the person's previous place of residence (Article 4).

There were several *leges speciales* to the Decree on Registration and Obligation to Work. Also in their scope, it is possible to speak of the work for the reconstruction of the country in the figurative sense (at the institutional level) and the physical repair of material damage. Reconstruction in the former sense – in the area of the judiciary – was to be improved by the Decree on the Registration and Compulsory Employment in the Judiciary of Persons Qualified to Become Judges[111]. The regulations of the Decree on the Registration and Forced Employment of Professional Technical Forces in the Area of Construction for National Reconstruction[112] are more closely related to the subject of this book. It applied to architectural engineers, road, and bridge engineers, civil engineers, and other engineers with at least three years' experience in construction, as well as construction and installation technicians, and foremen (Article 2). They were exempted from the responsibilities specified in the Decree on Registration and Obligation to Work (Article 8). At the same time, they were required, regardless of age, to register with the district general administration authority (Article 1, Section 1). Those who failed to do so faced a penalty of three months' imprisonment or a PLN

[111] Dekret z dnia 22 lutego 1946 r. o rejestracji i przymusowym zatrudnieniu we władzach wymiaru sprawiedliwości osób, mających kwalifikacje do objęcia stanowiska sędziowskiego (Dz.U. 1946 nr 9, poz. 65).

[112] Dekret z dnia 5 września 1946 r. o rejestracji i przymusowym zatrudnieniu fachowych sił technicznych z dziedziny budownictwa na rzecz odbudowy kraju (Dz.U. 1946 nr 47, poz. 266).

30,000 fine (Article 10, Section 1). The authorities could appoint registered specialists for forced labour "in the area of construction for national reconstruction" for a maximum of two years (Article 6 Section 1). Those who had reached the age of 60 could not be appointed (Article 6, Section 2). A professional covered by the analysed decree had the right to choose his place of work from among several localities indicated by the authorities (Article 7).

The differences between forced labour under general rules (Decree on Registration and Obligation to Work) and under the Decree on Registration and Forced Employment of Professional Technical Forces in the Area of Construction for National Reconstruction were thus as follows: professional technical forces were obliged to register with general administration offices, not employment offices; there was no upper age limit in their case, beyond which the obligation to register ceased (there was, however, a maximum age at which it was possible to be appointed, but it was as high as 60); the Minister of Reconstruction, not the Minister of Labour and Social Welfare, was authorised to determine the details of fulfilment of the decreed responsibility; the maximum duration of forced labour was the same but builders were guaranteed employment in their industry; the ability to choose the locality of employment from among several proposals was guaranteed as a right of the person called up to work away from home.

The dissimilarities between the two described regimes of forced labour are evident in the unique importance of the construction industry, which came out of the need to repair wartime damage – manifested, among other things, in the keeping of separate registers of professionals in this industry and placing them at the disposal of the local authorities directly, without the intermediation of employment offices. The higher age limit at which forced labour could be called up, on the one hand, may be related to the fact that the Decree on the Registration and

Forced Employment of Professional Technical Forces in the Area of Construction concerned technical intelligentsia, whose typical responsibilities are of a nature that does not require as much health and strength as, e.g., in the case of blue-collar workers; but on the other hand, it may come out of great demands, and therefore the need to maximise the use of human resources. The fact that builders were particularly valuable to the People's Poland authorities may also be evidenced by the fine threatened for failure to comply with the responsibility to register, the amount of which was ten times the financial penalty for failure to register those covered by the obligation under general rules. In addition, it can be considered that the situation of professionals in the area of construction was slightly better than those appointed under the general rules (guarantees of work in their own industry and the ability to choose the place of employment), which may come out of the special importance of this professional group for the authorities of People's Poland.

An act that imposed on a certain category of people the obligation to perform work related to postwar reconstruction but not involving permanent employment was the Law on Neighbourhood Assistance for the Reconstruction of the Countryside[113]. Its Article 1, Section 1 imposed the obligation of such assistance, defined in Section 2 as the provision of horses with harness and attendants, carts or trucks to transport construction materials, machinery, tools, and equipment needed for construction, and the transportation of the workers employed in the construction. Rural reconstruction was considered not only reconstruction and repair but also construction and redevelopment of housing as well as farm buildings in rural communities (Article 1, Section 1 of the discussed law). Holders of farms with the above-mentioned

[113] Ustawa z dnia 18 listopada 1948 r. o pomocy sąsiedzkiej przy odbudowie wsi (Dz.U. 1948 nr 58, poz. 461).

means of transportation were obligated to provide the services specified in the law (Article 3, Section 1). This responsibility could be narrowed to include certain categories of farm holders (Section 2, Article 3) or expanded to include owners of means of transportation residing in certain towns (Article 3, Section 4) by ordinance of the Minister of Reconstruction. The latter exercised both options[114], excluding under certain conditions from this obligation such as war invalids, widows, and orphans as well as persons who may have been otherwise particularly useful in the reconstruction of the countryside: construction instructors, agricultural instructors, and veterinary specialists. The amount of mandatory services could not exceed 14 days per year, counting together with the time of services specified in the Decree on Neighbourhood Assistance in Agriculture[115] (Article 5, Section 1). Among those eligible to receive neighbourly assistance for village reconstruction were owners of farms that had no housing or farm buildings, or the existing buildings were damaged (Article 6, Section 1), who did not have the means of transportation necessary to transport construction materials and hired workers (Article 6, Section 2). Priority in granting necessary assistance was to be given to those who had received farms under the land reform

[114] Rozporządzenie Ministra Odbudowy z dnia 13 kwietnia 1949 r. w sprawie wykonania ustawy o pomocy sąsiedzkiej przy odbudowie wsi (Dz.U. 1949 nr 23, poz. 157).

[115] Dekret z dnia 12 września 1947 r. o pomocy sąsiedzkiej w rolnictwie (Dz.U. 1947 nr 59, poz. 320). It imposed a responsibility on the owners of draft power and agricultural machinery to assist the owners of farms not equipped with these tools. This act is not directly related to the reconstruction of the destruction (as evidenced by the fact that the Ministers of Agriculture and Agrarian Reform, Public Administration, Recovered Territories and Justice were responsible for its implementation but the Minister of Reconstruction was not). However, the hardship of the first postwar years is evident in its content. The absence of draught power – the farmer's primary tool – on the farm is, by all accounts, an extraordinary and extremely difficult situation.

(Article 7, Section 3). The services were compulsory but paid for (Article 15, Section 1). Their cost was borne by the beneficiary (Article 15, Section 2). The amount of fees was set by county authorities in accordance with the rules established in an ordinance issued by the Minister of Reconstruction (Article 15, Section 3, in conjunction with Article 17). Interestingly, as a general rule, services were provided at the request of an eligible person (Article 8, Section 1) but the county architect could, on her or his own initiative, apply for services to those she or he designated. Therefore, it was theoretically possible that a person did not ask for assistance but received it by allocation and had to pay for it. Therefore, also this example shows that the authorities of People's Poland prioritised the effective reconstruction and development of the country, rather than the freedom of choice of individuals.

The temporary nature of the discussed regulation came out directly from Article 22, Section 1, which stated that the law was to remain in force until 31 December 1949, i.e., for a little over a year, unless the Council of Ministers exercised the power to extend the law for a period of three years contained in Article 22, Section 2. The authorities decided to take such action and, by an ordinance[116] dated 3 March 1950, extended the validity of the discussed act until the end of 1952. It documents the attitude of People's Poland's authorities toward the legal system at the time: besides the fact that its § 3 established the validity of the ordinance retroactively, i.e., from 1 January 1950, the very legal basis for its issuance is questionable, and on several levels.

First, the mere fact that the validity of an act of statutory rank depends on an ordinance of the Council of Ministers may be doubtful. Pursuant to Article 19 of what is called "Little

[116] Rozporządzenie Rady Ministrów z dnia 3 marca 1950 r. w sprawie przedłużenia mocy obowiązującej ustawy o pomocy sąsiedzkiej przy odbudowie wsi (Dz.U. 1950 nr 9, poz. 90).

Constitution"[117] at the time of the passage of the discussed law, Article 44 of the Constitution of March 17, 1921[118] applied in effect *mutatis mutandis* to the Council of Ministers and the ministers themselves. It stated that ministers had the right to issue executive ordinances to implement laws and with reference to legislative delegation. It is, therefore, worth recalling Rozmaryn's considerations on the executive-only nature of ordinances (though these were based on the content of the 1952 Constitution of the People's Republic of Poland.[119], the powers of the Council of Ministers and Ministers to issue ordinances were formulated there very similarly to those of the March Constitution, to which the Small Constitution referred; moreover, Rozmaryn wrote in the same ideological context of People's Poland):

> On the other hand, it is necessary to object to the phrase about "statutory delegation" (or "legislative delegation") often encountered in colloquial usage (but not in the legal documents). This is because the Polish constitutional system does not know of any transfer of the right to execute laws to other organs, and in particular to government administrative bodies. The parliament cannot do so in a statute, and it never does so either[120].

Rozmaryn explicitly stated that it was not possible to authorise the Council of Ministers to issue a new law. However, the question was whether the decision to extend the law was so different

[117] Ustawa Konstytucyjna z dnia 19 lutego 1947 r. o ustroju i zakresie działania najwyższych organów Rzeczypospolitej Polskiej (Dz.U. 1947 nr 18, poz. 71).

[118] Ustawa z dnia 17 marca 1921 r. – Konstytucja Rzeczypospolitej Polskiej (Dz.U. 1921 nr 44, poz. 267).

[119] Article 32 point 8 and article 33 section of the 1952 Constitution.

[120] S. Rozmaryn, *Ustawa w Polskiej Rzeczypospolitej Ludowej* (Warszawa: Państwowe Wydawnictwo Naukowe, 1964), 215.

in its essence from the decision to enact a completely new law that the authority to undertake the former – as opposed to the latter – could have been transferred by the Parliament to another body. In the opinion of the author of this book, there are serious doubts about this.

Second, the ordinance was not issued until 3 March 1950, on the basis of Article 22, Section 2 of the Law on Neighbourhood Assistance for Reconstruction of the Countryside, which, according to Section 1 of the same article, expired at the end of the previous year. Therefore, even if the legislative delegation to issue an ordinance on such a subject was considered possible, it no longer existed in March 1950. So the act of the Council of Ministers was issued without a legal basis. Finally, even if the statutory authorisation in this regard could be considered possible and existed when the ordinance was issued, it is still likely that it was exceeded. It depends on the interpretation of the term "for a period of three years" in Article 22, Section 2 of the Law on Neighbourhood Assistance for the Reconstruction of the Countryside. The ambiguity of the wording used makes it possible to consider either that it is the total period of applicability of the law (from the original date of its entry into force), or that the three years should be counted from the moment of its extension. If the first of the possible interpretations was adopted, the period of three years for which the act could be extended expired on 31 December 1951, and not on 31 December 1952. It is worth noting that the Decree on Neighbourhood Assistance in Agriculture of 1947, so issued earlier, had a similar solution but the wording used in it was more precisely defined and did not leave analogous doubts in its interpretation: "The Council of Ministers may, by ordinance, extend the validity of this decree for a further three years".

The first issue depends on adopting a particular interpretation of the constitutional norms on sources of law in effect at the time. As for the second issue, the results of interpreting the

ambiguous wording used in the Neighbourhood Assistance for Rural Reconstruction Law under review will be crucial. As for the third issue, on the other hand, there is no doubt that even with the adoption of a stance favourable to the authorities of the People's Poland in previous cases, it turns out that the discussed ordinance was issued in the absence of legislative delegation. Such a situation is part of a picture in which the law is a tool and not the basis for the actions of the state authorities. The realisation of particular political goals, for which the continued use of the law was required, turned out to be more important than the absence of a formal basis for its extension.

Regulations designed to ensure an adequate number of hands to work on repairing postwar damage also included the Decree on Concessionary Granting of Construction Authorisations in Exceptional Cases[121], which shall be discussed in the chapter on construction law, as well as the decree already analysed above establishing the obligation to perform certain works for the reconstruction of Warsaw.

The last group of regulations related to postwar reconstruction worth examining includes solutions intended to encourage private individuals to undertake projects to rebuild Poland's housing stock – in the broad sense of the term, i.e., not only the repair and reconstruction of damaged, and destroyed buildings but also the erection of entirely new objects. Among such acts there was the 1947 Law on the Promotion of Construction[122].

Its purpose was to direct private capital to socially and economically purposeful investments related to housing (Article 1). According to Article 2, Section 1, the state supported the sector by providing land and material assistance, exempting newly

[121] Dekret z dnia 27 marca 1947 r. o ulgowym nadawaniu uprawnień budowlanych w wyjątkowych przypadkach (Dz.U. 1947 nr 31, poz. 132).

[122] Ustawa z dnia 3 lipca 1947 r. o popieraniu budownictwa (Dz.U. 1947 nr 52, poz. 270).

constructed structures from public management of dwellings and rent control regulations, and granting relief from public tributes. What is particularly important from the perspective of this analysis is that it was assumed that the repair of structures damaged was more than 66%, and more than 33% in the Recovered Territories which would also be considered new construction (Article 2, Section 2). Carrying out such an investment entailed exemption from a number of public tributes: real estate tax (Article 7, Section 1); tax on dwellings located in the building covered by the concessions, provided that the dwellings were occupied by the people who bore the cost of their construction (Article 8); and income tax on rental income from dwellings located in the building covered by the concessions (Article 9). All of these privileges were effective for 5 years. In addition, newly erected buildings (and renovated structures recognised as such) were exempt from the provisions of the Decree on Public Management of Dwellings and Tenancy Control (Article 6).

However, it should be noted that all of these concessions did not apply to buildings in which there was at least one dwelling unit which had a floor area of more than 80 sqm (Article 17, Section 1), and if regulations were set for the minimum number of residents per dwelling unit or per chamber, the exemption from these provisions applied to 80 sqm (Article 17, Section 2). Thus, in practice, the provisions of the discussed law were not as favourable as they might seem at first glance.

Tax solutions favourable to those pursuing construction projects were also included in the Law on Investment Relief, also dating back to 1947[123]. According to its provisions, the reconstruction, redevelopment or construction of real estate (as one of the categories of investments listed in Article 3) entailed certain

[123] Ustawa z dnia 2 czerwca 1947 r. o ulgach inwestycyjnych (Dz.U. 1947 nr 43, poz. 221).

privileges. According to Article 2, Section 1, the tax authority did not investigate the origin of funds spent on a project of this type. They were also exempt from income tax as well as the War Enrichment Extraordinary Tax[124].

2.6. People's Poland's legal regulations related to the reconstruction of postwar destruction – a summary and attempt at evaluation

On 27 April 1949, the office of Minister of Construction was established. According to Article 2 of the law[125], which gave it a legal basis, its scope of activity included all matters of construction (excluding special construction) and matters of planning and carrying out the development of cities and settlements as well as construction and architectural supervision. At the same time, the office of the Minister of Reconstruction was dissolved (Article 6). This day can perhaps be considered the symbolic end of a period in which the removal of war damage was the main task of People's Poland's authorities, especially in the areas of construction and spatial planning. Another office established specifically to deal with problems specific to postwar Poland – the Ministry of Recovered Territories – had also been liquidated a few months earlier[126]. The formative stage of the new state thus ended on various fronts.

[124] It was a tribute introduced by the Decree of 13 April 1945 on Extraordinary War Enrichment Tax (Dekret z dnia 13 kwietnia 1945 r. o nadzwyczajnym podatku od wzbogacenia wojennego, Dz.U. 1945 nr 13, poz. 72). According to Article 4 Section 1 of this Decree, it was imposed on the surplus value of property created during the period between 31 August 1939 and 30 June 1945.

[125] Ustawa z dnia 27 kwietnia 1949 r. o utworzeniu urzędu Ministra Budownictwa (Dz.U. 1949 nr 30, poz. 216).

[126] Article 1 of the Law of 11 January 1949 on the Integration of the Management of the Recovered Territories with the General State

Naturally, some processes continued for some (sometimes long) time. In People's Poland's space, this was evident in the unreconstructed buildings, and in its legal system, e.g., in the continued existence of the Office of Reconstruction of the Capital, which, as an organ of the new Ministry of Construction, continued to be in charge of planning the development of Warsaw and the Warsaw Urban Complex, although its other previous tasks were passed to the jurisdiction of the State Economic Planning Commission (Article 5, Section 3). The transformations in the organisation of People's Poland's authorities must be followed by the course of this analysis, so the next chapter will be devoted to construction law, although the special provisions for reconstruction still require summary and evaluation.

Bohdan Domosławski, in his book *Organizacja i wyniki odbudowy w latach 1944–1948* ("Organisation and Results of Reconstruction in 1944–1948"), published in 1967, wrote the following about the special legal regulations on postwar reconstruction:

> this legislation dates largely from the period when the social and economic upheaval proclaimed in the July Manifesto of 1944 was seeking a place in the given arrangement of legal relations. Therefore, it has the features of partiality at times, not always finding the best, quite radical and fundamental solutions but always striving to link the right idea with the real conditions of life at the time[127].

From the perspective of mature state socialism, the legal solutions adopted in the early years of People's Poland must have seemed like a compromise. The provisions for the demolition and repair of damaged and destroyed buildings not only provided

Administration (Ustawa z dnia 11 stycznia 1949 r. o scaleniu zarządu Ziem Odzyskanych z ogólną administracją państwową, Dz.U. 1949 nr 4, poz. 22).

[127] Domosławski, op. cit., 152.

for the state or other institutions to take over individual buildings for time-limited use, instead of expropriation but also announced incentives for private owners rebuilding their properties. The Bierut Decree declared compensation payments and other instruments that made it not drastically different from the solutions used in some countries on the western side of the Iron Curtain. Tax breaks and exemptions from state housing management were other instruments targeted at private owners and investors. It is evident in all these laws that they did not ultimately implement the ideology of state socialism to the same extent as later legal solutions.

Two reasons for such a situation can be identified. First, the state of the Polish economy and especially the housing substance after World War II was extremely unsatisfactory indeed. Solving the most pressing problems in this area had to be a priority for any government, regardless of the ideology it would follow and the political system it would like to create. Therefore, it is understandable to set aside certain issues and introduce such legislation that would be effective in the first place. Secondly, the political system of People's Poland was in transition at the time. This is evidenced, e.g., by the later attitude of the People's Poland authorities to the laws issued in those years. Many of the instruments indicated in the various Decrees remained defunct. No implementing acts were issued for the Bierut Decree, which would have made it possible to obtain compensation for seized properties. The approach to these regulations is also evidenced by the manner in which administrative proceedings in Warsaw land cases were handled. There was also no ordinance through which the promised financial assistance to investors renovating their properties could be launched.

Two distinct issues are also evident in the provisions for organising the reconstruction of Warsaw. First, this task was also difficult, urgent, and crucial, as it involved one of the most devastated

cities across Europe. Therefore, regulations of this type would not be surprising in any political system. Second, the reconstruction of the capital had a very high propaganda significance, which is evident in the personal involvement of People's Poland's top leadership in coordinating the work, among other things.

The period of postwar reconstruction was a special time, accompanied by special legal solutions, but the beginning of certain processes can already be seen in their content. The legal system's reflection of the further evolution of People's Poland's political system and, above all, the degree to which its political ideology was implemented shall be analysed in the subsequent chapters.

3
Construction Law

The law analysed in the previous chapter was created because of the emergency situation caused by the enormous damage to the country's spatial fabric sustained during World War II, and its assumptions were to repair it as efficiently as possible. It was, therefore, temporary in its nature. As has been shown, in this legislation, ideological goals were intertwined with the real socio-economic problems that any government would have faced, regardless of its political orientation.

In the next step, it is worth examining how political ideology infiltrated those areas of regulation related to spatial development that are permanently embedded in the legal systems not only of People's Poland but also of prewar and post-1989 Poland as well as of all other countries, regardless of their political systems. The first to be analysed will be construction law, i.e., laws regulating spatial development at the "micro scale", at the level of individual buildings. Nowadays, construction law is defined as the entire body of legal norms regulating the con-

struction process[1], namely, as provisions aimed at "regulating the construction process, understood as a legally defined activity, including matters of design, construction, maintenance, and demolition of buildings as well as the rules of operation of public administration bodies in these areas"[2].

In accordance with the convention adopted here, construction law shall be analysed precisely within such contemporary boundaries, even though much broader definitions also appeared in the literature of the People's Poland. In 1955, Wacław Brzeziński wrote not only that "construction law includes norms regulating the planning and implementation of investments in the field of construction as well as norms concerning spatial planning in the field of construction"[3] but also that

> The construction law of the People's Poland – is a law of a new type, which, in the hands of the state is a means of consolidating and organising new socialist economic and social relations, a law socialist in content and form, because it captures in legal form the new socialist modes of production in the field of construction[4],

and its main purpose was to "regulate the activities of units of the socialised economy in carrying out the construction tasks imposed on them"[5]. Therefore, Brzeziński included in the scope of the construction law, understood in this way, the provisions of economic planning (which are outside the scope of this study).

[1] M. Błażewski, "Prawo budowlane", in: M. Miemiec, ed., *Materialne prawo administracyjne* (Warszawa: Wolters Kluwer Polska, 2013), 238.

[2] R. Lewicka, "Wolność budowlana i jej ograniczenia", in: Z. Duniewska, and B. Jaworska-Dębska, and M. Stahl, eds., *Prawo administracyjne materialne. Pojęcia, instytucje, zasady* (Warszawa: Wolters Kluwer, 2014), 549.

[3] W. Brzeziński, *Polskie prawo budowlane* (Warszawa: Wydawnictwo Prawnicze, 1955), 38.

[4] Ibid., 37.

[5] Ibid.

3.1. Development of construction law before World War II

Nevertheless, the aforementioned "construction law of the People's Poland" was not the first set of regulations of socio-economic activity related to the erection of buildings on Polish soil. The first legislation on this matter dates back to medieval Kraków[6]. Regulations dedicated to the institution known then as construction policy developed in the 19th century, at first, in Prussia[7]. Later, similar solutions also appeared in other Partitions, so they were present in all Polish territories[8]. These varying regulations were in force in various areas of the Second Republic after the restoration of independence in 1918[9]. Legal discrepancies expressed differences in the building culture of the former partitions[10]. The introduction of uniform regulations was seen as an urgent task but not an easy one[11]. However, the Ordinance of the President of the Republic on the Construction Law and Development of Settlements[12] (hereinafter: 1928 Ordinance) was successfully completed in 1928.

[6] J. Wyrozumski, "U początków prawa budowlanego w Polsce", *Przegląd Historyczny* 75/3 (1984), 546.

[7] S. Zwolak, "Policja budowlana w ujęciu historycznym", *Przegląd Prawno-Ekonomiczny* 23 (2013), 24.

[8] Ibid., 26–27.

[9] S. Jędrzejewski, *Proces budowlany. Zagadnienia administracyjnoprawne* (Bydgoszcz: Oficyna Wydawnicza "Branta", 1995), 11.

[10] L. Bar, *Podstawowe zasady prawa budowlanego* (Warszawa: ZPP, 1961), 7.

[11] S. Jędrzejewski, *Prawo budowlane. Wydanie II poprawione i uzupełnione* (Toruń: UMK, 1981), 39.

[12] Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 lutego 1928 r. o prawie budowlanem i zabudowaniu osiedli (Dz.U. 1928 nr 23, poz. 202).

It was a very comprehensive act, including not only regulations on construction law but also on parcelling and consolidation of land or spatial planning law (see: chapter 3.2). From the perspective of this analysis, the important piece is the second part, entitled "Police and Construction Regulations". It contains a great deal of detailed provisions governing the erection of various types of buildings. Standards for urban municipalities (and certain resorts) and rural settlements are set separately.

Rules were established that buildings erected in cities, generally, should not be taller than 22 meters (Article 181), however, in certain situations the maximum height was even lower – on the street side it should not exceed the width of the street (Article 182), and on the yard side it should not be more than one and a half times the distance from the border of the plot or the opposite wall (Article 183). However, separate regulations are provided for many special cases and exceptions. For example, according to Article 186 of the analysed regulation, the competent authorities could allow for the height to be exceeded in justified cases, and in particular, when the planned building could contribute to the beautification of a street or square. Thus, thanks to such undefined prerequisites, a considerable amount of discretion was left to administrative authorities despite the specificity of the regulations (which defined, among other things, the minimum height above the sidewalk at which balconies could be built – Article 187).

It also classified buildings into fireproof and non-fireproof, depending on the materials used for walls and roofing (Article 188). According to Article 189, the erection of the latter was forbidden unless expressly provided otherwise by local regulations (note that this is still a matter of regulation of buildings in cities), while the use of non-fireproof roofing – except for a possible five-year transition period – was completely prohibited (Article 190). Structures designated as non-fireproof were

also subject to additional restrictions in terms of their distance from the border of the plot and other structures (Article 193) and the number of stories (Article 194). Even the erection of fireproof buildings required the use of what was called fireproof walls, i.e., sufficiently thick walls without any openings, if they were to be located on the very border of the plot (Article 196). Such fireproof walls also had to be inside buildings of particularly large size (Article 199). Therefore, the legislature devoted an exceptional amount of attention to fire safety issues, which should not be surprising, since the fire safety regulations were the very ones from which the history of the construction policy, and so, the construction law, began[13].

The analysed Ordinance also included standards for particular elements of buildings erected in cities: foundations and walls (with regard to their insulation from moisture – Article 206), stairs (the width and height of steps – Article 210), skylights or stoves and chimneys (their minimum cross-sections – Article 234). Minimum standards have been imposed for premises intended for human habitation, such as their lighting (Article 241) or height (Article 242). The rules applying to wells and toilets were also formulated. Finally, several provisions were included to regulate aesthetics: front facades were supposed not to disfigure the surroundings (Article 262), buildings were not to be painted in flashy or glaring colours (Article 263).

Plots of land in cities, as a general rule, could not be built up to more than 75% of their size (Article 176). Development of landslide, swampy, and polluted areas was prohibited (Article 175). Requirements were also set for public spaces: streets should have had a durable surface, drainage and sidewalks (Article 172). Care had to be taken, as far as possible, to provide trees for streets and squares (Article 173).

[13] Zwolak, op. cit., 24.

Separate regulations for rural municipalities took into account the specific characteristics of such areas, and thus, differed sharply from regulations for buildings erected in cities. For example, it was considered unnecessary to regulate the maximum height of buildings. Instead, their distance from public roads was determined (Article 265), access of residential buildings to roads was ensured (Article 267), and the minimum size of a yard was specified (Article 269).

Likewise, much attention was paid to fire safety in rural areas. However, the standards set were more liberal than those for buildings in cities. For example, in rural communities, houses built using half-timbered technology were considered fireproof (Article 270), while in cities such structures were treated as non-fireproof and could be built only under specific local regulations (Article 189). As in cities, the possibility of erecting non-fireproof buildings was an exception. This prohibition of their construction in a specific area had to be issued by a decision of the head of the province, at the request of the municipality (Article 271). Standards different from those in cities were also set for individual building elements and the distances between them. In addition, the 1928 Ordinance introduced a number of separate regulations for buildings of various types, intended for special purposes, including the industry or railroads.

Despite such abundant and detailed requirements for various types of buildings , the general approach of the 1928 Ordinance was the principle of construction freedom, which meant that the investor was free to carry out construction work to erect the planned building within the limits of the law[14]. However, this right, which was similar to the solutions in place in other European countries at the time, was subject to significant restrictions

[14] M. Błażewski, "Ograniczenie wolności budowlanej w ujęciu rozporządzenia Prezydenta RP z 1928 r. o prawie budowlanem i zabudowaniu osiedli", *Acta Universitas Wratislaviensis* 328 (2017), 202.

under public law[15]. As a general rule (especially in the case of erecting new buildings, making structural changes to the existing buildings, and adapting premises previously used in other ways for human habitation), the exercise of this freedom was possible upon a permit issued by the relevant authority on the basis of a project submitted by the investor (Article 333). In cities the municipal or city authority (Article 385) were the competent authorities for issuing permits, whereas in the rural areas, it was the county authority (Article 389). The competent body was bound by a time limit, which ranged from three to 10 weeks, depending on the case (Article 344). Upon completion of the construction of facilities requiring a permit, it was still necessary to obtain an occupancy permit (Article 357). There were several exceptions to this rule. Among others, it was not required for the erection of gazebos, etc., with an area of 12 sqm or less, temporary structures necessary for the implementation of construction carried out under a separate permit, or renovations not involving changes in the structure of the building, though a notification was required in these cases (Article 335). Certain works in single-story buildings in rural localities, some demolition work, and the erection of certain fences involved a permit, but the submission of a project was not necessary to obtain one (Article 334).

Obviously, the basic condition that was necessary to obtain a building permit was to prepare a project in accordance with all the requirements described above for the structure of the building, its location, and fire safety. Still, it did not guarantee a permit in every case. The 1928 Ordinance included cases in which the competent authorities could refuse to issue it. This was possible if the construction, reconstruction or expansion

[15] I. Zachariasz, "Planowanie zabudowy miast w latach 1928–1939. Aspekty prawne", *Czasopismo Prawno-Historyczne* 62 (1) (2010), 324.

of a building could lead to the disfigurement of the landscape in localities where it deserved to be protected (according to the indications of the competent head of the province) but only on the condition that this could have been avoided by constructing the building in a different place or form (Article 337). It was possible to prohibit changes in the external appearance of buildings, especially by placing advertisements of various types, if this lead to the disfigurement of the street[16]. In some other cases, the issuance of a building permit depended on the prior approval of another specialised authority. These included, e.g., the work on historic buildings or their immediate surroundings as well as the erection of new buildings on streets and squares recognised as historic monuments under separate regulations. Then it was necessary to obtain the permit required under the regulations on the care of art and cultural monuments (Article 341). On the other hand, in the case of construction or reconstruction of a building near a fortress or in a "fortification area", a permit from the military authorities was necessary (Article 342). The opinion of a railroad board or administration (either state or private, as these also existed at the time) was required for a permit for construction work near railroads (Article 345). Meanwhile, in the case of construction or reconstruction of buildings close to roads in towns without a development plan, the opinion of the road administration was demanded (Article 346). Specific opinions and permits were also required in connection with the water regulations or mining law.

[16] Most of such works did not require a building permit but only a notification under Article 335 of the discussed Ordinance. Thus, this competence could be exercised by the competent authorities mainly by issuing a prohibition within seven days of notification, rather than by refusing to grant a building permit.

Thus, as it can be seen, the catalogue of values whose protection justified the restriction of the owner's right to carry out investments on his land was broad. Among other things, it included the protection of the landscape, the aesthetics of the city, the protection of historical heritage, the defence of the state or the efficient functioning of transport infrastructure. However, it was strictly defined – it was a set of exceptions to the general principle of freedom of construction, provided by the legislature to protect the public interest. Mention should also be made of Article 350 of the 1928 Ordinance, according to which the granting of a building permit did not infringe on the rights of third parties, which they enjoyed under private law and could be asserted through the courts. It follows that construction freedom could also be limited by private interest[17].

Construction work on state buildings was regulated separately, although the difference involved mainly procedural and terminological issues. As in the case of buildings erected by private investors, projects had to be drawn up. However, instead of obtaining permission from county, city or municipal authorities, it was necessary to have state building designs approved by provincial authorities and, in special cases, by the Minister of Public Works (Article 355 in conjunction with Articles 382 and 284). Even the sheer ratio of the volume of regulations on private and state investments and their order in the 1928 Ordinance prove that the act was addressed primarily to private investors. This should be considered one of its most important features, in addition to its reliance on the general principle of freedom of construction. These two issues will be of particular importance in the application of the regulations discussed in this subchapter in the very different political reality of the first years of the People's Poland.

[17] Błażewski, op. cit., 205.

3.2. Applying prewar law after 1945

The prewar regulations were analysed above in relative detail also due to the fact that a large part of them remained in force for quite a long period after 1945. In the literature of that period, both pieces of information can be encountered which makes it possible to reconstruct the practice of applying the 1928 Ordinance in People's Poland, as well as the views of administrative law scholars of the time on a law dating back to a to a period from before 1939. Wacław Brzeziński, the author of the first publications on construction law in People's Poland[18], referred to regulations dating from before 1939 as "the law of bourgeois Poland"[19]. They were intended to fulfil the tasks of precisely this kind of state, limited to the protection of public peace, order, and security. According to Brzeziński, the state's attitude to construction was based on private ownership of land and "the means of construction" [20], and consisted of recognising the property owner's subjective right known as freedom of construction. According to the objectives of economic liberalism, the state was supposed to interfere with this freedom to a minimal degree. Brzeziński puts the name "freedom of construction" in inverted commas and calls it emblematic[21]. His negative attitude to this concept can be easily sensed.

[18] His first book on the matter, discussed in the previous chapter, was published in 1949, another in 1955.

[19] That name appears in the very title of the chapter of his book devoted to the 1928 Ordinance, see, e.g., 5.

[20] Brzeziński, *Polskie prawo*…, 33. The author does not indicate whether he is referring to the means of construction in the literal sense, i.e., e.g., construction tools and materials, or to the financial resources required to carry out the investment, but it can be assumed that both the first and second meanings of the term mentioned above fit in this context.

[21] Ibid.

Moreover, Brzezinski saw "a very clearly emphasised class content of the construction law"[22]. He criticised the excessively lenient, in his opinion, treatment of those who intentionally violate these regulations. He pointed out that demolition of an arbitrary building was possible only in certain cases (violating the limits of possible development, disfiguring the surroundings, and creating danger). A building erected without a permit that violated, for instance, only the regulations concerning the safety of residents could not become the subject of a demolition order – even if it was not possible to bring the building into compliance with the law through modifications. In his opinion such provisions were intended to serve rogue private entrepreneurs "specialising in illegal construction"[23].

It is worth noting that such an assessment is contained in the Polish Construction Law of 1955. Back in 1949, Brzeziński analysed in detail the application of the provisions of demolition orders in the context of the case law of the Supreme Administrative Tribunal (Naczelny Trybunał Administracyjny – NTA) Among other things, he pointed out that, according to one of the rulings, the acceptance of a proven threat to public safety or an impact detrimental to the health of residents was determined by the building authority on the basis of a free evaluation of the results of the administrative proceedings[24]. Another ruling was cited by the NTA in the context of the possibility of ordering the building to be vacated for demolition because of the danger created by negligent maintenance of the building[25]. In the 1955 study, no more references to the prewar NTA's jurisprudential output appear. This difference is perhaps due to the fact that Brzeziński

[22] Ibid.
[23] Ibid.
[24] Ibid., 72.
[25] Ibid., 73.

published his first book at a time when the Little Constitution of 1947[26] was in force, Article 1 of which stipulated that

> until the new Constitution of the Republic of Poland enters into force, the Legislative Sejm, as the supreme governing body of the Polish Nation, will function on the basis of the basic tenets of the Constitution of the Republic of Poland of 17 March 1921, the principles of the Manifesto of the Polish Committee of National Liberation of 22 July 1944, the principles of the legislation on national councils, and the social and political reforms confirmed by the Nation in the popular vote of 30 June 1946.

Accordingly, according to some lawyers active at the time, the NTA should be reactivated, especially since the Ordinance of the President on the Supreme Administrative Tribunal[27] was formally binding all the time[28]. Brzeziński published his next book already during the period when the Constitution of the People's Republic of Poland of 22 July 1952[29] was in force, which no longer mentioned in any way the establishment and functioning of the administrative judiciary, because in the People's Republic the rule of law was to be ensured by national councils and the Attorney General[30]. The evolution of the legal system of the People's Poland, involving the transition from the temporary solutions of the first postwar years,

[26] Ustawa Konstytucyjna z dnia 19 lutego 1947 r. o ustroju i zakresie działania najwyższych organów Rzeczypospolitej Polskiej (Dz.U. 1947 nr 18, poz. 71).

[27] Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 października 1932 r. o Najwyższym Trybunale Administracyjnym (Dz.U. 1932 nr 94, poz. 806).

[28] M. Sadłowski, "Projekty powołania sądownictwa administracyjnego w Polsce w latach 1944–52", *Miscellanea Historico-Iuridica* 16 (2) (2017), 100–102.

[29] Konstytucja Polskiej Rzeczypospolitej Ludowej uchwalona przez Sejm Ustawodawczy w dniu 22 lipca 1952 r. (Dz.U. 1952 nr 33, poz. 232).

[30] Sadłowski, op. cit., 197.

strongly based on the institutions of the Second Republic and characterised by uncertainty about the final shape of the system of the new Poland, to the well-established solutions based on the Stalinist constitution, can, therefore, also be seen very well in the writings of the administrative law doctrine of the time.

When discussing the legal regulation (or "rationing", as he called it) of individual construction, Brzeziński mentioned that, according to many legal practitioners, the 1928 Ordinance had already ceased to be in effect completely by then[31]. He cautioned that this opinion was inaccurate, as it was only the case for construction covered by the regulations governing the investment planning system. The author of the first postwar textbook on construction law treated these norms as part of the branch of law he discussed, and devoted a separate chapter[32] to them, in which he reviewed acts outside the scope of this analysis (because, from today's perspective, they rather belong to public economic law), including the Decree on the State Investment Plan[33], the Law on the Plan for Economic Reconstruction[34], and numerous ordinances of the Chairman of the State Economic Planning Commission. However, they did not concern individual construction, so the regulations of the 1928 Ordinance still applied in its subject area. Brzeziński wrote about this field that due to the serious shortcomings of the regulations dating from the period of capitalism, "the thesis of the new content in the old form is fully applicable here"[35].

Ludwik Bar, in an article summarising the first two decades of construction law in People's Poland, pointed out, in turn, that

[31] Brzeziński, *Polskie prawo budowlane*, 76.

[32] Ibid., 40–61.

[33] Dekret z dnia 25 czerwca 1946 r. o państwowym planie inwestycyjnym (Dz.U. 1946 nr 32, poz. 200).

[34] Ustawa z dnia 2 lipca 1947 r. o Planie Odbudowy Gospodarczej (Dz.U. 1947 nr 53, poz. 285).

[35] Brzeziński, *Polskie prawo budowlane*, 76.

the 1928 Ordinance was "a set of legal norms intended for the construction industry, in which the investor was basically a natural or legal private person; the design of buildings was handled by private companies, while the public investor, i.e., the state or local government, occurred to a limited extent"[36]. Thus, these were the regulations which were incompatible with the new socio-economic and, above all, political reality. Bar pointed out that for this very reason it was necessary to "gradually transform this law, which periodically took place in the form of departmental normative acts"[37]. As examples of these, he mentioned among others the introduction of a simplified way of approving projects for facilities built by the Department of Workers' Estates or the establishment of control over the state construction industry by territorial administrations.

It was precisely the shape of the aforementioned construction supervision that was one of the controversial issues in the 1950s. In the monthly magazine *Miasto* ("City"), Bar reported on one of the positions propagated at the time, according to which the local construction administration was to become completely unnecessary as a result of the reconstruction of the economic system:

> some thought with the development of state construction industry, local construction administration bodies were unnecessary. It was said: the state office designs, the work is carried out by the state enterprise, so the designs do not need to be approved, and the execution of construction work is supervised by designated employees of the enterprise[38].

Bar explained that those expressing such a view in the early years of the history of People's Poland were unfamiliar with

[36] L. Bar, "Prawo budowlane", *Studia Prawnicze* 7 (1965), 106.
[37] Ibid.
[38] L. Bar, "Zmiana prawa budowlanego", *Miasto* 11 (1955), 23.

Soviet solutions. In the USSR, the institution of an urban architect existed since 1940. It is worth mentioning at this point that Ludwik Bar was not the only author who emphasised the role of Soviet models. Even greater importance was attached to them by the second of the experts in construction law publishing in the 1950s, the aforementioned Wacław Brzeziński. He wrote about the development of this area as follows: "it is necessary here to draw attention to the assistance we receive in this field from the country that implemented socialism – the USSR. It is expressed not only in realities but also in giving us tried and tested models of organisational and legal forms"[39]. The existence of Soviet influence on the Polish legal system was, thus, not only openly acknowledged but also regarded as something positive.

The ultimate victory of the model, in which local architectural and construction authorities nevertheless existed, was to be determined not only by Soviet models but also by the experience of several years of construction development in People's Poland. In 1955, Ludwik Bar allowed himself to criticise the functioning of the state in this area. He pointed to cases in which state-owned enterprises initiated investment projects despite the lack of required documentation, and carried out construction work inconsistently with projects and without observing safety rules[40]. It was to support the need for the creation of separate (as in the political conditions of the People's Poland, it can hardly be labelled independent) architectural and construction supervision bodies, which were established in 1954 by a resolution of the Council of Ministers[41] – discussed in the chapter 4 on spatial planning law, as it rebuilt the administrative structures of the

[39] Brzeziński, *Polskie prawo budowlane*, 126.

[40] Bar, "Zmiana prawa budowlanego", 23.

[41] Uchwała nr 319 Rady Ministrów z dnia 18 maja 1954 r. w sprawie organizacji terenowej służby architektoniczno-budowlanej (M.P. 1954 nr 59, poz. 790).

state in that area as well. Also Wacław Brzeziński, in a publication from that period, pointed out the important role of construction supervision in the new socio-economic system. He wrote that

> compared to the period of the bourgeois state in People's Poland, the attitude of the state to construction issues has changed, and consequently, the content of construction supervision From policy-administrative supervision, construction supervision becomes a legal measure to secure the improvement of the material, cultural and health conditions of citizens' existence in the construction sector in accordance with the basic economic law of socialism[42].

Thus, it turns out the People's Poland wanted to include new ideology-filled narration even regulations that might seem purely technical-administrative.

The aforementioned regulations simplifying the approval of building designs for structures erected by, among others, the Department of Workers' Estates benefited from a separate procedure for state buildings already provided for in the 1928 Ordinance (Article 355), according to which their erection did not require a building permit but only an approval of the project by the competent authorities. First, the Minister of Construction issued an Ordinance on Improving the Approval of Technical Documentation Developed by State Project Offices Subordinate to the Minister of Construction[43], which outlined the procedure for approval of project documentation by provincial authorities or the Ministry of Construction (depending on the cubic capacity

[42] Brzeziński, *Polskie prawo budowlane*, 80.

[43] Zarządzenie Ministra Budownictwa z dnia 7 lutego 1950 r. w sprawie usprawnienia zatwierdzania dokumentacji technicznej, opracowywanej przez Państwowe Biura Projektów, podległe Ministrowi Budownictwa (Dz. Urz. Ministerstwa Budownictwa nr 3, poz. 23).

of the buildings), and then – just a few months later, on 17 May 1950, an Ordinance on Exempting State Project Offices Subordinate to the Minister of Construction from the Obligation to Obtain Approval for Certain Technical and Construction Programmes[44]. According to its § 1, state project offices were exempted from the obligation to obtain these approvals for part of the documentation of a certain type of facilities (what was called technical-construction programmes were prepared, among other purposes, for buildings for schools, kindergartens or health centres, in connection with the establishment of guidelines for the design of facilities of this type as well as for residential construction, for which the documentation was prepared outside the Department of Workers' Estates, i.e., in these offices).

Later, the formal requirements for documentation of buildings erected by the state were lowered even further. Significant changes were brought about by Resolution No. 817 of the Presidium of the Government on the approval of urban and architectural projects[45] of 1 December 1951. On the basis of its § 12, the Minister of Construction of Cities and Settlements gained the power to authorise the "verification bodies" of individual state project offices to approve basic construction projects. Given that, according to Article 355 of the 1928 Ordinance, the approval of a construction project in the case of state buildings superseded the obtaining of a building permit, the transfer of this authority

[44] Zarządzenie Ministra Budownictwa z dnia 16.V.1950 r. w sprawie zwolnienia Państwowych Biur Projektów podległych Ministrowi Budownictwa od obowiązku uzyskiwania akceptacji dla niektórych programów techniczno-budowlanych Budownictwa (Dz. Urz. Ministerstwa Budownictwa nr 7, poz. 70).

[45] Uchwała nr 817 Prezydium Rządu z dnia 1 grudnia 1951 r. w sprawie zatwierdzania projektów urbanistycznych i architektonicznych (M.P. 1951 nr 102, poz. 1481).

to state project offices meant that the construction of individual buildings could begin immediately after their projects were drawn up. Naturally, this was done within the framework of the rules of planned economy, i.e., when such projects were scheduled in the relevant economic plan, a decision on their location was issued, and so on[46]. However, it does not change the fact that some architectural projects were not subject to any control by construction supervision authorities. It was explained by the need to simplify and speed up the procedure for approving projects due to the huge demand for them, especially from the mass construction activities of the Department of Workers' Estates[47].

Using the example of the sub-statutory acts outlined above, it can be observed that the provisions of the 1928 Ordinance, designed mainly to regulate private construction, left the authorities of People's Republic of Poland a great deal of freedom in the management of state construction, which became dominant after 1945. In the mid-1950s, however, there was a change in the trend toward the independence of socialised economy investors. Not only were the aforementioned bodies of local architectural and construction administration created in 1954. Other changes were also implemented, e.g., the Presidium of the Government, in a Resolution on the takeover of housing investment matters by the Ministry of Communal Economy[48], obliged workers' housing construction headquarters to submit reports on the implementation of housing construction plans as well as proposals aimed at removing the difficulties encountered to the Presidiums of provincial national councils. The Presidiums of these national

[46] The nature of location decisions is explained in the chapter on spatial planning law.

[47] L. Bar, "Prawo budowlane", *Studia Prawnicze* 7 (1965), 124.

[48] Uchwała nr 149 Prezydium Rządu z dnia 19 lutego 1955 r. w sprawie przejęcia przez Ministerstwo Gospodarki Komunalnej spraw inwestycyjnych budownictwa mieszkaniowego (M.P. 1955 nr 27, poz. 261).

councils were now supposed to coordinate all work on housing construction. According to Ludwik Bar, this was in line with the outlines of the new construction law already developed at the time, and heralded the arrival of the bill awaited by specialists[49]. However, it should be noted that the changes were not yet modifications in the distribution of competencies related to the investment and construction process (in the issuance of construction permits) but simply the organisational subordination of entities engaged in construction activities.

A separate, extremely brief piece of legislation that modified the application of the 1928 Ordinance was the Decree on Concessionary Granting of Construction Authorisations in Exceptional Cases[50]. According to its Article 1, the Minister of Reconstruction could, in exceptional cases, grant the authorisations listed in Articles 361–364 of the 1928 Decree (i.e., authorisations to manage construction works of various types) to persons who did not have the required qualifications but had demonstrated practice and skill along with passing an examination on knowledge of the regulations. According to Article 3, the discussed Decree was a temporary act, as it was to expire two years after its promulgation and simultaneous entry into force. The delegation of authority to the Minister of Reconstruction, and precisely, this temporary nature of the regulation should lead to the recognition of the Decree on Concessionary Granting of Construction Authorisations in Exceptional Cases as part of the emergency legislation related to the removal of postwar destruction (and consequently the discussion of it in chapter 3.1). Probably, originally, the analysed regulations were of this nature but in 1949, the Law on Amending the Decree of 27 March 1947 on Concessionary Granting of Construction

[49] Bar, "Zmiana prawa budowlanego", 26.

[50] Dekret z dnia 27 marca 1947 r. o ulgowym nadawaniu uprawnień budowlanych w wyjątkowych przypadkach (Dz.U. 1947 nr 31, poz. 132).

Authorisations in Exceptional Cases[51] (hereinafter: 1947 Decree) was adopted, according to which the powers of the Minister of Reconstruction, whose office had been abolished, were transferred to the Minister of Construction, and the validity of the analysed decree was extended until 31 March 1952.

Moreover, in the literature of the 1950s, the introduction of these regulations was explained not only by the need to increase the number of professionals with specialist authorisations due to the huge needs resulting from wartime destruction. Brzeziński noted that under the new socio-economic system, the content of state supervision of the exercise of professional construction authorisations changed. He pointed out that "under the bourgeois law, this supervision, in addition to considerations of construction safety and protection of the interests of the construction owner, was aimed at protecting the professional interests of the holders of authorisations from competition from those who could not demonstrate equivalent formal rights" [52], which obviously should not be the case in a socialist system. He also argued that at the time of the dominance of socialised construction industry based on large and well-organised state enterprises, safety considerations were much less important than before the war, when there were many small private construction companies. It was for these two reasons that it was supposed to be possible to significantly relax the regulations defining the qualifications required to obtain construction authorisations. Although Brzeziński noted that the 1947 Decree was intended to solve the problem of losses sustained during World War II, he pointed out that it was primarily intended to respond to the huge increase in the demand for professionals holding executive positions in the construction industry. He also

[51] Ustawa z dnia 1 lipca 1949 r. o zmianie dekretu z dnia 27 marca 1947 r. o ulgowym nadawaniu uprawnień budowlanych w wyjątkowych przypadkach (Dz.U. 1949 nr 42, poz. 307).

[52] Brzeziński, *Polskie prawo budowlane*, 80.

pointed out that thanks to this legislation, a path of promotion was opened up for outstanding employees[53]. Such an interpretation implies that in the 1950s, new meaning was given not only to prewar legislation but also to legislation already created during the existence of the People's Poland, which originally was intended as an ad hoc measure to solve problems arising from wartime devastation, without such broad ideological content.

In publications that were issued in the second half of the 1950s, there was quite a lot of criticism of construction law application practices. It was pointed out that the part of the 1928 Ordinance containing what was called the policy-construction regulations, despite being formally in force, was not followed in practice, in part because the ordinances related to them were outdated[54]. Actually, the provisions of this prewar act allowed municipal building authorities to issue decisions only in matters of private construction, which was of secondary importance in People's Poland, and even in this field local authorities were not always fully capable of effective supervision[55]. The issue of unauthorised construction, arising in the suburbs of Warsaw and other large cities in massive quantities was also cited as another serious problem which the then-current legislation could not handle[56].

Brzeziński drew attention to systemic problems arising within the construction law. He negatively assessed the inflation of laws created mainly in the form of acts of sub-statutory rank: resolutions of the Council of Ministers and the Presidium of the Government, orders of the Chairman of the State Commission for Economic Planning or particular ministers[57]. He stressed that

[53] Ibid.

[54] S. Tołwiński, "Projekt ustawy o prawie budowlanym", *Miasto* 2–3 (1959), 11.

[55] Bar, "Zmiana prawa budowlanego", 23.

[56] Tołwiński, op. cit., 11.

[57] Brzeziński, *Polskie prawo budowlane*, 126.

the use of such normative acts was advantageous in a system of planned economy, where detailed regulations must be changed frequently and quickly to adapt them to new needs and conditions. However, he also noted their disadvantages – resolutions and ordinances were created in isolation from the entire legal system. New regulations regulating the same issues were issued without repealing those previously in force (or at least determining the relationship between them)[58].

Brzeziński also recognised situations where various ordinances, executive orders, and resolutions collided with statutory acts. His assessment of this situation from today's perspective seems peculiar as it depended on what period a certain law came from. He wrote:

> there are no objections to inconsistencies with the provisions of legislative acts from the interwar period. It is clear that the regulations on the system of investment planning are a development of the principles of our system, and therefore, it should be concluded that contradictory regulations from the capitalist period have no force. However, the matter is different in the case of a collision with a legislative act issued in People's Poland[59].

For this reason, it turns out that Brzeziński was proposing a principle of legal interpretation, according to which the primacy of a legal act of "proper" ideological origin becomes the supreme rule of conflict, even more important than the hierarchy of sources of law under the current constitution. This radical concept helps understand why this author puts the term "state of law" in inverted commas alongside "freedom of construction" when discussing the legal solutions of the Second Republic[60].

[58] Ibid., 127.
[59] Ibid.
[60] Ibid., 32.

Other authors writing about construction law before 1989, if not analysing in detail the issue of applying the prewar regulations in force in this area until 1961, at least mentioned that the regulations of the 1928 Ordinance did not adapt to the new socio-economic and political conditions[61]. To sum up, two levels of criticism of the Second Republic-derived construction law in the first period of the People's Poland can be distinguished. First, the very regulations which came from a different political system were evaluated negatively. Secondly, since the second half of the 1950s, it was possible to observe the presence of criticism of the application of the law in the literature, based not only on its capitalist roots but also on certain practices of the authorities of the People's Poland, which were viewed negatively by the legal scholars of the time.

As can be seen, the lack of a comprehensive revision of construction law in the first years of the People's Poland does not prevent the reconstruction of the perspective of the dominant political ideology of the time on this area of socio-economic life. The reconstruction of its main assumptions is possible on the basis of the legal writings of experts who actively co-created the system at that period.

3.3. Construction Law of 1961

Attempts to draft a new construction law were made by the Ministry of Reconstruction already in the first years after the war[62]. Nonetheless, the work did not gain any significant momentum until 1954, when a Commission for the Drafting of Construction

[61] See e.g.: B. Księżopolski, and L. Martan, *Prawo budowlane w zarysie* (3rd ed., Warszawa–Wrocław: Państwowe Wydawnictwo Naukowe, 1988), 40; E. Kulesza, and J. Słoniński, *Prawo budowlane* (Warszawa–Poznań: Państwowe Wydawnictwo Naukowe, 1978), 10.

[62] Bar, *Podstawowe zasady prawa budowlanego*, 5.

Law was established. Theses for the new regulations were presented in 1956[63]. However, before this happened, a discussion on the principles of the new law were abundant in the professional press. It should be remembered, of course, that all this took place under the conditions of state socialism, in which all publications were subject to censorship, nevertheless it was a significant change from the Stalinist era. Stanislaw Tołwiński in the pages of *Miasto* magazine put forward "a decalogue of the essential chapters of construction law"[64]. According to the author of this book, it involved the following 10 points. First, it was necessary to define the notions of investor, designer, and other participants in the investment and construction process. Secondly, the investor's rights and responsibilities needed to be clearly defined, especially, the scope of work that did not require the completion of formalities under construction law. Third, the content of the necessary construction documentation should have been clearly defined. Fourth, the investor should have obtained a permission for his undertaking based on verification and approval of the submitted project. Fifth, the responsibilities and powers of the contractor had to be defined. Sixth, the competencies of construction supervision and its organisation had to be determined. Seventh, it was necessary to set rules for commissioning completed investments. Eighth, the requirements for persons performing independent functions in the construction industry had to be determined. Ninth, it was necessary to consider the problem of unauthorised construction, including introducing appropriate criminal provisions. Last but not least, Tołwiński advocated that some equivalent of local construction regulations should be introduced as in the 1928 Ordinance[65]. It is clear that the scope of regulation of the new construction law was intended

[63] L. Bar, *Kodeks budowlany. Przepisy i objaśnienia* (Warszawa: Wydawnictwo Prawnicze, 1967), 8.

[64] Tołwiński, op. cit., 13.

[65] Ibid., 12–13.

to be closer to the subject matter of the prewar legislation than to Brzeziński's definition of construction law, among others, when he wrote that in a socialist state this area also included issues related to economic planning[66].

Likewise, Ludwik Bar reported about the work on the new regulations in the pages of *Miasto* describing the principles of the regulations being drafted in the areas he believed to be the most important, such as architectural projects, the conditions for starting construction work (taking into account the role of municipal architectural-construction boards), the organisation of state construction supervision, the qualifications of persons performing the functions of designer and manager of works, or the maintenance of buildings[67].

Theses for the new legislation were presented in 1956. The final result of the work was an entirely new bill passed on 31 January 1961[68] (hereinafter: 1961 Law). A reading of its provisions allows one to conclude that the vast majority of Stanisław Tołwiński's demands were actually satisfied. Only a possibility of introducing local building regulations was precluded. Some of the new regulations are interesting also in terms of their ideological content, and they shall be analysed in detail.

In comparison with the 1928 Ordinance, the 1961 Law was drafted in a rather modern way. It begins by indicating the scope of regulation – it regulates matters of design, construction, demolition, and maintenance of building structures as well as sets the rules for the organisation, duties, and powers of state construction supervision bodies (Article 1, Section 1). Its provisions do not apply to the design, construction, and maintenance of machinery and means of transportation (Article 1, Section 2) but they do

[66] See: Brzeziński, *Polskie prawo budowlane*, 37–39.

[67] Bar, "Zmiana prawa budowlanego", 24–26.

[68] Ustawa z dnia 31 stycznia 1961 r. Prawo budowlane (Dz.U. 1961 nr 7, poz. 46).

apply to devices affecting the appearance of construction objects, such as advertisements or signs (Article 1, Section 3). Then the law includes a glossary of the terminology used, including such key terms as building or construction object (Article 1, Section 4).

Article 2 contains a solution that is new and characteristic of the 1961 Law. A division into general and special construction (in the 1928 Ordinance, the line of basic and original division was between urban and rural construction). General construction objects were permanent and temporary buildings and related construction structures, monuments and other objects of minor architecture, as well as shrines, and objects of religious worship (Article 2, Section 2). On the other hand, special construction structures were engineering facilities in power, water, and industrial plants, engineering facilities related to the exploitation of minerals, to the maintenance of rail, road, urban, and marine transportation, industrial installations, and technical equipment (Article 2, Section 4). Special construction regulations were also applicable to facilities serving strictly military purposes, facilities for production and communications related to national defence, and buildings connected with mineral exploitation (Article 2, Section 5). The Council of Ministers was to define in detail the scope of special construction by ordinance (Article 6).

According to Article 3, Section 1 of the new law, construction structures could only be erected in areas designated for a given purpose in accordance with spatial planning regulations. It was an implementation of the principle of *Planned Development of the State* contained in these regulations, and discussed in the next section. Article 3, Section 2 stipulated that the architectural form of buildings should not only be harmonised with their surroundings but also, as far as possible, should enhance an aesthetic value of these surroundings. In this case, socialist construction law actually placed requirements on builders that were greater than the "minimum standards" contained in the

law of the "bourgeois state" being "a brake on raising technical requirements for construction"[69]. Indeed, the 1928 Ordinance only required that the buildings did not cause disfigurement to the neighbourhood (Article 262).

Another article of the 1961 Law was also drafted in the spirit of "raising technical requirements for construction". It stated that construction structures should not only be designed to ensure safety for people and property. Designers were also to take care of: the proper functional layout of the building, its appropriate durability, construction costs (especially the economical and rational use of materials), maintenance costs as well as the needs for lighting, water supply, sewage disposal, hygienic, and sanitary requirements or communication (Article 4, Section 1). This goal was to be achieved through the application of binding state standards and technical norms, as well as the use of approved typical projects, if there were no technical or economic contraindications (Article 4, Section 2). Especially the last provision should be considered a rather serious restriction imposed on investors – already at the level of the legislation they were obliged to use typical architectural projects wherever possible. It should be remembered that Article 4 had an unlimited circle of addressees and typical drafts were also drawn up for single-family houses. Therefore, theoretically, there was a legal possibility to force individual investors to refrain from ordering individual drafts of private houses if there was no particular justification to do so.

Articles 5–7 regulated the establishment of technical conditions to which construction structures should conform, general technical conditions for the performance of construction work, technical design norms for construction, etc. These were to be adopted in the form of sub-statutory acts – ordinances of the Chairman of the Universal Construction Committee. It was not

[69] All these terms are taken from Brzeziński, *Polskie prawo budowlane*, 33.

decided to include any technical standards in the body of the law itself. It was probably the result of experience with the 1928 Ordinance, where detailed regulations had become obsolete due to technical progress.

Article 8 of the analysed law was dedicated to the aforementioned typical studies. They could include not only drafts of entire buildings but also their sections and fragments, as well as individual elements of building, construction, installation, and equipment, and their packages (Article 8, Section 1). Approved typical studies were to be published in the form of catalogues (Article 8, Section 3). Even in a situation justifying the execution of an individual project of a building, the architect did not have a completely free hand – according to Article 4, Section 2, she or he should then use typical projects of the individual elements that compose the designed building.

Article 10 of the 1961 Law created a legal basis for the rapid implementation of new developments in construction materials and methods – clearly, technical progress was very important to the legislature. Such innovations could be applied on the basis of a decision by the Chairman of the Construction Committee before they were included in the relevant ordinances, norms, etc.

From the perspective of the research on the presence of People's Poland ideology in the provisions of the 1961 Law, the most interesting provisions seem to be those that fulfil the first of Stanisław Tołwiński's postulates – defining the concept of an investor. The prewar Ordinance on the Construction Law and Development of Settlements did not use the term at all, instead referring to the person applying for a construction permit simply as a builder[70]. Contemporary construction law[71] lists the investor as a participant in the construction process (Article 17,

[70] Article 333 of 1928 Ordinance.

[71] Ustawa z dnia 7 lipca 1994 r. – Prawo budowlane (Dz.U. 2023 poz. 682) [with subsequent amendments].

point 1) and defines her or his responsibilities (Article 18). However, it does not contain its legal definition[72].

The 1961 law, however, includes an entire chapter entitled "On the investor" (Articles 12–16). Article 12 not only defines an investor as a legal entity or other organisational unit that, by virtue of separate regulations, is authorised to allocate funds for the implementation of construction investments and carries out these investments, as well as an individual who performs such actions but also divides investors into several different categories. Provision is made for: state investors (state organisational units), cooperative investors (cooperatives and cooperative headquarters), social investors (political organisations, social and professional organisations, registered associations), and private investors (individuals and legal entities not falling into any of the previous categories).

The regulations concerning the state investor were the most extensive. An entire Article 13 was devoted to that matter, on the basis of which a number of responsibilities were imposed on this category of investors: to develop or have developed by a competent entity the guidelines for the intended investment and then obtain their approval; to obtain the right to implement the investment in a given area; to commission a competent entity to draft the project and obtain its approval (unlike the guidelines for the investment, here no possibility was provided for the investor to develop the documents on his own); to supervise the implementation of the investment and coordinate the activities of contractors; to carry out the approval of the investment (Article 13, Section 1). Provision was also made for the issuance of additional executive regulations by the Chairman of the Construction Committee, establishing: the principles of drafting, agreeing, and approving

[72] Z. Niewiadomski, ed., *Prawo budowlane. Komentarz* (Warszawa: C.H. Beck, 2016), 214.

the guidelines and projects in state construction institutions; the principles and conditions of contracts for the performance of project work, and for the performance of construction work; the principles of acceptance of construction work (Article 13, Section 2). Thus, regulations on economic issues related to the implementation of construction projects by the entities of the socialised economy became part of the construction law, in accordance with the already cited broad understanding of socialist construction law. Indeed, these implementing regulations also applied to cooperative and social investors who were subjects of the socialised economy (Article 13, Section 4).

According to Article 12, Section 6 of the discussed law, state and cooperative investors were allowed to carry out construction projects with the aim of handing them over to the proper user. The legislator adjusted the content of the norms to the shape of a planned economy – the roles of investor, designer, contractor, and user of the building were distributed among various specialised units but they were all to be the subjects of the socialised economy. It should be noted that the regulations on the state investor and the cooperative investor did not differ in principle. It is due to the place of cooperatives (including housing cooperatives) in the economic system of People's Poland and the degree of their subordination to its authorities, which shall be discussed in detail in one of the following chapters.

The legal position of the social investor was defined by Article 14 of the 1961 Law, according to which it could only carry out such construction investments that were related to its activities as defined in the statute or other legal regulations, or recognised by law and corresponding to the scope of those activities (Article 14, Section 1). The rules and procedure for approving the assumptions of social investors' initiations were to be specified in an ordinance of the Council of Ministers. Significantly, the provisions on social investors were to be applied *mutatis mutandis*

to investments by churches and religious associations (Article 14, Section 5).

According to Article 15, Section 1 of the analysed law, a private investor was allowed to make construction investments only to satisfy her or his own housing needs and the needs of her or his immediate family, as well as to satisfy her or his own economic needs, to carry out her or his profession or to provide services. Moreover, Article 15, Section 2 stipulated that the Chairman of the Construction Committee, in consultation with the Minister of Municipal Affairs and the Chairman of the Committee for Small Production, could issue regulations by ordinance which would establish in more detail what particular investments private investors could realise (however, for the entire time that the 1961 Law was in force, no such implementing act was issued).

In the content of the provisions cited above, the differentiation of powers and responsibilities of investors of various types is clearly visible. It was done in accordance with the principles of the economic system of socialism – the overwhelming dominance of socialised economic entities (state-dependent cooperatives and state organisational units) was assumed. Although more duties were prescribed for them, only they could implement investments of any kind. Characteristically for the system of a planned economy, numerous detailed regulations were provided for each stage of the investment and construction process, including those going beyond the scope of contemporary construction law but rather related to economic issues.

In contrast, the possibilities for social and private investors were drastically restricted. The former could implement only those construction projects that were related to their statutory activities, while the latter were entitled to build only for their personal needs. Construction laws shaped in this way went beyond matters of construction, regulating the legal position of the individual also in the area of, e.g., economic activity.

The above classification of investors is not an independent concept which arose entirely from construction law. In 1964, a new Civil Code was enacted[73]. It is, therefore, clear that at the time the discussed construction law was adopted, work on it was already well under way. Article 126 of the Civil Code established social property, which was divided into state (nationwide) property, cooperative property, and property of other social organisations of the working people. In addition, Article 130 of the Civil Code provided for individual ownership, and Article 132 for personal ownership. The various civilian types of property roughly correspond to the specific categories of investors defined by the 1961 Law: the state investor is nationwide (state) property; the cooperative investor is, of course, cooperative property; and the social investor corresponds to the property of other social organisations of the working people[74]. Only the attribution of a certain type of property (the remaining choices are personal or individual) to a private investor poses some problems, as discussed below.

In accordance with the principles of the socialist system, the new Civil Code broke with the unified view of property and recognised nationwide (state) property as the highest form of ownership[75]. Cooperative ownership was an inferior form of ownership by comparison, but in accordance with Article 11 of the 1952 Constitution, People's Poland supported the development of various forms of cooperative ownership in urban and rural areas and

[73] Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny (Dz.U. 1964 nr 16, poz. 93).

[74] One should not confuse the property of other social organisations with social property, which was a broader and overarching category under the Civil Code, which included three types of property: state, cooperative, and property of other social organisations. See F. Błahuta, ed., *Kodeks cywilny. Komentarz vol 1.* (Warszawa: Wydawnictwo Prawnicze, 1972), 303. The difference between the Civil Code and the Construction Law is terminological in this regard.

[75] Błahuta, op. cit., 305.

provided them with comprehensive assistance[76]. The property of social organisations was also considered social property[77] and – as such – was protected under Article 127 of the Civil Code. Individual property, as a form of ownership of the means of production opposed to social property, was to be found in People's Poland because the social and economic system of the time was described as a system of a period of transition[78]. Meanwhile, personal property was considered economically derivative, being the result of the distribution of social product based on ownership of the means of production – either social or individual[79].

The classification of investors contained in the 1961 Law thus turns out to be derived from the types of property found in the socialist system. Accordingly, it should come as no surprise that the powers of the state, cooperative, and social investor, as representing various forms of social property are by far the broadest. The strong limitation of the possibilities of the private investor is also consistent with the restrictions on the property of individuals contained in the property law. The doctrine of construction law explicitly expressed the view that "construction law, as a law serving to shape the relations of socialist society, limits the possibility of developing construction activities by investors other than state and cooperative investors"[80].

The Civil Code listed a total of five forms of ownership, while the 1961 Construction Law provided for four categories of investors. In this connection, it is still worth considering with which form (or forms) of ownership the concept of a private investor is associated, as this could have conditioned the scope of investments she

[76] Ibid., 324.
[77] Ibid., 328.
[78] Ibid., 343.
[79] Ibid., 344.
[80] L. Bar, "Pozwolenie budowlane (jako instrument kształtowania stosunków społecznych)", *Przegląd Ustawodawstwa Gospodarczego* 2 (248) (1969), 54.

or he would be entitled to make. There is no doubt that she or he could carry out construction projects that are subject to personal ownership. Article 133 § 1 of the Civil Code explicitly indicated that a single-family house (defined in Article 134 of the Civil Code as a dwelling house or an independent part of a semi-detached or terraced house intended to meet the needs of the owner and her or his relatives and not exceeding the size specified by the relevant regulations) was precisely the subject of personal property.

It is still necessary to consider the second type of property that could potentially be associated with the category of private investor. This is the individual property described in Article 130 of the Civil Code, i.e., such property of individuals, the object of which, unlike personal property, are not things intended to satisfy the needs of the owner but the means of production. According to doctrinal views, this type of property could exist in two forms, depending on whether the owner based production on her or his personal labour (ownership of small manufacturers) or on hired labour (capitalist ownership)[81].

According to Article 15 of the 1961 Law, a private investor, in addition to investments necessary to satisfy her or his own needs and those of her or his immediate family, could only make investments that serve to satisfy her or his own economic needs, to carry out her or his profession, and to carry out service activities. The law does not explicitly regulate whether it is a matter of performing service activities personally (this would be associated with ownership by small manufacturers) or using hired labour (under capitalist ownership). However, both the Civil Code and construction law should be interpreted in accordance with the provisions of the 1952 Constitution of the People's Republic of Poland[82]. On the one hand,

[81] J. Wasilkowski, *Prawo własności w PRL. Zarys wykładu* (Warszawa: Państwowe Wydawnictwo Naukowe, 1969), 23.

[82] Konstytucja Polskiej Rzeczypospolitej Ludowej uchwalona przez Sejm Ustawodawczy w dniu 22 lipca 1952 r. (Dz.U. 1952 nr 33, poz. 232).

according to Article 3, Section 4 of the Constitution, the People's Poland restricts, suppresses, and abolishes social classes living off the exploitation of workers and peasants. On the other hand, according to Article 12, the People's Republic recognises and protects the ownership of the means of production belonging to peasants, craftsmen, and persons engaged in domestic handicrafts.

In conclusion, although it is not expressed in construction law *expressis verbis*, it can be considered that the category of private investor, in addition to personal property, is also related to individual property, however, only in the form of ownership of small manufacturers, and not as capitalist property. Thus, an interpretation seems legitimate, according to which a private investor would be entitled to carry out construction projects related to her or his profession and services only to the extent that it would be a personally performed activity. In contrast, she or he would not be allowed to construct buildings for activities based on hired labour. These doubts would probably be clarified by an ordinance based on the statutory delegation contained in Article 15, Section 2 of the 1961 Law, if it were ever issued.

At the end of the analysis of the different categories of investors, it should be pointed out that the introduction of this division was not the most radical of the solutions considered during the development of the 1961 construction law. At one point, it was even proposed to create completely separate legislation for socialised and non-socialised construction. Ultimately, this concept was rejected. However, it was considered that from the point of view of this branch of law, the key issues are the building and the construction project, not who the investor is[83].

The next chapter of the 1961 Law detailed the issue of professional qualifications and responsibilities of those performing

[83] L. Bar, "Problemy i instytucje prawa budowlanego", *Państwo i Prawo* 7 (1961), 71.

technical functions in the construction industry. It was pointed out that appropriate education was required to obtain professional licenses. Provision was also made for mandatory examinations. Thus, the paths for rapid professional advancement in the construction industry opened by special regulations enacted after the war were finally closed.

Chapter four regulates the drafting and approval of construction projects. It is worth noting that – as a rule – state design entities were to be appointed to draft construction projects and other design work in the construction industry (Article 27, Section 1) and individuals as well as legal entities that were not units of the state economy could engage in professional activity in drafting projects in the construction industry only after obtaining a permit for such activity (Article 28, Section 1). This is a manifestation of the programmatic domination of state entities in the People's Poland economy. Article 32, Section 2 of the 1961 Law stipulated that the Chairman of the Construction Committee in the field of general construction, and the competent ministers in the realm of special construction, could exempt by ordinance all or certain basic projects drawn up in state design units from the obligation of approval of respective construction supervision bodies. This may seem to have preserved the independence of state construction industry from construction supervision authorities that was created by sub-statutory legislation in the 1950s.

However, the new construction law broke with the principle, derived from the 1928 Ordinance, that in the case of state buildings approval of the project supersedes the responsibility to obtain a building permit. Article 36, Section 1, opening the fifth chapter of the law and entitled "On Building Permits and Conditions for the Commencement of Construction Work" stipulated that it was necessary for an investor to obtain a building permit before constructing a building. There was no differentiation between the situation of state, private, and other investors. There were no

exemptions from this requirement for any type of investor. Article 36, Section 3 created the possibility of establishing exemptions for certain types of investment, through the determination by the Chairman of the Construction Committee and the competent ministers of construction structures for which construction or demolition permits or notifications were not required.

However, this legislative delegation has not been used to create practices that are inconsistent with the principles of the new construction law. The list included in the ordinance[84] of the Chairman of the Committee on Construction, Urban Planning and Architecture included investments of lesser importance, such as upgrades to sanitary installations, changes to partition walls, repairs and demolition of inferior outbuildings, renovation of one-story houses outside cities, construction of driveways, construction of low-rise fences, construction of garden architecture, or installation of antennas (§ 4, Section 1 of the ordinance). It did not include any categories that would allow large-scale state projects to be carried out without obtaining a building permit from the relevant construction supervision authorities.

Instead, the legal position of different categories of investors was differentiated in terms of conditioning the issuance of a construction permit on demonstrating the ability to obtain the materials necessary for the intended construction (Article 37, Section 5). The state construction supervision authority could require this of private and social investors but not of the state and cooperative investors. It was probably assumed that units which were entities of the socialised economy would certainly be guaranteed all the necessary materials, since they carried out projects within the framework of economic planning.

[84] Rozporządzenie Przewodniczącego Komitetu Budownictwa, Urbanistyki i Architektury z dnia 27 lipca 1961 r. w sprawie państwowego nadzoru budowlanego nad budową, rozbiórką i utrzymaniem obiektów budowlanych budownictwa powszechnego (Dz.U. 1961 nr 38, poz. 197).

The provisions on supervision of the construction, demolition and maintenance of buildings contained in the next chapter gave building supervision authorities broader powers than the 1928 Ordinance, especially in combating unauthorised construction. According to Article 52, Section 1, building structures erected without a permit or in violation of its essential conditions were subject to demolition not only if they were located on land that had been designated for other purposes in spatial planning acts or posed danger to people or property but also if they caused an unacceptable deterioration of utilitarian and health conditions for the surrounding area. In addition, the provincial or corresponding state building supervisory authority could issue an order for the forced demolition of a structure built without a permit or in violation of its conditions, if justified by unspecified "other important reasons" (Article 53, Section 3).

Moreover, the 1961 Law regulated the issues of use permits, maintenance of construction facilities or organisation of construction supervision, i.e., what Stanisław Tołwiński pointed out in the aforementioned paper as issues that needed to be regulated. The criminal provisions contained in the final part of the act were also worth noting. A number of relatively severe sanctions were provided there, e.g., a failure to fulfill the obligation to maintain the building in a proper state of repair was punishable by up to three months in jail (Article 78, Section 4). A person who commenced construction of a building without a permit required by law could be sentenced to as long as a year in jail (Article 80, Section 1). Interestingly, the construction law also extended criminal protection to the building structures as such – those destroying these objects maliciously or through improper use could be imprisoned (Article 82, Sections 1 and 2).

However, the law adopted in 1961 did not meet all the expectations of the administrative law doctrine of the time. Bar, in the paper on the analysed law, drew attention to the role of what was

referred to as a social factor. He stated that the participation of working people in the direct execution of the management of state affairs was a basic condition for the realisation of the principle of participation of the masses in the exercise of power in a socialist state[85]. The scholar of administrative law stressed that the issue became relevant after Nikita Khrushchev mentioned it at the 21st Congress of the CPSU as one of the "most up-to-date state works"[86]. Bar assessed that the social factor was taken into account when the new law was drafted but it played a modest part in preparing new regulations. At the same time, he expressed concern that limiting the participation of socio-professional associations in matters of professional responsibility solely to expressing opinions and not to partaking in decision-making could expose the implementation of construction law to "bureaucratic distortions"[87]. The same author regretted that the law omitted collegiality, taken into account by People's Poland through the creation of such institutions as criminal-administrative colleges, housing commissions, and arbitration commissions. Bar noted that the collegial factor could have been taken into account, e.g., when issuing an order for the demolition of a building or an order for changes or modifications to a construction structure[88].

3.4. Construction Law of 1974

The urgent need to reform the construction law was recognised as early as nine years after the 1961 Law came into force. In 1970, the Minister of Construction and Construction Materials Industry

[85] Bar, "Problemy i instytucje prawa budowlanego", 76.
[86] Ibid., 77.
[87] Ibid., 77–78.
[88] Ibid., 78.

appointed a special commission to deal with this task[89]. Also around this revision there was a discussion recorded in articles appearing in scientific journals. Bar pointed out the following reasons behind the need to prepare a new bill: increasing social demand in the field of construction, both in terms of the quantity and quality of buildings being commissioned; technical progress in construction, especially the increased use of prefabricated elements; the formation of developed state organisations involved in the drafting of projects, the execution of construction work and the production of materials, allowing greater obligations to be imposed on them in terms of the quality of their work; the increase in the education and experience of those performing independent functions in the construction industry, and the growing understanding of the importance of construction in shaping the human environment as well as the appreciation of the need to protect that environment[90]. The only completely new consideration in the enumeration above was environmental protection. Besides this, there was a strong emphasis on increasing accountability of both state-owned enterprises and particular professionals. The issue of quality in construction was also mentioned several times, which could be perceived as signalling the problems in this area which needed to be solved.

In 1971, the Construction Law Commission developed the *Theses for the Reform of the Construction Law*. The work on them was partly transparent and open. On the one hand, the text presented indicated the issues on which the commission was not unanimous and expressed dissenting opinions[91], on the other hand, the study was not published – it was kept in the Ministry of Construction and Building Materials Industry[92]. Thus, the debate on the new regulations was attended only by those who

[89] Jędrzejewski, *Prawo budowlane*, 10.
[90] L. Bar, "Reforma prawa budowlanego", *Państwo i Prawo* 5 (1962), 23–34.
[91] Ibid., 25.
[92] Ibid., 24.

were invited by the authorities of the People's Poland. Therefore, it can be considered that the published comments of several of these specialists were consistent with the ideological line of the time.

The Review of Economic Legislation published a two-voice article by Jędrzej Słoniński and Stanisław Jędrzejewski[93]. The first co-author opposed the inclusion of the issue of contracts made in the construction process in the construction law. He pointed out that it was not economically justified, the subject of administrative law was separate from civil law, and the issues of contracts in construction had already been regulated by the relevant provisions of civil law[94]. It should be recalled that the opposite concept – the presence of such issues in the construction law of the People's Poland was supposed to differentiate it from the bourgeois construction law, as Brzeziński emphasised in the fifties. Also in the legal literature barely a decade older, the exact opposite concept was presented – the codification of investment law, which would combine administrative and construction issues with even more extensive regulations on economic matters[95].

Słoniński addressed the issue of experimental construction as well, being in favour of including in the proposal regulations allowing exceptions to existing norms, provided that the decision was made not by the investor but by the relevant administrative body. He also welcomed the idea of transforming construction supervision authorities into the State Construction Inspectorate, whose Central Office would be subordinate to the Prime Minister[96]. His text also shows that a heated discussion revolved around the

[93] J. Słoniński, and W. Jędrzejewski, "Uwagi do tez reformy prawa budowlanego (dwugłos)", *Przegląd Ustawodawstwa Gospodarczego* 2 (284) (1972), 46–52.

[94] Ibid., 46.

[95] See: J. Topiński, "O kodyfikację prawa inwestycyjnego", *Państwo i Prawo* 1 (1962), 3–12.

[96] Słoniński, and Jędrzejewski, op. cit., 47.

issue of construction authorisations. There was no shortage of supporters of abolishing state exams, convinced that education and relevant practice were sufficient. Słoniński was opposed to that[97].

Stanisław Jędrzejewski also addressed the issue of construction authorisations – he noted the potential negative effects of their elimination but also pointed out that the current way of obtaining them was overly formalised. More importantly, he presented the issue of discussed changes to construction permits. Both the elimination of notifications replacing construction permits for certain minor construction work and, on the contrary, the expansion of the list of projects for which a notification sufficed were considered. Jędrzejewski mentioned that in practice, the institution of notifications did not function, because either works requiring them were not notified at all, or after a notification, construction supervision authorities issued a building permit anyway. It was also considered to limit the possibility of carrying out work on the basis of a notification only to investors in the socialised economy, performing construction work with the help of enterprises having organised quality control[98].

Bar, in a paper on the reform of the construction law, also argued against the inclusion of regulations on the organisational structure of planning, construction works, and production facilities in the construction law[99]. Discussing the problem of securing quality in various areas of construction, Bar mentioned that there was a problem with the application of the construction law under the 1961 Law. Neither the solution, in which the Committee for Construction, Urban Planning and Architecture was responsible for overseeing its observance, nor the model, where the Minister of Construction and Construction Materials Industry had that responsibility, passed the test. The author of the paper pointed

[97] Ibid., 49.
[98] Ibid., 52.
[99] Bar, "Reforma prawa budowlanego", 26.

out that the heads of the ministry in charge of project offices, contracting companies, and manufacturers of construction materials did not show enough concern for the implementation of the construction and spatial planning law. It was because they were too busy implementing economic plans[100].

Even before the entire draft of the new law was prepared, that part of the demands of the aforementioned commission, which could be introduced at the level of an executive act, was included in the Ordinance on Determining the Site of Construction Projects and State Construction Supervision of General Construction of 20 January 1973[101]. It put a number of issues in order. A single regulation replaced eight other executive acts, including the Ordinance of the Chairman of the Committee on Construction, Urban Planning and Architecture[102] of 27 July 1961 on State Construction Supervision of Construction, Demolition and Maintenance of General Construction Objects, which normalised the issuance of construction permits in detail. Interestingly, the new legislation regulated differently the procedures for obtaining a building permit for natural persons and investors who were not natural persons, although in the new construction law adopted already a year later, the differentiation of the situation of particular categories of investors was abandoned, which is discussed further in this chapter. For example, an investor other than a natural person (in the realities of the People's Republic of Poland, this meant basically entities of the socialised economy) could erect

[100] Ibid., 32.

[101] Rozporządzenie Ministra Gospodarki Terenowej i Ochrony Środowiska z dnia 20 stycznia 1973 r. w sprawie ustalania miejsca realizacji inwestycji budowlanych oraz państwowego nadzoru budowlanego nad budownictwem powszechnym (Dz.U. 1973 nr 4, poz. 29).

[102] Rozporządzenie Przewodniczącego Komitetu Budownictwa, Urbanistyki i Architektury z dnia 27 lipca 1961 r. w sprawie państwowego nadzoru budowlanego nad budową, rozbiórką i utrzymaniem obiektów budowlanych budownictwa powszechnego (Dz.U. 1961 nr 38, poz. 197).

one-story buildings with a volume of up to 1,000 cubic meters on the premises of industrial plants without a permit (§ 41 Section 2, Point 2 of discussed regulation), on the other hand, she or he was required to provide a technical description of the structure together with the application for a building permit, justifying the solutions used and the materials selected, taking into account the harmfulness of production processes, categories of explosion and fire hazards, etc. (§ 42 Section 1, Point 1, Subpoint c). Still, investors who were natural persons were exempt from the requirement to obtain a permit for the construction of gazebos in gardens and one-story outbuildings on plots in allotment gardens (§ 45 Section 2). In accordance with § 47 Section 2 of the analysed regulation, the competent authority, while issuing a building permit to an investor who was a natural person, notified the Citizens' Militia. Arguably, the intention behind it was to simplify it for the uniformed services to combat unauthorised construction. It is worth pointing out that the construction of chapels, crosses, and other objects of religious worship required a building permit, regardless of the type of investor[103], although the installation of any other similar objects of small architecture generally did not require the completion of analogous formalities. Thus, it is clear that the authorities of People's Poland wanted to control particularly strongly the presence of religious-related elements in public space.

The new Construction Law[104] (hereafter: 1974 Law) was adopted in October 1974.The legal act begins with a complete novelty as far as People's Poland construction law is concerned – the preamble. The relatively long opening paragraph of the discussed

[103] This obligation resulted, respectively, from §41, Section 1, Point 3, Letter b of the decree under review for investors who are not natural persons, and § 44, Section 1, Point 3, Letter c of this act for natural persons.

[104] Ustawa z dnia 24 października 1974 r. Prawo budowlane (Dz.U. 1974 nr 38, poz. 229).

act emphasises that "the role of construction in the development of the socialist economy and in raising the standard of living of society requires the constant improvement of construction activity, in accordance with the needs of the national economy and the public interest". It was this constant development that was identified as the source of the need for new legislation that would ensure, in particular: streamlining the process of preparing and implementing construction projects, securing spatial order in urban and rural development, strengthening environmental protection, ensuring high quality of construction and increasing its efficiency, making fuller use of the achievements of science and technology, and streamlining the activities of state administration in construction.

The preamble identified a number of values within construction that were important to the legislator. For the vast majority of them, the declared goal of the new regulations was further development. From this it comes out – first – that the starting point for the reform of the construction law in the mid-1970s had to be evaluated quite positively, and second – evolutionary changes were declared – the continuation of development in the direction already taken. As an aside, it is worth noting that in the case of construction quality, however, it was not written about increasing it but ensuring it, as if it had not been high up to that point.

Unlike the 1961 Law, the new act contains a clearly distinguishable ideological statement. However, key to this analysis is how the ideological content has changed in the act's exact provisions. They begin by defining the object of the law. According to Article 1, the Law of 1974 regulated activity involving matters of land use in accordance with the provisions of local spatial plans, the design, construction, maintenance, and demolition of buildings as well as defined the rules of operation of state administrative bodies in these areas. The glossary in the following

article was limited to defining three terms: "building structures", "construction", and "construction work". Article 3 of the discussed law upheld the principle of planned development of the state, stipulating that building facilities could only be erected in areas designated for this purpose in accordance with spatial planning regulations.

In a subsequent article, the 1974 Law stipulated that the architectural form of buildings should not only harmonise with their surroundings and enhance their aesthetics but also take into account the qualities of the landscape. This was the first of many provisions in the new construction law that paid attention to the human living environment. Article 5, Section 1 was essential, as it contained a catalogue of values that should be protected through designing, constructing, and maintaining buildings in accordance with the requirements of modern knowledge. It also included the safety of people and property protected by previous regulations (Point 1); necessary health conditions (Point 3); proper functional layout (Point 4); and appropriate operating conditions, with particular reference to fire protection, lighting, water supply, and sewage disposal (Point 5).

However, the extensive protection of two values listed in this catalogue under construction law was a novelty. The first was environmental protection (Point 2). The new law devoted an entire chapter to this issue (Articles 13–17). It was stipulated that building structures (especially those potentially troublesome to the environment) should be designed, built, maintained, and used in a manner that ensured protection of the environment, especially water, air, soil, nature, and landscape, as well as protection from noise, vibration, radioactivity, and electromagnetic radiation (Article 13). Designers of building structures were also required to ensure the protection of green space and limit the change of use of green areas to necessary and reasonable dimensions (Article 14). In addition, provisions regulating environmental

protection during the carrying out construction works are included in this chapter.

The second of the new values protected by construction law was the protection of the legitimate interests of third parties (Article 5, Section 1, Point 6). Although there was Article 39 in the 1961 Law, which stipulated that granting a construction or demolition permit did not infringe on the rights of third parties, it sounded "enigmatic" even for a administrative law doctrine of the time[105]. By contrast, under the new legislation, the protection of the legitimate interests of third parties was specified in detail in Article 5, Section 2, which stated that in particular it included the provision of access to a public road, utilities (water, sewerage, electricity and heat, and means of communication), and daylight, as well as the protection from nuisances such as noise, vibration or pollution. The concept of "legitimate interests" was not defined in the construction law itself but the doctrine indicated that it was appropriate to understand it as in an administrative procedure[106].

Rather than analysing in detail the changes which were of lesser importance from the point of view of the presence of political ideology in Polish construction law, it is worth giving voice to representatives of the legal doctrine of the time commenting on the introduction of the new regulations. Jędrzejewski, in a script prepared as part of the materials for participants in an extramural course on construction law, identified the following as the main changes introduced in the 1974 Law: inclusion of the issue of detailed localisation of construction projects in the construction law; elimination of the division into general and special construction; removal of the requirement for approvals of construction projects; different regulation of the scope of the obligation to apply for a construction permit for entities of the

[105] S. Mizera, "Administracyjnoprawna ochrona interesów osób trzecich w budownictwie", *Palestra* 21/1 (229) (1977), 95.

[106] Ibid., 98.

socialised economy and individuals (which, as indicated above, was actually done by an ordinance issued before the law was passed); elimination of permits for demolition and use; creation of the institution of a construction expert; regulation of procedures in the event of a construction disaster; more detailed regulation of environmental protection issues; extension and clarification of the principles of protecting the rights of third parties, appropriate distribution of responsibility among entities participating in the construction process[107].

Meanwhile, Władysław Graboń, in a paper[108] on the essential provisions of the new construction law published in the monthly *Przegląd Ustawodawstwa Gospodarczego* ("Review of Economic Legislation"), listed some of the main areas where the most significant changes were made. The first was reshaping the operation of technical and construction supervision, mainly by eliminating the division between general and special construction[109]. The second was the preservation of order in urban and rural development, which was to be fostered by a series of changes such as the obligation to develop the land around buildings being commissioned, various amendments in the procedures for approving documentation or obtaining permits, and higher penalties for unauthorised construction[110]. The third major area was the introduction of new, detailed environmental regulations[111]. As the fourth, Graboń pointed to facilitations that allowed faster implementation of technological advancements

[107] S. Jędrzejewski, *Prawo budowlane w systemie prawo polskiego (ogólna charakterystyka). Zakres i zasady stosowania prawa budowlanego. Prawo budowlane a proces inwestycyjny* (Warszawa: Wydawnictwo Prawnicze, 1980), 36.

[108] S. Graboń, "Zasadnicze postanowienia nowego prawa budowlanego", *Przegląd Ustawodawstwa Gospodarczego* 5 (233) (1975), 137–143.

[109] Ibid., 138.

[110] Ibid., 138–139.

[111] Ibid., 140.

in the construction industry[112]. The fifth area involved revisions of the authorisations for the independent performance of technical roles in the construction industry[113]. Referring to the discussion that took place in the Construction Law Commission, it should be pointed out that it was the idea of abolishing the exams that won out, after all. The ordinance[114] specified the education and practice necessary to perform certain roles as well as the authorities and organisational units authorised to certify the fulfilment of these conditions. The sixth area mentioned by Graboń was the protection of legitimate interests of third parties[115], and the seventh – the changes in the tasks and responsibilities of various state administrative bodies[116].

Both the author of the materials intended for legal education and the lawyer publishing in a journal intended to inform about new developments in the legal system pointed to either the above-discussed issues, such as protection of the environment or protection of third-party rights, or the various numerous changes in the organisation of authorities and procedures, which had a common goal of a general ordering of regulations and streamlining the investment and construction process, as the main changes introduced into the construction law by the 1974 Act. Of course, some of these also reflect changes in the political ideology of the People's Poland's authorities – such as precisely the greater attention paid to the rights of third parties, without distinguishing whether they were private individuals or entities of the socialised economy.

[112] Ibid., 140–141.

[113] Ibid., 141–142.

[114] Rozporządzenie Ministra Gospodarki Terenowej i Ochrony Środowiska z dnia 20 lutego 1975 r. w sprawie samodzielnych funkcji technicznych w budownictwie (Dz.U. 1975 nr 8, poz. 46).

[115] Graboń, op. cit., 142.

[116] Ibid., 142.

However, none of these studies mentioned a change that was perhaps the most fundamental from this perspective. The 1974 Law lacked an entire chapter on investors, present in the previous version of the construction law. Barely a dozen years earlier, complex provisions had been introduced to extend to this area of administrative law the concepts present in the Civil Code, which served to implement the socialist system's assumptions about property and the economy. This division imperceptibly disappeared, which was scantily ignored in all the publications discussed. After all, the ideology that the removed regulations were supposed to implement, theoretically, still remained in place.

In this form, with only minor changes in the 1980s[117], the construction law remained in force in an unchanged form until the end of the People's Poland, and even a few years longer, until 1995.

3.5. Other People's Poland's legislation on construction law

In addition to successive generations of construction law, the People's Poland legal system also saw *lex specialis* regulating certain selective issues related to the erection of buildings. A particularly interesting act of this type is the Decree on Finishing the Construction and Superstructing Certain Residential Buildings of 10 December 1952[118].

At the beginning of this act, it can be read that the provisions contained therein were established to obtain additional living chambers for working people. It applied to residential buildings suitable for finishing or superstructure, which were privately owned

[117] Ustawa z dnia 6 maja 1981 r. o zmianie ustawy – Prawo budowlane (Dz.U. 1981 nr 12, poz. 57) introduced the function of investor's supervision inspector.

[118] Dekret z dnia 10 grudnia 1952 r. o wykańczaniu budowy i nadbudowie niektórych budynków mieszkalnych (Dz.U. 1952 nr 49 poz. 325).

(Article 1, Section 1), and whose projects included more than five residential chambers (Article 1, Section 2). Article 2 of an analysed decree defined a building suitable for finishing as a structure in which at least one room was unfit as a result of interrupted work, and a building suitable for superstructure as a structure whose superstructure was technically possible and corresponded to the architectural and urban design of the settlement.

The presidium of the district national council (or the national council of the city constituting the district) – after inspection and recognition of the need for finishing or superstructure of the building – was supposed to set the owners of such buildings a technically reasonable deadline of no less than six weeks to carry out the work necessary for this purpose (Article 3). If the owner failed to complete the work within the indicated period, the relevant (municipal or town) national council could carry it out (Article 5, Section 1). In areas where the Central Administration for the Construction of Towns and Settlements of the Department of Workers' Estates invested, the latter should perform this task.

An analysed decree regulated the use of living spaces obtained as a result of the superstructuring or finishing a building. Based on the provisions contained therein, they remained at the disposal of the presidium of the relevant national council, unless the work was carried out at the expense of another administrative body or a socialised economy unit, in which case they could allocate the premises to their employees (Article 8). They were granted the right to use the finished or superstructured part of the building for the duration of the amortisation of the costs incurred in this regard, as determined precisely by the Council of Ministers (Article 12, Section 1). It passed a resolution[119] stipulating that

[119] Uchwała nr 27 Rady Ministrów z dnia 15 stycznia 1955 r. w sprawie zasad i trybu przyznawania odszkodowania za przejęte budynki wykończone lub nadbudowane oraz zasad ustalania okresu amortyzacji kosztów wykończenia lub nadbudowy budynku (M.P. 1955 nr 7, poz. 70).

the period could not be shorter than 10 years, and referring to an ordinance of the Minister of Construction of Cities and Settlements for details. It was issued two years later, already after the ministry had been renamed to the Ministry of Construction and Building Materials Industry[120]. The adopted method of calculation was quite complicated but in most cases the competent administration or a socialised economic unit obtained the right of use for several decades[121]. In this way, the rights of the property owner to use his property were temporarily restricted.

The provisions of the Decree on the Finishing the Construction and Superstructing Certain Residential Buildings were not limited to this. According to its Article 9, if the cost of the work exceeded 50% of the value of the building being finished or superstructed, it was transferred, along with the land, to the ownership of the state (or, alternatively, to the institution that financed the construction work), which was determined by the provincial or equivalent national council. Its ruling was the basis for entry in

[120] Zarządzenie Ministra Budownictwa i Przemysłu Materiałów Budowlanych z dnia 6 lipca 1957 r. w sprawie określenia czasu trwania poszczególnych rodzajów budynków dla ustalenia okresu amortyzacji nakładów poczynionych przez organy administracji państwowej lub jednostki gospodarki uspołecznionej na wykończenie lub nadbudowę tych budynków (M.P. 1957 nr 57, poz. 359).

[121] According to §5 of the discussed Council of Ministers' resolution, the amortisation period came out of dividing the sum of expenditures on substitute finishing or superstructuring by the sum of annual amortisation allowances. The latter came out of the duration of buildings specified in the Ordinance of the Minister of Construction and Building Materials Industry, which was 125 years for masonry buildings with fireproof ceilings and 50 years for wooden buildings if they were properly maintained in good condition.

Therefore, e.g., for a masonry building, for which expenditures accounted for 30% of its value, the depreciation period, and for this reason, also the time of use by the administrative authority or the socialised economy unit, was 37.5 years.

the land register (Article 9). Therefore, the decree was a standalone basis for expropriation of real estate in certain cases. It had to be carried out with compensation awarded according to the principles and procedure established by the Council of Ministers (Article 10). Significantly[122], the resolution in this case was adopted more than two years after the issuance of the discussed decree. According to its provisions, the owner of the seized property was entitled to compensation in the amount of the value of the building before superstructure or finishing, and the value of the land that the building occupied (§ 2). The exact amount was determined by the provincial or equivalent national council (§ 3) on the basis of the opinions of experts (§ 4). The resolution of the Council of Ministers did not provide for a possibility of appealing a decision on the amount of compensation to a court.

If the costs of superstructuring or finishing a building on the basis of the discussed decree did not exceed 50% of its value, they became an encumbrance on the real estate mortgage in favour of the entity that incurred them (Article 11) for the aforementioned amortisation period. It is worth adding that premises obtained in the course of finishing or superstructuring under an analysed decree were not allowed to be converted into commercial premises (Article 6). It indicates that the actual purpose of the legislation was meeting the housing needs of the public. In this case, the expression of People's Poland's political ideology was the way in which the problem in question was to be solved – with restrictions on the property rights of individuals.

In the modern doctrine of administrative law, there is a view that the erection of new buildings (as well as the reconstruction, expansion or superstructuring of existing ones) should be treated as

[122] Uchwała nr 27 Rady Ministrów z dnia 15 stycznia 1955 r. w sprawie zasad i trybu przyznawania odszkodowania za przejęte budynki wykończone lub nadbudowane oraz zasad ustalania okresu amortyzacji kosztów wykończenia lub nadbudowy budynku (M.P. 1955 nr 7, poz. 70).

a subjective right of the owner of a particular real estate, which falls with numerous conditions within the framework of a public-law liberty right to build[123], indirectly deriving even from the Constitution (because it is closely related to the constitutional right to property). Critics of the concept of the property owner's subjective right to build on her or his land point out that the use of land in accordance with its intended purpose in the land use plan is protected nowadays[124]. Hubert Izdebski wrote that it was necessary to break with the myth that the right to build up land arbitrarily arose from the essence of the property right. At the same time, he noted that spatial planning institutions "should be oriented towards the idea of rational compromise and proportionality between the constitutionally guaranteed right to property and the needs of the general interest becoming the public interest"[125]. The solution introduced by the discussed decree turns out to be far more radical in restricting the right to property than both of these views. The regulations analysed were not limited to regulating whether a property owner could or could not build. They gave the administrative bodies the ability to tell the owner that she or he must build – it imposed an obligation on the property owner to complete the construction or superstructuring of a residential building.

[123] W. Jakimowicz, *Wolność zabudowy w prawie administracyjnym* (Warszawa: Wolters Kluwer Polska, 2012), 18.

[124] I. Zachariasz, "Planowanie przestrzenne versus zagospodarowanie przestrzeni. Podstawowe problemy w orzecznictwie sądów administracyjnych", in: I. Niżnik-Dobosz, ed., *Przestrzeń i nieruchomości jako przedmiot prawa administracyjnego. Publiczne prawo rzeczowe* (Warszawa: LexisNexis Polska Sp. z o.o., 2012), 106–108.

[125] H. Izdebski, "Prawo własności w planowaniu zagospodarowania przestrzeni", in: I. Zachariasz, ed., *Kierunki reformy prawa planowania i zagospodarowania przestrzennego* (Warszawa: Wolters Kluwer Polska, 2012), 35.

The possibility of imposing a responsibility to finish, let alone superstructure, an owned residential building, compared to modern solutions, should be assessed as at least unusual. The current construction law allows for the possibility of the construction supervision authorities to order the owner of the property to carry out certain works but only if they aimed at removing serious irregularities (e.g., if the building may endanger human life or health; was a threat to property or the environment; was in an inadequate technical condition or caused disfigurement of the surroundings with its appearance)[126]. Similar solutions can be found in prewar legislation. Article 380 of the Ordinance on the Construction Law and the Development of Settlements allowed to summon the owner of a building to perform certain works in case of deficiencies in its maintenance[127]. It should be noted, moreover, that the 1927 Ordinance of the President of the Republic on the Expansion of Cities[128] authorised municipal authorities to order owners of unfinished houses to complete their construction, and owners of dilapidated houses to carry out appropriate repairs to improve the housing situation (Article 4). In the event that such a solution did not address the housing problem effectively, the authorities were authorised to expropriate buildings which were unfinished or in danger of collapse (Article 6, Section 2). These provisions can be considered, at least in part, the prototype of the solutions used in the analysed decree.

The Decree on Finishing Construction and Superstructing Certain Residential Buildings allowed for the imposition of obligations

[126] Article 66 Section 1 of the current construction law (Ustawa z dnia 7 lipca 1994 r. – Prawo budowlane, Dz.U. 2023 poz. 682, consolidated text with subsequent amendments).

[127] Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 lutego 1928 r. o prawie budowlanem i zabudowaniu osiedli (Dz.U. 1928 nr 23, poz. 202).

[128] Rozporządzenie Prezydenta Rzeczypospolitej z dnia 22 kwietnia 1927 r. o rozbudowie miast (Dz.U. 1927 nr 42, poz. 372)

to carry out the work (and the possibility of substituting it) not because of the need to secure the building but to increase its functionality. It was not up to the private owner but to the state authorities to decide whether the building should be finished or superstructured to accommodate more residents. Such a solution carries a strong ideological message, as it gives clear primacy to the state's housing policy over individual property rights. The solutions adopted were somewhat similar to the provisions of the already discussed Decree on the Demolition and Repair of Buildings Destroyed and Damaged by War, under which the competent authorities could oblige the owner of the property to carry out demolition or repair works, and if she or he failed to fulfil the imposed obligation, carry out these works in substitute. It can be suspected that the instrument introduced by the analysed decree was modelled on this act. However, it must be remembered that those provisions dealt with a completely extraordinary situation of eliminating the effects of war, while the decree under discussion was intended to implement the state's housing policy.

The decree analysed above was replaced in 1959 by the Law on Renovation and Reconstruction and the Finishing of Construction and Superstructing Residential Buildings[129]. Its provisions applied to residential buildings owned by individuals and legal entities that were not units of the socialised economy (Article 1, Section 1), with the exception of single-family houses and small residential houses within the meaning of the Law on Exclusion of Single-Family Houses and Dwellings in Houses of Housing Cooperatives[130], i.e., single-family houses with a total floor area

[129] Ustawa z dnia 22 kwietnia 1959 r. o remontach i odbudowie oraz o wykańczaniu budowy i nadbudowie budynków mieszkalnych (Dz.U. 1959 nr 27, poz. 166).

[130] Ustawa z dnia 28 maja 1957 r. o wyłączeniu spod publicznej gospodarki lokalami domów jednorodzinnych oraz lokali w domach spółdzielni mieszkaniowych (Dz.U. 1957 nr 31, poz. 131).

of no more than 110 sqm and buildings consisting of no more than four residential units (the floor area of each unit could also not be greater than 110 sqm – Article 1, Section 1 and Article 3, Sections 1 and 2 of that act) [131]. Thus, the scope of the exemptions, which until then, had included only five residential chambers, regardless of their area, was expanded.

The new law maintained the definitions of buildings suitable for finishing and superstructing (Article 6). The housing authority of a county national council[132] could, after inspection, summon the owner or administrator of a building to carry out finishing or superstructing work (Article 7, Section 1). The latter had 14 days from the receipt of the summons to declare that she or he would perform the work himself. Then the competent housing authority set technically reasonable deadlines for the commencement and completion of the works, the former of which could not be shorter than six weeks since announcing the decision (Article 7, Section 2). If the owner failed to submit a statement of intent to complete the works her- or himself, or missed set deadlines, the housing authority could order that the works should be continued with state funds (Article 7, Section 3). In such a situation, the entity that carried out the finishing or superstructing of the building (the housing authority in question, another administrative body or another socialised economy entity) obtained the right *in rem* to use the part of the building affected by the construction work for a period depending on the incurred costs (Article 10, Section 1). However, if the costs exceeded 50% of the technical value of the building, it could be taken into state ownership with compensation. Therefore, applied solution was similar to that contained in the Decree on the Completion of Construction and Super-

[131] The same exceptions applied as for the public management of dwellings, they are discussed in detail in the chapter on housing law.

[132] Or the municipal council of a city constituting a county or a city excluded from the province.

structing Certain Residential Buildings, which had been in force previously. The method of determining the time of amortisation was regulated by an ordinance of the Council of Ministers[133], and did not differ significantly from the solution that had been functioning earlier. In turn, with regard to the procedure for determining the amount and payment of compensation for real estate taken over by the state, reference was made to the Law on the Principles and Procedure for Expropriation of Real Estate, which had already been in effect at the time[134].

A novelty contained in Article 2 of the Law on Rehabilitation and Reconstruction and Finishing Construction and Superstructing of Residential Buildings was the possibility for the housing authority to carry out major renovations and protective repairs of residential buildings subject to the provisions of the discussed act as well as improvements to their technical equipment and their restoration or redevelopment. The procedure was similar to that for finishing and superstructing – the authority, after an inspection, notified the owner of the extent and type of the planned work (Article 3, Section 1). The latter had 14 days to declare that he would finish the work her- or himself[135]. In that case, the authorities set an appropriate deadline for the start and completion of the works (Article 3, Section 2). As in the case of finishing buildings and superstructing them, the owner's failure to submit a statement or meet the indicated deadlines could result in the execution of the works with state funds (Article 3, Section 3).

[133] Rozporządzenie Rady Ministrów z dnia 27 sierpnia 1959 r. w sprawie zasad ustalania okresu użytkowania wykończonej lub nadbudowanej części budynku (Dz.U. 1959 nr 52, poz. 314).

[134] Ustawa z dnia 12 marca 1958 r. o zasadach i trybie wywłaszczania nieruchomości (Dz.U. 1958 nr 17, poz. 70).

[135] When the need to carry out the work was caused by a natural disaster or an immediate threat to the building, the deadline could be reduced to three days.

In such a situation, the expenses incurred by the state constituted its claim secured by a mortgage on the property (Article 9, Section 1), bearing interest at 1% per year (Article 9, Section 2). Also, in the case of works related to the repair, improvement, reconstruction, and redevelopment of private buildings, when the costs exceeded 50% of the technical value of the building, it could be taken into state ownership with compensation (Article 11, Section 1).

The Law on Renovation and Reconstruction, and on Finishing Construction and Superstructing Residential Buildings reduced the scope of private buildings as to which People's Poland's administrative bodies were able to decide to oblige their owners to carry out certain construction work, or to carry out this work on their own, obtaining in this way the use of part of the building or ownership of the whole structure. However, on the other hand, the catalogue of types of works that such decisions could include was expanded – it was no longer just finishing and superstructing, i.e., actions aimed at increasing the amount of housing space available in the country but also repairs, improvements, and reconstructions, namely, actions aimed at improving the quality of the housing substance. It further broadened of the scope of government interference in the use of private property, at first limited to the demolition or repair of structures destroyed or damaged during the war.

The law discussed above saw a significant amendment in 1968[136], as part of which Chapter 3 entitled *Reconstruction of building complexes* was introduced. Pursuant to Article 6, Section 1 contained therein, it was possible (while complying with the

[136] Ustawa z dnia 15 lipca 1968 r. o zmianie ustawy o remontach i odbudowie oraz o wykańczaniu budowy i nadbudowie budynków mieszkalnych (Dz.U. 1968 nr 25, poz. 166); the numbering of articles of the law cited hereafter refers to the consolidated text of 3 September 1968 (Dz.U. 1968 nr 36, poz. 249).

provisions on the protection of cultural property and museums) to reconstruct, expand, superstructure or renovate, or even demolish buildings or parts thereof as well as to combine buildings and internal facilities of such buildings when, for architectural or spatial planning reasons as determined by the provisions of local spatial plans, it was necessary to arrange a building complex of historical developments within the city.

Such complexes of historical buildings requiring rearrangement were determined by the provincial national council at the request or after consultation with the national council of the relevant city, and in cities excluded from voivodships – by the national council of the city at the request or after consultation with the relevant district national council (Article 6, Section 2).

As in the case of the completion of other works included in the analysed law, the state was allowed to take the ownership of the buildings covered by the works. However, the specific conditions for such expropriation were defined differently. Buildings and associated land could be seized when the works related to the reconstruction of a building complex involved buildings intended for the needs of the general public, or when, as a result of the repairs made, the technical value of the building increased by more than 50% (Article 7, Section 1). Moreover, the law included the possibility of expanding the catalogue of situations in which there was drastic interference with the ownership of real estate involved in the reconstruction of building complexes by having it taken over by the state by ordinance of the Council of Ministers (Article 7, Section 2). However, in practice, the Council of Ministers did not use this possibility, and an ordinance based on this authorisation was not issued.

In the case of properties included in the reconstruction work of a building complex, which were not taken over by the state, their owners were left with the cost of the reconstruction – it created a state claim subject to mortgage security (Article 8,

Section 2). Although its amount corresponded to the increase in the value of the property, according to Section 1 of Article 6 of the amended law, it forced investment at the owner's expense and it could concern the architectural aesthetic qualities of the building only.

It should be noted that the law also provided for the demolition of private buildings as part of the redevelopment of residential complexes. It should be assumed that the value of the property in the case of demolition of a residential house was decreasing, not increasing. Thus, there was a theoretical possibility that the owner would be left with an empty plot of land and without compensation in a situation where her or his house would be demolished and the freed land allocated for the needs of the general public. However, this was a legal gap rather than another gateway for greater interference with property rights.

It should be added that, unlike other construction works carried out under the analysed law, in the case of the reconstruction of building complexes, the property owner could not realise the investment on her or his own. Moreover, the owner's consent was not needed to perform these works (Article 8, Section 1). Therefore, regardless of the owner's willingness and ability to commit financial resources, the state always had the option of taking ownership of the property. On top of this, according to Article 1, Section 4 of the discussed act, even single-family houses and small apartment houses, which were not covered by the regulations on finishing, superstructuring or reconstruction, were subject to the provisions on reconstruction of building complexes. Thus, the area of application of the new regulations was limited only to historical housing complexes in urban areas, on the other hand, if any properties were already in the area covered by the redevelopment of housing complexes under the analysed act, the possibility of interference by state authorities with property rights was much greater than before. Once again,

a new element appeared in the catalogue of goals that justified such interference – in addition to increasing available housing space and improving its quality, there were spatial order as well as architectural and urbanistic qualities of historical parts of cities.

It is also important to note the imprecision of the wording introduced in the 1968 amendment. Reconstruction of a building complex was possible in the case of necessity occurring "for urban or architectural reasons" (Article 6, Section 1), and taking property into ownership, regardless of the cost of the completed work, was permitted if it was intended "for the needs of the general population of the complex". It was not specified exactly what all this meant, so the room for the authorities' discretion was considerable.

A very short Act on the Responsibility of Documenting the Origin of Materials Used for Non-socialised Construction Purposes helps to reconstruct the reality of People's Poland[137]. Under its Article 1, Section 1, an individual or legal entity that was not a socialised economy entity, carrying out the construction, superstructuring, reconstruction or expansion of a residential house or other building, was required to have written evidence of the legal acquisition or obtaining of the building materials used in the construction. These documents had to be kept for three years after the completion of the project. According to Article 1, Section 3 of the discussed law, the list of building materials covered by this responsibility was established by ordinance of the Chairman of the Committee on Construction, Urban Planning and Architecture[138].

[137] Ustawa z dnia 15 lipca 1961 r. o obowiązku udokumentowania pochodzenia materiałów użytych na cele budownictwa nie uspołecznionego (Dz.U. 1961 nr 32, poz. 162).

[138] Rozporządzenie Przewodniczącego Komitetu Budownictwa, Urbanistyki i Architektury z dnia 21 lipca 1961 r. w sprawie wykazu materiałów budowlanych, na których posiadanie osoby fizyczne i prawne nie będące jednostkami gospodarki uspołecznionej obowiązane są posiadać dowody legalnego ich nabycia lub uzyskania (Dz.U. 1961 nr 35, poz. 181).

The list included cement, bricks, reinforcing steel, wood, flooring materials, cables, pipes, bathtubs, and radiators, basically, all the most important materials needed to build a house.

Failure to comply with these documentation duties resulted not only in an imposition of a fine but more importantly, in an obligation to pay to the State Treasury a contribution equal to the full value of materials whose legal origin was not proven (Article 2, Section 1). The financial authorities of the relevant national councils and the architectural and construction administration were obliged to control whether investors had the proper documentation (Article 3, Section 1). Its permissible form was determined by ordinance by the Minister of Finance (Article 4)[139] . Itindicated the detailed requirements that had to be met not only by bills for the purchase of materials but also by documents certifying that they had been obtained from demolition or manufactured at the investor's own effort. The manner in which investors carried out an inventory of building materials in their possession at the moment the analysed regulations came into force was also precisely regulated. Documentation of their legal origin was not mandatory only on condition that an inventory of them was delivered to the competent authorities within the prescribed period.

Thus, it is clear that the legislature took the issue of the legality of building materials used by private individuals on their construction sites very seriously, so this was, most likely, a major problem. Unlike most of the legislation analysed in this work, this short law did not contain norms designed to implement the political ideology in effect at the time. Rather, it serves as evidence that the authorities of People's Poland encountered specific problems in implementing their goals and objectives – including

[139] Rozporządzenie Ministra Finansów z dnia 21 lipca 1961 r. w sprawie dowodów nabycia materiałów budowlanych oraz sporządzenia spisu remanentu tych materiałów (Dz.U. 1961 nr 35, poz. 179).

in the area of construction – and tried to solve them by ad hoc means. There is a question why the analysed provisions were included in a separate act, rather than in an amendment to the construction law. Was theft of building materials an embarrassing issue for the People's Poland authorities?

3.6. Construction law of People's Poland – summary

As with other areas of regulation, the history of People's Poland's construction law began with the application of regulations dating back to the Second Polish Republic in the new political and socio-economic reality – the 1928 Ordinance on the Construction Law and Development of Settlements, which contained policy and construction regulations typical for the period.

However, in this case, the prewar regulations remained in force for a notably long time, until 1961. Several reasons for this state of affairs can be identified. The 1928 Ordinance was not evaluated positively at all by lawyers publishing officially in People's Poland. They pointed out that it came from the bourgeois system and was not adapted to the new reality. However, one of the reasons for this non-adaptation to modern times was the focus of the 1928 Ordinance's regulations on private sector investment, which was no longer expected to play an important role after the economic transformation. The state construction industry, which dominated after 1945, was given little attention there. That is why these provisions did not contradict the policy of the People's Poland authorities. They left a kind of legal vacuum, which could be filled by various decrees and, above all, by acts of a lower rank: resolutions, ordinances, executive orders. Occasionally, it also turned out that this gap did not need to be filled with anything. Under Stalinism, sometimes legal grounds were not necessary for actual action, as exemplified by the above-mentioned cases

of state investments being carried out without the required documentation.

The specific needs that arose in the construction industry after World War II were another reason why the 1928 Ordinance was in effect for such a long time. Most of the forces and resources were committed to cleaning up the damage. That is why new, separate legislation (analysed in the previous chapter) was dedicated to this issue, and it included solutions that corresponded to the new political and economic system.

Analysing the history of construction law in People's Poland, one can also easily see the effects of the post-Stalin thaw. It was in 1954 that a commission was established whose work led to the enactment of a completely new law in 1961. In the same year, the Council of Ministers passed a resolution that effectively recreated state construction supervision. From the mid-1950s also come papers (by Ludwik Bar and Wacław Brzeziński, among others) which offered direct criticism of the practice of applying construction law in the first decade of People's Poland and called for legal reforms in this area.

The adoption of the new construction law had been preceded not only by the work of a specially appointed commission but also by a discussion of the assumptions of the new regulations on the pages of the professional press. The Construction Law of 1961 finally ended the full freedom of state construction units, imposing the responsibility to obtain a permit before starting any construction – even when the draft was drawn up in a state project office. It also cleaned up issues regulated in sub-statutory acts which often contradicted each other.

At the same time, a complicated distinction was made between investors of different categories (state, cooperative, societal, and private), which was consistent with the provisions of the property law adopted a few years later regarding different types of property. Under the Civil Code, private property suffered restrictions (and

enjoyed less protection than societal property), and under the construction law, the private investor had limited opportunities to carry out construction projects. Thus, the 1960s were a period in which the political principles of state socialism (in this case, regarding the dominant role of national ownership), a decade earlier declared in the Constitution, were implemented in all kinds of specific provisions of various branches of law – from civil to the construction law.

The 1961 Act also included other measures that came out of the People's Poland's economic system. The use of typical designs became a rule, an exception to which had to be well justified. Projects had to be drafted in state offices, and the activities of independent architects required a special permission. In essence, the role of the state and its influence on construction was beginning to increase compared to the regulations of the 1928 Ordinance. It was no longer limited solely to ensuring the safety of the construction and maintenance of buildings. According to the new regulations, the People's Poland authorities were also supposed to take care of their functionality or economy of construction and maintenance.

The Construction Law of 1974 was drafted as a tool for pragmatic state management in the area of construction. Most of the changes made were aimed at simplifying or streamlining procedures and regulations. A number of formalities were eliminated. The interest of third parties (including individuals) and environmental protection were of greater importance than before. However, regulations introduced barely a dozen years earlier implementing the desired vision of social relations in a socialist state in the area of construction disappeared. Political ideology was transferred to the preamble of the law. It was thus a dead declaration, with less and less translation into the practice of social and economic life. The political events of the late 1970s and early 1980s were not associated with significant changes in

construction law. It can be explained by the fact that the provisions with the strongest ideological tinge, which had real significance, had been removed with the adoption of the new law several years earlier.

People's Poland's legal literature identifies three stages in the development of construction law: application of the 1928 Ordinance (1945–1961), the period of the 1961 Law (1961–1974) and the period after 1974 under the latest act[140]. However, from the point of view of the influence of People's Poland's political ideology on construction law, more clear-cut stages can be identified. The first was the early years of the state's existence, when the main problem was the reconstruction of war damage. At that time, the main role was played by regulations specifically established for this purpose, discussed in the previous chapter. Then came the Stalinist era, when the most important thing was the implementation of economic plans, and no care was even taken of the consistency of the legal system. Various issues related to construction were regulated through sub-statutory acts, often contradictory, and the laws. At the same time, some of the provisions still formally in force were simply not applied.

The 1945–1961 period indicated in the literature, from the point of view of this analysis, should be divided into two stages. The time of Stalinism, summarised above, ended with the thaw, which was followed by changes visible in the area of construction law, including the reestablishment of the architectural and construction administration, the beginning of work on a new law or, finally, criticism of the practice of the law in previous years in officially published journals and literature. However, at some point in People's Poland's political history, the thaw ended, whereas state socialism did not. The 1960s saw an attempt to

[140] See: Kulesza, and Słoniński, op. cit., 10; Księżopolski, and Martan, op. cit., 40.

consolidate the political system in various areas of regulation, including construction law. The new act contained provisions which openly implemented the ideological assumptions of the state system. Nevertheless, these provisions did not last long, as the 1974 Law has concentrated political ideology mainly in its preamble, and the regulations were drafted more in terms of pragmatic state management. As a result, they survived until 1995.

The evolution of People's Poland's construction law thus reflects the political changes that took place in the country over nearly half a century of its existence. Only the events of the late 1970s and early 1980s were not hinted at in the changes to these laws, due to the fact that a major reform had already been carried out several years earlier.

4
Spatial planning law

Architect and urban planner Krzysztof Kafka defines spatial planning as "a system of activities of a practical and organisational nature implemented in physical space, undertaken by certain levels of territorial administration aimed at mastering changes in that space" and adds that "in the environment of a democratic state under the rule of law, the construction of this system and certain powers are sanctioned by regulations of statutory rank"[1]. Therefore, spatial planning law is a part of the legal system that undoubtedly falls within the case study framed as the legal regulations on housing, construction, and spatial planning of People's Poland, i.e., shaping the living space of socialist society – regardless of the fact that during the period under analysis, People's Poland was not a democratic state under the rule of law, as mentioned by the author writing in 2013, but a state of people's democracy.

[1] K. Kafka, *Modele współdziałania uczestników planowania przestrzennego* (Gliwice: Wydawnictwo Politechniki Śląskiej, 2013), 28.

In this chapter, spatial planning law shall be understood as any legislation that forms the basis for the issuance of universally binding legal acts defining the possible use of land in a given (smaller or larger) area of the country, and regulating the procedure for creating such acts – regardless of the titles of the laws and the terms used in them. Indeed, this has changed over the years: in the Second Polish Republic, the legislator spoke of development plans; in the People's Poland period under review, there was initially a decree on "planned land use of the country", later replaced by a "spatial planning" law, while after the political transition a symbolic change was made, introducing the concept of "spatial development" in 1994, only to partially return to the old nomenclature a few years later in the 2003 law on "spatial planning and development". Regardless of the repeatedly changing terminology, all of the normative acts analysed in this chapter deal with the same matter and form a regulatory continuity in which new legislation replaced earlier ones. Each time, the changes went deeper than the title of the decree or law, and were not unrelated to the evolution of the People's Poland political system, so a detailed analysis is necessary.

4.1. Development of spatial planning law before World War II

Like in other areas of socio-economic life, also in the field of spatial planning the authorities of People's Poland did not build a legal system from scratch. In the first period of the construction of the new state, the prewar Ordinance of the President of the Republic on the Construction Law and Development of Settlements[2] of 1928 (hereinafter: 1928 Ordinance) was still in force. Its entire

[2] Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 lutego 1928 r. o prawie budowlanem i zabudowaniu osiedli (Dz.U. 1928 nr 23, poz. 202).

Part I related to land use issues (it regulated issues of parcelling and consolidation of land and – temporarily – the matter of expropriation inter alia), while Title I, located therein, was directly devoted to spatial planning.

On the basis of the experience of the legal regulation of the development of Polish cities by the Partition authorities (including the effectiveness of district legislation after Poland regained independence)[3], it included provisions introducing the development plan as the main measure for shaping spatial order. This instrument was to be applied only at the local level, and not for the entire country – according to Article 7 of the discussed ordinance, development plans were to be drawn up for urban municipalities and "resorts recognised as having a public utility character". For other settlements, development plans could be drawn up on an optional basis – not for any areas but only for settlements, so the drawing up of development plans for areas designated for purposes other than construction was not envisaged.

Provision was made for general plans for "the area of the entire settlement, or a significant part thereof, or for several neighbouring settlements", and for detailed plans, drawn up on the basis of the general plan, covering "the area of the entire settlement, or a part thereof, or individual parts of neighbouring settlements" (Article 8). The general plans were to specify the layout of the main streets and the general use of land (Article 10), while the detailed plans were to contain more detailed regulations of the manner of construction (Article 11). A detailed plan could be prepared without a prior general plan if it met all the requirements for a general plan and covered the entire settlement, or in a few special situations, such as the need to rebuild after a natural disaster (Article 9).

[3] W. Brzeziński, *Plan zagospodarowania przestrzennego. Studium z zakresu nauki administracji i prawa administracyjnego* (Warszawa: Państwowe Wydawnictwo Naukowe, 1961), 73.

The analysed ordinance contained only general guidelines for planners, defined in Article 12 as "health requirements, safety from fire, convenience and development of transportation, and reasonable drainage of the settlement". Subsequent articles clarified, e.g., that the distance between buildings on two sides of a street should generally extend to at least 12 meters (Article 14) but that the width of major thoroughfares should be at least 18 meters (Article 13), and streets and squares should be designed to provide sunlight to residential buildings (Article 15). Many of the regulations were general directives, e.g., Article 20 stipulated that aesthetic requirements should be taken into account when drawing up development plans, and the character of the settlements and parts of settlements in question should be preserved, while Article 16 stated that the density of development should be adapted to the character of existing neighbourhoods.

Thereafter, it was not until a while later that the Ordinance of the Council of Ministers on Peacetime Preparation of Anti-Aircraft and Anti-Gas Defence in the Areas of Regulation and Development of Settlements and Public and Private Construction of 1938[4] and the Ordinance of the Council of Ministers on Peacetime Preparation of Anti-Aircraft and Anti-Gas Defence in the Area of Industrial onstruction of 1939[5] concretised the principles according to which development plans should be drawn up. The former ordinance among other things indicated that the layout of thoroughfares should be straight and in line with the direction of the winds (§ 3 Point 1), the planning of dead-end streets, i.e.,

[4] Rozporządzenie Rady Ministrów z dnia 29 kwietnia 1938 r. o przygotowaniu w czasie pokoju obrony przeciwlotniczej i przeciwgazowej w dziedzinach regulacji i zabudowania osiedli oraz budownictwa publicznego i prywatnego (Dz.U. 1938 nr 32, poz. 278).

[5] Rozporządzenie Rady Ministrów z dnia 24 marca 1939 r. o przygotowaniu w czasie pokoju obrony przeciwlotniczej i przeciwgazowej w dziedzinie budownictwa przemysłowego (Dz.U. 1939 nr 31, poz. 207).

those enclosed by buildings, was forbidden (§ 7); metropolitan, compact, and dense districts should be loosened with green areas, which should receive formal protection (§ 8), and at least 40% of the land of newly designed settlements should be left undeveloped (§ 9). Industrial areas, meanwhile, should not exceed a seventh of the city's total area (§ 12). The second ordinance specified the minimum distance of strategic industrial plants from residential facilities intended for their employees (§ 8). These ordinances, as implementing acts of the Anti-Aircraft and Anti-Gas Defence Act of 1934[6], were intended to be dedicated primarily to defence issues. However, as can be seen, they also had a significant impact on the quality of life of the people by establishing minimum requirements for green areas and public spaces.

According to Article 22 of the 1928 Ordinance, drawing up plans for individual areas was the responsibility of magistrates, county departments, and resort commissions operating under separate regulations[7]. Article 29 of that act stipulated that the prepared plans should be enacted by city or municipal councils, county departments, and resort commissions, respectively. Therefore, the legislature decided to place planning powers in the hands of the democratic local government that existed in the Second Polish Republic[8].

[6] Ustawa z dnia 15 marca 1934 r. o obronie przeciwlotniczej i przeciwgazowej (Dz.U. 1934 nr 80, poz. 742).

[7] Ustawa z dnia 23 marca 1922 r. o uzdrowiskach (Dz.U. 1922 nr 31, poz. 254).

[8] Under Article 23 of the 1928 Ordinance, certain powers were reserved for the supervisory authority only in the case of the need to draw up a plan for a particularly large area – encompassing several settlements, especially those lying within several municipalities. In such a situation, a special commission was established, whose chairman was appointed by the relevant state supervisory authority (or, in the case of Warsaw, by the Minister of Public Works in consultation with the Minister of Internal Affairs). However, the members of this commission, or at least the majority

The provisions of the Ordinance on the Construction Law and the Development of Settlements granted protection to the individual interests of the owners of real estate covered by development plans, which was in fact the reason for criticism of the prewar regulations by scholars publishing during People's Poland. Economist Urszula Wich saw a particular impediment to the implementation of development plans in "granting broad powers to representatives of individual interests (primarily owners of real estate and urban plots)"[9].

Among the aforementioned rights was the possibility for interested parties to raise objections to the approved plans contained in Article 31 of the ordinance under review. To make it possible, the relevant authorities were obliged to make planning acts available to the public for inspection for a minimum period of four weeks (Article 30). The procedure for handling objections was a two-stage process. First, they were dealt with by the authorities who had the right to the respective plan. Objections rejected by them were considered by the Minister of Public Works or the provincial governor, depending on the type of area covered by the plan.

Another entitlement of property owners granted by the provisions of Article 47 of the 1928 Ordinance was the right to compensation for actual damage as a result of the prohibition of construction, expansion and major reconstruction of buildings located in areas designated in development plans for main thoroughfares, public squares, squares, parks, gardens, sports grounds, and forest, agricultural crops, allotment gardens, etc., arising from Article 46 in conjunction with Article 10 of the act. A several-step procedure was provided for the recovery of such

of them, were already appointed by the constituent bodies of the municipalities affected by a particular plan.

[9] U. Wich, "Rozwój planowania przestrzennego w Polsce", *Annales Universitatis Mariae Curie-Skłodowska. Sectio H, Oeconomia* 10 (1976), 61.

a damage (Article 48) – the injured party and the municipality had one year to reach a settlement. When this did not happen, the relevant authorities ruled on the amount of compensation to which they were entitled on the basis of the opinions of assessment commissions appointed under Article 49. Such a decision could still be appealed to court (Article 50).

In 1936, the analysed ordinance was significantly amended[10] – the new wording of its Article 8 allowed the creation of general development plans for the area of the entire province or even several neighbouring provinces (or parts thereof). Such acts were called regional plans. They had to be drafted by a commission appointed by the Minister of Internal Affairs when he deemed that economic conditions or the public interest required it. This means that it was only three years before the outbreak of World War II that spatial planning was regulated on other than the local level.

The legal arrangements in the area of spatial planning introduced in the Second Polish Republic are now considered innovative[11] but administrative law scholars publishing in People's Poland drew attention to the difficulties of implementing development plans because of the formalised procedure applicable to modifications to existing structures and the high costs involved[12]. This indicates a change in the understanding of the role of spatial planning law after World War II, about which there shall be more in the next subchapter.

[10] Ustawa z dnia 14 lipca 1936 r. o zmianie rozporządzenia Prezydenta Rzeczypospolitej z dnia 18 lutego 1928 r. o prawie budowlanem i zabudowaniu osiedli (Dz.U. 1936 nr 56, poz. 405).

[11] See: Z. Niewiadomski, *Planowanie przestrzenne. Zarys systemu* (Warszawa: Wydawnictwo Prawicze LexisNexis, 2002), 17; Z. Leoński, and M. Szewczyk, and M. Kruś, *Prawo zagospodarowania przestrzeni* (Warszawa: Wolters Kluwer Polska, 2012), 35.

[12] Jędrzejewski, *Prawo budowlane*, 24.

4.2. The 1946 Decree on the Planned Development of the State

According to Brzeziński, the works on the Spatial Planning Law were carried out "among progressive urban planners"[13] already during the occupation. They were based on the assumption that the system of the new state would be founded on a planned economy, and therefore, work was undertaken to extend spatial planning not only to urban areas, but to all land, regardless of its use. It was "a rejection of the hitherto bourgeois concept of the development plan as a 'minimum plan,' limited only to planning issues of cities and settlements"[14].

The author of this study has not been able to obtain any materials from the work on draft laws carried out during the occupation that would confirm the words of Wacław Brzeziński. However, it cannot be denied that new regulations in the area of spatial planning were indeed introduced very quickly, as in less than two years after the end of the war. The Decree on the Planned Development of the State[15] dates back to 2 April 1946 (hereinafter: 1946 Decree). According to its first article, "all public and private activities in the use of land should be aligned with the provisions of the spatial development plans". The planning acts were, therefore, given a new name. However, the replacement of development plans with spatial development plans was not a purely terminological change. The administrative law doctrine of the time pointed out that "the difference is not just a verbal difference. There is a difference in the content and nature of these

[13] Brzeziński, *Plan zagospodarowania przestrzennego. Studium z zakresu…*, 81.

[14] Ibid.

[15] Dekret z dnia 2 kwietnia 1946 r. o planowym zagospodarowaniu przestrzennym kraju (Dz.U. 1946 nr 16, poz. 109). Hereinafter in this chapter also: 1946 Decree.

legal acts"[16] – spatial planning was supposed to cover all areas, not just the areas of built-up settlements and areas designated for construction.

The next article of the analysed decree introduced another important change compared to the prewar spatial planning system. Local planning, obligatory only for parts of the country, with elements of only optional regional planning, was replaced by a three-tier structure consisting of national, regional, and local plans. The order in which the various plans were to be created and the relationship between them was also clearly defined – regional plans were to be drawn up on the basis of the national plan (Article 4, Section 1), and local plans based on regional plans. In the absence of a regional plan, the local plan was to be drawn up using the guidelines of the institution responsible for planning at the regional level (Article 5, Section 1). The situation of the absence of a national plan was not even considered by the legislator.

The structure of entities responsible for drafting planning acts changed completely. Chapter III of the analysed decree established completely new planning authorities. The General Office of Spatial Planning (Główny Urząd Planowania Przestrzennego – GUPP), regional planning administrations and local planning offices were created (Article 8). Therefore, the newly created structure corresponded to envisaged levels of the planning acts. It should be noted that from 1947 onward, spatial planning for the area of the capital city of Warsaw was governed by separate regulations discussed in detail in the section of this work dedicated to special legislation for the postwar reconstruction of that city.

The drafting of the national plan was the responsibility of the General Office of Spatial Planning. The procedure for its prepa-

[16] W. Brzeziński, *Podstawy prawne planowania gospodarczego i przestrzennego* (Warszawa: Gebethner i Wolff, 1948), 47.

ration was to be determined by regulations issued by the Minister of Reconstruction by ordinance (Article 19). However, no such act was published. The draft national plan had to be adopted by the Council of Ministers and then passed by parliament in the normal legislative procedure (Article 20). This was parallel to the measures used in economic planning[17]. GUPP had also the power to inspect the compliance of ongoing investments with the national plan. It could halt construction and rule on the restoration to the original condition (Article 10, Point 3).

Similarly, regional plans were to be drawn up by regional spatial planning administrations (Article 12). However, projects had to be later approved by the GUPP (Article 10, Point 2). The finished draft had to be submitted to the Provincial National Council for adoption. This body could enact the plan or reject and return it to the regional spatial planning directorate with justification (Article 24, Section 1). However, the Provincial National Council had not have the ability to submit amendments or any other influence on the content of the spatial plan before it was passed.

Local spatial plans were to be prepared by local planning offices (Article 14, Point 1) and approved by regional planning administrations (Article 28). Subsequently, these acts were to be enacted by the respective national councils – municipal councils for "separated cities" and county councils for other cities and settlements (Article 29). Analogous to the procedure applicable to regional plans, city or county national councils could only

[17] According to the Decree on Planned National Economy (Dekret z dnia 1 października 1947 r. o planowej gospodarce narodowej, Dz.U. 1947 nr 64, poz. 373), multi-year and annual economic plans were enacted by statute. See also Law on the Economic Reconstruction (Ustawa z dnia 2 lipca 1947 r. o Planie Odbudowy Gospodarczej, Dz.U. 1947 nr 53, poz. 285) enacted even before the official adoption of the legal principles of economic planning.

reject the plan and return it to local planning offices with justification. They were not allowed to make their own changes and amendments.

The legislature did not anticipate a situation in which particular national councils would permanently block the adoption of planning acts by continually rejecting projects submitted to them. The 1946 Decree did not include a procedure that would allow for the adoption of a spatial plan by some other higher authority, even in the event of several negative decisions by a provincial, district or city national council. Wacław Brzeziński saw a possible solution to such a conflict in Article 15 of the analysed decree, according to which the Minister of Reconstruction had the option of delegating the drafting of a regional or local plan to the GUPP, and a local plan to the Regional Spatial Planning Administration. The plan would then be passed by the Parliament or the provincial national council, respectively[18]. However, it is probably possible to offer the hypothesis that it was not a serious legislative omission, since the legislature was simply not overly concerned about the occurrence of such a conflict between the planning authorities and a national council. Unlike the institutions of local self-government during the Second Republic, from the beginning national councils were under the strong political influence of the central authorities, who shaped their composition in various ways[1]. It was easy, since their members did not come from universal elections but were delegated by various organisations – only those that reported their activities to the authorities of People's Poland. The reality appeared to be typical of democratic centralism. Although in their theoretical conception the national councils were intended to enable the participation of the broad

[18] Brzeziński, *Plan zagospodarowania przestrzennego. Studium z zakresu…*, 92.

[1] I. Lewandowska-Malec, "Dwie koncepcje udziału rad narodowych w życiu publicznym PRL", *Państwo i społeczeństwo* 1 (2001), 126.

masses of society in the exercise of power, they were ultimately subordinated to the political decision-making centres[2].

According to Article 16 of the 1946 Decree, the main Planning Council and the regional planning councils were to be the consultative bodies on spatial planning matters. However, these institutions remained only on paper, as their composition, detailed scope of activities, term of office and method of appointment were to be regulated by an ordinance of the Minister of Reconstruction. However, as late as 1948, Brzeziński mentioned that a regulation on the Main Planning Council and regional planning councils was "in preparation"[3], and ultimately, it never saw the light of day. It is one of the symptoms indicating the direction in which the practice of the spatial planning law application would be heading in the next decade (the following subchapter shall be devoted to the matter).

Compared to the prewar solutions, the structure of the bodies with competence in spatial planning was changed completely. The system, in which – with some exceptions – the most important powers were held by democratic local self-government, was replaced by a concept based on a strongly hierarchical structure of state institutions. They were empowered to draft planning acts at all envisaged levels, and public participation was limited to the approval of ready-made spatial plans by the façade bodies of people's democracy – Sejm (parliament) and the national councils. In addition, the professional consultative bodies established by the 1946 Decree did not even begin to function, indicating that, most likely, they were also of a phoney nature already in their conception. Therefore, in practice, the system created was prepared primarily for the effective implementation of the supreme political authorities of the People's Republic of Poland's decisions in the area of spatial planning.

[2] Ibid., 123.

[3] Brzeziński, *Podstawy prawne…*, 47.

A systemic change, perhaps even more important than the centralisation of spatial planning, was its linking with economic planning. Article 2 of the analysed decree stipulated that planning acts at all levels of the system were to be drawn up in accordance with the guidelines of state economic policy. According to Article 6 of the decree, spatial plans were to be prepared in alignment with long-term economic and investment plans. It is clear from this provision that the relationship between spatial and economic planning was unequal. The high priority that the state assigned to the rapid industrialisation of the country during the period in question was, therefore, evident in these regulations as well.

According to Article 17 Section 2 of the analysed decree, the Central Office of Spatial Planning was supposed to cooperate with the Central Planning Office (Centralny Urząd Planowania – CUP). The principles of this cooperation were defined by the Decree of the Council of Ministers[4]. According to its § 6, the GUPP was obliged to coordinate draft of the national plan principles with the CUP even before presenting them to other authorities, including individual ministries, with which the GUPP was also obliged to cooperate. This highlights the special systemic position of the Central Planning Office in the system at the time. It is also worth noting that the relationship between spatial planning and economic planning was asymmetrical for yet another reason: in accordance with the Decree on National Planned Economy[23], the draft of national economic plan was prepared by the CUP independently, with no obligation to cooperate or agree with the spatial planning authorities.

[4] Rozporządzenie Rady Ministrów z dnia 20 marca 1947 r. o współdziałaniu władz w akcji planowego zagospodarowania przestrzennego kraju (Dz.U. 1947 nr 34, poz. 152).

[23] Dekret z dnia 1 października 1947 r. o planowej gospodarce narodowej (Dz.U. 1947 nr 64, poz. 373).

Requirements for these planning acts as such were specified in much greater detail than in prewar regulations. Just as according to the 1928 Decree, under the discussed decree, local plans were to establish the use of land for residential, industrial agricultural or road purposes (Article 5 Section 2). It is worth mentioning that the legislator indicated that residential areas for social housing should be included, which in itself is a minor expression of the authorities' socio-economic ideology. On the other hand, it has been specified in much greater detail – compared to previous legislation – how local plans should determine the development of particular areas. According to Article 5, Section 4, Point 3, not only the development lines known from earlier solutions should be specified, but also the number of stories, the development intensity ratio, the vertical outlines of buildings, the principles of their architectural design and the type of development (compact, terraced, detached, etc.).

In the legal act under review, regulations very similar to those in the 1928 Decree of the President of the Republic on the Construction Law and the Development of Settlements can also be found. According to Article 26 of the discussed decree, drafts of local plans should be put on display for a period of one month. It still should not be controversial among supporters of the political system of the time. However, another article granted the right to file objections against the draft within two weeks after the period of the plan's display to the Regional Planning Administration, which may or may not have considered them. The institution of raising objections to a spatial plan was very similar to the objections to a development plan provided for in Article 31 of the 1928 Decree. However, unlike interwar legislation, the 1946 Decree did not provide for a procedure upon which compensation could be sought for losses incurred as a result of a change of land use in an enacted plan. The rights of property owners were, therefore, significantly restricted in People's Poland. However, Brzeziński

criticised even the institution of objections to the draft spatial plan – pointing out that they serve to protect private interests in terms of what was referred to as land annuity (the increase in the value of real estate resulting from the development of an area), which was considered a decent source of income under capitalism but should not be protected in a state that "from the very beginning embarked on the path of building socialism"[24]. The administrative law scholar explained the existence of these provisions by the legislator's failure to understand the essence of planning acts on the grounds of administrative law[25]. However, in the opinion of the author of this study, the following explanation is also plausible – the authorities of the People's Poland, when drafting the first postwar legislation, borrowed abundantly from prewar legislation, which can also be seen in the case of the provisions analysed in other chapters. Legal institutions that were most obviously incompatible with the new political ideology were removed and modified in the first place. In this case, the compensation for the change of use of real estate was such an institution.

A separate, seventh chapter of the 1946 Decree was devoted to criminal provisions. According to Article 41 therein, a person was subject to a penalty of up to one year in jail or a fine if she or he not only undertook new investments but even reconstructed and rebuilt buildings or changed their use, violating the spatial development plan. Criminal sanctions in the planning law were a novelty. The prewar Ordinance on the Construction Law and Development of Estates did contain criminal provisions but they sanctioned acts that were within the area of construction law (to which the act was also, or rather, primarily devoted, as denoted by its very title) – in addition to construction without a permit (Article 399), mainly issues related to violations of safety rules, whether in the

[24] Brzeziński, *Plan zagospodarowania przestrzennego. Studium z zakresu…*, 96–97.

[25] Ibid., 97.

construction (Article 403) or maintenance of buildings (Articles 401 and 402). Criminal provisions were no longer included in the next law, which replaced the analysed decree (it shall be discussed in detail in one of the following subsections). The introduction of such an unusual solution shows that the authorities of the People's Poland in the first period of its existence wanted very strongly to emphasise their planning power and explicitly show the owners of real estate who decides how to use it.

Summarising the analysis of the 1946 Decree on Planned Development of the State, it is necessary to point out the following features of the spatial planning system created on its basis, which were new in comparison with the interwar legislation: centralisation and hierarchy; subordination to the supreme political authorities with only symbolic participation of facade representative bodies at the local level; connection of spatial planning with economic planning (with apparent dominance of the latter); deterioration of the situation of property owners (no compensation procedure, criminal sanctions). At the same time, elements duplicated from the 1928 Decree can be found in the decree in question, despite their inconsistency with the dominant political ideology noted even by the legal doctrine of the time. The piece of legislation analysed above was formally in force until 1961 but by the late 1940s there had been a practice of ignoring many of its provisions. It is worth a detailed look at it, and so it shall be discussed in the next subchapter.

4.3. The practice of applying the law in the 1950s

In the first months of 1949, a series of transformations were carried out at the highest levels of the administration of People's Poland, marking the end of the period of laying the foundations of the new state. In January, the Ministry of Recovered Territories was

dissolved[26], symbolically ending the process of initial development and integration of these lands with the rest of Poland. And in April, the Law on the Establishment of the Office of the Minister of Construction[27] was passed, under which (Article 9) the Ministry of Reconstruction (whose activities have already been discussed in detail in one of the opening chapters) was dissolved, closing the period in which the state's efforts were focused on lifting Poland from ruins. At the same time, the Central Office for Spatial Planning and the regional spatial planning administrations were also liquidated (Article 7, Section 1). Their city and settlement planning tasks came directly under the authority of the newly established Ministry of Construction (Article 2, Section 1, Point 2), while other planning projects were to be carried out by the State Economic Planning Commission (Państwowa Komisja Planowania Gospodarczego – PKPG) and its subordinate bodies (Article 7, Section 2). The PKPG was also created in 1949 and replaced the Central Planning Office[28].

The model based on two interacting but separate divisions of economic and spatial planning, which had been created only a few years earlier, was, therefore significantly modified, and in fact, replaced by a concept in which all planning at the regional and national levels was concentrated in the hands of a single institution, while only planning at the local level remained in the competence of a sectoral institution (the Ministry of Construction).

[26] Article 1 of the Law of 11 January 1949 on the integration of the management of the Recovered Territories with the general state administration (Ustawa z dnia 11 stycznia 1949 r. o scaleniu zarządu Ziem Odzyskanych z ogólną administracją państwową, Dz.U. 1949 nr 4, poz. 22).

[27] Ustawa z dnia 27 kwietnia 1949 r. o utworzeniu urzędu Ministra Budownictwa (Dz.U. 1949 nr 30, poz. 216).

[28] Article 4 and 9 of the Law on changes in the organisation of the supreme authorities of the national economy of 10 February 1949 (Ustawa z dnia 10 lutego 1949 r. o zmianie organizacji naczelnych władz gospodarki narodowej, Dz.U. 1949 nr 7, poz. 43).

Scholars publishing in the later years of People's Poland differed in their assessments of these changes. Economist Urszula Wich viewed the merger of the two higher levels of spatial planning with economic planning positively – she pointed out that the reorganisation was justified because the interdependence of the two types of planning was so great that the model of co-operation between economic and spatial planning authorities proved insufficient[29]. Bogusław Wełpa, in a report[30] issued by the Committee on National Spatial Planning of the Polish Academy of Sciences on the occasion of the 40th anniversary of spatial planning, stated that the abolition of GUPP was "an expression of the authorities' conviction at the time that in a socialist state the only form of planning on a macro scale [was] economic planning"[31]. In his view, the changes were not a merger of the two planning divisions but rather simply the abolition of the institution of spatial planning and the takeover of only some of its tasks by the PKPG and the Provincial Economic Planning Commissions[32].

The practical effect of the 1949 reforms was the disappearance of spatial planning activities at higher levels throughout the first half of the 1950s. Planning at the national level was completely abandoned, and it was with the belief that plans of this type would never be drawn up again[33]. The situation at the regional level was virtually similar. The only approved act was the Regional Spatial Plan for the Upper Silesian Industrial District[34].

[29] Wich, op. cit., 63.

[30] B. Malisz, ed., *40 lat planowania struktury przestrzennej Polski* (Warszawa: Państwowe Wydawnictwo Naukowe, 1978).

[31] B. Wełpa, *Okres ograniczeń zakresu planowania przestrzennego*, in: Malisz, ed., op. cit., 47.

[32] Ibid.

[33] Wich, op. cit., 64.

[34] Wełpa, op. cit.

The reasons for this were sought in copying the solutions from the Soviet Union without taking into account local conditions, in particular, the different ownership structure of land, which in Poland – unlike in the USSR – was not completely nationalised. It was a source of criticism on the grounds of the dominant political ideology of the time – it was meant to be "a disregard for the basic thesis of historical materialism that legal and political forms can only be a superstructure of the system of social and economic relations"[35]. State ownership of land was to be decisive for the legal forms of land disposal and, consequently, for the legal forms of spatial planning[36]. Another explanation was the current economic situation of a state recovering from wartime devastation – spatial planning, being oriented toward long-term goals, was to temporarily give way to economic planning focused on meeting immediate needs[37]. If the second explanation was considered closer to the truth, the discrepancy between the actual policy of the People's Poland authorities and the propaganda layer evident in the legal reforms would become evident. The law abolishing the Central Office of Spatial Planning also simultaneously replaced the Ministry of Reconstruction with the Ministry of Construction, which was supposed to show that the stage of postwar recovery was already behind the Polish state.

At the level of local planning, there were also changes in comparison with the wording of the 1946 Decree. The Ministry of Construction did not function for long in the form in which

[35] Brzeziński, *Plan zagospodarowania przestrzennego. Studium z zakresu…*, 123.

[36] W. Brzeziński, "Plan zagospodarowania przestrzennego. Studium porównawczo-prawne na tle prawodawstw kilku państw europejskich", in: W. Brzeziński, J. Kaleta, L. Martan, and M. Wersalski, *Problemy prawne planowania gospodarczego* (Warszawa: Państwowe Wydawnictwo Naukowe, 1964), 263.

[37] Wich, op. cit.

it was established in 1949. Before two years had passed, it was replaced by two new central offices – the Ministry of Industrial Construction and the Ministry of Construction of Cities and Settlements[38]. The law through which this change was carried out was also the basis for the creation of the Committee for Architecture and Urban Planning, which was subordinate to the Prime Minister (Article 5).

Contrary to the still binding 1946 Decree and issued without a clear legal basis, the Resolution No. 817 of the Presidium of the Government on the Approval of Urban and Architectural Projects[39] dated 1 December 1951, part of whose provisions have already been discussed in the chapter on construction law in the context of the changes it introduced to the approval of projects for buildings erected by the state, was of momentous importance for local planning. In accordance with its provisions, local spatial plans, adopted by city and county national councils after obtaining the approval of the relevant – no longer existing at the time – regional spatial planning administration, were to be approved by the Presidium of the Government (in the case of Warsaw, the Warsaw Municipal Complex, Łódź, Kraków, the Tricity, Szczecin, Wrocław, Poznań, Lublin, Bydgoszcz, Częstochowa, Tychy, Katowice, Gliwice, Bytom, Chorzow, Zabrze, Sosnowiec, and Dąbrowa Górnicza), the Minister of Construction of Cities and Estates (in the case of cities, the list of which was determined by the minister himself) and presidencies of provincial national councils (in other cases). Later, competencies regarding plans,

[38] Articles 2, 3 and 8 of the Law on the organisation of authorities and institutions in the area of construction (Ustawa z dnia 30 grudnia 1950 r. o organizacji władz i instytucji w dziedzinie budownictwa, Dz.U. 1950 nr 58, poz. 523).

[39] Uchwała nr 817 Prezydium Rządu z dnia 1 grudnia 1951 r. w sprawie zatwierdzania projektów urbanistycznych i architektonicznych (M.P. 1951 nr 102, poz. 1481).

which, according to the analysed resolution, were to be approved by the minister, were taken over by the aforementioned Committee for Architecture and Urban Planning[40].

According to Brzeziński, the analysed resolution practically deprived national councils of the competence to adopt local spatial plans. According to the provisions of the 1946 Decree, the approval of the plan by the regional spatial planning administration was in fact an action preceding its adoption by the relevant council, only as a result of which (and subsequent publication) did the local plan become legally valid. From then on, approval by the body designated in the resolution of the Presidium of the Council of Ministers was sufficient to make the planning act legally valid[41]. The action described in Resolution No. 817 of the Presidium of the Government on the approval of urban and architectural projects of 1 December 1951, thus replaced not only the approval of the planning authorities but also the decision of the district or city national council.

The practice of approving planning acts by the Presidium of the Government and the Committee for Architecture and Urban Planning documents the approach of the authorities of People's Poland to the legal system. Regulations of the sub-statutory rank were applied, completely ignoring the formally still binding 1946 Decree, whose content was contradicted by the resolution of the Presidium of the Council of Ministers. It was done in a situation where, due to the concentration of power, rapid amendment of the decree would not pose the slightest problem. The highest political factors of the People's Poland treated the legal system purely instrumentally – as a tool for shaping society, and not as norms whose observance the authorities themselves must bother with.

[40] Brzeziński, *Plan zagospodarowania przestrzennego. Studium z zakresu…*, 107.

[41] Ibid.

In the following years, an extensive field structure of architecture and construction administration was created, organisationally subordinate to the Committee for Architecture and Urban Planning. In 1954, a resolution of the Council of Ministers[42] appointed chief architects for the provinces, chief architects of cities for Łódź, Częstochowa, Kraków, Lublin, Poznań, Szczecin, and Wrocław, as well as city architects (for the remaining cities), and county architects. Territorial architects were to be responsible for the direction of work on city and settlement master plans. City and county architects acted in accordance with the guidelines of the chief architects of the provinces and the city and county national councils. However, the chief architects of cities were already instructed directly by the Council of Ministers and the chairman of the Committee for Architecture and Urban Planning. At the same time as national and local spatial planning was effectively abandoned and the separate administrative structure designed for it was abolished, completely new hierarchically subordinate institutions were created so that local planning remained strongly centralised, and in fact, by reducing the role of even these facade national councils it became centralised even more.

Another practice of applying the law that did not comply with the provisions of the 1946 Decree was related to "localisation decisions". These were administrative acts issued to determine the location where an investment included in the economic plan was to be carried out[43]. There was no universally binding legal act that supported it. The types of localisation decisions and the procedure for issuing them were determined by an internal act – what was referred to as Instruction No. 20 on the principles of

[42] Uchwała nr 319 Rady Ministrów z dnia 18 maja 1954 r. w sprawie organizacji terenowej służby architektoniczno-budowlanej (M.P. 1954 nr 59, poz. 790).

[43] Brzeziński, *Plan zagospodarowania przestrzennego. Studium z zakresu…*, 108.

preparing and approving technical documentation for investments, approved by Order of the Chairman of the State Economic Planning Commission No. 104 of 3 May 1950, which was not even published in any official state publications. *Instruction No. 20* was available as a booklet (marked "For office use") published by the Polish Economic Publishing House[44].

The greater part of it, in accordance with the title, was actually devoted to technical documentation, including such detailed issues as the rules for drawing up technical design or working drawings, special rules for standard designs, construction of bridges or railroads. In addition, in the introduction written by the General Director of the State Economic Planning Commission, Czesław Bąbiński, one can read about the importance of drawing up plans for urban development, which would take into account not only urban and architectural principles but also issues of utility infrastructure[45]. However, Chapter VII of *Instruction No. 20*, entitled "Temporary Rules for Determining Locations", contained legal solutions because of which local spatial plans had lost their practical significance.

Part A of the chapter contained rules for determining the general location, i.e., determining the settlement in which the investment would be carried out[46]. From the perspective of spatial planning at the local level, Part B, concerning the "detailed location", was of greater importance. According to § 220, opening it, the developer (i.e., some socialised economy entity in practice) was responsible for its designation itself[47]. This provision stated

[44] Instrukcja Państwowej Komisji Planowania Gospodarczego nr 20 o zasadach sporządzania i zatwierdzania dokumentacji technicznej dla inwestycji, 1950.

[45] Ibid., 7–8.

[46] Brzeziński, *Plan zagospodarowania przestrzennego. Studium z zakresu…*, 108.

[47] Instrukcja Państwowej Komisji Planowania Gospodarczego…, 58.

that they should rely on local spatial development plans. However, the author of the instruction also anticipated a situation in which a local plan would not be passed (or rather, given the reality of the application of the law – approved) for the area selected for the investment. In such a case, the investor should use the "simplified plans" or "other studies held by the field bodies of the PKPG and the Ministry of Construction"[48]. The instruction contained a catalogue of directives that should guide the investor in choosing the detailed location of the project. In particular, it was necessary to: take into account the technical requirements of the site; try to make use of existing facilities; take into account the existing street grid and utilities; in the case of nuisance facilities, take care to ensure adequate distance from residential neighbourhoods; do not abuse water resources; and finally, while locating residential facilities, take care of ensuring that they were at an appropriate distance from workplaces.

Therefore, Instruction No. 20 contained, in principle, more guidelines for proper spatial planning than the 1946 Decree, which was formally still entirely binding. Attention was paid to issues related to economic efficiency, transportation, and even environmental protection. The implementation of the aforementioned directives had also an indirect positive impact on the quality of life of the residents of the areas in question. However, it did not change the fact that the main effect of the application of the solutions introduced by the analysed instruction was the transfer of a large amount of real power in the area of local spatial planning into the hands of entities of the centrally controlled socialised economy. They were the bodies that proposed the location of the investments they were implementing. As a result, the development of many areas was carried out in accordance with the principles of economic planning rather

[48] Ibid.

than spatial planning – often the localisation decisions for important facilities determined the direction of further development of their surroundings by "the method of accomplished facts". Sometimes investors surprised local authorities with their proposals for the location of investments, at a time when these authorities were already developing spatial plans, forcing changes in their projects[49]. The authority competent to consent to the detailed location proposed by the investor for a particular project was the provincial territorial authority of the Ministry of Construction (§ 222 of the instructions), which, on the basis of a properly justified application (§ 223), issued the relevant certificate (§ 228).

Subsequent instructions (No. 92 of 1952 and 92-A of 1955) limited the investor's independence in choosing the location of the project to be carried out only slightly. That of 1955 contained some more rules for urban and settlement development. Still, these were guidelines for the investor, and it was up to her or him to decide how and to what extent to comply with them. In the case of projects with a strong impact on the local spatial layout, the instruction required the investor to appoint a special commission to develop its location. However, in relation to *Instruction No. 20* of 1950, it was a rather symbolic change, since this commission was to be headed by the chief designer of the project, and the representative of the local architectural administration was only one of its members[50].

It follows that in the late 1940s and early 1950s, spatial planning gave way to economic planning not only at the national and regional levels (through the abolition of the GUPP and the assumption of its powers by the PKPG, which in practice did not use them) but also at the local level, where tasks should theoretically

[49] Brzeziński, *Plan zagospodarowania przestrzennego. Studium z zakresu…*, 108–109.

[50] Ibid., 109.

be carried out by the Ministry of Construction. This is because in practice, in many cases, the initiative was taken by socialised economic entities implementing economic plans on the basis of localisation decisions, which de facto became the most important legal instrument in the area of spatial planning. This has led to a limitation of local planning on a larger scale. Urban planner Bartłomiej Kolipiński pointed out that as early as 1948, the 1946 Decree started losing its practical significance, as due to political changes, a period of – as he called it – "ZOR[51] urbanism" began at that time, when in his view, no local general plans for urban development were drawn up[52]. Arguably, it was not necessary given that most of the housing projects were the responsibility of the aforementioned Nationwide Department of Workers' Estates, which chose the location of its projects for itself based on the instructions analysed above (often in connection with the location of new industrial plants, since providing housing for workers was a priority at the time). In retrospect, Brzeziński also stated that the 1946 Decree "failed the hopes placed in it"[53]. The legal scholar wrote that this piece of legislation was issued at a time when the planned economy system of the People's Poland was in its early stages of development and "contained organisational provisions that were at odds with the direction of development of [its] economic system"[54]. From a several-decade's perspective, other authors assessed that "the prioritisation of socio-economic

[51] ZOR is an acronym for the institution of the Department of Workers' Estates (Zakład Osiedli Robotniczych), whose history shall be discussed in the following chapters.

[52] B. Kolipiński, "Zagadnienia metodyczne miejscowego planowania przestrzennego w świetle przepisów prawa", *Biuletyn Komitetu Przestrzennego Zagospodarowania Kraju PAN*, 257–258 (2015), 20.

[53] W. Brzeziński, "Planowanie przestrzenne", *Studia Prawnicze* 7 (1965), 91.

[54] Ibid.

planning led to the degradation of spatial planning and the violation of spatial order in Poland'"[55].

The practice of applying spatial planning law in the 1950s shows the dismissive attitude of the authorities of People's Poland not only toward spatial planning itself but also toward the legal system. The state severely curtailed its activity at all three levels of the spatial planning system created by the 1946 Decree. At the national and regional levels, activity almost ceased with the abolition of the General Office of Spatial Planning as well as regional spatial planning administrations and the transfer of their powers to entities belonging to the economic planning system. At the local level, spatial planning was limited by the activities of socialised economic entities independently choosing the locations of investments under construction, and even in this limited scope, it was carried out even without the facade representative institutions (municipal and district national councils). The dismissive attitude of the authorities of the People's Poland to the legal system was evident in the creation and application of regulations that contradicted the still formally valid 1946 Decree through resolutions of the Presidium of the Government or internal instructions of the State Economic Planning Commission, i.e., acts of a lower rank. Apparently, the authorities did not feel bound by the laws they enacted.

4.4. The Spatial Planning Law of 1961

The first changes in the approach to spatial planning were evident in People's Poland as early as the late 1950s. In July 1957, the Council of Ministers passed a resolution on the location of

[55] W. Radecki, and J. Sommer, and W. Szostek, *Ustawa o zagospodarowaniu przestrzennym oraz wybrane przepisy wykonawcze. Komentarz* (Wrocław: Wydawnictwo Prawo Ochrony Środowiska, 1995), 8.

investments[56], on the basis of which new regulations on the localisation of investments were issued on the same day by ordinance[57], the content of which was determined not only by the authorities competent for economic planning (the Chairman of the Planning Commission at the Council of Ministers) but also those professionally related to spatial planning development (the Chairman of the Committee for Architecture and Urban Planning).

According to § 12 of the discussed ordinance, the project of detailed location was still developed by the investor. However, § 13 in conjunction with § 15 stipulated that the location had to be approved by county or city architects for construction projects costing less than PLN 1 million, and in other matters – by the chief architects of the provinces (the Chief Architect of Warsaw and the chief architects of the cities approved the locations of all projects in their areas of operation). What is more, the ordinance also specified the procedure in which investors were supposed to apply to the relevant field architect for the designation of a site (§ 24, Section 1). Along with the application specifying the objectives of the investment, the investor could submit requirements for the needed site (§ 24, Section 2) but the architect was not bound by them. She or he could propose a different location (§ 25, Section 2). If there was no agreement between the investor and the county or city architect, the investor could submit the matter to the decision of the chief architect of the province, and if no agreement was possible at this level either, the matter was to be decided by the national council at the provincial level in consultation with the Committee for Urban Planning and Architecture.

[56] Uchwała nr 270 Rady Ministrów z dnia 29 lipca 1957 r. w sprawie lokalizacji inwestycji (M.P. 1957 nr 67, poz. 407).

[57] Zarządzenie Przewodniczącego Komisji Planowania przy Radzie Ministrów i Prezesa Komitetu do Spraw Urbanistyki i Architektury z dnia 29 lipca 1957 r. Przepisy o lokalizacji inwestycji (M.P. 1957 nr 67, poz. 408).

These regulations were applied in practice, as conflicts over the location of investments actually occurred[58].

They were still regulations of sub-statutory rank to some extent contrary to the 1946 Decree. However, greater effort can be seen in the form of regulation – adopted by ordinance, for which the Chairman of the Committee for Urban Planning and Architecture was co-responsible on the basis of a resolution of the Council of Ministers, rather than simply as an internal instruction of the PKPG, and in its content, which included greater powers of the architectural and construction administration in relation to investors.

Works on a new legal act comprehensively regulating the analysed area of law were undertaken in the late 1950s. Training materials for legal service employees of socialised economic entities, published a decade later, mention that in 1958 an extensive discussion was held on the theses of the new draft[59]. On 31 January 1961, the Spatial Planning Law[60] (hereinafter: 1961 Law) was passed. Its first article featured an element absent from the 1946 Decree previously in force – the official purpose of spatial planning. From the perspective of this analysis, this provision is very important, as it represents a kind of ideological statement of the legislator's approach to spatial planning. According to Article 1, Section 1, its objective was to

> ensure the proper development of the various areas of the state, taking into account their interrelationships and national interests, and to establish proper spatial interdependence

[58] Brzeziński, *Plan zagospodarowania przestrzennego. Studium z zakresu…*, 112.

[59] E. Usakiewicz, *Planowanie przestrzenne* (Katowice: Zrzeszenie Prawników Polskich, 1968), 9.

[60] Ustawa z dnia 31 stycznia 1961 r. o planowaniu przestrzennym (Dz.U. 1961 nr 7, poz. 47).

> between production and service facilities in these areas, and thereby create conditions for the development of production, the comprehensive satisfaction of the needs of the population, and the protection of the country's natural resources and environmental values.

There is still nothing special in these formulations – they list various values that are protected precisely by properly conducted spatial development. Marian Szydłowski in 1982 criticised the omission of environmental protection and national defence issues from this catalogue[61]. However, what draws attention is the placement of the development of production at the very beginning of the enumeration, before the needs of the population or environmental protection. Here it was mainly a declaration; in earlier years this dependence had been more evident in practice. Among other things, housing construction was subordinated to the development of industry so as to provide accommodation for employees of strategic plants first. In the literature of the time, the development of individual areas of the country was called a social goal, the establishment of spatial interdependence was called an urban goal, and the creation of conditions for the development of production and the satisfaction of the needs of the population was considered an ultimate goal, which was achieved through the implementation of the previous two[62].

However, in Section 2 of this article, it can be found that "the task of spatial planning is to determine the use and development of land for specific purposes in particular areas, taking into account current and future needs arising from the future and economic development programme", and Section 3 indicated what all these determinations should be based on. It listed in the first place

[61] M. Szydłowski, *Miejscowe planowanie przestrzenne* (Warszawa: Wydawnictwo Prawnicze 1982), 11.

[62] Ibid., 10–11.

prospective plans for the development of the national economy and long-term national economic plans, and only after them the results of studies of natural, demographic, economic, and social conditions as well as technical studies. The strong connection not only between spatial planning and economic planning but above all the direction of interaction between the two, is very evident in these formulations. This was no longer the model of interaction between two almost equal branches of state planning enshrined in the 1946 Decree. In the new law, economic planning studies were literally indicated as the basis for spatial planning.

The new law maintained the three-tier structure of spatial planning and the division of competencies among the chief state administrative bodies in carrying out these tasks developed in the practice of applying the previous legislation – responsibility for planning at the national and regional levels rested with the Planning Committee of the Council of Ministers, which was essentially in charge of economic planning. On the other hand, local plans remained within the competence of the Committee for Construction, Urban Planning and Architecture, which stood at the head of the architectural and construction administration (Article 5, Section 1). A major difference consisted of abolishing the separateness of planning acts at the highest level. The national plan known from the 1946 Decree disappeared. According to Article 2, Section 1, Point 1 of the new regulations, spatial planning for the entire area of the state was to be carried out within the framework of prospective plans for the national economy. This further emphasises the connection between spatial planning and economic planning, and actually, presents the former as an integral part of the planned economy system. The legal doctrine described this as the realisation of the principle of the unity of the plan[63].

[63] Niewiadomski, op. cit., 18.

Regional plans remained separate documents. Their drafts were to be drawn up by provincial economic planning bodies (Article 8, Section 1). Admittedly, representatives of state administrative bodies and scientific institutions, as well as experts on relevant issues, were to participate in work related to such matters (Article 8, Section 2) but the legislator did not indicate in which fields they should specialise, so the dominance of economic planning cannot be ruled out in this field either. According to Article 9 Section 1, regional plans were to be adopted by provincial (or municipal in the case of cities separated from the province) national councils but only as proposals to the Council of Ministers, which had the final decision (Article 9, Section 3). However, prior to that, regional plans were subject to the opinion of the Planning Commission of the Council of Ministers and the Committee on Construction, Urban Planning and Architecture (Article 9, Section 2). Only at this, almost final, stage of the procedure any participation of the architecture and construction administration was guaranteed.

The second most important generalised conclusion about the 1961 Spatial Planning Law, besides the fact that it made spatial planning an integral part of the economic planning system, should be the observation that the system (or rather, subsystem – taking into account the first conclusion) of spatial planning became much more complicated. Except for the national level, a division into general and specific plans was introduced. In the case of the regional level, general plans were to be prepared for each province and, as a rule, cover its entire area (Article 7, Section 2). Detailed regional plans were to be prepared only for areas (which were part of a province or even parts of several adjacent provinces) where it was planned to carry out "major investments or other economic activities that have a significant impact on shaping the economic development of the area" (Article 7, Section 4). It was another provision of the new law, in which

the development of spatial planning was basically contingent on the planning of certain economic projects in the area.

Local spatial plans were also divided into general and detailed ones (Article 13). The former were to "comprehensively determine the basic directions and scale of development and the principles of spatial utilisation of the settlement unit[64] in the period of the forthcoming multi-year economic plan". This provision implements the aforementioned assumption of the new law, according to which spatial planning was to focus on determining the directions of spatial development as a continuous process, rather than defining a final land use. General plans were to be prepared for all settlement units (Article 15, Section 1). Detailed plans, on the other hand, were to be prepared "for the part of the area of the settlement unit scheduled for development (development, reconstruction, rebuilding) in the period of the current and forthcoming multi-year national economic plan" (Article 17, Section 1), and only these that were to contain the typical architectural and spatial planning regulations known from the local plans of the 1946 Decree or prewar development plans, including the detailed designation of individual areas, the rules for their development, the boundaries of construction or the permissible height of buildings (Article 17, Section 3). Thus, the 1961 Law explicitly stipulated that not all land – not even entire areas of cities – must have a strictly defined designation. The need for such detailed rules depended on the intentions for a given piece of space contained in economic planning acts.

The task of drafting the more important general local plans (those pertaining to cities and districts and complexes of set-

[64] A settlement unit is a concept introduced into the legal language by the 1961 Law, defined in its Article 2, Section 2 as "a city or settlement and a village or other locality that is a concentration of residential buildings and, together with related production and service facilities, forms a defined living environment for people".

tlement units) was entrusted to the competent provincial local planning bodies, while general plans for other settlement units and all detailed plans were to be prepared by county authorities, to which the provincial authorities could also delegate the drafting of plans for cities and districts (Article 19, Sections 1 and 2). In the case of spatial planning at this level, the participation of architectural and construction authorities was greater. The chairman of the Committee for Construction, Urban Planning and Architecture could determine which drafts of local spatial plans should receive his approbation before approval (Article 19, Section 3) – his powers were, therefore, not limited to giving an opinion, as in the case of regional plans.

According to Article 21 of the 1961 Law, drafts of general local plans should be reviewed by the presidium of the relevant national council (of a city, settlement, district, etc.). Detailed drafts should be put out for public viewing (Article 22, Section 1). Interested parties, including individuals, had the right to submit comments and proposals to the draft, which should be considered by the authority in charge of preparing the plan (Article 22, Sections 2–4). Therefore, it was not the institution of objections to the plan known from earlier regulations. General plans for rural areas were approved by presidencies of county national councils, while general plans for other areas (such as cities) were approved by presidencies of provincial councils. All detailed plans were approved by the presidencies of county national councils (Article 23).

It might seem that, at least as far as detailed plans are concerned, the new law thus returned to local authorities the powers originally provided by the 1946 Decree, which they had lost to provincial authorities in the practice of applying the law in the 1950s. However, this is not entirely true. In fact, decisions on local plans were returned to the level of county authorities, however, the aforementioned Decree provided for the adop-

tion of local plans through resolutions of national councils. By contrast, under the new law, they were to be approved by their presidencies. It is worth noting that this solution was criticised by Wacław Brzeziński, the main researcher of the legal issues of spatial planning in People's Poland. In a monograph published as early as 1962, he pointed out that such a regulation was incompatible with the Constitution, Article 41 of which stipulated that national councils adopt local economic plans, as well as with the Law on National Councils[65], which indicated that the enactment of economic plans was within the scope of the national councils, and that the competence of their presidiums included only the enactment of projects for plans (Article 10 and Article 53, Section 4, Point 2 of the Law on National Councils). Brzeziński saw an analogy between economic plans and spatial plans for local development[66].

The problem of the division of competencies between the national councils and their presidencies is also relevant to the decisions that the 1961 Act reserved for the provincial authorities, since at this level these were also to be taken by the presidencies, not the councils. This can be seen as an expression of the People's Poland authorities' greater trust in narrower decision-making bodies than in representative bodies, even though the authorities had virtually total influence over their composition.

Another innovation introduced in the 1961 Law was the third division of land use plans – the period for which they were prepared was indicated as a criterion. Article 3, Section 1 of the law distinguished three types of planning acts in this regard, naming them accordingly. Directional plans were to cover a period longer than the period of the plan for the prospective

[65] Ustawa z dnia 25 stycznia 1958 r. o radach narodowych (Dz.U. 1958 nr 5, poz. 16).

[66] Brzeziński, *Plan zagospodarowania przestrzennego. Studium z zakresu…*, 159.

development of the national economy. The latter was to be equal to the period of time over which the prospective plans were drawn up within the framework of spatial planning. Finally, stage plans had to be prepared for the period of the current and upcoming multi-year national economic plan. It marked a change in the approach to spatial planning. According to the regulations of the 1946 Decree, the purpose of state action in this area was to determine the intended use of particular areas. The plan once drawn up later was simply to be executed. Instead, the new law implemented the view that the task of land use plans involved setting more general principles and directions for development[67]. The changeability of planning acts over time was expressed explicitly in Article 3, Section 2 of the discussed law, which stipulated that zoning plans were subject to periodic analysis with updates based on the results. Therefore, making changes to these documents became not some kind of eventual possibility, used, for instance, to rectify committed mistakes but a pre-planned practice – as a realisation of what was referred to as principle of continuity of planning[68]. However, in practice, the plans usually were not updated, and instead, entirely new ones were drafted[69]. The provisions analysed above are also another part of the 1961 Law that strongly ties spatial planning to economic planning, making the types of development plans and their time horizons dependent on the types of documents prepared as part of economic planning.

[67] W. Brzeziński, "Rozwój planów zagospodarowania przestrzennego jako formy prawnej zarządzania gospodarką narodową", in: A. Jaroszyński, ed., *Aktualne problemy administracji i prawa administracyjnego* (Warszawa: Państwowe Wydawnictwo Naukowe, 1987), 227.

[68] I. Biegańska, and Z. Bukowska-Mankiewicz, *Problemy planowania przestrzennego w świetle orzecznictwa Naczelnego Sądu Administracyjnego* (Warszawa: Instytut Gospodarki Przestrzennej i Komunalnej, 1987), 41.

[69] Ibid.

In addition to maintaining the division between national, regional, and local planning, and distinguishing between general and detailed plans, as well as directional, perspective and stage plans, the 1961 Law also created an entirely new, separate type of planning act. According to its Article 36, what was called implementation plans were to be drawn up for individual building plots as plans for the development of their areas or plans for the location of building structures, but also, in the case of areas to be developed by a single investor, as part of a construction project. This provision might seem to be a legal basis for sanctioning practices in the style of the "ZOR urbanism" known since the 1950s and described in the previous section. However, it was prevented by the following Article 37, according to which the implementation plan had to be based not only on the provisions of the decision on localisation but also on the approved detailed spatial plan. According to its Section 2, in the event that the area of the intended undertaking was not covered by a detailed local plan, then, although the developer was responsible for preparing this plan, firstly, it had to be based on the guidelines given by the local planning authority, and secondly, the draft of this plan was subject to consultation and approval under general rules. Therefore, the possibility of accelerating the preparation of a detailed local plan by involving the investor's forces and resources remained there but she or he had no decisive voice and no theoretical possibilities to circumvent the decision-making factors. From a doctrinal point of view, implementation plans were not treated as spatial plans, they were considered to belong to a separate group of planning acts – plans for development of investment sites[70].

The decisions on the location of investments were another issue on which the practice of applying the law of spatial planning in

[70] A. Augustyniak, and E. Usakiewicz, *Planowanie przestrzenne. Lokalizacja szczegółowa inwestycji* (Warszawa: Ośrodek Informacji Technicznej i Ekonomicznej w Budownictwie, 1963), 21.

the 1950s was formed in contradiction to the content of the 1946 Decree. This topic was also revived in the 1961 Law. In accordance with its Article 30, the matters of the use of certain land falling within the jurisdiction of local spatial planning authorities included, in particular, the determination of the detailed location of construction projects – by specifying not only the plot or land where the project was carried out, but even, if necessary, the architectural, spatial planning, and construction conditions that had to be met in its implementation. Similar to the preparation of implementation plans, decisions on the detailed location of investments were to be made on the basis of approved spatial development plans (Article 31, Section 1). However, in this case, the substitute procedure was shaped differently in the situation of an urgent need to issue a decision on detailed localisation in areas for which there was no approved local spatial plan.

In such a case, according to Article 31, Section 2, the competent authority – instead of proceeding with a draft plan drawn up by the investor – was supposed to make a decision on the basis of "the materials in its possession for the plan, supplemented with the necessary data and after making arrangements with the authorities concerned". The procedure for issuing localisation decisions, which had previously been practiced only on the basis of instructions contained in lower-level acts, was now regulated in statutory matter. It solved the problem with their actual illegality and contradiction with the content of the 1946 Decree. It was also confirmed by the change in the content of the instructions themselves. The previous 1957 investment location regulations, already discussed above, were replaced by Resolution No. 354 of the Council of Ministers of 19 November 1962 on the general location of investments[71], which no longer contained any provisions on detailed location.

[71] Uchwała nr 354 Rady Ministrów z dnia 19 listopada 1962 r. w sprawie lokalizacji ogólnej inwestycji (M.P. 1962 nr 82, poz. 385).

As can be seen, the new regulations left a gateway allowing for the realisation of investments that are important from the point of view of economic planning (probably the only way the generally worded "urgent need" in the regulations was interpreted) in areas not covered by spatial plans. Particularly noteworthy is the last sentence of Article 31, Section 2 – in the case of locating a private investment in an area not covered by a spatial development plan, the provincial spatial planning authority could – at the request of the district authority – suspend the issuance of a decision until the relevant plan was approved, for up to three years. This little norm manifests the economic and political ideology of the People's Republic of Poland, assuming the primacy of state property over private ownership and of socialised economy entities over private initiative because, as we can see, the exception allowing a quick localisation decision for an investment to be made in an area not yet covered by a spatial plan was actually intended primarily for the former sector.

The 1961 law was intended to solve many of the problems that had become entrenched in the practice of spatial planning in People's Poland in earlier years. However, over time, problems similar to those known in the 1950s occurred in the application of the law governing this area. A comprehensive solution of all spatial planning issues in a single piece of legislation was considered a mistake[72]. Accordingly, at the statutory level, the disintegration of the system began in 1974, when the regulations on the location of investments were transferred to the new Construction Law[73], which, by the way, in its very preamble stated that the legislator adopted the regulations contained in this act, among other things, to ensure spatial order in the

[72] S. Jędrzejewski, "Refleksja na temat nowej ustawy o planowaniu przestrzennym", *Przegląd Ustawodawstwa Gospodarczego* 4 (1985), 115.

[73] Ustawa z dnia 24 października 1974 r. Prawo budowlane (Dz.U. 1974 nr 38, poz. 229).

development of cities and villages. According to Article 21 of that law, a localisation decision could be based not only on the local spatial plan but could also be grounded on the designation of building areas under the regulations on building areas in cities and villages.

The statutory changes were preceded by a resolution on the location of investments adopted by the Council of Ministers in 1971[74]. From a legal point of view, it simplified the implementation of the project by eliminating the formalities related to the issuance of a decision on detailed location[75]. However, the preamble to the resolution is particularly remarkable – it was very extensive, especially for an act of sub-statutory rank. It contained a number of declarations related to spatial planning. They mainly concerned planning at the national level (e.g., demands for optimal use of natural resources, reducing disparities between different regions of the country) but also at the local level (it was indicated, e.g., that commuting to work should not exceed 45 minutes). Despite the positively assessed changes, the issue of top-down decision-making on investment locations was indicated as a problem related to the location of investments that still needed to be solved. It was pointed out that the implementation of such projects often entails such changes in the layout of spatial relations that require the revision of planning acts[76].

In April 1974, the Council of Ministers took another step toward dismantling the statutory system of spatial planning – they adopted a Resolution on the Preparation of Simplified Spatial

[74] Uchwała nr 109 Rady Ministrów z dnia 29 maja 1971 r. w sprawie lokalizacji inwestycji (M.P. 1971 nr 31, poz. 198).

[75] A. Walaszek-Pyzioł, "Wydawanie decyzji o ustaleniu lokalizacji inwestycji", *Przegląd Ustawodawstwa Gospodarczego* 11 (293) (1972), 368.

[76] W. Brzeziński, "Planowanie przestrzenne a lokalizacja", *Państwo i Prawo* 11 (1972), 59.

Plans for Municipalities[77]. The purpose of the introduced regulations, declared in its preamble, was – in addition to "ensuring rational land use conditions […] to intensify the protection of agricultural and forest land". Based on the analysed resolution, spatial development plans for all rural settlement units not covered by local spatial plans were to be drawn up in a simplified form. Their content was limited to defining the agricultural and forest land to be protected and the areas to be built on. Precisely for this purpose, it was indicated that development should be concentrated on wasteland or lands with the lowest agricultural value. It was stipulated that simplified plans for all municipalities where local spatial plans were not yet in effect should be prepared by the end of 1974, so less than a year was allotted for the task. Its implementation was entrusted to local authorities. Blueprints for the plans were to be drawn up by working teams appointed by the heads of the counties, and they were also to approve the finished plans.

The detailed regulations of the resolution prove that the protection of agricultural and forest land declared in the preamble was the actual intention of the legislator. For the first time in the history of spatial planning in People's Poland, focused mainly on urban spaces, so much attention was paid to agricultural development issues. However, in practice, besides this, mechanisms were created to circumvent the procedures stipulated by the law, and simplified land use plans bore the features of a "permanent makeshift".

Further changes were included in the law introducing the reform of the administrative division of the country in 1975[78]. Its

[77] Uchwała nr 85 Rady Ministrów z dnia 6 kwietnia 1974 r. w sprawie opracowania uproszczonych planów zagospodarowania przestrzennego gmin (M.P. 1974 nr 15, poz. 95).

[78] Ustawa z dnia 28 maja 1975 r. o dwustopniowym podziale administracyjnym Państwa oraz o zmianie ustawy o radach narodowych (Dz.U. 1975 nr 16, poz. 91).

Article 17 completely deleted from the 1961 Spatial Planning Law the provisions regulating the procedures for drawing up spatial plans, and transferred the authority to determine this matter to the Council of Ministers. The latter exercised them a year later, adopting a Resolution on the Principles and Procedures for Drawing up, Coordinating, and Approving Local Spatial Plans[79]. Compared to the regulations removed from the 1961 Law, it contained a number of significant changes.

First, in accordance with the provisions of the discussed resolution, approval of spatial plans became the competence of the relevant national councils – and not, as before, of their presidiums. Secondly, a new, non-statutory type of zoning plan was introduced – a municipality plan, i.e., a local plan of a set of settlement units covering the entire territory of a given municipality. The third, and very important, difference between the resolution under review and the 1961 Law in its original form can be found in the manner in which exceptions to the existing spatial plan were regulated. The statutory provisions stipulated that exceptions to plans could only be made with the approval of the authority that approved the plan, and moreover, could not involve basic elements of the plans (Article 25, Section 2). Pursuant to the regulations replacing them contained in § 7, Section 4 of the analysed resolution, the national council, within whose authority the approval of the plan in question lay, could grant the requesting local administrative body authorisation to deviate from the binding plan to a specified extent.

Fourth, and finally, provincial spatial planning offices were established to carry out the work of preparing projects for planning acts, regardless the fact that drafting them was the task of provincial authorities or lower-level local authorities. The previ-

[79] Uchwała nr 148 Rady Ministrów z dnia 9 lipca 1976 r. w sprawie zasad i trybu sporządzania, uzgadniania i zatwierdzania miejscowych planów zagospodarowania przestrzennego (M.P. 1976 nr 31, poz. 135).

ous Resolution of the Council of Ministers of 12 April 1963 on the Organisation of Preparing Local Spatial Plans[80], which only regulated the details of the organisation of the institutions responsible for planning work, because the procedure for enacting spatial plans itself was then regulated by the statute provided for the creation of spatial planning offices or teams to prepare drafts of local spatial plans also by municipal and county authorities.

From the perspective of the rule of law, the changes introduced were certainly unfavourable on the one hand, as they transferred relatively important regulations from the statute to an executive act. On the other hand, by transferring to the national councils the competencies previously reserved for their presidiums, an error was corrected – as indicated above – noted from the beginning of the 1961 Law. From the perspective of the spatial planning system, the tendency can be seen towards a stronger centralisation of the institutions practically involved in drawing up local spatial plans and an increase in the competencies of the administrative bodies responsible for implementing the plans. The changes were explained by "the need to loosen previous restrictions on the choice of scope, manner and forms of action by planning bodies"[81]. However, this process of "loosening" has been met with criticism – as a source of further ambiguity and uncertainty within the legal regulation of spatial planning[82].

Inconsistent and defragmented statutory regulation, supplemented by many lower rank acts, caused problems with the application of the law. Particularly many irregularities were noted

[80] Uchwała nr 146 Rady Ministrów z dnia 12 kwietnia 1963 r. w sprawie organizacji sporządzania miejscowych planów zagospodarowania przestrzennego (M.P. 1963 nr 40, poz. 197).

[81] M. Szopa, "Nowa organizacja służb planowania przestrzennego po roku działalności", *Miasto* 10 (1976), 2.

[82] W. Pańko, *Własność gruntowa w planowej gospodarce przestrzennej. Studium prawne* (Katowice: Uniwersytet Śląski, 1978), 95.

in the settlement of individual cases, which became evident in the jurisprudence after the establishment of the administrative judiciary[83]. It was analysed by the Institute for Spatial and Municipal Management. The results[84] of the study outlined a number of inadequacies in the regulations of the 1961 Act, which were still in effect during the first few years of the Supreme Administrative Court's activity. These included the problem of simplified spatial development plans, already described above. The court ruled that, as they were introduced by means of what was called "self-standing resolution", they could not be the basis for issuing investment localisation decisions as local spatial plans in accordance with Article 21, Section 1 of the Construction Law, since they are not plans as defined by the spatial planning law. Instead, the Supreme Administrative Court recognised that simplified plans can be the basis for a localisation decision issued under Article 21 Section 2 of the Construction Law providing for the procedure in the absence of an applicable planning act for a given area – as materials for a plan under development[85]. In light of the case law, among other things, regulations concerning the updating of spatial plans[86] or development on agricultural land[87] have also proved problematic.

Meanwhile, research by the Institute of the Shaping of the Environment pointed to another problem in the practice of spatial development in People's Poland. It showed that only about 60% of implementation plans were drawn up on the basis of spatial plans. On top of that, they were mostly only general plans[88].

[83] Jędrzejewski, "Refleksja na temat nowej ustawy o planowaniu przestrzennym", 115.

[84] Biegańska, and Bukowska-Mankiewicz, op. cit.

[85] Ibid., 20–21.

[86] Ibid., 40f.

[87] Ibid., 2f.

[88] W. Brzeziński, "Plan zagospodarowania przestrzennego jako forma prawna zarządzania gospodarką narodową", *Państwo i Prawo* 3 (1978), 16.

Therefore, it follows that, in practice, the preparation of detailed local land use plans was virtually abandoned. This demonstrates the serious collapse of the planning system in People's Poland.

Two decades after its entry into force, the 1961 law was evaluated negatively. Marian Szydłowski considered it an ineffective instrument, especially in terms of nationwide planning[89]. Michał Kulesza wrote in 1981 that "the regulations on spatial planning, growing out of the 1961 Law on Spatial Planning today are unfortunately decomposed and metrified with normative acts of a very low rank, often contradicting each other at the same time"[90]. It is significant that in 1980 Wacław Brzeziński wrote about the practice of applying this act: "too often the role of spatial planning is limited to regulating matters arising from a location decision already issued"[91], which is more or less the same as he wrote 20 years earlier about planning under the 1946 Decree distorted by conflicting sub-statutory acts. And yet the 1961 Act was reportedly said to be the best legislation of its kind in the world, which other countries envied[92].

4.5. The Spatial Planning Law of 1985

In conditions of disintegration of the 1961 Law and the fragmentation of spatial planning regulations among various legal acts, including those of sub-statutory rank, the Council of State and

[89] Szydłowski, op. cit., 13.

[90] M. Kulesza, *Aspekty prawne zagospodarowania przestrzennego aglomeracji warszawskiej* (Warszawa: Zakład Graficzny Politechniki Warszawskiej, 1981), 23.

[91] W. Brzeziński, "Plan zagospodarowania przestrzennego i planowanie przestrzenne. Zagadnienia administracyjno-prawne", in: S. Piątek, ed., *Podstawy prawne i instytucjonalne systemu gospodarki przestrzennej. Zbiór opracowań* (Warszawa: Instytut Geografii i Przestrzennego Zagospodarowania PAN, 1980), 40.

[92] [no author], "Spór o ustawę", *Miasto* 10 (1984), 5.

the Council of Ministers passed a resolution of 28 November 1980 requiring the Minister of Administration, Land Management and Environmental Protection to prepare a draft amendment to the Spatial Planning Law. In carrying out this task, the development of an entirely new piece of legislation began[93].

Ideas for a comprehensive reform of this area of the law also appeared outside government circles. The draft drawn up by the Society of Polish Town Planners is worth mentioning, e.g., as it was more progressive than the law that later came into force[94]. Basically, in the early 1980s there was a fairly wide-ranging discussion on the future system of spatial planning in Poland. The later co-founder of local government reform in the Third Republic – Michał Kulesza, in the pages of the magazine *Miasto* in 1984, reported that work on a new law on spatial planning was going reluctantly because of a fundamental dispute over its model[95]. He pointed to the possibility of moving away from the previous solution of a hierarchical structure, where goals set at higher levels of the administrative structure always took precedence over the objectives and needs of local communities, which "were pejoratively referred to as particularistic and were often rejected in the name of higher, legitimate interests"[96]. Rather, in a system of content-based, instead of hierarchical, relationships between planning acts of various types, spatial planning could become the responsibility of the national councils of cities and municipalities. This would result in a system in which "the local community, represented by its bodies, is a subject and not, as has been the case so far, merely an object of management"[97]. Integrity

[93] Szydłowski, op. cit., 1.

[94] Niewiadomski, *Planowanie przestrzenne…*, 20.

[95] M. Kulesza, "Wokół ustawy o planowaniu przestrzennym", *Miasto* 1 (1984), 14–16.

[96] Ibid., 14.

[97] Ibid.

of planning acts was the second issue. Kulesza pointed out that this was the reason for the poor performance of the spatial planning system. He pointed out that the obsolescence of one element had the effect of making it necessary to amend the entire plan[98]. For the record, it is worth noting that such a remark by a scholar specialising in the subject was another argument for the fact that the provisions for updating planning acts contained in the 1961 Law did not work in practice. A different view was recalled by Andrzej Pyszkowski, president of the Society of Polish Town Planners, in a discussion of the already passed law, the transcript of which can also be read in the pages of *Miasto* magazine. The position of part of the community, called by Pyszkowski radical, was based on the view that spatial planning was only a certain part of planning conceived holistically, so there should not be a separate law dedicated only to this issue[99]. This proposal lost its practical relevance with the adoption of the Law on Social and Economic Planning in 1982[100]. It did not contain provisions on spatial planning, so it made it necessarily essential to enact a separate act to regulate these issues.

The new Spatial Planning Law[101] was adopted on 12 July 1984. It began by defining the purpose of the activities regulated therein. Namely, spatial planning was to be carried out in order to comprehensively shape the spatial development of the country, regions, cities, and villages in such a way that there were conditions for improving the quality of life of society, preserving the natural balance, protecting cultural assets, increasing the efficiency of economic processes, and raising the defence capability of the

[98] Ibid., 15.

[99] "Spór o ustawę…", 5.

[100] Ustawa z dnia 26 lutego 1982 r. o planowaniu społeczno-gospodarczym (Dz.U. 1982 nr 7, poz. 51).

[101] Ustawa z dnia 12 lipca 1984 r. o planowaniu przestrzennym (Dz.U. 1984 nr 35, poz. 185), hereinafter also: 1984 Law.

state (Article 1). Compared to the provisions of the 1961 Law, the order of declared priorities clearly changed. Issues related to the achievement of economic goals, which opened the enumeration in the old regulations, were placed almost at the end in the new law. Before them, issues directly affecting citizens were listed (in the old law, defined as meeting the needs of the population; in the new one, improving the quality of life of society; the mere substitution of "population" for "society" gave the impression of more subjective treatment) as well as environmental protection, which was already gaining a great deal of importance and spatial planning was considered its primary instrument[102]. A complete novelty not found in the goals of the earlier law – the protection of cultural property – also came before economic issues. Kazimierz Bald, who participated in the work on the new law on behalf of the Society of Polish Town Planners, said that the order of the goals listed in the new law was not accidental. Their sequence in the drafts disclosed differences in opinions, and the final version reflected the victory of the view that the social goal (i.e., the creation of conditions to improve the quality of life of society) was superior to the development of production. Bald described the nature of the previous law as pro-industrial, and the new one as pro-social[103].

Article 2 of the 1984 Law defined spatial planning as a continuous process and listed its four elements: (1) undertaking assessments of the state of land use, conducting studies and research, and preparing forecasts in this regard; (2) developing spatial plans; (3) determining the location of investments; and

[102] J. Stelmasiak, *Miejscowy plan zagospodarowania przestrzennego jako środek ochrony środowiska* (Lublin: Wydawnictwo UMCS, 1994), 27.

[103] K. Bald, "Nowa regulacja prawna w planowaniu przestrzennym – nadzieja i zagrożenia", in: Towarzystwo Urbanistów Polskich, *Komentarze do ustawy o planowaniu przestrzennym* (Warszawa: Towarzystwo Urbanistów Polskich, 1986), 77.

(4) controlling the implementation of spatial plans. Thus, from the very first provisions of the new law, it is apparent that the legislator reversed the decision from a decade earlier to transfer regulations on location decisions to the construction law. In fact, Chapter 6 of the 1984 Law, discussed later in this subchapter, was devoted to this issue, and Article 47 removes the relevant provisions from the 1974 Construction Law. Thus, the desire to clean up the spatial planning system can be seen not only in the declaratory enumeration of all its elements but above all in the amendment of the provisions used in practice, including those contained (as a result of the progressive disintegration of the system) in other legal acts.

Subsequently, Article 3 formulated an element absent in the 1961 Law – general guidelines for proper spatial planning. It was indicated that it should take into account: the study of the development needs of regions, cities, and villages as well as balancing of general interests with local interests; the results of comprehensive studies of natural, social, economic, demographic, technical, and defence conditions, as well as forecasts of socio-economic development; requirements for the protection of human health, the protection of the environment, and in particular, the protection of water and energy resources, mineral deposits, agricultural, and forest land, and the protection of cultural property, as well as requirements related to national defence and security; requirements for the spatial order ensuring proper utilitarian and aesthetic conditions in the spatial development of areas; and finally, and it was a complete novelty, an assessment of the effects of spatial development that may occur beyond the state's borders. It is noteworthy that in this extremely extensive catalogue there were various values but no economic development, industrial development of the state, etc., and some goals (such as the protection of natural assets) were related to economics only indirectly.

Special attention was given to only two types of production – agricultural and forestry. Exceptionally strict conditions were established for the allocation of agricultural and forest land for other purposes – such arrangements could be made only after comprehensive analysis and taking into account the natural and technical-economic conditions of development and the needs of production in these two areas (Article 5).

It can probably be said that the lack of a direct indication of economic issues among the catalogue of priorities which should be taken into account in the spatial planning process was only a prelude to subsequent regulations that governed the entire relationship between spatial planning and socio-economic planning entirely differently from the 1961 Law. According to Article 4, Section 1 of the new bill, these two types of planning were interdependent. Subsequently, it was stipulated that the opportunities and constraints for socio-economic development arising from spatial plans should form the basis for determining ways, proportions and means of meeting social needs in socio-economic plans (Article 4, Section 1), while the conditions for development arising from socio-economic plans should form the basis for determining ways, proportions, and places for implementing projects to meet social needs in spatial plans (Article 4, Section 3). The symmetrical and bi-directional relationship between the two types of planning regulated by these provisions replaced the previous, completely different model, in which spatial planning was supposed to be an element of economic planning – the 1961 Law explicitly stated that spatial planning should be based on economic planning. Interestingly, just in 1978 Wacław Brzeziński wrote: "it seems that the process of integrating the issues of socio-economic planning and spatial planning is irreversible"[104], he

[104] Brzeziński, "Plan zagospodarowania przestrzennego jako forma prawna…", 13.

also reminded the effects of the principle of unity of plans under socialism on the structure of spatial planning[105] .

A natural consequence of the new model of the relationship between spatial and socio-economic planning was the restoration of national spatial plans as separately drafted documents. In addition, the new law maintained the three-tier structure of spatial planning (Article 7, Section 1). The 1984 Law defined a local plan as a planning act drawn up for a city or municipality, or possibly parts or complexes thereof (Article 7, Section 1, Point 1). Thus, the use of the term "settlement unit" familiar from the previous law was abandoned. In its place, the practice of drawing up municipality plans, hitherto based on the provisions of the above-discussed Resolution No. 148 of the Council of Ministers of July 1976, was included directly in the act. A logical consequence was that municipality plans were not distinguished as a separate type of planning act, since most local plans were henceforth to concern precisely whole areas of individual municipalities.

In addition, a new, hitherto unknown type of planning act was introduced – a functional area plan covering areas distinguished by reason of fulfilling specific economic, social, cultural or natural-environmental functions (Article 7, Section 2). They were intended to replace what was called special plans previously prepared on the basis of separate regulations (e.g., mining law, water law or regulations concerning national parks). The literature pointed out the need to unify regulations for their issuance, especially procedural provisions[106].

Meanwhile, the general division of spatial plans by their time horizon was abolished, at least as it was present in the 1961 Law. As a general rule, planning acts were to be drawn up as long-term plans, with tasks for the prospective period distinguished

[105] Ibid., 11.

[106] Brzeziński, "Rozwój planów…", 228–229.

in them (Article 7, Section 5). Only local plans were allowed to be drawn up as prospective plans, with tasks set out in them for the upcoming five-year plan period (Article 7, Section 6). Instead, a statutory obligation was introduced to update local plans at all levels at least every five years (Articles 19, Point 3, 24, Section 1 and 33). Previously, such an obligation existed in internal acts, which caused difficulties in enforcing it[107].

A trend evident in modifications in the procedures for enacting planning acts at all levels was an increased participation of experts and representatives of the society. Based on Article 9 of the analysed law, the State Council for Spatial Planning, an advisory and consultative body of the Council of Ministers on spatial planning matters, was established. Unlike the Central Planning Council provided for in the 1946 Decree, the new body did not remain only on paper. The Ordinance of the Council of Ministers on the Organisation, Principles and Scope of Action of the State Council for Spatial Planning was issued[108]. According to its provisions, the scope of the new body's activities included, in particular, giving opinions on drafts of the national spatial plan, selected regional plans, and plans for functional areas, especially, plans for urban agglomerations. The State Council for Spatial Planning was also to give its opinion on proposals for the location of investments of fundamental importance to the national economy, and to deal with other research and development activities in the field of spatial planning. Council was to be composed of representatives of science, professional circles and social organisations, and its meetings could be attended in an advisory voice by, among others, representatives of universities,

[107] Jędrzejewski, "Refleksja na temat nowej ustawy o planowaniu przestrzennym", 116.

[108] Rozporządzenie Rady Ministrów z dnia 6 marca 1985 r. w sprawie organizacji, zasad i zakresu działania Państwowej Rady Gospodarki Przestrzennej (Dz.U. 1985 nr 11, poz. 42).

scientific institutions, scientific, and research institutes invited by the Chairman of the Council.

The State Spatial Planning Council was a permanent body. The 1984 Law also provided for the existence of temporary advisory panels created for the duration of the preparation of particular planning documents. In connection with the preparation of a regional plan, the relevant local state administration bodies were required to appoint what was referred to as regional plan commissions, which should have included representatives of the local state administration bodies, its other interested entities, social, professional, economic organisations, scientific institutions, and specialists in the relevant field. Representatives of commissions of the national council whose fields were intertwined should be invited to participate in the work of the regional plan commission (Article 21). This direction of change was not surprising, since the need to increase the participation of the civic factor (in addition to experts) had already been signalled in the results of research on the legal and institutional bases of spatial planning carried out in 1976–1979[109].

For the period of drafting local general plans, what was called local plan commissions had to be established, composed of representatives of interested state administration bodies, social and economic organisations as well as scientific institutions, residents' self-government, and socio-professional organisations of farmers. As was the case with the regional plan commission, representatives of interested commissions of the national council also had to be invited to participate in the work of this advisory panel (Article 28).

[109] K. Sobczak, "Podstawy prawne i instytucjonalne systemu gospodarki przestrzennej/synteza badań zespołowych", in: S. Piątek, ed., *Podstawy prawne i instytucjonalne systemu gospodarki przestrzennej. Zbiór opracowań* (Warszawa: Instytut Geografii i Przestrzennego Zagospodarowania PAN, 1980), 15.

The will of the legislator to clean up the regulations on spatial planning and to merge them into a single act again was also manifested in the inclusion in the new law of provisions on the location of investments. These returned to the spatial planning law after more than a decade. Chapter 6 of the 1984 Law provided for a three-stage procedure (Article 35). First, at the investor's request, "locational indications", i.e., conditions for the implementation of the investment and – above all – information regarding placement of the investment, resulting not only from spatial development plans but also from socio-economic plans, had to be granted. Location indications were given by the Planning Commission under the Council of Ministers in the case of investments of national importance, by provincial state administration bodies for projects of provincial importance, and by territorial authorities of the basic level for investments of a local nature (Article 37, Section 1). The Council of Ministers was to determine the criteria for dividing investments into those of national, provincial, and local importance (Article 37, Section 3). It was done in the Ordinance on the Division of Investments and the Scope, Principles, and Procedure for Determining Their Location[110]. Among construction projects of national importance, it listed mining facilities in first place, followed by gas and oil pipelines, and any investment in industry that was expected to create more than 500 new jobs. The central government thus reserved the right to decide on the location of those investments that were crucial to central social and economic planning. In addition, various major infrastructure projects were also considered projects of national importance. Interestingly, nuclear power plants were listed separately.

[110] Rozporządzenie Rady Ministrów z dnia 27 czerwca 1985 r. w sprawie podziału inwestycji oraz zakresu, zasad i trybu ustalania ich lokalizacji (Dz.U. 1985 nr 31, poz. 140).

Despite the consolidation of the regulation of location decisions with the law of spatial planning, it was still apparent in the regulations discussed above that the connection with socio-economic planning and centralisation were still strong in the executive stage of the planning. However, certain powers were provided for local bodies that, in the theoretical assumptions of the system of the People's Poland, were supposed to represent society, namely, national councils. According to Article 39 of the analysed law, in the case of investments that were not named in spatial plans, the competent national council had the right to challenge location indications. Then the dispute was resolved by a higher-level national council, and in the case of investments of national importance, by the State Council.

Location indications could be developed in variants (Article 36, Section 2), so the second stage of the procedure could be the determination of the conditions for implementing the investment in a location in line with the selected variant. The final, third stage was the issuance of a decision on the location of the investment.

According to Article 35, Section 1, investors who were socialised economy entities had to apply for an investment location decision for any project but other organisational units and individuals were required to do so when they wanted to carry out an industrial, service or commercial investment. Thus, private individuals building residential houses were exempted from the obligation to obtain a decision on location. Particularly noteworthy is the final part of this provision, according to which the obligation to apply for an investment location determination was also imposed on churches and other religious associations and their legal entities intending to implement a religious or ecclesiastical investment. On the one hand, for the first time in the history of spatial planning in the People's Poland, the legislator noticed this category of entities, and investments of this type were allowed at all. On the other hand, an obligation to obtain

location decisions was imposed there, despite the fact that they were neither commercial, industrial or service investments, nor implemented by entities of the socialised economy. Thus, it can be seen that the state authorities wanted to have strict control over the construction of new churches and other religious buildings.

In the community of spatial planning professionals, the new law received mixed reviews. In the aforementioned *Miasto* magazine's discussion of the then-new 1984 Law, the director of the Warsaw Development Planning Office indicated that the main feature of the enacted bill was its "openness"[111]. By this he understood the transfer of many technical and procedural details to executive acts that had not yet been issued at the time. He considered this "both an advantage and a major sin of that document"[112]. He pointed to the risk of regulating planning procedures in a too specific manner. Andrzej Pyszkowski agreed with the magazine's editorial board that the law did not contain details, referring on their subject to executive acts, being more like a policy or ideological declaration than a legal norm. However, he indicated that these ideas contained in the law were extremely important, because they provided the spatial policy principles with the necessary stability and made them independent of the influence of changing economic policies. He cited the equivalence and interdependence of spatial and economic planning enshrined in Article 4 of the new law as the most important ideas[113]. Michał Kulesza cautioned that the law did not provide a basis for defence against illegal actions. He pointed out that authorising the minister to control the compliance of any plan with state spatial policy was a backdoor restriction on the sovereignty of national councils[114]. At the end of this discussion, Andrzej Trochimowski,

[111] "Spór o ustawę…", 5.
[112] Ibid.
[113] Ibid., 5.
[114] Ibid., 8.

Andrzej Pyszkowski, and Michał Kulesza agreed that the one-and-a-half-year deadline for enacting local spatial plans for areas for which such plans had not been prepared when the law entered into force (Article 48, Section 5) was completely unrealistic[115].

4.6. The development of spatial planning law and the evolution of People's Poland's political ideology

The method of legal regulation of spatial planning evolved throughout the history of People's Poland. It is possible to indicate several turning points related to the entry into force of completely new legal acts, comprehensively regulating this area (in 1946, 1961, and 1985), as well as periods when changes in this area of the legal system were gradually introduced by amendments and provisions contained in other acts, including those of sub-statutory rank.

Regulations originating in the Second Republic were replaced as early as the second year of People's Poland. Originating in 1946, the Decree on the Planned Development of the Country adjusted the spatial planning system to the new social and economic regime, inter alia, through introducing the obligation to prepare planning acts for the entire country; creating a centralised administration for tasks in this area, being headed by the General Office of Spatial Planning, and linking this activity to economic planning. On the other hand, however, some solutions from the prewar period were maintained, such as the right to file objections to a draft local plan, available also to private property owners. The legal regulation of spatial planning in the early years of People's Poland had the characteristics of legislation peculiar to a state whose political system was still forming.

During the Stalinist period, no new act was drafted. In the legal system, the political reality of the time was reflected in the practice

[115] Ibid., 8.

of (non)application of the existing legislation. Although the 1946 Decree was formally still in force, a number of incompatible sub-statutory acts were issued, such as a resolution of the Presidium of the Council of Ministers and ordinances of the State Economic Planning Commission. They basically ignored spatial planning, giving priority to the implementation of economic objectives. It was not uncommon for the directions of spatial development to be determined by the emergence of large, usually industrial investments of political significance, erected on the basis of location decisions with questionable legal basis. In such cases, the role of planning acts was to sanction the actual state of affairs and adjust other elements of the urban structure to it. Planning activity at the regional and national levels basically froze. Precisely during this period, it was most evident that the People's Poland authorities did not feel bound by the laws they enacted. The key thing for them was to achieve political goals through economic planning tools. However, they did not attach importance either to spatial planning, or to the rule of law – even regarded only as a facade.

The October thaw in the late 1950s allowed not only for criticism of the law and the practices of its application in official publications but also for any kind of debate, albeit concessionary, on the directions of possible changes, which slowly began taking effect. First, the role of architectural and spatial planning authorities was increased in sub-statutory regulations. Then, in 1961, a completely new Law on Spatial Planning was adopted. The goal of its authors was to clean up this area of regulation, including eliminating discrepancies between the statute and lower-level legislation. The new law regulated such issues as the approval of spatial plans or the issuance of location decisions in the absence of a valid plan for a given area. In this way, the contradictory situation of the practical application of the law with binding normative acts was removed. Still, the power to approve the plans remained not in the hands of those bodies which should

have had it according to the Constitution. There were still gates left in the system allowing the implementation of investments prioritised from the point of view of economic planning in areas not yet covered by local spatial plans. The unusually strong connection between land-use planning and economic planning, actually making spatial planning one of the branches of economic planning, was the main direction of changes visible in the 1961 Law – this was emphasised explicitly in the objectives of spatial planning formulated at the beginning of the act. Planning at the national and provincial levels was placed in the hands of economic planning institutions. Spatial planning at the national level was to be carried out entirely within the framework of economic planning – the national spatial plan ceased to exist as a separate act. Moreover, the system became extremely complicated – the previous three-tier structure was left in place, with the additional introduction of a division of plans based on their time horizon and level of detail, and a completely new type of planning act was added, i.e., implementation plans. Undoubtedly, this was an ambitious attempt to create legal solutions worthy of mature state socialism. At the time of its enactment, the 1961 Law was considered an exceptionally modern and successful piece of legislation. However, in practice, it proved quite problematic.

The 1970s brought a renewed defragmentation of the spatial planning law system. Some of the provisions were transferred to the new construction law, others to ordinance. There was a new instrument introduced by a resolution of the Council of Ministers without statutory authorisation – simplified development plan for municipalities. Exemptions from existing planning acts, not many anyway, were facilitated. General plans had not been drawn up for the vast majority of areas, and detailed plans for practically none. The era of Edward Gierek was another period in which economic development – although this time aimed at improving the standard of living of the population rather than

building heavy industry – took precedence over the planned land use of the country. In the late 1970s and early 1980s, criticism of the way the law was amended in this area and its application was very similar to that which had occurred two decades earlier.

In the early 1980s, another attempt was made to repair the spatial planning system. The irreversibility of the political changes that took place in Poland after August 1980, even despite the subsequent martial law, can be seen in the openness of the debate on the directions of possible changes. Various models for future regulations were discussed, and the new law adopted in 1985 was not only praised like its predecessor – the censors let its criticism pass in the professional press published in official circulation. The creation of new regulations was also necessitated by the economic reform underway at the time. The previous ones, which were strongly linked to the central planning implemented under the old model, had become obsolete. The relationship of subordination between economic and spatial planning was replaced by interdependence. The solutions introduced by the new regulations were also much simpler than those of the 1961 Law

Therefore, it is evident that, as in the case of other areas of legal regulation analysed in this book, in the history of spatial planning law in People's Poland it is possible to distinguish several periods corresponding quite closely to particular eras in the political history of the country: the spirit of the first, postwar years of the formation of the system of the new state was reflected in the 1946 Decree; mature Stalinism is represented in the practice of applying the law in accordance with political objectives (in this case, it was primarily the rapid industrialisation of the country) but contrary to the wording of the above-mentioned Decree. the Gierek era's shift from long-term policy to day-to-day management of the state coincided with the defragmentation of this system in the 1970s; finally, the 1980s witnessed a search for new solutions to resolve the crisis both nationwide and in the area of spatial planning law.

5
Housing Law

The previous chapters dealt with regulations related to the erection (or repair) of buildings and entire new settlements. However, an analysis of the law shaping the architectural and spatial environment in which citizens of People's Poland lived would not be complete without a discussion of the norms governing the use of already existing properties. The subject of this chapter is the influence of the political ideology dominant in that state on the regulations which, for most of its existence, were called housing law. According to the administrative law doctrine of the time, it was an area of law responsible for determining the rules for disposing of dwellings[1]. According to Andrzejewski's definition, already cited at the beginning of the book, the housing economy is the totality of activities aimed at meeting housing needs, and primarily the production, maintenance, and allocation of dwellings[2]. The issues of postwar reconstruction, construction

[1] Z. Rybicki, and S. Piątek, *Zarys prawa administracyjnego i nauki administracji* (Warszawa: Państwowe Wydawnictwo Naukowe, 1988), 469.

[2] A. Andrzejewski, *Polityka mieszkaniowa* (Warszawa: Polskie Wydawnictwo Ekonomiczne, 1980), 24.

law, and spatial planning already discussed were related to the former area. Housing law essentially deals with the latter.

In this chapter, most attention shall be paid to the issue most relevant to the influence of ideology on legislation, namely, allocation, which was commonly understood in People's Poland as the allocation of dwellings on the basis of an administrative decision[3]. Other issues, such as rents or service housing, shall be flagged to the necessary extent.

5.1. Housing law before World War II

Housing policy can be understood as the methods of action used by the state to meet housing needs[4]. The primary instruments for its implementation are the laws regulating not only the organisation of the housing construction but also the allocation and use of existing dwellings[5]. The mediocre housing situation in interwar Poland is a well-known fact. Many authors wrote about it, from lawyers publishing in People's Poland – to whom it served as a contrast to show the perceived superiority of socialist solutions[6] – to contemporary popular reporter non-fiction writer Filip Springer, who devoted a large part of

[3] A. Fermus-Bobowiec, "Problem «kwaterunku» lokali mieszkalnych w ustawodawstwie i nauce Polski Ludowej", *Zeszyty Naukowe Uniwersytetu Przyrodniczo-Humanistycznego w Siedlcach. Seria: Administracja i Zarządzanie* 31 (104) (2015), 50.

[4] Andrzejewski, op. cit., 25.

[5] E. Ochendowski, *Prawo mieszkaniowe i polityka mieszkaniowa* (Toruń: Uniwersytet Mikołaja Kopernika, 1980), 13.

[6] See: W. Brzeziński, *Prawo mieszkaniowe* (Warszawa: Państwowe Wydawnictwo Naukowe, 1953), 10–17; S. Łęczycki, *Zagadnienia prawne gospodarki mieszkaniowej* (Warszawa: Wydawnictwa Uniwersytetu Warszawskiego, 1962), 2–9; B. Wójtowicz, *Gospodarka lokalami w Polsce Ludowej* (Warszawa: Wydawnictwo Prawnicze, 1952), 3–15.

his book *13 pięter* ("13 floors")[7] to this subject. In the first years of reborn Poland, the lack of renovations and the damage done during World War I made the situation particularly dire[8].

The rapid emergence of legislation to calm public tensions was, therefore, no surprise. Once the Polish judiciary was up and running, the biggest problem became mass evictions related to the insolvency of tenants who were unemployed or drafted for military service[9]. A temporary solution was provided by a the Law on Suspension of Eviction of Tenants of 15 July 1918, yet issued by the Regency Council of the Kingdom of Poland[10]. Based on it, the Minister of Justice ordered an immediate halt to executions from one and two room apartments, as well as three room apartments inhabited by families of six members and more[11]. This law was supposed to be in effect until 10 August 1918 but the expiration date was later extended to 15 September of that year[12]. The next piece of legislation regulating housing was the Temporary Law for the Protection of Tenants[13] of 4 September 1918, which introduced rent reductions for small apartments in Warsaw, Łódź, Pabianice and Zgierz in relation to their 1914 levels. (On the other hand, it allowed rises in other cities). The first legislation of Jędrzej Moraczewski's government was devoted to

[7] F. Springer, *13 pięter* (Wołowiec: Wydawnictwo Czarne, 2015).

[8] M. Konarski, "Obowiązek dostarczania mieszkań na potrzeby osób wojskowych i cywilnych w latach 1919–1925 w świetle ustawodawstwa i orzecznictwa Najwyższego Trybunału Administracyjnego", *Krakowskie Studia z Historii Państwa i Prawa*, 14 (2) (2021), 159.

[9] Brzeziński, *Prawo mieszkaniowe…*, 19.

[10] Ustawa o wstrzymaniu eksmisji lokatorów (Dz.U. 1918 nr 8, poz. 17).

[11] Rozporządzenie Ministra Sprawiedliwości w przedmiocie wstrzymania eksmisji (Dz.U. 1918 nr 8, poz. 18)

[12] Ustawa o przedłużeniu terminu wstrzymania eksmisji lokatorów (Dz.U. 1918 nr 9, poz. 19).

[13] Ustawa tymczasowa o ochronie lokatorów (Dz.U. 1918 nr 10, poz. 21).

the housing issue as well[14]. The Decree on Temporary Provisions on Housing Moratorium for the Unemployed of 19 December 1918[15] authorised courts to suspend evictions for up to three months if a defendant living in one of the cities specified in the ordinance[16] was in a difficult situation, especially because of unemployment. At the beginning of 1919, the Decree on the Protection of Tenants and Prevention of Lack of Housing[17] was issued, which replaced the Temporary Law on the Protection of Tenants, maintaining the solutions used therein with a slight adjustment of rent reductions in favour of tenants. It contained regulations aimed at increasing the number of available dwellings, which shall be discussed later, and further rent-restricting provisions. The latter were in effect for less than six months. For as early as June of the same year, the Law on Tenant Protection[18] was passed, which abolished reductions for apartments consisting of one or two rooms (Article 2), and allowed rises for larger apartments (Article 3). Solutions limiting the possibility of terminating a lease to valid reasons specified in the law were maintained (Article 13). Perhaps most significantly, the discussed law (and all subsequent laws regulating rents in the interwar period) provided exemptions for new buildings (Article 4, Section 3). As a result, in practice,

[14] Brzeziński, *Prawo mieszkaniowe*…, 20.

[15] Dekret w przedmiocie przepisów tymczasowych o moratorjum mieszkaniowem dla pozostających bez pracy (Dz.U. 1918 nr 20, poz. 62).

[16] Rozporządzenie Rady Ministrów w sprawie rozciągnięcia przepisów dekretu w przedmiocie przepisów tymczasowych o moratorjum mieszkaniowem dla pozostających bez pracy z dnia 19 grudnia 1918 r. na miasta: Warszawę, Łódź, Pabjanice, Zgierz, Ozorków, Tomaszów, Żyrardów, Sosnowiec, Włocławek, Zawiercie, Dąbrowę i Częstochowę (Dz.Pr.P.P. 1919 nr 26, poz. 243).

[17] Dekret o ochronie lokatorów i zapobieganiu brakowi mieszkań (Dz. Pr.P.P. 1919 nr 8, poz. 116).

[18] Ustawa z dnia 28 czerwca 1919 r. o ochronie lokatorów (Dz.Pr.P.P. 1919 nr 52, poz. 335).

regulated rents applied only to premises erected during the Partitions. Brzeziński regarded these changes in 1953 as a "victory for the counterrevolution"[19]. This piece of legislation also did not survive long. In December 1920, a new Law on the Protection of Tenants[20] was passed which, due to inflation, allowed rent rises of 100 to 300%, depending on the size of the premises (Article 3). In addition, landlords were allowed to charge tenants for the real cost of utilities (Article 5). The Law on the Protection of Tenants[21] of 11 April 1924, was the last of the series of laws, which had survived to the outbreak of World War II. However, it does not mean that the housing law of the Second Polish Republic stabilised, as the bill was amended 14 times by 1939[22]. Constantly applied solutions consisted of statutory limits on rent increases and restrictions on the landlord's ability to terminate the contract. Continuously, tenant protection regulations did not apply to new buildings. Other important solutions applied similarly in all the above-mentioned regulations include the establishment of settlement offices to resolve tenancy disputes in larger towns; in the event of a tenant's death, the right to continue the tenancy by the relatives who had previously cohabited with her or him[23]; and the outlawing of the "compensation" – a common one-time fee charged by the landlord at the beginning of the tenancy.

As mentioned above, the Decree on the Protection of Tenants and Prevention of Lack of Housing, in addition to norms reg-

[19] Brzeziński, *Prawo mieszkaniowe…*, 22.

[20] Ustawa z dnia 18 grudnia 1920 r. o ochronie lokatorów (Dz.U. 1921 nr 4, poz. 19).

[21] Ustawa z dnia 11 kwietnia 1924 r. o ochronie lokatorów (Dz.U. 1924 nr 39, poz. 406).

[22] E. Ochendowski, *Administracyjno-prawna regulacja korzystania z lokali mieszkalnych w systemie gospodarki planowej PRL* (Poznań: Wydawnictwo Naukowe UAM, 1965), 11.

[23] W. Fedarczyk, Wybrane problemy ochrony praw lokatora i gospodarki mieszkaniowej gmin w Polsce", *Samorząd Terytorialny* 4 (2008), 31.

ulating rents, also contained solutions that fell within the area of the second pillar of interwar housing policy – legal measures aimed at increasing the number of available dwellings. In the absence of housing, the following measures could be applied – with the approval of the Ministry of Public Health, the Ministry of Labour and the Ministry of the Interior: A ban on the demolition of habitable houses; an order to divide dwellings of at least four rooms into smaller ones; an order to sublet the portion of the dwelling that was insufficiently occupied; the possibility for the municipality to seize and rent out dwellings which had not been in use for more than three months (the income from such forced rental was due to the property owner); an order to repair houses that were unfit for habitation; an order to convert non-residential premises (attics, basements, etc.) to dwellings (Article 28). Brzeziński pointed out that these solutions were purely theoretical, since obtaining the consent of three ministries was unrealistic. In support of this view, he cited the transcript of the 19 June 1919 session of the Polish parliament, where it was argued that the procedures provided for in the decree made the aforementioned instruments impossible to apply in practice[24]. The discussed part of the Decree on the Protection of Tenants and Prevention of Lack of Housing was reversed by the Law on the Responsibility of the Boards of Urban Municipalities to Provide Chambers[25]. It, too, provided tools for interfering with private property – authorising the boards of municipalities to seize dwellings that were unoccupied, under-occupied and owned by persons who possessed more than one apartment (Article 3). However, the units thus obtained could only be used to meet the housing needs of the diplomatic corps, deputies to legislative bodies, officers, civil servants, prosecutors, professors,

[24] Brzeziński, *Prawo mieszkaniowe…*, 33.

[25] Ustawa z dnia 4 kwietnia 1922 r. o obowiązku zarządów gmin miejskich dostarczania pomieszczeń (Dz.U. nr 33, poz. 264).

and teachers assigned by appointment (Article 1). The purpose of restrictions on the right to dispose of private property was, therefore, no longer to solve the housing problem but to ensure the functioning of the state by securing accommodation for its key people. The legal tools implementing the housing policy can also include a series of urban expansion acts, the most important of which shall be discussed in the chapter on housing cooperatives, as that organisations sought to benefit from the measures contained therein.

The interwar scientific literature gave different assessments of the housing law of the time. Feliks Ochimowski appreciated the solutions adopted as a remedy to protect a large part of society from landlord abuse and potential homelessness[26]. Zenon Pietkiewicz criticised them as "a strong impediment to the development of the construction movement"[27]. As already mentioned, the judgment of authors publishing in the period of People's Poland was unequivocally negative. In principle, it should be agreed with the statement that the housing policy of the Second Polish Republic focused on protecting the rights of tenants, rather than providing housing for people who lacked accommodation[28]. Legislation interfering with private property to increase the amount of available housing was in effect on a broader scale for basically only three years – after that it was limited to providing housing for people crucial to the state – and even for that short period that legislation remained essentially defunct. The authorities of the Second Polish Republic recognised the dire housing situation

[26] F. Ochimowski, *Prawo administracyjne* (vol. 2, Warszawa: nakł. Księgarni F. Hoesicka, 1922), 65–68.

[27] Z. Pietkiewicz, *Gospodarka miast polskich* (Warszawa: Polski Bank Komunalny, 1928), 49.

[28] D. Cendrowicz, "Zadania administracji publicznej z zakresu pomocy osobom bezdomnym w II Rzeczypospolitej", *Acta Universitatis Wratislaviensis PRAWO* 327 (2019), 49–51.

from the very beginning. At the same time, they did not take remedial measures that actually interfered heavily with private ownership rights.

5.2. Decree on Housing Committees

As described in the chapter on rebuilding the damages, the housing situation after World War II was terrible. On top of this, the Polish Committee for National Liberation, in its manifesto, promised to immediately begin relieving the housing poverty. Therefore, it is not surprising that, just as in 1918, housing legislation was issued very early during the formation of the new state. However, this time the measures used were quite different.

The People's Poland authorities, in a decree of 7 September 1944[29], recognised the need to regulate housing issues resulting from war damage, mass displacement and the forced removal of people from their homes. For this purpose, housing committees were created at city and municipal national councils (Article 1). Their task was to regulate the occupancy of housing with consideration of the living space needed by each person, taking into account his occupation, health, and family situation. At the same time, any housing contracts signed in circumvention of the committees became legally invalid (Article 2). Contracts for the aforementioned "compensation" became not only invalid but also illegal. They were punishable by imprisonment for up to two years and a fine of up to PLN 20,000. Under the same sanction, it was forbidden to charge fees for brokerage in renting and finding premises (Article 11).

[29] Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 7 września 1944 r. o komisjach mieszkaniowych (Dz.U. 1944 nr 4, poz. 18); hereinafter also: 1944 Decree.

The 1944 Decree applied to almost all premises. This act already included an exemption for buildings severely damaged during the war and renovated at the owner's expense – as part of the incentives for private capital already discussed (Article 10, Letter c). In addition, the decree's provisions also did not apply to service apartments, rooms in hotels, guesthouses, summer resorts, sanatoriums, etc. (Article 10, Letter e and Letter f) but interestingly, also buildings intended for religious worship (Article 10, Letter a).

The discussed legislation provided for the establishment of one or more housing committees at each municipal or communal national council. Such a body consisted of three members: a chairman appointed by the relevant national council; a representative of property owners; and a representative of trade unions or social associations existing in the municipality (Article 4). Housing committees acted on the request of interested persons by allocating them housing (Article 3, Letter a). For this purpose, in the case of a shortage of housing units in a given municipality, they could issue rulings on limiting the rights of the principal tenant to the dwelling she or he occupied while determining the amount of rent due to him from the sub-tenant (Article 3, Letter b). It means that it was possible to add additional persons to an already occupied apartment. Significantly, the decree did not contain any specific standards for the occupancy of apartments.

The executive ordinance[30] of the analysed legislation regulated the composition and procedure for the establishment of housing committees in more detail. The national councils had to convene meetings of all property owners to elect their representatives on the committees there by a simple majority (§ 5, Letter a). In turn, tenants' associations and trade unions (or, in

[30] Rozporządzenie Kierowników Resortów Administracji Publicznej i Sprawiedliwości z dnia 3 października 1944 r. w sprawie wykonania dekretu Polskiego Komitetu Wyzwolenia Narodowego z dnia 7 września 1944 r. o komisjach mieszkaniowych (Dz.U. 1944 nr 7, poz. 36).

their absence, community associations) were to be called upon to delegate a designated number of representatives (§ 5, Letter b). The ordinance indicated, as well, that the municipal or communal national council should appoint as many housing committees as necessary for their prompt and efficient functioning – if necessary, the territory of a city or commune should be divided into districts and a separate committee was to be established for each (§ 3, Letter a). However, also in this act there were no specific density standards or other guidelines under which the committees should proceed.

In addition to allocating dwellings and adding extra tenants, the housing committees' powers included regulating relations between landlords and tenants arising from the use of dwellings (Article 4, Letter c); issuing opinions in cases of deferred eviction (Article 4, Letter d); determining the value of expenditures made by the tenant (Article 4, Letter e); and authorising rent increases (Article 4, Letter f). The committees ruled at meetings, the minutes of which were recorded (Article 5, Letter b), after hearing the parties, examining evidence, conducting inspections, hearing witnesses and experts (Article 5, Letter a). A ruling should have been issued within two weeks of the date of the application (Article 5, Letter c). On the subject of rents, the discussed decree was limited to freezing their rates at the level from 1 September 1939 (Article 12).

Historian Dariusz Jarosz found documents in archival resources that show that the highest state authorities were not satisfied with the functioning of the housing committees. He cited a letter from the Presidium Office of the State National Council to the chairmen of local national councils, which stated that housing management (especially in the larger industrial and provincial cities) was unsatisfactory, and that the allocation of housing was carried out without taking into account the needs of applicants. In addition, during the course of the inspection, it was found that the

committees did not function properly – the allocation of housing was handled exclusively by the bureaucratic apparatus, so the idea of socialising housing policy was not implemented[31]. Accordingly, from 10 June 1945, a housing improvement campaign had to be carried out and led by committees specially established for this purpose in provincial and industrial cities with a population of more than 50,000 people[32]. Also Irena Paczyńska assessed the commissions' impact on solving real housing problems as low. She concluded that their importance was greater in terms of bureaucratising and formalising the disposal of dwellings – they were an instrument of state control over the private housing sector[33].

The legal doctrine of the period of People's Poland recognised the 1944 Decree as the first piece of legislation regulating housing in a new way, i.e., separating the ownership of real estate from the right to dispose of individual premises[34]. The role of the owner has even been reduced to administrative and housekeeping matters[35]. It was intended as a response to the contradiction between private ownership of real estate and the system of a planned economy, created due to the absence of nationalisation of residential buildings. Its removal was possible by taking dwellings out of commercial circulation[36]. Such a solution was considered a characteristic example of the role of law in the formation of social relations during the period of transition to the socialist system, which consisted of "multiple economic relations"[37] (namely,

[31] D. Jarosz, *Mieszkanie się należy… Studium z peerelowskich praktyk społecznych* (Warszawa: Oficyna Wydawnicza ASPRA-JR, 2010), 29.

[32] Ibid., 30.

[33] I. Paczyńska, *Gospodarka mieszkaniowa a polityka państwa w warunkach przekształceń ustrojowych w Polsce w latach 1945–1950 na przykładzie Krakowa* (Kraków: UJ, 1994), 56.

[34] Łęczycki, *Zagadnienia…*, 12.

[35] Paczyńska, *Gospodarka…*, 48.

[36] Brzeziński, *Prawo mieszkaniowe…*, 64.

[37] Ibid., 5.

the very combination of central economic planning and private ownership of parts of real estate that occurred in People's Poland).

Regardless of its historical significance, the 1944 Decree was a short and general piece of legislation. Its provisions were ad hoc in nature, and it is guessable that they were most likely created in a hurry. The administrative law doctrine of the time also considered this act as "far from perfect"[38]. For these reasons, a more mature decree regulating housing came into effect as early as 1945.

5.3. Decree on Public Management of Dwellings and Rent Control

More precise standards for the disposition of real estate were introduced by the Decree on the Public Management of Dwellings and Rent Control[39] (hereinafter: 1945 Decree). As its title suggests, it announced two forms of state influence on the use of private property[40]. Their declared purpose was to make rational use of the housing stock depleted by the war and to regulate public housing needs in a planned manner (Article 1). The same article of the discussed decree pronounced that the solutions provided therein were applied on a temporary basis – until the reconstruction of the destroyed cities and settlements would provide a sufficient number of properties to meet public and housing needs.

The basic instrument contained in the 1945 Decree was the public management of dwellings. It was immediately introduced in Warsaw, Łódź, Gdańsk, Lublin, Kraków, Katowice, and Poznań

[38] Ibid., 64.

[39] Dekret z dnia 21 grudnia 1945 r. o publicznej gospodarce lokalami i kontroli najmu (Dz.U. 1946 nr 4, poz. 27).

[40] Brzeziński, *Prawo mieszkaniowe…*, 67.

(Article 2, Section 1). However, the Council of Ministers could extend it by ordinance to other cities and even rural municipalities (Article 2, Section 2). The People's Poland authorities made very extensive use of this possibility. Almost 800 localities were covered by the discussed legal measure, mainly towns and cities[41]. It was possible to introduce public management of dwellings in suburban settlements with their subordination to the allocation authorities of the city near which these settlements were located (Article 2, Section 3). For example, on this basis, the housing matters of Milanówek were decided upon by the authorities of Warsaw[42]. The decree directly excluded from its regulations only two categories of facilities: premises occupied by the diplomatic corps as well as temples and houses of worship of denominations recognised by the state (Article 3). However, it is crucial to remember the exclusion, most importantly in practice, resulting from the already discussed Decree on the Demolition and Repair of Buildings Destroyed and Damaged by War.

The public management of dwellings was based on the fact that in the covered areas, the right to occupy not only independent housing but also sub-occupancy of rooms was given only to people who were entitled to its allocation (Section 1, Article 4). It included: deputies to the State National Council; persons employed in state and local government authorities, offices, enterprises, schools, and educational institutions; military troops stationed at a particular location; clergy of denominations recognised by the State; employees of the Cooperative Revision Association of the Republic and the cooperatives affiliated with it; schoolchildren and students; representatives of particular professions registered with the relevant local government chambers; people who run farms, and even ones who run private industrial, commercial,

[41] Ochendowski, *Prawo mieszkaniowe…*, 28

[42] Wójtowicz, op. cit., 18.

and craft enterprises as well as those employed in the private sector (Article 4, Section 2). It is apparent that the catalogue was basically broad. It included everyone employed virtually anywhere (not just in socialised economy entities). Brzeziński stated that it was an expression of the legislator's acceptance of the pluriformity of economic relations[43]. Instead, the solutions adopted prevented migration to cities just to seek work. This was a shift from the 1944 Decree, according to which housing committees made allocation decisions on the application of an interested party – those regulations did not specify who could be that interested party.

On the other hand, even the immediate family of those entitled to allocation was not automatically covered by the provisions of the discussed decree. Quite broad powers were granted to local national councils. First, they could allocate housing to persons beyond the decree catalogue (Article 4, Section 3). In addition, they were authorised to set population norms by specifying the minimum number of persons that should be accommodated per chamber – along with exceptions based on a person's position, occupation or health status (Article 6, Section 1). As part of the setting of these standards, the local national councils were authorised to determine which persons belonging to the family or household members of the allocated person were taken into account in determining the number of persons occupying the apartment (Article 6, Section 2). The national councils exercised their decree powers in various ways. Among the examples collected by Jarosz is the standard from Lublin, according to which two persons were supposed to occupy a maximum of 9 sqm per room, and the kitchen was usually counted as a separate room. The right to occupy additional space was granted by the Lublin authorities to doctors, dentists, lawyers, university professors,

[43] Brzeziński, *Prawo mieszkaniowe…,* 82.

and engineers. By contrast, in Warsaw, each professionally active person had to be allocated 10 sqm, and members of their family were to be given 5 sqm. Each chamber would be occupied by a minimum of two people but holding a particularly responsible post entitled one to accommodate an individual room[44].

The right to occupy independent dwelling (including a commercial one) was granted only on the basis of an allocation issued by the competent housing authority (Article 5, Section 1). Any contracts signed contrary to the provisions of the analysed decree were illegal and legally invalid (Article 10, Section 1). Contracts for "compensation" were also forbidden (Article 12, Section 1). In contrast, it was permissible to freely conclude contracts for the lease of sub-tenant spaces, on condition that the tenant fell into the category of persons who would have been entitled to the allocation anyway (Article 5, Section 2). Thus, freedom consisted solely of the ability to choose the apartment and the main tenant with whom to live. Subletting did not allow any additional people to live in areas under the public management of dwellings.

However, it was a solution for avoiding the subletting of persons beyond the apartment holder's control. The housing authorities could act if after they had announced the population norms, it turned out that there were too few people living in the apartment in question, and the holder of the property did not find sub-tenants her- or himself within the prescribed period (Article 7, Section 1). Housing cooperatives and social institutions had the option of selecting a tenant to take up the vacant premises, but again, only from among those eligible for an allocation (Article 8, Section 1).

The owner or property manager was obliged to notify the housing authorities within three days not only of the release of an independent apartment (Article 11, Section 1) but, if the local

[44] Jarosz, op. cit., 153–154.

national council required it, also of the release of sub-occupancy premises (Article 11, Section 2) and of insufficient occupancy of the premises in accordance with the standards introduced (Article 11, Section 3).

One more measure provided under the public management of dwellings was the possibility of ordering the division of three-room or larger apartments into two or more independent dwellings. The owner was obliged to do this at her or his own expense. If she or he had not made the conversion, the authorities had the option of substituting this responsibility and charging the costs to the mortgagee of the premises (Article 9, Section 1).

The second tool for housing policy provided by the 1945 Decree was public rent control, considered a milder institution[45]. It could be introduced by the relevant local national councils in cities and settlements where the public management of dwellings was not functioning (Article 19, Section 1). It consisted of granting the housing authority the power to allocate dwellings at the request of interested persons (Article 20, Letter a) but without any restrictions on who those persons could be; to regulate the size of the premises in accordance with the allocation regulations (Article 20, Letter b); and to regulate the relationship between the tenant and the landlord regarding the use of the dwellings (Letter c). A repetition of the powers of the housing committees from the 1944 Decree is evident here. In areas where public rent control was in effect, landlords and property managers were required to make public information about any vacant premises (Article 21, Letter a); to make both vacant and occupied premises available to the competent authorities for inspection (Article 21, Letter b) and, perhaps most significantly, to submit any concluded rental agreement to the competent authorities for approval (Article 21, Letter c). In the case of the implementation of public rent control,

[45] Ochendowski, *Prawo mieszkaniowe…*, 28.

state interference was actually limited to situations where the property owner did not take steps toward renting the property. In general, it was considered an ineffective instrument that failed to meet the demands of practice[46].

The 1945 Decree remained in force almost until the end of the 1950s but several amendments were introduced in the meantime. The greatest one was in 1950[47]. It was then that public rent control was abolished. In addition, the possibility of contractual subletting of sub-occupancy in areas under public management of dwellings was removed, which was supposed to be an expression of the fact that every resident of such areas had the right to occupy the premises on the basis of an allocation decision[48]. The circle of persons who were entitled to obtain a housing space allocation was also defined slightly differently (more broadly). According to the new wording of the regulations, these were still people whose profession, job or position required them to live in a particular city or settlement. However, the enumeration clarifying this norm, similar to one contained in the original version of the decree, was preceded by the phrase "in particular" and not "namely" as before (Article 6, Section 1). The catalogue thus became open-ended.

The freedom of local national councils in formulating housing policy was restricted. Population norms had to be determined according to rules set by the Minister of Municipal Affairs, in consultation with the Minister of Health and the Chairman of the State Economic Planning Commission (Article 7, Section 1). The 1951 Ordinance[49] regulated various procedural issues (e.g., when

[46] Brzeziński, *Prawo mieszkaniowe…*, 67.

[47] Ustawa z dnia 20 lipca 1950 r. zmieniająca dekret o publicznej gospodarce lokalami i kontroli najmu (Dz.U. 1950 nr 36, poz. 337).

[48] Ibid., 83.

[49] Zarządzenie Ministra Gospodarki Komunalnej z dnia 8 marca 1951 r. w sprawie zasad ustalania norm zaludnienia mieszkań (M.P. 1951 nr 24, poz. 314).

a kitchen should be included in living space – Section 6). First and foremost, it established a range of possible occupancy standards. These ranged from 9 to 12.5 sqm per person who was entitled to a housing allocation, her or his spouse as well as preschool and older children, and from 6 to 9 sqm for other persons entitled to cohabit with the recipient of the allocation (Section 9 in conjunction with Section 10). Persons whose profession or social function required more space; the sick, whose health condition required a separate room; those decorated with the order of "Builders of People's Poland" and those with special merits for the state were entitled to an additional 10 sqm (Section 12 in conjunction with Section 13). Larger premises were, therefore, granted not only on the basis of special needs but also as a reward.

The decree also directly established the circle of relatives of a person who was entitled to an apartment allocation, to be taken into account when determining its size (Article 7, Section 3). It included: the spouse; ascendants, and ascendants of the spouse; descendants, and descendants of the spouse up to the age of 18, and those studying up to the age of 24; and, interestingly, persons employed in the household (in justified cases). In the main body of the decree it was also stated precisely that the buildings whose non-subjection to the public management of dwellings already stemmed from the Decree on the Demolition and Repair of Buildings Destroyed and Damaged in War and the Law on the Promotion of Construction were outside of its scope (Article 3, Section 1).

This repetition necessitated another amendment just a year later, this time removing the aforementioned exemptions, since under the Law on Newly Built or Rebuilt Buildings and Dwellings[50], which introduced the amendment, public management

[50] Ustawa z dnia 26 lutego 1951 r. o budynkach i lokalach nowowybudowanych lub odbudowanych (Dz.U. 1951 nr 10, poz. 75).

of dwellings was extended precisely to facilities that had not previously been subject to it (Article 1, Section 1). This amendment was of great importance to housing cooperatives and shall be discussed in detail in the chapter devoted to them. The revisions of 1954 and 1957, which again gradually excluded cooperative apartments from the public management of dwellings, likewise.

5.4. Decree on the Extraordinary Housing Committees

Another source of housing management regulations was the Decree on Extraordinary Housing Committees issued on 8 August 1946[51] (hereinafter: 1946 Decree). Based on an analysis of the legal literature of People's Poland, it could be called a "phantom legal act" because virtually it was not discussed in any of the positions cited in this chapter and published before 1989. For this reason, after reviewing its content, special attention should be paid to the socio-political circumstances of the 1946 Decree.

On the basis of the analysed piece of legislation, the Extraordinary Housing Committee (Nadzwyczajna Komisja Mieszkaniowa – NKM) was established, reporting directly to the Prime Minister and covering the territory of the entire state (Article 1). At the request of the District Trade Union Commission, it created commissions for individual cities and settlements, in the decree also called Extraordinary Housing Committees (Article 2). To avoid confusion, the body in Article 1 of the 1946 Decree shall be referred to in this work as the national NKM, and those described in Article 2 as local NKMs. They consisted of a chairman and four members. Meanwhile, the National Extraordinary Housing

[51] Dekret z dnia 8 sierpnia 1946 r. o nadzwyczajnych komisjach mieszkaniowych (Dz.U. 1946 nr 37, poz. 229).

Commission acted with a composition appointed by the Prime Minister on the proposal of the Central Commission of Trade Unions (Article 9).

The NKM's task was to take all measures necessary to increase the amount of housing available to the working class, especially, by removing work evaders or speculators, particularly, those who had occupied post-German housing (Article 3). The committees were to work closely with labour unions, works councils and economic self-government organisations (Article 4).

The powers of the national NKM included submitting demands to the Government in the area of housing and giving opinions on laws and ordinances related to the area (Article 5, Letter a); reviewing complaints against housing authorities operating under the 1945 Decree (Article 5, Letter b); conducting inspections of the operation of these authorities (Article 5, Letter c); and issuing binding instructions and orders to local NKMs (Article 5, Letter d).

In turn, local NKMs could rule on the removal of work evaders or speculators along with their family members. They also had broad powers over the relevant housing authorities – they could accept complaints against them, conduct inspections, and issue binding recommendations to them (Article 5, Section 2). These decisions were final and binding, regardless of housing rights arising from rulings by courts as well as other bodies and commissions (Article 6). It was, therefore, entirely possible to remove from an apartment a person who had received an allocation for it under the 1945 Decree.

Anna Machnikowska assessed the 1946 Decree, not only as a source of disorder in the legal system (because it introduced double-tracking and a collision of powers of institutions determining rights and responsibilities in housing matters) but also as a manifestation of limiting the role of the judiciary – due to the enforceability of the decisions of the Extraordinary Housing

Commissions regardless of the legal titles to premises resulting from court decisions[52].

According to Article 10 of the discussed decree, the mode of operation of local NKMs was to be determined by the national NKM. An ordinance[53] on this matter was issued only three months after the decree had been issued, on 6 November 1946. This period probably highlighted to the authorities the collision of powers mentioned by Machnikowska. The question of whether an executive act is the right place to resolve such a problem remains a separate issue, and it is precisely what the national NKM attempted to do. In its ordinance the mutual relationship of the local NKMs and local accommodation authorities was regulated. The committees were to hold offices at these authorities and make use of their personnel and the files and records they kept (§ 3, Letter a). The chairman of the committee had the right to choose which cases coming to the housing authorities would be handled by the NKM and which would be left to the procedure provided by the 1945 Decree (§ 3, Letter b). Only a change in factual or legal relations would entitle the committee to rule contrary to decisions already made by other authorities (§ 3, Letter d).

The 1946 Decree was issued on the date of promulgation, 8 August 1946, and from the beginning it was stipulated that it would expire at the end of 1947 (Article 14). Temporality is another feature that confirms the extraordinary nature of the discussed act – in addition to the power contained therein to immediately and in principle arbitrarily amend decisions issued

[52] A. Machnikowska, *Wymiar sprawiedliwości w Polsce w latach 1944–1950* (Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2008), 463–464.

[53] Zarządzenie Nadzwyczajnej Komisji Mieszkaniowej przy Prezesie Rady Ministrów z dnia 6 listopada 1946 r. w sprawie wewnętrznej organizacji i sposobu funkcjonowania Nadzwyczajnej Komisji Mieszkaniowej przy Prezesie Rady Ministrów i miejscowych Nadzwyczajnych Komisji Mieszkaniowych (M.P. 1946 nr 123, poz. 226).

by institutions that were functioning continuously on the basis of laws that had not been amended or reversed.

Therefore, it is worth looking at the history and reasons for the enactment of the 1946 Decree. Andrzej Leon Sowa describes the 1946 Decree as a repressive act, listing it alongside the Decree on Responsibility for the September Disaster and the Fascism of State Life[54], since its provisions established the NKM "able to eject tenants and landlords from apartments at will or allocate new tenants to particular premises"[55].

The circumstances of enactment of the decree cited by Irena Paczyńska confirm the repressive nature of the discussed piece of legislation. She pointed out the authorities decided to evict "economically and politically harmful elements" from the cities following political protests in Kraków and Łódź and as a consequence of the large number of "no" votes cast in the 1946 popular referendum[56]. In Łódź, the figure was said to be between 50,000 and 90,000 people, according to various sources. A resolution adopted at a meeting of the local branch of the Polish Socialist Party with the participation of Józef Cyrankiewicz stated that Kraków "harbours 44,000 enemies of the nation and the state"[57]. Moreover, Paczyńska reached materials showing that the initial draft of the discussed decree envisioned even broader powers for the NKMs. They would also examine the "social productivity" of individuals and, on this basis, rule on their eviction from dwelling units[58].

[54] Dekret z dnia 22 stycznia 1946 r. o odpowiedzialności za klęskę wrześniową i faszyzację życia państwowego (Dz.U. nr 5, poz. 46).

[55] A. L. Sowa, *Historia polityczna Polski 1944–1991* (Kraków: Wydawnictwo Literackie, 2011), 61.

[56] I. Paczyńska, "Dekret o Nadzwyczajnej Komisji Mieszkaniowej i jego realizacja w Krakowie (1946–1947)", *Przegląd Historyczny* 84/3 (1993), 322.

[57] Ibid., 320.

[58] Ibid., 322.

The heated political atmosphere surrounding the planned legal solutions is confirmed by the fact that the State National Council committee tasked with reviewing the decree prior to its approval by the Council, while applying for approval of the decree (as was the rule), at the same time submitted a draft resolution expressing a negative assessment of the regulations introduced by the decree. This is significant because out of some 80 decrees dealt with by the committees, draft resolutions were submitted in only a dozen cases involving significant restrictions on civil rights and freedoms. A motion to approve a decree, but submitted along with a draft resolution criticising the provisions contained therein, was almost the only permissible way for deputies to manifest their opposition to the solutions introduced by the state leadership in the political system of the time[59].

The articles in the daily press devoted to the decree under review indicate the official goals that the legislation was intended to achieve. The author signing with the initials St. M., in a piece entitled "Jeszcze raz problem mieszkaniowy" ("Once Again the Housing Problem"), printed on the front page of *Rzeczpospolita* of 21 August 1946, recognises the 1946 Decree as a potentially effective (subject to the issuance of a missing executive ordinance) tool for combating abuses in the activities of the Allocation Offices, thanks to the participation of the social factor in the committees[60]. In an article "Nowy dekret spełnia żądania mas pracujących w dziedzinie polityki mieszkaniowej" ("The New Decree Meets the Demands of the Working Masses in the Area of Housing Policy") published in the 14 August 1946 issue of *Jedność Narodowa*

[59] J. Mordwiłko, "Udział komisji Krajowej Rady Narodowej w tworzeniu podstaw prawnych Polski Ludowej", *Państwo i Prawo* 7 (1976), 33–34; The author also points to one case of a request for approval of a decree submitted with a bill amending that decree and eight cases of a request to revoke a decree.

[60] St. M., "Jeszcze raz problem mieszkaniowy", *Rzeczpospolita* 224 (729) (1946), 1.

("National Unity"), the author stressed the importance of providing proper housing for workers and white-collar employees, and assessed that the new decree would be a tool that would facilitate the realisation of this demand[61]. Dariusz Jarosz, however, cited extensive criticism of the solutions of the 1946 Decree coming from social organisations (letters on the matter were addressed by the Supreme Council of Merchant Associations of Poland and the Chamber of Commerce and Industry in Warsaw)[62].

According to data as of 13 April 1946, there were 70 local NKMs in Poland[63]. Archival materials accessed by Anna Fermus-Bobowiec draw a picture of the commissions as bodies which were inefficient in practice. Their functioning was affected not only by the shortage of housing and absence of staff, but also by corruption. Although the discussed legislation was formally in force until the end of 1947, most commissions were abolished earlier. As early as April 1947, they had already suspended their activities[64]. The story of the 1946 Decree is a very interesting testimony to the turbulent political life that took place in People's Poland in the first years after World War II, even before the consolidation of power and full Stalinisation.

5.5. Decree on Tenancy of Dwellings

The 1945 Decree regulated the allocation of dwellings in detail. The issue of the rental rates was addressed by only one of its provisions, which stipulated that their level should be maintained at

[61] [no author], "Nowy dekret spełnia żądania mas pracujących w dziedzinie polityki mieszkaniowej", *Jedność narodowa. Pismo codzienne Województwa Białostockiego* 136 (227) (1946), 1.

[62] Jarosz, op. cit., 166–167.

[63] Ibid., 172.

[64] A. Fermus-Bobowiec, Prawne instrumenty polityki mieszkaniowej w Polsce w latach 1944–1956", *Miscellanea Historico-Iuridica* 18 (2) (2019), 251–252.

the rate of 1 September 1939, unless special provisions stipulated otherwise (Article 41). At the same time, the prewar Law on the Protection of Tenants of 1924 was still in effect. This state of law was maintained until July 1948, when the Decree on Tenancy of Dwellings[65] was issued (hereinafter: 1948 Decree).

The new legislation applied to all premises – not only residential, which is the focus of this analysis but also commercial (Article 1). Excluded from its scope were premises referred to as "representative premises" (Article 2, Letter b), rooms rented in hotels, guesthouses, and inns (Article 2, Letter c), certain buildings in rural communities (Article 2, Letter d), and above all, those rebuilt and newly constructed buildings that were also excluded from the public management of dwellings (Article 2, Letter a). The latter exclusion survived until 1951, at which time there was an expansion of the coverage not only of the allocation regulations but also precisely those concerning tenancy[66].

The 1948 Decree provided detailed regulations on the amount of rent that tenants of premises and persons placed in them on the basis of decisions of the Housing Committee or housing authorities were obliged to pay (Article 2, Points 1 and 2). The rent was calculated by multiplying the rate from the table annexed to the discussed decree by the number of square meters of usable floor area of the premises (Article 2, Points 3 and 5), by which was meant the total area of all rooms, regardless of their use (Article 2, Point 4). The aforementioned table provided for rates ranging from PLN 80 to 120 per square meter, depending on the location and standard of the premises. Properties were divided into those located in settlements with up to 20,000 residents, settlements with 20,000 to 75,000 residents, and larger settlements. In large

[65] Dekret z dnia 28 lipca 1948 r. o najmie lokali (Dz.U. 1948 nr 36, poz. 259).

[66] Pursuant to the aforementioned act of law, i.e., Ustawa z dnia 26 lutego 1951 r. o budynkach i lokalach nowowybudowanych lub odbudowanych.

and medium-sized localities, an additional differentiation was made into buildings located in the city centre and in inferior locations. The specified standard of the units came out of the facilities they were provided with, such as water supply, sewerage, gas or electrical installation or bathrooms.

According to the classification introduced by Bolesław Wójtowicz, it was what was called statutory rent[67]. However, the vast majority of tenants paid different, lower rates[68]. Article 3 of the discussed decree provided for a rent described by Wójtowicz as the current rent, and Article 4 regulated the issue of reduced rent[69]. The latter, amounting to half of the statutory rent, was paid by members of labour cooperatives and craftsmen employing, depending on the trade, no more than one or two people (Article 4, Section 1). The Council of Ministers could expand this catalogue by ordinance. This possibility was used to grant reductions in the amount of rent paid also to war invalids and craftsmen employing a larger number of people, if they ran their businesses in the Recovered Territories[70]. Later, this catalogue was expanded to include, for instance, cab drivers[71].

The current rent, i.e., at the rate of 1 September 1939, and therefore, very low after the 1950 currency reform[72], was paid by everyone

[67] Wójtowicz, op. cit., 52.

[68] Brzeziński, *Prawo mieszkaniowe…,* 112.

[69] Wójtowicz, op. cit.

[70] Rozporządzenie Rady Ministrów z dnia 29 września 1948 r. w sprawie zwolnień i ulg w opłacaniu czynszu za najem lokali mieszkalnych oraz zwolnień od wpłat na Fundusz Gospodarki Mieszkaniowej (Dz.U. 1949 nr 49, poz. 374), § 5.

[71] Rozporządzenie Rady Ministrów z dnia 21 czerwca 1949 r. o zmianie rozporządzenia Rady Ministrów z dnia 29 września 1948 r. w sprawie zwolnień i ulg w opłacaniu czynszu za najem lokali mieszkalnych oraz zwolnień od wpłat na Fundusz Gospodarki Mieszkaniowej (Dz.U. 1949 nr 42, poz. 313), § 1 ust. 3.

[72] Brzeziński, *Prawo mieszkaniowe…*, 111.

whose main source of income was wage labour (Article 3, Section 1, Letter a), professional work or scientific, educational, artistic or journalistic activity (Article 3, Section 1, Letter b), recipients of pensions and benefits (Article 3, Section 1, Letter c), and the unemployed (Article 3, Section 1, Letter d). This catalogue could also be expanded by ordinance of the Council of Ministers (Article 3, Section 3). Thus, it later listed members of parliament, sea fishermen working in associations based on the principle of common ownership of boats, and certain persons receiving education[73].

As a consequence of the aforementioned regulations, statutory rents were paid basically only by members of the liberal professions and private initiative. Virtually everyone else fell into some category of persons entitled to lower rents. Brzeziński stated that "this differentiation of rents ha[d] an eminently class character and [gave] expression to the state's policy aimed at distributing the burden of rents in a class-appropriate manner and satisfying the legitimate interests of the working masses"[74]. According to Wójtowicz, the People's Government, by means of the regulations contained in the 1948 Decree, "resolved the issue of rent for the benefit of the working class population while depriving capitalists of the opportunity to become unjustifiably rich"[75]. He agreed with the view that "rent from premise tenancy cannot be a means of capital accumulation and constitute a landlord's income without any labour input, nor can it ruin a working man's household budget"[76]. The discussed legislation was, therefore, a tool for strengthening socialist justice.

[73] Rozporządzenie Rady Ministrów z dnia 29 września 1948 r. w sprawie zwolnień i ulg w opłacaniu czynszu za najem lokali mieszkalnych oraz zwolnień od wpłat na Fundusz Gospodarki Mieszkaniowej (Dz.U. 1948 nr 49, poz. 374), § 2.

[74] Brzeziński, *Prawo mieszkaniowe…,* 112.

[75] Wójtowicz, op. cit., 51.

[76] Ibid.

However, rent was not the only issue regulated by the 1948 Decree. The second matter addressed by its provisions was the organisation of property management. The Minister of Public Administration or the Minister of Recovered Territories were to establish local compulsory associations of private property owners for particular settlements (Article 16, Section 1). The purpose of their existence was to supervise the maintenance of privately owned buildings[77]. Therefore, they were formed not to protect the interests of their members but to control them. The executive ordinance[78] stipulated the following tasks of these compulsory associations: to cooperate with the competent authorities in supervising the association's members in covering the costs of operation and current repairs of real estate; to cooperate with these authorities in administrative matters; to make proposals for the capital repairs and operation of real estate, and only in the last place to protect the legal and economic interests of the association's members. On the tenant side, property owners were additionally controlled by the house committees (Article 10, Section 1).

The aforementioned issue of capital renovations is yet another of the issues regulated by the 1948 Decree that requires further consideration. Building owners were required to cover the costs of operation and ongoing repairs from their rents (Article 10, Section 1). They were required to allocate 15% of the proceeds from statutory rents and 30% from reduced rents for this purpose. However, the rents were set at such a low level that capital renovations could not be financed from these revenues. The People's Poland authorities were aware of this fact. Therefore, they

[77] L.M., "Nowe prawo lokalowe a likwidacja zrzeszeń", *Miasto* 4 (1959), 33.

[78] Rozporządzenie Ministrów: Administracji Publicznej, Skarbu i Budownictwa z dnia 10 sierpnia 1949 r. w sprawie utworzenia przymusowych lokalnych zrzeszeń prywatnych właścicieli nieruchomości (Dz.U. 1949 nr 51, poz. 386).

incorporated construction work of this type into the planned economy, which was used as another tool to influence the formation of housing relations and restrict individual ownership of buildings. The authorities justified this by the absence of trust in building owners, driven by the desire to maximise profit, and thus, neglecting the properties they owned[79].

The takeover of control of general renovations by the state was accomplished by the creation of the Housing Management Fund (Article 18). It consisted of local funds for individual counties and separated cities, which covered the costs of major repairs to buildings subject to the 1948 Decree (Article 19, Section 2), and a nationwide fund to compensate for shortfalls in local funds (Article 19, Section 3). The revenues of the Housing Management Fund consisted of mandatory contributions from property owners of 35% of the statutory rent and 55% of the reduced rent (Article 21, Section 1). Contributions were also due from premises used free of charge – in an amount that depended on the rent that the user of the premises would have paid in accordance with the provisions of the discussed decree. The landlord was exempt from the responsibility to make payments for premises whose tenants were in default of rent (Article 22, Section 1). Payments to the Housing Management Fund were divided into three parts, two of which went to the local fund, and one to the national fund (Article 25).

5.6. Housing Law of 1959

In January 1959, a new housing law was enacted[80], which was intended to replace both the 1945 Decree and the 1948 Decree. At the time of its entry into force, the bill was regarded as an act that

[79] Brzeziński, *Prawo mieszkaniowe*…, 117.

[80] Ustawa z dnia 30 stycznia 1959 r. – Prawo lokalowe (Dz.U. 1959 nr 10, poz. 59), hereinafter also: 1959 Law.

put the basic legal problems of tenancy and public management of dwellings in order but did not fundamentally reform these areas[81].

The declared purpose of the law was to regulate the use of residential and commercial premises in a way which not only included the needs of the population but also ensured that the stock of residential and commercial property was maintained in good condition (Article 1). This provision was interpreted as a declaration of a change in the approach to rent policy. Fees were set at such a level that the funds flowing from them would be sufficient to cover the costs not only of maintenance and repair, but even depreciation of buildings. However, it was immediately recognised that rent increases were not possible under the economic conditions prevailing at the time the 1959 Law was enforced[82]. The rules for determining rents were established in an ordinance of the Council of Ministers (Article 3). However, for a number of subsequent years, this executive act was not issued, and in accordance with the transitional provisions (Article 84), the regulations introduced by the 1948 Decree remained in force.

Due to the character of the 1959 Law, it is unnecessary to discuss all its provisions but to focus on a few important areas. Szymon Łęczycki pointed out as the most important those changes that led to improvements in the use of housing within the framework of the allocation policy: the right to select a co-tenant, the right to voluntarily exchange housing, and the right to reconstruct and divide housing[83]. This was more specifically regulated as follows. A person occupying a dwelling that was below the applicable standards, but only to the extent that at

[81] S. Łęczycki, "Problem mieszkaniowy na tle ostatnich zmian ustawowych", *Państwo i Prawo* 7 (1959), 53.

[82] F. Błahuta, "Prawo lokalowe", *Nowe Prawo* 3 (152) (1959), 260.

[83] Łęczycki, "Problem mieszkaniowy na tle ostatnich zmian ustawowych", 60.

least one separate room could be carved out of the surplus space, was summoned to propose someone from among the persons entitled to the allocation who would be co-located within 14 days (Article 48). As can be seen, not only was it possible to choose a housemate, but it was also legally confirmed that co-tenancy where strangers had to share a single room was abandoned. Housing authorities were also given a statutory obligation to grant approval for the exchange of apartments between consenting applicants, as long as occupancy standards were maintained (Article 51, Section 2). The possibility was also created to divide a large apartment into two or more independent units at the request of a tenant (Section 1 of Article 42), and in apartments of any size, to make such alterations that would allow the use of the unit or common technical facilities without passing through another tenant's dwelling – such as making additional doors (Article 42, Section 2). As a rule, these construction works were to be financed by the applicant, but their cost could also be covered by the state in the event of the poor financial situation of the tenant concerned (Article 42, Section 3).

The rights and responsibilities of the parties to the lease relationship were regulated differently than before. The tenant was now obliged to bear the costs associated not only with minor repairs but also with the renewal of the premises (Article 7, Section 1). Zbigniew Radwański assessed this change as appropriate, motivating tenants to take greater care of the dwellings they used[84]. They were also charged with the cost of damage caused through their fault (Article 8). A deposit was introduced for buildings constructed or rebuilt after 1 January 1950 (Article 12, Section 1). Another important innovation related to the operation of real estate was the possibility for the competent authorities of

[84] Z. Radwański, "Uwagi o prawie lokalowym", *Państwo i Prawo* 10 (1959), 546.

national councils to take over the management of buildings whose owners had not managed them themselves, or had managed them improperly (Article 68).

A major amendment to the discussed law was made in 1962[85]. According to the new wording of Article 43, the allocation of dwellings at the disposal of the national councils could take place on the basis of a list prepared by a commission appointed for this purpose. The doubts regarding the doctrine were raised by the single-instance nature of the action of the commissions preparing allotment lists in practice – as their findings could not be the basis for an appeal against the decision of the housing authority[86].

The ordinance announced in the 1959 Law setting new rents, which replaced the provisions of the 1948 Decree (still in force), was issued only in 1965[87]. It included two tables with rental rates which depended, as before, on the size of the premises and their location. The rates according to the first table, i.e., lower ones, were paid by most people, including those living from remuneration for work performed under a contract of employment, appointment, election, cooperative employment relationship, and homeworkers (§ 3, Section 1) as well as those living from professional creativity or scientific activity, those receiving pensions, and benefits or living from scholarships (§ 4, Section 1). Higher rent, according to the rates set out in the second table, was required to be paid mainly by sales tax payers, i.e., members of the liberal professions and private initiative (§ 5). As can be seen, the solutions differed in detail from those of 1948 but were similar in principle.

[85] Ustawa z dnia 29 czerwca 1962 r. o zmianie Prawa lokalowego (Dz.U. 1962 nr 39, poz. 170).

[86] S. Łęczycki, "Z zagadnień prawa mieszkaniowego", *Państwo i Prawo* 1 (1964), 49.

[87] Rozporządzenie Rady Ministrów z dnia 20 lipca 1965 r. w sprawie czynszów najmu za lokale mieszkalne (Dz.U. 1965 nr 35, poz. 224).

The 1959 Law did not bring major shifts for People's Poland's housing policy. During the period discussed, the changes occurred mainly in connection with the development of housing cooperatives and the consequent loss of the importance of allocation, regardless of how it was regulated in detail. The issues of cooperatives shall be addressed in the next chapter of this book.

5.7. Housing Law of 1974

Since the beginning of the 1970s, the need for changes in the housing law has been recognised, inter alia, due to the fragmentation of regulation between two pieces of legislation: the 1959 Law and the Law on Exclusion from Public Management of Dwellings of Single-Family Houses and Premises in Houses of Housing Cooperatives[88], which is very important from the perspective of housing cooperatives (and shall be described in the next chapter), as well as an excess of provisions contained in numerous, internally inconsistent, and unfamiliar to the people implementing acts[89].

As a result, a completely new housing law was adopted in 1974[90]. The most easily discernible changes in the regulation of allocation involved a change in the official name of the institution. The 1974 Law no longer provided for the public management of dwellings. Instead, its Chapter 3 (Articles 20–45) introduced a special mode of renting dwellings and buildings. It could be

[88] Ustawa z dnia 28 maja 1957 r. o wyłączeniu spod publicznej gospodarki lokalami domów jednorodzinnych oraz lokali w domach spółdzielni mieszkaniowych (Dz.U. 1957 nr 31, poz. 131).

[89] Z. Radwański, "Perspektywy i kierunki zmian w prawie lokalowym", *Państwo i Prawo* 10 (1972), 19.

[90] Ustawa z dnia 10 kwietnia 1974 r. Prawo lokalowe (Dz.U. 1974 nr 14, poz. 84), hereinafter also: 1974 Law.

applied in settlements where there were difficulties in meeting housing needs through rental agreements. It provided for tenancy by administrative decision on allocation (Article 1). Therefore, in essence, there was no significant difference between new legislation and the public management of dwellings present in the earlier law[91]. Besides, the transitional provisions of the new act introduced a special mode of renting dwellings and buildings in all settlements where the public management of dwellings was in effect on the day it came into force (Article 60). Despite the fact that the allocation provisions from then on were referred to as a special mode, under conditions of a persistent housing shortage, they were, nevertheless, still more important than contractual rental[92].

Meanwhile, a more important change was the reduction of the scope of administrative restrictions on the disposal of ownership of dwellings[93]. The catalogue of properties in Article 22 of the new law, which did not apply to the provisions on renting by administrative decision, included, among others: premises in buildings of housing cooperatives; single-family houses and dwellings constituting separate properties, if they were at least partially occupied by the owners, their adult children or parents, and mixed residential/guest houses (in addition, as in earlier regulations, the exemptions included premises in hotels, student residences, executive, and representative apartments, etc.). In addition, these regulations no longer included a ground for adding a co-tenant to an underpopulated apartment[94]. The range of properties excluded from allocation was increased in 1982[95]

[91] Fermus-Bobowiec, "Problem «kwaterunku» lokali…", 59–60.

[92] Ibid., 59.

[93] Rybicki, and Piątek, op. cit., 468.

[94] Ochendowski, *Prawo mieszkaniowe…*, 39.

[95] Ustawa z dnia 3 grudnia 1982 r. o zmianie ustawy – Prawo lokalowe (Dz.U. 1982 nr 37, poz. 244).

by adding to this catalogue dwellings in multi-apartment houses occupied by the owners, their children or parents, including those dwellings that did not constitute separate ownership, and in 1987[96], houses and premises sold by the state to individuals, if they were at least partially occupied by the owners or their relatives.

In the 1974 Law and its amendments, a clear desire of the People's Poland authorities to limit the use of allocation-based solutions can be seen. This tendency was not only not concealed but it was even stronger in the declaratory sphere (expressed by changing the name of the legal institution) than in practice.

5.8. Housing law and the ideology of People's Poland

In housing law, unlike the other areas of regulation analysed in this work, the transitional, postwar solutions functioned for a very short time – only in the period of 1944–1945. Even before the political system of People's Poland was fully formed, detailed regulations on public management of dwellings were introduced. However, the political tensions of this period are evident in the circumstances in which the 1946 Decree establishing the Extraordinary Housing Committee was drafted and in its content.

Despite the existence of allocation, the second half of the 1940s can nevertheless be described as a kind of transitional period of housing law. As in other areas, at that time, there were instruments to include the private and cooperative sectors – in this case in the form of exemptions from public management of dwellings. These were abolished with the progress of the country's Stalinisation but after the thaw, they began to be restored, which occurred to the greatest extent after October 1956. The attitude

[96] Ustawa z dnia 16 lipca 1987 r. o zmianie ustawy – Prawo lokalowe (Dz.U. 1987 nr 21, poz. 124).

of the People's Poland authorities to particular social classes was evident in the regulation of rents. In addition, the top-down setting of their amount at such a level that did not provide private property owners with sufficient funds to repair their buildings led to a systemic restriction of private property.

In the following periods, the housing law did not undergo major revisions, despite the enactment of completely new bills in 1959 and 1974. This came out of the declining importance of allocation. The share of state and private housing in People's Poland's resources steadily declined – housing cooperatives became the main instrument for implementing housing policy. However, subsequent legislation and its amendments showed a gradual loosening of the rules of allocation. From the abandonment of accommodation of additional people to individual rooms, through the abandonment of the introduction of tenants into under-occupied dwellings, increasing the catalogue of properties excluded from the allocation regulations, up to the change of the name of this legal institution from public management of dwellings to a special mode of tenancy.

6
Legal framework for the operation of housing cooperatives in People's Poland

According to data collected by Andrzej Basista, in 1960 housing cooperatives provided 16.59% of the total housing completed in People's Poland. However, just five years later, the number increased to 25.98%, rising to as high as 67.25% in 1970 and further climbing slightly to 69.95% in 1984[1]. Thus, cooperative housing at one point became an important, and later dominant, way of meeting housing needs in People's Poland. Also in the literature from this period, cooperative housing was indicated as the most important of the institutional forms of housing construction[2]. The analysis of the legal framework for the functioning of these institutions in the reality of state socialism is, therefore, a necessary addition to the study of the basic areas of regulation, the results of which have been presented in the previous chapters. The following questions must also be answered. What was it that led

[1] A. Basista, *Betonowe dziedzictwo* (Warszawa–Kraków: Wydawnictwo Naukowe PWN, 2001), 200.

[2] J. Kleer, "Spółdzielczość mieszkaniowa – kilka uwag z zakresu teorii", *Spółdzielczy Kwartalnik Naukowy* 3 (27) (1973), 3.

to the growth of housing cooperatives in the subsequent decades of People's Poland's history? What was the role of legislation in these changes?

6.1. The emergence and development of housing cooperatives in Poland until 1939

Housing cooperatives began to emerge in Poland long before World War II. The history of some dates back to the Partitions. The first to be established was the Bydgoszcz Housing Cooperative in 1890. In the same year a cooperative was founded in Poznań, and in subsequent years such institutions were created in other cities of the Prussian partition. These were primarily carried out by people of German nationality. However, after 1918, these institutions were Polonised and continued their activities[3]. Historians consider the "Pomoc" ("Help") Society to be the first Polish housing cooperative in these areas, despite that it adopted the legal form of a limited liability company[4].

The activities of Poles in Austria-Hungary were important not only for Galicia but for the entire monarchy. In 1907, on the initiative of social activist and Kraków councilman Adolf Gross, the first cooperative was established in that city under the name of the Universal Society for the Construction of Cheap Dwelling Houses and Workers' Houses. In 1910, Gross, already a member of the Austrian parliament, contributed to the adoption of the Housing Fund Act, which became the legal framework for social activities of this kind[5].

[3] J. Płocharski, *Spółdzielczość mieszkaniowa w Polsce w latach 1945–1956* (Warszawa: Zakład Wydawnictw CZSR, 1979), 5.

[4] A. Maliszewski, *Ewolucja myśli i społeczno-ekonomiczna rola spółdzielczości mieszkaniowej w Polsce* (Warszawa: Wydawnictwo Spółdzielcze, 1992), 43.

[5] Płocharski, op. cit., 6.

In the Russian Partition, cooperative activity was hampered as the tsarist authorities were afraid of social organisations of any type and, for this reason, piled up various formal requirements: the need for the approval of statutes by the central authorities in St. Petersburg or the examination of the views of founding members by the Warsaw governor[6].

The development of housing cooperatives increased momentum after Poland regained its independence and proceeded along two tracks. During the interwar period, two types of the discussed institutions developed in Poland: housing cooperatives (tenant cooperatives) and building cooperatives (proprietary cooperatives). The main difference between the two was that a member of tenant cooperatives was not entitled to ownership of an apartment. She or he was entitled to a dwelling with a floor area that depended on the size of her or his family. They also had the option of exchanging apartments. A member of a building cooperative, on the other hand, had free disposal of their property[7].

It was the building cooperatives that held the majority of the investments completed in the interwar period. By 1937, 181 cooperatives affiliated with the Union of Cooperatives and Associations of Workers of the Republic of Poland (ZSiZP RP) had built 2,496 houses with 13,000 apartments, and these figures are not complete, as there were at least 70 active building cooperatives outside this union[8]. The investment activities of such cooperatives were often limited in both time and scope. They planned to construct one or a few buildings and then dissolved or took on purely administrative functions[9].

[6] Maliszewski, op. cit., 41.

[7] W. Kasperski, *Spółdzielczość mieszkaniowa w Polsce* (Warszawa: Zakład Wydawnictw CRS, 1971), 6.

[8] Maliszewski, op. cit., 58–59.

[9] Ibid., 51–52.

The development of tenant cooperatives was much slower. Until 1934, their growth was blocked by the low availability of credit[10]. Nevertheless, efforts were made all the time. In 1922, the Warsaw Housing Cooperative (Warszawska Spółdzielnia Mieszkaniowa – WSM) was founded, considered in People's Poland literature to be the most progressive[11]. It was the organisation, along with the Housing Cooperative of Polish Public Servants (Spółdzielnia Mieszkaniową Polskich Urzędników Państwowych – SMPUP), which can be perceived as the main driving force behind the development of the tenant housing cooperatives. In 1937, institutions of this type had 495 buildings with 5,720 apartments, of which the WSM and SMPUP owned 124 buildings (25% of the total) and 2,144 apartments (37.5% of the total)[12]. The "Lokator" ("Lodger") Housing Cooperative in Łódź and the Gdynia Housing Cooperative also had significant achievements[13].

SMPUP was established even earlier than the WSM, as early as 1920 – from the transformation of Germany's largest housing cooperative, Deutscher Beamter-WohnungsBauVerein, established in Poznań, in 1900[14]. On the other hand, the WSM was close to the circles of the Polish Housing Reform Association[15]. Its activists led to the establishment of the Society of Workers' Estates, which was a state-owned enterprise but developed concepts (including the notion of workers' estates) which influenced the development of Polish cooperatives[16]. Among those associated with these circles were Teodor Toeplitz, Stanisław Szwalbe, and Stanisław Tołwiński, and its first president was none other than

[10] Ibid., 62.
[11] Kasperski, *Spółdzielczość mieszkaniowa…*, 5.
[12] Maliszewski, op. cit., 62.
[13] Płocharski, op. cit., 9.
[14] Maliszewski, op. cit., 70.
[15] Kasperski, *Spółdzielczość mieszkaniowa…*, 6.
[16] Maliszewski, op. cit., 16.

Bolesław Bierut himself[17]. Therefore, it was precisely this type of cooperative – tenant-based, rather than ownership-based – that involved people who later played a significant, or even leading, role in the construction of People's Poland after 1945.

It should be noted that there were ideological disputes between activists of housing cooperatives of both types. Those involved in tenant cooperatives expressed the view that this was the only appropriate form of solving the housing problem by providing members with hygienic and adequately equipped housing but without transferring ownership to them[18]. Ownership cooperatives were accused of building oversized, luxury apartments that, in addition, were often rented out for profit[19]. Their representatives defended themselves, claiming that an apartment could be the personal property of a member who had the means to build it. They did not deny the validity of the tenant cooperatives, pointing out that the two types of organisations should develop in parallel – the more wealthy should associate in building (ownership) cooperatives, and the poorer in tenant cooperatives[20]. Also, among the founders of building cooperatives were left-wing activists, such as Bolesław Limanowski, which was passed over in silence after 1945, because in People's Poland a negative assessment of the activities of these entities was common, juxtaposed with a positive evaluation of the activities of tenant cooperatives[21].

The roots of legal regulation of cooperative activity also date back to the interwar period. The authorities of the reborn Poland were favourably oriented to the idea of cooperatives, thanks to which work on a new law giving a framework for activity in this

[17] Maliszewski, op. cit., 68.
[18] Płocharski, op. cit., 8.
[19] Ibid., 9.
[20] Ibid., 8.
[21] Maliszewski, op. cit., 62.

form began as early as 1919. *The Law on Cooperatives*[22] (hereinafter: 1920 Law) was enacted on 20 October 1920, and came into force at the beginning of the following year. The legislator considered a cooperative as an association of an unlimited number of persons with variable capital and composition, conducting a joint enterprise for the purpose of earning a profit for its members. Raising the cultural level of cooperative members was indicated as an additional (optional) purpose (Article 1). The law regulated the procedure for the establishment and liquidation of cooperatives, the keeping of a register of entities of this type, the issues of cooperative bodies and its branches.

Detailed regulation was given to the issues of what was called "revision", i.e., control of cooperatives' activities, mandatory every two years (Article 60). From the perspective of the analysis of the legal situation of cooperatives after 1945, it is worth pointing out that the 1920 Law provided for revision unions as a form of association of cooperatives. Their main task was precisely to expertly control the activities of their member entities. However, they could also conduct other activities for the development of the cooperatives affiliated with them (Article 66). Membership in a revision union was not mandatory.

A Cooperative Council was also established under the 1920 Law. However, what is important from the perspective of further considerations, it was not any association of all housing cooperatives in Poland but a body operating under the Ministry of Treasury, whose task was to coordinate the collaboration of the cooperative movement with the state authorities. It had only a few competencies with respect to the cooperatives operating in Poland, and these were not of an authoritative nature per se. For example, if a cooperative acted inconsistently with its

[22] Ustawa z dnia 29 października 1920 r. o spółdzielniach (Dz.U. 1920 nr 111, poz. 733).

statute or ceased its activities entirely, the Cooperative Council could not decide on its liquidation on its own but only had the authority to bring an action in this regard to the competent court (Article 108, Point 6, in conjunction with Articles 65 and 75, Point 3). In addition, the Cooperative Council appointed an auditor to carry out a mandatory inspection in a cooperative that did not belong to an auditing association (Article 61). A certain change was not introduced until the amendment of the 1920 Law by the Sanation authorities in 1934[23]. It gave a new wording to Article 108, according to which the Cooperative Council's competence included giving an opinion on the advisability of establishing new cooperatives. A certificate of favourable opinion from the Cooperative Council was one of the documents required for the registration of cooperatives (Article 5, as amended in 1934).

The 1920 Law did not contain any specific provisions separately regulating the activities of housing cooperatives. However, during the interwar period, there were several other pieces of legislation that were of particular importance for the activities involving the construction and provision of housing for cooperative members. One of these was certainly the Law on the Establishment of the State Housing Fund[24], from which loans were to be granted to local authorities not only for their own housing construction activities but also for the purpose of crediting projects carried out by housing cooperatives, among other entities (Article 4). Another piece of legislation offering housing cooperatives some opportunities for development was the 1925 Urban Expansion Act[25],

[23] Ustawa z dnia 13 marca 1934 r. w sprawie zmiany ustawy o spółdzielniach (Dz.U. 1934 nr 38, poz. 342).

[24] Ustawa z dnia 1 sierpnia 1919 r. w przedmiocie utworzenia Państwowego Funduszu Mieszkaniowego (Dz.U. 1919 nr 72, poz. 424)

[25] Ustawa z dnia 29 kwietnia 1925 r. o rozbudowie miast (Dz.U. 1925 nr 51, poz. 346).

whose the purpose was "to carry out action to prevent the absence of housing" (Article 2 in conjunction with Article 1). For this purpose, it introduced, among other measures, short-term construction loans that could cover up to 80% of investment costs (Article 12). An executive ordinance[26] to this law identified housing cooperatives as one of the categories of entities eligible for this type of support (§ 9(1) of the ordinance). A replacement for the aforementioned law, the Presidential Ordinance on the Expansion of Cities[27] created the State Construction Fund (Article 15), which was to provide not only short-term loans for the construction period, such as before but also long-term amortisation loans (Article 16). Housing cooperatives were listed as one of the beneficiaries of this scheme. Along with municipalities and social institutions, they were included in the category of entities that could receive loans covering the largest part of the investment – up to 90% (Article 17). It is worth noting that the executive ordinance[28] to this regulation contained definitions of housing cooperatives and housing-construction cooperatives. However, in its original formulation, housing cooperatives were considered not only as entities building cooperatively-owned housing with granting the right to use it to its members but also those cooperatives which transferred ownership of individual dwellings to members, however, limited to only one apartment.

[26] Rozporządzenie Ministra Skarbu w porozumieniu z Ministrami Robót Publicznych, Spraw Wewnętrznych i Reform Rolnych z dnia 20 maja 1925 r. o wykonaniu artykułów 11, 12, 13, 14 i 25 ustawy o rozbudowie miast (Dz.U. 1925 nr 56, poz. 401).

[27] Rozporządzenie Prezydenta Rzeczypospolitej z dnia 22 kwietnia 1927 r. o rozbudowie miast (Dz.U. 1927 nr 42, poz. 372).

[28] Rozporządzenie Ministra Skarbu w porozumieniu z Ministrami Robót Publicznych, Spraw Wewnętrznych i Reform Rolnych z dnia 3 listopada 1927 r. w sprawie wykonania rozporządzenia Prezydenta Rzeczypospolitej z dnia 22 kwietnia 1927 r. o rozbudowie miast (Dz.U. 1927 nr 106, poz. 913).

It was not until the 1933 amendment[29] that the classification was adopted in accordance with the division outlined above, which is widely recognised in the literature. Therefore, only such organisations that remained owners of erected residential houses (their members, meanwhile, were merely tenants of apartments) were considered housing cooperatives. Any cooperatives transferring ownership of even a single apartment to its member were henceforth officially considered as construction-housing cooperatives by the legal standards of the time as well.

An analysis of housing development legislation dating from before 1939 allows us to conclude without a doubt that the authorities of interwar Poland at least tried to pursue an active housing policy, which took into account the role of housing cooperatives and offered some forms of support to these institutions. It seems no accurate data exists showing the achievements of Polish housing cooperatives at the outbreak of World War II. According to the statistics of the ZSiZP RP, in 1938 there were 194 housing cooperatives (proprietary cooperatives) and 67 construction-housing cooperatives (tenant cooperatives)[30]. On the other hand, Antoni Gandecki reported that in 1937 there were 252 cooperatives in Poland, including 60 tenant cooperatives and 102 ownership cooperatives[31]. Despite the above, these institutions did not play a significant role in solving the housing problem. Indeed, their total contribution to the construction of new

[29] Rozporządzenie Ministra Skarbu w porozumieniu z Ministrami: Spraw Wewnętrznych oraz Rolnictwa i Reform Rolnych z dnia 31 marca 1933 r. o zmianie niektórych postanowień rozporządzenia Ministra Skarbu w porozumieniu z Ministrami: Robót Publicznych, Spraw Wewnętrznych i Reform Rolnych z dnia 3 listopada 1927 r. w sprawie wykonania rozporządzenia Prezydenta Rzeczypospolitej z dnia 22 kwietnia 1927 r. o rozbudowie miast, zmienionego rozporządzeniem z dnia 6 kwietnia 1928 r., oraz rozporządzeniem z dnia 15 października 1931 r. (Dz.U. 1933 nr 26, poz. 220).

[30] Maliszewski, op. cit., 56.

[31] Płocharski, op. cit., 12.

housing units during this period averaged at only 2%[32]. However, apart from moderate tangible effects expressed in terms of the number of housing units built (data for both types of cooperatives as of 1937 have already been presented above), Polish housing cooperative movement nevertheless had a large ideological and conceptual output in the area of social housing.

6.2. Housing cooperatives in the reconstruction period

In 1941, the Nazi occupier abolished the ZSiZP, and the various housing cooperatives that existed in the General Government were subsidiary to the German Wohnban-Osten trust organisation, which removed Polish residents and replaced them with Germans. After their escape, the premises were settled by savage tenants[33]. A similar situation occurred in Warsaw. Buildings suitable for habitation were occupied by people who returned to the ruined city earlier than the members of the cooperatives holding legal titles to them. On top of this, in the capital, some of the buildings preserved in the best condition were taken over by ministries and institutions embarking on rebuilding the city – either for their own headquarters or to house essential employees. There were even cases of displacement of cooperative members who managed to return to Warsaw exceptionally quickly, so that their apartments could be used for the aforementioned purposes[34].

Cooperatives had serious problems getting rid of wild tenants, but if such a situation occurred, it means that the building in question at least survived the war. According to available data, 3,318 cooperative apartments were destroyed or severely damaged

[32] Kasperski, *Spółdzielczość mieszkaniowa…*, 6.
[33] Maliszewski, op. cit., 85.
[34] Płocharski, op. cit., 21.

as a result of warfare[35]. In Kraków, Łódź or Lublin the damage was minor, the worst situation was in Warsaw – a city generally destroyed to a particularly large extent. From the previous subchapter, it is known that housing cooperatives in the interwar period developed particularly dynamically there. Therefore, the losses were very severe. The Warsaw Housing Cooperative entirely lost the first colony of the housing development in Żoliborz district – 111 apartments were completely destroyed. Other colonies also suffered massive damages. In the entire Żoliborz housing estate, 300 of the 2,824 chambers survived. 376 were demolished, 672 were burned and 1,476 were damaged[36]. Particularly dramatic was the situation of the WSM housing estate in Rakowiec district – after it was destroyed by 58% during hostilities in 1939, with great effort it was partly rebuilt but during the Warsaw Uprising it was completely devastated once again[37].

Despite the difficult conditions, many housing cooperatives immediately began restoring damaged housing assets. It was encouraged by the already-discussed Decree on the Demolition and Repair of Buildings Destroyed and Damaged by War of 26 October 1945, taking out of the public housing management dwellings restored to use as a result of thorough reconstruction. This decree was also the legal act that introduced new solutions in the area of housing cooperatives in People's Poland. The provisions contained in this act and the implementing ordinance issued to it provided the basis for the creation of cooperative institutions of a new type – administrative and housing cooperatives (SAM – Spółdzielnie Administracyjno-Mieszkaniowe), established to repair damaged buildings and manage them for a limited period of time. Assessments of this solution in the literature are mixed.

[35] Ibid., 16.
[36] Ibid.
[37] Ibid.

According to Andrzej Maliszewski, the creation of SAM was the first step in the process of pushing housing cooperatives into minor positions[38]. Drawing on the history of analogous institutions in the Soviet Union, he stated that the purpose of their establishment was to streamline the administration of municipal buildings, rather than to "cooperativise" housing, which was eventually fully nationalised. He pointed out that the People's Poland authorities had the same goal in mind, as evidenced by the adopted principles of SAM organisation: the detachment of the right to ownership of buildings and apartments from the associated persons, the absence of the possibility for these persons to decide on the duration of the cooperative, and the reduction of the function of cooperative self-government to the management of state or municipal property[39].

Józef Płocharski disagreed with the statement that administrative-housing cooperatives failed the test. He believed that they fulfilled their primary role, which was to secure the remnants of the existing housing substance during the most difficult period of reconstruction, "when every room counted for the proverbial weight of gold"[40]. According to the data he presented, more than 100 SAMs were created (virtually exclusively in Warsaw), which by the end of 1948 had rebuilt 13,894 chambers[41]. Most of the housing administration cooperatives ceased operations after the expiration of the time for which they were entrusted to manage the repaired buildings, but some of them continued to exist, taking ownership of the facilities using the provisions of the 1957 Law on the Sale of Dwelling Houses and Building Allotments by the State[42],

[38] Maliszewski, op. cit., 86.

[39] Ibid., 87.

[40] Płocharski, op. cit., 26.

[41] Ibid.

[42] Ustawa z dnia 28 maja 1957 r. o sprzedaży przez Państwo domów mieszkalnych i działek budowlanych (Dz.U. 1957 nr 31, poz. 132).

authorising housing cooperatives (as the only category of entities) to purchase multifamily buildings from the state (Article 4). Some of the former SAMs in later years even carried out investment activities, erecting new buildings, e.g., the Building and Housing Cooperative "Mokotowska" or the Cooperative "Osiedle Belwederskie"[43].

After 1945, entities belonging to categories known before the war also resumed operations. In 1948, in addition to 102 administrative and housing cooperatives, there were 95 tenant cooperatives and 125 ownership cooperatives. Even a few new entities were established: in Brzeg, Wrocław, Szczecin, and Gdańsk (i.e., in what was called Recovered Territories)[44]. A major role in repairing wartime damage was played by the Social Construction Company, established at the inspiration of the WSM back in the Second Polish Republic, and in 1945 transformed into the economic headquarters of building cooperatives[45]. In the first years of People's Poland, housing cooperatives largely recovered from the ruins and returned to the path of development, thanks to great efforts. According to available data, as of 31 December 1949, cooperatives of all types had more than 62,000 rooms, of which more than 40,000 were rebuilt and 5,300 were newly built[46].

6.3. The period of the dominance of the Department of Workers' Estates

The above-mentioned activity of the cooperatives was also manifested in the organisational field. On 25–26 November 1947, the Second Congress of Delegates of the Cooperative Society "Społem"

[43] Płocharski, op. cit., 27.
[44] Kasperski, *Spółdzielczość mieszkaniowa…*, 7.
[45] Płocharski, op. cit., 31–33.
[46] Ibid., 40.

was held. Its participants passed resolutions recognising the need to unite the Polish cooperative movement through the establishment of the Central Cooperative Union (Centralny Związek Spółdzielczy – CZS). These demands in the following year found expression in two normative acts: the Act on the Central Cooperative Union and Cooperative Headquarters (hereinafter: the CZS Law)[47] and the Law on Cooperative-State Headquarters[48]. It should be noted that the resolutions adopted at the 1947 Congress were, at least in theory, the outcome of internal democratic procedures in the Polish cooperative movement but the aforementioned legal acts carried out the centralisation of the cooperative movement by means of state coercion – in the spirit of democratic centralism. Indeed, according to Article 28 of the first of these bills, a cooperative headquarters was a cooperative uniting all cooperatives of a certain type, and Article 29 stipulated that each cooperative had a duty to belong to the appropriate cooperative headquarters. These cooperative headquarters were established and dissolved by the Supreme Cooperative Council, a legislative body of the Central Cooperative Union (Article 14, Section 2, Point c). Based on these regulations, the Supreme Cooperative Council established the Central Office of Housing Cooperatives (Centrala Spółdzielni Mieszkaniowych – CSM) on 1 July 1948. At the same time, the first Supervisory Board of the CSM was appointed, which, apart from a few distinguished activists, such as Eugeniusz Ajnekiel and Stanisław Tołwiński, was mainly composed of people unrelated to housing cooperatives. It was the result of ideological disputes between those involved before the war in tenant and ownership cooperatives, and the prevailing post-1945 positive assessment

[47] Ustawa z dnia 21 maja 1948 r. o Centralnym Związku Spółdzielczym i centralach spółdzielni (Dz.U. 1948 nr 30, poz. 199).

[48] Ustawa z dnia 21 maja 1948 r. o centralach spółdzielczo-państwowych (Dz.U. 1948 nr 30, poz. 200).

of the former and negative assessment of the latter[49]. The statute of the CSM was drafted ambitiously. The Central Office was to foster cooperative housing by, among other measures, initiating, organising, and supporting, within the framework of a planned economy, social housing construction; initiating and carrying out construction, architectural and technical work, or initiating and organising the administration of housing estates. It would seem that such formulations provide a good basis for the development of housing cooperatives in the subsequent years of People's Poland's construction. However, as Płocharski noted, "the beautiful statutory assumptions [of the CSM] that spoke of the development of housing cooperatives to provide housing for the working class remained on paper"[50]. The reasons for this course of events require a detailed explanation.

People's Poland housing cooperative activist Witold Kasperski wrote that during this period there was a discussion that questioned the need for cooperatives. At the time, it was believed that under socialist conditions the housing problem could be solved directly by the state[51]. In a work published after 1989, Krzysztof Madej sought the sources of aversion to cooperatives in the removal of members of the Polish Socialist Party (Polska Partia Socjalistyczna – PPS) from influence on state policy, because it was the PPS that saw the need for strong social control over the economy, one of the instruments of which was to be developed cooperatives[52]. It was in the years 1945–1948 that the dispute over the shape of Poland's social and economic system as well as the

[49] Płocharski, op. cit., 36.

[50] Ibid., 38.

[51] W. Kasperski *Problemy spółdzielczości mieszkaniowej 1956–1970* (Warszawa: Zakład Wydawnictw CRS, 1971), 26.

[52] K. Madej, *Spółdzielczość mieszkaniowa. Władze PRL wobec niezależnej inicjatywy społecznej (1961–1965)* (Warszawa: Wydawnictwo Trio, Instytut Pamięci Narodowej, 2003), 15.

role such organisations would play in it was to take place[53]. This explains that, at virtually the same time, the CSM, operating on the basis of the statute described above and promising dynamic development of housing cooperatives, was established, and on the other hand, a legal act was also issued that was a normative implementation of the opinion on the redundancy of housing cooperatives, i.e., the Decree on the Establishment of Workers' Estates[54].

Based on its provisions, the Department of Workers' Estates (Zakład Osiedli Robotniczych – ZOR) was established, whose task was henceforth to perform all tasks related to the construction of social estates and workers' housing, in particular, the development of workers' housing financed by funds provided in the state investment plan (Article 1). ZOR fulfilled its tasks by, among other means: drafting and submitting to the Minister of Reconstruction drafts of all documents related to housing development (from the provision of land, through drafts of construction programmes and plans for their financing, to blueprints for workers' housing standards); scientific and research activities on methods of building and developing settlements and houses; acquiring or taking on leases of land and preparing it for development; repairing damaged houses and completing unfinished houses as well as, above all, building settlements and managing or contracting their administration (Article 5).

Reporting to the Minister of Reconstruction, the ZOR was headquartered in Warsaw (Article 2). However, in order to carry out the ambitious tasks described above, it was decided to establish field units – Workers' Estates Administrations of two types. For reasons of jurisdiction, they can be tentatively called "districts" and "branches". The former were appointed by the

[53] T. Kowalik, *Spory o ustrój społeczno-gospodarczy Polski* (Warszawa: Niezależna Oficyna Wydawnicza 1980), 55–63.

[54] Dekret z dnia 26 kwietnia 1948 r. o Zakładzie Osiedli Robotniczych (Dz.U. 1948 nr 24, poz. 166).

Minister of Reconstruction at the request of the Chairman of the General Board of the ZOR, and included within their scope of activity matters of housing construction in a specific area (Article 3, Section 1, Point 1). The branch administrations, on the other hand, were appointed by the Minister of Reconstruction at the request of the minister concerned, and their task was to deal with matters of housing construction for the needs of specific branches of the economy or even a specific workplace (Article 3, Section 1, Point 1). Thus, it can be seen that housing construction, controlled entirely by the ZOR, as declared in Article 1, was divided into two areas – social settlements and workers' housing. In fact, the provisions on service housing (Article 17, Section 3) applied to housing built by branch administrations.

In practice, the fulfilment of all activities related to the construction of social settlements stipulated in Article 1 of the discussed decree was understood very literally. As early as September 1948, the Warsaw Housing Cooperative (WSM) was forced to hand over the building they had rebuilt for the offices of the Department of Workers' Estates[55]. Subsequently, ZOR took over from this cooperative a housing estate in the Mokotów district which had already been under construction[56]. Faced with the impossibility of commissioning new apartments in early 1949, the WSM General Assembly approved the decision of the cooperative's Supervisory Board to suspend the admission of new members[57]. Based on the history of the Warsaw Housing Cooperative, the fate of Polish housing cooperatives in the early 1950s can be traced. As the plan of the People's Poland authorities envisaged a complete halt to the investment activity of entities other than the ZOR, the WSM could only complete the construction started in 1948 and 1949. As a result, still in 1950, this cooperative put

[55] Maliszewski, op. cit., 88.
[56] Kasperski, *Problemy…*, 27.
[57] Maliszewski, op. cit., 88.

into use 1,657 rooms, but in 1951 only 125, and in 1952 – 141[58]. The WSM's role at the time was limited to administering the properties it had already owned. However, its position, as one of the largest entities of its kind, was not the worst anyway. Smaller cooperatives even faced attempts to liquidate them[59]. Therefore, there is no doubt about the accuracy of the assessment of Andrzejewski who at that time described in Poland's economic history as a "period of intensive industrialisation", and said that the development of cooperative construction was hampered by administrative measures[60].

The effect of limiting the possibilities for investment projects was the transformation of People's Poland's housing cooperative movement organisation. Soon after the establishment of the CSM, it became apparent that there was virtually no possibility of carrying out its ambitious statutory tasks. As a result, on 30 June 1950, almost on the second anniversary of its establishment, the Supreme Cooperative Council passed a resolution to dissolve the Central Office of Housing Cooperatives. In its place, the Office of Housing Cooperatives was established, which was considered sufficient to handle entities conducting activities of a much narrower scope, basically, limited to administration and completion of investments begun before the establishment of the ZOR. As Płocharski stated, "in this way, housing cooperatives were pushed to the far margin of economic life"[61].

Another blow to the independent cooperative movement was no longer limited to housing industry entities. Already the Law on the Central Cooperative Union and Cooperative Headquarters stipulated that the union was subject to the supreme supervision

[58] Płocharski, op. cit., 44.

[59] Maliszewski, op. cit., 88.

[60] A. Andrzejewski, *Polityka mieszkaniowa* (Warszawa: Polskie Wydawnictwo Ekonomiczne, 1980), 158.

[61] Płocharski, op. cit., 44.

of the Council of Ministers (Article 27). However, the People's Poland authorities recognised that such a degree of subordination of cooperatives to the state was unsatisfactory. Just a year and a half later, an extensive amendment to the CZS Law and the 1920 Law was passed.[62]. The definition of a cooperative itself was changed. Henceforth, it was such an association with an unlimited number of members and variable membership, which simply did not conduct economic activities anymore but actions within the framework of the national economic plan. After the amendment, its purpose was not only to raise the economic and cultural level of members' lives but also to act for the good of the People's State (Article 1 of the 1920 Law, in its new wording). The Central Cooperative Union gained the authority to establish model statutes for particular types of cooperatives. The court, when registering them, was obliged to verify that the statutes submitted by the founding members did not contradict the principles of the model statutes (Article 5 of the 1920 Law, as amended). The CZS also gained the right to dispose of enterprises run by individual cooperatives at the request of the relevant cooperative headquarters, if the needs of a national planned economy required it (Article 461 of the 1920 Law, as amended). Amendments to the cooperative's statute from then on required the approval of the relevant headquarters (Article 71 of the 1920 Law, as amended). The CZS Board of Directors was authorised to dissolve a cooperative by a ruling issued at the request of the relevant headquarters, not only in cases where the cooperative abandoned its operations or conducted them with serious violations against the applicable regulations but also when considerations of planned national economy were in favour of the abandonment of the cooperative's undertaking, which constituted the object of

[62] Ustawa z dnia 20 grudnia 1949 r. o zmianie ustawy z dnia 29 października 1920 r. o spółdzielniach oraz ustawy z dnia 21 maja 1948 r. o Centralnym Związku Spółdzielczym i centralach spółdzielni (Dz.U. 1949 nr 65, poz. 524).

its operations (Article 75 of the 1920 Law, as amended). The CZS could also (again at the request of the relevant headquarters) decide to merge cooperatives if considerations of planned national economy required it (Article 108 of the 1920 Law, as amended). The purpose of revisions conducted at cooperatives was redefined. Henceforth, it was to verify the cooperatives' implementation of state policy guidelines and economic plans (Article 64 of the 1920 Law, as amended). As a result of the amendments to the CZS Act, the Supreme Cooperative Council gained the ability to revoke resolutions of provincial assemblies of the union, national assemblies of central delegates and supervisory boards of central boards (at the request of the CZS Board) but above all (at the request of the relevant headquarters), resolutions of general meetings, supervisory boards and audit committees of particular cooperatives. It was not only when these resolutions violated the provisions of the Act but also when other valid reasons occurred (Article 14 of the CZS Act, in its new wording). The May 1949 amendment thus drastically reduced the independence of the cooperative movement in two aspects. First, on the organisational level: the centralised structures, to which membership was compulsory, gained very broad possibilities to interfere in the activities of individual cooperatives. Second, on the economic level: all projects implemented had to be consistent with the objectives of the national planned economy. In the event of any discrepancies, the CZS authorities could apply various corrective tools – including such drastic ones as liquidation and merger of cooperatives. The changes in the Law on Cooperatives were so far-reaching that Maliszewski wrote about the published consolidated text of the law that "the 'old' name of the document remained, while in practice a new legal act promulgated by the chairman of the Economic Planning Commission was created"[63] .

[63] Maliszewski, op. cit., 120.

Further deterioration of the situation of housing cooperatives during the peak of Stalinism resulted in the changes in the housing law that were aimed at them. A very significant (and negative) impact on the situation of housing cooperatives came from the 1951 Law on Newly Built or Rebuilt Buildings and Dwellings, already discussed in the previous chapter. As it has been outlined, it abolished the exemptions from public management of dwellings that were available to new buildings and buildings brought back into service through major repairs. From the point of view of housing cooperatives, the latter category was crucial. Particularly in Warsaw, reconstructed premises accounted for the overwhelming majority of the cooperatives' assets. Starting in 1951, non-cooperative users began to move into them on the basis of allocations. On more than one occasion, existing residents were forced to move to one room, with the remaining rooms being settled by people with allocations. In some cooperative buildings, 70–80% of residents were non-members of the cooperative[64].

The extension of state tenancy control regulations to rebuilt premises was also painful for the authorities and members of housing cooperatives. According to Płocharski, it harmed the basic economic interests of housing cooperatives and placed tenants occupying premises on the basis of allocations in a privileged position in relation to cooperative members[65]. The rents ruled by the decree on public management of dwellings and tenancy control were very low and did not cover the actual costs of the buildings' maintenance. Deficits related to the operation of state-administered facilities were covered by the state budget. In contrast, the upkeep of buildings managed by cooperatives rested on the shoulders of its members. The latter not only often lost the use of their dwellings or parts of them but de facto financed the housing needs of new tenants.

[64] Płocharski, op. cit., 46.
[65] Ibid., 48.

The situation of housing cooperative movement, deteriorating year by year, aroused the opposition of the activists who were part of it. The first meeting of representatives of various cooperatives was held as early as June 1951 (interestingly, in the parish hall of one of Warsaw's churches).What was called the Delegation, a group of activists representing the cooperative movement during visits to various state and party activists, was established[66]. Between 1951 and 1953, the Delegation submitted three memorandums to the authorities insisting on the restoration of the housing cooperatives' deserved role and opportunities for action, referencing, among other things, the fact that, at that time, regulations for such entities were more favourable in the USSR than in People's Poland[67]. It should be noted that also the CZS, despite being a centralised institution and fully subsidiary to the socialist authorities, made some efforts to improve the situation of housing cooperatives as well. A special subcommittee of the union developed theses for the reorganisation of this area. They assumed the acting of cooperatives in the role of investors erecting residential houses in large cities independently of state development as well as the functioning of building and housing cooperatives, in which apartments would become the personal property of members. The difference in the approach of the CZS and the Delegation can be seen mainly in the call for strict verification of cooperatives that existed before 31 December 1950, in order to evaluate their ability to operate within the framework of a planned economy and on the basis of existing regulations[68]. The theses were adopted in the form of a CZS board resolution and submitted to party and state authorities. However, they remained unanswered for a long time, as the

[66] Maliszewski, op. cit., 88.

[67] The demands included in the various memoranda were described in detail by Płocharski, op. cit., 51–56.

[68] Ibid., 57.

prevailing view was that the state would handle the housing problem on its own. It was not until 1953 that Deputy Prime Minister Stanisław Jędrychowski stated that there was a place for housing cooperatives in a national planned economy[69]. Thus, it turns out that even during the Stalinist period, People's Poland's institutions did not constitute a monolithic consensus on the assessment of the policies implemented. This was very evident precisely in the issue of housing.

As early as 1952, housing cooperatives were reincorporated into the national economic plan, however, it had no practical effect at the time, as no funding was provided for their development (even in the form of construction loans)[70]. However, the first legal announcement of a shift in the approach of People's Poland's authorities to housing cooperatives can be considered the Resolution of the Presidium of the Government of 8 May 1954 on housing cooperatives and the tasks of cooperatives in the field of housing construction (hereinafter: the 1954 Resolution)[71]. One of the purposes of the act, declared in its preamble, was to create additional opportunities for the construction of residential buildings by housing cooperatives[72]. The resolution provided for the establishment of new housing cooperatives of two types: building and housing cooperatives, whose task was

[69] Ibid., 58.

[70] Ibid., 44.

[71] Uchwała nr 269 Prezydium Rządu z dnia 8 maja 1954 r. w sprawie spółdzielni mieszkaniowych i zadań spółdzielczości w zakresie budownictwa mieszkaniowego (M.P. 1954 nr 59, poz. 792).

[72] In addition, it was declared that the resolution was issued in connection with the implementation of Article 4 of the Decree on the Ceding of Non-Agricultural Real Estate by the State for Housing and the Construction of Individual Single-family Houses (Dekret z dnia 10 grudnia 1952 r. o odstępowaniu przez Państwo nieruchomego mienia nierolniczego na cele mieszkaniowe oraz na cele budownictwa indywidualnych domów jednorodzinnych, Dz.U. 1952 nr 49, poz. 326).

to build cooperative multi-family and single-family houses for their members and later administer them (§ 1, Section 2) as well as cooperative associations for the construction of single-family houses, whose task was to build homes that later became the personal property of their members (§ 1, Section 3). In order to establish the above-described cooperatives, it was necessary to have a statement of purpose issued by the CZS (§ 7, Section 1).

The resolution strictly defined the size of these new cooperatives. The development programmes they drafted should have included between 10 and 100 houses or apartments (§ 2, Section 1). The duration of these programmes could not exceed three years, otherwise the cooperative would be dissolved (§ 2, Section 2). The size of the units that could be built was also limited. Houses could consist of no more than four rooms and a kitchen, with a total area of no more than 110 sqm, and apartments in multi-family buildings could not have more chambers than three rooms and a kitchen (§ 3). In addition, design norms for residential buildings had to be applied in the construction of the project (§ 4).

State aid to cooperatives established on the basis of the discussed resolution was limited to the ceding of construction land in accordance with applicable regulations (which was mainly important in the case of the construction of single-family houses due to the opportunities provided by the Decree on the Ceding of Non-agricultural Eeal Estate by the State for Housing Purposes and for the Construction of Individual Single-family Houses) and the granting of construction loans of up to 70% of the construction costs (for a period of 15 years for workers' cooperatives and 10 years for other cooperatives) to housing cooperatives that, due to the material situation of their members, could not finance construction with contributions (§ 5, Section 1).

The legal act supplementing the regulations of the 1954 Resolution was the Decree on Dwellings in Housing Cooperative

Buildings and Single-Family Houses[73], which excluded apartments and houses erected as part of the activities of cooperatives established on the basis of the Resolution discussed above from public management of dwellings. This led to a further differentiation of the legal situation of the newly established cooperatives and the old ones, most of which were reactivated after World War II. Their legal situation still needed to be regulated.

Cooperatives formed on the basis of the 1954 Resolution were described as "drainage institutions". It was pointed out that only wealthier people could benefit from construction based on these provisions, due to the high requirements for own contributions[74]. The amount of a loan granted for one apartment or single-family house could not exceed PLN 70,000, while the cost estimate came to PLN 180,000[75]. The difference had to be covered by the cooperative member from her or his own funds. The cost of carrying out investments by cooperatives created on the basis of the discussed resolution was particularly high due to the setting of what was referred to as "retail prices" for building materials for them, much higher than the prices in force in state building industry[76]. The 1954 resolution is assessed as a breakthrough act from the point of view of the People's Poland government's attitude to housing cooperatives but not yet changing the socio-economic situation of cooperative members[77].

Despite the activity of the Department of Workers' Estates, the housing situation continued to deteriorate in the first half of the 1950s [78]. The average urban settlement rate increased from

[73] Dekret z dnia 25 czerwca 1954 r. o lokalach w domach spółdzielni mieszkaniowych i w domach jednorodzinnych (Dz.U. 1954 nr 31, poz. 120).

[74] Kasperski, *Problemy…*, 27.

[75] Płocharski, op. cit., 65.

[76] Ibid.

[77] Maliszewski, op. cit., 92.

[78] Kasperski, *Problemy…*, 27.

1.57 persons per chamber in 1950 and to 1.8 persons in 1957[79]. Therefore, the upcoming political changes must have also entailed changes in housing policy, including a revision of the People's Poland authorities' approach to the role of cooperatives in this area.

6.4. The beginnings of a new housing policy

The political upheaval of October 1956 also involved the cooperative movement. At a meeting of the Supreme Cooperative Council on 12 October 1956, a resolution was adopted that included the following statement:

> It is now clear that many of the errors and distortions committed in the cooperative movement, as well as in attitude toward the cooperative movement, were the consequence of errors and distortions born in the atmosphere of relations defined as the cult of the individual. [...] These errors and distortions also led in cooperatives to excessive centralisation and bureaucratisation in management methods and a reduction of democracy in the daily life of cooperatives, their field and central bodies[80].

"The wind of change" was also blowing in the area of housing cooperatives. The move away from strictly copying Soviet models revived hopes on the Left other than the activists of the Polish United Workers' Party, in the circles from which the founders of the first Polish housing cooperatives came.

An embodiment of the recreation of democracy there was the National Congress of Delegates of Housing Cooperatives, held

[79] Płocharski, op. cit., 69.

[80] Uchwała Naczelnej Rady Spółdzielczej z 12 października 1956 r., *Monitor Spółdzielczy* 5 (5) (1965), cited after Maliszewski, op. cit., 92.

on 28–29 December 1956. Its main purpose was to establish the Union of Housing Cooperatives (Związek Spółdzielni Mieszkaniowych – ZSM)[81]. The resolution on its foundation included the guidelines that ZSM should follow. Many of the demands concerned the real self-governance of housing cooperatives. In addition, the ZSM was obliged to make efforts in the areas of: regulating the legal and property situation of housing cooperatives; exempting all cooperative premises from the provisions on public management of dwellings; restitution of cooperative buildings occupied by offices, institutions, socialised economy entities, etc.; recovery by cooperatives of dwellings occupied by non-members, or at least making these people bear the actual costs of operating the premises. A separate group of guidelines to be implemented by the ZSM concerned investment activities. These were to put cooperative construction on an equal basis with state construction; ensure that fully developed land could be acquired or leased from national councils; facilitate the formalities of obtaining a building permit; receive construction materials and equipment through the central economic plan; have access to typical designs and, finally, to obtain favourable bank loans[82].

At the same time, announcements began to come from the state authorities about serious changes in their attitude toward housing cooperatives. The topic appeared as early as the Eighth Plenum of the Central Committee of the Polish United Workers' Party (PZPR) in October 1956, when a special commission was appointed to work out new principles of housing policy[83].

From this period comes the first in a series of resolutions of the Council of Ministers, already having introduced some solutions

[81] Płocharski, op. cit., 89.
[82] Ibid., 97–99.
[83] Maliszewski, op. cit., 93.

in line with the new approach to housing [84]. Its purpose, as declared in the preamble, was to promote the development of various forms of housing construction with the people's own funds. According to § 1 of the analysed resolution, these forms included individual housing construction and the construction of housing cooperatives (tenant housing), building (ownership) cooperatives, and cooperative associations for the construction of single-family houses. Cooperatives affiliated with the Association of Housing Cooperatives (§ 1, Section 2) were eligible for state aid, in addition to individuals building single-family houses or what was called small residential houses (buildings with up to four units). The resolution listed as many as 10 forms of titular state aid for housing. The first instrument was the transfer of building plots under separate regulations[85] to individual investors and cooperatives without the necessary land (§ 6, Section 1). The second support tool were long-term loans. Tenant cooperatives could receive a loan for 90% of the construction costs, other co-operatives and individuals for 70–85% of the costs – depending on the size of the dwelling under construction (§ 7, Section 1). Tenant cooperatives were granted loans for 40 years, others for 25 years (§ 8). The interest rate on all these financial instruments was 1% per year (§ 11). Other tools for promoting construction indicated in the discussed resolution included providing access to typical designs; facilitating material procurement; promoting the production of building materials from local raw materials;

[84] Uchwała nr 81 Rady Ministrów z dnia 15 marca 1957 r. w sprawie pomocy Państwa dla budownictwa mieszkaniowego ze środków własnych ludności (M.P. 1957 nr 22, poz. 157).

[85] It was about the already mentioned Law on the Sale of Dwelling Houses and Building Allotments by the State. According to its Article 6, building plots in cities could only be sold for temporary ownership, or, as described when analysing the Decree of Bierut, a limited right *in rem*, later replaced by the right of perpetual usufruct.

enabling the outsourcing of construction and installation work to state contractors; supporting cooperative construction enterprises; providing advice and instruction; promoting the reconstruction and major repairs of unused houses and major repairs of existing houses.

One of the most important demands of the National Congress of Housing Cooperative Delegates was realised not much later, already in May 1957. At that time the Law on Exclusion from Public Management of Dwellings of Single-Family Houses and Dwellings in Houses of Housing Cooperatives was adopted[86]. This exclusion applied to single-family houses, dwellings in "small residential houses", i.e., buildings consisting of two to four apartments owned by a cooperative or separately by different persons, and dwellings in multi-family buildings being the property of cooperatives (Article 1, Section 1). These provisions also applied to premises in multi-family buildings built by housing cooperatives also when these dwellings became the property of cooperative members (Article 1, Section 2). Therefore, the law did not differentiate between the situation of members of tenant and building (ownership) cooperatives. Importantly, the discussed act applied not only to all housing cooperatives formed after 1 July 1954, i.e., on the basis of the 1954 Resolution discussed above but also to cooperatives formed earlier, included in the list compiled by the Central Cooperative Union. The criterion for being on it was being "adapted to the tasks of housing cooperatives" (Article 2, Section 1). According to Płocharski, this verification of cooperatives by the CZS was slow, so that only 100 cooperatives were included in the new regulations by the end of 1957, and the rest even later[87].

[86] Ustawa z dnia 28 maja 1957 r. o wyłączeniu spod publicznej gospodarki lokalami domów jednorodzinnych oraz lokali w domach spółdzielni mieszkaniowych (Dz.U. 1957 nr 31, poz. 131).

[87] Płocharski, op. cit., 101.

The theses of the new housing policy were also formulated in more detail at the tenth Plenum of the Central Committee of the Polish United Workers' Party (PZPR) in October 1957. During the deliberations, a paper on housing issues was delivered there by Władysław Gomułka, who stated the following:

> the idea is that those whose wages are high – and there is such, albeit a small portion of workers and white-collar workers as well as higher-earning young people – should systematically allocate part of their earnings to the construction of their housing. The idea is that the increase in the real income of the population should not be entirely allocated only to consumption but also partly to investment in housing. If only a third of that sum that the population spends on vodka was allocated steadily, year after year, to the construction of their apartments – the matter of solving housing difficulties would have moved forward quickly[88].

Further Gomułka pointed out that the state was unable to build the necessary amount of housing, relying solely on its own funds, and workers as well as white-collar employees must help in this regard. The assumptions and ways of implementing the new housing policy were clarified at the 11th Plenum of the Central Committee of the Communist Party in March 1958[89].

Andrzejewski focuses on four of its main points. First, it was decided to improve the difficult housing situation by involving private funds in financing cooperative and individual housing, and to restore the chargeability of state housing services (the idea was to set rents at a level that corresponded to real costs). Second,

[88] W. Gomułka, *Sytuacja w partii i kraju. Referat wygłoszony na X Plenum KCK PZPR w dniu 24 X 1957 r.,* Warszawa: Książka i Wiedza 1957, cited after Kasperski, *Problemy…*, 30.

[89] Kasperski, *Problemy…*, 29.

it was decided that state housing would henceforth be intended primarily for the less wealthy, who could not afford to meet their housing needs through individual or cooperative housing. Third, much of the decisions and coordination responsibilities related to housing had to be shifted to national councils. Finally, fourth, it was recognised that conditions for the development of social and individual initiative should be improved, including through the development of cooperative and tenant self-government[90]. In the principles of the new housing policy, realism can be seen above all. People's Poland's authorities apparently understood that they were unable to fulfil all housing needs in the manner closest to communist ideals, i.e., based entirely on a centrally planned economy and state ownership.

As a result, the legal basis for the new housing policy was formulated. They were embodied in several resolutions of the Council of Ministers. The first concerned additional state aid for cooperative housing construction[91]. In its preamble, the People's Poland authorities declared their intention to provide more favourable conditions for the development of housing cooperatives. According to § 3, Section 1 of the discussed resolution, a specific instrument to achieve this goal would be long-term bank loans granted on much more favourable terms than those provided for in the 1957 Resolution, because they were interest-free (only a small, flat rate bank service fee had to be paid) and providing the possibility to write off a significant part of the debt.

Loans granted to tenant-type cooperatives could cover up to 85% of construction costs (§ 3, Section 3). Two-thirds of each timely repaid loan instalment or 40% of the total loan amount was forgiven after 24 years of regular repayments (§ 3, Section 2).

[90] Andrzejewski, op. cit., 160.

[91] Uchwała nr 59 Rady Ministrów z dnia 15 marca 1958 r. w sprawie dodatkowej pomocy Państwa dla spółdzielczego budownictwa mieszkaniowego (M.P. 1958 nr 22, poz. 133).

Instruments to support housing (ownership) cooperatives were also provided, on slightly less favourable terms. For the construction of apartments with a floor area of up to 50 sqm, they could obtain loans covering up to 80% of the construction costs, and for apartments of 50 to 80 sqm, 70% of the costs (§ 4, Section 1). If instalments of 4% of the loan sum per year were paid on time, it was possible to obtain a write-off of the remaining 20% of the loan after 20 years, and if instalments of an increased amount – 5% of the loan sum per year – were paid, it was possible to obtain a write-off of the remaining 25% of the loan after 15 years (§ 4, Section 2). The situation for housing (ownership) cooperatives was worse primarily in that only tenant cooperatives were allowed to use the services of state construction companies at prices applicable to state investors (§ 7). Interestingly, in the case of house reconstruction in the Western Territories, an additional 10% of the loan could be forgiven (§ 8, Section 1).

Another resolution of the Council of Ministers proclaimed the creation of Company Housing Funds (Zakładowe Fundusze Mieszkaniowe – ZFM)[92]. They can be regarded as an instrument for the continuation of construction previously carried out by the branch administrations of the ZOR under the conditions of the new housing policy. The ZFM was financed by budget subsidies for company housing and its own funds, which consisted, inter alia, of a portion of the company fund, housing contributions paid by persons receiving housing in company housing, voluntary contributions declared by the workforce, or profits from what was called side production of building materials (§ 2, Sections 1 and 2). The funds of the ZFM could be used for: the construction of company housing; financing the construction of houses by national councils, provided that housing in them would be allotted to company em-

[92] Uchwała nr 60 Rady Ministrów z dnia 15 marca 1958 r. w sprawie zakładowych funduszów mieszkaniowych (M.P. 1958 nr 26, poz. 153).

ployees; assistance to tenant cooperatives, provided that housing was allotted to company employees; and direct financial assistance to employees. It could be non-refundable or refundable if it was a housing contribution to a tenant cooperative, and only refundable if it was a contribution to a housing (ownership) cooperative or the construction of a single-family house. Obtaining housing or other assistance from the ZFM was contingent on the employee in question having sufficient contributions in the housing savings book of the Universal Savings Bank (§ 3, Section 1).

The next resolution of the Council of Ministers dealt with the construction of company housing and its management[93]. It made provisions for the construction of several types of dwellings in company houses. Premises for crew members belonging to the production emergency service (§ 2, Section 2) and crew members whose work required them to occupy premises in a specific building (§ 2, Section 3) were financed entirely from the state budget. However, the broadest category included premises intended for all workplace employees (§ 2, Section 1). These were built with own funds of the aforementioned ZFM and budget subsidies (§ 3, Section 3). The share of own funds and the subsidy that could be received was determined by the respective minister (§ 4). The allocation of housing intended for all members of the workplace was decided by the company council (§ 10, Section 1).

The last piece of legislation in the series regulated the issue of ensuring the real value of deposits on housing savings books of the Universal Savings Bank[94]. The idea was to valorise the funds accumulated by the public on the aforementioned savings books

[93] Uchwała nr 64 Rady Ministrów z dnia 15 marca 1958 r. w sprawie budownictwa zakładowych domów mieszkalnych i zarządzania nimi (M.P. 1958 nr 26, poz. 155).

[94] Uchwała nr 65 Rady Ministrów z dnia 15 marca 1958 r. w sprawie zapewnienia realnej wartości wkładów na mieszkaniowych książeczkach oszczędnościowych Powszechnej Kasy Oszczędności (M.P. 1958 nr 26, poz. 156).

by augmenting them with what was called a guarantee bonus corresponding, in proportion, to the amount of accumulated funds to the difference in housing construction costs in a given year and in the years in which the saver deposited money on the book (§ 3). Such protection was afforded to funds in an amount not exceeding 50% of the construction costs of an 85-square-meter apartment. This solution was intended to eliminate the risks associated with inflation and thus encourage people to save for an apartment built with their own funds.

The next stage in the implementation of the new housing policy was connected with the adoption of the Law on Cooperatives and their Associations in 1961[95] (hereinafter also: 1961 Law). This piece of legislation replaced the 1920 Law and the CZS Law. It did not introduce any groundbreaking solutions, and its role should be considered primarily as organising legal regulations in this area. The subordination of cooperatives to the People's Poland authorities and the National Economic Plan had already been accomplished during the amendment of the previous law in 1949. The structure of institutions forcibly associating cooperatives was also maintained. Only the division of tasks among them was slightly reorganised and their nomenclature was changed. Instead of the Central Cooperative Union, cooperatives in People's Poland were henceforth headed by the Supreme Cooperative Council (Article 180). In turn, cooperative headquarters were replaced by Central Cooperative Unions (Article 158). The essence of these entities remained the same – they were to subordinate all housing cooperatives in the country to the People's Poland authorities.

A feature to emphasise the self-governance of cooperatives was the placement of the general assembly (instead of the board of directors) at the top of the hierarchy of organisational organs[96].

[95] Ustawa z dnia 17 lutego 1961 r. o spółdzielniach i ich związkach (Dz.U. 1961 nr 12, poz. 61).

[96] Maliszewski, op. cit., 122.

However, in practice, this was mainly symbolic, since resolutions of general assemblies could still be overruled by the superior organisations to which cooperatives were forced to belong, henceforth calling themselves central cooperative unions. However, the new law also no longer provided such broad possibilities for the liquidation and merger of cooperatives for such reasons as important considerations of the national planned economy.

This was the first Polish cooperative law that incorporated separate regulations for housing cooperatives. The entire Section III (Articles 134–157) of Title II of the 1961 Law was devoted to it, and it contained special provisions for several specific branches of cooperatives. In principle, no groundbreaking solutions were included there. Again, the new act had an organising role mainly. However, the collection of regulations on housing cooperatives in one place and their elevation to statutory status was another confirmation of the great importance attached to these institutions by the People's Poland authorities under the new housing policy. According to Article 134, § 1 of the 1961 Law, the object of the activities of housing cooperatives was to satisfy the needs of their members – not only housing ones but also the economic or cultural needs resulting from living in a common settlement. The new legislation confirmed the existence of three types of institutions of this type: tenant cooperatives and building (ownership) cooperatives as well as cooperative associations for the construction of single-family houses (Article 135, § 1). The rights of members of each of these entities were defined in detail.

The 1961 Law used the term "cooperative housing right" to refer to both dwellings in the resources of tenant cooperatives and building (ownership) cooperatives. However, only some of the rules applied to both types of associations: an individual could be a member of only one housing cooperative and be entitled to only one dwelling (Article 136, § 1), and a cooperative right to a dwelling

could belong to only one person, except when it was part of the spouses' joint property (Article 138).

In addition to these general regulations, the scope of this cooperative right to dwelling was defined separately for tenant and building (ownership) cooperatives. A member of the former type of association was entitled to use a dwelling assigned to him, with the floor area depending on the size of her or his family, the housing contribution made and other criteria specified in the statute (Article 135, § 1). In the case of tenant cooperatives, the cooperative housing right was non-transferable and was not subject to execution (Article 144, § 1). Also, it was not hereditary. It expired in the event of termination of membership for any reason, and thus also in the event of death (Article 144, § 2 in conjunction with Article 22, § 1). However, priority for admission to the cooperative and obtaining a cooperative right to a dwelling after a former member was given to her or his spouse, children and other relatives who cohabited with her or him (Article 145).

Members of building (ownership) cooperatives were entitled to use not any unit designated by the cooperative but a specific unit (Article 135, § 2). Conversion to another was generally possible only with the consent of the member (Article 148, § 3). In this case, the cooperative right to housing was hereditary and transferable but was also subject to execution (Article 147, § 1). In spite of the same name, the right to an apartment in a building (ownership) cooperative had a completely different legal essence than in a tenant cooperative. It was because it constituted a limited property right on cooperative property (Article 148, § 2). When a member left a cooperative of this type, or even when she or he was expelled from it, she or he had six months to name a person to take over the rights (Article 149).

Cooperative associations for the construction of single-family houses continued to remain temporary organisations, established

for the duration of the construction of houses (Article 155, § 1). Upon its completion, ownership of the buildings was transferred to the association's members (Article 135, § 4).

The statute of the Association of Housing Cooperatives was adjusted to the provisions of the 1961 Law at the Third Congress of Delegates of the ZSM[97]. This organisation entered the new legal framework, becoming the Central Association of Housing Cooperatives (Centralny Związek Spółdzielczości Budownictwa Mieszkaniowego – CZSBM). Thus, in the course of a few years, the entity made its way from an association formed on the wave of the October 1956 renewal, striving for reforms in the spirit of democratisation and the fight against excessive centralisation, to an entity which was supposed to play a key role in the centralisation of Polish housing cooperatives.

The importance of housing cooperatives grew precisely because of the political decisions of the People's Poland authorities, and not because of the increasing popularity of cooperative ideas. People chose this way of satisfying their housing needs because they had no alternative. In a sociological study dating back to the 1960s, conducted by Barbara Zamojska, more than 800 people from the Warsaw area were asked why they joined cooperatives. More than half indicated the absence of any other options as the reason[98]. They were, in fact, significantly restricted by subsequent regulatory measures[99], a result of which people whose income per family member exceeded PLN 1,500 lost the opportunity to apply for the allocation of housing at the disposal of the national councils. The same

[97] Madej, op. cit., 38.

[98] D. Jarosz, *Mieszkanie się należy… Studium z peerelowskich praktyk społecznych* (Warszawa: Oficyna Wydawnicza ASPRA-JR, 2010), 233–235.

[99] Uchwała nr 239 Rady Ministrów z dnia 4 lipca 1961 r. w sprawie zatwierdzenia tez dotyczących usprawnienia gospodarki mieszkaniowej (not published) and Uchwała nr 240 Rady Ministrów z dnia 4 lipca 1961 r. w sprawie zasad przydziału mieszkań w m. st. Warszawie w latach 1961–1965 (M.P. 1961 nr 52, poz. 227).

ordinances, implemented upon a resolution of the CZSBM Council and Board of Directors on 19 September 1961, imposed on housing cooperatives the obligation to settle apartments in accordance with existing housing norms, which aroused much controversy among cooperative members who took the position that units allocated in this way would be far too small[100]. Regulations forcing the use of only typical designs were also met with reluctance[101].

As a result of the new housing policy in the 1960s, housing cooperatives became a tool in the hands of the state. In practice, it took over the tasks of allocation[102]. The structural and systemic subordination to the supreme authorities of all housing cooperatives through the central bodies of the cooperative movement forced individual associations to accept solutions imposed by the People's Poland authorities. As early as 1964, it was possible to encounter in the legal literature a view according to which a "side effect" of the development of the cooperative movement was its "exaggerated pursuit of autonomy", which was a "manifestation of unhealthy particularism"[103].

However, the absence of this "exaggerated autonomy" was not always enough for the state authorities to push through solutions that were not necessarily beneficial to cooperative members. Perhaps the most prominent concept of this type in the 1960s was what was referred to as a thrift building. In the Prime Minister's Order of 7 August 1962, it was defined as a building in which the cost of a building was 20% less than that envisaged in the order of the Minister of Communal Affairs of the previous year[104].

[100] Madej, op. cit., 80.

[101] Ibid., 82. These regulations are discussed in the construction law chapter of this book.

[102] Ibid. 26.

[103] S. Łęczycki, "Uwagi o społeczno-gospodarczych założeniach rozwoju spółdzielczego prawa mieszkaniowego", *Państwo i Prawo* 11 (1964), 708–709.

[104] Maliszewski, op. cit., 104.

Due to the passive resistance of cooperative members, who were reluctant to embrace the concept of thrift building from the very beginning, it was not implemented to a greater extent in the housing cooperative sector in 1962–1964[105].

6.5. Housing cooperatives as the main instrument of housing policy – "the May resolutions"

At the Third Plenum of the Central Committee of the Polish United Workers' Party (PZPR), Władysław Gomułka said that

> socialised housing construction of the urban type in the next five-year period [would] proceed within the framework of state construction and within the framework of cooperative construction, with cooperative construction constituting the main way to improve the housing situation of the urban population and [would] be eminently increased[106].

It was a signal to proceed to the stage called by Andrzejewski a "cooperative phase of housing policy" in the implementation of the five-year plan 1966–1970[107]. Its objectives declared that the share of cooperatives in socialised construction had to increase to as much as 65%[108]. It was determined that in order to achieve this goal, it was necessary to adjust the legal framework. As a result, the Council of Ministers issued eight acts known as the "Uchwały majowe" ("May Resolutions")[109].

[105] Madej, op. cit., 89.
[106] Cited after: Kasperski, *Problemy…*, 42.
[107] Andrzejewski, op. cit., 162.
[108] Kasperski, *Problemy…*, 44.
[109] W. Chrzanowski, "Aspekty prawne rozwoju spółdzielczości mieszkaniowej", *Nowe Prawo* 3 (1968), 377.

The mere fact that all of these changes were introduced through successive resolutions of the Council of Ministers stirred controversy in legal doctrine. Szymon Łęczycki believed that it contravened the established principles of the legal order and violated the hierarchy of legal norms. He pointed out that housing issues should be comprehensively normalised by the Sejm in the form of a statutory act[110]. Wiesław Chrzanowski, instead of discussing this opinion, decided to find a solution – he proposed an interpretation that the resolutions remained in compliance with the Constitution of the People's Republic of Poland, since they only contained recommendations to the CZSBM, and were, therefore, of a non-authoritative nature[111].

The most important and comprehensive of the eight "May Resolutions" concerned ensuring the conditions for further development of cooperative housing construction[112]. In addition to the three previously known types of cooperatives, it also introduced a second division, listing three forms of cooperative construction (depending on the form of its financing): general, company, and departmental (§ 2). In each case, one source of financing was the cooperative members' own funds. In general cooperative construction, these were supplemented by bank loan granted by the presidium of the relevant national council (§ 3, Section 1); company cooperative construction was also financed from company housing funds (§ 3, Section 2); and in departmental cooperative construction, another source of financing was bank loan granted to the cooperative at the request of the workplace (§ 3, Section 3).

[110] S. Łęczycki, "Podstawy prawne i założenia aktualnej polityki mieszkaniowej", *Państwo i Prawo* 8–9 (1965), 227.

[111] Chrzanowski, *Aspekty…*, 378–379.

[112] Uchwała nr 122 Rady Ministrów z dnia 22 maja 1965 r. w sprawie zapewnienia warunków dalszego rozwoju spółdzielczego budownictwa mieszkaniowego (M.P. 1965 nr 27, poz. 133).

It was adopted that obtaining loan assistance was conditioned not only on the accumulation of sufficient membership contributions and the possession of suitable building plots but also on compliance with applicable design standards and construction cost norms (§ 4). It was a solution for forcing housing cooperatives to conform to assumptions in line with the spirit of frugal construction, which had been resisted by cooperatives in previous years.

Two furnishing standards for apartments were introduced: basic and improved. The choice of one of them determined the conditions under which cooperatives could obtain a bank loan. It also still depended on the type of cooperative, and from then on, in some cases even on the location of the development. Housing cooperatives could obtain a loan covering 85% of the construction costs of each building in the basic standard. In the case of an improved standard, the limit ranged from 78% in the case of the inner centres of large cities to 82% for small towns and the more peripheral districts of large cities (§ 5, Section 1). On the other hand, building (ownership) cooperatives could expect loans of 60% of the cost of constructing units in the basic standard and 50% in the improved standard (§ 5, Section 2).

Repayment terms also depended on a very wide range of factors. Loans to tenant cooperatives were interest-free. Those granted to building (ownership) cooperatives were charged interest at 1% per year (§ 7, Section 1). Housing cooperatives could count on a write-off of a third of the loan, and the repayment period depended on the standard of the units built. The repayment period could be 60 years for standard housing but only 45 years for improved standard (§ 7, Section 2).

The amount of housing contributions also varied widely and depended on the same factors as the loan terms. They were lowest in tenant cooperatives for dwellings with a basic standard – they were only 15%. At an improved standard they rose to 18–22%, depending on the location of the apartment – in the centres of

large cities they were the highest (§ 28, Section 1). In building (ownership) cooperatives, the minimum contributions were set at 40% for the basic standard and 50% for the improved standard.

An analysis of the complicated rules for financing cooperative construction allows the conclusion that the People's Poland authorities aimed at active influence on the choices of those applying for cooperative housing (which, as mentioned above, was often the only option available at that time). Housing in lower standards, outside the centres of large cities, was promoted. The terms of financing were intended to suggest the choice of tenant-based cooperatives rather than ownership.

As a result of the political decision to make cooperatives the primary instrument for implementing state housing policy, individual cooperatives faced an influx of so many new members that it became impossible to allocate housing to all of them[113]. The answer to this problem was another legal measure contained in the analysed resolution. The institution of a candidate member of a housing cooperative was introduced (§ 18, Section 1). Such a person was obliged to open a savings book of the Universal Savings Bank (§ 18, Section 2), accumulate funds on it to cover the housing contribution (§ 18, Section 3), and wait. The CZSBM was authorised to impose a minimum candidate seniority in localities where the number of housing applicants exceeded the number of housing units planned for delivery in the next five years (§ 19, Section 4). The candidate seniority requirement was imposed in Warsaw, Kraków, Wrocław, Toruń, and Lublin, among other cities. In 1969, the number of registered candidates approached half a million[114], and it should be remembered that one candidate represented an entire household, which often included a spouse and children. It gives a picture of the housing situation in People's Poland at the end of the 1960s.

[113] Jarosz, op. cit., 236.
[114] Ibid.

At the same time, a list of exceptions to the obligation to wait out the candidate period was introduced. For example, people who were referred by the workplace for company and departmental housing or relocated on official business to another locality were exempt from it. Maliszewski said that the number of possibilities to circumvent the principle of tying candidate seniority to the order of housing allocation was considerable, and the discussed resolution in practice incapacitated cooperative self-governments, which from then on had little to say about the order of allocation of housing to cooperative members[115]. The length of the candidacy period and the accumulation of the membership contribution were related to the criterion for determining the order of housing allocation called by Wiesław Chrzanowski the organisational and property criterion. It had the greatest significance in general construction (next to the social criterion). On the other hand, in company and departmental construction, a major role was played by the personnel criterion, which dictated that the professional suitability and social attitude of individual people be taken into account[116].

Another[117] "May Resolution" concerned the allocation of housing units at the disposal of national councils in localities where public management of dwellings was in force. Strict regulations introduced by the Council of Ministers' Resolutions Nos. 239 and 240 of 1961 were upheld. Only persons who: occupied premises unfit for habitation; re-housed from buildings subject to demolition or in danger of collapse; those who lost their premises due to a natural disaster; occupied excessively dense premises; re-housed in the execution of administrative decisions, and necessary in the

[115] Maliszewski, op. cit., 107.

[116] W. Chrzanowski, "O przydziale mieszkań spółdzielczych", *Przegląd Ustawodawstwa Gospodarczego* 1 (127) (1969), 18.

[117] Uchwała nr 123 Rady Ministrów z dnia 22 maja 1965 r. w sprawie zasad przydziału mieszkań w latach 1966–1970 (M.P. 1965 nr 27, poz. 134).

locality due to occupation or qualifications (§ 1, Section 1) could receive housing from this resource.

Moreover, an apartment from the new housing stock could only be given to people who met the above conditions, and were additionally employees of socialised workplaces, institutions or social and professional organisations, and their professional suitability, social attitude, material conditions or health condition justified such an allocation (§ 2, Section 1). Failure to meet this additional requirement resulted in limiting the possibility of receiving housing only to the resources of old buildings (§ 3). In addition, housing from the resources of the national councils could not be granted at all (regardless, e.g., of living in a building in danger of collapse) to persons whose income per family member exceeded PLN 800, instead of 1,500, as before (§ 4, Section 1). In special cases, such as large family size or poor health, this limit could be raised but only to PLN 1,000 (§ 4, Section 1 in conjunction with § 15, Section 2). The role of housing cooperatives was thus increased once again by limiting other options for obtaining a dwelling.

The next[118] "May Resolution" regulated the issue of company housing funds in an essentially similar manner as before, except for the fact that assistance to supplement housing contributions could be limited to 2/3 of their amount (§ 5, Section 1). It was consistent with the general trend of increasing the share of society's own funds in housing construction. The "May Resolution" on the General Savings Bank's savings books[119] introduced additional bonuses for regular savings through the workplace (§ 6). The remaining "May Resolutions" concerned the provision of bank loans to supplement housing deposits in the draft 5-year plan

[118] Uchwała nr 124 Rady Ministrów z dnia 22 maja 1965 r. w sprawie zakładowych funduszów mieszkaniowych (M.P. 1965 nr 27, poz. 135).

[119] Uchwała nr 125 Rady Ministrów z dnia 22 maja 1965 r. w sprawie dalszego rozwoju oszczędzania na mieszkaniowych książeczkach oszczędnościowych Powszechnej Kasy Oszczędności (M.P. 1965 nr 27, poz. 136).

for 1966–1970[120]; the principles of housing construction by state workplaces and presidencies of national councils[121]; the principles of planning, financing, and implementation of accompanying facilities in socialised housing construction of the urban type[122] as well as state assistance in the construction by individuals of single-family houses and dwellings in small residential houses[123].

In the second half of the 1960s, extensive legal regulations were issued which established the position of housing cooperatives as an instrument strictly subordinated to the state for implementing housing policy. Gradually, the scope of state aid was reduced, and the share of society's own resources was increased. Nevertheless, the capacity of housing cooperatives was not sufficient. This is evidenced by the emergence of the institution of candidate cooperative membership. The cooperative self-government lost control over the order of housing allocation. The ties between housing cooperatives and workplaces were getting stronger. Madej assessed that at that time housing was becoming a hidden form of remuneration. It provided an incentive for people with the qualifications needed at a particular enterprise or in a certain area[124].

[120] Uchwała nr 126 Rady Ministrów z dnia 22 maja 1965 r. w sprawie zapewnienia w projekcie planu 5-letniego na lata 1966–1970 kredytów bankowych na uzupełnienie wkładów mieszkaniowych w spółdzielniach budownictwa mieszkaniowego (M.P. 1965 nr 27, poz. 137).

[121] Uchwała nr 127 Rady Ministrów z dnia 22 maja 1965 r. w sprawie zasad realizacji budownictwa mieszkaniowego przez państwowe zakłady pracy i prezydia rad narodowych (M.P. 1965 nr 27, poz. 138).

[122] Uchwała nr 128 Rady Ministrów z dnia 22 maja 1965 r. w sprawie zasad planowania, finansowania i realizacji urządzeń towarzyszących w uspołecznionym budownictwie mieszkaniowym typu miejskiego (M.P. 1965 nr 27, poz. 139).

[123] Uchwała nr 129 Rady Ministrów z dnia 22 maja 1965 r. w sprawie pomocy Państwa przy budowie przez osoby fizyczne domów jednorodzinnych i lokali w małych domach mieszkalnych (M.P. 1965 nr 27, poz. 140).

[124] Madej, op. cit., 129.

The bureaucratisation of the cooperative movement and its detachment from its original ideals were progressing. However, it should be noted that the changing role of housing cooperatives in the literature of People's Poland was sometimes evaluated positively. Jerzy Kleer stated that due to the fact that cooperatives took over the basic housing stock in the economy, they became a kind of representative of the whole society. As a result, cooperatives must treat housing more as a social good than a commodity[125]. Obviously, it was in line with People's Poland's ideology.

6.6. Housing cooperatives as centralised mammoth corporations

Dariusz Jarosz, in the title of the chapter of his work devoted to the history of housing cooperatives in the 1970s and 1980s, included the phrase "dilemmas of the mammoth"[126]. Indeed, the use of cooperatives as the main tool of state housing policy has led to the formation of extremely large associations. In 1961, the 50 largest cooperatives had almost 80% of all cooperative housing in their assets. In 1969, 12% of the largest cooperatives were carrying out 65% of the projects in this housing sector[127]. It was pointed out that a number of negative phenomena can be seen in large housing cooperatives, such as the feeling of absence of influence of cooperative members on the management of the affairs of the organisation, or the great distance between the board and the management of the cooperative[128]. It was

[125] Kleer, op. cit., 21.

[126] Jarosz, op. cit., 257.

[127] Maliszewski, op. cit., 108.

[128] W. Chrzanowski, "Spółdzielczość mieszkaniowa w Polsce – problemy teorii i praktyki rozwoju", *Spółdzielczy Kwartalnik Naukowy* 3 (27) (1973), 147.

decided to solve these problems by introducing the so-called multi-neighbourhood cooperative model, in which the neighbourhood was the basic organisational unit of the cooperative movement. A candidate for a cooperative member was not supposed to choose a specific organisation (especially considering the existence of the aforementioned mammoths taking over the monopoly on cooperative housing in large areas, such a choice was illusory) but to indicate the specific settlement in which she or he would like to live. Cooperatives were only supposed to perform supervisory and coordinating functions with respect to individual settlements, where cooperative self-governance would materialise within the framework of settlement councils[129]. In the assessment of Wiesław Chrzanowski, the concept of a multi-neighbourhood cooperative met the expectations placed in it only to a limited extent, due to the unity of the cooperative as a legal entity and the joint property liability of the entire cooperative, which prevented the real independence of the neighbourhoods[130].

In the late 1960s, the "cleaning up" process of the cooperative network began[131]. According to a resolution of the CSBM Board, all cooperatives were to transform themselves into what was called district cooperatives (i.e., those whose area of operation coincided with the administrative division of cities) by 1970. Investments outside the district of a given cooperative were banned, and investments already started were ordered to be transferred to cooperatives with local competence[132]. It was decided that there should be only one housing cooperative in cities with up to 50,000 residents. Only in sparsely urbanised counties, there was a provision for the creation of "county housing cooperatives",

[129] Maliszewski, op. cit., 109.
[130] Chrzanowski, "Spółdzielczość…".
[131] Kasperski, *Problemy…*, p. 66.
[132] Maliszewski, op. cit., 110.

which could invest throughout the county – until such time as cooperativism developed enough in any of the localities lying there to create a separate entity there[133]. These restrictions were basically a negation of the idea of cooperatives as a voluntary association of people acting for a common purpose. There was virtually no longer any (even illusory – in view of the need to obtain a certificate of purpose) possibility of establishing a new housing cooperative. People wishing to apply for housing from cooperative housing were forced to join the only cooperative which existed in a particular area. There was no choice or possibility of creating alternatives.

The creation of Provincial Housing Cooperatives (also based on an internal act of the CZSBM) in 1975 can be considered the culmination of the centralisation of housing cooperatives. In theory, they were to unite all housing cooperatives operating in the new provinces created as a result of the reform of the country's territorial division. In practice, they took over the keeping of registers of candidates awaiting membership and dictated the terms of operation for individual cooperatives[134].

The freedom of individual cooperatives to choose the type of operations they conducted was also restricted. In the early 1970s, the Council of Ministers issued another resolution setting guidelines for housing cooperatives[135]. The most important changes were formulated in it in the form of recommendations issued to the CZSBM (§ 17). Among other things, they recommended the development of ownership housing (§ 17, Point 3), however, the key recommendation was to create conditions for obtaining ownership and tenant housing within a single

[133] Kasperski, *Problemy…*, 66.

[134] Maliszewski, op. cit., 113.

[135] Uchwała nr 281 Rady Ministrów z dnia 10 grudnia 1971 r. w sprawie zasad realizacji i finansowania uspołecznionego budownictwa mieszkaniowego (M.P. 1971 nr 60, poz. 398).

cooperative, and to allow members occupying tenant housing to obtain ownership rights to it (§ 17, Point 4). The CZSBM implemented this directive through a series of internal laws creating a de facto new type of housing cooperative. It was permissible because Article 135, § 4 of the 1961 Law allowed for the creation of types of housing cooperatives not prescribed by the law, according to rules established by the relevant central association. The new cooperatives were called tenant-ownership cooperatives. It was recommended that associations which previously existed as tenants' cooperatives be transformed into them, so that their members could obtain limited rights *in rem* on the apartments they occupied[136]. The new legal measures made it possible for a large group of people to obtain titles to the apartments they occupied close to private ownership, however, such a conversion was not free, so there was another instrument for the People's Poland authorities to extract even more money from the society.

In the late 1960s and in the 1970s, a series of changes were carried out, a common feature of which was a severe restriction on the freedom of action of housing cooperatives. Cooperative associations were deprived of the ability to choose not only the area (through forced regionalisation) but also the form of operation (tenant cooperatives ceased to exist). Housing cooperatives became so huge that their members lost real influence over the management of the organisations to which they belonged. Attempts to rectify this situation by increasing the independence of individual housing estates proved unsuccessful. On top of this, the centralisation of the cooperative movement was increased, with the creation of Provincial Housing Cooperatives. After the end of the 1970s, the conviction that the crisis in Polish housing was

[136] L. Myczkowski, "Nowy typ spółdzielni mieszkaniowej (wstępne informacje i uwagi)", *Przegląd Ustawodawstwa Gospodarczego* 7 (289) (1972), 222.

growing became more widespread, and individual cooperatives protested against further changes but the central structures did not acknowledge it[137].

6.7. Cooperative Law of 1982

As was the case in October 1956, the socio-political climate of August 1980 also reached housing cooperative circles. Critical views, which had been present in the ranks of the movement, resounded for a long time – it was believed that cooperatives had ceased to carry out the decisions of their members, and instead were executing state policy[138]. In 1980–1981, there were two processes that transformed Polish housing cooperatives to some extent. One was an internal revolt against provincial cooperatives. By the end of 1981, 12 such institutions were put into liquidation by the decisions of provincial conventions of delegates. In several cities, independent provincial unions of cooperatives were established, not always in place of provincial cooperatives – in Koszalin, both entities functioned for a while[139]. Perhaps an even more important phenomenon was the grassroots formation of new small housing cooperatives. This movement was supported by both the People's Poland and "Solidarity" authorities. It also enjoyed the sympathy of the media and the public. It was emphasised that this was a way to democratise cooperative movement[140].

The future of housing cooperatives was to be discussed at the Eighth Congress of Delegates of Housing Cooperatives, which began on 12 December 1981. Its deliberations were interrupted by the outbreak of martial law. They were not completed until

[137] Maliszewski, op. cit., 113.
[138] Ibid.
[139] Ibid., 129.
[140] Ibid., 116.

27–28 November 1982[141]. The legislative changes that established the legal framework for the operation of housing cooperatives in the last decade of People's Poland's existence were made earlier, as an entirely new law on cooperative law was passed as soon as September 1982[142]. The demands of the cooperative movement formulated in 1980–1981 materialised only partially. As Lesław Myczkowski wrote, the new act was "the result of a compromise between the supporters of integrated cooperatives (controlled by central, territorial, and branch unions) and the concept of a fully independent and self-governing cooperatives"[143]. Krystyna Krzekotowska pointed out that despite a general reduction in the possibilities of interference by central unions in the functioning of particular cooperatives, these remained considerable in the case of housing cooperatives. The Central Association of Housing Cooperatives could, e.g., issue guidelines defining the order in which apartments were allocated to waiting members, which was, indeed, one of the most important issues[144].

As for the provisions of the 1982 Law most important for examining the influence of People's Poland's ideology on its content relevant to housing cooperatives, it is worth pointing out the following. Article 2, § 1 declared that cooperatives conduct their activities independently. Subsequently, it was explicitly regulated that local authorities and state administrative bodies could issue regulations and decisions binding on cooperatives only on the basis of statutory delegations (Article 2, § 2). This was the realisation of numerous demands for enhancing the independence of the cooperative move-

[141] Ibid., 114–115.

[142] Ustawa z dnia 16 września 1982 r. – Prawo spółdzielcze (Dz.U. 1982 nr 30, poz. 210), hereinafter: 1982 Law.

[143] L. Myczkowski, "Nowa ustawa – prawo spółdzielcze (wstępne informacje i uwagi)", *Palestra* 11–12 (1982), 47.

[144] K. Krzekotowska, *Spółdzielcze prawo do lokalu mieszkalnego* (Warszawa: Wydawnictwo Spółdzielcze, 1983), 20–21.

ment. The requirement to obtain a statement of purpose for the establishment of a cooperative was left in place (Article 6, § 3), however, it was specified when the central association could refuse to issue it in a situation where an assessment of the economic capacity of the cooperative to be established would not be able to achieve its intended goals (Article 6, § 4). The 1982 law also contained separate provisions on housing cooperatives (Section IV – Articles 204–239). They did not contain revolutionary changes. The types of housing cooperatives were no longer defined, and instead included separate regulations for tenant and ownership cooperative housing rights. This was the result of the aforementioned transformation of most organisations into tenant-owner cooperatives.

The post-August 1980 period proved too short to comprehensively reform Polish housing cooperatives but the changes made allowed for at least partial decentralisation and increased the scope of independence of individual cooperatives. A breakthrough was also made in their regionalisation, creating many new associations. However, the CZSBM still retained an important role, and the new cooperative law passed in 1982 was clearly a compromise. Nevertheless, further significant changes had to be awaited until the political transformation.

6.8. Transformations of housing cooperatives in People's Poland

The history of housing cooperatives on the Polish territory dates back to the time of the Partitions. In the interwar period, the development of these institutions was based on two main pillars: the Polonised cooperatives in the former Prussian partition and the ventures undertaken in the capital, primarily the Warsaw Housing Cooperative created there.

In the first years after World War II, many cooperatives were reactivated and undertook reconstruction efforts. At that time,

the state even offered them some incentives, mainly in the form of exempting repaired buildings from public housing management. A new type of association was also created – administrative-housing cooperatives – but these were intended to be temporary.

During the Stalinist period, housing cooperatives' activities were completely halted. The view that the housing problem should be solved by the state, with its own resources, on the basis of state ownership alone, won out. The Department of Workers' Estates was created to be the sole investor, and premises owned by housing cooperatives were placed under public housing management, which put these associations in a difficult economic situation. The cooperative law was amended so that cooperatives became dependent on central bodies (such as the CZS or branch headquarters) fully controlled by the state. It will not be an exaggeration to say that this reform was as fundamental to the cooperative sector like the Law on the Transfer of Basic Branches of the National Economy to State Ownership[145] was to private enterprises. The assets of cooperatives were not private and could not be nationalised straightforwardly (especially since the Polish Committee of National Liberation Manifesto declared broad support for cooperatives), so control was taken over through organisational and personnel changes. Therefore, this process may be called a certain kind of nationalisation – carried out by means other than typical expropriations.

The first signs of a coming change appeared after the death of Joseph Stalin. At the beginning of the 1950s, new housing cooperatives engaged in investment activities were allowed to be formed, but on terms that suited only the wealthiest people. People's Poland's approach to the role of housing cooperatives changed completely after October 1956. What was called a new housing policy was announced, in which cooperatives were to play a key role.

[145] Ustawa z dnia 3 stycznia 1946 r. o przejęciu na własność Państwa podstawowych gałęzi gospodarki narodowej (Dz.U. 1946 nr 3, poz. 17).

However, the authorities were not convinced by the idea of cooperatives. It was a matter of involving the society's financial resources in solving the housing problem. The state was building housing exclusively at its own expense, making the speed of investment insufficient. Cooperatives were able to require members to make housing contributions that covered significant portions of construction costs. The consequence of assigning housing cooperatives such an important role in public policy was even greater state interference in their operation. Over the following years, a number of regulations were issued (usually in the form of sub-statutory acts – resolutions of the Council of Ministers), which defined in great detail the operational abilities of housing cooperatives.

In the late 1960s and early 1970s, intensive intervention began in the structures of Polish housing cooperatives. The policy of the People's Poland authorities led to the creation of cooperatives so huge that their members had no influence on the management of the organisations to which they belonged. Particular cooperatives were granted a monopoly in particular areas. A person wishing to live in a particular neighbourhood (or even city) was thus deprived of any choice. Progressive centralisation and bureaucratisation detached housing cooperatives from the ideals that guided their founding. That raised opposition from the community associated with the movement. Some changes were initiated after August 1980, but work on the shape of new solutions was interrupted by the outbreak of martial law, and the cooperative law in effect since 1982 was a compromise.

The history of Polish housing cooperatives has had many twists and turns, as well as better and worse periods. The changes in its role and structure reflect the political transformations over the decades of People's Poland. Nonetheless, the tool used by state authorities to implement current housing policies has always involved legal regulations of various kinds.

7
The history of the law of People's Poland and allotment gardens – a case study (towards a conclusion)

It can be argued that the subject of allotment gardens is not a key issue for the analysis of the law on construction, housing and spatial planning in People's Poland. However, allotment gardens in the final period of the People's Poland occupied from 2 to 5% of the area of large cities[1], so their emergence must be considered an important element of urban development processes. In 1983, there were 6,798 gardens with 811,229 allotments[2], so it was also a significant social phenomenon. These topics, therefore, undoubtedly fall within the scope of the research to which this book is devoted, and the nature of the conclusions of this small case study makes it worth devoting the final (not counting the summary) chapter of this work to it – as they will lend themselves to generalisation in the final part of the study. Moreover, in the

[1] R. Szkup, *Użytkowanie rodzinnych ogrodów działkowych (ROD) przez społeczność wielkomiejską. Przykład Łodzi* (Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2013), 7.

[2] R. A. Waśniewski, "Problematyka prawna pracowniczych ogródków działkowych", *Palestra* 30/3 (339) (1986), 40.

history of legal regulation of this small area of socio-economic life, confirmation of the operation of the mechanisms already described can be found.

7.1. The history of allotment gardening in Europe and Poland

As in the case of housing cooperatives, the history of institutions commonly associated[3] with the period of state socialism is in fact much longer, and their establishment was not related to this political system at all. The origins of allotment gardening date back to the 19th century. At first, gardens of a charitable nature were created – plots of land on their premises were given to the poorest families to improve their food supply. Such activity was carried out and supported by the state in England, Germany, and Denmark, among others[4]. In 1865, the first allotment garden was established in Leipzig upon the initiative of Ernest Hauschild and Daniel Schreber[5]. One of its founders was a school principal, the other a doctor, and the original goal of their venture was the healthy upbringing of young people. In order to implement this intention,

[3] Unfortunately, there are no opinion polls on people's beliefs related to allotment gardening and its history, still, e.g., the association of allotment gardens – a relic of the People's Poland is very popular in the media; see e.g.: T. Płużański, "Tadeusz Płużański o ogrodach działkowych: relikty PRL-u po 22 latach", *SuperExpress*; P. Sarzyński, "Polski fenomen: ogródki działkowe", *Polityka*; J. Gratkiewicz, "Działkowcy to relikt PRL, ale trzeba im pomóc", *Money.pl* or Informacyjna Agencja Radiowa, "«Relikt PRL». Działkowcy mogą liczyć na PiS?", *PolskieRadio24.pl*.

[4] M. Kuropatwińska, *Ogrody działkowe a kultura miast* (Warszawa: Ministerstwo Pracy i Opieki Społecznej, 1928), 24.

[5] A. Dolecka, and W. Deręgowski, ed., *100 lat Ogrodnictwa Działkowego w Polsce i województwie bydgoskim* (Bydgoszcz: Polski Związek Działkowców, 1997), 7.

they founded the first Allotment Garden Society[6]. As part of its activities the original allotment garden was established five years later, embodying the ideas with which modern allotment activists identify. The year 1870 marks a turning point in the development of the allotment movement by Władysław Lubawy, an chronicler of Polish interwar activism in this area[7].

On the Polish ground, the first allotment gardens were established during the Partitions (e.g. in Poznań and Gniezno) and were used mainly by the German population[8]. However, as early as 1897 in Grudziądz, upon the initiative of doctor Jan Jalkowski, the first Polish garden was created under the name "Kąpiele Słoneczne" ("Sun Baths")[9]. As in the case of Leipzig, its founding was also the result of a grassroots social organisation – the Society for a Natural Way of Life[10]. In subsequent years, more gardens were created. By the time Poland regained its independence, there were 18 of them, divided into a total of more than 2,000 allotments[11].

During the Second Polish Republic, users of allotment gardens created vibrant organisations. After the end of World War I, Allotment Garden Societies, established to design and manage particular gardens, began to emerge as independent entities. On 3 July 1927, the Union of Allotment Garden Societies was established in Poznań to unite these organisations[12]. In the following

[6] W. Lubawy, *Historia ogrodów działkowych w Polsce: z okazji dziesięciolecia Związku Towarzystw Ogrodów Działkowych, Przydomowych, Małych Osiedli i Hodowli Drobnego Inwentarza Rzeczpospolitej Polskiej. Uzupełnione do 1939 r.* (Warszawa: Centralny Związek Towarzystw Ogrodów Działkowych i Osiedli Rzeczypospolitej Polskiej, 1939), 9.

[7] Lubawy, op. cit., 10.

[8] Ibid.

[9] Dolecka, and Deręgowski, op. cit., 6.

[10] E. Kondracki "90-lecie ogrodnictwa działkowego w Polsce", *Działkowiec*, 9 (2) (1987), 2.

[11] Dolecka, and Deręgowski, op. cit.

[12] Lubawy, op. cit., 11.

years, it carried out organisational, educational, and promotional activities, creating, over time, field branches for different parts of the country[13].

Activists of the Polish interwar allotment movement tried to create, in cooperation with state authorities, a proper legal framework for the operation of the gardens they operated. Several complete drafts of normative acts were prepared. The appendix to Maria Kuropatwińska's 1928 book is "Projekt ustawy o ogrodach działkowych, przyjęty przez Komisję Specjalną Państwowej Rady Opieki Społecznej" ("Draft Law on Allotment Gardens, adopted by the Special Commission of the State Welfare Council")[14]. The new draft law was prepared by the Association of Allotment Garden Societies in 1930[15]. In 1936, the union collaborated on the adoption of the law with Polish parliament member Bruno Wank[16], what in today's language could be described as the carrying out of lobbying activities. Another bill was drafted and submitted to the Ministry of Social Welfare in 1939[17]. The outbreak of World War II prevented it from being legislated.

Moreover, for the same reason, the dynamic development of allotment gardening in the Second Polish Republic came to a general halt. The German Nazi occupation authorities dissolved the Central Union of Allotment Gardens and Estates However, the District Unions were still functioning[18]. Thus, there were structures in place that could become the basis for rebuilding the institution after the end of warfare and occupation.

[13] For instance Warsaw and the following voivodeships: Masovian, Łódź, Białystok, Kielce, and Lubusz in 1933, see: Lubawy, op. cit., 28; in 1934 Greater Poland, see: Ibid., 31.

[14] Kuropatwińska, op. cit., 67–71.

[15] Lubawy, op. cit., 25.

[16] Ibid., 35.

[17] Ibid., 86.

[18] Szkup, op. cit., 29.

7.2. Allotment gardening in the first postwar years

The legislation of the People's Republic of Poland already mentioned allotment gardening in the Decree of the Polish Committee of National Liberation on the Implementation of Land Reform[19]. Its Article 1(2) lists four goals of the reform. The two most important were the completion of existing farms with less than 5 hectares of farmland (i.e., increasing their area) and the creation of new self-sustaining farms. In addition, the decree provided for the creation of a land reserve for schools and other institutions whose activities were related to agricultural development, and precisely the creation of "allotment gardens of workers, clerks and craftsmen". The passage contains two pieces of information relevant to analysing the ideology of People's Poland at the time. At the level of allotment gardening, it is evident that postwar authorities attached great importance to allotment gardens, mentioning them already in one of their first and most momentous decrees. On a more general level, attention should be paid to the language used. The prewar sources on allotment gardening cited earlier, including the draft laws under discussion, spoke of "adjective-free" allotment gardens. The PKWN Decree on Land Reform already defines them more precisely – as workers', clerks', and craftsmen's gardens.

The support of the authorities of the People's Poland for allotment gardening was evident from the very beginning of the postwar reconstruction period, not only in the content of legal acts but also in actual actions. Cooperation with social activists was undertaken by the Ministry of Agriculture and Agrarian Reform and the Ministry of Provisions and Trade. As early as 15 November

[19] Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 6 września 1944 r. o przeprowadzeniu reformy rolnej (Dz.U. 1944 nr 4, poz. 17).

1945, the head of the former ministry, at the request of Prime Minister Edward Osóbka-Morawski, established an organisational commission for the Central Union of Allotment Societies, whose convention was held in August 1946. Therefore, the first years after World War II were marked by the cooperation of the authorities of People's Poland with prewar NGOs in the reconstruction of their structure, partially liquidated by the occupiers. Continuity in the history of Polish allotment gardening was visible not only in the reactivation of the aforementioned institutions but also in the continued activity of activists who worked for the development of allotment gardens already before 1939. The aforementioned events from 1945–1946 are described in the book *Ogródek działkowy* ("Allotment Garden")[20] published in 1947 by the Department of Agricultural Education of the Ministry of Agriculture and Agrarian Reform. Its author was Maria Kuropatwińska-Kalicka, who in 1928 published the book *Ogrody działkowe a kultura miast* ("Allotment Gardens and the Culture of Cities")[21], published by the Institute of Social Economy and with financial support from the Ministry of Labour and Social Welfare. Thus, it turns out that in the early days of the People's Poland, strong ties to the Second Polish Republic were not necessarily a problem for either the social organisation or the activists involved. The summer of 1946 not only was a time for the reactivation of prewar allotment organisations but also for the adoption of the first comprehensive legal regulation of allotment gardening in People's Poland.

[20] M. Kuropatwińska-Kalicka, *Ogródek działkowy* (Warszawa: Ministerstwo Rolnictwa i Reform Rolnych. Departament Oświaty Rolnej, 1947), 10–11.

[21] Kuropatwińska, op. cit.

7.3. Decree of 25 June 1946 on Allotment Gardens

The Decree on Allotment Gardens[22], which dates back to 25 June 1946 (hereinafter: 1946 Decree), is another source of evidence of the continuation of prewar institutions in the early years of People's Poland. According to its Article 6, the obligation to establish allotment gardens was the responsibility of municipalities (Section 1) and workplaces employing more than 200 people – in regard to workers' gardens (Section 2). However, according to Article 12, municipalities and workplaces were to lease the gardens they created to allotment societies, and it was these organisations that were to "sublease individual allotments to their members". From this provision, it comes out clearly not only that social organisations of gardeners were to manage allotment gardens but also that membership in such organisations was necessary to be eligible to use an allotment. Additional goals for allotment garden societies affiliated with the association were set by Article 21 of the 1946 Decree, according to which they were responsible for "professional supervision of allotment gardens, guidance in matters of allotment gardening, support of scientific work in this field and initiation of social activities".

The special importance of the provisions discussed above derives from the fact that they are legal proof that, the People's Poland authorities pursued a policy of continuing the functioning of prewar structures in the area of allotment gardening. Its manifestation, more important than tolerating the activities of these organisations, or even actively supporting them, was the allocation of a defined function to them under the provisions of the 1946 Decree in the new legal order.

[22] Dekret z dnia 25 czerwca 1946 r. o ogrodach działkowych (Dz.U. 1946 nr 34, poz. 208).

These are not the only provisions of the analysed decree that are worth mentioning. Already at its very beginning, the legislator defined the purpose of the functioning of allotment gardens and the range of their potential users they were to enable

> the utilisation of free time of people of intellectual and physical labour and their families by making it possible for them to cultivate the land in healthful conditions on the allotment and to facilitate the obtaining of garden produce by this means for the satisfaction of their own needs and thus to raise their health and economic level.

Article 1 of the 1946 Decree only generally stated that allotment gardens were to serve "people of intellectual and physical labour". However, the discussed piece of legislation does not include a detailed catalogue of people entitled to use allotment gardens – it did not define who exactly a person of "intellectual and physical labour" was. Only one negative prerequisite was included (in Article 13) – the user of the allotment could not be the owner of any other cultivable land "within the settlement". In addition, the article formulated several restrictions on how the allotments could be used: they were to be cultivated for personal and family use, and work on them was to be done without the help of hired labour. It also reiterated, already indirectly derived from Article 12, the obligation of an allotment user to belong to an allotment garden society.

The purpose of existence of allotment gardens was formulated quite similarly to the provisions of the 1939 draft law on allotment gardens, which in Article 2 stated that "the task of the gardens is to meet the economic, health, cultural and social needs of the residents of cities or industrial centres, with the exclusion of profit-making purposes"[23]. Both bills mention

[23] Lubawy, op. cit., 86.

health and economic needs, the prewar draft further adds cultural and social needs. Commercial cultivation is excluded in both the 1946 Decree ("for personal satisfaction") and the 1939 draft ("excluding commercial purposes"). However, there was a significant difference in the definition of the group of potential users of allotment gardens. According to the 1946 Decree, free time was to be used on their premises by "people of mental and physical labour". However, in the 1939 draft it was stated that the gardens were designed to meet the needs of "residents of cities or industrial centres". In the interwar proposal, the target group was defined by its place of residence, while in the People's Poland act, by membership in a particular social class, derived from its source of income.

There is no doubt that the wording used in the 1946 Decree, referring to the class structure of society, was more in line with the ideology of People's Poland than the construction found in the 1939 draft. Still, it does not mean that the discussed regulations were created from scratch by postwar legislators. The first paragraph of Article 2 of the draft law on allotment gardens of 1928 reads, "Allotment gardens under this Law are intended to make rational use of the holidays of white-collar and physical labourers by giving them the opportunity to work independently and not professionally on a plot of land, to obtain crops to satisfy their own needs and spend moments in the fresh air, and thus raise the socio-cultural, health and economic level of them and their families"[24]. The similarity between this formulation and the regulation of Article 1 of the 1946 Decree is apparent at first glance, and is manifested not only in the analogous construction but also in the use of the same wording (e.g., "enjoying holiday avidly" and "enjoying leisure time avidly"; "people of mental and physical labour" or "working on a plot of land" and "activities

[24] Kuropatwińska, op. cit., 67.

on a plot of land"). It becomes evident that the authors of the 1946 Decree must have been familiar with the 1928 draft and patterned their work after it, taking the entire wording and merely making the language more modern. Thus, it turns out that in the area of allotment gardening, continuity between the Second Polish Republic and the first postwar years occurred not only through the continuation of the functioning of prewar institutions but also in terms of legislative work. At the same time, it should be remembered that among the various drafts prepared in the interwar period, the People's Poland authorities chose a model which better suited the new political ideology.

It is also worth mentioning the language of the 1946 Decree. Both in the content and in the title of the act – contrary to the Decree of the Polish Committee of National Liberation on the Implementation of Land Reform – appear only "adjective-free" allotment gardens, despite the fact that, as already written, the legislator intended them for specific social classes. In conclusion, not only the policy of continuing the operation of prewar structures in the form of social organisations of allotment holders and the modelling of the prewar draft law but also the wording used demonstrates a rather conservative nature of the 1946 regulations in the sense that they mainly served the fundamental and officially declared purpose therein – the development of allotment gardening. This objective was not inconsistent with People's Poland's ideology but also not specific or unique to it – it had been already evidenced by the possibility of using fragments of draft laws from the capitalist Second Polish Republic. The lifespan of the 1946 Decree's provisions, however, was not long.

7.4. Law of 9 March 1949 on Workers' Allotment Gardens

As early as the spring of 1949, an entirely new Law on Workers' Allotment Gardens[25] (hereinafter: 1949 Law) was adopted. The scope of the changes was broad. It manifested already in the language of the new legislation. The wording used at every turn emphasised the class nature of the regulated institution. Both in the body and in the title of the law, allotment gardens belonged exclusively to "workers", a term narrower not only in comparison with the "adjective-free" gardens of the 1946 Decree but also in relation to the "workers', clerks', and craftsmen's" gardens of the Polish Committee of National Liberation Land Reform Decree – the first two categories fall under the term workers but craftsmen do not anymore. Moreover, this is confirmed by the content of Article 1 of the analysed legal act. Neither the definition of an allotment garden (which became "worker's garden" in 1949) in Article 1, Section 1, nor the purpose of its existence in Article 1, Section 2, have changed fundamentally – it was still about the possibility of healthy leisure activities and obtaining crops for one's own consumption. A major change was contained in Article 1, Section 3, which significantly narrowed the group of potential allotment users. Unlike to the 1946 Decree, the new law did not stop at a general declaration that gardens shall serve workers. The group of potential users of the allotments narrowed considerably. The discussed section included a precisely defined catalogue of persons authorised to use them. These were employees engaged on the basis of an employment contract or service relationship as well as those receiving social benefits under the regulations in effect at the time. This provision left no doubt that allotment gardens were not intended for craftsmen, among

[25] Ustawa z dnia 9 marca 1949 r. o pracowniczych ogrodach działkowych (Dz.U. 1949 nr 18, poz. 117).

others. Not only, in contrast to the Polish Committee of National Liberation's Decree on Carrying out Land Reform, were they not included in the name of the gardens but also they were not listed in the catalogue of persons entitled to use the gardens.

Another major change was a radical break with the concept of continuing the operation of prewar structures. According to Article 2 of the new law, the management of workers' allotment gardens was entrusted "on an exclusive basis" to the Central Commission of Trade Unions of the Association of Trade Unions. Under the discussed act, allotment gardens existing at the time the new legislation came into force were transferred to the management and free use of the Association of Trade Unions. Article 13 of the discussed law stipulated the liquidation of the associations running the gardens to date. The union institutions were not only to carry out this liquidation but also to take over all the assets of these organisations. There are two pieces of important background information regarding the analysed shift. First, as in the case of housing cooperatives, the institutions, which had a prewar pedigree and were originally created from the bottom up as independent grassroots social organisations, were taken over by the state through their subsidiary centralised structures under the full control of the People's Poland authorities. The ability to use an allotment was a specific form of use, the acquisition of which depended on the decision of the entity managing the particular garden. Thus, as in the case of cooperative housing, it was based on different grounds than the property right of a specific user. Therefore, it was not even necessary to interfere with individual property rights (which is the basis of classical nationalisation) to take control of the discussed area of socio-economic life. The subordination of institutions and organisations responsible for the organisation and management of allotment gardens proved a sufficiently effective tool. Thus, it is another case of "institutional-organisational nationalisation",

analogous to how housing cooperatives were handled. Secondly, the subordination of allotment gardening to precisely (state-controlled) trade unions further emphasised the working-class nature of this institution.

For another law regulating People's Poland's allotment gardening in its entirety, it was necessary to wait until 1981, which does not mean that allotment gardening remained outside the scope of interest of People's Poland's authorities. In February 1961, the Council of Ministers passed a resolution[26], in which it obliged various institutions to actively support the development of allotment gardening in the years 1961–1965: the Chairman of the Committee for Construction, Urban Planning, and Architecture (in cooperation with the presidencies of the Voivodship National Councils) was to ensure that an adequate amount of land for new permanent allotment gardens was allocated in land use plans (§ 1, Section 1); the Minister of Municipal Economy (also in cooperation with the presidencies of the Voivodship National Councils) was obliged to ensure that the necessary land was actually transferred for the creation of these gardens (§ 1, Section 2); regardless of this, the presidencies of the national councils were to provide land for temporary gardens (§ 2); the Minister of Finance was obliged to establish regulations for the financing of investments in the infrastructure of allotment gardens and its repair (§ 7, Section 3); another task of the Minister of Municipal Economy was to develop typical drafts of gazebos, storage buildings, etc. (§ 8, Section 1); the Minister of Forestry and Timber Industry and the Chairman of the Committee for Small Production were to see to the manufacturing of equipment and buildings for allotment gardens (using prefabricated elements and waste materials) (§ 8, Section 2); the Minister of Agriculture, in turn,

[26] Uchwała Rady Ministrów i Centralnej Rady Związków Zawodowych z dnia 21 lutego 1961 r. w sprawie dalszego rozwoju pracowniczych ogrodów działkowych w latach 1961–1965 (M.P. 1961 nr 26, poz. 122).

was to provide "comprehensive assistance" in supplying allotment gardens with, among other things, fertilisers and plant protection products (§ 9, Section 1). The resolution was complemented by tables showing the demand for land for allotment gardens in various voivodships and for fruit tree seedlings for allotment holders. At the highest level of People's Poland's power structures, an act was passed regulating in great detail the activities of many different institutions related to the development of an area that, keeping in mind the important role played by allotment gardens, cannot be considered strategic for the state. Therefore, using the example of allotment gardening, one may visualise how legal tools were used to implement the principles of the planned economy in various areas of social life. The integration of the development of allotment gardening with central planning is confirmed by the duration of the period to which, according to the title of the act itself, the discussed resolution referred. Not coincidentally, it happened at the time of the implementation of the Second Five-Year Plan[27]. Later (including 1972[28] and 1977[29]), the Council of Ministers passed successive resolutions on the development of allotment gardening, concerning periods corresponding to particular (but not all) five-year plans. Their content was similar to that discussed above, and it is not purposeful to analyse them in detail.

The absence of new regulations until the 1980s did not mean there were no significant changes in this period either. In 1957, provincial boards of workers' allotment gardens began to be

[27] Uchwała Sejmu Polskiej Rzeczypospolitej Ludowej z dnia 17 lutego 1961 r. o pięcioletnim planie rozwoju gospodarki narodowej na lata 1961–1965 (Dz.U. 1961 nr 11, poz. 58).

[28] Uchwała nr 111 Rady Ministrów z dnia 28 kwietnia 1972 r. w sprawie rozwoju pracowniczych ogrodów działkowych do roku 1975 (M.P. 1972 nr 27, poz. 150).

[29] Uchwała nr 83 Rady Ministrów z dnia 3 czerwca 1977 r. w sprawie rozwoju pracowniczych ogrodów działkowych do 1980 r. (M.P. 1977 nr 15, poz. 82).

formed from the bottom up as part of trade union structures. Consequently, a resolution of the Central Council of Trade Unions on 30 December 1957 established the National Council of Workers' Allotment Gardens (Krajowa Rada Pracowniczych Ogrodów Działkowych – KR POD)[30]. Later, county boards were also created[31]. The establishment of these bodies initiated the return to self-government of the Polish allotment movement[32]. Although for the time being it was a partial independence, still within the structures of the trade union movement, its significance proved momentous. Soon, the KR POD was to play a key role in further reforms of this area of socio-economic life and the regulations governing it.

7.5. Law of 6 May 1981 on Workers' Allotment Gardens

In the 1980s, it was the National Council of Workers' Allotment Gardens that proved the perpetrator of events which led to the adoption of a completely new law the following year. In its resolution from 8 October 1980, the KR POD announced the independence of the Polish allotment movement from the Central Council of Trade Unions. Council members stated that:

> Taking into account the socio-political maturity of workers' allotment gardens, resulting from the 80-year tradition of the allotment gardening movement in Poland, the mass character of the organisation, and the extensive development of

[30] Dolecka, and Deręgowski, op. cit., 37.

[31] W. Jamrożek, "W stulecie ogrodnictwa działkowego w Polsce i jego działalności społeczno-wychowawczej", *Biuletyn Historii Wychowania* 5/6 (1997), 56–57.

[32] Waśniewski, op. cit., 41.

> self-governance in its operation, the plenary meeting of the National Council of Workers' Allotment Gardens speaks in favour of the independence of workers' allotment gardens based on the organisation's statute and legal personality […]. Bearing in mind the need for further integration of workers' allotment gardens and the necessity for operative activity, the plenary meeting of the National Council of Workers' Allotment Gardens finds it expedient to emphasise that all field instances, i.e., workers' allotment gardens self-governments and provincial boards are subject exclusively to the National Council of Workers' Allotment Gardens [33].

It is evident from the cited passage that the KR POD not only declared full independence from the CRZZ but also its desire to create a self-governing organisation with legal personality, i.e., enjoying full recognition by the authorities of People's Poland. The postulated solutions stood in direct contradiction to the provisions of the Law on Workers' Allotment Gardens of 1949. A thorough change in the legislation was needed to bring them to fruition.

The expectations of allotment gardeners were fulfilled. The new Law on Workers' Allotment Gardens[34] (hereinafter also: 1981 Law), passed by the Sejm on 6 May 1981, not only made it possible to implement the ideas of the KR POD but legally sanctioned the solutions proposed by the Council the previous year. Its chairman, Eugeniusz Kondratiuk, in an article published on the occasion of the 35th anniversary of the Polish Allotment Association, of which he became president for many years, recalled that the allotment holders were surprised by the absence

[33] M.P., "Ustawa o pracowniczych ogrodach działkowych w dniu 6 maja 1981 r.", *Polski Związek Działkowców*.

[34] Ustawa z dnia 6 maja 1981 r. o pracowniczych ogrodach działkowych (Dz.U. 1981 nr 12, poz. 58).

of resistance from the state authorities and union structures and that the new law fulfilled their expectations[35].

The law used the same language as its predecessor – it still referred both in its title and in its content to "workers'" allotment gardens. The purpose of these gardens was also defined similarly, although the wording of Article 2, Section 1 of the law ("workers' allotment gardens provide working people and their families with active recreation, the opportunity to grow horticultural crops primarily for their own needs, and are a component of green spaces and recreational areas") indicated a certain evolution: the principle of growing crops for one's own needs, from 1981 onward, was relaxed, and greater importance was given to the recreational and leisure functions of the gardens.

More significant changes were hidden elsewhere. Already Article 1 of the law stated that it regulated not only the principles of establishing and running workers' allotment gardens but also the principles of association of allotment users in the Polish Allotment Association (Polski Związek Działkowców – PZD). That was the organisation that became the implementation of the demands of an allotment gardeners in 1980. Article 24, Section 1 of the discussed law defined PZD as an independent and self-governing social organisation, bringing together people who were users of allotments in workers' allotment gardens. The legal personality demanded by the members of the KR POD in their resolution was granted to PZD under Article 24, Section 2 of the Law. The organisation's self-governance was realised by granting it the authority to determine the details of its activities on its own.

The law listed only the union's "field cells": workers' allotment gardens and provincial and district field branches (Article 27) and its self-governing bodies: general meetings, boards of directors, audit committees and arbitration committees at the garden level;

[35] E. Kondracki, "Trudna droga do jubileuszu", *Zielona Rzeczpospolita*.

delegates' conventions, boards of directors, audit committees and arbitration committees at the level of field branches; finally, the National Convention of Delegates, the National Council, the National Audit Committee and the National Arbitration Committee at the national level (Article 27). The details of the functioning of these bodies were to be specified in the statutes of the Polish Allotment Association, which were to be adopted by the National Convention of Delegates (Article 30, Section 3). According to Article 30, Section 2 of the discussed law, in addition to the powers of the union's bodies, the duration of their term of office and the procedure for their election, the statute was also to determine, among other things, the rules for the allocation of allotments in workers' gardens or the rights and responsibilities of members, as well as the issues of entry fees and membership fees. The new law thus granted the allotment organisation a great deal of real organisational autonomy.

In addition, the independence of the PZD was emphasised by Article 28 of the 1981 Law. Its Section 1 conferred powers of admission as members of the Union and allocation of allotments in workers' gardens on the boards of particular gardens (or regional boards in the case of newly created gardens). According to Section 2 of this article, resolutions of the union's bodies on the subject of membership were not subject to the jurisdiction of the courts. From the perspective of a citizen of a democratic state of law, the absence of judicial protection of membership in a social organisation may appear to be a restriction on the rights of a member. For example, today, according to a consistent line of jurisprudence, confirmed in a resolution of the Supreme Court[36], the claim of a member of an association to protect his membership from being removed from the association in violation of the law or the statute is subject to recognition through the courts,

[36] Uchwała Sądu Najwyższego z dnia 6 stycznia 2005 r., III CZP 75/04.

even though the Law on Associations[37] does not explicitly mention it. However, such a solution can be considered understandable in the realities of People's Poland of the early 1980s, where the independence of social organisations was newly acquired by its members. Under such conditions, it is not surprising that there was a desire to protect the Association from interference by state bodies and a willingness to settle internal disputes (including those over membership) within the activities of PZD bodies.

Subsequent provisions of the analysed legal act were created by slight modifications to the essence of the previous regulations with simultaneous institutional connection to the Polish Allotment Association. The circle of potential users of allotments, as defined in Article 25, Section 2, did not change radically. They were still mainly employees, retirees, and pensioners. In addition, the new law also made it possible to obtain an allotment in an allotment garden for people who ran a craft or service business and those who performed mental labour. It is worth mentioning that Article 25, Section 4 introduced a form of inheritance of the right to use an allotment in an employee garden. According to its provisions, as a result of the death of a PZD member, the right to use an allotment was extinguished but in the allocation of this allotment, priority was given to relatives of the deceased, if they met two conditions: first, in principle, they could be users of allotments in employee gardens as a result of having a source of income listed in Article 25, Section 2, and second, they used this particular allotment jointly with the deceased. The general direction of change should, therefore, be described as a gradual liberalisation of the regulations, however, while preserving the specific nature of the institution of allotment gardening.

[37] Ustawa z dnia 7 kwietnia 1989 r. – Prawo o stowarzyszeniach (Dz.U. 2019, poz. 713) [with subsequent amendments].

The key change was introduced by Article 25, Section 1. It stipulated that the membership in the PZD is acquired automatically with the assignment of an allotment. Whereas the transitional provision in Article 34 of the Act granted membership in the Polish Allotment Association to all those who used workers' allotment gardens on the day the Act came into force. The combination of these two norms meant that only members of the PZD could be users of allotment gardens. Thus, in practice, membership in the Polish Allotment Association was added to the catalogue of requirements that had to be met in order to use an allotment garden, in addition to having one of the sources of income listed in Article 25, Section 2. It is worth mentioning at the margin that this somewhat resembles the regulations from the 1946 Decree, which was in effect for three years only but those regulations did not provide for such centralisation – in order to use an allotment, one had to be a member of a society of allotment gardens; there was a nationwide union but its members were the particular societies, not individual allotment users. However, in this context, the 1981 Law can be considered a partial return to the solutions of the early years of People's Poland.

In the analysed law, the definition of an allotment garden also resembled those contained in previous legislation. The most important novelty was Section 2 of Article 6, according to which a workers' allotment garden was subject to registration with the Polish Allotment Association. According to Article 8, it was the Association that was the user of the land designated for workers' allotment gardens, transferred (free of charge) by local state administration bodies. Article 12 established the size of allotments at a similar level as in earlier regulations (the lower limit was raised from 100 to 300 sqm, the upper limit was invariably 500 sqm) but it was PZD that was entrusted with dividing the garden into allotments. It was the Association that was responsible for building the basic infrastructure in the gardens, which

remained its property[38]. According to the discussed regulations, the Association also played an important role on the economic level. Under Article 15 of the Act, the Workers' Allotment Garden Development Fund was created. Its income consisted not only of contributions from allotment users but also of subsidies from various sources: the state budget, trade unions, social funds of state-owned enterprises. Section 2 of Article 16 stipulated that the disposer of all these funds was none other than the Polish Allotment Association. In this way, the independent social organisation became the administrator of money from, among other sources, the state budget of People's Poland.

The authorities of People's Poland did not make any more significant changes to the regulations on allotment gardening. The 1982 Resolution of the Council of Ministers on the Development of Allotment Gardening until 1985[39] declared a continuation of the previous policy. It was similar to earlier legislation specifying the details of the development of this area of socio-economic life within the framework of central planning – particular ministries and other bodies were commissioned to perform specific tasks. However, they were to cooperate no longer with the Central Council of Trade Unions but with the Polish Allotment Association. Another resolution concerning the period after 1985 (which would have corresponded to the sixth five-year plan) was not passed.

[38] This is one of the few exceptions to the principle *of superficies solo cedit*. The Law of 6 May 1981 on Workers' Allotment Gardens contained another: according to its Section 2, Article 13, the plantings, equipment and facilities (located on the allotment) made or acquired with the funds of the allotment user were the property of the allotment user – in the event that the use of the allotment ceased or the garden was liquidated, the allotment user was entitled to use it. See: H. Cioch, and H. Witczak, "Zasada superficies solo cedit w prawie polskim", *Rejent*, 5 (97) (1999), 27–28.

[39] Uchwała nr 50 Rady Ministrów z dnia 6 marca 1982 r. w sprawie rozwoju ogrodnictwa działkowego do roku 1985 r. (M.P. 1982 nr 9, poz. 56).

The Law of 6 May 1981 on Workers' Allotment Gardens, with minor amendments, survived not only until the end of the communist regime but even beyond the first decade of political transformation. It was necessary to wait for a completely new regulation until 2005, when the Sejm passed another law, no longer on workers' allotment gardens but on family allotment gardens[40].

7.6. Legal regulation of allotment gardening and the history of People's Poland's political ideology

In People's Poland, regulations for all areas of socio-economic life have evolved over time. The situation of allotment gardening is not special in this aspect. However, unlike, the law related to construction or housing, e.g., which is also analysed in this work, the norms relating to this area have always been concise, fairly simple, and concentrated in one central piece of legislation. That is why they prove an excellent case study. An attempt to determine how ideology is present in the laws of People's Poland, in relation to the political and economic situation of the country at a given time, among other things, would be the easiest on this very example.

The subject of allotment gardens was already mentioned in the Decree of the Polish Committee of National Liberation on Carrying out Land Reform, which contained a kind of declaration of support of the People's Poland authorities for the development of this idea. It was created before the war, in completely different political and political system conditions. Thus, the inclusion in this decree, in a way, certified its compatibility with the new ideology, and therefore, gave an opportunity for continuation of activities and development in its area.

[40] Ustawa z dnia 8 lipca 2005 r. o rodzinnych ogrodach działkowych (Dz.U. 2005 nr 169, poz. 1419).

The first legal act of People's Poland entirely devoted to allotment gardening, the 1946 Decree, documents the political reality of the first years after World War II, in which the political system of the country was still forming, temporarily based on solutions borrowed directly from the Second Polish Republic – not only at the constitutional level but, as it turns out, also in such narrow areas of socio-economic life as allotment gardening. In terms of the examined case study, it happened on two levels. First, the social capital that survived the turmoil of war (the allotment movement) was used and allowed to operate as a grassroots initiative independent of the state. After all, at that time, the centralisation of the state was not yet complete and, as one of the political priorities, gave way in various fields to the pragmatic goals of state reconstruction. Secondly, ready-made, prewar solutions were used the act's drafting. An analysis of its wording shows that it was modelled on one of the drafts prepared during the Second Polish Republic. The communist authorities were not afraid to use templates from the previous era. At the same time, however, it can be seen that from among the several available solutions, the one that best suited the new ideology was chosen – the provisions of the 1928 draft, which spoke of "people of intellectual and physical labour", were copied instead of using, e.g., the 1939 proposal, in which attention was paid to meeting the cultural needs of urban residents.

The differences between the 1946 Decree and the 1949 Law, which was adopted just three years later, illustrate the scale of the changes that took place in People's Poland during this short period. This ended the struggle for the character and political shape of the state, as A. L. Sowa, the author of *Historia polityczna Polski 1944–1991* ("Political History of Poland 1944–1991"), describes the period 1945–1947[41]. The country was rapidly

[41] A. L. Sowa, *Historia polityczna Polski 1944–1991* (Kraków: Wydawnictwo Literackie, 2011), 5.

entering the era of mature Stalinism. Accordingly, solutions based on prewar patterns, appropriate for the transition period, were being replaced by more radical ones. This can also be seen in the area of allotment gardening – already at the linguistic level: allotment gardens became workers' gardens. The class affiliation of this institution was also defined – from then on, allotments were intended only for workers[42]. The most serious changes affected the organisation of the allotment movement. It underwent "institutional-organisational nationalisation" – the allotment associations were liquidated, and management was entrusted to the Union of Trade Union Employees (Central Commission of Trade Unions). At this stage of People's Poland's development, there was no more room for grassroots and independent social initiatives. They had fulfilled their tasks related to postwar reconstruction and could be liquidated.

Further significant changes in the situation of allotment gardening occurred without amending the statutory matter. The resolution of the Central Council of Trade Unions, formally dealing only with the internal organisation of the institutions of the trade union movement, proved sufficient for the state to take several steps backward in centralising and subordinating the allotment movement. The creation of the National Council of Workers' Allotment Gardens within the structure of fully state-controlled trade unions became a substitute for self-government. Moderate liberalisation, reducing the omnipotence of the state and slightly increasing the scope of civil liberties, was not unique to allotment gardening or even to the entire area of construction, housing, spatial planning, and real estate. These changes were part of Gomułka's thaw. Once again, legislation (this time internal – in the form of a Central Council of Trade Unions resolution),

[42] And – as described above – for retirees, pensioners, etc., but certainly not for, e.g., a private initiative.

regulating even such a narrow slice of life, not only proved to be a picture of the evolution of People's Poland's political ideology but also a tool for implementing its current version.

Fundamental changes in the way allotment gardening was legally regulated in People's Poland were made by the Law of 1981. By virtue of its provisions, an independent and self-governing organisation was created – the Polish Allotment Association, which was granted exclusive management of all existing and new allotment gardens (and allotment gardeners became its members by law). The reform, which without exaggeration can be considered revolutionary, basically reversed the changes made by the regulations of 1949. The enactment of the 1981 Law was the implementation of the demands formulated by the KR POD in October 1980. It was possible because both of these events coincided with a period of liberalisation and relative civil freedoms that lasted from the signing of the August Agreements in Gdańsk in 1980 to the imposition of martial law on 13 December 1981, often referred to as the Carnival of Solidarity[43]. So, in this case, as well, the legal changes concerning allotment gardening were a reflection of the significant political processes taking place in People's Poland. Moreover, liberalisation in the area covered by this case study involved not only legal changes but also social practices. Landscape architect Beata J. Gawryszewska points out that the actual liberalisation of the 1980s also had another, more practical dimension – "wild" gardens, functioning outside the formally operating allotment gardens, were created more intensively in various undeveloped areas[44].

[43] See: M. Rosalak, "Karnawał 16 miesięcy «Solidarności»", *Najnowsza Historia Polaków. Oblicza PRL* 13 (2008). ["1980–1981 wielki karnawał Solidarności". a historical supplement of *Rzeczpospolita*].

[44] B. J. Gawryszewska, "Ogródki robotnicze, które zostały działkami", *Urbanista* 10 (2006), 31.

In the case of allotment gardening, all significant changes in the relevant legal regulations turned out to be related to the political, social and economic processes crucial to People's Poland at a particular time. The 1946 Decree was created in the conditions of postwar reconstruction and the formation of the state system; the 1949 Law was adopted during the period of progressive Stalinisation; the 1957 Central Council of Trade Unions Resolution was undertaken during the thaw after October 1956; and finally, the 1981 Law is one of the achievements of the Carnival of Solidarity. In each of these cases, significant political changes were related to the regulation of such a narrow area of life as allotment gardening. Moreover, these relationships were twofold. First, the regulations were an image of the political situation in a particular period of People's Poland's history. Second, the law was a tool for adapting social reality to the version of political ideology in force at a given time.

Not only can the dual relationship of legal regulations and time-varying political ideology be considered as conclusions of the case study to which this chapter is devoted. Subsequent changes in legislation on allotment gardening also draw a preliminary periodisation of the history of the relationship between the law and the political ideology of People's Poland. It was the last of the chapters devoted to the analysis of specific legal provisions. In the following summary, these preliminary conclusions based on the case of allotment gardening (regarding the nature of the relationship between law and political ideology and the periodisation in the history of this relationship) shall be related to other areas of socio-economic life related to construction, housing and spatial planning, the regulations of which have been analysed in previous chapters.

8
Summary

Each of the previous chapters provided a chronological analysis of one area of legal regulations concerning housing, construction, and spatial planning in People's Poland. They always ended with summaries attempting to show the evolutionary changes in the solutions applied and their dependence on the evolving political situation. Therefore, there is no need to repeat this in the last part of the book. The purpose of the concise summary will be to compare the trajectories of change in all these areas studied so that the reader can see possible analogies.

8.1. The formation of the system of the People's Poland in the postwar period

The first years of the People's Poland were exceptional, as the entire effort of the emerging state was focused on rebuilding after the massive destruction. A separate administrative structure was created for this purpose, with the Ministry of Reconstruction in the

lead. Special provisions were introduced for the repair of damaged buildings in order to encourage private owners to invest. On the other hand, legal solutions were prepared to direct people to forced labour for reconstruction (not all of which were used in practice).

A legal reflection of the fact that Poland's capital was the most damaged city in the country was the separate organisational and regulatory tools for Warsaw. The Office for Reconstruction of the Capital was established to coordinate a huge project. Only in Warsaw a full nationalisation of real estate was carried out. It was based on what was called Bierut Decree, which provided for compensation for private owners. It was quite similar to the solutions used in some of the most devastated cities of Western Europe but there the compensations were awarded in practice, while in the capital of People's Poland they remained only theoretical, which has been the subject of legal disputes related to reprivatisation even these days.

During this period, most of the state's efforts centred around postwar reconstruction. Special provisions concerning it are devoted to a separate chapter in this book. It does not mean that nothing was happening in the other analysed areas.

Relatively fewest new measures were introduced in the area of construction law. Prewar regulations were still in force. During this period, the procedures for obtaining permits for new construction were not crucial, since the vast majority of investments involved the reconstruction of buildings damaged during the war, which were covered by the separate regulations mentioned above.

The situation was entirely different in spatial planning. A comprehensive reform was carried out as early as 1946. The obligation to draw up planning acts for the entire territory of the country was introduced, and spatial planning was linked to the economic planning system that was then created. However, at the same time, some solutions from the legal system of the Second Republic were

left in place, such as instruments to protect the interests of private property owners in the procedure for drafting spatial plans.

In the area of housing law, new solutions were introduced most quickly, and they were completely different from those before the war. The rights of property owners were severely restricted, and they were henceforth entitled to occupy only a certain amount of living space, based on established norms. The entire surplus could be allocated by the housing administration to accommodate tenants designated by it, who were to pay very low, predetermined rents to the owner. However, in the first years after the war there were some incentives for private investors. New, rebuilt and renovated buildings were exempted from the aforementioned restrictions. The transitional nature of the just-forming state can also be seen in the history of the Extraordinary Housing Commissions and the disputes surrounding the operation and management of these institutions. The ideological content was evident in the regulations introduced somewhat later, according to which the amount of the rent depended on belonging to a particular social class.

In the earliest period of the People's Poland, housing cooperatives operated on the basis of prewar regulations, trying to repair wartime damage as much as possible. These entities were also subject to the aforementioned incentives and facilities related to the repair and reconstruction of buildings. An entirely new type of cooperatives was also created, which were intended to be associations of individuals undertaking the reconstruction of a damaged building whose owner was unable to carry out the required work.

In the area of allotment gardens, during the transitional period, the authorities of the People's Poland clearly drew heavily on the prewar legal system. These institutions initially functioned in their prewar form, albeit in accordance with the principles of the new political system. Most interestingly, their existence was

regulated using a prewar draft law that was only appropriately adapted.

The same features of the legal system of People's Poland in the first years after World War II can be seen in all the analysed areas of regulation. Regulatory solutions were a hybrid of new ideas, typical of the emerging socialist state, and the achievements of interwar Poland. The state authorities' strenuous attempt to reconcile two different goals was also evident. Efforts had already been made to remodel the state along the principles of state socialism but in many areas this goal had to give way, at least in part, to the urgent need to rebuild the postwar damage. Accomplishing this task required such compromises as certain privileges for private entities.

8.2. The climax of Stalinism

At the turn of the 1940s and 1950s, the process of postwar reconstruction was completed, at least officially. The separate ministry carrying out this task was abolished, and the vast majority of legal regulations issued for the implementation of projects related to the removal of war damage ceased to be in force or lost their significance.

In the first half of the 1950s, the practice of the application of the existing law was crucial, rather than the content of new legislation, which did not appear in such large numbers during this period. By then, quite a few new investments had already begun. However, the prewar construction law was still formally in force. It survived for so long because it very sparingly regulated state construction (which accounted for the overwhelming majority of investments in the period in question), and focused on private construction (which had virtually died out at the time). This created a peculiar legal vacuum, which was very convenient

for the authorities, who at the time, focused on actual activities rather than legal basis. Work on a new construction law, which began immediately after the war, was abandoned. There were even views present that such regulations were not needed in a socialist state, because all roles in the investment and construction process were to be performed by the state, and the need to keep an eye on capitalist landlords and contractors disappeared. Necessary regulations were introduced in the form of resolutions and ordinances, sometimes contradicting the prewar act of statutory rank, and no problem was seen in that.

In the practice of applying the spatial planning law of the Stalinist era, such tendencies as ignoring the content of existing regulations of statutory rank and introducing and applying conflicting resolutions and ordinances were even more evident. What's more, in this case, it was not prewar regulations but the 1946 Decree, which at the time was also considered inadequate to current needs (still it was not amended or repealed). Political goals took precedence, the most important of which was the industrialisation of the country. Factories and industrial complexes specified in economic planning acts were erected on the basis of administrative decisions issued on the grounds of the resolutions. Spatial planning acts often served to legalise investments that had already been completed.

Although public housing management had been in place since the early years of the People's Poland, housing regulations were further tightened during the Stalinist period. Exceptions for reconstructed and newly constructed buildings were eliminated.

During the discussed period, the legal situation of housing cooperatives changed the most sharply. The state decided to take full control of housing. The Department of Workers' Estates was created. On the other hand, the Central Office of Housing Cooperatives – created not much earlier – was dismantled, confirming that in the preceding years the state system had been forming

quite dynamically and its final shape had not been determined from the beginning (at least in the eyes of some Polish politicians). Housing cooperatives were forced to abandon their investment activities. New multi-family buildings could be built only within the framework of a planned economy, which allocated adequate funds, building materials, etc., exclusively to the Department of Workers' Estates.

In the case of the regulation of allotment gardens, the tightening of the course can already be seen in the language layer – the gardens became workers' gardens – belonging only to the working class. The most important change, however, was the centralisation of the hitherto independent social organisations that created these gardens. The state took control of them in the same way it regulated housing cooperatives – through organisational and administrative changes, so that nationalisation in the sense of property law was not necessary.

The first half of the 1950s was a period in which the totalitarian Stalinist state regime had a huge impact on the application of the law in all areas of construction, housing, and spatial planning regulation. The pursuit of political goals was so important that the authorities did not bother to amend the laws. Where they interfered, their content was ignored. The few new regulations were heavily infused with ideological content.

8.3. Thaw

The political changes following the death of Joseph Stalin and later after October 1956 also had an impact on regulations in the analysed areas. The most important changes in the construction law were the restoration of the institution of construction supervision (still by resolution of the Council of Ministers) and the start of the development of a completely new statutory regulation

of construction law. The thaw was visible in the legal literature of the second half of the 1950s. The authors dared to criticise the practice of applying the law during the Stalinist period.

At the time, the application of the spatial planning law in the previous period was also very negatively evaluated. Also in this area, the most urgent matters were put in order with resolutions and work on a completely new legislation began. The thaw had its clear reflection in the housing law – a vast number of smaller private properties were excluded from public housing management again.

Buildings belonging to housing cooperatives also ceased to be included in that scheme. The cooperative sector of the economy was the one that revived at that time. The liberation from public housing management was not the only positive change. An environment more favourable to investment activity was also created. Initially, it was related to the activism of the people involved in these associations. In a friendlier political climate, it produced visible results. Later, however, the role of housing cooperatives grew mainly because the state decided to use them instrumentally as part of what was referred to as new housing policy.

In the case of allotment gardens, the thaw was limited to minor changes introduced by internal regulations that somewhat increased the self-government of the social movement associated with them.

During the thaw, two trends can be seen in all areas analysed. First, there was liberalisation. The state reduced its control over various areas of life, including the rental of housing and the activities of organisations which retain at least partial independence, such as housing cooperatives and allotment gardens. Second, there was clearly, at least, a partial return to legalism. An effort was been made to organise the various areas of regulation, so that state bodies would act on the basis of the law in force, and legal

acts of a lower order (resolutions, ordinances) would not contradict those standing higher in the hierarchy of sources of law.

8.4. The maturation of state socialism

In the political history of the People's Poland, the late 1950s and the following decade were a period of consolidation of Władysław Gomułka's power after the thaw had ended, and for the areas of regulation analysed in this book, it was a time of enactment of large, comprehensive pieces of legislation in which the ideology of state socialism was clearly visible.

The 1961 Construction Law brought order to the legal chaos resulting from the regulation of many issues by resolutions and orders during the Stalinist period. It also introduced a division into state, cooperative, social, and private investors with different rights and obligations consistent with the socialist concept of property. The new regulations also implemented the ideas of central planning (including forced use of typical designs) and socialised economy (including restrictions on the activities of private architectural offices).

The same year, a new spatial planning law was passed. It sorted out many issues where legal chaos had arisen during the Stalinist era. However, the wording of the law clarifies that work on it was carried out after the end of the thaw. Spatial planning was officially subordinated to economic planning as one of its branches. Backdoors were left to allow state investments in areas not covered by spatial planning. Several new types of planning acts were also introduced, further complicating the structure of the legal instruments used.

In 1959, a completely new housing law was also passed. However, it did not contain groundbreaking solutions and was treated as a part of cleaning up the legal system. This was mainly due to

the fact that state-owned properties played an ever-diminishing role in housing policy.

After the thaw, the increased importance of housing cooperatives was associated with the centralisation of these associations and the acquisition by the state of almost full control over their functioning. As cooperative property was a separate category from private property in state socialism, there was no nationalisation in the civil legal sense of the term. However, the legal changes that were made – including the creation of the Central Association of Housing Cooperatives – can be considered a kind of "organisational-administrative nationalisation" due to a very high degree of control gained by the state. Housing cooperatives ceased to be organisations with any independence, and became an instrument for implementing the policy of the People's Poland. According to the ideology of state socialism, the state should provide citizens with housing for free. Cooperatives, however, could expect co-financing of investments by their members. Thus, by implementing housing policy through cooperatives, the state circumvented its own ideological limitations.

As for the allotment gardens, there were no significant changes during this period.

After a brief liberalisation, the second half of the 1950s and the 1960s saw a return to creating legal solutions that explicitly implemented socialist ideology. However, there was no longer the rush characteristic of the first years after the war. Nor was the content of the existing law ignored, which was the standard during Stalinism. Therefore, this was the period when the most elaborate and complicated legal regulations of People's Poland were created, where the ideological content was coded into the basic legal institutions.

8.5. A period of pragmatic management

The aforementioned solutions proved ineffective rather quickly. Already in the 1970s, many of them were changed again. In the middle of Edward Gierek's decade, a new construction law was passed, the main idea of which was to facilitate and simplify the formalities within the investment and construction process. The ideological content was concentrated in the preamble to the new act. On the other hand, there was much less of it in the body of the regulations than in the previous law, e.g., the division into different categories of investors disappeared.

The system of spatial planning law became fragmented one more time in the 1970s. Again, changes were made by resolutions without statutory legitimisation – simplified municipal development plans were created on that basis. Exemptions from existing planning acts were facilitated. Provisions on the localisation of investments were transferred to the construction law, so they became related more to the implementation of specific projects, rather than to comprehensive planning. Thus, a major loosening of spatial planning norms can be seen, aimed at facilitating economic development, which was the most important at that time.

The same year that the new construction law was created, another act comprehensively regulating the housing law was also passed. It can be considered an example of Gierek-era propaganda of success, since the name of public management of dwellings was changed to "special mode of renting premises". The provisions were drafted in such a way that one might have expected that public management of dwellings –would soon be abolished as it seemed less necessary due to economic development. This was not the case, however, as the housing situation continued to be difficult.

In the Edward Gierek decade, housing cooperatives virtually lost the character of voluntary and self-governing associations

of their members. Participation in such an organisation was basically the only way to obtain an apartment (state construction practically collapsed). Legal changes (introduced through government resolutions, which were then implemented by the organisationally and politically subordinate housing cooperatives through their internal regulations) led to the formation of large cooperative mammoths. The level of their bureaucratisation continued to grow, while the influence of their members on their management declined.

In the matter of allotment gardens, not much changed during this period. In all other areas, changes can be seen in the priorities of the authorities of People's Poland. New legislation in which the ideology of state socialism was so prominent was no longer introduced. Even some of the solutions adopted in the previous decade were withdrawn. There was a clear focus on the day-to-day administration of the state. Ideology increasingly took on the role of an ornament contained in the preamble of the law, rather than in the substance of the provisions themselves.

8.6. The effects of August 1980

The political breakthrough in 1980 also brought many changes in the analysed areas of regulation, even though the reforms were largely halted by the imposition of martial law. There were no major changes in the construction law during this period. It was probably due to the fact that an entirely new law had been passed barely a few years earlier, and it had already been stripped of its ideological baggage, so it could serve the pragmatists making attempts at a reform.

Meanwhile, in the early 1980s, an entirely new spatial planning law was enacted, breaking such a strong connection between this area and economic planning. It was necessary to implement the

economic reforms undertaken in an attempt to save the political system from collapsing. Greater attention was also paid to environmental protection.

In the area of housing law, in the last decade of the socialist regime minor changes were introduced, consisting mainly in loosening the rules of public management of dwellings – in successive amendments more categories of property were excluded from it.

August '80 led to a revival of many social organisations, including those belonging to housing cooperative movement. Grassroots initiatives initiated changes, however, they were halted after the imposition of martial law. The 1982 Cooperative Law may be a symbol of this. Work on it began back in 1981 but was already completed under entirely different political conditions. This law promised much, especially in terms of the independence and self-governance of the cooperative movement but, in reality, it introduced only minor changes.

However, in a narrow time window of the "Solidarity festival" important changes were made in time by social activists involved in the operation of allotment gardens. They were able to organise themselves into the Polish Allotment Association and push through a law that guaranteed the organisation's independence. The law was not changed during martial law or after it had been lifted. Thus, it can be seen that after 13 December 1981, changes were halted but many were not reversed.

Changes in all the analysed areas of regulation show that in the last decade of the People's Poland, the authorities made various attempts at reforms and tried to respond to the ever-worsening economic situation and social unrest. As history has shown, it did not prevent the collapse of this political system.

As can be seen, the trajectory of evolution in all analysed areas: construction law, spatial planning law, housing law, as well as regulations on housing cooperatives, and allotment gardens were

all very similar. The scope of the instrumentalisation of the law changed during different periods of People's Poland's existence, and the turning points correspond to the most important events in the political history of that country (such as the consolidation of the power of the PZPR, the thaw after the death of Stalin, October 1956, the consolidation of the power of Władysław Gomułka and August '80).

Accordingly, it should be considered that the content of the legal regulations on construction, housing, and spatial planning actually depended on the political ideology as it was shaped in the particular period of the history of the People's Poland, and these norms actually served to form the aforementioned areas of social and economic life in accordance with the vision set forth in this ideology.

The case study presented in this book reveals the role of law as a link between political ideology and construction, housing and spatial planning in People's Poland. The results of the research may be useful in better understanding the material environment in which Polish society still lives today since many of its enduring elements were created between 1944 and 1989. Most of the analysed legal acts are no longer in force today. However, some (such as those concerning housing cooperatives) are still binding, while others are a source of political tension and the basis for ongoing legal proceedings (such as the Bierut Decree) despite the time that has passed. Understanding the genesis of the law and the circumstances under which it was created can prove helpful in applying it, as well as in planning its revisions.

The purpose of the research, the results of which are presented above, was to find the answers concerning the relevance of legal regulations to the implementation of a particular ideology of People's Poland, precisely in the area of construction, housing, and spatial planning. Nevertheless, as mentioned, this is a case study. Thus, the research scheme developed for this purpose can

be used when studying another political ideology, present in a different country, in another historical epoch, and its impact on the regulation of some other area of socio-economic life. In particular, the author of the present work sees as expedient and necessary research that also concerns construction, housing, and spatial planning in Poland but during the period of political transformation and the influence of neoliberal ideology on the law at that time.

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Ustawa z dnia 14 lipca 1936 r. o zmianie rozporządzenia Prezydenta Rzeczypospolitej z dnia 18 lutego 1928 r. o prawie budowlanem i zabudowaniu osiedli (Dz.U. 1936 nr 56, poz. 405)
Ustawa Krajowej Rady Narodowej z dnia 15 sierpnia 1944 r. o tymczasowym trybie wydawania dekretów z mocą ustawy (Dz.U. 1944 nr 1, poz. 3)
Ustawa Krajowej Rady Narodowej z dnia 3 stycznia 1945 r. o trybie wydawania dekretów z mocą ustawy (Dz.U. 1945 nr 1, poz. 1)
Ustawa z dnia 3 stycznia 1946 r. o przejęciu na własność Państwa podstawowych gałęzi gospodarki narodowej (Dz.U. 1946 nr 3, poz. 17)
Ustawa z dnia 2 czerwca 1947 r. o ulgach inwestycyjnych (Dz.U. 1947 nr 43, poz. 221)
Ustawa z dnia 2 lipca 1947 r. o Planie Odbudowy Gospodarczej (Dz.U. 1947 nr 53, poz. 285)
Ustawa z dnia 3 lipca 1947 r. o odbudowie m. st. Warszawy (Dz.U. 1947 nr 52, poz. 268)
Ustawa z dnia 3 lipca 1947 r. o popieraniu budownictwa (Dz.U. 1947 nr 52, poz. 270)

Ustawa z dnia 21 maja 1948 r. o Centralnym Związku Spółdzielczym i centralach spółdzielni (Dz.U. 1948 nr 30, poz. 199)
Ustawa z dnia 21 maja 1948 r. o centralach spółdzielczo-państwowych (Dz.U. 1948 nr 30, poz. 200).
Ustawa z dnia 18 listopada 1948 r. o pomocy sąsiedzkiej przy odbudowie wsi (Dz.U. 1948 nr 58, poz. 461)
Ustawa z dnia 11 stycznia 1949 r. o scaleniu zarządu Ziem Odzyskanych z ogólną administracją państwową (Dz.U. 1949 nr 4, poz. 22)
Ustawa z dnia 10 lutego 1949 r. o zmianie organizacji naczelnych władz gospodarki narodowej (Dz.U. 1949 nr 7, poz. 43)
Ustawa z dnia 9 marca 1949 r. o pracowniczych ogrodach działkowych (Dz.U. 1949 nr 18, poz. 117)
Ustawa z dnia 27 kwietnia 1949 r. o utworzeniu urzędu Ministra Budownictwa (Dz.U. 1949 nr 30, poz. 216)
Ustawa z dnia 1 lipca 1949 r. o zmianie dekretu z dnia 27 marca 1947 r. o ulgowym nadawaniu uprawnień budowlanych w wyjątkowych przypadkach (Dz.U. 1949 nr 42, poz. 307)
Ustawa z dnia 20 grudnia 1949 r. o zmianie ustawy z dnia 29 października 1920 r. o spółdzielniach oraz ustawy z dnia 21 maja 1948 r. o Centralnym Związku Spółdzielczym i centralach spółdzielni (Dz.U. 1949 nr 65, poz. 524)
Ustawa z dnia 20 lipca 1950 r. zmieniająca dekret o publicznej gospodarce lokalami i kontroli najmu (Dz.U. 1950 nr 36, poz. 337)
Ustawa z dnia 30 grudnia 1950 r. o organizacji władz i instytucji w dziedzinie budownictwa (Dz.U. 1950 nr 58, poz. 523)
Ustawa z dnia 26 lutego 1951 r. o budynkach i lokalach nowowybudowanych lub odbudowanych (Dz.U. 1951 nr 10, poz. 75)
Ustawa z dnia 28 maja 1957 r. o wyłączeniu spod publicznej gospodarki lokalami domów jednorodzinnych oraz lokali w domach spółdzielni mieszkaniowych (Dz.U. 1957 nr 31, poz. 131)
Ustawa z dnia 28 maja 1957 r. o sprzedaży przez Państwo domów mieszkalnych i działek budowlanych (Dz.U. 1957 nr 31, poz. 132)
Ustawa z dnia 25 stycznia 1958 r. o radach narodowych (Dz.U. 1958 nr 5, poz. 16)
Ustawa z dnia 12 marca 1958 r. o zasadach i trybie wywłaszczania nieruchomości (Dz.U. 1958 nr 17, poz. 70)

Ustawa z dnia 30 stycznia 1959 r. – Prawo lokalowe (Dz.U. 1959 nr 10, poz. 59)
Ustawa z dnia 22 kwietnia 1959 r. o remontach i odbudowie oraz o wykańczaniu budowy i nadbudowie budynków mieszkalnych (Dz.U. 1959 nr 27, poz. 166)
Ustawa z dnia 22 kwietnia 1959 r. o remontach i odbudowie oraz o wykańczaniu budowy i nadbudowie budynków (tekst jednolity z 3 września 1968) (Dz.U. 1968 nr 36, poz. 249)
Ustawa z dnia 31 stycznia 1961 r. o zmianie ustawy z dnia 12 marca 1958 r. o zasadach i trybie wywłaszczania nieruchomości (Dz.U. 1961 nr 5, poz. 32)
Ustawa z dnia 31 stycznia 1961 r. Prawo budowlane (Dz.U. 1961 nr 7, poz. 46)
Ustawa z dnia 31 stycznia 1961 r. o planowaniu przestrzennym (Dz.U. 1961 nr 7, poz. 47)
Ustawa z dnia 17 lutego 1961 r. o spółdzielniach i ich związkach (Dz.U. 1961 nr 12, poz. 61)
Ustawa z dnia 14 lipca 1961 r. o gospodarce terenami w miastach i osiedlach (Dz.U. 1961 nr 32, poz. 159)
Ustawa z dnia 15 lipca 1961 r. o obowiązku udokumentowania pochodzenia materiałów użytych na cele budownictwa nie uspołecznionego (Dz.U. 1961 nr 32, poz. 162)
Ustawa z dnia 29 czerwca 1962 r. o zmianie Prawa lokalowego (Dz.U. 1962 nr 39, poz. 170)
Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny (Dz.U. 1964 nr 16, poz. 93)
Ustawa z dnia 15 lipca 1968 r. o zmianie ustawy o remontach i odbudowie oraz o wykańczaniu budowy i nadbudowie budynków mieszkalnych (Dz.U. 1968 nr 25, poz. 166)
Ustawa z dnia 10 kwietnia 1974 r. Prawo lokalowe (Dz.U. 1974 nr 14, poz. 84)
Ustawa z dnia 24 października 1974 r. Prawo budowlane (Dz.U. 1974 nr 38, poz. 229)
Ustawa z dnia 28 maja 1975 r. o dwustopniowym podziale administracyjnym Państwa oraz o zmianie ustawy o radach narodowych (Dz.U. 1975 nr 16, poz. 91)

Ustawa z dnia 6 maja 1981 r. o zmianie ustawy – Prawo budowlane (Dz.U. 1981 nr 12, poz. 57)
Ustawa z dnia 6 maja 1981 r. o pracowniczych ogrodach działkowych (Dz.U. 1981 nr 12, poz. 58)
Ustawa z dnia 3 grudnia 1982 r. o zmianie ustawy – Prawo lokalowe (Dz.U. 1982 nr 37, poz. 244)
Ustawa z dnia 26 lutego 1982 r. o planowaniu społeczno-gospodarczym (Dz.U. 1982 nr 7, poz. 51)
Ustawa z dnia 16 września 1982 r. Prawo spółdzielcze (Dz.U. 1982 nr 30, poz. 210)
Ustawa z dnia 12 lipca 1984 r. o planowaniu przestrzennym (Dz.U. 1984 nr 35, poz. 185)
Ustawa z dnia 29 kwietnia 1985 r. o gospodarce gruntami i wywłaszczaniu nieruchomości (Dz.U. 1985 nr 22, poz. 99)
Ustawa z dnia 16 lipca 1987 r. o zmianie ustawy – Prawo lokalowe (Dz.U. 1987 nr 21, poz. 124)
Ustawa z dnia 7 kwietnia 1989 r. Prawo o stowarzyszeniach (Dz.U. 2019, poz. 713) [with subsequent amendments]
Ustawa z dnia 7 lipca 1994 r. – Prawo budowlane (Dz.U. 2023 poz. 682) [with subsequent amendments]
Ustawa z dnia 8 lipca 2005 r. o rodzinnych ogrodach działkowych (Dz.U. 2005 nr 169, poz. 1419)

Decrees

Dekret w przedmiocie przepisów tymczasowych o moratorjum mieszkaniowem dla pozostających bez pracy (Dz.U. 1918 nr 20, poz. 62)
Dekret o ochronie lokatorów i zapobieganiu brakowi mieszkań (Dz. Pr.P.P. 1919 nr 8, poz. 116)
Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 6 września 1944 r. o przeprowadzeniu reformy rolnej (Dz.U. 1944 nr 4, poz. 17)
Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 7 września 1944 r. o komisjach mieszkaniowych (Dz.U. 1944 nr 4, poz. 18)
Dekret z dnia 12 marca 1945 r. o powszechnym obowiązku świadczeń osobistych na rzecz odbudowy m. st. Warszawy (Dz.U. 1945 nr 8, poz. 39)

Dekret z dnia 13 kwietnia 1945 r. o nadzwyczajnym podatku od wzbogacenia wojennego (Dz.U. 1945 nr 13, poz. 72)
Dekret z dnia 24 maja 1945 r. o utworzeniu Ministerstwa Odbudowy (Dz.U. 1945 nr 21, poz. 123).
Dekret z dnia 24 maja 1945 r. o odbudowie m. st. Warszawy (Dz.U. 1945 nr 21, poz. 124)
Dekret z dnia 26 października 1945 r. o własności i użytkowaniu gruntów na obszarze m. st. Warszawy (Dz.U. 1945 nr 50, poz. 279)
Dekret z dnia 26 października 1945 r. o prawie zabudowy (Dz.U. 1945 nr 50, poz. 280)
Dekret z dnia 26 października 1945 r. o rozbiórce i naprawie budynków zniszczonych i uszkodzonych wskutek wojny (Dz.U. 1945 nr 50, poz. 281)
Dekret z dnia 21 grudnia 1945 r. o publicznej gospodarce lokalami i kontroli najmu (Dz.U. 1946 nr 4, poz. 27)
Dekret z dnia 8 stycznia 1946 r. o rejestracji i o obowiązku pracy (Dz.U. 1946 nr 3, poz. 24)
Dekret z dnia 22 stycznia 1946 r. o odpowiedzialności za klęskę wrześniową i faszyzację życia państwowego (Dz.U. 1946 nr 5, poz. 46).
Dekret z dnia 22 lutego 1946 r. o rejestracji i przymusowym zatrudnieniu we władzach wymiaru sprawiedliwości osób, mających kwalifikacje do objęcia stanowiska sędziowskiego (Dz.U. 1946 nr 9, poz. 65)
Dekret z dnia 2 kwietnia 1946 r. o planowym zagospodarowaniu przestrzennym kraju (Dz.U. 1946 nr 16, poz. 109)
Dekret z dnia 25 czerwca 1946 r. o państwowym planie inwestycyjnym (Dz.U. 1946 nr 32, poz. 200)
Dekret z dnia 25 czerwca 1946 r. o ogrodach działkowych (Dz.U. 1946 nr 34, poz. 208)
Dekret z dnia 8 sierpnia 1946 r. o Nadzwyczajnych Komisjach Mieszkaniowych (Dz.U. 1946 nr 37, poz. 229)
Dekret z dnia 5 września 1946 r. o rejestracji i przymusowym zatrudnieniu fachowych sił technicznych z dziedziny budownictwa na rzecz odbudowy kraju (Dz.U. 1946 nr 47, poz. 266)
Dekret z dnia 11 października 1946 r. – Prawo rzeczowe (Dz.U. 1946 nr 57, poz. 319)

Dekret z dnia 11 października 1946 r. – Przepisy wprowadzające prawo rzeczowe i prawo o księgach wieczystych (Dz.U. 1946 nr 57, poz. 321)
Dekret z dnia 27 marca 1947 r. o ulgowym nadawaniu uprawnień budowlanych w wyjątkowych przypadkach (Dz.U. 1947 nr 31, poz. 132)
Dekret z dnia 12 września 1947 r. o pomocy sąsiedzkiej w rolnictwie (Dz.U. 1947 nr 59, poz. 320)
Dekret z dnia 11 kwietnia 1947 r. w sprawie zmiany dekretu z dnia 26 października 1945 r. o rozbiórce i naprawie budynków zniszczonych i uszkodzonych wskutek wojny (Dz.U. 1947 nr 32, poz. 145)
Dekret z dnia 1 października 1947 r. o planowej gospodarce narodowej (Dz.U. 1947 nr 64, poz. 373)
Dekret z dnia 26 kwietnia 1948 r. o Zakładzie Osiedli Robotniczych (Dz.U. 1948 nr 24, poz. 166).
Dekret z dnia 28 lipca 1948 r. o najmie lokali (Dz.U. 1948 nr 36, poz. 259)
Dekret z dnia 25 października 1948 r. w sprawie zmiany dekretu z dnia 26 października 1945 r. o rozbiórce i naprawie budynków zniszczonych i uszkodzonych wskutek wojny (Dz.U. 1948 nr 50, poz. 389)
Dekret z dnia 10 grudnia 1952 r. o wykańczaniu budowy i nadbudowie niektórych budynków mieszkalnych (Dz.U. 1952 nr 49, poz. 325)
Dekret z dnia 10 grudnia 1952 r. o odstępowaniu przez Państwo nieruchomego mienia nierolniczego na cele mieszkaniowe oraz na cele budownictwa indywidualnych domów jednorodzinnych (Dz.U. 1952 nr 49, poz. 326)
Dekret z dnia 25 czerwca 1954 r. o lokalach w domach spółdzielni mieszkaniowych i w domach jednorodzinnych (Dz.U. 1954 nr 31, poz. 120)

Ordinances with the force of law

Rozporządzenie Prezydenta Rzeczypospolitej z dnia 22 kwietnia 1927 r. o rozbudowie miast (Dz.U. 1927 nr 42, poz. 372)
Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 lutego 1928 r. o prawie budowlanem i zabudowaniu osiedli (Dz.U. 1928 nr 23, poz. 202)

Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 października 1932 r. o Najwyższym Trybunale Administracyjnym (Dz.U. 1932 nr 94, poz. 806)

Ordinances

Rozporządzenie Ministra Sprawiedliwości w przedmiocie wstrzymania eksmisji (Dz.U. 1918 nr 8, poz. 18)

Rozporządzenie Rady Ministrów w sprawie rozciągnięcia przepisów dekretu w przedmiocie przepisów tymczasowych o moratorjum mieszkaniowem dla pozostających bez pracy z dnia 19 grudnia 1918 r. na miasta: Warszawę, Łódź, Pabjanice, Zgierz, Ozorków, Tomaszów, Żyrardów, Sosnowiec, Włocławek, Zawiercie, Dąbrowę i Częstochowę (Dz.Pr.P.P. 1919 nr 26, poz. 243)

Rozporządzenie Ministra Skarbu w porozumieniu z Ministrami Robót Publicznych, Spraw Wewnętrznych i Reform Rolnych z dnia 20 maja 1925 r. o wykonaniu artykułów 11, 12, 13, 14 i 25 ustawy o rozbudowie miast (Dz.U. 1925 nr 56, poz. 401)

Rozporządzenie Ministra Skarbu w porozumieniu z Ministrami Robót Publicznych, Spraw Wewnętrznych i Reform Rolnych z dnia 3 listopada 1927 r. w sprawie wykonania rozporządzenia Prezydenta Rzeczypospolitej z dnia 22 kwietnia 1927 r. o rozbudowie miast (Dz.U. 1927 nr 106, poz. 913)

Rozporządzenie Ministra Skarbu w porozumieniu z Ministrami: Spraw Wewnętrznych oraz Rolnictwa i Reform Rolnych z dnia 31 marca 1933 r. o zmianie niektórych postanowień rozporządzenia Ministra Skarbu w porozumieniu z Ministrami: Robót Publicznych, Spraw Wewnętrznych i Reform Rolnych z dnia 3 listopada 1927 r. w sprawie wykonania rozporządzenia Prezydenta Rzeczypospolitej z dnia 22 kwietnia 1927 r. o rozbudowie miast, zmienionego rozporządzeniem z dnia 6 kwietnia 1928 r., oraz rozporządzeniem z dnia 15 października 1931 r. (Dz.U. 1933 nr 26, poz. 220)

Rozporządzenie Rady Ministrów z dnia 29 kwietnia 1938 r. o przygotowaniu w czasie pokoju obrony przeciwlotniczej i przeciwgazowej w dziedzinach regulacji i zabudowania osiedli oraz budownictwa publicznego i prywatnego (Dz.U. 1938 nr 32, poz. 278)

Rozporządzenie Rady Ministrów z dnia 24 marca 1939 r. o przygotowaniu w czasie pokoju obrony przeciwlotniczej i przeciwgazowej w dziedzinie budownictwa przemysłowego (Dz.U. 1939 nr 31, poz. 207)
Rozporządzenie Kierowników Resortów Administracji Publicznej i Sprawiedliwości z dnia 3 października 1944 r. w sprawie wykonania dekretu Polskiego Komitetu Wyzwolenia Narodowego z dnia 7 września 1944 r. o komisjach mieszkaniowych (Dz.U. 1944 nr 7, poz. 36)
Rozporządzenie Ministra Administracji Publicznej z dnia 19 maja 1945 r. w sprawie wykonania dekretu z dnia 12 marca 1945 r. o powszechnym obowiązku świadczeń osobistych na rzecz odbudowy m. st. Warszawy (Dz.U. 1945 nr 19, poz. 109)
Rozporządzenie Ministrów Odbudowy i Administracji Publicznej z dnia 25 lutego 1946 r. wydane w porozumieniu z Ministrem Sprawiedliwości w sprawie naprawy budynków uszkodzonych wskutek wojny (Dz.U. 1946 nr 10, poz. 72)
Rozporządzenie Ministrów: Odbudowy, Administracji Publicznej i Ziem Odzyskanych z dnia 29 marca 1946 r. o zrzeszeniach najemców dla dokonania naprawy budynków (Dz.U. 1946 nr 12, poz. 86)
Rozporządzenie Rady Ministrów z dnia 20 marca 1947 r. o współdziałaniu władz w akcji planowego zagospodarowania przestrzennego kraju (Dz.U. 1947 nr 34, poz. 152)
Rozporządzenie Ministra Odbudowy z dnia 27 stycznia 1948 r. wydane w porozumieniu z Ministrem Administracji Publicznej w sprawie obejmowania w posiadanie gruntów przez gminę m. st. Warszawy (Dz.U. 1948 nr 6, poz. 43)
Rozporządzenie Rady Ministrów z dnia 29 września 1948 r. w sprawie zwolnień i ulg w opłacaniu czynszu za najem lokali mieszkalnych oraz zwolnień od wpłat na Fundusz Gospodarki Mieszkaniowej (Dz.U. 1948 nr 49, poz. 374)
Rozporządzenie Ministra Odbudowy z dnia 13 kwietnia 1949 r. w sprawie wykonania ustawy o pomocy sąsiedzkiej przy odbudowie wsi (Dz.U. 1949 nr 23, poz. 157)
Rozporządzenie Rady Ministrów z dnia 21 czerwca 1949 r. o zmianie rozporządzenia Rady Ministrów z dnia 29 września 1948 r.

w sprawie zwolnień i ulg w opłacaniu czynszu za najem lokali mieszkalnych oraz zwolnień od wpłat na Fundusz Gospodarki Mieszkaniowej (Dz.U. 1949 nr 42, poz. 313)

Rozporządzenie Ministrów: Administracji Publicznej, Skarbu i Budownictwa z dnia 10 sierpnia 1949 r. w sprawie utworzenia przymusowych lokalnych zrzeszeń prywatnych właścicieli nieruchomości (Dz.U. 1949 nr 51, poz. 386)

Rozporządzenie Rady Ministrów z dnia 3 marca 1950 r. w sprawie przedłużenia mocy obowiązującej ustawy o pomocy sąsiedzkiej przy odbudowie wsi (Dz.U. 1950 nr 9, poz. 90)

Rozporządzenie Rady Ministrów z dnia 27 sierpnia 1959 r. w sprawie zasad ustalania okresu użytkowania wykończonej lub nadbudowanej części budynku (Dz.U. 1959 nr 52, poz. 314)

Rozporządzenie Ministra Finansów z dnia 21 lipca 1961 r. w sprawie dowodów nabycia materiałów budowlanych oraz sporządzenia spisu remanentu tych materiałów (Dz.U. 1961 nr 35, poz. 179)

Rozporządzenie Przewodniczącego Komitetu Budownictwa, Urbanistyki i Architektury z dnia 21 lipca 1961 r. w sprawie wykazu materiałów budowlanych, na których posiadanie osoby fizyczne i prawne nie będące jednostkami gospodarki uspołecznionej obowiązane są posiadać dowody legalnego ich nabycia lub uzyskania (Dz.U. 1961 nr 35, poz. 181)

Rozporządzenie Przewodniczącego Komitetu Budownictwa, Urbanistyki i Architektury z dnia 27 lipca 1961 r. w sprawie państwowego nadzoru budowlanego nad budową, rozbiórką i utrzymaniem obiektów budowlanych budownictwa powszechnego (Dz.U. 1961 nr 38, poz. 197)

Rozporządzenie Rady Ministrów z dnia 20 lipca 1965 r. w sprawie czynszów najmu za lokale mieszkalne (Dz.U. 1965 nr 35, poz. 224)

Rozporządzenie Ministra Gospodarki Terenowej i Ochrony Środowiska z dnia 20 stycznia 1973 r. w sprawie ustalania miejsca realizacji inwestycji budowlanych oraz państwowego nadzoru budowlanego nad budownictwem powszechnym (Dz.U. 1973 nr 4, poz. 29)

Rozporządzenie Ministra Gospodarki Terenowej i Ochrony Środowiska z dnia 20 lutego 1975 r. w sprawie samodzielnych funkcji technicznych w budownictwie (Dz.U. 1975 nr 8, poz. 46)

Rozporządzenie Rady Ministrów z dnia 6 marca 1985 r. w sprawie organizacji, zasad i zakresu działania Państwowej Rady Gospodarki Przestrzennej (Dz.U. 1985 nr 11, poz. 42)

Rozporządzenie Rady Ministrów z dnia 27 czerwca 1985 r. w sprawie podziału inwestycji oraz zakresu, zasad i trybu ustalania ich lokalizacji (Dz.U. 1985 nr 31, poz. 140)

Internal regulations of state institutions

Instrukcja Państwowej Komisji Planowania Gospodarczego nr 20 o zasadach sporządzania i zatwierdzania dokumentacji technicznej dla inwestycji (1950)

Uchwała Naczelnej Rady Spółdzielczej z 12 października 1956 r., *Monitor Spółdzielczy* 5 (5) (1965).

Zarządzenie Nadzwyczajnej Komisji Mieszkaniowej przy Prezesie Rady Ministrów z dnia 6 listopada 1946 r. w sprawie wewnętrznej organizacji i sposobu funkcjonowania Nadzwyczajnej Komisji Mieszkaniowej przy Prezesie Rady Ministrów i miejscowych Nadzwyczajnych Komisji Mieszkaniowych (M.P. 1946 nr 123, poz. 226)

Zarządzenie Ministra Budownictwa z dnia 7 lutego 1950 r. w sprawie usprawnienia zatwierdzania dokumentacji technicznej, opracowywanej przez Państwowe Biura Projektów, podległe Ministrowi Budownictwa (Dz. Urz. Ministerstwa Budownictwa nr 3, poz. 23)

Zarządzenie Ministra Budownictwa z dnia 16.V.1950 r. w sprawie zwolnienia Państwowych Biur Projektów podległych Ministrowi Budownictwa od obowiązku uzyskiwania akceptacji dla niektórych programów techniczno-budowlanych Budownictwa (Dz. Urz. Ministerstwa Budownictwa nr 7, poz. 70)

Zarządzenie Ministra Gospodarki Komunalnej z dnia 8 marca 1951 r. w sprawie zasad ustalania norm zaludnienia mieszkań (M.P. 1951 nr 24, poz. 314)

Zarządzenie Ministra Budownictwa i Przemysłu Materiałów Budowlanych z dnia 6 lipca 1957 r. w sprawie określenia czasu trwania poszczególnych rodzajów budynków dla ustalenia okresu amortyzacji nakładów poczynionych przez organy administracji państwowej lub jednostki gospodarki uspołecznionej na wykończenie lub nadbudowę tych budynków (M.P. 1957 nr 57, poz. 359)

Zarządzenie Przewodniczącego Komisji Planowania przy Radzie Ministrów i Prezesa Komitetu do Spraw Urbanistyki i Architektury z dnia 29 lipca 1957 r. Przepisy o lokalizacji inwestycji (M.P. 1957 nr 67, poz. 408)

Resolutions

Uchwała nr 817 Prezydium Rządu z dnia 1 grudnia 1951 r. w sprawie zatwierdzania projektów urbanistycznych i architektonicznych (M.P. 1951 nr 102, poz. 1481)

Uchwała nr 269 Prezydium Rządu z dnia 8 maja 1954 r. w sprawie spółdzielni mieszkaniowych i zadań spółdzielczości w zakresie budownictwa mieszkaniowego (M.P. 1954 nr 59, poz. 792)

Uchwała nr 319 Rady Ministrów z dnia 18 maja 1954 r. w sprawie organizacji terenowej służby architektoniczno-budowlanej (M.P. 1954 nr 59, poz. 790)

Uchwała nr 27 Rady Ministrów z dnia 15 stycznia 1955 r. w sprawie zasad i trybu przyznawania odszkodowania za przejęte budynki wykończone lub nadbudowane oraz zasad ustalania okresu amortyzacji kosztów wykończenia lub nadbudowy budynku (M.P. 1955 nr 7, poz. 70)

Uchwała nr 149 Prezydium Rządu z dnia 19 lutego 1955 r. w sprawie przejęcia przez Ministerstwo Gospodarki Komunalnej spraw inwestycyjnych budownictwa mieszkaniowego (M.P. 1955 nr 27, poz. 261)

Uchwała nr 81 Rady Ministrów z dnia 15 marca 1957 r. w sprawie pomocy Państwa dla budownictwa mieszkaniowego ze środków własnych ludności (M.P. 1957 nr 22, poz. 157)

Uchwała nr 270 Rady Ministrów z dnia 29 lipca 1957 r. w sprawie lokalizacji inwestycji (M.P. 1957 nr 67, poz. 407)

Uchwała nr 59 Rady Ministrów z dnia 15 marca 1958 r. w sprawie dodatkowej pomocy Państwa dla spółdzielczego budownictwa mieszkaniowego (M.P. 1958 nr 22, poz. 133)

Uchwała nr 60 Rady Ministrów z dnia 15 marca 1958 r. w sprawie zakładowych funduszów mieszkaniowych (M.P. 1958 nr 26, poz. 153)

Uchwała nr 64 Rady Ministrów z dnia 15 marca 1958 r. w sprawie budownictwa zakładowych domów mieszkalnych i zarządzania nimi (M.P. 1958 nr 26, poz. 155)

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Uchwała nr 239 Rady Ministrów z dnia 4 lipca 1961 r. w sprawie zatwierdzenia tez dotyczących usprawnienia gospodarki mieszkaniowej [not published]
Uchwała nr 240 Rady Ministrów z dnia 4 lipca 1961 r. w sprawie zasad przydziału mieszkań w m. st. Warszawie w latach 1961–1965 (M.P. 1961 nr 52, poz. 227)
Uchwała nr 354 Rady Ministrów z dnia 19 listopada 1962 r. w sprawie lokalizacji ogólnej inwestycji (M.P. 1962 nr 82, poz. 385)
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Uchwała nr 124 Rady Ministrów z dnia 22 maja 1965 r. w sprawie zakładowych funduszów mieszkaniowych (M.P. 1965 nr 27, poz. 135)
Uchwała nr 125 Rady Ministrów z dnia 22 maja 1965 r. w sprawie dalszego rozwoju oszczędzania na mieszkaniowych książeczkach oszczędnościowych Powszechnej Kasy Oszczędności (M.P. 1965 nr 27, poz. 136)
Uchwała nr 126 Rady Ministrów z dnia 22 maja 1965 r. w sprawie zapewnienia w projekcie planu 5-letniego na lata 1966–1970 kredytów bankowych na uzupełnienie wkładów mieszkaniowych w spółdzielniach budownictwa mieszkaniowego (M.P. 1965 nr 27, poz. 137)

Uchwała nr 127 Rady Ministrów z dnia 22 maja 1965 r. w sprawie zasad realizacji budownictwa mieszkaniowego przez państwowe zakłady pracy i prezydia rad narodowych (M.P. 1965 nr 27, poz. 138)
Uchwała nr 128 Rady Ministrów z dnia 22 maja 1965 r. w sprawie zasad planowania, finansowania i realizacji urządzeń towarzyszących w uspołecznionym budownictwie mieszkaniowym typu miejskiego (M.P. 1965 nr 27, poz. 139)
Uchwała nr 129 Rady Ministrów z dnia 22 maja 1965 r. w sprawie pomocy Państwa przy budowie przez osoby fizyczne domów jednorodzinnych i lokali w małych domach mieszkalnych (M.P. 1965 nr 27, poz. 140)
Uchwała nr 109 Rady Ministrów z dnia 29 maja 1971 r. w sprawie lokalizacji inwestycji (M.P. 1971 nr 31, poz. 198).
Uchwała nr 281 Rady Ministrów z dnia 10 grudnia 1971 r. w sprawie zasad realizacji i finansowania uspołecznionego budownictwa mieszkaniowego (M.P. 1971 nr 60, poz. 398).
Uchwała nr 111 Rady Ministrów z dnia 28 kwietnia 1972 r. w sprawie rozwoju pracowniczych ogrodów działkowych do roku 1975 (M.P. 1972 nr 27, poz. 150)
Uchwała nr 85 Rady Ministrów z dnia 6 kwietnia 1974 r. w sprawie opracowania uproszczonych planów zagospodarowania przestrzennego gmin (M.P. 1974 nr 15, poz. 95)
Uchwała nr 148 Rady Ministrów z dnia 9 lipca 1976 r. w sprawie zasad i trybu sporządzania, uzgadniania i zatwierdzania miejscowych planów zagospodarowania przestrzennego (M.P. 1976 nr 31, poz. 135)
Uchwała nr 83 Rady Ministrów z dnia 3 czerwca 1977 r. w sprawie rozwoju pracowniczych ogrodów działkowych do 1980 r. (M.P. 1977 nr 15, poz. 82)
Uchwała nr 50 Rady Ministrów z dnia 6 marca 1982 r. w sprawie rozwoju ogrodnictwa działkowego do roku 1985 r. (M.P. 1982 nr 9, poz. 56)

Case law

The Supreme Court's case law is available in a database on its website: http://www.sn.pl/wyszukiwanie/SitePages/orzeczenia.aspx
Wyrok Sądu Najwyższego z dnia 29 października1999 r., I CKN 108/99.
Uchwała Sądu Najwyższego z dnia 6 stycznia 2005 r., III CZP 75/04.

Piotr Eckhardt focuses on a certain aspect of the history of Polish law in the period 1944–1989, in particular, administrative law but also touches on the issues of political and legal doctrines (in terms of views on the essence, organization, and function of the state), ideology, and the history of architecture, which traditionally include issues regarding the reconstruction of cities, urbanization, and broadly understood construction and housing. The structure and composition of the work are well thought out. Throughout the work, the author refers to doctrine and practice (including interwar doctrine and practice), compares, draws conclusions, and points to inconsistencies between practice and legal status. He also tries to connect the title issues with the socio-historical changes taking place in Poland over the years 1944–1989.

Professor TOMASZ DOLATA

The monograph is devoted to the influence of official ideology on law-in-the-books and law in action relating to housing, spatial planning, architecture, and construction under "People's Poland", i.e., in the years 1944–1989. The author – specialising in legal history as well as legal and political thought – analysed respective pre-war legislation that could be formally in force over many years (the case, in particular of the 1928 Construction Law) and cumulative new legislation, in order to abstract an ideological background of their enacting and implementation, frequently distant from the texts. The monograph contributes much to our knowledge of the field it is devoted to, as well as to general knowledge of complex relationships between ideology on the one hand and spatial planning and architecture on the other hand.

Professor HUBERT IZDEBSKI

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