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Protection of tenants of Warsaw real properties in the light of amendment of the Act of 17 September 2020 on amending the Act about specific rules for removing legal effects of reprivatisation decisions concerning the Warsaw real properties, issued in violation of law, the Act on Commercialisation and Some Powers of Employees, as well as the Property Management Act

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Summary

On 17 September 2020, there was adopted the amendment to the Act of 9 March 2017 about specific rules for removing legal effects of reprivatisation decisions concerning the Warsaw real properties issued in violation of law, and the Property Management Act that entered into force as of 20 October 2020. It has fundamentally changed a complicated legal situation of tenants of the Warsaw real properties—in many aspects, mainly at two levels. Firstly, it gives greater indemnification guarantee with regard to damage and injuries resulting from the reprivatisation of Warsaw real properties repugnant to the law through the introduction of statutory universal succession of the Treasury in lieu of the capital city of Warsaw as an addressee of liability for damages. Secondly, it significantly extends the catalogue of prerequisites for a refusal to grant decree applications, e.g. through preclusion of reprivatisation of real property, if it is inhabited by a tenant within the meaning of Article 2 section 1 item 1 of the Act of 21 June 2001 on the protection of tenants’ rights, municipal housing reserves and on the amendment to the Civil Code. Moreover, the Act introduces a series of significant changes organising previous provisions of the Commission Act in order to increase its effectiveness, maximise the assurance of protection of rights of real property residents, and minimise reprivatisation-related ailments.

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4 Pursuant to Article 2 item 2 of the Commission Act, Warsaw real property is a real property being subject to the Bierut Decree, located within the administrative boundaries of the city as of its entry into force, i.e. 21 November 1945. – on that date the Decree covered approx. 14,146 ha (statistical data after: Ludność i powierzchnia Warszawy w latach 1921–2008 [Population and Area of Warsaw in the Years 1921-2008], Statistical Office in Warsaw, Warsaw 2009). See also: decision of the Supreme Court as of 4 March 2011, file reference I CSK 293/10, and judgement of the Voivodeship Administrative Court in Warsaw as of 1 April 2009, file reference I SA/Wa 403/08.

5 Journal of Laws of 2020, item 611
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1. General remarks

The Commission Act aimed at the elimination of negative results of reprivatisation of Warsaw real properties through the establishment of a special body of governmental administration, vested with power of verification of reprivatisation decisions in the course of rapid administrative procedure. Consequences of the so-called “wild reprivatisation” in Warsaw have had a significant and socially negative impact from the point of view of public and individual interest. Its main effect has been constituted by economic, financial and personal consequences continuing to this day at the level of individual subjective rights. The phenomenon of far-reaching pathologies in relation to persons inhabiting residential premises in real properties being subject to reprivatisation decisions has not been sufficiently noticed in terms of public perception. A dramatic legal situation of tenants of Warsaw real properties was not of interest for representatives of theory and practice until the adoption of the Commission Act, which was aptly pointed out by K. Zaradkiewicz, who stated that “The practice of emptying real properties handed over for perpetual usufruct to their former owners or their legal successors from persons who were tenants of premises treated before granting the decree application as municipal has become one of the socially most significant issues connected with the so-called judicial reprivatisation”6.

The Commission Act includes special normative foundations recognised in Article 32, 33 and 34, aimed at the provision of tenants of Warsaw real properties with money compensation in the form of compensation or redress for the damage suffered. The legislator has introduced therein “non-code, special type of regulation for liability for damages (...), different from the stricte civil institution of compensation specified in the Civil Code (...) special liability regime of an absolute (guarantee) nature, the source of which is constituted by the reprivatisation decision”7.

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adopted in this way is the normative determination of an obligation addressee, regardless of an entity actually liable for damage and injury. A reason for the introduction of liability for damages of a public entity “should be searched for not only in the constitutional principle of the rule of law\(^8\), but also in the constitutional principle specified in Article 77 section 1 of the Polish Constitution expressed in the necessary compensation of damage done by actions of public authorities repugnant to the law”\(^9\).

2. Reasons for the amendment of the Commission Act

More than three years of previous practice of the Commission on reprivatisation of Warsaw real properties\(^10\) have demonstrated that the provisions regarding the protection of tenants injured as a result of reprivatisation decisions adopted by the legislator in their original wording do not constitute a sufficient guarantee of application of the constitutional principle of the rule of law, confidence of citizens in the state authorities and protection of tenant rights through the satisfaction of housing needs and addressing homelessness\(^11\).

According to the data included in the Report of the Commission on reprivatisation of Warsaw real properties, from 11 May 2017 to–10 September 2019 the Commission issued 172 decisions on compensation or redress for 204 persons, including 71 decisions on compensation and 133 decisions on redress. The total amount of granted compensations comes to PLN 978,975.12, while of redress - PLN – 4 211,927.80. As of 10 September 2019, the total amount of enforced undue benefits granted pursuant to Article 34 of the Commission Act came to PLN 12 226,896.69\(^12\). All the Commission decisions on com-
pensation or redress were appealed against by the capital city of Warsaw to the common court by objection, pursuant to Article 34 of the Commission Act, and no case was completed even at the stage of proceedings before the court of first instance\textsuperscript{13}.

While using procedural instruments, the capital city of Warsaw effectively prevents the completion of judicial proceedings and, accordingly, the settlement of tenants’ claims regarding damage suffered as a result of reprivatisation of Warsaw real properties in violation of law. Consequently, the amounts enforced by the Commission on account of an independent benefit pursuant to Article 31a of the Commission Act and dedicated, pursuant to Article 32 of the Commission Act, only for payment of compensation or redress were not paid to the persons injured during the reprivatisation of Warsaw real properties. While guaranteeing compensation for the benefit of entitled entities, these amounts originating from independent benefits (Article 31 of the Commission Act), from administrative monetary penalties pursuant to Article 31a of the Commission Act and from recovery of a provided or enforced benefit due to the proceedings revision pursuant to Article 39 section 3 of the Commission Act, are collected on a special account of the capital city of Warsaw. In the explanatory memorandum to the draft, it is rightly emphasised that “Despite the provision of sufficient funds for the payment of benefits that do not burden the city budget, as a result of operations of the capital city of Warsaw no person to whom the Commission granted compensation or redress has received the granted benefit from the capital city of Warsaw”\textsuperscript{14}.

The above circumstances were the reason and inspiration to begin works towards amendment of the Commission Act, which had been initiated in 2018, yet in the previous term of office of the Parliament. Amendment of the Commission Act adopted on 17 September 2020 makes a significant change in the scope of liability for damages arising from the reprivatisation of Warsaw real properties in violation of law. The explanatory memorandum to the amending act draft points out that “This draft has a positive (...) impact on a situation of tenants of Warsaw real properties concerned by decisions issued by the Commission. (...) Adoption of the proposed solutions will undoubtedly fully accomplish

\textsuperscript{13} Ibidem, p. 840 of the Report of the Commission.

\textsuperscript{14} The explanatory memorandum to the draft dated 17 September 2020 on amending the Act about specific rules for removing legal effects of reprivatisation decisions concerning the Warsaw real properties, issued in violation of law, the Act on Commercialisation and Some Powers of Employees, as well as the Property Management Act (Journal of Laws of 2020, item 1709, https://lex.online.wolterskluwer.pl) (further: “explanatory memorandum to the amending act”).
the purpose - provision of residents of premises in Warsaw real properties with compensation for their damage and injury. Organisation and clarification of hitherto binding provisions shall have a positive impact on quicker and more efficient operation and proceeding of the Commission\textsuperscript{15}.

Currently, Article 33 of the Commission Act has the following wording: “An occupant of Warsaw real property on the issuance date of the reprivatisation decision concerned by the final decision referred to in Article 29 section 1 shall be entitled to compensation from the Treasury for its damage suffered due to: 1) permanent or temporary inability to use Warsaw real property or its part or 2) rise of rent or other charges for the use of premises in relation to the previous rent. 2. The occupant referred to in section 1 shall be entitled to redress from the Treasury for the damage suffered, if: 1) this person has been subject to unlawful threat, violence against person or other type of violence, if those actions were repeated or significantly hampered the use of property or its part, or 2) rent or other charges referred to in section 1 item 2 was raised, thus causing a significant deterioration of the occupant’s financial situation”.

3. Statutory legal succession of the Treasury in the substantive aspect within the scope of liability for damages specified in Article 33 of the Commission Act

Leaving the nature of liability for damages and its material scope unamended, the legislator has introduced a principal change in the subjective area, creating statutory legal succession of the Treasury in lieu of a previous addressee of the compensation obligation, i.e. the capital city of Warsaw. From the point of view of an interest of tenants as entities injured due to the reprivatisation of Warsaw real properties, the provision introduced by the amending act imposing the compensation obligation on the Treasury is beneficial. The legislator has ensured that receivables resulting from final and valid decisions of the Commission on compensation will be settled.

Change under the Act of an entity liable in a legal relationship between an injured entity and an entity committed to repair damage constitutes a special type of legal succession of a universal \textit{ex lege} nature. Structure of general succession occurs both under the private and public law at a substantive and procedural level. Its essence is that due to a specific event producing legal effects (legal or factual event) one entity being in a specific legal situation is replaced

\textsuperscript{15} \textit{Ibidem.}
by other entity - a successor of all (universal succession) or only some (singular succession) rights and (or) obligations, according to a type of legal succession. In its verdict dated 7 January 2004, the Supreme Court rightly concludes that "Universal succession surely consists in the transfer of all proprietary rights and obligations from one person to another based on one event, no matter if the acquirer knows about that".\(^{16}\)

Legal succession constitutes a type of derivative acquisition of right or obligation. It consists in deriving obligations by the successor from its legal predecessor, while its prerequisite is a previous existence of a specific right or obligation being its subject. Therefore, the successor acquires an obligation in the shape in which it was burdening the transferor\(^ {17}\). The essence of a statutory legal succession is the lack of specific event producing legal effect. Contrary to other structures, statutory legal succession occurs due to the will and intervention of the legislator. It has been established in hitherto provisions, while a sample of legal succession between public entities may be found in the Act of 10 May 1990 – Introductory provisions for the Local Government Act and the Act on Local Government Employees (Journal of Laws No. 32, item 191 as amended), pursuant to which legal succession of local government units has been governed by virtue of law in lieu of the Treasury\(^ {18}\).

Consequences of the development of liability for damages due to the re-privatisation of Warsaw real properties repugnant to the law according to the principle of statutory legal succession of the Treasury are important for all

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\(^{16}\)Verdict of the Supreme Court of 7 January 2004, file reference III CZP 98/03, OSN 2005, no. 2, item 27.


\(^{18}\)Judgement of the Supreme Administrative Court in Warsaw dated 8 December 1995, file reference IV SA 1033/94, „Wspólnota” 1996/21, p. 18: "1. The structure of derivative acquisition of property by a commune, referred to in Article 5 section 1 of the Act of 10 May 1990 – Introductory provisions for the Local Government Act and the Act on Local Government Employees (Journal of Laws No. 32, item 191 as amended), produces the effects specified in Article 36 thereof. Due to those consequences, obligations and debts of national councils and basic field local government units became the obligations and debts of competent communes upon entry into force of the Local Government Act of 8 March 1990 (Journal of Laws No. 16, item 95 as amended). 2. Pursuant to Article 36 of the Act of 10 May 1990, both an obligation of restitution of expropriated real property and a corresponding debt regarding recovery of valorised compensation refer to the public administration body who is its owner on the date of decision on restitution of expropriated real property"; judgement of the Voivodeship Administrative Court in Wroclaw dated 8 September 1995, file reference SA/Wr 1278/95, ONSA 1996/3, item 143: "1. Provision of Article 42 section 3 of the Act of 17 May 1989 on relations between the State against the Catholic Church in the Republic of Poland (Journal of Laws No. 29, item 154 as amended) refers only to the part of commune properties that constituted the property of former communes until the entry into force of the Act of 25 September 1954 on the Reform of Administrative Division of Villages and Establishment of Commune National Council and was converted into commune property pursuant to Article 98 section 2 of the National Council Act of 25 January 1958 (Journal of Laws of 1975, No. 26, item 139)".
entities forming compensatory legal relationship. Following the need for provision of injured tenants with the possibility of real compensation of their damage and injuries resulting from Warsaw reprivatisation, the legislator has made the Treasury an entity responsible and liable for their redress. As the explanatory memorandum to the draft act shows, the legislator has intended to introduce the solution that “will guarantee payment of amounts arising from final decisions of the Commission due to compensation or redress for persons injured in the reprivatisation process of Warsaw real properties”\textsuperscript{19}. Imposition of an obligation arising from the Commission’s decisions on compensation (also those appealed against before its entry into force) means a simultaneous exemption of the capital city of Warsaw from the above liabilities based on the Act.

Following a normative change of an entity liable to compensate for damage and injuries arising from the reprivatisation of Warsaw real properties, it would be necessary to develop transitional provisions that would guarantee the use of funds collected on an account of the capital city of Warsaw as intended, paid voluntarily or enforced by the Commission due to the performance of an obligation to return an undue benefit. Consequently, the legislator has formulated the normative basis for the transfer of funds collected and dedicated to pay compensation or redress to persons injured in the reprivatisation process of Warsaw real properties to an account of the Reprivatisation Fund referred to in Article 56 of the Act of 30 August 1996 on Commercialisation and Some Rights of Employees\textsuperscript{20}. As noted in the explanatory memorandum to the draft, “transfer of previously collected funds to an account of the Reprivatisation Fund shall guarantee, if no objection is raised by an entitled entity, that funds will be immediately paid directly by the Commission or holder of the Reprivatisation Fund”\textsuperscript{21}. According to the wording of the transitional provision of the amending act, the capital city of Warsaw was obligated to transfer the funds referred to in Article 32 of the Commission Act to the account of the Reprivatisation Fund within 14 days from the date when the Act came into force.

\textsuperscript{19} Explanatory memorandum to the draft amending act, https://lex.online.wolterskluwer.pl.

\textsuperscript{20} Journal of Laws of 2019, item 2181.

\textsuperscript{21} Ibidem.
4. Formal and legal changes within the scope of liability for damages specified in Article 33 and 34 of the Commission Act

The amendment act introduced significant changes at the subjective level in proceedings for compensation or redress before the Commission. Statutory legal succession of material nature of the Treasury in lieu of the capital city of Warsaw has its consequence in the form of succession in litigation before the Commission, which determines a separate party establishment. A general normative basis for succession in litigation in exploratory administrative proceedings is established in Article 30 section 4 of the – Administrative Procedure Code Act of 14 June 1960 and is not exhaustive. It should be emphasised that it concerns only the type of succession in litigation arising from specific legal events referring to transferable or heritable rights. Therefore, it does not cover other rights and obligations, as well as statutory legal succession, as the latter does not result from death of the party or from legal transaction, but it arises from the legislator’s will. In practice, the issue of continuing administrative proceedings with participation of legal predecessor in the case of statutory succession of the Treasury may be questionable. The lack of general provision and of special provision in the amending act that could constitute the basis for continuing proceedings before the Commission, commenced prior to the entry into force of the amending act leads to the conclusion that the Commission should firstly discontinue these proceedings as aimless, and then institute new proceedings ex officio, with participation of the Treasury as legal successor of the capital city of Warsaw.

Special nature of the Treasury’s absolute liability for damages has caused distinct formation of methods of appealing against the Commission’s decisions on compensation. Assuming that the principle of two instances, although has a general nature arising from Article 15 of the APC, does not constitute a general rule in administrative proceedings, the legislator has formulated a special exception thereto in the amending act. From the point of view of the Treasury as an addressee of an obligation arising from the Commission’s decision on compensation, this decision becomes final upon its issuance and is not subject

22Uniform text Journal of Laws of 2020, item 256, as amended, further: “APC”. Pursuant to Article 30 § 4 of the APC, in cases concerning transferable or heritable rights, if the right is disposed of or the party dies during the proceedings, its legal successors replace the previous party. In turn, § 4a of this Article stipulates that in cases concerning transferable or heritable rights, arising from conducting the party’s enterprise, in the event of its death in the course of proceedings, if succession management of the party’s enterprise was established, it shall be replaced by succession manager. If succession management to the proceedings pending with participation of succession manager expires, it is replaced by legal successors of the deceased.
to indictment. Pursuant to Article 34 section 3 of the Commission Act with the wording provided by the amending act, only an individual referred to in Article 33 section 1, i.e. occupant of Warsaw real property on the issuance date of the reprivatisation decision, may raise an objection to the decision on compensation.

The issue of claimability of a decision on compensation from the point of view of a person entitled to compensation has been formed differently. Raising an objection by the party means demanding that the case is taken to the court. The structure of indictment of the decision on compensation is based on the principle of hybrid combination of administrative and judicial proceedings and constitutes an attempt to solve the issue of choosing administrative proceedings by the legislator to hear claims of a civil law character.

In the amending act, the legislator adopted a special solution in the area of validity of a decision on compensation, which arises from different formation of positions of parties to proceedings with regard to administrative court protection. The Commission’s decision on compensation against which there is no appeal becomes final and valid upon lapse of deadline for its lodging. A copy of this decision is delivered ex officio to the holder of the Reprivatisation Fund referred to in Article 56 section 1 of the Act of 30 August 1996 on Commercialisation and Some Rights of Employees. The solution adopted by the legislator indicates the moment when the decision acquires features of validity and combines it with the expiration of the period to lodge an appeal. Taking into regard the fact that appeal may be lodged only by an entity entitled to compensation, two interpretative solutions are possible. Firstly, that the legislator has adopted the variant in which the Commission’s decision on compensation becomes valid at different time for the Treasury as an addressee of the compensation obligation and for the entitled entity. As the Treasury is not entitled to appeal against the decision, it becomes not only final upon its issuance, but also valid, with this reservation. This means the exclusion of judicial protection of the Treasury, which must be deemed acceptable in the light of guarantee of individual rights (not of the state) arising from Article 45 of the Polish Constitution. In the second variant, the legislator forms differently the moment when the decision on compensation acquires features of validity for the entitled and the obligor. Acceptance of the above solution would lead to the situation when filing a complaint by the Treasury to the court would initiate legal action and simultaneous use by the entitled of appeal would lead to the reversal of a decision and transfer of the case to proceedings before a common court. The reasonable legislator standard leads to the conclusion that it is impossible to accept

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the second solution and, consequently, to acknowledge that control of a decision on compensation has been excluded.

In the Commission Act, the legislator ties the decision on compensation together with the Commission’s decision issued pursuant to Article 29 of the Commission Act, which is demonstrated by the literal wording of the provision of Article 33. Existence of prejudication, i.e. judgement stating that action of a public administration body in the form of reprivatisation decision was repugnant to the law, determines the establishment of compensation claim pursuant to Article 33 of the Commission Act\textsuperscript{24}.

The adopted solution has caused some significant issues related to the potential reversal of the Commission’s decision by extraordinary administrative proceedings or administrative court proceedings. In the amending act the above matter has been settled unambiguously in Article 34 section 8 of the Commission Act, pursuant to which any reversal, change or annulment of the decision referred to in Article 29 section 1 does not constitute the basis for resumption of the proceedings, reversal or annulment of a decision on compensation or redress. The indicated provision constitutes a clarification and guarantee. It should be noted that in the previous legal status there was also no basis for such an interpretation according to which the Commission’s decision on compensation would not be autonomous in the sense that its “legal personality” would be determined by the existence of the Commission’s decision issued pursuant to Article 29 of the Commission Act. A compensation decision constitutes an act of law application settling a formal administrative case, the subject of which is the action for compensation or redress as a consequence of reprivatisation of Warsaw real properties pursuant to substantive conditions specified in Article 33 of the Commission Act\textsuperscript{25}. The Commission’s final decision has constituted the basis for payment of compensation or redress, which means no requirement of its validity\textsuperscript{26}.

\textsuperscript{24} A. Dalkowska points out that “the institution of compensation specified in Article 33 of the Commission Act shows an analogy to liability for damages done by action or omission repugnant to the law at the exercise of public authority through the issuance of a final administrative decision stipulated in Article 4171 of the Civil Code”. See: A. Dalkowska, \textit{Decyzja Komisji do spraw reprywatyzacji nieruchomości warszawskich w sprawie odszkodowania i zadośćuczynienia} [Decision of the Commission on reprivatisation of Warsaw real properties on compensation and redress], „Nieruchomości@” 2019, issue 1, p. 45–57.


\textsuperscript{26} In its judgement dated 30 September 2016 (file reference I OSK 1152/16), the Supreme Administrative Court precisely indicates differences between the final and valid decision. Pursuant to Article 16 § 1 of the APC –, the final decision shall mean – a decision against which one may not appeal in the administrative instance or application for
A necessary supplement to the amendment of the institution of compensation specified in Article 33 and 34 of the Commission Act is constituted by the inter-temporal provisions governing the issues of judicial proceedings for compensation or redress initiated before the entry into force of amendments and still pending, due to making an objection only by the capital city of Warsaw. Upon the entry into force of the act amending the Commission Act, these proceedings are subject to discontinuance in virtue of law. The Commission’s decisions appealed against by the capital city of Warsaw on the award of compensation or redress to tenants of Warsaw real properties, as to which judicial proceedings had not been initiated, became final and valid upon entry into force of the amending act.

5. Statutory administration of the Warsaw real property

Due to the amendment, the provision for the Warsaw real property administration was changed. The institution of administration was replaced in the Commission’s decision with the structure of statutory administration established in each case when the Commission issues a specific decision cancelling the reprivatisation decision of the commune or the Treasury and an obligation to take over administration of the Warsaw real property or its relevant part according to the principles specified in Article 184a–186a of the Property Management Act of 21 August 1997\(^\text{27}\) by the commune or the Treasury. At the same time, the amendment introduces the *ex lege* obligation to hand over real properties for the benefit of the commune or the Treasury, concerning a recipient of the reprivatisation decision, its legal successors or previous administrator. While explaining reasons of the above solution, the legislator points out that “Introduction of intercorrelated obligations consisting, on the one hand, in the takeover of real property administration by the commune and, on the other hand, in the issuance of real properties and performance of other necessary actions by the recipient of the reprivatisation decision, its legal successor or previous administrator, is necessary to ensure a smooth takeover of administration”.

In Article 40e section 2 of the Commission Act, the commune or the Treasury has an obligation of collecting rent for occupied premises. This fee is charged since the decision issuance date in the amount specified in the agreement referred to in Article 40b section 1, according to applicable

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\(^{27}\)Uniform text Journal of Laws of 2020, item 65 (further: “PMA”).
rates determined in a resolution of the competent Town Council or in an order of the competent starost. Pursuant to Article 10 of the amending act, the obligation of administration takeover by the commune or the Treasury applies also to decisions repealing the reprivatisation decision, issued by the Commission pursuant to Article 40e before the entry into force of the amendment, which in fact creates a statutory obligation of administration takeover *ex tunc*.

6. Amendment of Article 214a of the PMA – prohibition of granting decree applications for letting the real property occupied by tenants for perpetual usufruct

More than 70 years of validity of the Decree of 26 October 1945 on the Ownership and Use of Land in the Capital City of Warsaw\(^\text{28}\) have caused effects contrary to the assumptions of its authors, significantly increased by judicial reprivatisation of lands nationalised by its operation, regardless of whether perpetual usufruct concerned real property developed with a building inhabited by tenants. It led to the transfer, pursuant to Article 7 of the Warsaw decree, by way of administrative decision, of buildings together with their residents, which, in turn, often resulted in individual and social pathologies\(^\text{29}\). The explanatory memorandum to the amending act includes the explanation of a reason for expanding the prerequisites for a refusal to grant the decree application to the prerequisite of housing estate being occupied by tenants. It indicates that "previous activities of the Commission have disclosed frequent cases of recipients of reprivatisation decisions performing activities repugnant to the law towards previous tenants, consisting usually in intentional prevention from proper use of real property by carrying out virtual renovations, cutting off access to utilities and hampering free movement around common parts of real property aimed at communication"\(^\text{30}\).  

\(^{28}\) Journal of Laws No. 50, item 279, as amended. (further: "Warsaw decree").

\(^{29}\) K. Zaradkiewicz, in his paper (Sytuacja prawna lokatorów nieruchomości warszawskich w postępowaniu dotyczącym decyzji reprivatyzacyjnej [Legal Situation of Tenants of Warsaw Real Properties in the Proceedings Concerning the Reprivatisation Decision], „Nieruchomości@” 2020, issue 1, p. 11-28), explicitly points out that “the practice of emptying real properties handed over for perpetual usufruct to their former owners or their legal successors from persons who were tenants of premises treated before granting the decree application as municipal has become one of the socially most significant issues connected with the so-called judicial reprivatisation”. However, so far the scale of this phenomenon has not been determined in detail, but famous cases of harassing tenants have certainly adversely affected the perception of the entire phenomenon of judicial reprivatisation in Warsaw (so-called deconcentrated reprivatisation).

\(^{30}\) See: explanatory memorandum to the amending act.
Reaching out to social needs for protection of rights of persons inhabiting reprivatised properties, the amendment of the Commission Act has significantly expanded the catalogue of prerequisites preventing from the issuance of decisions on the establishment of a right of perpetual usufruct for the benefit of entitled entity. Provision 214a of the PMA valid before the amendment has entirely missed the protection of the above-mentioned category of tenants. According to the draft change in Article 214a item 6, it is proposed to add another prerequisite for refusal to establish perpetual usufruct. The indicated legislative changes equip the decree body with an optional competence to refuse to grant the decree application due to the interest of tenants, while the referred competence does not depend on the prerequisites for refusal to grant the decree application pursuant to Article 7 of the Warsaw decree. The proposed change settles the recent dispute about legal situation of an entire category of persons residing in real properties reprivatised in the process of administering the law. It is also significantly changing its perception and empowers tenants, who so far have been refused the status of a party to reprivatisation proceedings both in the doctrine and in judicial decisions of administrative courts.

7. Conclusions

The amending act has introduced significant changes, which have as one of their fundamental purposes the improvement of a legal situation of persons occupying premises in Warsaw real properties at a date of issuance of reprivatisation decisions. Although many years have passed since the end of the World War II, so far the issue of statutory reprivatisation of real properties has not been solved. Over the course of 70 years of validity of the Warsaw decree, judicial reprivatisation has led to “distortion” of its essence and caused significant material and social losses, which affected mainly individuals who are economically the weakest, i.e. tenants of Warsaw real properties. Despite coming into effect of the Commission Act and the Commission’s activities for more than three and a half years, the objective of its implementation, i.e. reversal of negative effects of the reprivatisation of Warsaw real properties repugnant to the law and compensation of damage and losses, has not been fully accomplished. The amending act attempts to respond to practical issues with the execution of liability for damages and simultaneously it liquidates the possibility of handing over lands developed with buildings occupied by tenants, which undoubtedly proves its social value.