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Seizure of real estate for temporary accommodation of the Armed Forces of the Republic of Poland

Zajęcie nieruchomości na zakwaterowanie przejściowe Sił Zbrojnych Rzeczypospolitej Polskiej

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Abstract: The issues discussed in this article concern the organisational and procedural aspects of one of the several types of military accommodation existing in Polish law, namely temporary accommodation in the form of real estate seizure. The article, which draws on normative acts, court rulings and literature on the subject, analyses the evolution of military accommodation in the past, presents the methods and procedures for seizing real estate for military purposes, and discusses the issue of its financing.

Keywords: administrative law, military accommodation, real estate

Abstrakt: Zagadnienia będące przedmiotem niniejszych rozważań dotyczą organizacyjnych i proceduralnych aspektów jednego z kilku występujących w prawie polskim rodzajów zakwaterowania wojska, a mianowicie zakwaterowania przejściowego realizowanego w postaci zajęcia nieruchomości. W artykule, którego materiał źródłowy stanowią akty normatywne, orzecznictwo sądowe i literatura przedmiotu, dokonano zarówno analizy ewolucji instytucji kwaterunku wojska w przeszłości, jak i przedstawiono sposoby i metody dokonywania zajęcia nieruchomości na rzecz wojska oraz odniesiono się do kwestii jego finansowania.

Słowa kluczowe: prawo administracyjne, zakwaterowanie wojska, nieruchomość

Introduction

The issues that are the subject of this discussion have not been analysed more extensively in the literature so far (Smolka 1935: 335–354; Srogosz 1990: 3–33; Filipiak 2011: 215–229; Podolska-Meducka 2011: 125–138; Stasiak 2017: 293–299; Konarski 2021a: 165–191; idem 2021b: 125–148; idem 2021c: 153–187; Banaszek 2022: 193–201; Konarski 2023: 82–84; Witkowski 2021: 541–575; Rutkowski 2022: 619–649; Łopatecki & Bołdyrew 2024: 401–436). Thus, this study addresses the research deficiencies in this area by providing a comprehensive discussion of the evolution of legal norms in matters of military accommodation, its types, organisation of military and civilian structures, legal procedures and financing of temporary accommodation of the armed forces. This discussion is based on a logical and linguistic analysis of the legal norms in force, the case law of common and administrative courts as well as the regrettably scarce literature on the subject.

At the beginning of the present discussion, the relevant terminology needs to be clarified. It should be emphasised that the seizure of real estate by the state is not the same as expropriation, although both processes involve State interference with constitutionally protected property rights. Let us recall that according to the provisions of the 1997 Constitution, the Republic of Poland protects property, while expropriation is allowed only when it is carried out for public purposes and with just compensation[1]. As is well known, expropriation is a definitive deprivation of ownership or other right in rem to real property, carried out for public purposes and against compensation (Parachomiuk 2005: 75–108; Polanowski 2014: 123–127; Zdyb 2012: 591–602). Pursuant to the provisions of the Real Estate Management Act, expropriation of real estate consists in deprivation or restriction, by way of a decision, of the ownership right, the right of perpetual usufruct or other right in rem on real estate[2]. Expropriation of real estate may be carried out if public purposes cannot be achieved otherwise than by depriving or restricting rights to real estate, and these rights cannot be acquired by agreement. The competent authority in matters of expropriation is *starosta* (the starost), who performs the task of government administration.

On the other hand, the seizure of real estate, which is the main subject of the present deliberations, in the context of special laws, e.g. concerning military accommodation, may be temporary and can refer to restriction of the use of real estate for the performance of some task by the State, often also for a public purpose, such as defence, but it does not necessarily mean the loss of property.

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[1] Article 21(1) and (2) of the Constitution of the RP of 2 April 199 (JL, No. 78, item 483).

[2] Article 112 of the Act of 21 August 1997 on real estate management (JL of 2024, item 1145, consolidated text of 30 July 2024).

At the same time, it should be emphasised that the law may provide for expropriation of land in favour of the ST for the construction of military quarters (e.g. barracks),[3] but this situation does not apply to temporary quarters, which, although theoretically possible, would not be advisable if only for the sake of the time needed to carry out the legal procedure related to the launching of the quarters, or for the sake of the costs resulting therefrom.

1. The evolution of the legislation on military accommodation

Since ancient times, in addition to a series of levies, tributes and taxes imposed on subjects and inhabitants of most countries in the world, one of the additional extremely acute burdens of a property nature has been the obligation to provide temporary quarters for the army. The first references indicating this problem are found in Egypt, where the obligation to provide quarters was so onerous for the population that they defended themselves against it by showing sometimes extraordinary ingenuity, namely by placing altars dedicated to the gods in front of the entrances to the properties and thus protecting them from occupation by the army or civil officials (Smolka 1935: 335). This practice did not always pass the test. Interestingly, the burden of the obligation to provide accommodation also affected the privileged classes, who were obliged to place half of the building at the disposal of the army free of charge (ibidem: 341). The statutory contributions of the population for the benefit of the army existing in Ptolemaic Egypt (332-30 BCE) in the form of, *inter alia*, the obligation to provide quarters is considered to be a model for the entire legislation of the civilised world, particularly in view of the principle which arose at that time stating that quarters were to be handed over to the owners of houses in the same condition as they were given (ibidem: 351).

In the early period of Polish statehood, the obligation of military accommodation was related to the travels of the ruler and his entourage, and thus the order to provide accommodation and food by the local population hosting the ruler (Gąsiorowski 1972: 250–254; Januszek-Sieradzka 2010: 16–39; Konarski 2019a: 111–131). In later times, regulations concerning the duty of providing quarters to the army were issued by town councils (Łopatecki 2016:

[3] In the past, the method of satisfying the accommodation needs of the army in the form of expropriation of land for the expansion of barracks was sometimes used, see the Regulation of the President of the Republic of Poland of 7 August 1930 on the expropriation of land from the Rybiszki estate in Vilnius for the purpose of accommodation of the army (MP, No. 197, item 281); the Regulation of the President of the Republic of Poland of 2 August 1933 on the expropriation of land in Brest on the Bug River to the ST for the expansion of the barracks of the 35th Infantry Regiment (MP, No. 179, item 215).

59–60, 70), and then – at the end of the 18th century – they were regulated in parliamentary constitutions in 1789 (Konarski 2021a: 172–173).

With the spread around the world of the legacy of the American Revolution (1773–1785) and its intellectual gains in legal scholarship (Gross 1991: 215–221; Rogers 2008: 747–780; Bell 2012: 1243–1276; Coon 2019: 45–71), or the legislation of the Great French Revolution (1789–1799) and the Napoleonic Era (1799–1815), the basic legal principles relating to the army's duty of quartering took shape.

As Maurice K. Wise, the great authority of these issues, writes:

> The liberal principles of the revolution were quickly embodied in the requisitory law of France. Billeting, which had been longest a source of objection under the monarchy, was first remodeled. A decree of April 7, 1790 made the obligation of quartering troops general until "a new order of things" could be instituted. (…) A decree of July 10, 1791 provided for the strengthening of fortifications. Title V of the decree was concerned with the quartering of troops. Barracks were to be constructed as rapidly as was feasible. No municipality could be requested to supply billets except where the military establishments were inadequate. Public buildings and rented vacant premises were to be occupied first by troops. If it became indispensable to secure billets in private homes, an equitable rotation was to be observed. No absolute exemptions were permitted; depositaries of public funds and women living alone were not required to lodge troops in their own homes but had to supply substitute quarters. The soldiers were individually liable for all damages. No indemnity was due, but no great injustice resulted from this since the charge was a general one. Title VI of the decree removed from the cities and departments all obligations to construct or maintain any military establishment whatever; the national government assumed the entire responsibility for fortifications, barracks and other military constructions. The quartering of troops was thus regularized and in large part provided for through non-requisitory means (Wise 1944: 48–49).

On Polish soil, the contemporary normative foundations for the accommodation of the army at the turn of the century were adopted through their reception from French law supplemented by indigenous legal solutions still originating from the feudal system.[4] In the 19th century, these normative principles were supplemented in the Polish lands by Austrian, Russian and Prussian legislation constituting the source of contemporary legal regulations on the temporary accommodation of troops, sometimes referred to as temporary or extraordinary accommodation taking place during marches, concentrations, exercises, decommissioning, or in general as a result of and for the duration of transient causes.

After Poland regained its independence in 1918 (Konarski 2019b: 151–166 and the references cited therein), the difficult situation of the ruined state characterised by housing shortages created numerous pathological situations in the form of imposing an obligation on the inhabitants to provide quarters

[4] See *inter alia*: the Decree of 5 July 1810 – Provisions with regard to military quarters (JLDW II, No. 20, pp. 261–270); the Decree of 9 November 1811 with regard to remuneration in readiness instead of quarters (JLDW III, No. 36, pp. 465–466).

for the needs of military servicesmen or demanding the ceding of dwellings to accommodate the army by means of requisition orders issued by the competent administrative offices on the basis of demands issued by the military authorities (Konarski 2021a: 174; idem 2021c: 153–187).

Pursuant to the legislation that came into force in 1925[5], three types of accommodation were distinguished: permanent, temporary and emergency accommodation, the meaningful scope of the last two types being of interest to the author of the present study. Temporary accommodation was considered to be that required in the event of changes in permanent dislocation, the formation of new formations, concentrations, exercises, detachments, travel, etc. In a situation where there were no suitable quarters in the municipality, the municipal board had the right and duty to seize, for remuneration, private quarters necessary for the needs of the army. If, on the other hand, the municipal board did not do so, this could be done in its stead and at its expense by the administrative authority of the first instance. The final seizure was made on the basis of a requisition order of a municipal board or an administrative authority of the first instance, whereby Article 30 stipulated that „the burden of accommodation should, as far as possible, be distributed equally among the districts, municipalities and individual holders of premises". To this end, lists of rooms that could be seized for temporary accommodation were created by the municipal boards. For temporary quarters provided in this way and their furnishing, firing and lighting, the holder of the premises received payment from the Treasury on the basis of certificates issued by the persons or wards who used the quarters or on the basis of a certificate from the municipal offices (Konarski 2021b: 132–136).

The now defunct category of emergency accommodation, on the other hand, covered, as the name suggests, emergencies, which included mobilisation, the calling up of reservists under arms and the summoning of the army to assist civil authorities and at army marches. In the case of emergency quarters, the military authorities requested that the quarters be delivered directly to the board of the relevant municipality, if possible, at least 24 hours before the arrival of the troops. On the other hand, if the municipal board failed to deliver the quarters, the military authorities occupied the quarters with the assistance of the administrative authorities and, if necessary, could occupy private premises for this purpose. It should be emphasised, however, that the occupation of premises for emergency accommodation, not exceeding three days, was free of charge, and during this time the premises were free of accommodation tax. On the other hand, the ST was responsible for damages caused in buildings

[5] The Act of 15 July 1925 on the accommodation of the army in time of peace (JL, No. 97, item 681).

occupied for military quarters, except for damages caused by a proven fault of the owner of the accommodation and except for damages resulting from an accident not related to the occupation of the quarters, and it had a right of recourse against the persons who caused the damage.

In a situation of international tension and impending armed conflict, in July 1939 the President of the Republic of Poland promulgated a decree amending some of the provisions of the Quartering Act of 1925[6]. The amendments to the Act provided for by the provisions of the decree referred largely to situations related to accommodation precisely in times of war and mobilisation or increase in the number of the AF. In any case, Article 28 of the decree explicitly stated that in those situations where the interest of national defence required it, the very fact of the existence of the indicated states was to be the basis for temporary accommodation of a military unit or individual soldiers. The provisions of the decree clearly defined the right of the organisational units of the armed forces to decide freely on the quantity and quality of the accommodation they occupied. Private quarters could henceforth be occupied as temporary quarters for a period of three to six months, with this time limit not applying in the event of war and mobilisation. Furthermore, remuneration for temporary accommodation, in the event of the above-mentioned states being declared, was due from the fourth day of accommodation. And according to Article 41 of the decree, against an accommodation order for the occupation of a room there was a right of appeal within seven days to the competent appeal authority, whose decisions were final.

After the end of the Second World War, Poland, which found itself in a bloc of socialist countries, regulated anew the issues of temporary accommodation for the army in the 1951 Act and the implementing acts[7]. According to these legal provisions, temporary accommodation was temporary and applied in particular in cases of: 1) changes in the dislocation of the AF and the creation of new units, 2) military exercises, training and control meetings, 3) manoeuvres, concentrations and marches of units, 4) registration and conscription, 5) tours

[6] The Decree of the President of the RP of 28 July 1939 on amending the Act on the accommodation of the army in time of peace (JL, No. 69, item 461); the Announcement of MMA of 2 August 1939 on the announcement of the uniform text of the Act on the accommodation of the army and the navy (JL, No. 82, item 531).

[7] The Act of 27 April 1951 on accommodation of the AF (JL, No. 26, item 194); the Regulation of the Ministers: ND and PS of 16 September 1953 on remuneration for damage caused by military units in connection with the use of land and grounds and temporary quarters during peace (MP, No. A-108, item 1447); the Regulation of the Minister of ND of 8 October 1952 on remuneration for temporary quarters (MP, No. A-98, item 1506); the Regulation of the Minister of PS of 8 December 1951 on the determination of premises not subject to occupation for temporary accommodation (MP, No. A-105, item 1523).

of duty and temporary duty of soldiers and civilian employees employed in the AF outside their usual place of duty. On the other hand, in the event of mobilisation, in time of war and in the event of the CM ordering military service in the interest of the defence of the State, temporary accommodation could also apply in other cases. It should be added that in the event of mobilisation, in time of war and in the event of the CM ordering military service in the interests of the defence of the State, the basis for temporary accommodation is also the departure order itself or another travel document, or even an oral request for the provision of accommodation made by military authorities or persons.

In the following years of the functioning of real socialism, one more accommodation act was passed[8], which, however, did not bring any significant changes compared to the previous regulation[9]. After the collapse of the socialist system in Eastern Europe, another military accommodation act was adopted in Poland in 1995, which, together with the HDA enacted in 2022[10], now constitutes the accommodation system of the Polish AF, which is the subject of the considerations.

2. The types of accommodation of the Polish Armed Forces

As indicated above, the nomenclature related to the types of military accommodation has been perpetuated since modern times, distinguishing them into permanent accommodation, emergency accommodation, temporary accommodation, etc. Attention was drawn above to the importance of the concept of temporary accommodation in the Polish pre- and post-war legislation. Here, let us analyse the current significance of this legal institution against the background of its other types adopted in the Polish legal system.

In accordance with the Polish Act on the Defence of the Homeland, the accommodation of the AF consists in: 1) permanent, temporary or transient deployment of: a) soldiers and other persons specified in the Act, b) organisational units subordinate to the MND or supervised by him or her, 2) storage or retention of equipment, armament, material means and military equipment – in buildings and premises and on land owned by the ST, remaining under permanent management of military bodies or entrusted to the Military Property

[8] The Act of 31 January 1961 on accommodation of the AF (JL, No. 6, item 38).

[9] The Act of 20 May 1976 on accommodation of the AF (JL, No. 5, item 19).

[10] The Act of 11 March 2022 on defence of the Homeland (JL, No. 248, consolidated text of 23 February 2024).

Agency, temporarily obtained for these purposes from competent government administration bodies, local government units, legal or natural persons[11].

Common permanent quarters are intended for collective accommodation of soldiers performing basic military service; territorial military service performed in rotation; those performing military exercises; those performing professional military service in the course of training at a military academy, with the exception of professional soldiers assigned to training at a military academy while performing their professional military service; those who are students of schools or participating in other forms of training in the AF, as well as those assigned to active military service outside the borders of the State; those performing military service during a state of emergency, after the declaration of mobilisation or during war. The possibility of accommodation in shared permanent quarters is also available to professional soldiers, upon their application, with the consent of the commander of the military unit.

A professional soldier from the day of their appointment to the first duty post until the day of his or her release from active military service shall be entitled to accommodation for the duration of his or her military service in the locality in which the soldier performs service, or in a nearby locality or, with consent, in another locality. The right to accommodation for a professional soldier is exercised in one of the following forms of assignment of quarters or other residential premises[12]; assignment of a place in a boarding school or dormitory accommodation;[13] payment of a housing benefit[14].

In turn, a place in a boarding house or dormitory accommodation, without family members, is granted to a professional soldier; an employee employed in an organisational unit subordinate to the MND or supervised by the MND residing in a locality other than the locality in which he or she is employed and not a nearby locality, provided that the needs of professional soldiers are

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[11] Article 1(1) and (2) of the Act of 22 June 1995 on Accommodation of the AF of the RP (JL of 2024, item 1270, consolidated text of 22 August 2024). Cf. the JCT of 29 June 2006, Ref. No. U 306; the JVCA in Szczecin of 5 December 2007, Ref. No. I SA/Sz 440/07; the JVCA in Szczecin of 12 March 2008, Ref. No. I SA/Sz 520/07; the JDC in Warsaw of 8 July 2016, Ref. No. V Ca 3405/15.

[12] The Regulation of the MD of 17 March 2016 on the allocation of quarters or other housing by the Military Property Agency (JL of 2025, item 609, consolidated text of 8 May 2025). Cf. The Judgment of the SAC of 10 July 2024, Ref. No. III OSK 2801/22.

[13] The JVCA in Gorzów Wielkopolski of 19 June 2024, Ref. No. II SA/Go 213/24.

[14] A housing benefit is granted to a professional soldier for the duration of his service in a given garrison in the amount of the product of the basic rate and the coefficient of the housing benefit depending on the garrison. The basic rate of the benefit amounts to PLN 300, the Regulation of the MD of 6 November 2023 on housing benefit and costs of maintaining accommodation (JL of 2025, item 818, consolidated text of 24 June 2025). Cf. the JVCA Court in Warsaw of 25 May 2017, Ref. No. II SA/Wa 187/17; the JVCAin Warsaw of 19 December 2024, Ref. No. II SA/Wa 501/24.

met; and to a veteran soldier or a person having the status of a veteran of operations outside the borders of the state or a veteran injured in operations outside the borders of the state granted by a decision of the MND, residing in a locality other than the locality in which the dormitory or dormitory accommodation is located, provided that the needs of professional soldiers are met[15]. Obviously, a professional soldier is not entitled to reside in a boarding school or dormitory quarters if he or she has been provided with accommodation in a common permanent quarters[16].

In the following discussion, only accommodation of a temporary nature will be addressed, in accordance with the objective guiding this analysis.

3. The temporary accommodation of the Polish Armed Forces

In the light of the Polish legislation, temporary military accommodation takes place when it is necessary to temporarily deploy military units, soldiers and military personnel employed in these units and persons accompanying the AF, as well as to store or keep equipment, armament, material means and military equipment – outside the buildings, premises and land intended for permanent accommodation. This type of military accommodation takes place in particular in the event of: exercises, marches or transports of the army; tours of duty or temporary performance of duties by soldiers and employees of the army outside their permanent place of duty or work; and the introduction of a state of emergency or war, the declaration of mobilisation or during war[17].

Real estate owned by the ST or a local government unit and, in special cases, real estate owned by other legal or natural persons are subject to seizure for temporary accommodation. Under Polish civil law, real property comprises parts of the earth's surface constituting a separate object of ownership (land), as

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[15] Article 4(16) of the Act of 19 August 2011 on veterans of operations outside national borders (JL of 2023, item 2112, consolidated text of 2 October 2023).

[16] The Judgment of the SAC of 8 April 2022, Ref. No. III OSK 803/21.

[17] Pursuant to Article 136 of the Constitution of the RP of 1997, in the event of a direct external threat to the state, the President of the Republic of Poland, at the request of the Prime Minister, orders general or partial mobilisation and use of the AF for the defence of the RP. In turn, Article 229 of the Constitution of the Republic of Poland stipulates that in the event of an external threat to the state, an armed attack on the territory of the Republic of Poland or when an international agreement implies an obligation to jointly defend against aggression, the President of the RP, at the request of the CM, may impose martial law on part or all of the state's territory. In turn, in accordance with Article 230 of the Constitution of the RP, in the event of a threat to the constitutional system of the state, security of citizens or public order, the President of the Republic, at the request of CM, may introduce, for a definite period of time, not longer than 90 days, a state of emergency on a part or on the entire territory of the state. The state of emergency may be extended only once, with the consent of the Sejm and for a period not exceeding 60 days.

well as buildings permanently connected to the land or parts of such buildings, if under specific provisions they constitute a separate object of ownership from the land[18]. There is no need to analyse at this point the numerous disputed issues concerning this notion occurring in court rulings and literature on the subject (Rudnicki 1999: 68–72; Niewiadomski 2014: 215–227; Saltarius 2023: 33–43)[19], as they do not have a major impact on the present considerations.

The Polish legislation sets out a number of exceptions to the seizure for temporary accommodation of real property: 1) belonging to the Police, the Internal Security Agency or the Intelligence Agency respectively, the Military Counterintelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, the Border Guard, the National Fiscal Administration used by the Customs and Fiscal Service, the State Fire Service and the Prison Service; 2) belonging to state organisational units performing tasks of particular importance for the defence or security of the State; 3) covered by general protection within the meaning of the 1954 Hague Convention. (the occupation of these properties may take place only with the consent of the competent authority of the conservation service);[20] 4) marked and covered by protection within the meaning of the Additional Protocol to the Geneva Conventions of 1949 – intended for the protection of the civilian population;[21] 5) belonging to universities or research and development units; 6) intended for the performance of religious worship; 7) in which social welfare homes are located; 8) used by: (a) foreign diplomatic and special missions and consular offices, (b) members of the diplomatic staff of foreign diplomatic and special missions and consular staff, (c) members of the administrative and technical staff and members of the service staff of foreign diplomatic and special missions and consular offices, if they are not the Polish citizens and do not have their permanent residence in the RP – on condition of reciprocity, d) belonging to other persons or international institutions benefiting from diplomatic or consular immunities

[18] Article 46 § 1 of the Act of 23 April 1964 – CC (JL of 2024, item 1061, consolidated text of 17 July 2024).

[19] See inter alia: the JVCA in Łódź of 28 June 2017, Ref. No. I SA/Łd 335/17; the JCA in Wrocław of 13 December 2018, Ref. No. II AKA 367/18; the JCA in Warsaw of 12 August 2020, Ref. No. I ACa 679/19; the OSC of 28 March 2024, Ref. No. II CSK 1452/22.

[20] The Convention on the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May 1954 (JL of 1957, No. 46, item 212).

[21] The Additional Protocols to the Geneva Conventions of 12 August 1949, concerning the Protection of Victims of International Armed Conflicts and concerning the Protection of Victims of Non-International Armed Conflicts, done at Geneva on 8 June 1977 (JL of 1992, No. 41, item 175). For a more extensive discussion of military requisitions for military accommodation under public international law, see: Dinstein 2019: 228–256.

or privileges pursuant to laws, international agreements as well as universally recognised international customs.

In addition, health and veterinary care facilities may only be occupied for the purposes of the military health service or the military veterinary service[22]. Land subject to special forms of nature protection within the meaning of the provisions on nature protection[23], except in the event of the introduction of a state of emergency or war, the declaration of mobilisation or in time of war, shall not be subject to seizure. Properties seized for temporary accommodation shall be subject to release no later than within 6 months from the date of seizure. This restriction shall not apply in the event of the introduction of a state of emergency or martial law, the declaration of mobilisation or in time of war.

The seizure of real estate for temporary accommodation shall take place on the basis of: 1) an administrative decision issued in administrative proceedings[24], issued by: a) *starosta* (district administrator) performing the task of government administration – in relation to the real estate of the ST, subject to the letter c and d, b) head of a commune (mayor, town president), *starosta* (district administrator), voivodship marshal – in relation to the real estate being the property of a relevant unit of territorial self-government, c) director of the Regional Directorate of State Forests – in relation to ST objects and forest land owned by the State Forest Holding „State Forests", d) General Director of the National Center for Agricultural Support – in relation to agricultural real estate of the ST forming part of the Treasury Agricultural Property Stock; 2) a written agreement concluded by a military authority with a natural or legal person who is the owner of the property.

The administrative decision on temporary accommodation is issued by the authority on the request of the competent military authority. The application should contain the name or number of the military unit, the size and type of real estate, the duration of the accommodation and the date of its commencement and termination. The seizure of the property shall take place after the decision becomes final. The seizure and return of the real estate shall be carried out on the basis of an acceptance protocol.

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[22] Recall at this point that the tasks of the occupational medicine service include the elimination of health hazards associated with the military's transient accommodation, particularly in the conditions of training ground exercises, § 2(8) of the Regulation of the MD of 7 May 2010 on the tasks of the occupational medicine service in organisational units subordinate to or supervised by the MD (JL, No. 88, item 577).

[23] The Act of 16 April 2004 on Nature Protection (JL of 2024, item 1478).

[24] The Act of 14 June 1960 – Code of Administrative Procedure (JL of 2024, item 572, consolidated text of 15 April 2024). See the OSAC of 10 February 2005, Ref. No. OSK 998/04.

In the event of the introduction of a state of emergency and martial law (Konarski 2023: 104-108), the declaration of mobilisation and in time, the provisions on the seizure of real estate on the basis of an administrative decision or the said agreement shall not apply. In such cases, the seizure of real estate for temporary accommodation shall take place on the basis of a written decision of the commander of the military unit, specifying the real estate seized for temporary accommodation, as well as its duration. The decision shall be made immediately enforceable and shall be delivered to the owner of the real estate.

The amount due for temporary military accommodation shall be determined by agreement with the owner of the real estate, taking into account market prices in the area. The amount due shall be paid to the owner of the property on completion of the temporary accommodation within 30 days of the release of the property. If the temporary accommodation lasts longer than one month, the amount due shall be paid monthly in arrears. The provisions concerning the receivable determined by contract shall not apply in the event of the introduction of a state of emergency and war, the declaration of mobilisation and in time of war. In such a situation, a different procedure applies, which will be mentioned in the next section of this analysis.

A danger zone may be established around real estate seized for temporary accommodation on the basis of a decision of the provincial governor, issued at the request of the commander of the military unit using the accommodation. A danger zone is an area of land where there is a temporary threat to the health or life of the occupants due to military activities (Pieprzny 2011: 233–246; Guzek 2013: 21–40; Baryłka 2017: 101–106). Unauthorised persons are prohibited from entering the danger zone and, if inhabited areas are included in the danger zone, the evacuation of residents from the zone may be ordered for the period of time for which the areas are declared a danger zone. The decision to establish a danger zone should specify the area of the zone, how it is to be marked and the time limit for the temporary evacuation of residents from it. The competent mayor is obliged to inform the inhabitants about the establishment of the danger zone in inhabited areas and the introduction of the obligation of temporary evacuation and the prohibition of entry to this area.

In the event of creation of a danger zone, the *starosta* (district administrator) performing the task of government administration shall provide substitute premises for the residents temporarily evacuated from the zone and shall organise their relocation to such premises. The property left behind by the residents, after having been taken over by protocol, shall be secured by the military unit that occupies the area covered by the zone. The means of transport necessary for the evacuation of residents and their movable property shall be provided by the military unit. The return of property secured by the military unit takes place on the basis of a protocol. It should also be remembered that anyone who

violates the prohibition on entering the area occupied for the accommodation of the AF or the area covered by the danger zone is liable to a fine.

Damage caused in connection with the occupation of property for temporary accommodation or the creation of a danger zone shall be the responsibility of the relevant military unit. Damage shall be deemed to be damage to the property on the property occupied for temporary accommodation and caused by the forced evacuation from the area covered by the danger zone or to the property remaining in the danger zone. The claim for compensation shall be time-barred 3 years from the date on which the damage was caused[25].

Proceedings for compensation shall be initiated at the request of the injured party. The application for compensation shall be submitted to the commander of the military unit that caused the damage, and if the place of the unit's berth is not known, the application shall be submitted to the Head of the Inspectorate of the AF Support (Bursztyński 2008: 97-108). Immediately after receiving the application for compensation, the commander of the military unit orders an investigation. A protocol is drawn up on the course of the investigation, which should include in particular: 1) description of the factual state with determination of the type, size and amount of the damage and the place and date of its occurrence or determination that the damage did not occur; 2) determination of the amount of the proposed compensation. The protocol shall be signed by the person conducting the investigation and the injured party.

Before issuing a decision, the commander of the military unit should endeavour to conclude a settlement with the injured party determining the amount of damage and the manner of its redress. The damage may be repaired by restoring the previous state of affairs or by paying an appropriate sum of money. If no settlement is concluded, the commander of the military unit shall issue a decision on the manner in which the application for compensation is to be settled. The aggrieved party may pursue a claim against the said decision within one month from the date of its delivery, or if the military authority fails to issue it within three months from the date of the application for compensation. It should be emphasised that the provisions on liability for damages in the event of the introduction of a state of emergency and martial law, the declaration of mobilisation and in time of war do not apply during the period of the state of emergency and martial law and in the event of the declaration of mobilisation and in time of war.

During trips, performance of official duties outside the permanent place of service or work or residence, soldiers and military personnel may use accommodation in official dormitory rooms or in hotel facilities, and in the absence

[25] Cf. Article 442^1 § 1 of the Act of 23 April 1964 – CC (JL of 2024, item 1061, consolidated text of 17 July 2024).

of such possibilities, temporary accommodation under the rules set out above. The establishment and management of service accommodation rooms, including the authorities responsible for accommodation in these rooms, is set out in the 2011 Order of the MND[26].

To conclude this section of the analysis, it needs emphasizing that whoever does not comply with the decision of the authority on the surrender of real estate for transient accommodation or on the removal of residents from the area covered by the danger zone is subject to a fine. The same punishment shall be imposed on anyone who prevents or obstructs the use of property occupied for temporary accommodation. Adjudication of the indicated offences takes place in accordance with the provisions on misdemeanour proceedings[27]. Soldiers are liable for these acts under the terms of HDA. Pursuant to Article 689 of the cited Act, anyone who, in the time of mobilisation or war, contrary to the obligations arising from the Act: evades the fulfilment of the obligation to provide a personal service or in-kind contribution; and fails to notify the competent authority of the disposal of real or movable property intended for the purposes of benefits in-kind shall be subject to a penalty of deprivation of liberty of up to 3 years. The same penalty shall be imposed on anyone who, in the time of mobilisation or war, hinders or prevents the fulfilment of a personal or in-kind service.

4. The financing of temporary accommodation of the Polish Armed Forces

Pursuant to the Polish legal provisions, the territorially competent military economic branch or the territorially competent military unit performing the function of an economic branch (military authority), on the basis of a decision on the seizure of real estate for temporary accommodation issued by the commander of the military unit, shall determine the amount due for temporary accommodation on the seized real estate by way of: 1) an administrative decision issued by the military authority in relation to a natural or legal person who is the owner of the real estate; 2) an agreement concluded by the military authority with the competent authority representing the ST or a local govern-

[26] The Order No. 43 of the MD of 25 August 2011 on the manner of creation and management of service accommodation rooms (Official Journal of the MD No. 17, item 237).

[27] The Act of 24 August 2001 – Code of proceedings in misdemeanour cases (JL of 2024, item 977, consolidated text of 2 July 2024).

ment unit in matters of real estate management – in the case of real estate owned by the ST or a local government unit[28].

The decision shall determine the payment of dues for temporary accommodation by applying the minimum rental rates for the lease of analogous business premises and real estate in the given area announced by the head of the commune (mayor, town president, starost) and applicable in the commune in which the real estate occupied for transient accommodation is located. The decision shall also specify the operating costs and fees, respectively, if they are not included in the rental rates. The agreement, determines the payment for temporary accommodation in the amount of the operating costs incurred and fees associated with the ordinary use of the property for temporary accommodation, which are regulated by Polish civil law. Under these laws, the user is obliged to make repairs and other expenditures related to the ordinary use of the property. They should immediately notify the owner of the need for other repairs and outlays and allow him or her to carry out the necessary works[29].

Either an administrative decision or the said agreement shall determine the payment for temporary accommodation in relation to the actual time of use of the property or part thereof. In the decision issued by the military authority with respect to the natural or legal person owning the real estate and in the agreement, the paid receivable for temporary accommodation shall be increased by the costs of preparing the real estate for temporary accommodation in such amount as for the use of the real estate for one day[30].

The receivable for temporary accommodation shall be paid by the military authority after obtaining confirmation from the commanders of military units of the extent and period of occupation of the real estate for transient accommodation or non-use of the real estate prepared for transient accommodation. Payment for temporary accommodation shall be made within 30 days from the date of release of the property and shall be paid each month in arrears if the temporary accommodation lasts longer than one month.

At this point of the present discussion, it is necessary to draw attention to one more aspect related to the financing of accommodation of the Polish AF, namely the accommodation of persons in extraordinary cases, which may

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[28] The Regulation of the CM of 7 September 2022 on the principles and procedure for the payment of dues for transient accommodation of the AF of the RP in the event of the introduction of a state of emergency and martial law, the announcement of mobilisation and during war (JL, item 1972).

[29] Article 260 § 1 of the Act of 23 April 1964 – CC (JL of 2024, item 1061, consolidated text of 17 July 2024). Cf. inter alia, the JSC of 19 August 1980, Ref. No. IIICRN 145/80; the JSC of 2 February 2001, Ref. No. IV CKN 253/00; the JCA in Lublin of 10 June 2014, Ref. No. I ACa 673/13.

[30] Cf. the Regulation of the MND of 15 October 1988 amending the Regulation on the amount of flat-rate dues for the use of premises occupied for temporary accommodation of the armed forces (MP, No. 30, item 270).

take place in the event of a natural disaster[31], an extraordinary threat to the environment[32] and for the duration of the removal of their effects[33].

In the light of the Polish legal regulations, the authorities that have issued decisions on the seizure of real estate for temporary accommodation determine the amount due for the use of such real estate. The commander of the military unit, after concluding an agreement, sends it to the competent head of the district governmental body of general administration in order to settle the amount due for the real estate occupation. The amount of dues, determined in the contract, shall require prior approval of the competent head of the district governmental body of general administration.

The owner of the real estate shall be entitled to the amount due for the preparation of the real estate for temporary accommodation as for the use of the real estate for a period of one day. The commander of the military unit concluding a contract is obliged to notify the owner of the real estate of the amount due for the non-use of the real estate prepared for temporary accommodation. The amount due for the use of the real estate shall be paid after the commander of the military unit confirms the occupation of the real estate for temporary accommodation or the non-use of the real estate prepared for transient accommodation. The amount due shall be paid within 30 days from the date of release of the real estate. The amount due shall be paid each month if the temporary accommodation lasts longer than one month. Expenses for temporary accommodation incurred by the authority shall be paid from the State budget.

Conclusions

Among the factual and legal problems that remain in connection with the temporary accommodation of the army, let us draw attention to a few of them at the end of the present discussion.

First of all, it should be noted that the vast majority of these problems take place during wartime. The accommodation of the army in temporary quarters which are occupied private properties during periods of hostilities has, from time immemorial, sometimes led to conflicts between the stationed army, property

[31] The Act of 18 April 2002 on the state of natural disaster (JL of 2025, item 112, consolidated text of 28 January 2025).

[32] At present, this concept is not defined, although it can be argued that it has been replaced by the concept of 'major accident', as defined in Article 3(23) of the Act of 27 April 2001 – Environmental Protection Law (JL of 2025, item 647, consolidated text of 19 May 2025).

[33] The Regulation of the CM of 7 July 1998 on the manner of financing projects related to accommodation of persons in emergency cases (JL, No. 88, item 557).

owners and local residents. The lack of discipline among soldiers meant that it was not difficult for soldiers to commit crimes against local population, which manifested itself in looting, plundering, demolishing of quarters or violations of bodily integrity against outsiders (Srogosz 1990: 11–13; Stasiak 2017: 297–299; Gawron 2019: 99, 106–107). It may be presumed that in the event of occurrence in the future of one of the situations defined by the Polish legislator for the activation of temporary accommodation through the seizure of real estate for this purpose, the situations indicated above may recur, however, nowadays there are effective procedures for the assertion of claims for abuses of the army, which are mentioned above.

Subsequently, it should also be remembered that a number of problems related to accommodation may concern the accommodation of foreign troops on the territory of Poland, e.g. in order to participate in military operations conducted on its territory[34]. In the light of the applicable legislation, foreign troops may use permanent, temporary, collective and camping accommodation on military training grounds (Byłeń & Chrobak 2019: 19–30). In the context of the above considerations, it is most relevant that soldiers of foreign troops and members of their civilian staff participating in military exercises taking place on the territory of the Republic of Poland may camp on land remaining under the permanent management of military units or used for the purposes of national defence on the basis of another legal title,[35] which may be, for example, an administrative decision on the occupation of real estate for accommodation purposes.

It should be added that under Polish law, the sending party is exempted, subject to reciprocity, from liability for damage to property owned by the ST and used by the Armed Forces of the Republic of Poland, caused by foreign troops or soldiers of foreign troops or their civilian personnel, provided that the damage was caused during the performance of tasks related to the realisation of the purposes specified in the agreement. Individuals, on the other hand, may pursue their claims for damage caused by foreign troops, e.g. in connection with accommodation, before a commission specially appointed by the MND, and if there is no agreement as to the amount of compensation determined by the commission, they may refer their claim against the ST for consideration by a common court in civil proceedings.

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[34] The Act of 23 September 1999 on the principles of stay of foreign troops on the territory of the RP, principles of movement through this territory and principles of providing assistance to allied troops and international organisations (JL of 2024, item 1779, consolidated text of 2 December 2024).

[35] The Regulation of the MND of 14 November 2000 on detailed conditions and procedures for accommodation of foreign troops and their civilian personnel staying on the territory of the RP (JL of 2016, item 1735, consolidated text of 21 October 2016).

In conclusion, it should be emphasised that due to limited space, it was not possible to address all interesting issues related to the seizure of real estate for temporary military accommodation. These include the material and formal relations between civil law and administrative law, as well as issues of liability for compensation. These and other problems that emerge from the analysis will be the subject of a next study expanding on the issues presented here.

List of abbreviations

AF – The Armed Forces
BCE – before Common Era
CC – the Act of 23 April 1964 – Civil Code (JL of 2024, item 1061, consolidated text of 17 July 2024)
CM – The Council of Ministers
HDA – The Homeland Defence Act
JDC – The Judgment of the District Court
JLDW – Official Journal of Laws of the Duchy of Warsaw
JL – Official Journal of Laws of the Republic of Poland
JCA – The Judgment of the Court of Appeal
JCT – The Judgment of the Constitutional Tribunal
JVAC – The Judgment of the Voivodship Administrative Court
MMA – The Minister of Military Affairs
MND – The Minister of Defence
MP – Official Journal of Laws of the Republic of Poland "Monitor Polski"
OSAC – The Order of Supreme Administrative Act
PS – The Public Security
RP – The Republic of Poland
SAC – The Supreme Administrative Court
ST – The State Treasury

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Decree of the President of the RP Poland of 28 July 1939 on amending the Act on the accommodation of the army in time of peace (JL, No. 69, item 461).
Order No. 43 of the MND of 25 August 2011 on the manner of creation and management of service accommodation rooms (Official Journal of the MND No. 17, item 237).
Regulation of CM of 7 September 2022 on the principles and procedure for the payment of dues for transient accommodation of the AF of the RP in the event of the introduction of a state of emergency and martial law, the announcement of mobilisation and during war (JL, item 1972).
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