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THE QUARTERING OF TROOPS IN INTERWAR POLAND IN THE LIGHT OF ADMINISTRATIVE LAW

Introduction

Before I proceed to the proper discussion, it should be noted that the issues which are in the author's research interest have not been discussed in detail in the relevant literature so far. Usually, legal issues of the quartering of troops refer to the institution of requisitioning in the old Polish law and related abuses, including those concerning military quarters. Nevertheless, it should be noted that so far there has been no solid legal analysis of aspects of the accommodation of troops in peace conditions in the interwar period in Poland. In view of the above, the analysis I carried out using the historical-legal and formal-legal methods, aims at filling this gap. Due to the modest state of research in the relevant field, its literature also remains extremely poor. Thus, my analysis is original and innovative,¹ because the discussion will be based primarily on sources of law in the form of statutory and sub-statutory normative acts that create a uniform system of norms concerning the accommodation of troops in peacetime. In addition, I sometimes refer to interwar judicial decisions (of common and administrative courts) on the accommodation of troops in peacetime. I also used normative sources, which have also not yet been extensively analysed in the relevant literature, i.e. the orders of the Ministry of Military Affairs issued to elaborate upon statutory and executive provisions. The content of the selected orders thus constitutes an exceptionally valuable source for my analysis.

The subject of the present analysis, is connected with the constitutional

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¹ It should be stressed that the adopted scholarly methods should be identified with the logic of a scholarly discovery. The choice of the method adopted for this discussion is a decision as to how to treat scholarly claims, see Popper 1977, 46. Cf. Łyskowski 1929, 1-9; Ziemiński 1974, 1-9, 106; Pomorski 1991, 9-26; Bardach 2001, 10-33.

obligation to comply with public burdens and duties [Konic 1906, 177-89; Kasznica 1946, 124-27; Szalewska 2012, 503-30; Konarski 2020b, 43-46]. Among the many public burdens of a personal or pecuniary nature for the defence of the state, which already existed in the distant past, one of the oldest and most onerous of them should be mentioned, namely the obligation to quarter troops. Let us just mention here that one of the oldest examples known to us of a statutory provision of civilians for the benefit of the army, or for state purposes, is the Ptolemaic quartering law dating back to the times of ancient Egypt, which has the character of a negative set of rules of conduct, i.e. one that was constructed in the form of prohibitions and in the form of a condemnation of the practices applied, which in fact was not uncommon in patriarchal societies, the most familiar example of which is the Decalogue [Smolka 1935, 354].

Bearing burdens and fulfilling duties as well as public obligations associated with them have a centuries-old tradition and are firmly rooted in modern legal regulations in force on Polish soil.² These obligations in the past mainly concerned the supply of recruits, means of transport, food, the duty to build fortifications, repair roads and bridges, etc.³ and, which is most interesting to us, to the quartering of troops. The obligation to quarter troops is also associated with their marches across Polish lands during numerous wars,⁴ and the greatest problem associated with the obligation to provide military quarters⁵ was related to numerous robberies and act of destructions carried out by the army, both within and outside of towns [Srogosz 1990, 3-33; Baczkowski 2012, 193-207; Gąsiorowska 2013, 145-52; Baczkowski 2018, 795-801]. Abuses resulting from the quartering and marching of the army of-

² They should be distinguished from demesne burdens (obligations in favour of landowners) under private law, such as rents, tributes in kind, services (e.g. the provision of *podvodas*), serfdom (labour) or various fees (e.g. marketplace fees). For more, see Opas 1971, 121-44; Konarski 2019b, 63-86.

³ For more, see Mencil 1974, 129-37; Konarski 2019c, 113-35; Idem 2019a, 111-31.

⁴ When analysing the relevant legislation over the centuries, it should be noted that issues related to the accommodation of troops were sometimes regulated by municipal military articles, i.e. normative acts concerning the rules of military discipline in municipal troops, which were issued directly or under the authority of the municipal council, see Łopatecki 2016, 59-60.

⁵ For more on organisational and social problems related to quartering in the towns of old Poland, see Włodarczyk 2019, 77-82.

ten led to the disorganisation of the economy of a village, town or city and the impoverishment of its population [Zyglewski 2017, 45-49; Gut 2019, 43-60].⁶ The need to regulate this matter was noticed in the era of the Four-Year Sejm and in view of the fact that “stationing the army in various corners of the country over time highlighted the problem of observance of the law by soldiers or the necessity of settling possible conflicts between soldiers and civilians” [Gordziejew 2017, 188], these issues were regulated in two Sejm constitutions passed in November and December 1789.⁷ Further regulations were carried out in subsequent years both in the Duchy of Warsaw⁸ and the Kingdom of Poland.⁹ During the First World War, the powers involved in that armed conflict usually regulated matters of quartering troops on the basis of specific legislation on in-kind contributions with regard to the burden of pro-

⁶ Cf. a chronological list of the town’s expenses on the accommodation of troops in the years 1777-1778, National Archives in Kraków, fonds no. 34, “Expens dla wojska w Kazimierzu lokującego się”, file no. 835, cards 3-11 [hereinafter: NAK].

⁷ *Komisje wojewódzkie i powiatowe w Wielkim Księstwie Litewskim* and *Komisje porządkowe cywilno-wojskowe, województw, ziem i powiatów w Koronie, Volumina Legum*, Vol. 9, Cracow 1889, 136-42, 146-56.

⁸ NAK, fonds no. 678, “Akta dotyczące pobytu armii napoleońskiej w Polsce. Sprawy kwater, furażu, rekwizycji z lat 1807-1812”, file no. 656, all cards; the Decree of 5 July 1810 – Regulations on quarters for servicemen, Journal of Laws of the Duchy of Warsaw 2, No. 20, 261-70 [hereinafter: JLDW]; the Decree of 22 May 1811 on exempting houses in which public cash offices are located from the quartering obligation, JLDW 3, No. 32, 319-20; the Decree of 9 November 1811 on remuneration in cash instead of quartering, JLDW 3, No. 36, 465-66. Cf. Filipiak 2011, 215-29; Idem 2020, 85-91. For more on requisitions related to the quartering of troops during this period, see Gąsiorowska 1917, 105, 107 and 110-11; Dzwonkowski 1996, 71-79. The procedure for the entry of an army unit (garrison) into a town, including the review of the state of quarters and the taking up of accommodation in the town, etc., is analysed in detail by Stasiak 2017, 293-99.

⁹ See, *inter alia*, the decision of the Royal Governor of 3 February 1816, exempting newly-built houses in Warsaw from the quartering duty for a several years; the decision of the Administrative Council of 12 (24) October 1837, defining the order in which the quartering duty should fulfilled by residents of the city of Warsaw and the suburb of Praga, and how it should be monitored; the decision of the Administrative Council of 21 April 21 (3 May) 1864 determining additional quartering fee from the houses of private owners in the city of Warsaw for the duration of martial law; the Regulation of the Government Commission for Internal Affairs of 26 May (7 June) 1867, developing the resolution of the Administrative Council of the Kingdom by which a new act on the quartering obligation in the city of Warsaw was approved, *Zbiór przepisów administracyjnych Królestwa Polskiego* [Collection of Administrative Provisions of the Kingdom of Poland], Part IV, Vol. 2, Warsaw 1867, 9-19, 43-95, 137-41 and 191-97. Cf. Konic 1906, 181-85.

viding accommodation for the army.¹⁰

1. The obligation to quarter troops in the first years after regaining independence

During the first months and years of the reborn Polish state [Konarski 2019b, 151-66; Idem 2020a, 113-53], there was a number of organisational difficulties, which also affected the institution of military accommodation. As a matter of fact, problems related to duties for the defence of the State after the end of World War I included not only accommodation issues, but also those related to illegal requisitions. For example, in Order No. 167 of 29 November 1918 the Minister of Military Affairs indicated that “during the relocation of troops, it is not allowed to take and carry away livestock or materials, as they are not the property of the troops, but belong to the boards of local Quartering Commissions, and only these may dispose of them.”¹¹

The problem must have been serious and recurrent because a few months later – in Order No. 982 of 10 March 1919 – it was decided that “the person responsible for taking or not returning unlawfully the movable property of quarters during the translocation of military units – is the commander of the unit, who in the above-mentioned cases shall be held liable in disciplinary and financial terms.”¹² Therefore, the responsibility of commanders for their subordinate soldiers became a means of counteracting the illegal conduct of military units. In Order No. 564 of 3 February 1919 the Minister of Military Affairs stressed that “due to abnormal relations and the lack of appropriate regulations of the former occupation authorities, it is not possible to carry out orders regarding the provision of accommodation for the needs of the ar-

¹⁰ See para. 19-20 of the Austrian War Duties Act of 26 December 1912, which obliged all owners of real estate to put it to military use, whereby remuneration was provided for the use of the real estate. According to para. 21 of this Act, the provisions of the Peacetime Quartering Act were applied to quarters, and, if necessary, parts of the property free of peacetime quartering could be taken for use, see Stefczyk 1916, 4-10.

¹¹ The Order of the Minister of Military Affairs on Quartering Authorities, Journal of the Regulations of the Ministry of Military Affairs No. 8 of 4 December 1918, items 187, 94-95.

¹² Order of the Minister of Military Affairs on the responsibility of unit commanders for quartering movables, Journal of Military Orders No. 30 of 18 March 1919, items 982, 769 [hereinafter: JMO].

my everywhere in a uniform manner and without certain inconveniences connected with them.”¹³ Thus, as we can see, the situation required an urgent regulation of a general nature.

This first took place by way of the adoption, in February 1919, of a decree on the requisition of premises for state offices,¹⁴ which provided that in the event of a lack of suitable premises in state buildings for military and civilian state offices, they could occupy premises in private houses, either under voluntary agreement or by way of official requisition. In the light of the provisions of this decree, the amount to be paid for the requisitioned premises and, if necessary, also for the eviction of existing tenants, was determined by a decision of the district administration of the State property which ordered the requisition. These decisions could be appealed within fourteen days to the Minister of Agriculture and State Property,¹⁵ who ruled finally in agreement with the minister concerned.

¹³ The Order of the Minister of Military Affairs on quarters for the needs of the army, JMO No. 16 of 13 February 1919, items 563, 414. Cf. the Order of the Minister of Military Affairs on quartering orders, JMO No. 17 of 11 February 1919, items 588, 433.

¹⁴ The Decree on the requisition of premises for state offices, Journal of Laws of the Polish State No. 14, item 197 [hereinafter: JLPS]. A few months later, this Decree was repealed by the Act of 27 November 1919 on the obligation of gmina executive boards to provide premises, Journal of Laws No. 92, item 498. Court cases arising from the application of this Act were the subject of numerous rulings of the Supreme Administrative Tribunal concerning, *inter alia*, the individual character of requisitions, see the judgement of the Supreme Administrative Tribunal of 12 October 1923, ref. no. 399/22, *Zbiór Wyroków Najwyższego Trybunału Administracyjnego* [Collection of Judgements of the Supreme Administrative Tribunal], Vol. I, Warsaw 1923, No 125, 285-87 [hereinafter: CJSAT I]; conflict of a requisition decision with a court decision, see the judgement of the Supreme Administrative Tribunal of 23 January 1923, ref. no. 70/22, CJSAT I, No. 37, 66-68; legitimacy for a complain, see the judgement of the Supreme Administrative Tribunal of 16 January 1923, ref. no. 57/22, CJSAT I, No. 33, 55-57; the right of complaint of a homeowner, see NTA judgement of 5 October 1923, ref. no. 152/23, CJSAT I, No. 120, 271-75; the relationship of administrative proceedings to judicial proceedings in a case concerning premises, see the judgement of the Supreme Administrative Tribunal of 19 September 1923, ref. no. 19i/22, CJSAT I, No. 99, 220-22; provisional seizure, see the judgement of the Supreme Administrative Tribunal of 12 December 1922, ref. no. 49/22, CJSAT I, No. 12, 29-32; conditional requisition ruling, see the judgement of the Supreme Administrative Tribunal of 6 April 1923, ref. no. 1097/22, CJSAT I, No. 62, 129-32.

¹⁵ Article 27 of the Decree of the Regency Council of 3 January 1918 on the Provisional Organisation of Supreme Authorities in the Kingdom of Poland, Journal of Laws No. 1, item 1.

In the months that followed, an act was passed that obliged municipal and rural *gmina* boards to provide rooms for officers, clerks and military clergy,¹⁶ and if such rooms were not available, the local governments had the right to requisition private flats for the army. Accommodation was provided on the basis of a quartering order issued by the Square Commands (commands of town and fortresses), or military bodies exercising their functions.¹⁷ Thus, flats whose owners or users were permanently absent and individual rooms in flats with more than four rooms were subject to requisition. The rooms for officers and military officials were to be supplied with furnishings (including bedding, washing utensils, etc.) and light.¹⁸ Provision of rooms was made in return for remuneration, which the state treasury paid to the municipalities monthly in Polish marks according to established norms. What was then regulated – together with other types of material and personal burdens of the population for the defence of the state in the event of the outbreak of war or upon the ordering of mobilisation – the provision of accommodation to the army, which was defined as “the handing over to the state, in return for payment, of the right to use real estate directly or indirectly for the purposes of

¹⁶ The Act of 8 April 1919 on Providing Flats for Army Needs, JLPS. No. 31, item 262; the Act of 23 April 1920 on Prolonging the Validity of the Act of 3 April 1919 on Providing Flats for Army Needs, Journal of Laws No. 37, item 211. Cf. the Order of the Minister of Military Affairs on Providing Quarters for Officers and Military Officials on Secondment, JMO No. 16 of 18 May 1920, item 443.

¹⁷ The Decree of the Minister of Military Affairs and the Minister of Internal Affairs on the implementing provisions for the Act of 8 April 1919 on Providing Flats for Army Needs, “Monitor Polski” of 21 June 1919, No. 13, 1 [hereinafter: MP]. In accordance with the agreement with the French Government, separate guidelines were promulgated on the accommodation of officers and non-commissioned officers of the French Military Mission in Poland, see: the Order of the Minister of Military Affairs on the accommodation for members of that Mission, JMO No. 48 of 21 December 1920, item 998.

¹⁸ The provisions of the Act were made more specific in a subsequent regulation of the Minister of Military Affairs and the Minister of Internal Affairs of 11 November 1919 on implementing rules to the Act of 8 April 1919 on providing Flats for Army Needs, Journal of Laws No. 91, item 493. Subsequently, this regulation was amended by another one, namely, by the executive regulation of the Minister of Military Affairs and the Minister of the Former Prussian District of 1 February 1921 to the regulation of the State Defence Council of 22 September 1920 on providing flats for the needs of the army in the former Prussian district, Journal of Laws No. 14, item 88.

supplying the army and the defence of the state.”¹⁹

In the light of the provisions of this Act, the demand for wartime duties, and thus also the obligation to provide premises for the army, was made by means of requisition orders issued by the competent administrative offices on the basis of demand documents issued by the military authorities (the Minister of Military Affairs and the military bodies authorised by him).²⁰ As a rule, remuneration followed immediately and was paid in cash at prices determined by the Minister of Military Affairs in agreement with the Minister of the Treasury and other ministries; if immediate payment was not possible, holders of the contributed items received requisition receipts,²¹ on the basis of which payment was made by the nearest quartermaster of the general district.²² At the same time it was decided that the if owner of objects of wartime contributions, and thus also of rooms intended for military quarters, did not receive payment for his contribution or felt aggrieved, had the right to lodge a complaint within one month with the Regional Requisition Commission at the Military District Command, and he could also appeal against this decision within one month to the Main Requisition Commission of at the Ministry of Military Affairs.²³

¹⁹ The Act of 11 April 1919 on In-kind Wartime Contributions, Journal of Laws No. 32, item 264; Act of 28 October 1919 on amending the Act on In-kind Wartime Contributions of 11 April 1919, Journal of Laws No. 86, item 470; Act of 23 April 1920 on Restoration of Validity and Partial Amendment of the Act of 11 April 1919 on In-kind Wartime Contributions, Journal of Laws No. 37, item 212. The literature emphasises that after the end of the war with the Bolsheviks, the validity of the Quarters Act of 8 April 1919 was not extended, which was due to the lack of a favourable atmosphere around quartering matters. Although work on a new regulation was undertaken, this was abandoned and a new regulation, adapted to peace conditions, began to be prepared [Podolska-Meducka 2011, 137-38].

²⁰ For a definitive regulation of the question of competence during requisitioning for military purposes of premises and their management, see Order of the Minister of Military Affairs on competence during requisitioning for military purposes of premises and their management, JMO No. 13 of 27 April 1920, item 314.

²¹ See the Order of the Minister of Military Affairs on the model of the requisition receipt, JMO No. 48 of 21 December 1920, item 1002.

²² Cf. the Order of the Corps District Command No. 8 on cashing requisition receipts, No. 102 of 10 October 1920 on cashing requisition receipts, items 22, 9; the Order of the Minister of Military Affairs on the payment for requisitions covered by informal receipts, JMO No. 40 of 3 November 1920, item 868.

²³ The Order of the Minister of Military Affairs on the estimation of damage caused by the ar-

Subsequently, an act was promulgated on the duty of municipal *gmina* boards to provide rooms,²⁴ which, in comparison with previous regulations, was characterised by greater liberalism in relation to tenants subject to seizure [Hrehorowicz 1922, 385]. With regard to the obligation to provide accommodation for the army, this act imposed an obligation on the boards of municipalities to provide accommodation in the event of a shortage of such accommodation for officers and equivalent servicemen with a permanent service assignment in the municipality. In addition, the obligation to provide flats also applied to military representatives of foreign governments accredited to the Government of the Republic of Poland, who were displaced from their temporary hotel accommodation. The same obligation applied to repatriates (e.g. prisoners of war). In this case, *gmina* executive boards had the right to exempt flats or parts of flats from total or partial seizure and to restore the right to dispose of such flats to their original owners if the owners proved that circumstances had occurred that would allow them to be classified as sufficiently used or not subject to seizure. In accordance with the provisions of the Act, issuing decisions on the seizure and allocation of flats was the responsibility of *gmina* executive boards or the offices designated for this purpose by *gmina* executive boards. Decisions of the authorities could be appealed against within 30 days before the Supreme Administrative Tribunal, and until it was established, to the Supreme Court in Warsaw, and the appeals had to be lodged directly with the Supreme Administrative Tribunal before the Supreme Court.²⁵

2. The obligation to provide military quarters between 1925 and 1939

On 24 September 1925, an act entered into force,²⁶ and remained effective, with amendments, until the outbreak of the Second World War,²⁷ and

my to private buildings and payment of remuneration, JMO No. 51 of 30 December 1922, item 708. Cf. Rodziewicz 2017, 57-58.

²⁴ The Act of 4 April 1922 on the Obligation of *Gmina* Executive Boards to Provide Premises, Journal of Laws No. 33, item 264.

²⁵ Cf. the ruling of the Supreme Court of 4 November 1920, ref. no. 349/1920; the ruling of the Supreme Court of 15 December 1923, ref. no. ZS 43/23.

²⁶ The Act of 15 July 1925 on the Quartering of the Army in Peacetime, Journal of Laws No. 97, item 681.

²⁷ In the 14 years that this Act was in force, 65 implementing acts were promulgated, and the

even a few years after its end in the conditions of the changed legal, political and social system of the Polish state,²⁸ as it was not repealed until 12 May 1951.²⁹ The first constitution of the reborn Poland, the so-called March Constitution,³⁰ stipulated in Articles 91 and 92 that all citizens were obliged to submit to any public burdens and contributions, including those for military purposes, which also included the obligation to quarter troops. Thus, in the light of the above-mentioned Act of 15 July 1925, quartering troops included the provision of premises needed for the deployment and training of the armed forces of the State.

The Act distinguished between three types of accommodation (permanent, temporary and emergency), whose objective and subjective character was used to create the army accommodation system in force in subsequent years in interwar Poland.³¹ The first category, i.e. permanent accommodation – at the permanent garrison headquarters on the basis of permanent peacetime deployment,³² was in its essence the least concerned with the obligation of accommodation as a public burden.³³ Permanent quarters were provided by the state in its own real estate, or rented for that purpose.³⁴ If officers and married professional non-commissioned officers could not obtain accommodation,

Act itself was amended several times.

²⁸ For more on the nature of Poland's political system after the end of World War II [Konarski 2018, 113-49].

²⁹ This occurred due to the entry into force of the Act of 27 April 1951 on the Quartering of the Armed Forces, Journal of Laws No. 26, item 194.

³⁰ The Act of 17 March 1921, the Constitution of the Republic of Poland, Journal of Laws No. 44, item 267. For more, see Konarski 2020a, 120-30.

³¹ On the concept of “quarters” within the meaning of the Act of 15 July 1925, see the judgement of the Supreme Administrative Court of 27 March 1931, ref. no. 6402/29, *Zbiór Wyroków Najwyższego Trybunału Administracyjnego* [Collection of Judgements of the Supreme Administrative Court], Vol. IX, Warsaw 1931, No. 374A, 118-20 [hereinafter: CJSAC IX].

³² For more on the realities of quartering the largest Polish garrison during the Second Republic, see Ostanek 2016, 380 and 383-90.

³³ See the Regulation of the Council of Ministers of 11 July 1927 on remuneration for permanent quarters provided by *gmina* executive boards on the basis of Article 12 of the Act of 15 July 1925 on the Quartering of the Army in Peacetime, Journal of Laws No. 71, item 623.

³⁴ On the subletting of property to provide officers and married non-commissioned officers with accommodation, see the judgement of the Supreme Administrative Tribunal of 9 January 1931, ref. no. 5065/29, CJSAT IX, No. 334A, 12-13.

gmina executive boards were obliged to provide them with accommodation in their own premises or in premises rented by them for this purpose.³⁵ If they did not receive accommodation in this way, officers and married non-commissioned officers could rent accommodation on their own.³⁶

The quarters provided by *gmina* executive boards to eligible persons were to be located as close as possible to the place where they performed their service, while garrison (city) commanders were obliged to ensure that the quarters provided by *gmina* executive boards were always properly used. These quarters were assigned by the garrison (town) commander with a personal order to occupy given quarters. These orders were issued in 5 copies, which were given to the person accommodated, the owner of the house in which the rented accommodation was located, the *gmina* executive board, the economic commission (which was the payer) and the garrison (town) command. The order stated the exact starting date of the occupation of the quarters by the entitled person. When taking separate permanent quarters, detailed descriptions of their condition had to be drawn up in 2 copies and signed by the owner (building administrator). Orders to vacate quarters provided by *gmina* executive boards were to be issued and delivered in the same way as orders to occupy these quarters. When the quarters were released, a hand-over report had to be drawn up.

Remuneration for separate permanent quarters provided in real estate of *gminas* or leased by *gminas* were to be paid to *gminas* by the respective garrison commands.³⁷ The payments were made via the payers of the formations designated by the garrison commanders to pay the dues for separate pe-

³⁵ The Regulation of the Minister of Military Affairs of 27 February 1928, issued in agreement with the Ministers of: Treasury, Internal Affairs, Agriculture, Public Works, Religious Denominations and Public Enlightenment and the Minister of Justice on the implementation of Articles 9 and 12 of the Act of 15 July 1925 on the Quartering of the Army in Peacetime, Journal of Laws No. 26, item 240.

³⁶ Cf. the judgment of the Supreme Administrative Tribunal of 26 November 1930, I. ref. no. 4961/28, *Zbiór Wyroków Najwyższego Trybunału Administracyjnego* [Collection of Judgments of the Supreme Administrative Tribunal], Vol. VIII, Warsaw 1930, No. 311A, 379-81; the judgement of the Supreme Administrative Tribunal of 15 October 1937, ref. no. 5170/34, *Zbiór Wyroków Najwyższego Trybunału Administracyjnego* [Collection of Judgments of the Supreme Administrative Tribunal], Vol. XV, Warsaw 1937, No. 1407A, 403-406.

³⁷ The Order of the Minister of Military Affairs on the provision of separate permanent quarters by *gmina* executive boards – fees, JMO No. 16 of 16 June 1928, item 195.

rmanent quarters provided by *gmina* executive boards on the basis of verified lists of amounts due to the *gminas*. The payment for these quarters consisted of the following amounts: (1) the rent paid monthly in arrears by the occupants of the quarters; (2) a subsidy from the State Treasury to cover any difference between the tariff remuneration for the permanent quarters and the rent paid by the occupants of the quarters; (3) a subsidy from the State Treasury equal to 1/3 of the difference between the tariff remuneration and the rent paid by the *gmina* for the permanent accommodation; and (4) a subsidy from the Military Accommodation Fund,³⁸ equal to 1/3 of the difference between the tariff remuneration and the rent paid by the *gmina* for the permanent accommodation.³⁹

In addition, attention should also be drawn here to the creation of the above-mentioned Military Accommodation Fund (*Fundusz Kwaterunku Wojskowego*) to cover the expenses associated with the construction and maintenance of buildings for permanent quarters for officers and married non-commissioned officers.⁴⁰ It derived its main income from the quartering tax that

³⁸ The Fund was established to cover expenses connected with the construction and maintenance of buildings necessary for the accommodation of the army in peacetime, cf. the Ruling of the Supreme Court of 20 November 1936, ref. no. I C 2137/36. See the Regulation of the Minister of Military Affairs of 2 June 1927 issued in agreement with the Ministers of Treasury, Public Works and Internal Affairs on the "Military Accommodation Fund", Journal of Laws No. 56, item 496. Cf. the Act of 23 March 1929 on the Transfer of State Real Estate to the Military Accommodation Fund, Journal of Laws No. 26, item 269. After World War II, as of 17 June 1949, this Fund was liquidated, and all its assets were transferred to the State Treasury under the administration of the Ministry of National Defence, see the Resolution of the Council of Ministers of 30 May 1949 on the liquidation of the Military Accommodation Fund as a legal person, MP No. 36, item 512.

³⁹ It should be noted that servicemen, as well as civilians, working in the army on a full-time basis, who obtained their own flat in a cooperative house with the help of a loan from the State Treasury, for the duration of their permanent service in the locality in which they had their own flat, could under no circumstances possess or receive separate permanent quarters, see the Order of the Minister of Military Affairs on the prohibition of providing separate permanent quarters to persons having their own flat in a given garrison in cooperative houses built with the financial assistance of the State Treasury, JMO No. 5 of 19 February 1929, item 47.

⁴⁰ For more on the administration of the armed forces' real estate and the organisation of military construction in the interwar period in Poland and the activities of the Fund, see *Domy mieszkalne Funduszu Kwaterunku Wojskowego. Sprawozdanie 1930-1933*, Warsaw 1934, 3-12 and 17-36; *Sprawozdanie Funduszu Kwaterunku Wojskowego 1927-1937*, Warsaw

was to be levied from 1 January 1925 for 7 years, i.e. until 31 December 1931 [Matwias 1926, 173-76]. The same premises and the same persons were subject to the quartering tax as were already subject to the municipal tax on premises and the State tax on premises,⁴¹ with the difference that premises in buildings owned by the State and local government associations, occupied by State and local government offices or institutions were added to the catalogue of tax exemptions. The tax exemption for newly erected buildings was also broadened (it applied to all newly erected buildings for 10 years, counting from the date of the completion of construction). The structure of the tax base and payment deadlines deadlines were specified in a similar way both in the municipal tax and the State tax. The tax rate was set at 4% of the bases of assessment. The tax on premises was assessed and collected by local government authorities, which were obliged to transfer the tax revenue to the Military Accommodation Fund fund (no later than six weeks after the end of each quarter). If this deadline was not met, the Minister of the Treasury had the right to withhold (on the application of the board of the Military Accommodation Fund) the payment to local government associations of their share in state taxes and the local government allowances due to them [Witkowski 2013, 337-38].

The second category of accommodation concerned temporary quarters, i.e. in the event of changes in the permanent deployment, creation of new formations, concentrations, exercises, detaching, travel, etc. If there were no suitable premises on the territory of a given *gmina*, the *gmina* executive board had the right and duty to seize, against remuneration, private premises necessary for the needs of the army. If the board did not do so, the administrative authority of the first instance could do it in its place and at its expense.⁴² The final seizure took place on the basis of a requisition order of the

1938, VII-XIX; Kłoczewski 1987, 113-35.

⁴¹ Act of 2 August 1926 on the Tax on Premises, consolidated text, Journal of Laws of 1934 No. 76, item 718.

⁴² In the interwar period, diverse nomenclature was used to describe the general administration. The organs of first instance were firstly people's commissars, then governmental ones, and later *starostowie*, *powiat* (land) and municipal *starostowie*. The second instance authorities were voivodes. A unification of the nomenclature took place only after the legal definition was included in the Regulation of the President of the Republic of Poland of 19 January 1928 on the organisation and scope of activity of general administrative au-

gmina executive board or the administrative authority of the first instance, and Article 30 provided that “the burden of quartering should, as far as possible, be distributed evenly between *gmina* and *powiat* districts as well as individual owners of premises.”

For this purpose, lists of premises that could be seized for temporary quarters were created by *gmina* executive boards.⁴³ The annexes to the Act contained detailed provisions on each of the three categories of quarters, covering: the size of the quarters and their hygienic conditions, the arrangement of the privates’ quarters, the accommodation of horses and other animals, authorities and commands and military establishments, prisons, hospitals and medical treatment centres.⁴⁴ There is neither space nor need for a more extensive analysis here of these detailed provisions. Let me just mention that for example in the case of permanent quarters, soldiers with ranks ranging from private to master corporal were given shared quarters with 4.52 m² of floor

thorities, Journal of Laws No. 11, item. 86. Cf. the Regulation of the Ministers of Interior, Military Affairs, Industry and Trade, Agriculture, Transport and Public Works Ministries of 12 January 1929 on delegating certain decisions to the Government Commissioner for the Capital City of Warsaw, Journal of Laws No. 24, item 251; the judgement the Supreme Administrative Tribunal of 7 April 1936, ref. no. 5691/33, 2056/34 and 2057/34, *Zbiór Wyroków Najwyższego Trybunału Administracyjnego* [Collection of Judgements of the Supreme Administrative Tribunal], Vol. XIV, Warsaw 1936, No. 1176A, 138-50. The Commissioner was delegated competences reserved for district general administrative authorities (of first instance) in matters of military accommodation in peacetime.

⁴³ Cf. the Regulation of the Minister of Military Affairs of 2 August 1935 in agreement with the Ministers of Internal Affairs and the Treasury on the size of separate permanent quarters and payments for them, Journal of Laws No. 63, item 399.

⁴⁴ The first guidelines for the calculation of standards for barrack accommodation in government and private barracks were published as early as in 1919. A distinction was made between permanent residence under normal living conditions and temporary residence for the duration of a war, a march or an unexpected grouping of troops in one place. At the same time it was emphasised that the then condition of the Polish State in terms of the deployment of troops should be considered transitional, as there were not enough habitable barrack buildings, which did not allow the needs of the army to be met in accordance with peacetime standards. In view of this, it was pointed out that officers could be given accommodation according to ordinary, peacetime standards only in exceptional cases, see: the Order of the Minister of Military Affairs on the standards of barrack premises, JMO No. 32 of 22 March 1919, item 1081. Cf. the Order of the Minister of Military Affairs on technical supervision and care of military buildings, JMO No. 32 of 22 March 1919, item 1082 and Order of the Minister of Military Affairs on Quartering Orders, JMO No. 32 of 22 March 1919, item 1084. For more on the construction of barracks, see Aleksandrowicz 1922, 56-61.

space and 15.75 m³ of air space per person, while non-commissioned officers sharing quarters with privates were given 6.10 m² of floor space. The accommodation regulations stipulated that the quarters should be light, airy, hygienic and provided with adequate heating and lighting facilities. In addition, each building or group of buildings used to accommodate troops had to have adequate bathing and washing facilities. With regard to the accommodation of officers and married professional non-commissioned officers, the permissible sizes of quarters were laid down in an annex to a separate regulation.⁴⁵ These sizes were changing during the following years.⁴⁶ According to these guidelines, for example, the Marshal of Poland, whether with his family or alone, was entitled to 10 living rooms with a maximum area of 420 m². For a lieutenant general (admiral), this was 6-7 rooms with a maximum size of 180 m² for those with a family, or 3-4 rooms with a maximum size of 100 m². For a lieutenant (second lieutenant) this was 2 rooms with a maximum floor area of 60 m² for a person with a family, or 1 room with a maximum floor area of 15 m² for a single person. It should be added that exceeding the norms as to the number of rooms was unacceptable, while exceeding the square metres of the floor area of the rooms could amount to at most 10% of the full norm. As far as temporary quarters are concerned, if separate rooms could not be provided, it was permissible to quarter privates in single-room buildings together with the owner in one room, or in the summer months to quarter privates together in covered farm buildings outside the living quarters, although it was emphasised that this type of accommodation could not be an obstacle to placing crops in these buildings. As regards furnishing quarters for privates, it was the duty of the owner of the premises to provide each private with 3 kilogrammes of fresh straw bedding and the necessary equipment for folding or hanging clothing and gear. Non-commissioned officers with rank of a sergeant or above and professional non-commissioned officers had to be provided with a full bed and a clothes hanger, and if beds could not be

⁴⁵ The Regulation of the Council of Ministers of 29 August 1927 on the size of permanent quarters and payments for permanent quarters in barracks or state buildings leased or administered by the State Treasury, Journal of Laws No. 81, item 705.

⁴⁶ Cf. the Regulation of the Council of Ministers of 28 May 1934 on amending the Regulation of the Council of Ministers of 29 August 1927 on the size of permanent quarters and payments for permanent quarters in barracks or state buildings leased or administered by the State Treasury, Journal of Laws No. 52, item 479.

provided, they had to make do with bedding like other privates. As far as temporary accommodation of officers was concerned, the Marshal was entitled to have at least 2 rooms, and officers of other ranks to have 1 room. However, in exceptional cases, when the military authorities stated that the accommodation could not be provided by *gmina* executive boards, a smaller room had to be provided. In such a situation, the owner of the room or the *gmina* executive board was obliged to provide as the number of beds with bedding equal to the number of officers actually occupying the room, while the civilian population was to be left with 1 full bed per person.

In the case of the temporary accommodation of animals, they were to be accommodated, as far as possible, in the premises normally used for this purpose. The owner of the premises was obliged to provide bedding for each animal in a quantity and quality appropriate to the type and size of the animal. Bedding supplied by the owner and the fertilizer remained his property, and if the owner of premises was unable to provide bedding for people and animals, the military authorities were responsible for providing it. For the temporary quarters thus provided, and for their furnishing, heating and lighting, the owner of the premises received remuneration from the State Treasury on the basis of certificates issued by the persons or units using the accommodation, or on the basis of a certificate from the *gmina* offices.

The third category of quartering covered emergency cases, i.e. mobilisation, the calling up of reservists for arms and the summoning of troops to assist civil authorities and during military marches. In the case of emergency quartering, the military authorities demanded that the accommodation be delivered directly to the executive board of the relevant *gmina* at least 24 hours, if possible, before the arrival of the troops. If the *gmina* executive board did not provide the accommodation, the military authorities seized quarters in cooperation with the administrative authorities and, if necessary, could seize private premises for this purpose. It should be emphasised, however, that the seizure of premises for emergency accommodation, not exceeding three days, was free of charge,⁴⁷ and during that time the premises were exempt of the quartering tax.

⁴⁷ The Regulation of the Council of Ministers of 18 November 1927 on payments for temporary and emergency quarters supplied to the army and for their furnishing, heating and lighting, Journal of Laws No. 113, item 957.

The following were obliged to pay *gmina* executive boards (which paid the owners of the accommodation) for the temporary and emergency accommodation provided and for their furnishing, heating and lighting: (a) for the accommodation of formations (units) – the commanders; (b) for the accommodation of individual military persons – the military persons concerned. As a rule, payment for accommodation was to be made in cash in arrears, with two exceptions. Firstly, in the case of longer-term accommodation, the payment could be made on the same dates as the payment of salary to privates, and, secondly, in the case of shorter-term accommodation, at the time when the quarters were vacated. If the unit commanders did not have the money to pay the dues, they could issue a certificate to the *gmina* executive board or, in case of lack of time, directly to the owner of the premises, stating the amount of the dues for the accommodation provided. Such a certificate had to be stamped and legibly signed by the commanding officer, and if there was no stamp, the legible signature of the commanding officer was sufficient, stating the rank and function of the signatory. The certificate was drawn up in 3 copies, which were received by the authority providing the quarters and the owner of the premises, while the third copy remained in the book of the military formation. If troops accommodated in one place by several owners of premises, the second copy was given to one of them.

An annex to the regulation contained a table of dues for temporary and emergency quarters according to the rent class of the locality, of which there were five: (i) urban *gminas* with more than 80,000 inhabitants; (ii) urban *gminas* with more than 40,000 inhabitants; (iii) urban *gminas* with more than 10,000 inhabitants; (iv) urban *gminas* with less than 10,000 inhabitants; (v) and rural *gminas*. In addition, the division included separately the capital city of Warsaw.⁴⁸ Depending on the class of the locality and military rank, the amount due for the supplied accommodation was determined in zloty, taking into account 1 room for 1 day and indicating separately the amount due for quarters, furnishing, heating and lighting. At the same time the dues for any extra beds put in, the weight of straw or each washing of bed linen (2 sheets

⁴⁸ Cf. Regulation of the Council of Ministers of 15 July 1933 on the division of localities into rent classes for the purpose of calculating remuneration for permanent accommodation provided by *gmina* executive boards on the basis of Article 12 of the Act of 15 July 1925 on the Quartering Army in Peacetime, Journal of Laws No. 59, item 441.

and a pillowcase) were determined. In the same way, the amount due for the animal accommodation was determined, with the amount due relating to the accommodation and bedding only. As an example, the amount due for officer's quarters in an urban *gmina* with more than 80,000 inhabitants was 1.42 zlotys in total, and 0.95 zlotys for animals. For comparison, the amount in a rural *gmina* for the same entities was 0.87 zlotys for officers and 0.75 zlotys for animals.

In the event of damage to buildings occupied as military quarters, the State Treasury was liable, with the exception of damage resulting from a proven fault of the owner of the premises and damage resulting from an accident not connected with the occupation of the quarters, and the State Treasury had the right of recourse to the persons who had caused the damage. In addition, if a quartered person or persons staying with him, by their gross violations of the house rules or by their indecent behaviour, made the occupants of the house uncomfortable or seriously disturbed the house rules, the owner of the premises could demand that the occupant be removed. It should be noted that the owner of the premises had the right to either take legal action against the occupant for eviction,⁴⁹ or to have the occupant removed by his superior.⁵⁰ If, in the latter case, the military authority did not remove the quartered person within 7 days of the request, the owner of the premises could also take legal action (which was under the jurisdiction of courts of peace or *powiat* courts).⁵¹ If the quartered person or persons living with him refused to vacate

⁴⁹ Cf. the Regulation of the President of the Republic of Poland of 29 November 1930 the Code of Civil Procedure, Journal of Laws No. 83, item 651; the Regulation of the President of the Republic of Poland of 29 November 1930 Provisions introducing the Code of Civil Procedure, Journal of Laws No. 83, item 652.

⁵⁰ The occurrence of circumstances which caused the expiry of the right to use the accommodation was determined by the garrison commander responsible for the place where the accommodation was located and notified the interested party in writing. If the person did not vacate the accommodation within the time limit specified in the notice, the authority ordered that the accommodation be forcibly emptied (evicted). The eviction took place on the basis of a formal order of the garrison commander, see the Regulation of the Minister of Military Affairs of 18 July 1928 issued in agreement with the Minister of the Interior on the administrative eviction of quarters, Journal of Laws No. 81, item 712.

⁵¹ For more on the admissibility of legal action in matters of military accommodation, see the decision of the Supreme Court of 18 February 1937, ref. no. C 132/35; the decision of the Supreme Court of 18 February 1937, ref. no. III CZ 48/36.

the occupied premises after the expiry of the time limits for vacating the premises (after 3 months or 6 months at the latest), the superior military authority was obliged to immediately remove the reluctant persons by force. Soldiers accommodated in private premises were liable according to military laws and regulations for disturbing the peace in these premises and for not obeying the order of the superior authority to vacate the premises.⁵²

In July 1939, in a situation of international tension and an impending armed conflict, the President of the Republic of Poland issued a decree amending some of the provisions of the Quartering Act of 1925.⁵³ The amendments of the Act provided for in the decree referred, to a large extent, to situations related to accommodation in wartime and mobilisation or an increase of size the Armed Forces. In fact, Article 28 of the decree directly stated that in those situations where the interest of national defence requires it, the basis for temporary accommodation of a military unit or individual soldiers was to be the very fact of the existence of the indicated states. As D. Rodziewicz rightly noted, the provisions of the decree “unambiguously defined the right of the organisational units of the Armed Forces to freely decide on the quantity and quality of occupied quarters” [Rodziewicz 2017, 58].

From that time on, private rooms could be used as temporary quarters for a period of between 3 and 6 months, but this period did not apply in the event of war and mobilisation. Furthermore, in the case of the announcement these states, the remuneration for temporary quarters was due from the fourth day of quartering. A quartering order could be appealed against within 7 days to the competent appeals authority, whose decisions were final.

Conclusion

To conclude my analysis let me draw attention to the following issues. It should be emphasised that the obligation to provide military quarters, consti-

⁵² The Regulation of the President of the Republic of Poland of 21 October 1932, Military Penal Code, Journal of Laws No. 91, item 765.

⁵³ The Decree of the President of the Republic of Poland of 28 July 1939 on amending the Act on the Quartering of the Army in Peacetime, Journal of Laws No. 69, item 461; the Announcement of the Minister of Military Affairs of 2 August 1939 on the announcement of the consolidated text of the Act on the Quartering of the Army and Navy, Journal of Laws No. 82, item 531.

tuting one of the most onerous public burdens for the defence of the State, constituted and still constitutes, in its essence, an interference in the right to property (and other rights in rem) as a subjective right [Zdyb 2012, 540-48, 591-602]. The institution of expropriation for military needs should be pointed here,⁵⁴ understood as a special case of requisition [Zimmermann 1933, 10-11, 120-21, 204-205], which was often used in the past, especially in interwar Poland. During this period, by way of regulations of the President of the Republic of Poland, numerous pieces of real estate were permanently or temporarily compulsorily expropriated for the benefit of the State Treasury, which were used for various military purposes indicated in detail: quartering of troops,⁵⁵ expansion of barrack,⁵⁶ military exercises,⁵⁷ or for military air-

⁵⁴ The Regulation of the President of the Republic of Poland of 4 March 1932 on the expropriation of land in Wolkowysk for military purposes, MP No. 59, item 69; the Regulation of the President of the Republic of Poland of 25 September 1932 on the temporary seizure of land in Łódź for military purposes, MP No. 223, item 255; the Regulation of the President of the Republic of Poland of 31 December 1932 on the expropriation of land in Suwałki for military purposes, MP No. 8, item 7. The legal basis for such expropriation acts were the provisions of the Quartering Act of 15 July 1925 and the Decree of 7 February 1919 on temporary provisions on compulsory expropriation for the use of railways and other land and water transport routes and any public utility facilities, JLPS No. 14, item 162. It should also be remembered that expropriation for state defence purposes was provided for in the Regulation of the President of the Republic of Poland of 24 September 1934, Law on Expropriation Proceedings, Journal of Laws No. 86, item 776. Cf. Zadrowski 1935, 6.

⁵⁵ The Regulation of the President of the Republic of Poland of 7 August 1930 on the expropriation of land in the Rybiszki estate in Vilnius for army accommodation purposes, MP No. 197, item 281; the Regulation of the President of the Republic of Poland of 5 October 1931 amending the Regulation of the President of the Republic of Poland of 1 March 1930 on the expropriation of land for army accommodation purposes in Stawy near Dęblin, MP No. 235, item 321; the Order of the President of the Republic of Poland of 19 May 1932 on the expropriation of land in Vilnius for army accommodation purposes, MP No. 117, item 147; the Order of the President of the Republic of Poland of 7 November 1933 on the expropriation of land in Lida for army accommodation purposes, MP No. 262, item 289.

⁵⁶ The Order of the President of the Republic of Poland of 2 August 1933 on the expropriation of land in Brest on the Bug to the State Treasury for the expansion of the barracks of the 35th Infantry Regiment, MP No. 179, item 215.

⁵⁷ The Order of the President of the Republic of Poland of 4 November 1927 on expropriation of real estate in Będzin for a military training ground, Journal of Laws No. 100, item 864; the Order of the President of the Republic of Poland of 8 February 1930 on temporary compulsory seizure of land for a shooting range of the Garwolin garrison, MP No. 39, item 66; the Order of the President of the Republic of Poland of 21 June 1930 on temporary

fields.⁵⁸ It should be emphasised that cases of expropriation of real estate connected with quartering troops became the subject of judicial decisions (judicature) of Polish courts.⁵⁹

In conclusion, attention should be drawn to the role of judicial decisions in quartering matters. As I have already indicated above, matters of military accommodation in peacetime were on many occasions examined by both common courts and administrative courts. Judicial decisions of these courts contributed significantly to the elimination of doubts of a legal nature which sometimes arose when the administrative authorities applied the regulations in question. What is more, it should be emphasised that even though the regulations concerning the accommodation of the army which I analysed have lost their legal force, their legal effects are still valid, which can be found in the contemporary judicial decisions.⁶⁰

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seizure of land for a shooting range and exercise area for the garrison of Pułtusk, M.P. No. 151, item 228; the Order of the President of the Republic of Poland of 29 September 1930 on expropriation of land for a training ground and shooting range for the garrison of Wilno, MP No. 232, item 316.

- ⁵⁸ The Regulation of the President of the Republic of Poland of 19 December 1927 on the expropriation of land for the airfield in Dęblin, MP No. 116, item 984; the Regulation of the President of the Republic of Poland of 7 November 1933 on the expropriation of land for the airfield in Małaszewicze, MP No. 261, item 286.
- ⁵⁹ See the ruling of the Supreme Court of 29 April 1929, ref. no. R 317/29; ruling of the Supreme Court of 23 September 1931, ref. no. III Rw 1621/31.
- ⁶⁰ See the judgment of the Voivodeship Administrative Court in Kraków of 19 December 2016, ref. no. II SA/Kr 922/16; judgment of the Supreme Administrative Court of 27 March 2019, ref. no. I OSK 1385/17.

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The Quartering of Troops in Interwar Poland in the Light of Administrative Law

Abstract

The subject of this article is connected both with public burdens in the form of the obligation to provide accommodation for the armed forces in situations envisaged by the legislator, and with the issues of military economy, in particular with the administration of military real estate. The author analyses the legal regulations in the field of military quartering in the interwar period in Poland, additionally taking into account the quartering practice as well as the judicial decisions in this field.

Keywords: Second Polish Republic, administrative law, military law, public burdens, military accommodation, military quarters, military real estate

Kwaterunek wojska w międzywojennej Polsce w świetle prawa administracyjnego Streszczenie

Przedmiot niniejszych rozważań pozostaje związany zarówno z ciężarami publicznymi w postaci obowiązku dostarczania zakwaterowania siłom zbrojnym w sytuacjach przewidzianych przez ustawodawcę, jak i powiązany jest z zagadnieniami gospodarki wojskowej, a w szczególności z administracją nieruchomości wojskowych. Autor dokonuje analizy przepisów prawnych w obszarze kwaterunku wojskowego w okresie międzywojennym w Polsce, uwzględniając dodatkowo praktykę kwaterunkową, jak i orzecznictwo sądowe w tym zakresie.

Słowa kluczowe: II Rzeczpospolita, prawo administracyjne, prawo wojskowe, ciężary publiczne, zakwaterowanie wojska, kwatery wojskowe, nieruchomości wojskowe

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