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THE RIGHT TO ADEQUATE HOUSING IN INTERNATIONAL HUMAN RIGHTS LAW: POLISH TRANSFORMATION EXPERIENCES

BOGUMIL TERMINSKI *

Abstract

Housing rights are now one of the most fundamental social and economic human rights. It is therefore the duty of every country to implement such rights for its own citizens, irrespective of its economic development, political situation, or social conditions. Possession of appropriate living conditions determines, in fact, the possibility of using other, more advanced human rights (e.g. the right to health, right to development, right to peace, or access to culture). Realization of the right to adequate housing is increasingly problematic for developed countries. According to the United Nations, there are over 100 million homeless people worldwide and more than 1 billion inadequately housed. Poland is an example of a country particularly afflicted by housing problems after the Second World War. Experiences of Polish democratic transformation after 1989, therefore, provide interesting lessons (and warnings) for all countries wishing to deal with the social problems arising from housing difficulties.

Keywords: *right to adequate housing, human rights, housing rights, social transformation, transition, economic and social human rights, social issues, Poland, United Nations, communism.*

Resumen

El derecho a la vivienda es uno de los derechos humanos sociales y económicos más elementales. Por lo tanto, es un deber de todos los países implementar esos derechos para sus ciudadanos y ciudadanas, independientemente de su desarrollo económico, situación política, o condiciones sociales. La posesión de adecuadas condiciones de vida determina la posibilidad de utilizar otros derechos humanos más avanzados (por ejemplo, derecho a la salud, derecho al desarrollo, derecho a la paz, acceso a la cultura). La realización del derecho a una vivienda adecuada es cada vez más problemática para los países desarrollados. Según las Naciones Unidas, hay más de 100 millones de personas sin hogar en todo el mundo y más de 1000 millones alojadas en viviendas inadecuadas. Polonia es ejem-

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plo de un país particularmente afectado por los problemas de vivienda después de la Segunda Guerra Mundial. Experiencias de la transformación democrática de Polonia después de 1989 ofrecen lecciones interesantes (y advertencias) para todos los países que deseen hacer frente a los problemas sociales derivados de las dificultades de vivienda.

Palabras clave: derecho a la vivienda, derechos humanos, transformación social, transición, **derechos económicos y sociales**, cuestiones sociales, Polonia, Naciones Unidas, comunismo.

Introduction

In the past few years housing rights have become a major locus of activity in the field of economic and social human rights. The growing importance of this particular area of human rights is reflected not only in a rapidly increasing number of professional publications, studies, and reports dealing with this subject, but primarily in significantly more distinct actions undertaken by international organizations and humanitarian institutions. Decisions made under the aegis of the United Nations system play a leading role in the protection of housing rights, especially in the form of discussions at the United Nations General Assembly, United Nations Economic and Social Council, Office of the High Commissioner for Human Rights, United Nations Housing Rights Programme (UNHRP), and the United Nations Human Settlement Program (UN-HABITAT), operating since 1976. In April 2000, the UN Commission on Human Rights established the mandate of a Special Rapporteur on adequate housing. Activities conducted for the purpose of strengthening housing rights are also related to regional intergovernmental organisations (e.g. Council of Europe, the African Union, and the

Organisation of American States) and numerous non-governmental organizations (NGOs), including humanitarian profiles (such as the Centre for Housing Rights and Evictions-COHRE, the Asian Coalition for Housing Rights, and others).

Why have housing rights become in recent years such an important area under the rubric of the international protection of human rights? The answer to this question appears simple, but only at a superficial level. Without going into details, it is necessary to take into account several issues.

The most prominent catalyst for the development of housing rights in the last several decades was an increase in world population, and simultaneously the increased rate of urbanization. In the 70s of the twentieth century, the planet's population was a little over three billion people; this figure is now near 6.8 billion. The disparities in standards of living between different parts of the world have become significantly stronger, which translates to urbanization (Cook, 1987: 362; Allen, 2004: 62). Poverty clusters (also known as slums or favelas) are growing in certain nations, and the phenomenon of homelessness

is more present than ever.¹ Numerous national as well as international armed conflicts account for some violations of fundamental housing rights (Leckie, 2003: 37; Leckie, 2007: 148; Newman and Schnabel, 2002: 169). Growing scale of social exclusion and marginalization of the poorest in many regions of the world is not unfortunately accompanied by attempts of solving systematically the problem of housing.

Secondly, housing rights are one of the most fundamental rights for the development of every human being. For each person on the planet, home is an essential space for the realization of social ties. Psychologists point out that adequate housing is a key component in the proper functioning of the family. Without adequate guarantees regarding this matter (as well as the will of state authorities to take care of the issue), it is very hard to implement not only social and cultural rights but also some basic civil and political rights (Ellickson, 1992: 21; Michelman, 1970: 64). At the present time, we can consider homelessness or unacceptable housing conditions as the primary factor limiting proper human functioning in surrounding communities. The strong relationship

¹ According to the UN-HABITAT estimations, nearly one billion people worldwide (32 percent of the global urban population) live in slums. More than 70 percent of people live in inadequate housing conditions. This figure will likely grow to nearly two billion people by 2030. At least 900 million people worldwide still do not have access to safe drinking water and 2.6 billion people lack access to basic sanitation services, such as toilets or latrines. Conversely, China's urban population living in slums fell from 37.1 percent in 2002 to some 28.2 percent in 2010, a relative decrease of 25 percent.

between difficult housing conditions and the increase of crime rate in many regions of the world is well-known. This suggests that poverty, marginalization, social exclusion, homelessness, and crime are – to a great extent – interconnected. Many problems of this particular kind are observed in countries deliberately sustaining the division between minority of the rich and majority of the poor. Deepening social disproportions together with impossibility of economic advancement create frustrations within representatives of the next and inevitably lost generation. The reluctance of state authorities of many developing countries toward introducing a comprehensive solution to problems linked to redistribution of wealth is the basic obstacle thwarting the realization of housing rights.

The recently observed development of international human rights shows us how far-reaching the implications of the right to adequate housing can be for many other aspects of the issue. Discrimination in housing affects the representatives of the numerous and varied groups such as foreigners, refugees, stateless persons, or migrant workers. According to global reports concerning this subject, particularly strong discrimination of housing rights is currently observed among women, children, the disabled, and various groups of foreigners (Leckie, 2003: 132). Thus housing problems of citizens constitute only a part of the wider context of social and economic discrimination exposed to this kind of practices of groups of people. Only the development of relevant na-

tional legislation as well as the growing importance of protection of housing rights at the international level can lead to far-reaching changes.

This article does not claim to offer a solution to this complex problem. In any case, given the scope of the paper and the diversity of global housing problems, such a thing would mean creating an utopia. Therefore, the present work focuses on explaining the origins and achievements in the field of housing rights, and offers some examples of problems and their solutions in chosen countries. For these reasons, this paper does not include a discussion of the detailed terminology required for solving legal disputes. Rather, it selectively examines the major forms of activity in the protection of housing rights carried out by international institutions, particularly those within the UN system. Its aim is thus to provide a comprehensive overview of the housing rights movement through the achievements of the international protection of human rights. This article presents an analysis of the problems associated with implementing housing rights in the countries of Central and Eastern Europe during a period of political and economic transition (e.g. the political situation in Poland after 1989).

It seems that the social experience of the Polish transformation may prove to be an interesting starting point for countries currently becoming key players on the international stage (Brazil, Nigeria, or Indonesia). Just as in case of Poland, they must deal with deep social

inequality, and vast areas of poverty, alienation, and social exclusion. Brazil, as an emerging world power, combines impressive economic development with the levelling of differences between developed and underdeveloped regions. As its aim is the ultimate liquidation of poverty, it stands to reason that housing rights should be treated as a priority (Durand-Lasserve, 2002: 28). Brazil has established strong grounds for the functioning of its society and is on its way to accomplish the common good.

Housing problems do not only concern countries entering a path of rapid economic growth or social transition. The worst housing conditions are currently located in the poorest countries of the world, primarily on the African continent. The consequences of civil wars and international conflicts are one of the main reasons for the deterioration of housing conditions. Natural disasters present another factor central to such decrease (e.g. floods, earthquakes, earthquake-induced tsunamis, or volcanic eruptions). The housing situation in that area remains only a part of the broad array of social problems (such as access to safe drinking water, high mortality of children, and lack of access to medical care).

Fundamental international instruments

The right to adequate housing has been a matter of public international law for over sixty years. However, the concept of housing as a right is itself not a new political or legal issue. Reading ancient legal sources, we can find numerous re-

ferences to the housing situation in the Middle East (Code of Ur-Nammu) and Rome (Roman law). According to the Code of Ur-Nammu (2100 BCE-2050 BCE) "If a slave marries a slave, and that slave is set free, he does not leave the household". Regulations within the scope of housing rights can be found in privileges conferred upon the cities of the Arabic Peninsula by the second Muslim caliph Umar ibn al-Khattab (c. 586-644). Many references to the housing situation can also be found in the acts of domestic law in later times. Improving housing conditions for the poorest parts of the society was the idea of the great philosophers of the Enlightenment as well as the slogan of the French Revolution. The development of contemporarily understood housing rights can be tied to the patterns of British social policy, initiated in the second half of nineteenth century. First two decades of twentieth century illustrate the beginning of wide social housing in Europe and some attempts to include housing rights in the constitutional order of certain countries. Housing entitlements constitute therefore a concept deeply rooted within the frame of main, global law orders.

As pointed out S. Leckie, by the end of the Second World War housing rights were not a subject of discourse within the area of public international law (Leckie, 2003: 8, 43; Leckie, 1992: 7). It was undertaken primarily at the level of domestic law, particularly in relation to social security issues, health, and pension compensation for accidents at work. The issues of housing rights allu-

ded to numerous trade unions, presenting the demands advocated by social protection. Taking into consideration what was said above we cannot claim that the subject of housing rights was a completely neglected area of public international law. Discussion of housing rights issues was conducted, inter alia, in the 30s of twentieth century by the International Labour Organisation (on the occasion of carrying out studies at the ILO Unemployment Provision Convention no 34 in 1934).

The first international document in which we can find explicit reference to housing rights is the Universal Declaration of Human Rights adopted in 1948. Housing rights are a part of this document focusing on economic, social, and cultural rights (Articles 22-27). Article 25 (1) of the document states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.

According to this regulation the implementation of the right to adequate housing is perceived as one of the guarantees fundamental to individual human safety. It is listed third in the document, after the right to food and the right to clothing, and is therefore depicted as one of the key social rights. The best

illustration of its significance seems to be its frequent occurrence in subsequent documents. Since that time, no less than 12 other relevant documents adopted by the United Nations recognize the right to adequate housing².

Perhaps the most significant articulation of the right to adequate housing is Article 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), currently ratified by 160 states. Here the housing issues are a part of the broader right to of adequate living conditions. As noted in article 11(1):

The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself [or herself] and for his [or her] family, including adequate food, clothing, and housing, and

² Legal sources of the right to adequate housing under international human rights law include (in chronological order): Universal Declaration of Human Rights (1948), Convention Relating to the Status of Refugees (1951), International Convention on the Elimination of All Forms of Racial Discrimination (1965), International Covenant on Economic, Social, and Cultural Rights (1966), Convention on the Elimination of All Forms of Discrimination Against Women (1979), Convention on the Rights of the Child (1989), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), Convention on the Rights of Persons with Disabilities (2006); International declarations and non-binding documents regarding the issue of housing rights include: Declaration of the Rights of the Child (1959), International Labour Organisation (ILO) Recommendation No. 115 on Worker's Housing (1961), Declaration on Social Progress and Development (1969), Vancouver Declaration on Human Settlements (1976), and the Declaration on the Right to Development (1986),

to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

References relating to housing rights can also be found in the International Covenant on Civil and Political Rights (Hebel, 1987: 343; Sepulveda, 2003: 125). Among its provisions, the crucial for this matter are those included in article 17 (1): "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honour and reputation".

Housing rights have also been recognized in many human rights documents relating to certain categories of people. The most fundamental provisions in this regard can be found in the texts of international conventions on refugees, migrant workers, children, women, indigenous peoples, persons with disabilities, as well as in the convention on the prohibition of racial discrimination (Doebbler, 2004: 321).

The first international convention which contained provisions on housing rights was the Convention Relating to the Status of Refugees adopted on 28th July, 1951. According to this document:

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully

staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

It is worth noting that all categories of displaced people have the right to adequate housing, return to their homes and property restitution (including the right to restitution of one's original home). As James C. Hathaway claimed, in implementing housing rights, state authorities should consider the housing needs of "social groups living in unfavourable conditions", because "they are expected to seek out international aid where necessary to comply with the duty to ensure adequate housing" (See: Hathaway, 2005: 829). The right to adequate living conditions and property restitution is not limited only to refugees and asylum seekers protected by the UNHCR. The provisions of the International Bill of Human Rights guarantee access to adequate housing for every human being, irrespective of actual conditions or national regulations. International organizations and specialized agencies provides housing-related support to specific categories of involuntary migrants, such as conflict induced refugees, environmental migrants and development induced displaced people.

Pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination, adopted in 1965, the authorities should ensure housing rights to any person without any discrimination of ethnic, racial, or political nature. This is similar to the provisions included in

Article 14, originating in the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted in 1979:

State Parties shall take all appropriate measures to [...] enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity [...].

The provisions of this convention seem to be particularly important in view of the discrimination against women which is present in many housing rights cases. Recently this problem has been the subject of many studies conducted, inter alia, by the UN-HABITAT, UNHRP, UNIFEM, UNAIDS, and numerous non-governmental organizations. According to a joint report from the Centre of Housing Rights and Evictions (COHRE) and the Women and Housing Rights Program (WHRP), since about 2008, nearly thirty percent of the world's women are homeless or living in inadequate housing conditions which do not meet basic social standards. The most commonly reported problems of homelessness for women included the situation of women refugees (and IDPs) and problems with the acquisition of property rights (Mahon, 2007: 21; Nelson and Dorsey, 2008: 74). As COHRE states, "women are often primary targets during forced evictions, which most often take place during the day, when women are at home".

Children as individuals do not have full power over their economic and social situation; they constitute a particularly

vulnerable group for housing rights violations (Gomez, 2007: 125). More than 640 million children in developing countries do not live in adequate housing conditions and approximately 400 million children do not have access to safe drinking water. Pursuant to Article 27 of the UN Convention on the Rights of the Child:

States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing.

Thus, housing rights of children are strongly connected (as in article 25 UDHR and article 11 ICESCR) with other economic and social human rights (right to food, clothing, realising the right to health, right to social security and social insurance, right to family reunification, etc.). Adequate housing is an issue of particular importance of all children. WHO estimates of the causes of death in children (2005) in an inadequate housing environment, children were 50 times more likely to die before reaching the age of five.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), adopted in 1990, as well as ILO Conventions 97 and 143, and the provisions of the Vienna Declaration and Programme of Action represent a breakthrough in the issue of

international human rights protection (Terminski, 2011: 112). According to the UN Migrant Workers' Convention: "Migrant workers shall enjoy equality of treatment [...] in relation to: Access to housing, including social housing schemes and protection against exploitation in respect of rents". The document also states that: "States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them". Important regulations for housing rights can also be found in the text of ILO Recommendation No. 115 concerning Workers' Housing (1961), and in the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (1989).

European systems of human rights have also adopted provisions on housing rights. However, the 1950 European Convention on Human Rights does not include a housing clause, nor is the right to adequate housing even mentioned. Provisions related to housing are mentioned in the most fundamental European instrument for the protection of social rights: the European Social Charter (adopted in 1961 and revised in 1996). Article 31 states that "Everyone has the right to housing". In April 2008, the Council of Europe adopted a document entitled "Housing Rights: The duty to Ensure Housing for All". It contains several conclusions and guidelines which should be guided by member states of the organizations for the right to housing (Edgar, Doherty, and Meert, 2002: 22; Lowe and Tsenkova, 2003: 130).

There are also provisions on housing rights in the Maastricht Guidelines on Violation of Economic Social and Cultural Rights (1997) and The Limburg Principles on the Implementation of the International Covenant of Economic, Social, and Cultural Rights (1986). According to the Maastricht Guidelines:

The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social, and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions” [...]. States and appropriate international bodies should actively pursue the adoption of new standards on specific economic, social, and cultural rights, in particular the right to work, to food, to housing, and to health.

All of the above-mentioned documents confirm that housing rights have become one of the major economic and social human rights. This is confirmed by the growing activity of international organizations aiming at their protection (Edgar, Doherty, and Meert, 2002: 127-130; Kenna, 2008: 223).

Housing rights are not at present a consistent theoretical concept. Nowadays we can distinguish at least several types of analysis carried out on the issue of housing rights. The diversity of the concept of housing rights is particularly visible in the methods of its implementation by the state authorities at the domestic level. Housing rights are primarily part of the national social policy. The state authorities therefore must take care to ensure them to all of their citizens without any discrimination.

At the present time, we can distinguish at least four separate categories within housing rights, considered on the basis of international human rights law as well as national legislation:

1. The right to adequate housing—a problem affecting proper human function in living space. Examples of adequate housing include: a) access to safe drinking water, b) proper building conditions, c) appropriate size of housing units, d) housing rights for all groups of people, including women, children, the elderly, those with disabilities, refugees, migrant workers, etc.
2. Protection against forced evictions and homelessness.
3. The Right to return home and property restitution.
4. The Right to Housing Recovery after Natural Disasters (Gould, 2008: 169-176).

Activity of International Organizations

Implementing global housing rights is currently the focus of many initiatives undertaken by international organisations. These tasks have varied widely in nature. The first extensive action in this field can be dated to the mid-seventies. In 1976, Canada hosted the first United Nations Conference on Human Settlement (HABITAT I) in Vancouver. Conference participants signed two documents: The Vancouver Declaration on Human Settlements and The Vancouver Action Plan. As a result of this Vancouver conference,

the United Nations General Assembly adopted a resolution on the creation of a Commission on human settlements. The UN-HABITAT was established in 1978 as a consequence of this event. Concerns regarding inadequate housing conditions in metropolitan areas led to the Second United Nations Conference on Human Settlement, held in Istanbul in June 1996. In 2002, the United Nations Housing Rights Programme was launched as a joint initiative by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UN-HABITAT (Leckie, 2003: 28).

The current efforts of the United Nations seem to concentrate on three principal tasks: 1) monitoring the housing situation in different parts of the world (United Nations Regional Commissions, Special Rapporteur on adequate housing, UNHCR, OHCHR, IOM); 2) formulating a detailed vision for advancing urban development (UN-HABITAT); and 3) the promotion of housing rights (UNHRP).

It is worth noting that working with housing rights is also a practice of NGOs—at global, regional, and national levels. A good example of a leading non-governmental organization dealing with housing problems is the Centre on Housing Rights and Evictions (COHRE). Due to this paper's limited scope, the following passage will highlight only those housing rights actions taken by the UN-HABITAT and UNHRP.

In 1976, the United Nations organized Habitat, the first international conference

on the augmenting number of problems associated with urban development. As a result, 56 countries became founding members of a specialized program: United Nations Human Settlements (UN-HABITAT), which became the main institution to delve into the difficulties arising from the massive growth of urban populations, especially in developing countries (Shlomo, 2000: 126). In 1996, the UN held another conference on human settlement and urbanization—the so-called Habitat II. Its objective was to assess the results of the follow-up conference in Vancouver and set UN-HABITAT targets for the new millennium. During the Istanbul meeting, called “Summit of Cities”, 171 countries endorsed a policy document called the Habitat Agenda, which contains over 100 commitments. In June 2001, the Special Session of the General Assembly, otherwise known as Istanbul+5, appraised and reviewed the implementation of the 1996 Habitat Agenda; they also formulated and prioritized future initiatives.

Upon noting increasing urbanization and globalization, the development of slums, and rising social inequities in urban settings, strategies to reduce urban poverty were discussed. These strategies are compatible with the guidelines of UN-HABITAT, and therefore include such things as: the sustainable development of urban areas providing shelter for all, improving the lives of slum dwellers, providing access to sanitation and safe drinking water, and respecting social and environmental human rights. In order to reduce poverty levels, experience

suggests that one necessary condition includes the development of appropriate mechanisms – that participation of all interested parties (the UN member states) – for managing urban development. Taking this into account, the strategic UN-HABITAT vision is subject to constant evolution. General attention is devoted to issues of the sustainable management of urban development, housing finances, and human settlements. The expanded strategic vision is both forward-looking and pragmatic. It remains consistent with the social norms and policies of the Programme, and with its mandate and capabilities. The operational activities of the programme focus on helping governments formulate policies and strategies to develop and strengthen the management capacity of relevant national, regional, and local levels (UN-HABITAT experts' assistance).

It also concerns the analysis and identification of opportunities for specific policies, for implementation of projects in the fields of housing and urban development, and for the mobilization of resources and outside assistance in order to improve human living conditions. According to the plan of action, operational activities of UN-HABITAT include the following five main priorities:

1. Promoting policies that ensure shelter and adequate housing conditions for all,
2. Improving the management of human settlements,
3. Reducing poverty in urban centres,
4. Assisting with post-conflict devastation,

5. Improving living conditions in human settlements.

The United Nations Housing Rights Programme (UNHRP), established in 2002, is an OHCHR and UN-HABITAT joint initiative. The principal focus of the programme is expressed in the Habitat Agenda (paragraph 61), which states that “Within the overall context of an enabling approach, Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing”. The main objective of the UNHRP is: “To assist States and other stakeholders with the implementation of their commitments in the Habitat Agenda to ensure the full and progressive realization of the right to adequate housing as provided for in international instruments. UNHRP activities concentrate on promoting housing rights through advocacy, research, networking, and political advice. The UNHRP has published a series of reports which point to the need to promote best practices at the national housing policy level. Due to the short period of UNHRP activity, it is difficult to assess its achievements objectively (Leckie, 2003: 12).

The right to adequate housing and political transition: the case of Poland

Transformations of a political, economic, and social character always have a significant impact on the economic and social sphere of human rights. Poland is an example of a country in which such transformation has played a particularly

major role in the implementation of housing rights (Markham, 2003: 1-12). The results of Poland's successful economic transformation include, on the one hand, immense economic growth and the reconstruction of the economy after its collapse in the 80s. On the other hand, during the last twenty years, many regions of Poland have developed niches of poverty and social exclusion. Many people have still not adapted (or do not want to adapt) to the changes in thinking patterns associated with the functioning of a free market economy. Also, the division between western and eastern Poland (otherwise known as "Poland A" and "Poland B"), especially notable between 1918 and 1939, is becoming an increasingly visible process. Therefore, we can use housing rights as a point of reference to all other major problems of the Polish transformation after 1989 (Markham, 2003: 17-22).

The Polish housing situation and the Polish government's implementation of the right to adequate housing over the last twenty years seem essential to a full understanding of the Polish transformation and its economic, political, and social consequences. However, to see the whole picture of housing issues in Poland, we must take a closer look at the period following the Second World War.

The post-war borders of Poland, established during the Yalta Conference, contributed to an unprecedented wave of returnees from the east part of the country (the "People living behind living over the Bug River", or "Zabuzanie" in Polish) to the areas of Lower and

Upper Silesia, the Opole Region, and Pomerania, which formerly belonged to Germany. Polish literature often defines these areas as "Recovered Territories" ("Ziemie Odzyskane" in Polish) (Kenney, 1997: 136). In the early post-war years, they were colonized in a very spontaneous way. The worst housing conditions were observed in the most devastated cities, such as Warsaw and other highly urbanized regions. The housing needs of post-war Poland, however, considerably exceeded its actual capabilities³. Problems of housing, caused by military operations, amounted to a social crisis for at least a decade (along with the main determinant of economic situation, that is the lack of meat products on the market). Solutions to such grave issues were an important factor in demonstrating the legitimacy of the Polish United Workers' Party in Poland (Kemp-Welch, 2008: 76).

Similar to politics undertaken in the Soviet Union, communist authorities in Poland were, at least theoretically, interested in the issues of economic, social, and cultural human rights; housing rights were widely reflected in the acts of the Polish legislation. (The Constitution of the People's Republic of

³ To precisely describe the housing problem in Poland, we need to go back to 1945. It is estimated that as a result of World War II, Poland (within the borders of Potsdam Conference) lost about 2 million dwellings. Some cities lay in ruins as a result of bombings or deliberate destruction by the Nazis, such as the destruction of Warsaw after the uprising in 1944. In western Poland, many cities were levelled to the ground as a result of governmental regulation of the Third Reich, which turned them into fortresses, or as a result of the Red Army, which burned many cities, such as Legnica or Gdansk.

Poland, adopted in 1952, had not contained any provisions concerning the implementation of housing rights.)

It should be emphasised that the socialist government found some solutions to housing problems and implemented the right to adequate housing. The most significant examples of these efforts include great socialist projects like the restoration of Warsaw, the construction of the workers housing estates of Nowa Huta near Kraków, and later under Edward Gierek's administration (1970-1980) building of the Ursynów district in Warsaw. The Polish Five-Year Plan of 1971-1975 and Gierek's housing investments can, in theory, be considered successful, because they have almost completely solved the phenomenon of homelessness in Poland for many years (van Kempen, 2005: 32; Sillince, 1990: 61). It is worth alluding (although there is a dispute in the literature) the effect of the creation of State Agricultural Farms ("Państwowe Gospodarstwa Rolne" in Polish) in solving the housing problems of people from rural areas. At any rate, despite these achievements, the People's Republic of Poland ("Polska Rzeczpospolita Ludowa" in Polish) failed, in first two decades of its existence, to guarantee the implementation of basic housing rights for all its citizens.

Despite the hypothetical right of every family to possess its own flat, the waiting time to receive a community flat could last very long (sometimes several years). Authorities also used overt discrimination in the allocation of flats

to individual social groups (members of PZPR, factory workers, etc.).

Some improvement took place only after Edward Gierek came into power in 1970, and his administration initiated major housing projects such as the aforementioned Ursynów district (van Kempen, 2005: 32). Only at that time did the idea of a house for every Polish family moved from being a meaningless demand to a potentially tangible fact. Edward Gierek successfully transformed the thinking of Poles about their own houses; if housing had been considered before a privilege and a luxury reserved only for certain groups (miners, steelworkers, factory workers, and agricultural workers), now it would have become a commodity available to everyone.

Thus, only during the leadership of Edward Gierek did we witness the full implementation of internationally guaranteed rights and national housing (with the construction of large housing units, non-discriminatory access to housing, and a relatively short waiting time for apartments) (Sillince, 1990: 61; Urban, 1988: 207)⁴. The housing situation and the associated realization of housing rights have undergone a negative transformation in the early 80s. Foreign loans and credits that were meant to reinvigorate Polish economy soon appeared to be archaic and inefficient. Hence it became clear that the communist regime was unable to meet

⁴ Between 1970 and 1980, about 2.5 million housing units were built in Poland. For the sake of comparison, the figure between 1950 and 1955 was only four hundred thousand.

the growing consumption needs (including housing needs).

Housing shortages became one of the subjects undertaken in the framework of strikes in the cities of the Baltic coast in August 1980 (the beginning of the Solidarity movement). They were reflected in the 21 Demands of Inter-Factory Strike Committee (“Międzyzakładowy Komitet Strajkowy” in Polish), the so called “Gdańsk Solidarity postulates”. The postulate no. 19 was: “*To reduce the waiting time for housing*”. After the August Agreement and then after the introduction of Martial Law in December 1981 the implementation of housing rights was also complicated because of the increasing birth rate in the 80s (the so-called Polish baby boom). Economic crisis evoked by growing international indebtedness led to the stagnation of cooperative housing developed in earlier decades. Young couples with children appeared to be the most threatened by housing problems. Disparity between increasing consumption needs of Poles and impossibility of satisfying those needs (withdrawal of foreign investment credits and decline of internal economy) became one of the fundamental reasons for the collapse of communism in Poland. Nevertheless we should remember that transformation in the 90s was not only the achievement of “Solidarity”, but also the result of economic crisis in the 80s.

In summary, we conclude that between 1944 and 1989 (the period of PRL) the implementation of housing rights was one of the most significant social and

economic problems. Together with rising food prices and periodic shortages of meat products it formed a major challenge for Communist system that could not handle it effectively and therefore solve all the structural problems of socialist society.

The transition process in the countries of Central and Eastern Europe, initiated, inter alia, by the fall of the Berlin Wall, was a process of unprecedented political importance not only for our region, but also for the whole European continent. On the basis of human rights, it strongly demonstrates how vital it is to have a comprehensive outlook at the issue of their protection. The political, economic, and social transformation launched in Poland in June 1989 also possesses serious implications for human rights discourse. It imposes a more holistic perspective of central government and local authorities with reference to the implementation of human rights. It is inaccurate to think of the right to housing as a fully autonomous postulate, completely separate from other social and economic rights (e.g. the right to work, the right to social security, or even the right to health and food). There is in fact a correlation between them, a kind of interdependence that should be taken into account when constructing policies. It is therefore not possible for state authorities to implement them selectively, which seems, at a subconscious level, to take place in the attempts made by the Polish political elites in the 90s of the last century.

The Polish transformation can be considered a successful one. However, many

errors have been committed. Three main mistakes that have potentially significant implications for human rights include:

- 1) Paying too much attention to the political and civil shortcomings of the transition at the expense of its economic and social dimensions.
- 2) The separation of the economic transition from its social context. It seems that the economic transformation in Poland took place too quickly (for example, some of Leszek Balcerowicz's activities). Performing "shock therapy" on the economy in a country with a relatively low level of development of civil society always poses risks (Klein, 2008: 107).
- 3) A lack of appropriate institutions of social assistance and support for people who are not beneficiaries of the political changes and free market development (for example, the population of eastern Poland, inhabitants of State Agricultural Farms, and in general people living in rural areas).

The peaceful Polish transition (so-called "refolution", term coined by Timothy G. Ash) which took place after the Round-Table talks and democratic elections (February-June 1989) had an enormous influence on the sphere of economic and social rights of individuals, including but not limited to housing rights. In a more abstract way, a strong relationship emerges between the right to work and the sphere of social security. All these rights are sometimes collectively referred to as so-called social security (Foscarinis, 2000: 171).

It seems that, despite their good intentions, the authors of economic transformation in Poland did not anticipate what kind and how big the consequences would be for the economic and social status of the Poles.

At the same time, the privatization process, combined with rapid and deep restructuring of Polish industry launched in the early 90s, has caused a massive wave of redundancies and structural unemployment. Equally important was the reduction of the privileges of certain social groups and parallel to it marginalization of the mechanisms of social assistance, and tax increase. The resulting wave of mass redundancies in the industry proved fatal, especially in the context of an underdeveloped Polish service sector in the first half of the 90s. (Many of the unemployed had no chance of finding there a job because of very low demand.) Coupled with a reduction in social benefits, this fact impaired the status of people living in northern and eastern part of Poland—areas which had the biggest number of State Agricultural Farms. Enclaves of poverty and social exclusion began to spring (Hardt and Kaufman, 1995: 463)⁵.

Economic transformation in the 90s entailed considerable consequences in the realm of housing rights. Constant

5 We can refer to the historical distinction between western and eastern Poland as the so-called Poland A and Poland B. Historically, the source of Poland A and B can be traced to the period of the partitions of Poland, which resulted in a much larger industrial development of the western areas than the eastern.

unemployment and rising rents sparked a chain reaction in the form of an increase in the number of people requiring those benefits. The liquidation of working-class housing and so-called “working class hotels” and, at the same time, a highly unfair buyout of whole tower blocks for prices not reflecting their true value led to growth of evictions and homelessness (Woods, 2003: 222; Dine and Fagan, 2006: 26).

It should be stressed that the relative underdevelopment of the structures of democratic civil society in Poland at that time caused that the state was not able to adequately respond to the negative trends described above. It seems that the worst situation in terms of housing rights in Poland prevailed during the period from 1994 (the end stages of the purely economic transformation, denomination of Polish currency) to 2004 (accession to the European Union and Common Market). The mass scale labour migration of Polish citizens slightly improved the general housing situation. It is estimated that about 2,2 million migrant workers left Poland between 2004 and 2011.

Currently, housing problems in Poland seem to be on a smaller scale than just a few years ago. Yet many more problems remain in this area. Adequate housing for each family or individual still often remains unattainable. After the Polish accession to the European Union (and European Economic Area as well as Schengen Area), property costs have increased dramatically in both primary and secondary real estate markets.

Apartments in major Polish cities are often more expensive than in comparable urban areas in Western Europe (e.g. France, Germany, or Spain). Szczecin, one of the biggest cities located in Western Pomerania, near to the Federal Republic of Germany, provides an interesting example of this situation. For the price of a one-bedroom apartment there, you can purchase a medium-sized house in the border area of Germany. Paradoxically, the Poles, reluctant to surrender property and land to German citizens before the accession to the EU, are now starting to buy apartments in the territory of former-East Germany.

The phenomenon of homelessness is currently an essential social problem in Poland, as well as a very low standard of social housing and a long waiting period (often up to five years) to get access to what does exist. In spite of the observed in years 2007-2011 noticeable improvement in this particular sphere actions undertaken by state authorities should be still deemed as insufficient. Profound discussion about the causes of homelessness and systemic solutions that eliminate them are lacking. Problems of unemployment, homelessness, limited capabilities of young generation and minimal wage which is one of the lowest in Europe does not correspond to the image created by the government depicting Poland as the region leader.

Reassuring, this paper emphasizes that housing rights are one of the most important problems with which Poland had to confront during the transformation of its economic system. The process of

the market facilitation and deregulation has led to many negative consequences for the economic and social aspects of human rights. Public administration often did not understand that a liberal and free market economy does not entail an automatic reduction in social assistance.

The above-mentioned cases reflect in-depth discussions undertaken by various international organizations focusing on the implementation of housing rights in Poland. Specific echoes included reflection on the eviction issues in the second half of the 90s. This issue was the subject of deliberations conducted, inter alia, at the UN Economic Commission for Europe in Geneva (1997, 2000, and 2001), European Union (2001), and the Council of Europe (2001).

Some aspects of current housing problems in Poland

In the following portion of my paper, I will try to draw attention to the three most crucial housing problems of Poland's transformation phase. One must include the problems of homelessness, eviction, low social housing standards, and long waiting times for social housing (Auleytner, 2006: 174). Measures to counter the above-mentioned problems should be responsibly introduced by the public administration. It must be stressed that very often the authorities do not perform their duties properly in that respect, or else do it on a very selective basis. Since the early 90s we have observed a lack of coordination on the subject of housing policy at the national level. The relative weakness

and underdevelopment of local government institutions, which include housing issues in municipalities and counties, negatively affected the housing situation. Realising the right to adequate housing will remain for some time a significant social problem for state authorities and Polish citizens.

The phenomenon of homelessness remains a serious problem in Poland since 1989. There are currently no accurate estimates of the magnitude of the issue. The number of homeless people in Poland is estimated at anywhere from 30,000 to upwards of 300,000 people. Reports sent by NGOs to the Polish Ministry of Health and Welfare, in conjunction with grants awarded to help the homeless, show that they provide assistance for around 80-130,000 people per year. The data estimating the number of homeless people at 300,000 me from one of the leading Polish non-governmental organizations (Monar).

Contrary to common opinion, evictions were not the main cause of the progressive phenomenon of homelessness in Poland since the early 90s. The causes remain within the economic and social dimensions of the transition after 1989. According to the report of the Polish Ministry of Health presented in 2008, the main reasons of homelessness are: family breakdown, eviction, a return from prison without the possibility of residence, having no fixed income, domestic violence, lack of social tolerance, dependence issues, the liquidation of working class hotels, leaving a childhood home, and returning from a mental hospital.

It is worth underlining that at least some of the factors listed above are related to the transformations in Poland after 1989. The major social catalyst for homelessness seems to be alcoholism. Such circumstances as job loss or being brought up in eastern parts of the country (e.g. in Podlasie) are excluded because these are factors that concur to alcoholism. The elimination of working class hotels and the fairly daunting legal purchase of tower blocks on-site by individuals or private companies remained a substantial problem in the 90s. (Existing residents were forced to move out as a result of rents in severe excess of market prices.) Although it is necessary for sustainable development of Polish economy and society, it is very difficult to solve the problem of homelessness. The rental prices are very high and the waiting time for social flats lasts for years due to their scarcity in the districts and communes⁶.

During the 90s, forced evictions became a very significant Polish dilemma (Markham, 2003: 7-13). This had a rather negative impact on the image of Poland abroad. The legal basis for these evictions was the earlier version of the Code of Civil Procedure and the Law on the Protection of the rights of owners of residential accommodations. It is estimated that by the end of 2004, forced evic-

tion in Poland was carried out on more than 60 thousand people (about 4-5 thousand people per year). This group was comprised mainly of defaulting co-operative rental housing tenants.

The case of eviction in Poland became a subject of interest at the UN Economic Commission for Europe. The 2000 paper, "Synthesis of National Reports on the Implementation of the Habitat Agenda" states:

In countries with economies in transition where social protection has declined considerably, there is a strong need to address the situation of tenants, as housing markets are becoming increasingly commercialised [...]. In Poland, the rents and service charges are too high for poor people. Notwithstanding the housing allowances, some households cannot afford such expenditures, which, in extreme cases, lead to evictions. There has been an increase in evictions in Poland.

Once again, it is worth mentioning that Poland as a party to the international human rights instruments (including, in particular the International Covenant on Economic, Social, and Cultural Rights) was under obligations to take all possible measures for guaranteeing the rights to adequate housing for its citizens. The public administration was thus expected to ensure some form of aid (mandatory property replacement) to evicted people, which unfortunately was not taken into account in previous Polish legislation.

⁶ Over the span of the years 2002 to 2008, real estate prices in Poland drastically increased. (This is the so-called Polish property bubble). Between June 2006 and July 2007 alone, the average price of a square metre in Warsaw rose from 1636 EUR to 2519 EUR. In 2009, internet surveys and analyses from real estate agencies revealed that Poland is one of the countries with the highest house-price to income ratio.

From 5th February, 2005, according to the amendment applied to Code of Civil Procedure, evicting someone onto the street is prohibited. The document states:

In carrying out the obligation to empty property to help meet the housing needs of the debtor under the writ of execution, which does not follow the debtor's right to the premises of social or replacement, the bailiff refrain from making transactions until the municipality designates a temporary room or when the debtor can find such a room.

Detailed rules for eviction include the order of the Minister of Justice on 26th January 2005. Pursuant to the regulations, the bailiff cannot execute an eviction onto the streets. He must wait until the person is evicted by the owner or a replacement takes place. If there is not available rooms, the bailiff should seek the assistance of the community. Until that, the bailiff suspends the eviction procedure.

Temporary premises must be in the same (or a nearby) city/village. Living space for each household member should be at least 5 square meters. The room should have access to safe drinking water, a toilet (which may be located outside the building), natural light, electricity, and heating. The walls may not be damp, and the evicted person must be able to install a microwave (or other devices) for cooking. Spaces cannot be substituted in place of lodging. One cannot evict a person having the right to social premises.

By 2005 evictions onto the street were in fact carried out, although, since 2002, the Law on the Protection of the rights of tenants does include a long list of people protected against them. Still, there have been eviction cases outside this list. Poland is not the only former communist state struggling with housing problems. The phenomenon of evictions in the 90s also occurred in other countries in transformation in Central and Eastern Europe (e.g. in Lithuania and Russia).

To set out the legal prohibition of eviction on the streets, the central problem in the implementation of housing rights in Poland is the low standard of social (replacement) housing and the long waiting period for them. Local authorities generally do not possess a sufficient number of social flats, which extends the waiting time to few years or even longer. Much of the public housing does not meet the basic requirements for sanitation, heating, and fire safety.

In April 2009 in Kamien Pomorski (a city in northern Poland), a tower block (former working class hotel) burned down. 21 people were killed and over 30 wounded. This tragedy could likely have been avoided if the legislators had tightened the criteria for the conditions which must be met by social housing and local administration in order to better fulfil their obligation to monitor the standards of this type of housing.

In long postwar period the housing situation in Poland has never been adequately matched with needs and

expectations. Poland's economic and social transformation has highlighted the importance of many previously unsolved problems and has created new ones (like the phenomenon of eviction). The point is to make the state authorities and local administration conscious of what their duties should be in the full and wide implementation of housing rights.

Conclusions

The battle for the shape of social and economic rights that took place in the last 50 years has led to wide catalogue of housing rights and principles of their implementation within the UN system. Although provisions of several international conventions legally bind countries housing rights remain a specific construct depending heavily on regional differences. Distinctness of economic development and political situation cause that the right to adequate living conditions seem hard to define as a coherent legal concept. Term "adequate housing conditions" can be interpreted in many ways, taking into account place where we live, our individual needs and aspirations etc.

The level of economic development and national patterns of politics are currently decisive factors influencing the diversity of housing problems in various countries of the world. The character of these problems changes together with the increase of general welfare and fluctuations in world economy. The current financial crisis has led to significant deterioration of housing situation in many

regions. Falling share rates caused by the turmoil of world economy give rise to artificially inflated property prices (for example, in Israel) and the attitude toward pulling out from investing in real estate sector in the aftermath of cutting economic fundamentals of middle class in USA, Spain or Morocco.

Proper realization of right to adequate housing seem a crucial tool of political stabilization. Long-term negligence in this sphere usually lead to gradual radicalization of marginalized social groups. In order to apprehend the essence of housing issue one must recall great revolutions of our time, such as polish transformation and the fall of Communist regime in Romania. Mass protests that take place now in Israel vividly show the importance of the realization of housing rights in many parts of the world.

Serious housing problems menace poor and overpopulated African countries. Standards of legal protection are relatively underdeveloped and social assistance should be in any form institutionalized. Housing rights in Africa as well as in some Asian countries (e.g. Bangladesh, Burma) are linked to more fundamental issues such as water rights, lack of food, or women rights. Actions taken by local state authorities do not focus on democratic redistribution of income, but on providing basic goods for its citizens (water, food, shelter, safety) indispensable for their functioning. Problems in this particular sphere emerge from negative consequences of political (conflict induced displacement), environmental (environmentally induced displace-

ment) and economic (development induced displacement) changes.

Housing rights within the category of countries entering the path of fast economic development constitute a very serious challenge. High pace of growth very often lead to the reduction of spending on social policy. However we must remember that limiting the aid for the poorest in the period of neuralgic changes seem a hazardous process especially from the social point of view. Chinese and Polish experiments with free market economy are the examples of such transformations that resulted in the occurrence of housing problems. Shock therapy used by polish economists caused the deepening of social disparities, rise of poverty enclaves, homelessness and social exclusion. Just redistribution of national income among all groups of people seems one of the methods of full realization of housing rights that has been actually introduced, e.g. in Brazil or India. Creating economy based on broad catalogue of the mechanisms of social aid is usually better for long-term economic and social benefits than other political strategy. One principle is worth recalling here: the biggest costs of transformation concern the lowest classes of a given society.

The implementation of housing rights in highly developed countries entails necessity of formulating by its state authorities the answer to growing consumption needs of the citizens. Equally important is also the role of aspirations of minority or immigrant groups. The West European model of social policy built successively

since the Second World War consisted of easy access to cheap houses and system of ad hoc or constant grants. Consequences of economic crisis force European countries to reduce many privileges deeply rooted in consciousness, especially among people from middle class who achieved a relatively high level of well-being. It is psychologically true that the perspective of loss makes them one of the fiercest defenders of welfare state.

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