

## TEMPORARY PREMISES IN THE MANAGEMENT OF MUNICIPAL PROPERTY RESOURCES

Dziadkiewicz M.\*

**Abstract:** The article discusses the issue of the obligation on municipalities to provide temporary living quarters (temporary residential premises) to people who have not been granted the right to social housing or substitute accommodation by the court. This obligation, implemented as part of the municipality's own task, has been characterised by a broad outline of its legal background and a practical presentation of the problems of managing municipal property resources. Statutorily prescribed ways of creating housing resources of the municipality contributed to presenting the discussed issues as one of the aspects of the management of municipal property resources.

**Key words:** Temporary premises, residential premises, eviction, management of municipal property resources.

### Management of the housing stock of the municipality

Political transformations, initiated in Poland in 1989 led to the restoration of territorial self-government. The basic unit of local government is the municipality (Polish *gmina*), which should be understood as a self-governing community created by the residents and the respective territory. The legal act that regulates the functioning of municipalities and defines their tasks is the Law of 8 March 1990 on local government (i.e. Dz. U. (*The Journal of Laws of the Republic of Poland*) of 2001 No. 142, item 1591, as amended). This law states that, among other things, municipalities perform public tasks assigned to them on their own behalf and at their own risk. Generally, the municipality undertakes all the tasks and public affairs of local significance which are not reserved by law for other entities [15]. Own tasks of municipalities have been generally specified in Art. 7(1) of the aforementioned Law as meeting the collective needs of the community – it is a parent category which characterizes in a general way all the own tasks of the municipality [8]. These tasks are not only the subject of legal analyses, but are also of interest to economic sciences, including the science of management [6]. Among the statutory own tasks of municipalities is the creation of conditions to meet the housing needs of the local community (Art. 4(1) of the Law of 21 June 2001 on the protection of the rights of tenants, municipal residential resources and on amending the Civil Code - Dz.U. no. 31 of 21.02.2005, item 266, as amended). Assigning this task to municipalities raises on their part the need for extensive activities in the field of property management, including also the obligation to indicate temporary premises in the event of performing the duty imposed on the debtor to vacate the premises on the basis of the executory entitlement, from which does not follow the right of the debtor to social or substitute accommodation. The aforementioned

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\* Dr Michał Dziadkiewicz, Czestochowa University of Technology, Faculty of Management, ✉ corresponding author: mdziadkiewicz@o2.pl.

statutory regulations have led municipalities to become interested in the subject of temporary premises, also in the context of programming the development of the municipality [17]. It should be noted that the cited regulations gave the municipality a special importance, as an entity which was directly entrusted with specific tasks in the field of housing - first in art. 4 of the law on residential tenancies and housing allowances, and then in Art. 4(1) of the Law of 21 June 2001 on the protection of the rights of tenants, municipal residential resources and on amending the Civil Code (Dz.U. no. 31 of 21.02.2005, item 266, as amended) [2].

- Implementation of tasks of the municipality, including the creation of conditions to satisfy the housing needs of the local community, is generally based on the housing stock of the municipality. The housing stock of the municipality, which is created and owned by a local government unit in order to implement its public tasks, imposed upon the municipality by Art. 4 of the Law on the protection of the rights of tenants, are premises owned by the municipality, municipal legal persons or commercial companies established with the share of the municipality, except for social housing associations, as well as premises which remain in autonomous possession of these entities [7].

- The economy of residential resources of municipalities is governed by e.g. the Law of 21 June 2001 on the protection of the rights of tenants, municipal residential resources and on amending the Civil Code (Dz.U. no. 31 of 21.02.2005, item 266, as amended). In accordance with its regulations, creating the conditions to fulfil the housing needs of the local community belongs to own tasks of the municipality. The municipality, under the rules and in cases provided for in the Law, provides social and substitute housings, but also meets the housing needs of households with low income. The municipality performs these tasks by means of using the municipal housing resources or in some other way [13].

- Allowing the municipality a possibility for carrying out the tasks of creating the conditions to satisfy the housing needs of the local community in some other way than with the use of the municipal housing stock, relates to the regulation of Art. 20 (1)(10) of the Law of 21 June 2001 on the protection of the rights of tenants, municipal residential resources and on amending the Civil Code, from which it follows that the municipality may, but does not have to own the housing stock; however, if the municipality creates or owns the housing resources, then it has to do it only in order to create the conditions to fulfil the housing needs of the local community or in order to provide social housings or substitute accommodation under the rules and in cases provided for in the Law, as well as to cater for the residential needs of households with low income [2]. Autonomy of municipalities in managing their property is of considerable significance here [9].

- Linking the problem of temporary premises with the issues of management of municipal property resources has sufficient grounds derived from provisions of the Law of 2 July 1994 on residential tenancies and house allowances (Dz. U. No. 105, item 509, as amended). The provisions of Art. 5 of this Law, defining the notion of a housing stock of the municipality (paragraph 1), also stated that the

housing resources referred to in paragraph 1 are created by the municipality by way of constructing or purchasing residential premises and are kept at a level which enables to serve the needs of families with low earnings, and also, in cases provided for in the Law, it guarantees substitute or social premises (paragraph 2) [10]. Such a link is also a reflection of general trends and principles of management in the public sector [1].

- The repeal of the Law of 2 July 1994 on residential tenancies and house allowances and replacing it with the Law of 21 June 2001 on the protection of the rights of tenants, municipal residential resources and on amending the Civil Code did not cause any changes in the actual state, appropriate to the municipal resources under the rule of the repealed laws, therefore, considerations relating to temporary premises in the context of the management of municipal property resources have both factual and legal grounds. The legitimacy of such a stand is additionally confirmed by the content of Art. 24 (2) of the Law of 21 August 1997 on real property management (i.e. Dz. U. of 2010 No. 102, item 651, as amended), which states that municipal property resources may be used for the development of municipalities and organized investment activity, in particular for the completion of the housing construction and technical infrastructure facilities connected with it, as well as for the implementation of other public purposes.

- The activities of managing the municipal property resources, and implicitly the housing stock of the municipality, can be performed by the municipality in forms provided for by the law for the management of municipal property by local government units. These forms are generally defined in Art. 9(1) of the Law of 8 March 1990 on local government, due to which, in order to perform their duties, municipalities were granted the right to form organizational units and to conclude contracts with other entities, also including non-governmental organizations.

- Conclusions about the forms of managing the municipal housing resources can be derived from the definition of this term contained in Art. 2(1)(10) of the Law of 21 June 2001 on the protection of the rights of tenants, municipal residential resources and on amending the Civil Code, which in the catalogue of entities that manage those resources lists municipalities, municipal legal persons, commercial law companies established with the share of the municipality, whereas the premises included in the stock may either be the property of those entities, or remain in their intrinsic possession. Programs of managing the housing stock of the municipality, designed for at least 5 subsequent years and including the way and principles of the management of premises and buildings which are part of the stock, are enacted by the municipal council [10].

- Entities directly managing the municipal property resources (housing stock) may be those of the communal property equipped with legal personality, in particular: the municipality, municipal association, municipal enterprise, limited company, in which the municipality or another municipal legal person has all the shares or stocks, association of municipalities and a foundation, which was set up by the municipality [18]. According to systematics, which is adopted in the science

of economics, creating conditions to fulfil the housing needs of the local community is connected with providing public services. Based on the definition of O. Lange, services will be referred to as all kinds of activities directly or indirectly related to meeting human needs but which are not directly used for the manufacture of goods [12].

- Due to the manner in which the municipality functions, the fulfilment of its own tasks and thus tasks of creating conditions to meet the housing needs of the local community, from the citizen's perspective, is manifested in the provision of public services [4,11]. As indicated by the practice of self-government, the most frequently used organizational and legal forms of providing services include: a budget unit, a subsidiary enterprise, a financial institution and a commercial law company [4].

### **The concept of temporary premises in Polish legislature**

- The notion of temporary premises is used in the legal terminology in connection with the issue of emptying the occupied premises or property which is carried out pursuant to the judgement of the court that pronounces eviction. In cases where the holder of the premises, in the foreclosure process referred to as the debtor, obliged by the sentence of the court to vacate the premises, does not voluntarily comply with this sentence, the state, acting by a bailiff or an administrative enforcement body, carries it out.

- The foreclosure in terms of emptying the premises is governed by the civil procedure rules which regulate the enforcement of non-monetary benefits. The term 'temporary premises' derives from these very regulations. Particularly important from the perspective of the issue of temporary premises is **the regulation of Art.1046** of the Law of 17 November 1964 – **the Code of Civil Procedure** (Dz. U. No. 43, item 296, as amended) and implementing rules that are issued on its basis. These regulations include, among other things, the rules for the obligation to vacate the premises in a situation where the court, by imposing such an obligation, did not state the right of the debtor to social housing or substitute accommodation.

An introduction of the term of temporary premises to civil procedure, which took place by means of amending Art. 1046 of the Code of Civil Procedure, made by **the Law of 2 July 2004 on amending the law – the Code of Civil Procedure and some other laws** (Dz. U. No. 172, item 1804), was dictated by the willingness to take into account the postulate of humanitarianism and to meet the aspirations towards avoiding the so-called eviction „out into the street”, i.e. generating the phenomenon of homelessness of those whom the court did not grant the right to social or substitute premises. The amendment to the Code of Civil Procedure, taking into account the aforementioned postulate, did not result in an ultimate solution to the problem of eviction of people deprived of the right to social housing. The reason for this was such a considerable and concerning so many elements, degree of undeterminedness of the regulation, that it prevented its proper

interpretation and application, and particularly unambiguous establishment of the rights and obligations of the debtor, creditor and municipality in terms of providing the debtor with temporary premises. This issue was frequently raised in the literature, pointing out among other things that: „The legislator did not specify where to look for the temporary premises and for what period of time the evicted tenants are to occupy them. The term itself refers to temporariness, but does not talk about whether you can e.g. register residents in the temporary premises, for how long and who is responsible for the condition of the premises.” [5]

Municipalities did not know whether, for example, temporary premises could be managed from own housing stock, as the binding Law of 21 June 2001 on the protection of the rights of tenants, municipal residential resources and on amending the Civil Code was not familiar with such a concept, and it functioned only in the Code of Civil Procedure and in its implementing acts, particularly in the Ordinance of the Minister of Justice of the Republic of Poland of 26 January 2005 on the detailed procedure in cases of emptying the premises or of giving out the fixed property as well as specific conditions which should be fulfilled by the temporary premises (Dz.U. 2005 No. 17 item 155).

This Ordinance, next to a number of detailed operating principles of a bailiff in cases related to vacating the premises and the scope of his cooperation with the municipality, also contained a definition of temporary premises (§ 3 of the Ordinance), according to which temporary premises ought to:

- have access to water supplies and to the toilet, even if these appliances were outside the building,
- have natural and electric lighting,
- be able to provide heating,
- possess not humidified building partitions,
- offer an opportunity to install the equipment for cooking food.

#### **Current legal status**

- The judicial decision of the Constitutional Tribunal of the Republic of Poland of 4 March 2008 and the Judgement of the Polish Constitutional Tribunal dated 4 November 2010 (Ref. No. K 19/06), which stated that Art. 1046 § 4 of the Code of Civil Procedure is inconsistent with Art. 2 and with the resulting from it principle of good legislation, with Art. 45(1) and with Art. 64(1) connected with Art. 31(3) of the Constitution of the Republic of Poland, furthermore, insofar as it concerns the enforcement of the obligation to vacate the residential premises that was adjudicated by the court judgement due to family abuse, is also inconsistent with Art. 71(1) of the Constitution, resulted in a change of law covered by the Law of 21 June 2001 on the protection of the rights of tenants, municipal residential resources and on amending the Civil Code and Article 1046 of the Code of Civil Procedure.

- The undertaken legislative work led to the adoption of the Act of 31 August 2011 on amending the Law on the protection of the rights of tenants,

municipal residential resources and on amending the Civil Code as well as the law – The Code of Civil Procedure (Dz.U. no. 224 of 19.10.2011, item 1342). The amendment came into force on 16 November 2011 and resulted in some crucial (from the point of view of the municipality) changes in terms of their duties connected with granting temporary premises to people who were sentenced to eviction from the premises without the right to social housing.

- From now on, municipalities have incurred an unequivocal **obligation to provide temporary premises** (temporary housing units) to people whom the court has not granted the right to social housings or substitute ones [14].

- The establishment of this obligation was a consequence of expanding the scope of regulation of the provisions of Art. 4 of the Law on the protection of the rights of tenants by adding paragraph 2a. of the following content: *„In case of the bailiff performing his duty to vacate the premises, as mentioned in Art. 1046 § 4 of the Law of 17 November 1964 – the Code of Civil Procedure (Dz. U. No. 43, item 296, as amended), the municipality indicates temporary accommodation or night shelter, a refuge or another institution providing a place to stay, unless the quarters complying with the requirements of temporary premises were indicated by the creditor, by the debtor or the third party.”*

- Bearing in mind that even before this amendment, the content of Art. 4 of the Law on the protection of the rights of tenants did specify obligations of municipalities with regard to fulfilling the housing needs of the local community, it is easy to see that the range of these obligations was increased as a result of the aforementioned change, to maintain the obligations contained in the provisions of Art. 4(1–3), which consist in creating the conditions to satisfy the housing needs of the local government community, as well as in providing social and substitute housings and meeting the housing needs of low-income households, by enabling municipalities to use their own housing stock in order to perform these tasks or to complete them in a different way.

- It should be emphasized that in compliance with Art. 17 of the Law on the protection of the rights of tenants, as amended by the Law of 31 August 2011 on amending the Law on the protection of the rights of tenants, municipal residential resources and on amending the Civil Code and the law – the Code of Civil Procedure, municipalities are not obliged to provide welfare lodgings to persons who use family violence, transgress against domestic order grossly or persistently, make the use of other premises in the building bothersome by inappropriate behaviour or when they occupied the premises without a legal title. In other words, the provisions of Art. 17 deprive the tenant of some kind of minimum protection entitled to the debtor, against whom eviction from the residential premises is carried out, in the form of prohibition of eviction "to nowhere" during the winter months [7]. When ordering the eviction of the premises for the above reasons, the court is obliged to point them out in its judgement.



### New obligations of municipalities

- The basic legislative act, influencing the obligations of local authorities within the scope of providing temporary premises, is the Law of 21 June 2001 **on the protection of the rights of tenants, municipal housing resources and on amending the Civil Code** – codified (Dz.U. no. 31 of 21.02.2005, item 266, as amended) – in short – the Law on the protection of the rights of tenants.

- In order to further clarify the obligations of municipalities, as a result of the discussed Amendment, in the Law on the protection of tenants, there is Chapter 4a, entitled „*Temporary premises*” (Art. 25a.- 25e of the Law on the protection of tenants).

- The provisions of this chapter have incurred on municipalities **an obligation to create a stock of temporary premises intended for renting**, and also set out the principles and conditions of the rental of such premises.

- The amendment has determined what legal title would be granted to those who are appointed temporary premises by the municipality. According to Art. 25b of the Law on the protection of the rights of tenants, it will be a classic lease agreement concluded for a fixed period, not less than a month and no longer than 6 months.

- In subsequent provisions of the new chapter there are conditions that the debtor should meet in order to be able to conclude the lease agreement for temporary premises. The provision of Art. 25c of the Law on the protection of the rights of tenants with respect to this issue states that: „*The lease agreement for temporary premises is concluded with a person, against whom enforcement is instituted on the basis of an executory entitlement in which it was adjudicated that the person is obliged to vacate the premises used for meeting one’s housing needs, without the right to social or substitute housing (...).*”

- The newly added section of the Law on the protection of the rights of tenants, in Art. 25d, has catalogued circumstances excluding the right of the debtor to temporary premises, stipulating that: „*The right to temporary premises is not granted to the debtor if:*

- 1. It follows from the executory entitlement that the order to vacate the premises was pronounced due to the use of family violence or due to gross or persistent transgression against domestic order or inappropriate behaviour which makes the use of other premises in the building bothersome, or when the debtor has seized the vacant premises with no legal title;*
- 2. The debtor has been obliged to empty the premises occupied on the basis of an occasional lease agreement, the conclusion of which was notified in accordance with Art. 19b(1);*
- 3. the debtor was required to vacate the temporary premises.”*

### Statutory definition of temporary premises

- A significant change introduced to the Law on the protection of the rights of tenants, by means of the Amendment of 31 August 2011, was to write a definition of temporary premises within the Law on the protection of the rights of tenants.

- According to this definition: „*temporary premises should be understood as living quarters with access to the source of water supply and the toilet (even if these appliances were outside the building), with natural and electric lighting, possibility of heating, not humidified building partitions and with an opportunity to install cooking devices, in addition, these are premises which provide at least 5 m<sup>2</sup> of living space per person and, as far as possible, are situated in the same or nearby locality, where the people who were rehoused have lived so far*” (Art.2(5a.) of the Law on the protection of the rights of tenants).

- This definition is a transfer to the Law on the protection of the rights of tenants of the content of § 3 of the aforementioned ordinance of the Minister of Justice of 26 January 2005 concerning the detailed procedure in cases of the evacuation of premises or of property release and detailed conditions to be met by temporary premises, which elaborated on the regulations of the Code of Civil Procedure. The promotion of this regulation to a statutory rank obliged municipalities to provide temporary premises of uniform minimum standards. However, it should be noted that this definition practically coincides with the definition of social housing, as prescribed in Art. 2(5) of the Law on the protection of the rights of tenants (the difference is only in reference to a single person, who needs to have at least 10 square metres of space in the social housing; in temporary premises, however, this requirement does not apply). Such a situation leads to the fact that the social housings owned by municipalities in their housing stocks may also function as temporary premises, which means that with the limited resources of these premises, the municipality will be able to provide neither of them. It seems appropriate to supplement this definition with a provision saying that temporary premises are not self-contained housing units in residential buildings; then it might be possible to regard as temporary premises e.g. rooms in workers' hostels, which would be rented for a period of time provided for by the law, after which, in the event where the debtor does not provide a roof over his/her head, the action which is referred to in Art. 1046 § 5<sup>1</sup> of the Code of Civil Procedure, would be taken.

### Liability of municipalities in case of not indicating temporary premises

- Analysing the provisions of chapter 4a of the Law on the protection of the rights of tenants, attention must be paid to Art. 25e of the Law, which, in cases of the lease of temporary premises, relates to proper application of the regulations of Art. 4, Art. 10(1–3), art. 11(2) items 1–3, Art. 13, Art. 18, Art. 20(2a&2b), Art. 21, Art. 23(3&4) as well as Art. 25, which applied to social housings and substitute accommodation before the amendment.



- Particularly noteworthy is a reference to Art. 18 of the Law on the protection of the rights of tenants, which in paragraph 5 determines the compensation claim that the owner is entitled to, if the municipality did not provide social housing to the person entitled to it pursuant to the judgement of the court of law.

- By virtue of the cited Art. 25e of the Law on the protection of the rights of tenants, such a claim will be entitled to the owner even when the municipality fails to provide temporary premises. Such a stand is confirmed in both the doctrine and the case law of the Supreme Court of the Republic of Poland. „*On the basis of Art. 417 § 1 of the Civil Code, the municipality assumes liability to the owner of the residential premises for the detriment caused during the term of Art. 1046 § 4 of the Code of Civil Procedure as amended by the act of 2.7.2004 on amending the Law – the Code of Civil Procedure and some other laws (Dz.U. No. 172, item 1804) as a result of failing to indicate, at the call of the bailiff, temporary premises for the debtor who is obliged to leave, vacate and release the premises (resolution of the Supreme Court (7) of 13.12.2011, III CZP 48/11, OSNC 2012, No. 5, item 57).*”[16]

- The amendment to the Law on the protection of the rights of tenants has also regulated matters of fulfilling the obligation to vacate temporary premises. Added to Art. 4 of this Law, paragraph 2a provides that: „*When the bailiff performs his/her duty to vacate the premises, as referred to in Art. 1046 § 4 of the Law dated 17 November 1964 – the Code of Civil Procedure (Dz. U. No. 43, item 296, as amended), the municipality indicates temporary premises, a night shelter, hostel or another institution providing accommodation, unless the quarters corresponding to the requirements of temporary premises have been indicated by the creditor, debtor or third party.*”

### Regulatory changes

- The consequence of the changes that took place in the regulations of the Law on the protection of the rights of tenants was passing a new implementing act to the Code of Civil Procedure, which is **the Ordinance of the Minister of Justice of 22 December 2011 on the detailed procedure in cases concerning the evacuation of premises or property release** (Dz. U. of 5 January 2012, item 11).

- Similarly to the previous implementing rules in force, also this one, issued on the basis of Art. 1046 § 11 of the Law of 17 November 1964 – The Code of Civil Procedure, was devoted to elaborating on the bailiff's actions in the course of enforcing the obligation to vacate the premises, and in terms of the cooperation of the bailiff with the municipality, it took into account the municipal responsibilities included in the Law on the rights of tenants.

- Characterising briefly the principles of that cooperation, we need to point out the regulation of § 2.1 of the ordinance, which in case of the debtor's lack of the legal title to another property or premises in which he/she may reside, orders the bailiff to immediately put forward a motion calling for the indication

of temporary premises in the municipality which is relevant due to the location of the premises subject to evacuation. Moreover, we also need to point out the regulation of § 5 which provides that if the debtor is not entitled to the temporary premises, the bailiff immediately presents in the municipality (which is relevant because of the location of the premises subject to evacuation) a motion for the designation of a night shelter, hostel or another institution providing accommodation to which the debtor will be removed.

- It is also the responsibility of the bailiff to immediately put forward in the local government (relevant due to the location of the premises to be evacuated) a motion calling for the designation of a night shelter, hostel or another institution that provides accommodation, if the period, provided for by Art. 1046 § 4 of the Code of Civil Procedure, in which the bailiff refrains from taking any action due to the municipality failing to designate the temporary premises, has expired.

### **Eviction as a tool of managing the revenues from the housing resources**

- Creating and maintaining the municipal property resources contains a social element, but in order to avoid its degradation, it has to generate revenues sufficient to at least retain its substance. The desired state is, however, a situation when it is possible to make new investments leading to an increase in the number of premises, particularly those qualified as social housings, from the revenue derived from the housing stock.

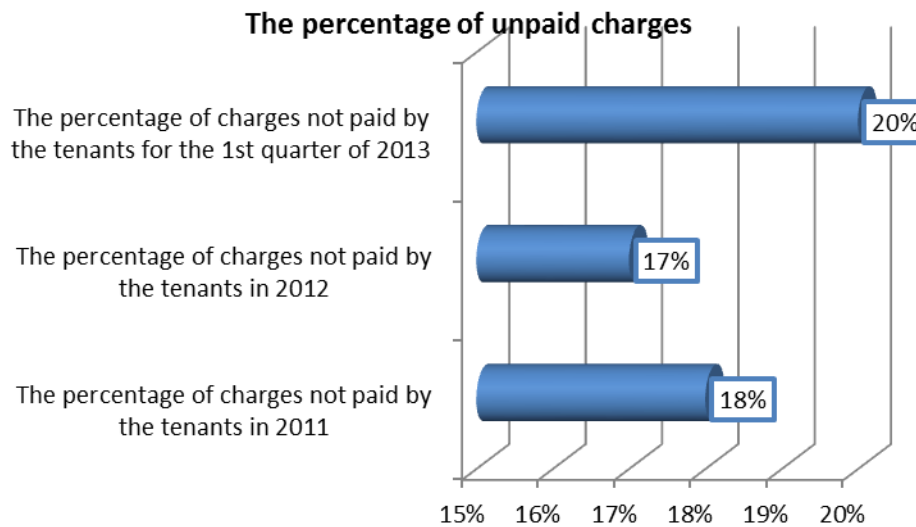
- As part of the study carried out for the purpose of this article, the state of the housing resources of a large municipality located within the Silesian Voivodeship has been analysed.

- The housing resource of the studied municipality is managed by a one-man municipal company and contains about 17,000 units. The managing body is confronted with a fundamental problem, i.e. the inability to cover the services provided by them (heating, the media, rubbish, etc.) solely from payments made by the tenants.

- An average loophole resulting from that title developed in 2011, 2012 and the 1<sup>st</sup> quarter of the year 2013 at approximately 18 %.

- Figure 1 shows amounts due (i.e. unpaid charges) for the use of premises, which the tenants do not pay.

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**Figure 1. The percentage of amounts due for the use of premises which are not paid by those who use the premises (in percentages)**

*Source: own study*

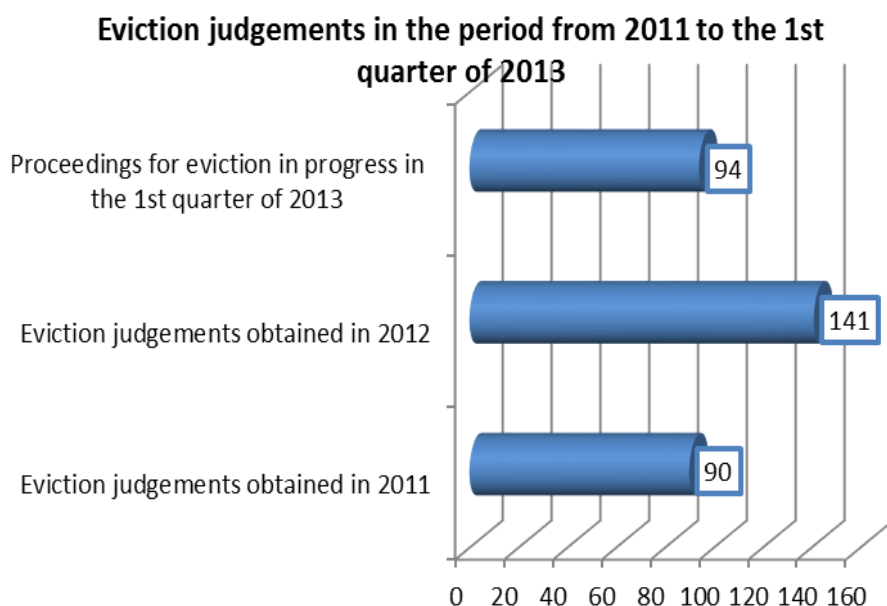
- A relatively constant proportion of unpaid receivables may be noted. Increase in the first quarter of 2013 can be explained by seasonality – the winter period is an increase in charges for heating with simultaneous reduction of the demand for odd jobs as well as economic downturn which is present in the country.

- The amounts of unpaid charges are considerable and need to be settled by the funds obtained from revenues generated by the resources which are the amounts of pure rents from the premises (rents decreased by receivables from benefits). The above situation results from the fact that those who have lost their previous premises belonging to private owners or to cooperatives are often directed to the premises that make up the housing resources of the municipality. Those are heavily indebted people against whom foreclosures, often unsuccessful, are in progress.

- Lack of an appropriate number of social housings leads to the fact that those people occupy premises which may be the subject of free-market rental and may generate profits that might be used for the opening of a substance of property resources and investments. At the same time, the group of those people often remains purely passive in paying their debts due to the phenomenon of the so-called debt spiral (debts, interests and costs rise much faster than the profits or expected earnings of the debtor). Thus, those persons lose motivation to pay their rental charges.

- Inability to evict this group of people is an additional morally corrupting factor.

- Figure 2 shows the dynamics of eviction proceedings in the period from 2011 to the 1<sup>st</sup> quarter of 2013.

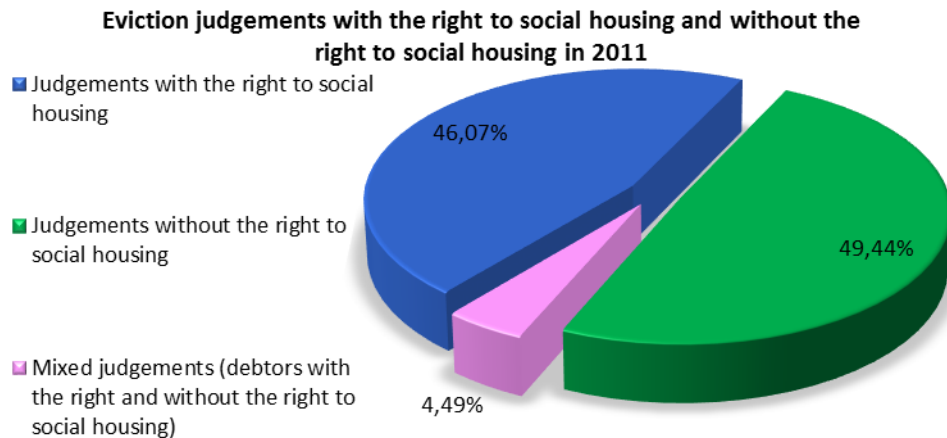


**Figure 2. Eviction judgements and proceedings for eviction in the period from 2011 to the 1<sup>st</sup> quarter of 2013**

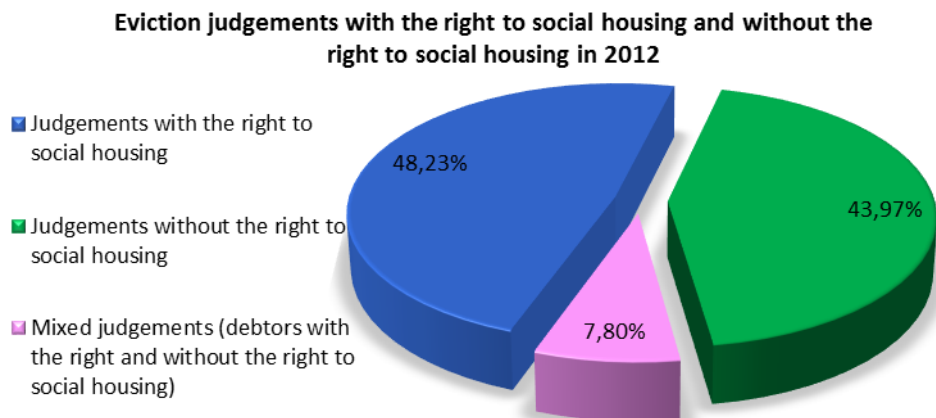
*Source: own study*

- Increasing dynamics of eviction proceedings can be noticed. This results from changes in the debt recovery policy of the subject, who has observed a relationship between the increase in the revenue from rents for the use of premises and the number of eviction proceedings. For instance, in 2011, 7,2 % of eviction cases ended with a voluntary debt repayment and a withdrawal from the eviction procedure; in 2012 the corresponding figure was 9,7%. Debts paid in this way are considerable and often reach the amount of several monthly charges.

- The following figures (3 & 4) illustrate the distribution of judgements which include the debtor's entitlement to social premises and those which do not provide for it.



**Figure 3. Eviction judgements with the right to social housing and without the right to social housing in 2011(in percentages).**  
*Source: own study.*

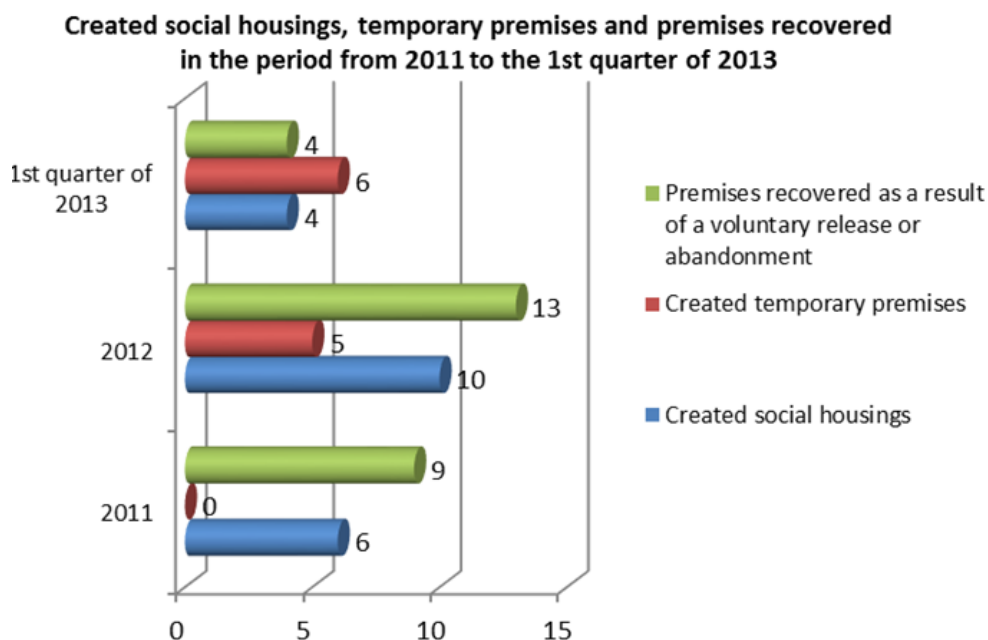


**Figure 4 . Eviction judgements with the right to social housing and without the right to social housing in 2012 (in percentages)**  
*Source: own study*

- In 2011 about 50 %, while in 2012 44% of judgements enabled eviction of the debtors to temporary premises, which would have resulted in the release of premises and an opportunity to let them to people who had paid the rent. The rest of the judgements imposed on the Municipality an obligation to provide welfare

lodgings to the debtor yet it opened up the possibility of resettlement of those people to premises of potentially poorer standard and lower rental charges.

- Crucial for the management of property resources is, however, the lack of social housings and temporary premises.



**Figure 5. Created social housings, temporary premises and premises recovered in the period from 2011 to the 1<sup>st</sup> quarter of 2013**

*Source: own study*

- Figure 5 shows the number of acquired social housings and temporary premises during the period of the study. This number is very low, which is clearly illustrated by the fact that premises recovered without forced debt collection constitute a larger number.

- In 2011, the management entity needed 44 temporary premises in order to effectively implement the obtained judgements and received none. In 2012 the demand increased by further 62 premises (altogether up to 106) while the municipality created only 5 temporary premises.

- The situation regarding social premises developed in a similar way – the demand in 2011 was 41 social housings, in 2012 – 68 social housings, which gives a total of 109 premises and the municipality has provided 16 of them.

- Thereby, a very important tool of managing the tenants' wallets, i.e. the possibility of eviction from the premises included in the resource, has been deprived of its effectiveness.



In practice, the negative effects of the current situation in terms of the protection of the rights of tenants and the lease of residential premises also refer to the tenants themselves, as introducing the far-reaching protection against eviction „out into the street” (and later against eviction to temporary premises) in the absence of social housings and temporary premises might lead to a situation where the owner cannot get rid of the former tenant from the premises, despite the legally valid eviction judgement. Such a situation favours the formation of a wide group of people, which from the perspective of property owners is a high-risk group that the owners will avoid and which will find it difficult to become tenants of any apartment in private resources [3].

### Summary

As a result of subsequent amendments to the law, the complexity of issues of the management of the municipal real property resources, particularly municipal housing stock, has increased. It was caused by the obligation imposed on municipalities to provide temporary premises (temporary housing units) to people who had not been granted the right to social housings or substitute accommodation by the court in the judgement ordering the eviction of residential premises.

Although the regulations stipulate that this obligation is imposed on them only when the bailiff determines that the debtor is not legally entitled to the premises in which he/she can reside, and no other premises complying with the requirements of temporary premises have been indicated. The obligation of the municipality also ceases if the creditor, debtor or third party designates such quarters (which the municipality should be informed of by the bailiff); however, in the face of virtually limited scope for making this obligation outdated, there has been a substantial increase in the responsibilities of municipalities with regard to the task of creating conditions to meet the housing needs of the members of the local community.

- In the field of managing the housing resources of municipalities, two basic aspects need to be emphasised. First of all – the material aspect, including the problem of acquiring temporary premises with real difficulties in earning by municipalities such revenues from the possessed property resources, which would allow to preserve its substance and to make investments that would increase that stock by premises classified as social housings. Secondly – the formal aspect, in particular shaping the optimal form of managing the municipal housing stock by choosing of the three legally permissible forms, namely:

- direct management by municipal employees,
- entrusting municipal organizational units (e.g. financial institutions, municipal companies, subsidiary companies) with the management of the resource,
- entrusting a professional administrator, i.e. private entity, with the management, or handing over – under the contract of mandate – control of residential buildings owned by the municipality to a social building society.

The choice of the form of management depends on such factors as the number of residential buildings owned by the municipality (in case of a small number, the first

form may prove right) and organizational structure of the municipality, including the existence of municipal organizational units which could indirectly manage the housing stock, or non-municipal, professional entities which the municipality might entrust with the management of its property resources.

## References

- [1]. Batko Roman, *Zarządzane jakością w urzędach gminy*, Jagiellonian University Press, Krakow, 2009
- [2]. Bończak-Kucharczyk Ewa *Wieloletni program gospodarowania mieszkaniowym zasobem gminy. Podstawy prawne, wzór programu*, portal minigo.pl, 2008.
- [3]. Bończak-Kucharczyk Ewa, *Ochrona praw lokatorów i najem lokali mieszkalnych. Komentarz*, published by Wolters Kluwer Polska, 2011.
- [4]. Borowiec Leszek, *Controlling w realizacji usług publicznych gminy*, Wolters Kluwer Polska, 2007.
- [5]. Chruściel Magdalena. *Prawno-społeczne aspekty eksmisji*. [in:] M. Popow, P. Kowzan, M. Zielińska, M. Prusinowska, M. Chruściel, *Oblicza biedy we współczesnej Polsce*, published by *Doktoranckie Koło Naukowe „Na Styku”*, Gdańsk 2011.
- [6]. Dębski Damian, *Ekonomia i organizacja przedsiębiorstw. Część 2*, Wydawnictwa Szkolne i Pedagogiczne Spółka Akcyjna, Warsaw 2006.
- [7]. Doliwa Adam, *Prawo mieszkaniowe. Komentarz*, 4<sup>th</sup> Edition, C.H. BECK Warsaw 2012.
- [8]. Dolnicki Bogdan (ed.), *Samorząd terytorialny w Polsce a sądowa kontrola administracji*, Wolters Kluwer Polska, 2012.
- [9]. Gilowska Zyta, *System ekonomiczny samorządu terytorialnego w Polsce*, published by Municipium, 1998.
- [10]. Izdebska Małgorzata, *Obecna sytuacja budynków objętych zarządem na podstawie przepisów Prawa lokalowego*, portal minigo.pl, 2008.
- [11]. Kisielnicki J., *Friendly Administration project of the procedure for personal income tax payment. Suggested changes and the role of information technology*, Polish Journal of Management Studies, 2010, vol. 1.
- [12]. Lange Oskar, *Ekonomia polityczna, Part 1*, Warsaw 1967.
- [13]. Mazurkiewicz Małgorzata, Małecki Paweł, *CIT podatki i rachunkowość komentarz*, Wolters Kluwer Polska, 2012.
- [14]. Ministry of Transport, Construction and Maritime Economy, *Komunikat w sprawie stosowania przepisów prawnych dotyczących pomieszczeń tymczasowych z dnia 07.12.2011r. (Press Release on the application of laws concerning temporary premises dated 07.12.2011)* [http://www.transport.gov.pl/2-482be1a920074-1794867-p\\_1.htm](http://www.transport.gov.pl/2-482be1a920074-1794867-p_1.htm)
- [15]. Możdżeń-Marcinkowski Michał *Wstęp do prawa administracyjnego ogólnego*, Wolters Kluwer Polska, 2009.

- [16]. Piasecki Kazimierz, Marciniak Andrzej, *Kodeks postępowania cywilnego. Postępowanie nieprocesowe, w razie zaginięcia lub zniszczenia akt, zabezpieczające i egzekucyjne. Komentarz do artykułów 506-1088, Part III.* Published by C.H. Beck, Warsaw 2012.
- [17]. Stabryła Adam (ed.), *Analiza i projektowanie systemów zarządzania przedsiębiorstwem*, published by Mifles.pl, 2010.
- [18]. Szczurek Zbigniew, *Prawo cywilne dla studentów administracji*, Wolters Kluwer Polska, 2008.

#### LOKALE TYMCZASOWE W ZARZĄDZANIU ZASOBAMI KOMUNALNYMI

**Streszczenie:** Artykuł omawia kwestię obowiązku gmin do udostępniania lokali tymczasowych, osobom, którym nie zostało przyznane, przez sąd, prawo do lokali socjalnych lub lokali zastępczych. Charakter tego obowiązku, realizowanego w ramach zadań własnych gminy, cechuje szeroki zakres jego prawnego tła i praktycznej prezentacji problemów związanych z zarządzaniem zasobami komunalnymi. Ustawowo określone sposoby tworzenia zasobów komunalnych gminy przyczyniły się do przedstawienia omawianych zagadnień, jako jeden z aspektów zarządzania zasobami komunalnymi i nieruchomościami.

**Słowa kluczowe:** pomieszczenia tymczasowe, lokale mieszkalne, eksmisja, zarządzanie zasobami komunalnymi

#### 臨時物業管理市政財產資源

**摘要：**本文討論直轄市的義務，誰沒有被授予的權利社會住房或替代住宿由法院的人提供臨時宿舍，（臨時住宅樓宇）的問題。這個義務，實現作為直轄市的自己的任務的一部分，已具有市政財產資源管理問題的法律背景和實際演示一個粗略的輪廓。全市建立住房資源的法律規定的方式提出討論為一體的市政財產資源的管理方面的問題做出了貢獻