

KATARZYNA KRÓLIKOWSKA

Cooperative Intermediate Housing Tenures in Poland and Germany*

Abstract

This paper presents a comparative analysis of cooperative tenures available in housing cooperatives in Poland and Germany. The research is based on the typology that understands property rights from the moderate constructivist approach and applies them to housing tenures by means of the analysis of the distribution of specific bundles of property rights which appears to be different across the housing tenures. Innovative intermediate tenures as housing options beyond tenancy and homeownership are approached and supported for a particular reason – as remedies to address the growing European housing crisis. So, the article contains a comparative analysis of the features of cooperative housing tenures as intermediate tenures for international comparisons of „affordable” and „social housing” options.

KEY WORDS: cooperative tenures, cooperative tenancy, cooperative ownership-like tenure, intermediate tenures, social housing, affordable housing

SŁOWA KLUCZOWE: spółdzielcze prawa do lokali, spółdzielcze lokatorskie prawo do lokalu, spółdzielcze własnościowe prawo do lokalu, mieszkania społeczne, tanie mieszkania

KATARZYNA KRÓLIKOWSKA, PhD in law, Kozminski University,
ORCID – 0000-0002-9178-1337, e-mail: kkrolikowska@kozminski.edu.pl

* Research was financed by the National Science Center in Krakow (NCN) within the project No. 2016/21/D/HS5/03899 titled „European Property Law: between harmonisation and fragmented unification”.

1 | Introduction

This paper presents a comparative analysis of cooperative tenures available in Poland and Germany. Housing cooperatives emerged in these countries in the late nineteenth century. Since then, they have had a long history of evolution. The distinction between ideology and everyday practice is highlighted by the position of occupancy rights in housing cooperatives. It is often said that the cooperative sector has evolved into the „third pillar” of housing tenures. In most jurisdictions, cooperative housing remains formally a part of the rental sector or the social rented sector. Members of rental cooperatives are not usually considered as full homeowners in many legal frameworks. There are, however, some exceptions including alternative tenures in Poland and Germany.

The hypothesis of the paper is that different cooperative housing models provide residents with different bundles of property rights that distinguish them from ordinary rental and owner-occupied housing. The first section of the article comprises studies that illustrate property law theory, with a particular focus on both cooperative and general housing tenure. Different typologies are plausible here, and some of them will be discussed further. The following sections introduce the comparative background of some housing developments in Poland and Germany, demonstrating that there are similarities, as well as important country differences to be studied. The final discussion section probes a generalization of the findings. The article aims to evaluate current cooperative housing options in each national model. Innovative intermediate tenures as housing options beyond tenancy and homeownership are approached and supported for a particular reason – as remedies to address the growing European housing crisis. So, the concept of affordable cooperative housing is discussed here. Finally, the summary highlights the general contribution of the article to housing studies.

2 | The concept of intermediate housing tenures

The commonly accepted definition describes intermediate housing tenures as tenures „[...]with a bundle of housing rights in-between owning and renting”^[1]. Housing tenures span from traditional ownership to traditional rental, with many different degrees of entitlements. Thus, intermediate tenure options range from building leases and other land rights to usufruct-like arrangements, shared ownership schemes or other specific housing tenures, some developed for or through the cooperative law and practice.

Even though ‘intermediate housing tenure’ seems to be an increasingly recurring concept within housing research, the term is not known to the Polish legal literature, nor in economic studies on housing. There are not even proper equivalents in the Polish language to express concepts such as „intermediate tenures”, or „affordable housing”. Nevertheless, alternative intermediate housing tenures, or hybrid tenures, exist in many countries worldwide. Many alternative tenures have a long history, such as typical cooperative forms of housing^[2]. Some of them have been developed recently.

Recent comparative research reveals that the picture is more complicated and developed here. In the most recent comparative surveys, certain taxonomies of the various categories of „new” and „old” alternative tenures to owning and renting are to be found. Above all, the analysis of cooperative tenures as intermediate tenures requires the recognition of the four conceptual types of alternative intermediate tenures^[3], including „ownership plus”, „ownership minus”, „rent plus”, and „rent minus”^[4] tenure options. This taxonomy recognizes different degrees of property and power rights embedded into economic categories of property rights. But, all those types of alternative housing tenures are not traditional home ownership. Except

¹ Marja Elsinga, „Intermediate Housing Tenures”, [in:] *International Encyclopedia of Housing and Home*, ed. Susan J. Smith (Amsterdam: Elsevier, 2012), 124.

² Christopher Feather, „Between Homeownership and Rental Housing: Exploring the Potential for Hybrid Tenure Solutions” *International Journal of Housing Policy*, No. 4 (2018): 596.

³ For an excellent analysis of intermediary tenures and conclusions about best practices at national levels, see Christoph U. Schmid, „Tenure Reform as a Means to Address the European Housing Crisis”, [in:] *Ways out of the European Housing Crisis: Tenure Innovation and Diversification in Comparative Perspective* (Cheltenham: Edward Elgar Publishing, 2022), 3.

⁴ „Rent minus” tenures encompass, for example, squatting, gratuitous housing loans typically among relatives, common law licences and informal, „black market” occupancies.

for the „ownership plus” type^[5], most of them include fewer rights than traditional ownership as according to the legal approach. The concept of intermediate tenure stems from the core concept of ‘traditional’ ownership of real property. Namely, there is a certain set of content rights that should be included for ownership to be owning^[6]. Ownership (or classic limited property rights such as usufruct^[7] or easements) can be divided into the various rights and obligations of the right holder^[8]. An owner should possess, above all, the right to use and transfer, and the right to gain the (economic) value of the good. Within the main groups of „bundles” one may distinguish more detailed rights such as the powers to use the dwelling and the whole structure (access to the property, possession and occupancy of the unit), security of tenure (right to exclude others, protection against eviction, terms of guaranteed time of continued occupancy, remedies during occupancy), the powers to change the substance (to make physical changes to the unit, to repair and maintain the unit), the powers to dispose of the whole bundle of rights as tenure or only some of the property rights stemming from that bundle, the power to let (sublet) and earn income from subletting, to use the apartment as an investment if its tradable and to obtain profit from that transaction, the right to enjoy the economic value of the property in other ways.

Such a concept of alternative intermediate tenures has been developed for the common law property law^[9]. Economic analysis of law is also one of the main research methods in international legal studies. It will also suit the need to describe property rights in rather rigid and formalistic continental private law regimes of Poland and Germany. Therefore, the theory of the „bundle of property rights” is used here as a framework for analyzing

⁵ ‘Ownership plus’ tenures (full ownership with security services) are of marginal importance in European practice.

⁶ Frank Snare, „The Concept of Property” *American Philosophical Quarterly*, No. 2 (1972): 201.

⁷ Anna Granath Hansson, Jenny Paulsson, Peter Ekbäck, „The Sliding Scale between Usufruct and Ownership: The Example of Swedish Multi-Family Housing” *Land*, No. 3 (2021): 311.

⁸ Sarah Blandy, Jennifer Dixon, Ann Dupuis, „Theorising Power Relationships in Multi-Owned Residential Developments: Unpacking the Bundle of Rights” *Urban Studies*, No. 13 (2006): 2375.

⁹ In common law jurisdictions, the role of contracts (and not imperative legal provisions) is crucial in property law. Therefore, instead of seeing ownership (or limited rights) as an absolute right *erga omnes* (as in German or Polish law), the content of ownership as well as for limited rights may vary considerably there.

the content of housing tenures in terms of a bundle of ownership rights embedded within other housing tenures^[10], including cooperative housing tenures in both studied jurisdictions^[11].

3 | The concepts of „affordable” and „social” housing

In Europe, the term ‘affordable housing’ has rapidly gained popularity over the last decade. In fact, the concept of intermediate housing tenures has emerged as the result of the need for more affordability in housing. Housing has been described as an economic good that can be „[...] produced and consumed, [...] bought and sold [...]”^[12]. In this sense, intermediate tenures are additional „cheaper” „mechanisms” or „products”^[13] available in the market leading eventually to home ownership or to quasi-ownership tenures. By implementing such tenures into the national legislations and market practices, individuals can meet their housing needs better at lower prices^[14]. Also savings or credit opportunities available on the financial markets can be applied to lower the prerequisites needed to finance the acquisition of housing for individual households. Some of the cooperative housing tenures discussed in this article support the view that intermediate and hybrid tenures aim either to support home ownership or to provide more affordable housing permanently^[15].

¹⁰ Peter Marcuse, „Property Rights, Tenure and Ownership: Towards Clarity in Concept”, [in:] *Social Rented Housing in Europe: Policy, Tenure and Design*, ed. Berth Danermark, Ingemar Elander (Delft, the Netherlands: Delft University Press, 1994), 23-24.

¹¹ Marja Elsinga, “Affordable and low risk home ownership”, [in:] *Home Ownership: Getting in, Getting from, Getting out*, ed. Peter Boelhouwer, John Doling, Marja Elsinga (Delft: DUP Science, 2005), 77.

¹² Hannu Ruonavaara, „Theory of Housing, From Housing, About Housing” *Housing, Theory and Society*, No. 2 (2018): 178.

¹³ Sarah Monk, Christine Whitehead, „Why Intermediate Housing Markets?”, [in:] *Making Housing More Affordable: The Role of Intermediate Tenures*, ed. Sarah Monk, Christine Whitehead (London: John Wiley & Sons, 2010), 2-3.

¹⁴ Schmid, „Tenure Reform”, 3. It correlates with the economic rule that markets expand and become more efficient through a diversification of the products offered on them.

¹⁵ Feather, „Between Homeownership and Rental Housing: Exploring the Potential for Hybrid Tenure Solutions”, 595.

Elsinga divided the intermediate tenures into permanent intermediate tenures and temporary intermediate tenures (subject to conversions)^[16]. The permanent intermediate tenures are permanent forms of renting or owning an apartment when they cannot be sold. Temporary tenures support future home ownership and can be described as aiding in the pursuit of home ownership. This distinction is fruitful in cooperative practice as the following sections will show. There are types of cooperatives in which the units cannot be privatized, nor the rights changed during the life cycle of the joint investment. Some cooperative tenures are deliberately temporary, giving the tenant-member the option (right-to-buy) to acquire ownership at will. In other cases, the 'internal' content of the bundle of rights proved to be changeable over time due to external reasons or regulatory framework.

Concluding this stage of considerations, it should be noted that the notion of affordable housing is sometimes used as a synonym for the term „social housing”. However, boundaries between the two concepts remain rather unclear in both Poland and Germany, as the following chapters will show. Both concepts potentially fall under the broader category of „intermediate tenures” as they aim to offer „something that the housing market lacks”^[17], such as institutional support for home ownership or better access to rental options and its terms. On the other hand, in international comparison different target groups of social and affordable housing are being distinguished^[18]. The definition says that intermediate tenures are directed towards those who cannot access the regular housing market (home ownership or market rental) but, at the same time, have too high income and do not qualify for social housing^[19] thus referring rather to the concept of affordable housing. Indeed, in international research, the category of affordable housing is becoming a more distinct field, and social housing remains as an ultimate response to the financial crisis, shifts in house prices, inflation and state budget austerity^[20]. Drawing a clear dividing line is not possible here due to the blurred contours of the concept

¹⁶ Elsinga, „Intermediate Housing Tenures”, 3.

¹⁷ Gary Libecap. *Contracting for Property Rights* (Cambridge: Cambridge University Press, 1989), 4.

¹⁸ Darinka Czischke, Gerard van Bortel, „An Exploration of Concepts and Policies on 'affordable housing' in England, Italy, Poland and the Netherlands” *Journal Housing and the Built Environment*, 38 (2023): 298-299.

¹⁹ Monk, Whitehead, „Why intermediate housing markets?”, 2-3.

²⁰ Czischke, van Bortel, „An exploration of concepts”, 299.

of „social housing”, but undoubtedly intermediate tenures represent nowadays more affordable housing options than ever.

4 | German rental cooperatives

From a formal legal point of view, cooperative housing does not exist as a separate form in German private law. There are, however, more than two million cooperatively provided housing units, predominantly rented to the cooperative members^[21]. There is also no separate statute concerning „housing cooperatives” (*Wohnungsgenossenschaften*) and cooperative law has never literally contained the term, too. Housing cooperatives are embedded in the legal form of a registered cooperative (*eingetragene Genossenschaft, eGen*) that is a corporation subject to the regulations of general cooperative law of 1889 (currently titled *Genossenschaftsgesetz GenG*)^[22]. Until 2006, only the associations for housing provision (*Vereine zur Herstellung von Wohnungen*) were mentioned in § 1(1)(7) GenG. Nevertheless, the concept of ‘housing cooperative’ has been included in tax law regulations and governmental documents procured for conducting housing policy that take into account market practices, standardized by the obligatory membership of the cooperatives in the central cooperative unions. Altogether, Germany has roughly 2,000 housing cooperatives; about 40 percent of them are located in former East Germany^[23]. According to data collected at the last federal census in 2011, cooperative dwellings in residential buildings amounted to 2,086.454 units constituting 5,1% of the total housing stock in Germany, most of them rented^[24]. Cooperatives, which are mainly an

²¹ Zensusdatenbank, *Statistische Ämter des Bundes und der Länder*, 2011. <https://ergebnisse.zensus2011.de>. [accessed: 30. 03.2024].

²² Law of 1.05.1889 (*Gesetz über die Erwerbs- und Wirtschaftsgenossenschaften*), RGBl. p. 55, new consolidated version of 16.10.2006 with a new title (*Genossenschaftsrecht*), RGBl. I p. 2230, as amended.

²³ *Wohnungsgenossenschaften. Potenziale und Perspektiven*, Bericht der Expertenkommission Wohnungsgenossenschaften, Bundesministerium für Verkehr, Bau- und Wohnungswesen: Berlin 2004, 3.

²⁴ Zensusdatenbank, 4000W-1005 Wohnungen in Gebäuden mit Wohnraum, *Statistische Ämter des Bundes und der Länder*, 2011. <https://ergebnisse.zensus2011.de>. [accessed: 30.3.2024].

urban phenomenon, reach even more share than 10 percent of the stock in the largest cities^[25].

In the dominant rental cooperatives the cooperative owns the structure and the housing units and the members use their units either based on a regular rental agreement subject to the German Civil Code or a specific rent-like tenure called cooperative right of use (*genossenschaftliches Nutzungsrecht*)^[26]. The latter being an unlimited contractual right of possession arises out of a contract concluded with a cooperative under standard term contracts (*GdW Mustervertrag für genossenschaftlichen Nutzungsvertrag*) or solely by application of the standardized registered by-laws of the cooperative (*GdW Mustersatzung*)^[27], respectively.

The statutory concept of non-profit activity was imposed in 1930 on building cooperatives (*Baugenossenschaften*)^[28] and continued in the Nonprofit Housing Act of 1940 (*Wohnungsgemeinnützigkeitgesetz, WGG*)^[29] which was in force until 1990. In return for generous tax exemptions and financial support, the law stipulated tasks for all non-profit housing companies: compulsory construction (*Baupflicht*), rent restrictions, and limitations in contracting^[30]. Housing cooperatives in former East Germany were

²⁵ *Wohnungswirtschaftliche Daten und Trends 2003/2004*, GdW Bundesverband deutscher Wohnungs- und Immobilienunternehmen: Berlin 2003, 141; Mirosław Gorczyca „Mieszkalnictwo w Niemczech [The Housing in Germany]” *Wiadomości Statystyczne [The Polish Statistician]*, No. 2 (2016): 90. Data for the previous periods are discussed by Mirosław Gorczyca, „Mieszkalnictwo w Niemczech [The Housing in Germany]” *Wiadomości Statystyczne [The Polish Statistician]*, No. 6 (2010): 72.

²⁶ Jürgen Keßler, „Commentry to § 1 GenG”, [in:] *Berliner Kommentar zum Genossenschaftsgesetz*, 2nd ed., ed. Klaus-Peter Hillebrand, Jürgen Keßler (Hamburg: Hamonia, 2010), 26-39.

²⁷ *Muster-Satzung für gemeinnützige Wohnungsunternehmen* of 1949/1961, Gesamtverband gemeinnütziger Wohnungsunternehmen in Köln, published in Johann Lang, and Ludwig Weidmüller, *Genossenschaftsgesetz* (De Gruyter: Berlin-New York, 1974), 172-215.

²⁸ Regulation on non-profits (*Gemeinnützigkeitsverordnung GVO*) as part of the regulation to secure the economy and finance of 1.12.1930 (RGBl. I, p. 593). Law to secure non-profit status in the housing sector (*Gesetz zur Sicherung der Gemeinnützigkeit im Wohnungswesen*) of 14.07.1933 (RGBl. I p. 484).

²⁹ Law on the non-profit organization in the housing sector (*Gesetz über die Gemeinnützigkeit im Wohnungswesen*) of 29.02.1940 (RGBl. I, S. 437). This law was supplemented by the regulation for the implementation of the non-profit housing law (*Verordnung zur Durchführung des Wohnungsgemeinnützigkeitsgesetze*) of 23.07.1940 (RGBl. I, S. 1012).

³⁰ Helmut Jenkis, *Kommentar zum Wohnungsgemeinnützigkeitsrecht* (Hammonia Verlag: Hamburg, 1988), XII.

not covered by the provisions of the 1889 cooperative law and the 1940 non-profit law. After reunification in 1990, all cooperatives adopted „old” cooperative law (GenG), Western model by-laws and standard tenancy contracts, and have been united within the cooperative union *Gesamtverband der Wohnungswirtschaft* (GdW) ever since.

The model of a non-profit rental cooperative proved to be resilient during the 1990s and in the 2000s after the law on non-profit housing and state support was repealed in 1990 as part of comprehensive tax reform^[31]. Cooperatives may continue to include the term „non-profit” in the company’s name, if specific conditions are met. The only tax exemption available has been restricted to a very specific form of rental cooperative (*Vermietungsgenossenschaft*) with the activity limited to providing rental housing to their members. Only those housing cooperatives are eligible for exemption whose scope of business is constrained to the preservation and maintenance of the existing rental stock (*Bestansgenossenschaften*)^[32]. Currently, almost 1,400 of the total 2,000 housing cooperatives use the tax exemption for corporate income tax which makes their cooperative rentals affordable tenures^[33]. As German cooperatives generate profits under cooperative law, a dividend in non-profit housing cooperatives must not exceed 4 percent annually and cannot be paid out to members in cash^[34]. Public subsidies and deductions are passed on to the tenants of „non-profit” rental cooperatives and through the mechanism of a dividend increase return on equity or allow setting lower rents for members in the future^[35]. Thanks to this, most non-profits can provide rental accommodation at cost or at least at below-market prices. But, the „for-profit” status of some rental

³¹ Steuerreform-Gesetz of 2.08.1988, BGBl. I S. 1093.

³² Wolfgang Pelzl, *Die Gründung von Mietergenossenschaften zur Erhaltung von sozialem Wohnraum* (Nürnberg: Veröffentlichungen des Forschungsinstituts für Genossenschaftswesen an der Universität Erlangen-Nürnberg vol. 25., 1987), 36.

³³ *Wohnungsgenossenschaften. Potenziale und Perspektiven*, Bericht der Expertenkommission Wohnungsgenossenschaften, Bundesministerium für Verkehr, Bau- und Wohnungswesen: Berlin 2004, 198. In the old federal states, the number of such associations is estimated at about 40%, while in the new federal states it has been adopted by almost 50% of the cooperatives.

³⁴ Jenkis, *Kommentar zum Wohnungsgemeinnützigkeitsrecht*, XII.

³⁵ Pinkel Tobias, Annika Schulenberg, Valerie Müller, Christoph U. Schmid, „Germany”, [in:] *Ways out of the European Housing Crisis: Tenure Innovation and Diversification in Comparative Perspective* (Cheltenham: Edward Elgar Publishing, 2022), 207-210.

housing cooperatives, depending on their financial standing, does not exclude providing housing below market-based rents also to their members.

It should be mentioned that in the 1990s different strategies were proposed to improve the financial standing of cooperatives and the capital commitment of their members in the cooperative equity (including additional shares and obligatory contributions from the tenant-members), as well as to combat tenant mentality among members. Within the state policy called „orientation towards strengthening more ownership in cooperatives” (*Eigentumsorientierung*) the by-laws of some cooperatives introduced an option right to acquire ownership of individual apartments outright by the sitting tenants against remuneration. In the long-run, it could be detrimental to the existence of cooperative stock in the future^[36]. In turn, cooperative organizations and financial authorities promote a new type of housing cooperative (*Mietwohnungsgenossenschaft*)^[37] which provides for the acquisition by members of special permanent usage rights (instead of cooperative tenancies).

The second model entails building up equity in exchange for stronger members’ housing tenures in the form of the ‘right of permanent use’ of residential property (*Dauerwohnrecht*), one of the limited property rights available in German private law, regulated in the § 31 *Wohnungseigentumsgesetz*^[38]. Here, the cooperative remains the owner of the building whereas tenants are encouraged to acquire more property rights in the cooperative both in housing tenure and equity. This form was expected to resemble home ownership status of the right holder to prevent the privatization of cooperative dwellings. Granting permanent residential rights to members (with the security of tenure stronger than in residential tenancy) requires additional payments in form of additional shares or for more financial contributions to the cooperative equity capital which resembles owner-occupier involvement in the enhanced cost of housing^[39].

³⁶ Ingrid Schmale, „Die Eigentumsfrage – ein kontroverses Dauerthema bei (Wohnungs)-Genossenschaften?” *Zeitschrift für das gesamte Genossenschaftswesen*, 49 (1999): 134.

³⁷ Thomas Schaefers, „Der § 17 Eigenheimzulagengesetz – seine Entstehung und Wirkung für die Wohnungsbaugenossenschaften” *Zeitschrift für das gesamte Genossenschaftswesen*, 49 (1999): 139.

³⁸ Act on the Ownership of Apartments and the Permanent Residential Right (*Gesetz über das Wohnungseigentum und das Dauerwohnrecht, Wohnungseigentumsgesetz WEG*) of 15.03.1951, in the version of 12.01.2021 (BGBl. I S. 34, as amended).

³⁹ Marieta Haffner, Daniel Brunner, Haffner Marieta, Daniel Brunner, „German Cooperatives: Property Right Hybrids with Strong Tenant Security” *OTB Working*

In return, the members obtain a tenure that comes closer to home ownership than tenancy or traditional usufruct^[40] but is formally distinct from apartment ownership and not accompanied by the governance structure of the condominium as management by cooperative bodies continues^[41].

Despite the existence of the two above mentioned types of housing cooperatives, non-profit (rental) housing cooperatives dominate the market as a regular basic form of the corporation. Unfortunately, the non-profit type of cooperative prevents both enfranchisement and new housing construction^[42] because ‘other activities’ of the board (other than renting out) cannot account for more than 10% of the cooperative’s total income^[43]. Although the recent housing crisis led to the legislative proposals to restore non-profit affordable housing (*bezahlbares Wohnen*) as a regime of a ‘new WGG’, they have not been adopted so far^[44].

5 | Post-socialist cooperative tenures in Poland

At present, there is one uniform statutory type of a housing cooperative in Poland (*spółdzielnia mieszkaniowa*), which allocates individual units under different housing tenures. The national legal framework for all registered

Papers, 7 (2014): 13. <http://resolver.tudelft.nl/uuid:cb635acb-b59a-455b-bd63-a-e8b1d01fc98>.

⁴⁰ On property-equivalent limited rights *in rem* see Tobias, Schulenberg, Müller, Schmid, „Germany”, 210-211.

⁴¹ For more details see Wolfgang Schneider in: *Erläuterungen zum Gesetz über das Wohnungseigentum und das Dauerwohnrecht*, 15th ed., ed. Johannes Bärmann (München: C.H. Beck, 2023), § 32 WEG, Nt 1-5.

⁴² Volker Beuthien, Daniel Brunner, „Haben Wohnungsgenossenschaften eine Zukunft?” *Die Wohnungswirtschaft*, No. 6 (2002): 22.

⁴³ On strategies how to apply to this rule see *Die Vermietungsgenossenschaft*, GdW Bundesverband deutscher Wohnungsunternehmen e.V.: Freiburg, 2019.

⁴⁴ *Gemeinnützigkeit der Wohnungswirtschaft*, 23.01.2013, document no. WD 7-3000-006/13, Department of Studies, German Parliament [accessed: 31.03.2024], and *Eckpunktepapier zur neuen Wohngemeinnützigkeit (NWG) einschließlich eines Förderprogramms*, 14.06.2023, document no. 20(24)143-neu, Committee for Housing, Urban Development, Construction and Municipalities [Ausschuss für Wohnen, Stadtentwicklung, Bauwesen und Kommunen], German Parliament [accessed 31.04.2024].

cooperatives is regulated by the 1982 Cooperative Law^[45], while the rules relating directly to the peculiarities of housing cooperatives are contained in the 2000 Act on Housing Cooperatives^[46] providing autonomous model of financing construction costs by the members through construction contributions and not by shares (as in Germany). In Polish housing cooperatives, the costs of constructing an apartment are no longer covered by the members' shares but by permanent assignment of construction contributions (*wkłady budowlane*) to the unit covering the full cost incurred by the cooperative.

Current cooperative tenures have deep roots in the past, except for individual apartment ownership right which is regarded in Poland as „home ownership” (a way of owning outright); it is not perceived *per se* as an intermediate tenure^[47]. Despite a mass privatization of the cooperative housing stock that followed only after 2000, housing cooperatives remain an important player in the housing market. Acquiring strata title from the cooperative under the 1994 Act of Apartment Ownership^[48] causes the members' unit to leave the cooperative stock. That is why, for the purposes of the legal and statistical studies, the ownership of dwellings belonging to housing cooperatives („cooperative housing”) refers only to cooperative housing units with a „cooperative residential tenancy” and the units with a „cooperative ownership-like” rights to residential premises^[49]. After 20 years of conversions, in 2021 the share of both cooperative housing

⁴⁵ Act of 16.9.1982 – the Law on Cooperatives (*Prawo Spółdzielcze*, Journal of Laws no. 30, item 210). Before 2001, the Cooperative Law Act of 16 September 1982 contained some special provisions for the regulation of housing cooperatives. Now, it regulates the functioning of the cooperative corporation. Since major amendment to the Cooperative Law in 1994, four major attempts have been made in Parliament to enact a new modern cooperative law, but no significant reform of the general provisions has taken place by now, see Krzysztof Pietrzykowski, „A Century of Codification of the Cooperative Law in Poland” *Studia Prawnicze KUL*, No. 4 (2022): 60.

⁴⁶ Act of 15.12.2000 on Housing Cooperatives (*Ustawa o spółdzielniach mieszkaniowych*), Journal of Laws no. 4, item 27, consolidated text Journal of Laws from 2003, no. 119, item 1116, as amended.

⁴⁷ Apartment ownership can be regarded as intermediate tenure option only in reference to the acquirers who are supported by the state through interest subsidies or price subsidies.

⁴⁸ Act of June 24, 1994 concerning apartment ownership (*Ustawa o własności lokali*, Journal of Laws of 1994 no. 86, item 388, as amended).

⁴⁹ *Narodowy Spis Powszechny Ludności i Mieszkań 2021. Warunki mieszkaniowe w Polsce w świetle wyników Narodowego Spisu Powszechnego Ludności i Mieszkań 2021* [National Population and Housing Census 2021. Housing conditions in Poland according

rights amounts to 20.6% of the urban housing stock against 58.1% of housing units occupied in cities on the basis of home ownership or apartment ownership^[50]. Nationwide, 68.8% of housing units are occupied on the basis of apartment ownership right, while cooperative housing amounted to 14.2% dwellings^[51].

In contrast to other Central and Eastern European countries, Poland still has a large cooperative housing sector encompassing mostly „modernized” post-socialist cooperative tenures due to little outcomes of cooperative construction. Under socialism, since the 1950s, there have been always two forms of cooperative housing tenures in Poland^[52]: the „weaker” cooperative residential tenancy (*in personam*) right and the „stronger” proprietary (*in rem*) cooperative right to an apartment. The dominant form was cooperative tenancy (under current legislation *spółdzielcze lokatorskie prawo do lokalu* or „cooperative member’s tenancy right to an apartment”), introduced in 1961 as a specific tenure distinct from regular tenancy. Similar to the position of a tenant under lease, it is an obligation in civil law, so it cannot be alienated (neither sold, nor donated). Formally, it is not subject to the succession *mortis causa*, but just as in the case of the lease contract, upon the member’s death it is assigned to the next of kin by the virtue of law which fulfills the socio-economic function of succession. The contributions paid to the cooperative assigned to the unit are inherited by the heirs. In the remaining scope, cooperative tenancy is decommodified. It may expire in rare occasions and the holder of the right enjoys high security of tenure. Therefore, it can be qualified as a „rent plus” type of intermediate tenure.

Another cooperative tenure is a limited property right (under the current legislation *spółdzielcze własnościowe prawo do lokalu* or literally „cooperative member’s proprietary right to an apartment”)^[53]. The concept was created in 1961 as a housing tenure much more conform to the socialist

to the results of the National Population and Housing Census 2021], GUS: Warszawa-Lublin, 2023 [2024], 60.

⁵⁰ Narodowy Spis Powszechny, 37.

⁵¹ Narodowy Spis Powszechny, 37. The vast majority of dwelling units were located in multi-dwelling buildings which contained 79.0% of dwellings in urban areas.

⁵² In centrally planned economy units owned by housing cooperatives could not be turned into private ownership.

⁵³ Rafał Mańko, „The Cooperative Member’s Proprietary Right to an Apartment: a Legal Survival of the Period of Actually Existing Socialism in Polish Private Law” *Zeszyty Prawnicze*, No. 4 (2015): 147-173.

principles^[54] than the individual ownership of an apartment. It granted a secure occupancy with some possibilities to transfer it *inter vivos* and *mortis causa*, providing persons who finance the construction of the unit from their own resources with a sufficiently attractive legal title^[55]. Since it was subject to strict administrative control and numerous limitations enshrining the privileged role of the „socialized” property of the cooperative, it can only be qualified as a tenure between „ownership minus” and „rent plus” types of intermediate tenure.

Both tenures represented the dominant social housing sector at that time, because the initial acquisitions were heavily subsidized by the socialist state. Until 1982, they were allocated by the two separate types of socialist housing construction cooperatives, in which all the dwellings in the building were delivered either under cooperative tenancy (rental cooperatives) or under cooperative ownership-like tenure (ownership cooperatives)^[56]. As of 1982, uniform housing cooperative could offer the individual units to candidates on terms prescribed either for cooperative tenancy or ownership-like tenure. The system became even more flexible after it became permissible, as of 1972 until 2007, to convert cooperative tenancy right into ownership-like tenure. This „internal” privatization was subject to official price reductions as the units were commodified not against a market price but against the subsidized payment of the difference between the construction input and the housing input required for the allocation of new subsidized dwelling. The concept of cooperative housing has become dynamic ever since; it was usual to acquire first cooperative tenancy on preferential terms and then to move on to stronger tenure along with the repayment of the significant part of construction cost (loans). As of 1977, 91% of cooperative flats were held under cooperative tenancy rights and just 9% under cooperative proprietary rights^[57], while in 1989 the numbers were 78% and 22%, respectively^[58]. After the fall of the communist regimes in Central and Eastern Europe, many tenants were offered the

⁵⁴ Lesław Myczkowski, *Nowa ustawa o spółdzielniach mieszkaniowych* (Zielona Góra: Zachodnie Centrum Organizacji, 2001), 66.

⁵⁵ Mańko, „The Cooperative Member’s Proprietary Right”, 147-173.

⁵⁶ Law of 17.6.1961 on cooperatives and their unions (Journal of Laws no 12, item 161, as amended).

⁵⁷ Maciej Cesarski, „Dorobek materialny spółdzielczości mieszkaniowej w Polsce”, [in:] *Historia i przyszłość spółdzielczości mieszkaniowej w Polsce*, ed. Zbigniew Gotfalski (Warszawa: Wydawnictwo „Dom”, 2011), 29.

⁵⁸ Cesarski, „Dorobek materialny”, 29.

option to purchase their dwellings at a low price^[59]. In the 1990s, the same was true for municipal housing in Poland but not for cooperative housing tenures, as the 1994 law on apartment ownership did not apply to 3.17 million cooperative dwellings belonging to housing cooperatives in 2002 (mostly dwellings in urban large multi-family estates) making up 24.4% of residential inhabited dwellings at that time^[60].

Only the cooperative housing reform of 2000 was aiming to abolish „old” cooperative housing rights and to replace them with the modern law on condominiums^[61]. Cooperative residents acquired the right to demand purchase of the individual ownership right to their apartments (cooperative „right-to-buy” with financial terms laid down in the statute^[62]), thus enabling the direct privatization of tenures in post-socialist housing cooperatives. The process has been very slowly at the beginning until the 2007 Amendment^[63] changed the financial terms and reduced the costs of conversion (the repayment of the original loan taken by the cooperative to build the unit, i.e. value of all financial obligations incurred by the construction works)^[64]. According to data collected by the largest Association of Housing Cooperatives, only within two years (2007-2009) thousands of flats were converted^[65] and the number of cooperative tenancies dramatically decreased from 23.7% to 6.5% of the housing stock in Poland during the period of 2002-2011^[66]. The recent results of the 2021 census show that cooperative tenancy today covers only about 1% of the housing stock^[67].

⁵⁹ József Hegedüs, Martin Lux, Nóra Teller. *Social Housing in Transition Countries* (London: Routledge, 2014), 1; Sasha Tsenkova, *Housing Policy Reforms in Post-Socialist Europe. Lost in Transition* (Heidelberg: Physica-Verlag, 2009), 1.

⁶⁰ *Warunki mieszkaniowe gospodarstw domowych i rodzin 2002* (Warszawa: GUS, 2003), 31.

⁶¹ Act of June 24, 1994 concerning apartment ownership (*Ustawa o własności lokali*, Journal of Laws of 1994 no. 86, item 388, as amended).

⁶² Act on Housing Cooperatives, Art. 12, Art. 17(14), Art. 39, Art. 48, Art. 52.

⁶³ Act of 14.06.2007, Journal of Laws no. 125, item 873.

⁶⁴ The article deals with the procedures for conversion of rights to apartments in housing cooperatives, see Agnieszka Napiórkowska-Baryła, „The Process of Transformation of Rights to Residential Units in Housing Cooperatives in Poland” *Olsztyn Economic Journal*, No. 2 (2011): 223.

⁶⁵ *Ibidem*, 226.

⁶⁶ In particular, before the 2007 Amendment, there were 830.000 rental apartments held by the cooperative members (making up to 23,7% of the total number of housing dwellings in total). After only two years the number of dwellings held in cooperative tenancy fell to 227.000.

⁶⁷ *Narodowy Spis Powszechny Ludności i Mieszkań 2021*, 36.

The law was supposed to dramatically change both cooperative housing tenures. Instead, the popularity of the second cooperative tenure became apparent, despite the fact that since 2007 there is no possibility to acquire it from the cooperative (neither on the primary market nor through conversion of the cooperative tenancy). In 2021, cooperative owner-occupied housing still accounted for about 13.4% of the total housing stock in Poland and compared to the 2011 census, this stock decreased only slightly, by 6.1% (from 1.9 million to 1.8 million units)^[68]. In cities, the results were even better at 19.3% of the total housing units occupied in cities^[69].

The reason that the majority of holders of „old” cooperative ownership-like rights do not convert them into full ownership are not caused by the costs of such an operation (the terms are the same). On the other hand, both apartment ownership and cooperative property rights have their advantages and disadvantages^[70]. During the transition from one socio-economic and political system (socialism) to another (democratic market economy), Polish cooperative tenures have survived interesting „internal evolution” concerning their content. After significant adaptations, resulting from far-reaching legislative changes and bold decisions by the Constitutional Court of Poland, cooperative institutions not only „survived” the demise of the earlier socio-economic and political system but also adapted to the new roles. The tenure survived due to the significant modifications during the 1990s and early 2000s including making the co-holdership of the right possible, repealing of the previous legislation that provided that in the event of the apartment’s alienation *inter vivos*^[71] or in the event of succession *mortis causa*^[72] the transfer could become effective only once the acquirer or the heir became admitted to the cooperative (where such an approval

⁶⁸ Narodowy Spis Powszechny Ludności i Mieszkań 2021, 36.

⁶⁹ Narodowy Spis Powszechny Ludności i Mieszkań 2021, 36. The decrease was only 7.6%. The current state is 92.4% of the number of owner-occupied cooperative housing units in the cities in 2011.

⁷⁰ Tadeusz Skotarczak, Monika Śpiewak-Szyjka, „Spółdzielnie mieszkaniowe w nowym otoczeniu społeczno-gospodarczym”, [in:] *Spółdzielnie mieszkaniowe: Dylematy funkcjonowania i rozwoju*, ed. Tadeusz Skotarczak (Warszawa: C.H. Beck, 2015), 18.

⁷¹ Decision of the Polish Constitutional Court of 30.3.2004, Case K 32/03, Official Journal of the Jurisprudence of the Constitutional Tribunal 2004, no. 3A, item 22.

⁷² Decision of the Polish Constitutional Court of 21.5.2001, Case SK 15/00, Official Journal of the Jurisprudence of the Constitutional Tribunal 2001, no. 4, item 85; Decision of the Polish Constitutional Court 29.6.2001, Case K 23/00, Official Journal of the Jurisprudence of the Constitutional Tribunal 2001, no. 2, item 124; Decision

could be denied by the board), and repealing of the legislation stating that an apartment could only be sublet with the cooperative's consent (which could also be denied)^[73]. The most profound change, however, led in 1991 to the legislature permitting the encumbrance of the right with mortgage (*hipoteka*)^[74] which enabled using the tenure for security purposes and credit financing, making the tenure (and not the shares or contributions paid to the cooperative) a true investment asset. Despite the fact that formally the tenure still constitutes a distinct legal title (limited property right, though 'stronger' than usufruct), it is regarded on the market as functional equivalent to homeownership or apartment ownership. Indeed, cooperative member's proprietary right to an apartment is an example of social institutions that are referred to as successful „legal survivals”^[75].

6 | Discussion

The first general observation leads to the conclusion that the actual models of cooperative housing in Poland and Germany vary in terms of tenures and the degree of financial involvement of members in the cooperative, which makes any international comparison difficult. However, the 'constructivist' approach requires that all the rights of the residents must be included, not only those regulated by the formal property law applicable to cooperative housing tenures.

Taking into the account the above, the concept of intermediate tenures fits also to the description of cooperative tenures available in Poland and Germany. Cooperative laws in Poland and Germany offer intermediate tenures between renting and owning that do not fit into the traditional

of the Polish Constitutional Court of 25.2.1999, Case K 23/98, Official Journal of the Jurisprudence of the Constitutional Tribunal 1999, no. 2, item 25.

⁷³ Decision of the Polish Constitutional Court 29.6.2001, Case K 23/00, Official Journal of the Jurisprudence of the Constitutional Tribunal 2001, no. 2, item 124.

⁷⁴ Act of 25 October 1991 amending the Civil Code, the Land Register and Mortgage Act, the Cooperatives Act, the Code of Civil Procedure and the Housing Law, Journal of Laws no. 115, item 496.

⁷⁵ Mańko, „The Cooperative Members' Proprietary Right”, 147.

categories^[76]. The initial hypothesis that cooperative tenures can be subdivided into certain categories of intermediate tenures, namely either the ‘rent plus’ or the ‘ownership minus’ type, has also been confirmed.

It must be noted that the German model of rental cooperative does not fully equal with the model of the Polish cooperative tenancy. Nevertheless, both rental tenures represent the „rent plus” type of intermediate tenure due to the similar reasons explained and summarized below.

The cooperative models in Poland and Germany contain also „stronger” options of limited property cooperative ownership-like rights: *spółdzielcze własnościowe prawo do lokalu* and *Dauerwohnrecht*, respectively. Both forms of tenure provide for a very strong security of tenure^[77] and seem to prove that the absence of formal individual apartment ownership does not signify the absence of ownership relations in the model of the so-called ‘ownership cooperatives’. It is worth mentioning that those proprietary tenures have no equivalents in other European countries except for the similar and converging Scandinavian models of ownership cooperatives and companies^[78]. The position of the member is equal to that of the home owner because housing unit is allocated under a tradeable and inheritable tenure (its tenure and not the shares that are the primary object of secondary transactions with acquirers), it can be regarded as an investment as the holders receive capital gains or return from renting out their property (unit). They may also suffer capital losses in transactions with the third parties, just as homeowners do. Therefore, this type of cooperative housing can be regarded as an „ownership minus” type of alternative tenure^[79].

The Polish case is special in this regard. As the German tenure can be subject under contract to modifications and limitations in favor of the

⁷⁶ For similar observation for German law see Jost Kramer, „Die Struktur deutscher Genossenschaften im Lichte der Property-Rights-Theorie”, [in:] *Genossenschaftsmodelle – zwischen Auftrag und Anpassung. Festschrift für Rolf Steding*, ed. Marcus Hanisch (Berliner Beiträge zum Genossenschaftswesen Band 56: Berlin, 2002), 286.

⁷⁷ Termination of cooperative limited property right is not possible in Poland, but in Germany it depends on the terms of the contract establishing *Dauerwohnrecht*.

⁷⁸ Especially in a model in which there are no price controls any more, see Hannu Ruonavaara, „How Divergent Housing Institutions Evolve: A Comparison of Swedish Tenant Co-operatives and Finnish Shareholders’ Housing Companies” *Housing, Theory & Society*, No. 4 (2005): 234.

⁷⁹ In my opinion, the status of the Polish cooperative freehold is even stronger than its German counterpart because greater stability of tenure and the role it plays as an equivalent for apartment ownership.

cooperative, the still existing cooperative ownership-like tenures in Poland did play an important role of affordable tenures in the past, but now they do not perform that role anymore. First, it can be attributed to the „internal” privatization of their content. Privatization is commonly associated with a reform of relations of ownership but is not limited to the buyouts only. The „internal” conversion of the legal content of cooperative ownership-like tenures in the 1990s and 2000s was also privatizations, because residents had been acquiring more property rights of a true owner, according to the accepted definition^[80] and in line with the main assumption of the constructivist understanding of housing tenures, where tenures can change in time and place^[81]. A similar process in Swedish and Norwegian ownership cooperatives showed that both tenures “have gradually evolved from being housing sectors partly de-commodified by regulation of prices and transactions into ones that resemble, more and more, direct ownership”^[82].

Second, since 2007 it has not been possible in Poland to establish (create) new tenures of that kind, so the cooperatives cannot produce or allocate unoccupied dwellings in this way (there is no primary market). Also, the state has not been supporting new construction of dwellings to be allocated by the cooperatives under cooperative ownership-like tenure. Only acquisition of the existing rights on the secondary market (where units are sold by the members against market prices) is supported under the same financial mechanisms and terms of interest subsidies lowering the cost of entry to apartment ownership^[83]. For that reason, cooperative ownership-like tenure constitutes a real substitute for apartment ownership and represents the „ownership [very little] minus” type of intermediate tenure.

On the other hand, there are similar differences between conventional renting and cooperative renting. Both Polish and German legislation strongly protect cooperative tenants. Even though cooperative tenancies under the Polish and German law do not usually differ from those in the rented sector and bring similar tenure security, cooperative tenants enjoy

⁸⁰ Marcuse, „Property Rights, Tenure and Ownership: Towards Clarity in Concept”, 25.

⁸¹ Hannu Ruonavaara, Types and Forms of Housing Tenure: Towards Solving the Comparison/Translation Problem” *Scandinavian Housing and Planning Research*, 10 (1993): 12.

⁸² Ruonavaara, Home Ownership and Nordic Housing”, 95.

⁸³ Within the Family’s Own Home programme, see Magdalena Habdas, „Poland”, [in:] *Ways out of the European Housing Crisis: Tenure Innovation and Diversification in Comparative Perspective* (Cheltenham: Edward Elgar Publishing, 2022), 249-250.

greater protection than ordinary tenants because tenants would be in danger of getting evicted only under very rare circumstances, and due to the control by the members over their cooperative landlord^[84], and (as in the Polish case) the protective provisions of the special legislation. Bundles of property rights stem directly from the cooperative tenures, but members of the cooperative also indirectly share the ownership of the building and land through their cooperative organization thanks to the membership relationship. Cooperative housing forms indirect or joint ownership relationships that denote additional bundles of ownership rights. The obligation to pay in shares to the cooperative (Germany) or contributions covering full construction costs of the dwellings (Poland), as well as maintenance fees, are forms of investing in the equity of the cooperative which make the tenants shareholders again (indirect ownership). Each member is a tenant and a provider of capital at the same time.

Here is where one important difference between Polish and German rental cooperatives is revealed. Conventional renters and Polish cooperative tenants have no right to any return on investment since they do not contribute by means of shares. Construction contributions are not interest-bearing and cannot be treated as loans, and rents or deposits are not investments. On the other hand, members of German cooperatives have the right to an annual dividend and participate in cooperative profits, the maximum amount of which will only be based on the chosen formula of action (for-profit or non-profit). Despite this, the situation of the Polish members is similar – the surplus of advance payments for management fees in one year is settled by reducing the amount of advances in subsequent periods, in accordance with the principle preventing the earning of profits from activities for members (Art. 6 of the Act on Housing Cooperatives). Despite this, in both countries cooperative housing forms indirect or joint ownership relationships within the organizational structure of the cooperative corporation.

Organizational relations also enhance stronger tenant participation of both cooperative tenants and holders of cooperative limited property rights. It is cooperative law that offers the members-residents bundles of property rights making cooperative tenures different from those for simple renting. The cooperative law regulates competences and activities of various

⁸⁴ In cooperatives, some eviction prerequisites acceptable for commercial landlords are basically excluded, i.e. landlord's inability to make an economically „acceptable” profit.

bodies of the cooperative including the involvement of members in the decision-making process. Cooperative members can influence or challenge the decisions of the cooperative, i.e. to terminate the rental contract.

Rental cooperatives representing „rent plus” type of intermediate tenure form affordable housing options in both countries. In the current housing market, the price of new rental cooperative flats is lower in cooperatives in comparison to rental dwellings, but it is not subsidized rental stock in general^[85]. Traditionally, housing cooperatives are collective organizations formed to fulfill shelter-related objectives such as new building construction or collective management. They are also institutions or vehicles for housing finance, often leading to the joint liability of member-tenants towards their creditors; tenants-members are often the recipients of state subsidies lowering the costs of access and occupation. From this perspective, housing tenure can be described as an instrument in housing policy to enable more affordable home ownership or affordable rental^[86].

As it was stated before, different target groups for social and affordable housing are being distinguished in international comparison^[87]. The German basic non-profit concept of the rental cooperative includes many ways of accumulating internal reserves that make it possible to lower the initial price and costs of housing to target different lower-income groups. In Poland, the targets are set at the moment of granting preferential credit from the government programs for new affordable social housing that is provided since 1995 by three types of subsidies' recipients: publicly owned non-profit building companies (formerly social housing societies TBS, currently social housing initiatives SIM), the municipal companies and by the housing cooperatives^[88]. As local providers of rental housing, both entities are dependent on the financial support for affordable housing in the form of housing construction support program providing preferential repayable financing for the construction of rental dwellings with limited rent, addressed to people with moderate incomes. In practice,

⁸⁵ Social rental housing in most EU countries is included under „subsidised rent”, a tenure that is not existent in Poland. Renting at a subsidised rate is common in the Netherlands, the United Kingdom, in France, Finland, or Ireland.

⁸⁶ Elsinga, „Intermediate Housing Tenures”, 3.

⁸⁷ Czischke, van Bortel, „An exploration of concepts”, 299.

⁸⁸ Similar two model organizations of social rental housing have been presented in Mark Stephens, „Social Rented Housing in the (DIS) United Kingdom: Can Different Social Housing Regime Types Exist within the Same Nation State?” *Urban Research and Practice*, No. 1 (2019): 38-60.

some cooperatives do contribute to the supply of affordable rental housing as they must apply income ceilings, but they do not provide dwellings for the largest sectors of society nor for the poorest^[89]. Though there is no official definition of social (rental) housing in Poland, cooperative rental tenures in Poland are not part of the concept of social housing (understood as rental housing for people on low and low-middle incomes). Affordable housing is provided to households below the average income as a target group whereas 'true' social rental housing serves the lowest income households and is provided in Poland by municipalities or other entities under government-supported homeless shelters. Such defined social housing sector do exist in Poland and is rather small (around 7%); most of this is public (i.e. municipal) housing, and not cooperative housing.

Within the financial schemes available, housing cooperatives provide for a subsidized low-cost rental sector in the form of either „new” cooperative tenancy (delivered to members only) or typical low-rent regular tenancy (non-members). Unfortunately, this sector suffers from growing stagnation and is not a viable alternative housing tenure^[90]. Both affordable housing actors (TBSa and housing cooperatives) own less than 1% of the current national housing stock^[91] and little new cooperative housing construction is being reported each year^[92]. In the literature it was claimed that cooperative tenancy rights are intended to house the poor because they lower the cost of access for the residents to secure rental with strong protection of the relatives of a member. But, in practice, cooperative tenancy is not sufficiently used which lies in the fact, that the statutory model of cooperative tenancy in Poland does not meet the housing needs of individuals eligible for social housing (for the lower-income tenants). This is the result of unfavorable legal arrangements excluding financial support from public

⁸⁹ Lydia Coudroy de Lille, „Housing Cooperatives in Poland. The Origins of a Deadlock” *Urban Research & Practice* 8, No. 1 (2015): 17-31.

⁹⁰ On problems with utilizing public credits and preferential treatment of TBSs see Alina Muzioł-Węclawowicz, Alina, „Mieszkalnictwo społeczne w Polsce – wyzwania i ograniczenia [Social Housing in Poland: Challenges and Barriers]” *Studia BAS*, No. 2 (2021): 90-91. About a project on the Fund of Rental Dwellings stimulating more social rental housing see Habdas. „Poland”, 251-253, 255, 258.

⁹¹ *Narodowy Spis Powszechny Ludności i Mieszkań 2021*, 36.

⁹² Małgorzata Ofiarska, „Finansowanie zwrotne przez Bank Gospodarstwa Krajowego inwestycji objętych rządowym programem popierania budownictwa mieszkaniowego – wybrane zagadnienia” *Przegląd Ustawodawstwa Gospodarczego*, 8 (2022): 17-18.

funds of members who would like to acquire a cooperative tenancy right to a dwelling^[93].

It is rather doubtful, though, whether cooperative tenure could ever play such a role. Due to the income thresholds and the duty of co-financing by the member of the building costs of the units (immanently embedded in the concept of construction contributions of the members), the cooperative tenancy is suitable for providing housing for people with average earnings, just as municipal-owned TBSs. What is more, due to fiscal austerity and the lack of sufficient funds new cooperative rental apartments can be privatised due to the statutory „right to buy”. In that case, the state loans are immediately repaid to the bank which allows granting new credits for new construction. Nevertheless, it prevents sustainable, affordable rental housing providers from emerging on the Polish market.

7 | Conclusion

Cooperative housing in both jurisdictions studied could be used to greater extent to provide affordable housing options. As opportunities to enter the housing market and renting a flat are decreasing, especially for the middle class in Poland^[94], a recommendation can be given that more innovative policies should be undertaken in Poland to develop more affordable housing solutions. There is a room among typical housing options (home ownership, ordinary market rent and the category of social housing for the poor) that should be supplemented by cooperative vehicles. Government agencies should play a more active role in improving the access to finance and affordable urban land^[95], as well modern legal framework. These are

⁹³ Adam Jedliński, Piotr Zakrzewski, „Zarys Projektu wykorzystania spółdzielczego lokatorskiego prawa do lokalu mieszkalnego w Narodowym programie budowy mieszkań” *Prawo i Więź*, No. 3 (2017): 18-19. The authors believe that the current legislation provides for two separate ways of financing the cost of building a dwelling: first, the cost of building the premises partly covered by public funds, second, building without participation of public funds, which does not seem to be realistic option.

⁹⁴ Coudroy de Lille, „Housing Cooperatives in Poland”, 17-31.

⁹⁵ Czischke, Bortel, „An exploration of concepts”, 283-303.

preconditions for affordable housing to develop, giving the chance for more people to become home owners or secured tenants.

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