

ABANDONED PROPERTIES IN THE PROCESSES OF REAL ESTATE MANAGEMENT IN POLAND

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Abstract

Important task in the field of real estate management in Poland is the regulation of the legal status of properties. The Real Estate Management Act of 21 August 1997 imposed on district governors (in relation to the real estates of the State Treasury), village-mayors, mayors (in relation to the municipal real properties) the requirement for submitting forms for the establishment of a land and mortgage register and for entry into a land and mortgage register, as well as undertaking the court proceedings for declaration of acquisition of property. It has a significant impact on expanding the assets, its disposal and its correct development. The intensification of the activities in this area occurred along with the Act of 7 September 2007 on publishing the right of ownership to the real estate of the State Treasury and of local government units in land and mortgage registers, which obliged the surveying administrative bodies and institutions responsible for the real estate management to prepare lists of properties whose ownership, under separate regulations, has been transferred onto the State Treasury and which are now the property of the State Treasury or of the local government units. Moreover, it introduced an obligation to submit applications for publishing the right of ownership in land and mortgage registers as well as reports on the fulfilment of the obligation to publish the right of ownership. It has highlighted a number of neglects in terms of arranging of the legal status of the property, including the ones resulting in the need to update the entries of ownership of real estates on the basis of legal acts published after 1945.

One of the problems observed quite commonly in Poland is the unregulated legal status of the abandoned real estates. This problem, associated with the legacy of the past, is currently largely in the course of solving or remains unsolved. Abandoned properties should be understood as the ones whose owners due to the war that began on 1 September 1939 lost their possession and did not recover them afterwards. In accordance with Art. 34 Decree of 8 March 1946 on Abandoned and post-German properties, the State Treasury and local government associations acquired ownership of abandoned and post - German real estates by omission after the period of 10 years. Although physically there can be a lack of documentation confirming the fact of the acquisition of the right of ownership to the real estates in this mode, the title to the property has already been acquired under the law. The confirmation of the acquired rights and the basis for making entries in the land and mortgage registers are judicial decisions. In 1985 the decree ceased to be in force but the process is requested on a given date (for example on 31 December 1955). For the purpose of the court proceedings, the regulations of the Code of Civil Procedure for ascertainment of the acquisition of the ownership of real estate by usucaption are applied.

Keywords: *real estate management, abandoned properties, regulation of the legal status of properties.*

Introduction

The ownership of property constitutes the most extensive property right in Poland and is protected by the Constitution of Poland. The property owner, to the exclusion of other people, may, within the limits set by the laws and the rules of social intercourse, use it in accordance with the socio-

economic of their right, in particular to derive profits and other income and dispose of it (article 140 of the Civil Code). In order to determine the legal status of real estates, land registers are maintained and the property owner is now obliged to immediately submit a form for publishing their right of ownership to the real estate in land and mortgage registers (Article 35 of the Act of 6 July 1982 on land and mortgage registers and mortgages). Nevertheless, in the Polish legal system, not all properties possess established land and mortgage registers, which is caused by the existing rule that entries are declaratory. The legal status disclosed in the land register not always corresponds with the actual legal status due to the number of omission in updating the entries. A common phenomenon is unregulated legal status of real estates and there are many reasons of the fact. Analyzing the cases appearing in practice, it can be observed that the difficulty is, inter alia, the unregulated legal status of real estates acquired under the law, including the abandoned properties and, in particular, because of the scale of the phenomenon, the post-Jewish properties. Although the events that contributed to the problem of abandoned properties in Poland took place in the distant past, it has continued to exert an influence on the contemporary processes of the property management. The situation in this case is closely related to the legacy of the past, but the problem is current and present not only in Poland but also around the world.

Outline of the issue of regulating of legal status of properties in Poland as the task in the field of real estates management

One of the tasks in the field of the management of real estates is the entry of the right of ownership in the land and mortgage registers. Land registers in Poland constitute a record of the legal status and the basis for designation of the disclosed real estates is the cadastral data (data enclosed in cadastre). In the case of the real estate owned by the State Treasury and the local government units the duty of submitting form for the establishment of land registers and for entry in the land register was imposed on governors (in relation to the real estates of the Treasury), mayors, city mayors (in relation to the municipal real properties) due to the Real Estate Management Act of 21 August 1997. They were also obliged to undertake actions in the court, particularly in the cases concerning ownership or other property rights in the real estate, including the cases of ascertainment of the acquisition of the ownership of real estate through the usucaption. This has a significant impact on expanding the belongings, its administration and its proper management.

The public administration's activities in regulating the legal status of real estates have been noticeably intensified since the Act of 7 September 2007 on publishing the right of ownership to the real estate of the State Treasury and of the local government units in land and mortgage registers. It imposed an obligation on district governors, among other things, to prepare and deliver lists of real estates which ownership has been transferred, under separate provisions, onto the State Treasury and which are now the property of the State Treasury or of the local government units. Under the assumptions of the Act, the governor, or any other body or organ unit representing the State Treasury in matters of real estate management, is intended to submit in the relevant district courts forms for publishing the right of ownership of the State Treasury in land and mortgage registers. In the cases when the basis for the entry of the right of ownership to real estates of the Treasury is a ruling of the court, they are obliged to submit forms to the competent courts to ascertain the acquisition of the right.

The completion of the above-mentioned tasks has revealed a series of omissions in ordering the legal status of the properties, including the ones carrying the necessity of updating entries of the right of ownership on the basis of the legal acts published after 1945. Not once, in fact, despite the lack of relevant entry in the register or the appropriate document confirming the existence of the right, the State Treasury or the local government units have already acquired the right of ownership to the property by the operation of law on the basis of a separate regulation, on which the State Treasury purchased the property after 1944. Only in some cases, the basis for the entry may be the law regulation itself. Mostly there is a necessity to confirm the acquisition of the right by an administrative decision or a ruling of the court, so it is necessary to conduct the appropriate administrative or legal proceedings and to gather proper documentary evidence.

Impact of the problem of abandoned properties on real estates management

The scale of the problem of the abandoned properties, including the post-Jewish properties, in Poland is not known and the individual cases of properties constituting the abandoned properties are gradually revealed, among other things, by the already mentioned process of regulating the legal status of properties owned by the State Treasury and local government units. The fact is that before the Second World War Poland was the world's largest concentration of Jews in Europe and

the second in the world. It is estimated that before the 1 September 1939 there were about 3.4 million Jews - Polish citizens in Poland, most of whom, as about 90% of them were killed along with their natural heirs (TYCH et al., 2011). The problem of abandoned properties influences the aesthetics of the urban space as such properties are very often located in the historic parts of cities and towns, disrupting their image. A large number of, in particular the developed properties representing the abandoned properties remains neglected, ruined and sometimes threatens the safety of the pedestrians walking in the vicinity. Meanwhile, the public administration authorities responsible for the management of state-owned and self-government-owned real estates have been required to manage real estates consistent with the principles of the proper management (Article 12 of the Real Estate Management Act of 21 August 1997). According to HEŁDAK (2009), the term 'proper management' should be understood as taking up factual and legal actions, including securing the property against damage so as to preserve them in a not deteriorated condition, as well as the obligation to do reasonable business investment for the proper fulfillment of the its functions associated with the socio-economic destiny of the property. The unregulated legal status of these properties results, however, in the lack of action taken by authorities to revitalize destroyed or deteriorating buildings and a large number of them deteriorate. According to BACIOR et al. (2015) the correct development of the surrounding space is one of the key tasks of the modern world. The authors emphasize that comprehensive and reasonable space management requires cooperation between many disciplines and the real estate management is a tool that combines the concept of space development with its implementation.

Terms of management of the abandoned properties

The first major legal act relating to the present subject was a decree of 2 March 1945 on abandoned and derelict estates. It defined the concept of the abandoned property as all movable or immovable property, which, due to the war that started on 1 September 1939, was not in the possession of the owner, their successors, or persons legally representing them and the assets possessed by third parties on the basis of agreement, if the agreement was concerned to protect these assets from loss due to war or occupation. The term did not include the assets of the German state, German citizens and people who fled to the enemy, as it represented the so-called deserted property (in later regulations called "post-German"). The owner of the abandoned property could restore their possession. In case of the absence of the owner, their relatives in a straight line (descendants and ascendants) and in the lateral line, who would have the right of succession in case of their death and their spouse, could apply for reimbursement of the property. Matters relating to the restoration of property entrusted to the courts which adjudicated whether and whom to equip with the possession of the abandoned property. On the basis of article 36 of the above-mentioned decree the State Treasury and, among others, legal persons of the public law, social institutions, cultural organizations and educational institutions, etc. used to acquire a title to the abandoned real estates after 20 years. Decree of 8 March 1946 on abandoned and post-German real estates shortened the period of time after which the acquisition of rights occurred. According to article 34 section 1 of the above-mentioned decree the State Treasury and the local government units' associations acquired the title of the ownership to the property by concealment (usucaption) after 10 years from 31 December 1945. Those who lost possession of the property in connection with the war, could submit forms for restoration of ownership until 31 December 1947. The deadline was extended until 31 December 1948 on the basis of the decree of 28 October 1947 on the extension of term provided in the article 15 section 2 of the decree of 8 March 1946 on abandoned and post-German real estates. What is more, with the consent of competent ministers the properties could be to put into management and operation of public service institutions, cooperative institutions, cultural and educational organizations, etc., which, however, according to article 12 section 4 did not violate the rights of people whose possession was to be restored.

In 1985 the decree of 8 March 1946 on abandoned and post-German real estates ceased to be effective but the right to the property acquired through concealment regulated by the decree of 1946 remains in force and can be affirmed even after the annulling of the decree (the resolution of the Supreme Court of 02.25.1987 III CZP 2/87). The process is requested on a given date (for example 31 December 1955). In the years 1985-2007, after the annulment of regulations of the Decree of 8 March 1946 on abandoned and post-German real estates, ascertainment of transition of the property to the State Treasury was done by the court basing on the article 189 of the Civil Procedure Code - in the legal case of determination of the right. Currently, if the basis of the entry of the right of the ownership in land and mortgage registers is a jury verdict affirming the acquisition of right by the law, the provisions of the Civil Procedure Code concerning usucaption

are included in the court proceedings. That principle was introduced by the Act of 7 September 2007 on publishing the right of the ownership to the real estate of the State Treasury and of the local government units in land and mortgage registers. The Supreme Court pointed out that for the course of time for concealment, the regulations for the usucaption are adopted, in particular the course of time was interrupted in case of bringing an action for vindication or submitting an application for the restoration of the possessions (GRZESIK et al., 2007).

Worldwide, other countries also often face the problem of the abandoned properties, which means that it is a current and universal problem. The issue of abandoned properties in Poland is not unprecedented around the world. Among the cases where there were or there are special rules for so called abandoned properties and ruined properties, the case of Kosovo may be mentioned. After the war in the Balkans the properties were transferred into public ownership, but as long as the possessor/owner uses the property according to its purpose, the right to occupy the land is almost identical as ownership to it (to possess, use and dispose the property as long as others property rights are not violated) (...) The rule is that a conscientious and legal holder of a real estate acquires the property right after three years and a conscientious but not legal one after ten years (EIDENSTEDT, 2002). Another case is Northern Cyprus. The illegal authorities of the occupied area of Cyprus drafted their own constitution. It stated that all immovable properties, buildings and installations which were found abandoned on 13th February, 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or not being owned after the above mentioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined, shall be the property of the "Turkish Republic of Northern Cyprus" (PASHOULIS, VARNAVAS, 2010). According to ZEVENBERGEN, VAN DER MOLEN (2004) dwellings that have been abandoned should not be left empty. They should be inventoried as soon as possible to prevent the invasion of abandoned properties, both by those in need or by criminal elements. However, the authors say the property rights of owners who had to abandon their properties should be respected and protected.

Reprivatization of the properties

Since the war the post-owners and their successors have attempted to regulate the ownership issues in connection with the real estates left behind. The increased interest in the recovery of real estates or compensation for the previously nationalized properties (as other property or money), was intensified by political changes in Poland. As it has already been mentioned, after the war it was possible to recover the property lost during the war and laying a claim to recover the assets resulted in its return. Documentation concerning Jewish families' cases, applying for the declaration of death of their relatives and for coming into possession, survived in the state archives. The vindication of restitution claims is, in the current legal system, prolonged and complicated. With the exception of regulations concerning property of religious communities, legal acts allowing the return of property or the payment of damages and equitable compensation have not been adopted till now. Despite the lack of legal regulations relating to property restitution in Poland, restitution claims are now inquired on the basis of various prerequisites in administrative and judicial proceedings. This allows, in some cases, the recovery of property expropriated in violation of the law or getting fair compensation.

Analyzing the problem of restitution in the world it should be emphasized that many countries have undertaken or still continue to take actions related to the reprivatization. Many countries in Central and Eastern Europe have adopted policies for the restitution of property that had been expropriated during the period of Communist rule. There are countries within the region, however, where, like in Poland, there are no restitution policies or they are limited. This is, for example, the Russian Federation where restitution concerns only church properties. Different solutions have been adopted. According to GROVER, FLORES-BÓRQUEZ (2004) Bulgaria has tried to restore the original location with updated boundaries (98% of the land claimed had been restituted by July 2002), Hungary has instituted vouchers that can be used in privatisations, for example of housing, Estonia and Latvia have sought to return exactly the land that had been lost, whereas Lithuania has had a more general right to receive land or compensation equivalent to what had been lost. This might involve either the land owned in 1940, if it remained unchanged in character, another parcel in the same or another district, or vouchers to acquire ownership of an apartment or shares in an enterprise. Whereas, in Kosovo there are no provisions for restitution. In spite of this the courts have in some cases returned land to previous owners (EIDENSTEDT, 2002). The problem of abandoned properties and the possibilities of their restitution appeared in the case of East Timor in Indonesia in 1999, as well. The abandoned properties may be returned, in the future, to the owners

who can prove some form of ownership (subject to expected law on land titles restitution) (DE SOUSA, 2005). According to GROVER, FLORES-BÓRQUEZ (2004) restitution has significant implications for the functioning of the property markets in the countries where it occurs, including an impact on foreign investors, who have invested in real estates. However, the question is whether it is necessary to correct past injustices, taking into consideration whether they were unjust and how to deal with the people in actual possession, whose occupancy was in good faith under the former legal structures. The authors say that limits may have to be placed on the specific recovery of property that is not vacant, as the current occupiers may have undertaken improvements to the property, for which they ought to receive compensation. They think that the important matter is also the relationship of the value of what is returned to that which was taken as property markets can change fundamentally during such a period.

Restitution of property of Jewish religious communities has recently become possible in Poland. The religious communities used to gather religious, charity and care activities, as well as education of Jewish population before the war. They had considerable assets - synagogues, prayer houses, cemeteries, ritual baths, etc. According to TYCH et al. (2011) it can be estimated that the pre-war religious communities had, among other things, about 2000-2500 cemeteries (including approximately 60% within the current area of the country and about 200 in the western connected areas) and totally about 10 000 synagogues and prayer houses (about 60% within the current area of the country). During World War II and after the war they were largely destroyed, and in some cases devastated and assigned for other purposes (Fig. 2). According to URBAN (2006) the problem was the lack of successor of the pre-war religious communities, which was connected with the possibilities of reclaiming the property.



Fig. 1. Synagogue in Chęciny (after the war it served as the public library and cinema) (on the left) and synagogue in Busko-Zdrój used for commercial purposes (on the right). *Source: own work.*

Currently, in accordance with Article 29 section 1 of the Act of 20 February 1997 on the relation of the state to Jewish religious communities, real estates or their parts remaining in the date of the enactment of that legal act in the possession of Jewish commonalties and religious congregations became their property under the provisions of law. The ascertainment of the transfer of ownership occurs by way of a decision of the locally competent governor, at the request of the Jewish commonalties or religious congregations. On the basis of the article 30, it is possible, among other things, to initiate the regulation proceedings aiming at transferring to the Jewish commonalties and religious congregations of the ownership of real estates or their parts that were taken over by the State, and which, on the 1 September 1939, were the properties of Jewish religious communities or other religious Jewish legal persons, acting on the territory of the Polish Republic provided that:

there were Jewish cemeteries and synagogues on them that day,
if there were buildings which formerly constituted the seat of the Jewish religious communities and the buildings formerly serving for the religious purposes, educational activities and educational and charitable care located on them on the date of the enactment of the legal act.

The ascertainment of the acquirement of real estates or their parts is done by a regulatory commission for the affairs of Jewish communities on the basis of a jury verdict or a settlement reached before the Commission. It may involve the transfer of ownership of real estates or their parts, the granting of the suitable replacement property, or the granting of compensation determined under the provisions concerning the expropriation of property, and in the case of Jewish cemeteries solely on the transfer of the property or its part. If such an adjustment is impossible, the proceeding is

amortized. A lot of cases are finalized on the grounds of a settlement between the parties – the current owner of the property and its pre-war owner or the Commission's decision. According to TYCH et al. (2011), till the day of 11 May 2002 designated by the act as the deadline for submission of applications for regulatory proceedings, there had been about 5504 applications filed. About 26 % of them were resolved until October 2008 and half of them positively.



Fig. 2. Jewish cemetery in Kielce (on the left) and cemetery in Szczucin (on the right). *Source: own work.*

Surveying-legal aspect of the management of abandoned properties

As it has already been mentioned, surveyors due to their territorial knowledge and the abilities in which they are qualified play a vital role in rightful identification of the property. They determine the property boundaries, verify proper documents concerning the real estate designation and property deeds. For the administrative and judicial proceedings needs a licensed surveyor prepares cartographic documents- maps for legal purposes, illustrating the state of borders on the date of acquisition of the right of ownership to the property. In case of discrepancies of current cadastral data with designation of real estate in the land and mortgage register, the surveyor makes an appropriate synchronization in order to determine which current cadastral parcel corresponds to the former plot disclosed in the land register. At the stage of gathering the evidence confirming the fact that the property is an abandoned property, it is necessary to analyze the archival materials. In addition, an important task is to analyze the content of land registers for probable records regarding the entry into possession of the property of any person and the entries concerning disconnection of plots to another land and mortgage register.

Conclusions

Although the events that contributed to the problem of abandoned property in Poland took place in the distant past, it still continues to exert an influence on the contemporary processes of the property management. The omissions in the field of regulation of the legal status of properties have been revealed, among other, during the implementation of tasks connected with regulation of the legal status of properties owned by the State Treasury and local government units and dealing with restitution claims of the pre-war owners and their successors. This problem is current and present also in the international arena. It influences the aesthetics of the urban space as such properties are very often located in the historic parts of cities and towns, disrupting their image and threatening the safety of the pedestrians walking in the vicinity. Meanwhile, as they are located in strategic parts of cities, after the regulation of their legal status, there would be a possibility of their lucrative lease, rent and even disposal. It is also important to respect the property rights of the people inquiring restitution claims, taking into consideration whether the past injustices were unjust and how to gratify them.

The Surveyor, due to their ability of rightful identification of the property and verification of documents, plays a key role in the administrative and court proceedings concerning the abandoned properties. They determine the property boundaries, verify proper documents concerning the real estate designation and property deeds, as well as prepare maps illustrating the state of borders on the date of acquisition of the right of ownership to the property.

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