

POLISH PRIVATE LAW

Urszula Drozdowska

THE SUPERFICIES SOLO CEDIT PRINCIPLE IN POLISH CIVIL LAW

Superficies solo cedit – The surface yields to the ground

1. It is a famous principle, dating back to the Roman law, which means that everything that has been erected or planted on a piece of land becomes, as an integral part of the land, the property of the owner of the land. In ancient Rome, land was considered the most important thing; therefore, in cases of permanent connection of objects with the land, for example by planting trees on land owned by another person (*implantatio*), or by sowing seeds (*satio*), or even by erecting a building (*inaedificatio*), it was assumed that accession took effect and that the objects connected with the land has become property of the owner of the land¹.

In Polish civil law, this principle is included in articles 48 and 191 of the Civil Code². According to the first of these legal provisions, integral parts of land include, in particular, buildings and other facilities permanently connected with the land, as well as trees and other plants, from the moment of their planting or sowing, with the exception of instances provided for in a relevant statute. Art. 191 of the Civil Code, on the other hand, states that if a movable object becomes connected with an immovable estate in a way that makes it an integral part of the land, ownership of the immovable estate extends over the movable object. As a result of such a connection, an object that has been separate becomes – as an integral part – property of the land's owner, regardless of who effected the connection and whose materials were used to effect it³.

1 Compare K. Kolańczyk, *Prawo rzymskie*, issue 4, Warsaw 1986, p. 308.

2 Civil Code – the Act of 23 April, 1964, *Journal of Laws* No. 16, item 93 with changes.

3 See A. Doliwa, *Prawo rzeczowe*, Warsaw 2004, p. 15.

As mentioned above, the Polish law provides for certain exceptions to this principle. The first and most important exception concerns buildings which, in situations defined by relevant laws, do not share legal purpose with the land on which they have been erected.

2. As we know, the value of a building may by far exceed the value of the land on which the building has been erected⁴. Therefore, Polish law provides for situations where, in the case of a building erected on land that constitutes public property (is owned by the State Treasury or by a unit of the local government, most often a commune), the land remains public property and the building becomes a separate property connected with perpetual usufruct of the land (Art. 235 of the Civil Code)⁵. In order to explain the special character of this exception in the background of the Polish law, one must indicate that perpetual usufruct has served as a certain means of assistance of the State to the construction industry aimed, in particular, to support construction of residential housing. The State Treasury or a unit of local government (commune, district, province) can give land that it owns for perpetual usufruct, for a fee, to a natural or legal person so that this person can erect on that land a building or other facilities connected with the land (Art. 232 and subsequent articles of the Civil Code). Such land remains public property while the building becomes a separate property of the natural or legal person that is connected with the perpetual usufruct of the land.

The institution of perpetual usufruct used to have a very strong ideological basis. In the times of communism, when only the State could own land, there was a need for a legal structure that would provide a right to land (perpetual usufruct) that was necessary to conduct construction projects, while allowing the State to maintain the ownership of the land⁶. Currently, the institution of perpetual usufruct, while remaining a part of the Polish law, is undergoing a crisis⁷ and the question whether it should be maintained is a subject of debate⁸.

4 The Polish legislator established a different solution to situations where the building or another facility has much higher value than the plot of land that it had been built on and occupied in good faith, but that is owned by someone else. In such cases, the person who had erected the building or facility may demand that the owner transfer the ownership of the land with compensation. On the other hand, the owner of the land may also demand that the ownership of the land be bought from him (Art. 231 of the Civil Code). This legal provision does not constitute an exception to the *superficies solo cedit* principle but is rather a particular type of a claim that parties in such situations are entitled to.

5 According to A. Stelmachowski, in: System Prawa Prywatnego vol. 3, in: T. Dybowski, ed., Prawo rzeczowe, Warsaw 2007, p. 249.

6 Compare A. Doliwa, *ibid.*, 171.

7 Under the legal acts (compare the Act of 4 September 1997, Journal of Laws No. 120 (2001), item 1299 with changes; the Act of 26 July 2001, Journal of laws No. 113, item 1209, with changes), natural persons had the possibility to transform perpetual usufruct into actual property. Similarly, some legal persons (such as housing cooperatives) could transform, under preferential terms, perpetual usufruct into property with the goal of regulating the legal status of their real estate.

8 See Z. Gawlik, *Użytkowanie wieczyste de lege ferenda* in: M. Sawczuk, ed., Czerdzieści lat Kodeksu Cywilnego. Materiały z Ogólnopolskiego Zjazdu Cywilistów w Rzeszowie (8-10 października 2004 r.) Kraków 2006, p. 115ff.

3. Similarly, the exception to the *superficies solo cedit* principle stipulated in Articles 272 and 279 of the Civil Code is related to Poland's former political regime. According to these two legal provisions, buildings erected on land owned by the State Treasury that has been handed over to a farming cooperative (Art. 272 of the Civil Code) or on land that constitutes members' contributions to a farming cooperative (Art. 279 of the Civil Code), remain a property of the cooperative that is separate from the land. The Act of 19 October 1991 on administration of farmland property of the State Treasury⁹ cancelled the possibility to transfer such land, based on the aforementioned principles, to production cooperatives and the usufruct right expired after the end of the period provided for by the statute (31 December 1997). Consequently, the above-mentioned legal provisions are no longer in effect, even though they have not been formally abolished. Remarkably, this legal form of conducting an economic activity in the farming sector has lost its importance and, therefore, these legal provisions have lost their practical significance¹⁰. According to § 2 Art. 279 of the Civil Code, if the usufruct of land expires, the plot of land on which the buildings or facilities that are property of cooperatives and constitute contributions of the members of the farming cooperatives, may be acquired by the cooperative as its property, with compensation equal to the value of the land. Trees and other plants become property of the owner of the land. What this means, in effect, is a return to the *superficies solo cedit* principle.

4. Another exception to be discussed concerns real estate that constitutes separate premises. According to Art. 2 passage 1 of the Act of 24 June 1994 on the ownership of premises¹¹, a separate residential premise as well as a premise with a different designation, may constitute a separate piece of real estate. In general, a premise is defined as a chamber, or a set of chambers, that is separated with permanent walls within a building, along with ancillary rooms. Ancillary rooms, and in particular basements, attics, and storage rooms, are regarded as integral parts of the premise, unless an act of law¹² or a decision of a court of law states otherwise (Art. 2 passage 4 of the Act). Ownership of premises that is separate from the ownership of land may be established in buildings that are either private or public property. An authorized person acquires ownership of a premise together with a share of ownership of the building or land, defined as a percentage. If the building is an integral and non-separated part of the land, the legal structure is less complex as the share of ownership extends over the whole piece of real estate and the building. If the land is used under perpetual usufruct rights, the co-ownership covers solely the building that

9 Uniform text can be found in: Journal of Laws No. 208 (2004), item 2128 with changes.

10 Compare: A. Stelmachowski, *ibid.*, 250.

11 Uniform text can be found in: Journal of Laws No. 80 (2000), item 903 with changes.

12 Separate ownership of a premise can be established either by a unilateral or by a multilateral legal act (see Art. 7 passage 1 of the law).

constitutes a separate piece of real estate owned by the homeowners' association (all the owners in the building). The land, on the other hand, is owned by a given unit of local government.

5. Art. 48 of the Civil Code states that facilities serving the purpose of supplying water, steam, gas, or electricity, or other similar facilities, do not constitute integral parts of the land or the building if they constitute a part of an enterprise or a company. As a result of permanent connection to a network owned by such an enterprise or company, they are no longer an integral part of a given piece of real estate and become property of the enterprise or company¹³. At the same time, Art. 191 of the Civil Code states that ownership of a piece of real estate extends over a movable object which has become connected with the immovable estate in a way that makes it an integral part of the land. Considering the mutual relation of these two legal provisions, the Supreme Court, in its decision of 8 March 2006¹⁴, stated that the provision of Art. 49 of the Civil Code does not, by itself, constitute a sufficient legal basis for transferring ownership of facilities mentioned therein to the owner of the enterprise by connecting them with a network. Whether such transfer does take effect depends on the circumstances of a given case, especially on the contract between the entity who had built such facilities and the enterprise. In its decision of 7 November 1997¹⁵, the Supreme Court declared that the recipient of electricity who was forced by monopolistic practices of the enterprise to finance the construction of facilities stipulated in Art. 49 of the Civil Code and then lost ownership of such facilities to the benefit of the enterprise as a result of connecting them to the network may claim to receive compensation for the cost he had incurred on the basis of legal provisions on baseless enrichment. Thus, in cases involving transmission facilities, exceptions to the *superficies solo cedit* principle apply only in particular circumstances of a given case. The current judicial decisions, most of all, support the interest of investors, that is persons who have financed and built such facilities in the framework of municipal economy.

6. To summarize the above discussion, one can state that the *superficies solo cedit* principle has been accepted by the Polish legislator, with the exceptions stipulated in the relevant laws. The number of such exceptions has decreased as a result of the system transformation in Poland. In practice, the separate ownership of a premise within a larger building has become the most important exception, as a result of the rapid growth of multi-family housing. Also, property and perpetual usufruct of land still coexist as forms of title to real estate.

13 See. Verdict of the Constitutional Tribunal of 4 December 1991, sign. W 4/91, OTK 1991, No 1, item 22.

14 Sign. III CZP 105/05, unpublished, quoted after S. Rudnicki, *Komentarz do kodeksu cywilnego. Księga pierwsza. Część ogólna*, Warsaw 2006, p. 203.

15 Sign. II CKN 424/97, OSNC 1998, No. 5, item 77.

Streszczenie

Artykuł wyjaśnia na czym polega zasada Superficies solo cedit oraz przedstawia na gruncie prawa cywilnego zastosowanie tej wywodzącej się jeszcze z prawa rzymskiego zasady. W polskim prawie cywilnym zasadę tę wypowiada art. 48 i 191 KC. W myśl pierwszego z cytowanych przepisów, do części składowych gruntu należą w szczególności budynki i inne urządzenia trwale z gruntem związane, jak również drzewa i inne rośliny od chwili zasadzenia lub zasiania. Z kolei art. 191 KC stanowi, iż w razie połączenia rzeczy ruchomej z nieruchomością, w taki sposób, że stała się ona częścią składową gruntu, własność tej nieruchomości rozciąga się na rzecz ruchomą. Publikacja omawia także wyjątki od wyżej wymienionej zasady. W szczególności przepisy kodeksu cywilnego tj. art. 235, art. 272, art. 279 oraz art. 2 ust. 1 ustawy z dnia 24 czerwca 1994 r. o własności lokali.