

The Legal Framework for Assisting Displaced Persons from Ukraine in Meeting Their Housing Needs in Poland Introduced by the Act of March 12, 2022 on Assistance to Citizens of Ukraine in Connection with the Armed Conflict in the Territory of That State

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Abstract

The article presents the issue of assistance to displaced persons from Ukraine in meeting their housing needs in Poland, which is provided on the basis of a special act dated March 12, 2022 regarding assistance to citizens of Ukraine in connection with the armed conflict in the territory of that state. The aim of the article is to discuss this specific legal regulation with subsequent assessment of its effectiveness in meeting the housing needs of displaced Ukrainians who settled in Poland due to the armed conflict in their country. Logical-linguistic and comparative legal methods are used herein. The right to housing as part of the human rights system is discussed in the beginning, and then individual solutions for meeting housing needs introduced by the special aid act are reflected on. Finally, the conclusions from the analysis are formulated, on the basis of which it should be concluded that the introduced solutions should be assessed positively. The clearest proof of their effectiveness is the lack of camps for Ukrainian refugees in Poland. The efficiency of the solutions results primarily from the skillful combination of two pillars of assistance, i.e. the public and private sectors.

Keywords: assistance to Ukrainian citizens, displaced persons from Ukraine, human rights, lease, lending for use, right to housing.

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1. Introduction

On February 24, 2022, the Russian Federation invaded Ukraine. As a result of

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the attack by the Russian troops, not only internal resettlement of people within the territory of Ukraine was observed², but also those displaced from Ukraine began to go to other countries, including Poland, seeking shelter from the war. The mass influx of displaced Ukrainians was met with a spontaneous reaction from the Polish society, who provided them with great assistance in terms of housing needs. They found shelter not only in collective accommodation centers, e.g. sanatoriums, stadiums or market halls, but above all in private apartments made available by Poles themselves. On the anniversary of the Russian aggression, i.e. February 24, 2023, the Polish Office for Foreigners published migration data which shows that almost 1 million Ukrainian citizens, mainly women and children, benefit from temporary protection in Poland. A total of 1.4 million people have valid residence permits³. Due to the outbreak of the war, Poland and its citizens are providing significant assistance to Ukraine and its nationals on the international, military, economic and social levels. Due to the massive inflow of people from Ukraine caused by the conflict on the territory of that country, one of the long-term challenges for the Polish state is the issue of housing policy towards them.

Polish assistance to displaced Ukrainians was followed by legislative work aimed at creating a legal framework therefor, which resulted in the adoption on March 12, 2022, of the Act on assistance to citizens of Ukraine in connection with the armed conflict in the territory of this state⁴. It entered into force on the same day on which it was adopted, with retroactive effect as of February 24, 2022. It is a unique act, the so-called special act, which introduced a number of exceptional solutions for Ukrainian citizens, in addition to the general rules applicable in Poland with respect to foreigners, resulting primarily from the Act of December 12, 2013, on foreigners⁵ and the Act of June 13, 2003 on granting protection to foreigners within the territory of the Republic of Poland⁶. The special aid act implements the Council Implementing Decision (EU) 2022/382 of March 4, 2022, stating the existence of a mass influx of displaced persons from Ukraine within the meaning of Art. 5 of Council Directive 2001/55/EC and resulting in the introduction of temporary protection⁷, thus activating the protective mechanisms arising from the Council Directive 2001/55/EC of 20 July 2001 concerning minimum standards for the granting of temporary protection in the event of a mass influx of displaced persons and on measures to promote balance of effort between Member States relating to the admission of such persons and its consequences⁸. The

² More about internally displaced persons in Ukraine; see Yurii Prytyka et al., „Protection of Rights of Internally Displaced Persons Amid Military Aggression in Ukraine,” *The Age of Human Rights Journal*, no. 20 (2023): 2 et seq., doi: 10.17561/tahrj.v20.7711.

³ <https://www.gov.pl/web/udsc/obywatele-ukrainy-w-polsce--aktualne-dane-migracyjne2>, accessed 29.09.2023.

⁴ Consolidated text: Journal of Laws of 2023, item 103 as amended, hereinafter: AssUkrA.

⁵ Consolidated text: Journal of Laws of 2023, item 519 as amended.

⁶ Consolidated text: Journal of Laws of 2023, item 1504, hereinafter: ProForeA.

⁷ Official Journal of the European Union L 71/1, 4 March 2022.

⁸ Official Journal of the European Union L 212/12, 7 August 2001, hereinafter: Directive 2001/55/EC; see Izabela Florczak, in *Pobyt i zatrudnienie cudzoziemców w Polsce. Rozwiązania wynikające z ustawy o pomocy obywatelom Ukrainy*, ed. Izabela Florczak (Warsaw: C.H. Beck, 2022), 4; Witold Klaus, in *Ustawa o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa. Komentarz*, ed. Witold Klaus (Warsaw: Wolters Kluwer Polska, 2022), 27 et seq.; Maja Łysienia, „Following the EU

provisions of the AssUkrA Act include, among others, specific legal solutions with respect to displaced persons from Ukraine in the field of housing law. It is worth emphasizing in the beginning that this special act dedicated to the citizens of Ukraine in no way excludes displaced persons from this country from using other forms of protection in the territory of Poland (e.g. granting refugee status, subsidiary protection, asylum, temporary protection), due to the situation in their country.

The research problem discussed in this article covers the legal regulation contained in the indicated special act, which relates to the rules of accommodation of Ukrainian citizens in Poland. The aim of the article is to discuss this specific legal regulation with subsequent assessment of its effectiveness in meeting the housing needs of displaced Ukrainians who settled in Poland due to the armed conflict in their country.

2. The right to housing and its legal protection

Meeting people's housing needs is subject to legal protection, both at the level of international and Polish law. Pursuant to Art. 25 section 1 of the Universal Declaration of Human Rights adopted by the UN General Assembly in Paris on December 10, 1948, everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including meals, 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. Similarly, according to Art. 11 section 1 sentence 1 of the International Covenant on Economic, Social and Cultural Rights of December 19, 1966, opened for signature in New York on December 19, 1966⁹, The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate meals, clothing and housing, and to the continuous improvement of living conditions. It can be concluded from these regulations that housing is important within the universal system of human rights protection, as it is one of the elements that constitute the right to an adequate standard of living¹⁰. Moreover, housing should be considered one of the most crucial elements of this human right, since the implementation of this right consists of many elements,

Response to the Russian Invasion of Ukraine? The Implementation of the Temporary Protection Directive in Poland," *Central and Eastern European Migration Review* 12, no. 1 (2023): 184–185, doi: 10.54667/ceemr.2023.14; Piotr Sawicki and Kamil Szmid, in *Ustawa o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa. Komentarz*, eds. Kamil Szmid and Piotr Sawicki (Legalis Database, 2022), Commentary on article 1, thesis 1 et seq.

⁹ Journal of Laws of 2023, No. 38, item 169.

¹⁰ General comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant), pt 1, accessed September 29, 2023, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FGEC%2F4759&Lang=en; see also Lorna Fox O'Mahony, and James A. Sweeney, "The Exclusion of (Failed) Asylum Seekers from Housing and Home: Towards an Oppositional Discourse," *Journal of Law and Society* 37, no. 2 (2010): 298; Robert Tabaszewski, "The UN system of protecting human rights," in *International Human Rights Law*, Krzysztof Orzeszyna, Michał Skwarzyński, and Robert Tabaszewski, translation by Piotr Gumola (Warsaw: C.H. Beck, 2023), 80; Ingrid Westendorp, "A Right to Adequate Shelter for Asylum Seekers in the European Union," *Nordic Journal of Human Rights* 40, no. 2 (2022): 333, <https://doi.org/10.1080/18918131.2022.2085007>.

as evidenced by the fact that they have not been listed exhaustively, but only as examples. Housing, however, is included in those elements covered by the right to an adequate standard of living which have been clearly indicated.

The right to housing is also important in the regional system of human rights protection of the European Union. This right is referred to in Art. 34 section 3 of the Charter of Fundamental Rights of the European Union¹¹ according to which, in order to combat social exclusion and poverty, the Union recognizes and respects the right to social and housing assistance for the purposes of securing, in accordance with the principles laid down in the EU law as well as in the laws and practices of its Member States, a decent existence for any and all persons deprived of sufficient resources¹². Pursuant to Art. 31 of the European Social Charter in its revised version (STE No. 163), opened for signature in Strasbourg on May 3, 1996, with a view to ensuring the effective exercise of the right to housing, the parties undertake to take measures designed to promote access to housing of an adequate standard, to prevent and reduce homelessness with a view to its gradual elimination, to make the price of housing accessible to those without adequate resources.

After all, the right to housing enjoys legal protection under Polish law¹³. Pursuant to Art. 75 section 1 of the Constitution of the Republic of Poland of April 2, 1997¹⁴, public authorities pursue a policy that helps to meet the housing needs of citizens, in particular counteracting homelessness, promoting the development of social housing and supporting citizens' actions aimed at obtaining their own apartment. In the light of the jurisprudence of the Constitutional Tribunal, the right to an apartment is not equivalent to the right to obtain its ownership, but it pertains to the access to an apartment in order to meet housing needs. In the judgment of October 18, 2017, the Constitutional Tribunal indicated that: *"The right to housing is understood as real access to a place where it is possible to meet housing needs. This right is not equivalent to the right of ownership of an apartment. It also refers to meeting the housing needs of those whose financial situation does not allow them to purchase a flat. At the same time, it does not guarantee that the housing needs of every person in need will be met. Therefore, it does not warrant that everyone will own an apartment. Although the right to housing is an economic and social right, there is no doubt that its implementation is inextricably linked with basic human rights. Hence, decent living conditions largely ensure respect for the principle of human dignity. It is obvious that a person without housing, sufficient funds to buy meals or clothing, or the possibility of receiving medical*

¹¹ Official Journal of the European Union C 83/389, 30 March 2010.

¹² Polish literature indicates that this provision implies the obligation of Member States to establish a broadly understood social assistance system, with housing assistance being one of its elements. Its subjective scope is broad and covers "any and all persons deprived of sufficient resources"; Leszek Mitrus, in *Karta Praw Podstawowych Unii Europejskiej. Komentarz*, ed. Andrzej Wróbel (Warsaw: C.H. Beck, 2020), 936.

¹³ See more Monika Florczak-Wątor, *Obowiązki ochronne państwa w świetle Konstytucji RP i Europejskiej Konwencji Praw Człowieka* (Cracow: Księgarnia Akademicka, 2018), 215 et seq.

¹⁴ Journal of Laws of 1997, No. 78, item 483 as amended, hereinafter: Constitution of the Republic of Poland.

treatment, has no chance for a decent life”¹⁵. The viewpoint of the Polish Constitutional Tribunal is of great significance from the point of view of the research problem discussed in this article because, as is clear from the content of Art. 75 section 1 of the Constitution of the Republic of Poland, it applies solely and exclusively to Polish citizens and does not apply to foreigners. However, the Constitutional Tribunal emphasized that the right to housing is one of the fundamental conditions for respecting the dignity of a human. This standpoint is confirmed by other judgments thereof. In the judgment of April 4, 2001, the Constitutional Tribunal stated that the condition for the respect for human dignity is, among other things, the existence of a certain material minimum enabling an individual to independent living as part of the society and providing every person with opportunities for full personal development in the surrounding cultural and civilizational environment¹⁶. In turn, in the judgment of March 17, 2008, the Constitutional Tribunal indicated that the right to housing enables the realization of dignity¹⁷. Hence, it can be concluded that the housing needs of Ukrainian citizens fleeing the war are protected at the constitutional level, but not on the basis of Art. 75 section 1 of the Constitution of the Republic of Poland, but pursuant to Art. 30 of the Constitution of the Republic of Poland which provides for the principle of inviolability and respect for human dignity. According to this provision, the inherent and inalienable dignity of a person is the source of freedom and rights of a human and citizen. It is inviolable, and its respect and protection is the responsibility of public authorities. What needs to be emphasized is the fact that constitutional protection of human dignity cannot in any case result in an obligation to provide Ukrainians with ownership to an apartment, but only with access to accommodation so that their housing needs are met.

The protection of the right to housing under the Polish legal system also includes Art. 75 section 2 and Art. 76 of the Constitution of the Republic of Poland, which, contrary to the above-mentioned Art. 75 section 1 thereof, are not limited subjectively, i.e. to Polish citizens solely. Therefore, the said provisions may also provide protection for Ukrainian citizens who have accommodation in Poland. Pursuant to Art. 75 section 1 of the Constitution of the Republic of Poland, the protection of tenants' rights is defined by law. However, in accordance with Art. 76 of the Constitution of the Republic of Poland, public authorities protect consumers, users and tenants against activities that threaten their health, privacy and safety as well as against unfair market practices. The scope of this protection is determined by law. Both provisions regarding meeting housing needs protect persons who occupy a flat on the basis of a legal title other than ownership. The tenant, including the tenant and user of an apartment, may be not only a Polish citizen, but also a foreigner, thus a Ukrainian citizen fleeing from the war in his country. Both provisions are too general in nature to constitute a direct source of rights and obligations that can be invoked in the protection of the right to housing¹⁸, hence refer to a separate act. Therefore, the Act of June 21,

¹⁵ Judgement of the Constitutional Tribunal of 18 October 2017, K 27/15 (Legalis Database).

¹⁶ Judgement of the Constitutional Tribunal of 4 April 2001, K 11/10 (Legalis Database).

¹⁷ Judgement of the Constitutional Tribunal of 17 March 2008, K 32/05 (Legalis Database).

¹⁸ Judgement of the Constitutional Tribunal of 12 January 2000, P 11/98 (Legalis Database); Judgement of

2001 on the protection of tenants' rights, the housing resource of the municipality, and on amendments to the Civil Code¹⁹ plays a special role in the Polish legal order in terms of protecting the right to housing. The said Act implements the objectives indicated in the provisions of the Constitution of the Republic of Poland by establishing a system of protection applicable to tenants, but also persons using residential premises on the basis of other legal titles, excluding the right of ownership²⁰. Pursuant to Art. 1 of the ProTenA, the Act regulates the principles and forms of protection of tenants' rights and the principles of managing the housing resource of the municipality. In particular, the Act protects the durability of the legal relationship entitling a person to the use of the premises (Art. 11 of the ProTenA), protection against excessive rent and fees for the use of the premises (Art. 7–8a of the ProTenA) as well as to protection against eviction “on the street” (Art. 14–15 of the ProTenA). Moreover, the Act also regulates (Art. 4, Art. 20–25 of the ProTenA) the principles of managing their housing resource by municipalities and other local government units (Art. 20 section 4 of the ProTenA), including issues related to social renting of premises, replacement premises and temporary rooms²¹.

To sum up, the right to housing is a human right²². And this is how it is recognized in the doctrine of the Polish law²³.

the Constitutional Tribunal of 2 July 2002, U 7/01 (Legalis Database).

¹⁹ Consolidated text: Journal of Laws of 2023, item 725, hereinafter: ProTenA.

²⁰ Zbigniew Radwański and Janina Panowicz-Lipska, *Zobowiązania – część szczegółowa* (Warsaw: C.H. Beck, 2019), 106.

²¹ *Ibid.*, 106.

²² David Birchall, „Human rights on the altar of the market: the Blackstone letters and the financialisation of housing,” *Transnational Legal Theory* 10, no. 3–4 (2019): 450–451, <https://doi.org/10.1080/20414005.2019.1692288>; Emeke Chegwe, „The Right to Housing in the Context of Nigerian Law and Human Rights Practice,” *Acta Juridica Hungarica* 55, no. 1 (2014): 21, doi: 10.1556/AJur.55.2014.1.2; Yvonne Donders, „Protecting the Home and Adequate Housing. Living in a Caravan or Trailer as a Human Right,” *International Human Rights Law Review* 5, no. 1 (2016): 18, doi 10.1163/22131035-00501002; Joe Hoover, „The human right to housing and community empowerment: home occupation, eviction defence and community land trusts,” *Third World Quarterly* 36, no. 6 (2015): 1095, <https://doi.org/10.1080/01436597.2015.1047196>; Padraic Kenna, „Can housing rights be applied to modern housing systems?,” *International Journal of Law in the Built Environment* 2, no. 2 (2010): 104–105; Taslima Khanam, Anju Man Ara Begum, „Implementation of the Right to Adequate Housing: A Glaring Paradigm of Sri Lanka,” *Mediterranean Journal of Social Sciences* 13, no. 4 (2013): 447–448, doi:10.5901/mjss.2013.v4n13p447; Ingrid Leijten, and Kaisa de Bel, „Facing financialization in the housing sector: A human right to adequate housing for all,” *Netherlands Quarterly of Human Rights* 38, no. 2 (2020): 95, doi: 10.1177/0924051920923855; Kaylee Ramage et al., „Is the Right to Housing Being Realized in Canada? Learning from the Experiences of Tenants in Affordable Housing Units in a Large Canadian City,” *Societies* 11, no. 2 (2021): 1, doi.org/10.3390/soc11020053; Bill Swannie, „Protection from forced eviction: what rights do social housing tenants have under human rights charters?,” *Australian Journal of Human Rights* 29, no. 1 (2023): 24–25, <https://doi.org/10.1080/1323238X.2023.2226948>; Stefan van Tongeren, „Housing Ex-Offenders in the Netherlands: Balancing Neighbourhood Safety and Human Rights,” *European Journal on Criminal Policy and Research* 28, no. 1 (2022): 58, <https://doi.org/10.1007/s10610-020-09443-6>.

²³ Paweł Sławicki, *Prawo człowieka do mieszkania i jego miejsce w systemie praw człowieka* (Sopot: Currenda, 2015), 230; see also Zenon Knypl, *Eksmisja a prawa człowieka* (Sopot: Currenda, 2015), 18; Agnieszka Napiórkowska-Baryła, „Potrzeby mieszkaniowe a prawo do mieszkania w regulacjach międzynarodowych, unijnych i krajowych,” *Studia Warmińskie* 55 (2018): 247.

3. Assistance from public administration bodies in accommodation

The first pillar of assistance in meeting the housing needs of Ukrainian citizens is accommodation organized for them by public administration bodies. Art. 12 section 1 of the AssUkrA stipulates a catalog of activities providing assistance to Ukrainian citizens whose stay in the territory of Poland due to war is in accordance with the law²⁴. This catalog is open²⁵, and the activities indicated therein are listed only as examples, therefore the possibility for public administration bodies to take other actions necessary to provide assistance to Ukrainian citizens cannot be excluded (Art. 12 section 1 point 8 of the AssUkrA). One of the fundamental activities is assistance in finding accommodation, which this catalog begins with (Art. 12 section 1 point 1 of the AssUkrA). In the light of the Act in question, the main public administration body that should provide assistance, including assistance in accommodation, is the voivode. Broadly speaking, under Polish law, voivodes are state administration authorities representing the Council of Ministers in voivodeships, which constitute administrative regions in Poland. The main role of voivodes is manifested not only in the fact that according to Art. 12 section 1 of the AssUkrA they are responsible for the implementation of the activities indicated in this provision, but apart therefrom, pursuant to Art. 12 section 2 of the AssUkrA, they have to coordinate the activities of public authorities, non-governmental organizations and entrepreneurs aimed at providing assistance to Ukrainian refugees. In order to improve the implementation of their tasks pertaining to assistance, including accommodation, voivodes have been empowered to issue orders binding on all government administration bodies operating in the territory of a voivodeship, state legal entities, local government bodies, local government legal entities as well as local government organizational units having no legal personality (Art. 12 section 10 of the AssUkrA).

In the light of the Act in question, the competences of voivodes in providing assistance to citizens of Ukraine, in particular in the field of accommodation, do not exclude the competences of other bodies. Pursuant to Art. 12 section 3 of the AssUkrA, other public administration bodies, units subordinated to or supervised by public administration bodies, public finance sector units as well as other public authorities may provide the said assistance to Ukrainian refugees. Moreover, for these purposes, such bodies or units may use the property acquired or entrusted thereto from the State

²⁴ The definition of legal stay is contained in Art. 2 of the AssUkrA. Generally speaking, pursuant to Art. 2 section 1 thereof, the stay of a Ukrainian citizen in the territory of Poland until March 4, 2024, shall be considered legal when two conditions are met: he has legally arrived in the territory of Poland in the period from February 24, 2022, to the date specified in accordance with the statutory delegation, in the regulation of the Council of Ministers; he has declared his intention to stay in Poland. Therefore, the legal solution contained in the said special act applies only to Ukrainian citizens who have declared their intention to continue to stay in Poland; Patrycja Joanna Suwaj, in *Ustawa o pomocy obywatelom Ukrainy. Komentarz z wzorami dotyczącymi pobytu, dostępu do rynku pracy, świadczeń społecznych, edukacji i opieki zdrowotnej*, ed. Paweł Drembkowski (Warsaw: C.H. Beck, 2022), 9; see also Anastasiia Kovalchuk, "Pomoc adwokatów Ukraincom przybywającym do Polski," *Problemy Prawa Prywatnego Międzynarodowego*, no. 32 (2023): 155–156, <https://doi.org/10.31261/PPPM.2023.32.06>.

²⁵ Marcin Princ, in *Ustawa o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa. Komentarz*, ed. Witold Klaus (Warsaw: Wolters Kluwer Polska, 2022), 78.

Treasury. Moreover, according to Art. 12 section 4 of the AssUkrA, such assistance to Ukrainian citizens may be provided by local government units, associations of local government units or metropolitan bodies, on their own initiative and within the scope of their resources²⁶.

In order for the aid activities to be effective, they had to be undertaken relatively quickly. Therefore, the Polish legislator decided to introduce a number of procedural facilitations in their implementation. Primarily, the provisions on public procurement contained in the Act of September 11, 2019 – Public Procurement Law²⁷ (Article 12 section 6 of the AssUkrA) do not apply to the public procurement necessary to provide assistance by a voivode, other public administration bodies, units subordinated to or supervised by public administration bodies, public finance sector units and other public authorities, as well as local government units, associations of local government units or metropolitan bodies, or to the public procurement necessary for the purposes of informing about assistance provided to Ukrainian citizens. The justification for the AssUkrA draft stated that the exclusion of the applicability of the said provisions results from a special situation that requires immediate provision of accommodation, transport, meals and medical care to Ukrainian citizens, thus making it necessary not only to award but also to execute the order - which would make it impossible to meet the deadlines necessary to conduct the procedure in a basic mode. Additionally, the situation in Ukraine is unpredictable, military operations carried out on its territory carry the risk of generating a significant scale of migration and are associated with additional circumstances of disruption of public order and state security - which, in accordance with Art. 12 of the PubPrL allows for the use of an exemption from the application of the Act – due to the significant interest of state security²⁸. Moreover, in order to provide assistance, the voivode, the body of a local government unit, an association of local government units or a metropolitan body, as well as a public administration body and organizational units subordinate to such public administration bodies may commission non-governmental organizations or entities listed in Art. 3 section 3 of the Act of April 24, 2003 on public benefit activities and volunteering²⁹, as well as trade unions, the implementation of a public task without the need for open tender (Art. 12 section 8 of the AssUkrA).

Since the entry into force of the AssUkrA, i.e. from March 12, 2022, to March 1, 2023, Ukrainian citizens did not have to participate in the costs of assistance provided to them, including the costs of accommodation and meals. Originally, Art. 12 section 17 of the AssUkrA stipulated that the voivode provide assistance to Ukrainian citizens to the extent of his resources, for no less than a period of 2 months from the date of first

²⁶ The scope of assistance is specified in a resolution by the decision-making body of a local government unit, an association of local government units or a metropolitan association. The forms and mode of providing assistance are determined by the competent executive body of a given entity or association (Art. 12 section 5 of the AssUkrA).

²⁷ Consolidated text: Journal of Laws of 2023, item 1605 as amended, hereinafter: PubPrL.

²⁸ Draft of the government bill on the Act on assistance to citizens of Ukraine in connection with armed conflict on the territory of that country, Print no. 2096, Sejm of the 9th term of office, 7, accessed September 29, 2023, <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=2069>.

²⁹ Consolidated text: Journal of Laws of 2023, item 571.

entry into the territory of Poland. Pursuant to the amendments made by the Act of January 13, 2023, amending the Act on assistance to citizens of Ukraine in connection with the armed conflict in the territory of that state and certain other laws³⁰, the content of Art. 12 of the AssUkrA was revised. As of March 1, 2023, a provision was made for the participation of Ukrainian citizens in the costs of assistance provided to them by public administration bodies, but only with regard to accommodation and meals. The justification for the draft amendment indicates that these solutions are aimed at sanctioning the practice of Ukrainian citizens' participation in the costs of housing and meals as well as at activating those residing in collective accommodation centers³¹. *De lege lata*, Art. 12 section 17 of the AssUkrA stipulates that the provincial governor and other public administration entities may provide assistance in meals and the provision of full-day collective meals for no longer than 120 days from the date of the first entry of a Ukrainian citizen into the territory of the Republic of Poland. Unlike initially, the scope of free assistance in the field of accommodation and meals is now limited in time, to 120 days from the date of the first entry of a Ukrainian citizen into the territory of the Republic of Poland. As of March 1, 2023, following 120 days from the date of the first entry into the territory of Poland, Ukrainian citizens must cover 50% of the costs of assistance in the field of accommodation and full board meals, but no more than PLN 40 per day (Art. 12 section 17a of the AssUkrA). However, as of May 1, 2023, after 180 days from the date of the first entry into the territory of Poland, Ukrainian citizens must cover 75% of the costs of this assistance, but no more than PLN 60 per day (Art. 12 section 17b of the AssUkrA). At the same time, exceptions to these general rules are allowed for humanitarian reasons. Pursuant to the *legis latae*, persons who due to their disability, age, pregnancy, the need to care for minor children or difficult life situation are unable to participate, even partially, in the costs of assistance are excluded from the principle of participation in the costs thereof (Art. 12 section 17c of the AssUkrA)³².

In the context of the analyzed pillar of assistance to Ukrainian citizens in meeting their housing needs during their stay in the territory of Poland, it is worth mentioning Art. 12 section 18 of the AssUkrA which sets forth the possibility of providing assistance to Ukrainian citizens by the minister responsible for culture and protection of national heritage and his subordinate units, including, among others, providing housing conditions that enable or support artistic, scientific, teaching or research activities in the field of art as well as professional or artistic development.

4. Pecuniary benefits

Ukrainian refugees coming to Poland in great numbers found shelter not only in places of collective accommodation set up by state administration, but also in places

³⁰ Journal of Laws of 2023, item 185.

³¹ Draft of the government bill on the Act amending the Act on assistance to citizens of Ukraine in connection with armed conflict on the territory of that country, Print no. 2845, Sejm of the 9th term of office, 8–9, accessed September 29, 2023, <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=2845>.

³² *Ibid.*, 9. M. Łysienia criticizes these solutions saying that in her opinion, they are inconsistent with the EU law; see Łysienia, „Following”, 190–191.

offered by private entities, i.e. Polish citizens³³ playing a crucial role in this respect by accepting displaced people into their homes. The Polish legislator noticed this huge potential hidden in Polish society and decided to actively use it in the housing policy towards Ukrainian citizens who fled their country as a result of war. Thus, we can say that the aid provided to Ukrainian refugees in meeting their living needs, including housing needs, is based not on one, but on two pillars, i.e. public and private sector.

Pecuniary benefits introduced for such private entities who have joined in helping Ukrainian citizens to meet their basic living needs is of great significance. Pursuant to Art. 13 section 1 sentence 1 of the AssUkrA, any entity, in particular a natural person running a household, who provides, at its own expense, accommodation and meals to citizens of Ukraine may be granted, at his request, a pecuniary benefit in this respect for a period of no more than 120 days from the date of arrival of the citizen of Ukraine in the territory of Poland. Originally, this period was shorter and amounted to 60 days. As of April 30, 2022, it was extended to 120 days by way of the Act of April 27, 2022, amending the Act on assistance to citizens of Ukraine in connection with the armed conflict in the territory of that state³⁴. However, the period of payment of this benefit may be subject to extension in justified cases (Art. 13 section 1 sentence 2 of the AssUkrA). Regulation of the Council of Ministers of May 4, 2022 on the maximum amount of pecuniary benefits due for providing accommodation and meals to citizens of Ukraine as well as the conditions for granting thereof and extending the period of its payment³⁵, which was issued pursuant to Art. 13 section 3 of the AssUkrA, stipulates that the commune may extend the period of payment of the benefit in question for a period longer than 120 days due to disability, age, pregnancy, the need of care for minor children of a Ukrainian citizen who is to be provided with accommodation and meals (§ 4 section 1 of the Regulation).

This benefit is managed by communes which carry out these tasks as commissioned activities from the scope of government administration, whereas voivodes are obliged to provide funds for their implementation (Art. 13 section 2 of the AssUkrA). Detailed solutions relating to the amount of the pecuniary benefit, the conditions for its granting and extending its payment are specified in the abovementioned Regulation. The amount of the pecuniary benefit for providing accommodation and meals to Ukrainian citizens is PLN 40 per person per day, and may be increased by the voivode in the case of providing accommodation and meals to Ukrainian citizens before the date of entry into force of the Act as well as when the entity providing them is an organizational unit, a legal person or an entrepreneur (§ 2 of the Regulation).

Moreover, it should be added that Art. 31 of the AssUkrA provides for assistance to Ukrainian refugees in the form of a one-off benefit of PLN 300 per person.

³³ See also Konrad Pędziwiatr and Wiktor Magdziarz, „The reception and integration of refugees from Ukraine in Poland, Czechia, Slovakia and Hungary – the New Immigration Destinations of Central Europe”, *Problemy Polityki Społecznej. Social Policy Issues* 59, no. 4 (2022): 359, <https://doi.org/10.31971/pps/162968>.

³⁴ Journal of Laws of 2022, item 930.

³⁵ Consolidated text: Journal of Laws of 2023, item 1381, hereinafter: Regulation.

This benefit is of some importance from the point of view of the subject matter of this paper as it may be used allocated for the costs of living, in particular the costs of housing.

5. Lending for use a building or its part in order to temporarily meet housing needs

Aid for Ukrainian citizens in connection with the outbreak of the war in Ukraine provided by Polish citizens took various forms, in particular many Poles decided to make their apartments available to Ukrainian refugees in order to meet their housing needs. This spontaneous social movement reached such a large scale that the accommodation of displaced persons in private apartments became an element of the Polish state's housing policy towards the influx of Ukrainian citizens. This phenomenon needed to be included in the legal framework over time, at the same time encouraging the Polish society to provide this form of assistance. On the one hand, the abovementioned pecuniary benefit in the amount of PLN 40 per day per person was introduced as the state's compensation for at least part of the costs incurred by the Poles who accommodated displaced Ukrainians in their apartments free of charge. On the other hand, life experience shows that a spontaneously emerging housing situation could, over time, become a source of conflicts between the owners or other administrators of such apartments and the Ukrainian citizens accommodated there, e.g. due to differences in character or changes in life situation. It should be emphasized that this housing assistance often takes the form of Ukrainian citizens' stay at residential premises inhabited by the host person and his family. Therefore, it was necessary to introduce legal solutions so that people who provide free apartments would not be afraid to do so, and the key in this respect is the possibility of quick and easy recovery of the premises provided out of courtesy.

Under Polish law, a situation in which the owner or another person with legal title to a residential premises admits a Ukrainian citizen to such premises in order to meet his housing needs should be deemed to constitute conclusion of a lending agreement by implication. According to Art. 710 of the Act of April 23, 1964 – Civil Code³⁶, by means of a lending agreement, the lender undertakes to allow the borrower, for a definite or indefinite period of time, to use the thing given thereto for this purpose free of charge. The legal nature, including the purpose of the lending agreement in Polish law, corresponds to the discussed situations of taking Ukrainians into their homes by Poles, in particular the altruistic motives behind it³⁷. The lending agreement is

³⁶ Consolidated text: Journal of Laws of 2023, item 1610 as amended, hereinafter: CC.

³⁷ Ewa Kacprzak-Szymańska, in *Ustawa o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa. Komentarz*, ed. Witold Klaus (Warsaw: Wolters Kluwer Polska, 2022), 363. The literature states that in order to increase the protection of the owner, it is necessary to resort to the institution of *precarium*, which consists in giving free use of things so as to perform a favor, guided by politeness or humanitarian reasons; Tomasz Szkaradnik, in *Ustawa o pomocy obywatelom Ukrainy. Komentarz z wzorami dotyczącymi pobytu, dostępu do rynku pracy, świadczeń społecznych, edukacji i opieki zdrowotnej*, ed. Paweł Drembkowski (Warsaw: C.H. Beck, 2022), 341.

unilaterally binding, as only the lender is obliged to perform the service³⁸. A characteristic feature of the lending agreement is its gratuitous nature. It consists in a free of charge benefit to the borrower, which comes down to his possibility to use the object of lending. The lending agreement cannot impose on the borrower the obligation to provide any benefits to the lender or to third parties³⁹. The Supreme Court, in its decision of March 5, 2009, stated that a lending agreement, most often motivated by selflessness and the willingness to help close people, is intended to benefit the borrower, who can use the lender's property free of charge⁴⁰. This is not prevented by the lack of a lending agreement concluded with a Ukrainian citizen in writing, as it may be concluded in any form, including implicitly⁴¹. Under Polish law a lending agreement is a real contract⁴², i.e. apart from the parties' uniform declarations of will, it is also necessary to hand over the object to the borrower. The legal relationship of lending arises at the moment of handing over, therefore it should be assumed that the agreement to lend premises or part thereof to a citizen of Ukraine occurs at the moment of taking possession of the premises, thus ensuring the possibility of the actual use of the premises or part thereof. From the point of view of certainty of transactions, it is best to prepare a handover and acceptance protocol regarding the handover of the loaned object. As stated in Art. 710 of the CC, the subject matter of lending is an object. This concept is understood broadly, so it can include movable and immovable property, as well as a part of an object⁴³. Therefore, the act of lending takes place regardless of whether the entire building on the plot of land, residential premises in the building, or even part of the premises, e.g. a room, was made available to Ukrainian citizens.

Qualifying the admission of a Ukrainian citizen to an apartment in order to meet

³⁸ Piotr Horosz, in *Kodeks cywilny. Komentarz*, ed. Mariusz Załucki (Warsaw: C.H. Beck, 2023), 1417; Jacek Gołaczyński, in *Kodeks cywilny. Komentarz*, eds. Edward Gniewek and Piotr Machnikowski (Warsaw: C.H. Beck, 2021), 1542; Jacek Gudowski, in *Kodeks cywilny. Komentarz. Tom IV. Zobowiązania. Część szczegółowa*, ed. Jacek Gudowski (Warsaw: Wolters Kluwer, 2017), 1023; Piotr Nazaruk, in *Kodeks cywilny. Komentarz*, eds. Jerzy Ciszewski and Piotr Nazaruk (Warsaw: Wolters Kluwer, 2019), 1256; Marcin Orlicki, in *Kodeks cywilny. Tom III. Komentarz. Art. 627–1088*, ed. Maciej Gutowski (Warsaw: C.H. Beck, 2022), 327; Wojciech Popiołek, in *Kodeks cywilny. Tom II. Komentarz do art. 450–1088. Przepisy wprowadzające*, ed. Krzysztof Pietrzykowski (Warsaw: C.H. Beck, 2021), 672.

³⁹ Jacek Górecki, in *Kodeks cywilny. Komentarz*, eds. Konrad Osajda and Witold Borysiak (Legalis Database, 2023), Commentary on article 710, thesis 5; Orlicki, in *Kodeks*, 327.

⁴⁰ Decision of the Supreme Court of 5 March 2009, III CZP 6/09 (Legalis Database); Judgement of the Supreme Court of 3 December 2009, II CSK 550/09 (Legalis Database); Resolution of the Supreme Court of 8 July 1992, III CZP 81/92 (Legalis Database).

⁴¹ Horosz, in *Kodeks*, 1418; Zdzisław Gawlik, in *Kodeks cywilny. Komentarz. Tom III. Zobowiązania – część szczegółowa*, ed. Andrzej Kidyba (Warsaw: Wolters Kluwer Polska, 2014), 677; Gołaczyński, in *Kodeks*, 1543; Górecki, in *Kodeks*, thesis 24; Orlicki, in *Kodeks*, 329.

⁴² Gawlik, in *Kodeks*, 677; Gołaczyński, in *Kodeks*, 1542; Gudowski, in *Kodeks*, 1022; Aneta Kaźmierczak, *Umowa użyczenia w polskim prawie cywilnym* (Warsaw: Wolters Kluwer Polska, 2008), 14; Nazaruk, in *Kodeks*, 1256; Zbigniew Radwański and Marcin Orlicki, „Użyczenie”, in *System Prawa Prywatnego. Tom 8. Prawo Zobowiązań. Część szczegółowa*, ed. Janina Panowicz-Lipska (Warsaw: C.H. Beck, 2011), 258–259; Radwański and Panowicz-Lipska, *Zobowiązania*, 150; Grzegorz Sikorski, in *Kodeks cywilny. Komentarz*, eds. Małgorzata Balwicka-Szczyrba and Anna Sylwestrzak (Warsaw: Wolters Kluwer Polska, 2022), 1131; Piotr Stec, in *Kodeks cywilny. Komentarz. Tom IV. Zobowiązania. Część szczegółowa (art. 535–764⁹)*, eds. Magdalena Habdas and Mariusz Fras (Warsaw: Wolters Kluwer, 2018), 569.

⁴³ Górecki, in *Kodeks*, thesis 13; Kaźmierczak, *Umowa*, 16–17.

his housing needs as concluding a loan agreement would have serious legal consequences in terms of the protection of the right to housing under general principles as the protective system resulting from some provisions of the ProTenA Act would apply. As far as the application of this Act is concerned, the definitions of premises, tenant and owner included therein are important. According to the definition contained in Art. 2 section 1 point 4 of the ProTenA, premises within the meaning of this Act to which it applies shall be premises used to meet housing needs, as well as premises used by the creator to conduct his activities in the field of culture and art. However, a room intended for the short-term stay of persons, in particular a room located in boarding houses, dormitories, guesthouses, hotels, rest houses or other buildings used for tourist or recreational purposes, shall not constitute premises within the meaning of the Act. Therefore, an apartment to which a Ukrainian citizen is admitted will be generally deemed as an apartment within the meaning of the ProTenA. Pursuant to Art. 2 section 1 point 1 thereof, a tenant should be understood as a tenant of the premises or a person using the premises on the basis of a legal title other than ownership rights. The scope of the concept of the tenant is therefore broad since the Act does not specify what legal title to the premises is meant. Therefore, the concept of the tenant includes a person using the premises on the basis of a legal title of a material or obligatory nature. The legal title to use the premises may also result from an administrative act or a court decision⁴⁴. Therefore, there is no doubt that a tenant may be a person whose legal title to the premises is based on a lending agreement⁴⁵. For the purposes thereof, Art. 2 section 1 point 2 of the ProTenA sets forth an autonomous definition of the owner⁴⁶. Thus, the owner is the lessor or another person with whom the tenant has a legal relationship entitling him to use the premises. Therefore, a person lending an apartment to a citizen of Ukraine may be the owner within the meaning of this Act.

ProTenA provisions guarantee tenants a wide range of protection not provided for in other acts. The measures to protect tenants' rights regulated in the ProTenA include: the order of a court ruling on the entitlement to social housing in the case of eviction of persons entitled thereto, the prohibition of carrying out evictions during the eviction moratorium period (in the period from November 1 to March 31 of the following year), the order to provide replacement housing to a tenant leaving or vacating the previously occupied premises, the order to create conditions for communes to meet the housing needs of the local community, especially low-income households, including the provision of social and replacement housing⁴⁷. Restrictions on the owner's ability to regain the premises, resulting from the wide scope of tenant protection included in the ProTenA, could have a deterrent effect on people considering admitting Ukrainian citizens to their apartments, thereby leading to the waste of the potential of the private

⁴⁴ Julita Zawadzka, in *Komentarze prawa prywatnego. Tom VI B. Prawo spółdzielcze i mieszkaniowe. Komentarz*, ed. Konrad Osajda (Warsaw: C.H. Beck, 2018), 521.

⁴⁵ Jacek Chaciński, *Ochrona praw lokatorów. Komentarz* (Warsaw: C.H. Beck, 2019), 13–14; Adam Doliwa, *Prawo mieszkaniowe. Komentarz* (Warsaw: C.H. Beck, 2021), 187; Roman Dzikczek, *Ochrona praw lokatorów. Dodatki mieszkaniowe. Komentarz. Wzory pozwów* (Warsaw: Wolters Kluwer, 2023), 79.

⁴⁶ *Ibid.*, 80.

⁴⁷ Mirosław Nazar, „Ochrona praw lokatorów, Cz. I”, *Monitor Prawniczy*, no. 19 (2001): 963.

sector to meet the housing needs of Ukrainian citizens seeking refuge in Poland. Therefore, the legislator decided to introduce special regulations. According to Art. 68 *in principio* of the AssUkrA, in the event of lending a building or part thereof to a citizen of Ukraine to temporarily meet his housing needs, the provisions of the ProTenA shall not apply in this respect. Under Polish law, tenant protection is part of the protected constitutional right to housing. As a result, excluding its application to Ukrainian citizens arriving in Poland in connection with the war, at first glance, weakens this protection. However, the extraordinary nature of the war situation and the pragmatic arguments for this exclusion of the ProTenA provisions must be taken into account. The exclusion means that people who provide residential premises free of charge to Ukrainian refugees do not need to worry that they will have problems with emptying the premises when they want to regain possession thereof. Thanks to this, the social campaign of admitting Ukrainian citizens to private apartments could develop and is still applicable. This is undoubtedly one of the factors that led to the fact that there are no camps for refugees from Ukraine in Poland, even though Poland accepted a very large number of Ukrainian citizens fleeing the war.

This trend of housing policy towards Ukrainian citizens also included Art. 68 *in fine* of the AssUkrA which, in the event of lending a building or part thereof to a Ukrainian citizen to temporarily meet his housing needs, excluded the application of special tenant protection provided for in the Polish legal system in connection with COVID-19, namely Art. 15 section 1 of the Act of March 2, 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them⁴⁸. It provided that during the period of an epidemic emergency or a state of epidemics declared due to COVID-19, enforcement titles ordering the emptying of residential premises are not executed. Due to the exclusion of the application of this provision, in the case of lending residential premises to a citizen of Ukraine who came to Poland in connection with hostilities in his country, it was possible to execute enforcement titles ordering the emptying of residential premises. The person lending a residential premises to a Ukrainian citizen could evict him from the premises even during the period of an epidemic emergency or a state of epidemics declared due to COVID-19⁴⁹. Currently, Article 68 *in fine* of the AssUkrA is irrelevant, for the reason that Article 15 section 1 of the CovidA Act is not in effect as of April 15, 2022, having been repealed under Article 20 of the Law of April 8, 2022, on amendments to the Act on assistance to citizens of Ukraine in connection with the armed conflict in the territory of that state and certain other laws⁵⁰.

It should be emphasized that despite the exclusion of the application of the indicated provisions in the field of tenant protection for pragmatic reasons, the tenant protection of Ukrainian citizens to whom residential premises have been leased is not completely limited. A certain minimum level of protection is provided for in the provisions of the Act of November 17, 1964 – Code of Civil Procedure⁵¹, the application

⁴⁸ Consolidated text: Journal of Laws of 2023, item 1327 as amended, hereinafter: CovidA.

⁴⁹ Szkaradnik, in *Ustawa*, 339–340.

⁵⁰ Journal of Laws of 2022, item 830.

⁵¹ Consolidated text: Journal of Laws of 2023, item 1550 as amended, hereinafter: CCP.

of which is not excluded in Art. 68 of the AssUkrA. Of primary importance is Art. 1046 § 4 of the CCP, from which it follows that when performing the obligation to vacate premises used to satisfy housing needs, even if the debtor is not entitled to social housing or replacement housing, the bailiff should remove the debtor to another premises or room to which the debtor has a legal title and in which he can live. In the event when the debtor does not have a legal title to another premises or room in which he can reside, the bailiff shall withhold his action until the municipality with jurisdiction over the location of the premises to be vacated, at the request of the bailiff, indicates a temporary room for use by the debtor.

6. Lease of a residential premises

The housing needs of Ukrainian citizens staying legally in Polish territory due to the war in their country are met on commercial terms. Apart from the possibility for Ukrainians to purchase residential premises in Poland, the main role in this area is played by the rental of residential premises. According to Art. 659 § 1 of the CC, through a lease agreement, the lessor undertakes to provide the tenant with an item for use for a specified or indefinite period of time, and the tenant undertakes to pay the agreed rent to the lessor. Thus, among the material elements of a lease agreement are the designation of the object of the lease and the rent charged by the lessor⁵². Citizens of Ukraine legally arriving in the territory of Poland may rent residential premises on the same terms as Polish citizens. The tenant of a residential premises is a tenant within the meaning of Art. 2 section 1 point 1 of the ProTenA and the tenant protection provided for in the provisions of this Act applies thereto. In the case of the conclusion of a housing lease agreement to the benefit of a citizen of Ukraine, the equivalent of providing housing for residential purposes is the payment of remuneration in the form of rent by such citizen. Due to the market nature of this form of satisfying housing needs by citizens of Ukraine, there is no grounds for them to be treated differently from other tenants in terms of tenant protection. In view of this, the tenant protection under the provisions of the ProTenA applies to Ukrainian citizens who are tenants of residential units. Hence, the AssUkrA regulations do not provide for any exemptions with respect to tenancy, unlike in the case of lending.

Nevertheless, the AssUkrA contains solutions specific to leases, and more specifically to occasional leases of premises. In Polish law, the occasional lease agreement is an extra-Code subtype of a lease agreement of premises⁵³. Pursuant to

⁵² Julian Jezioro, in *Kodeks cywilny. Komentarz*, eds. Edward Gniewek and Piotr Machnikowski (Warsaw: C.H. Beck, 2021), 1459; see also Helena Ciepla, in *Kodeks cywilny. Komentarz. Tom IV. Zobowiązania. Część szczegółowa*, ed. Jacek Gudowski (Warsaw: Wolters Kluwer, 2017), 881; Grzegorz Koziół, in *Kodeks cywilny. Komentarz. Tom III. Zobowiązania – część szczegółowa*, ed. Andrzej Kidyba (Warsaw: Wolters Kluwer Polska, 2014), 448; Janina Panowicz-Lipska, „Najem”, in *System Prawa Prywatnego. Tom 8. Prawo Zobowiązań. Część szczegółowa*, ed. Janina Panowicz-Lipska (Warsaw: C.H. Beck, 2011), 9; Piotr Zakrzewski, in *Kodeks cywilny. Komentarz. Tom IV. Zobowiązania. Część szczegółowa (art. 535–764⁹)*, eds. Magdalena Habdas and Mariusz Fras (Warsaw: Wolters Kluwer, 2018), 377.

⁵³ Paweł Sławicki, and Paweł Widerski, „Najem okazjonalny lokali – cz. I,” *Monitor Prawniczy*, no. 7 (2012): 351–352; see also Zawadzka, in *Komentarze*, 804.

Article 19a section 1 of the ProTenA, occasional lease agreement is an agreement for the lease of residential premises, the owner of which, who is a natural person, does not engage in business activity of renting premises, concluded for a specified period of time, not exceeding 10 years. What connects the occasional lease agreement with the lease agreement of premises specified in the CC are the material elements that in the case of the occasional lease agreement should be derived from Art. 659 § 1 of the CC. What proves the specificity of the occasional lease agreement as a subtype of a premises lease agreement is: the name of the agreement specified by law as the occasional lease agreement of premises; characteristic definition of the party to the agreement - the party is the owner who is a natural person that does not run a business activity in the field of lease of premises; characteristic definition of the object of the agreement - the landlord undertakes to rent a residential premises to the tenant, as well as a characteristically defined term of the agreement – a fixed period, not longer than 10 years⁵⁴. Occasional lease is intended to be part of the housing policy solutions that stimulate the proper development of the rental market. The reason for introducing the institution of occasional lease of premises was to eliminate the barriers encountered by natural persons who want to rent residential premises in a manner consistent with applicable law and obtain income therefrom⁵⁵. An occasional lease agreement of premises must be made in writing under the pain of nullity (Art. 19a section 6 of the ProTenA), with the following documents needed to be attached: statement of the tenant in the form of a notarial deed, in which the tenant surrendered to execution and undertook to vacate and surrender the premises used under the agreement of occasional lease of premises; indication by the tenant of another premises in which he will be able to live in the event of execution of the obligation to vacate the premises; statement of the owner of the premises or the person holding the legal title thereto to consent to the tenant and persons living with him to live in the premises indicated in that statement (Art. 19 section 2 of the ProTenA). In the case of occasional lease of premises, the landlord has a simplified way to vacate the premises if the tenant does not want to leave it voluntarily. The function of this lease is to limit the protection of the tenant. The landlord does not need to bring an action against the tenant to vacate the premises, as he may conduct enforcement on the basis of a notarial deed with an enforceability clause in which the debtor surrendered thereto⁵⁶. It is sufficient that before applying to the court for an enforceability clause of the notarial deed, after the expiration or termination of the lease of occasional premises, the owner serves on the tenant a demand to vacate the premises made in writing and bearing an officially certified signature of the owner (Art. 19d of the ProTenA).

In view of the abovementioned general principles, the possibility of concluding an occasional lease agreement of premises with a Ukrainian citizen who took refuge in

⁵⁴ Sławicki, and Widerski, „Najem,” 352.

⁵⁵ Draft of the government bill on the Act amending the Act on the protection of tenants' rights, municipal housing resources and on amending the Civil Code and amending certain other acts, Print no. 2250, Sejm of the 6th term of office, accessed September 29, 2023, https://orka.sejm.gov.pl/Druki_6ka.nsf/wgdruku/2250.

⁵⁶ Sławicki, and Widerski, „Najem,” 356.

Poland in connection with the war in his country would be highly limited since the formal requirement is that the tenant must indicate another premises in which he will be able to live in the event of enforcement of the obligation to vacate the premises, whereas the owner or the person having legal title to the premises must consent to the tenant and the persons living with him to occupy the premises indicated in the statement (Art. 19a section 2 points 2 and 3 of the ProTenA). Ukrainian refugees should not be expected to have a place in Poland where they could live. Therefore, in order to eliminate formal restrictions for Ukrainian citizens in meeting their housing needs by means of occasional lease of premises, the Polish legislator decided to relax the formality of this agreement so that it is also available to Ukrainian citizens who legally came to the territory of Poland in connection with the war. Based on Art. 69 of the AssUkrA, the application to persons covered by this Act of the provisions of the ProTenA regarding the tenant's indication of another premises in which he can live in the event of being obliged to vacate and hand over the premises occupied under an occasional lease agreement and submitting by the owner of the premises or the person holding the legal title thereto a statement with consent for the tenant and the persons living with him to reside in the premises indicated in the statement, including Art. 19a section 2 points 2 and 3 of the ProTenA, is excluded from the Act. Owing to this solution, occasional lease is widely available to Ukrainian citizens.

7. Social housing initiative

The social housing initiative is an institution operating in Polish law under the Act of October 26, 1995, concerning social forms of housing development⁵⁷. Social housing initiatives are intended to implement social housing. Social housing initiatives may take the form of limited liability companies, joint-stock companies and cooperatives of legal persons (Art. 23 section 1 of the SocHouA). The subject matter of their activity is the construction of residential housing and their operation on a lease basis (Art. 27 section 1 of the SocHouA). The legislator noticed the potential of social housing initiatives in meeting the housing needs of Ukrainian citizens who reside legally in the territory of Poland, and thus decided to include them in the housing policy towards them. Therefore, Art. 70 of the AssUkrA which excludes the application of some provisions of the SocHouA and thus facilitates meeting the housing needs of Ukrainian citizens in Poland through social housing was introduced. Pursuant to Art. 70 section 1 of the AssUkrA, in the event when under a social housing initiative an empty residential premises was leased to a citizen of Ukraine to whom the Special Aid Ac applies in order to temporarily meet his housing needs, or when an empty residential premises was rented to such citizen without concluding an agreement on participation in the costs of construction of this residential premises, then the last tenant is considered to be the last tenant within the meaning of Art. 29a section 5 of the SocHouA, to whom the amount of participation was returned. Thanks to this provision, a company that is a social housing initiative cannot require a person from Ukraine, to whom the provisions

⁵⁷ Consolidated text: Journal of Laws of 2023, item 790 as amended, hereinafter: SocHouA.

of the special aid act apply, to pay the participation amount⁵⁸, which could constitute a significant financial obstacle for such citizen to meet his housing needs as part of housing development carried out by social housing initiatives in Poland. According to the general principles contained in the SocHouA, as stated in Art. 29a section 5 thereof, a social housing initiative may make the conclusion of a lease agreement of a vacated residential premises conditional on the new tenant paying the participation amount in the amount paid to the previous tenant.

In turn, according to Art. 70 section 2 of the AssUkrA, a social housing initiative may rent a residential premises to a citizen of Ukraine to whom this special act applies without meeting the conditions referred to in Art. 30 of the SocHouA. This constitutes another facilitation for Ukrainian citizens as to meeting their housing needs through social construction, for the reason that Art. 30 of the SocHouA stipulates a number of conditions for social housing initiatives of renting to individuals housing units which have been constructed using a loan granted by the Bank of National Economy on the basis of loan applications submitted by September 30, 2009, or using repayable financing. Given the abovementioned exclusion, the conditions provided for in Art. 30 of the SocHouA, namely the condition of the lack of legal title to another residential premises in the same locality; the threshold of average monthly income, or the lack of legal title to another residential premises in another locality and the related premise of taking up a job near the location of the resources of the social housing initiative in question may not be applicable with respect to citizens of Ukraine covered by the AssUkrA⁵⁹. However, it should be emphasized that Art. 70 section 2 of the AssUkrA does not set forth an obligation for social housing initiatives to lease on simplified terms to the benefit of Ukrainian citizens, but gives them opportunity to do so⁶⁰.

8. Conclusions

Summing up, it should first be pointed out that the legislative initiative in the form of the enactment of a special act providing for a number of special solutions for Ukrainian citizens fleeing to Poland in connection with the war in their state, as a response to the migration crisis caused thereby, deserves a positive assessment. The provisions of the AssUkrA provide facilities for these persons in many areas of life, thus complementing the system of protection arising from the general principles of refugee and migration law, in particular the temporary protection of foreigners contained in the ProForeA, which constitutes the implementation of Directive 2001/55/EC into the Polish legal order. Secondly, the specific solutions introduced by this special

⁵⁸ Bartosz Rakoczy, in *Ustawa o pomocy obywatelom Ukrainy. Komentarz z wzorami dotyczącymi pobytu, dostępu do rynku pracy, świadczeń społecznych, edukacji i opieki zdrowotnej*, ed. Paweł Drembkowski (Warsaw: C.H. Beck, 2022), 344.

⁵⁹ Wiktor Niemiec and Kamil Szmid, in *Ustawa o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa. Komentarz*, eds. Kamil Szmid and Piotr Sawicki (Legalis Database, 2022), Commentary on article 70, thesis 4.

⁶⁰ Kacprzak-Szymańska, in *Ustawa*, 367.

act regarding the satisfaction of housing needs of Ukrainian citizens are accurate.

The most emphatic evidence of their effectiveness in this field in practice is the lack of refugee camps for Ukrainians in Poland, although Poland has taken in a record number of Ukrainian people fleeing the war. While in the first period after the outbreak of the war there was a spontaneous reaction of the Polish society that took in displaced persons into their homes, in the long term, without accurate legal solutions it would not have been possible to cope with the housing problem for such a large population as well as Poland did, i.e. without creating camps for such people. In the author's opinion, Poland's success in the area in question results from the skillful combination of two pillars of assistance, i.e. the public and private sectors. It seems that if meeting the housing needs of Ukrainians was based solely and exclusively on the assistance organized by public administration bodies, then due to the huge influx of foreigners in a very short time immediately after the outbreak of the war, the creation of refugee camps would be a matter of time. The Polish legislator noticed the potential of the Polish society and skillfully used the private sector in its housing policy towards Ukrainians.

As for the second pillar, i.e. the private sector, the system of financial incentives (pecuniary benefits) for accepting a person from Ukraine into an apartment undoubtedly plays a fundamental role in this respect. Secondly, to the efficiency of the private sector in solving the housing problem of Ukrainian refugees coming to Poland contributes the facilitation of vacating the occupied premises. The right to housing is a human right under Polish law, and specific legal solutions as to its protection are contained primarily in the provisions of the ProTenA. In principle, the provisions of the AssUkrA improve the tenant position of Ukrainian citizens who settled in Poland legally in connection with the war in their country in relation to the general rules; it is a matter of easing the formalism of occasional lease of premises (Art. 69 of the AssUkrA) or the conditions for making a residential premises available for use by social housing initiative (Art. 70 of the AssUkrA). However, when it comes to lending a building or part of it to temporarily meet housing needs, the AssUkrA regulations facilitate the eviction of Ukrainian citizens to whom the building was made available free of charge. Therefore, *prima facie*, it could be concluded that in this respect, the special solutions contained in this special act are unfavorable and weaken the protection of the right to housing of Ukrainian citizens who came to Poland as a result of the war in that state. However, such a conclusion is erroneous due to the lack of a holistic view of the extraordinary situation resulting from the war.

The regulation facilitating eviction in the case of lease should be assessed positively due to its pragmatism. After the spontaneous acts of kindness of Poles who selflessly welcomed displaced persons from Ukraine into their apartments, in the long run cohabitation could lead to conflicts. Applying tenant protection to Ukrainians in accordance with the general principles would prevent many people from admitting them to their apartments, which would weaken the assistance provided by the private sector. However, the loosening of this tenant protection *de facto* allowed for the admission of displaced persons from Ukraine to be very broad, even massive. Poles were not afraid that they would have difficulties in regaining the leased residential premises in the event of any misunderstandings caused by, for example, a difference in personalities or a

change in life situation that did not allow them to continue providing the premises for free.

Finally, the recent changes that introduced the principle of participation of Ukrainian citizens in the costs of their accommodation and meals should be assessed positively, because after the necessary period of adaptation in Poland, such measures mobilize them to take up work and, consequently, contribute to assimilation in Polish society. It should be noted that the principle of participation was introduced while maintaining the humanitarianism that characterizes Western societies at the current stage of civilization. People who are unable to work, e.g. for reasons of age, health or family situation, are still exempt from paying part of the costs of their meals and accommodation. The special aid act adopted in Poland, which supplements the general principles of protection arising from the migration and refugee law, may be a model regulation for other legal systems in solving the problem of the mass influx of war displaced persons.

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