

## **THE LEGAL CHARACTER OF “CEMETERTY PROPERTY” IN POLISH CIVIL LAW**

“Cemetery property” is not clearly or precisely defined in Polish law. The 23rd April 1964 Civil Code Act contains only the definition of “property” itself, stipulating that it is part of an area which constitutes a separate object of ownership – these are landed estates. The buildings or parts of them closely attached to the estate are also considered estates – if they form, by virtue of special regulations, a separate object of ownership distinct from landed estates.

The definition of “property”, included in Article 46 item 1 of the Civil Code, is the only universal and legally binding example in the whole civil law system as there is no other definition that would give “land estates” other meaning in civil law which would give validity to the statement that the term “property” may have a meaning other than that provided in the Civil Code.

This also cannot be concluded from the definition of “landed estates”, included in the 21st August 1997 Act on property and estate management, according to which ‘landed estates’ are defined as land with its own integral elements, excluding any buildings and premises which constitute a separate object of ownership. The definition does not provide any grounds to understand “landed estates” in any other way.

As a conclusion, it can be accepted that the term “property”, as stipulated in the Civil Code and in the Act on property and estate management, also refers to cemetery property.

If a landed estate is part of the area that forms a separate object of ownership, it means that the isolation of the part of the area – i.e. the determination of the area size and their external borders – is an essential requirement to constitute a separate object of ownership. Apart from the physical isolation of a particular landed estate, its legal isolation is also indispensable. This means that the owner of a particular piece of land is specified. The legal status of any property is determined by creating a real

estate register or by entering the area isolated by external borders in the existing register.

In the case of cemetery properties – the legal rules do not impose the obligation of a real estate register entry, as the cemetery is the area (land) passed on to churches, confessional associations or budgetary establishments (which communal cemeteries are) to hold as perpetual usufruct. The only obligation that people administering the cemetery area have is to keep the so called cemetery registers. The cemetery administrator – on the grounds of the Minister of Interior and Administration ordinance, dated the 1st of August 2001, on keeping interment space records – is obliged to keep the following documentation:

- a register of people buried in the cemetery, kept as an increasing numeration or in an annual arrangement,
- a register of graves,
- a cemetery book containing a register of people buried in the cemetery in an alphabetical order.

The regulations of the 31st January 1959 Act on cemeteries and burials do not contain the definition of “cemetery property”, and only article 1 states that “a cemetery” is an area designated in local spatial arrangement plans as a burying ground. Therefore, it may be concluded that a cemetery may only be established in an area designated in local spatial arrangement plans for burying purposes. The preparation of local spatial arrangement plans for a particular area in which local public purposes should be performed is obligatory. Public purposes, in accordance with the regulations, also include establishing and maintaining cemeteries. In spatial arrangement plans, the properties designated for cemeteries are described as the landed estates of the State Treasury given to communes and municipalities to administer.

On the grounds of the Act on cemeteries – establishing and expending confessional cemeteries is allowed only in the area designated for that purpose in the local spatial arrangement plans. This regulation is also applied to communal cemeteries.

We can distinguish three types of cemeteries: Communal, Confessional and Military. On the basis of this distinction the legislation grants local government organs (communes and municipalities) the right to establish, expand (after the competent sanitary inspector's permission) and administer communal cemeteries. The same right (referring to confessional cemeteries) is granted to the authorities of churches or confessional associations recognized by the state as corporate entities of public law, which according to their internal regulations organize the confessional cemetery structure. The Polish legal system excluded the possibility of establishing

and maintaining cemeteries by physical persons and legal entities. The regulations of the Act on cemeteries and burials are adequately applied to military graves and cemeteries. Military cemeteries are administered by the state and their maintenance costs are covered by the State Treasury. The conditions of military graves and cemeteries are under surveillance of communes, unless associations and social organization take over these activities.

The acquisition of cemetery properties is regulated by the Act on cemeteries and burials as well as the Act on property and estate management. According to the regulations, land constituting the property of the State Treasury or communal property which is designated for that purpose in the spatial arrangement plans can be passed over to church legal entities to be held as perpetual usufruct or sold. The properties designated for cemeteries which form community property can be sold for the price agreed during community meetings in villages, the city or commune councils in cities. In accordance with Art. 13 item 2 of the Act on property and estate management, the property belonging to the State Treasury can be the object of donation for public purposes. According to the regulation of this Act, the public purpose, among other things, covers establishing and maintaining cemeteries.

Polish law treats the right to interment space as the subject of civil law. The basic source of the interment rights is the civil contract concluded between the person that is authorized to bury the body and the cemetery. This type of contract belongs to innominate contracts (such civil contracts which are not regulated in the Polish Civil Code). The content of the contract covers the reception of the dead body to be buried. The Act does not stipulate any requirements as far as the contract form is concerned; therefore this type of contract may be concluded *per facta concludentia*. The right to interment space comprises both financial and non-financial rights. The former are, above all, connected to expenses incurred for the interment space and for the grave arrangement. The latter refer to the right to bury the body, to erect a headstone, to arrange the headstone's decoration or to perform other customary activities. If at least one dead body has been buried in the grave, the non-financial rights as elements of the right of interment space typically prevail. The district court is competent to determine the right to the interment space where the dead body has already been buried. Permission from the interment rights holder is required prior to interment or entombment in particular interment space. The interment space right, which is a personal right, is granted by the fact of burying a dead body. However, if there is no current holder, the right to interment space can be granted by concluding the contract with the cemetery administrator with the consent of all who are entitled to it. This right can also be granted by concluding a contract with the cemetery administrator with the present interment space holder's consent and by concluding the contract with the cemetery administrator for the use of a new interment space. The interment space can be used for another burial 20

years after a dead body has been previously buried. The particular interment space cannot be used even after that time when the person entitled makes a reservation against that and pays a fee. This reservation takes effect for the next 20 years and can be renewed. The present right to interment space does not expire automatically when the 20 years are over. After this period the interment space can be designated for another burial, i.e. the cemetery administration may pass the space on to another person for burying purposes. It is advisable, as far as possible, to inform the person who administers the interment space about such an intention. The present right to interment space expires when another person is granted the interment rights to that particular space. However, until the cemetery administration has not taken a decision about the space, it is possible to make a reservation and pay a fee to cover the next 20 years. The legislation provides a different solution for tombstones where more than one dead body may be buried. In such a case the people entitled do not need either to make a reservation or pay a fee after the 20 years have elapsed. The person who was not granted the right to administer the tombstone cannot be buried there. *Ipsa facto* the cemetery administration does not have the right to administer the spaces in tombstones either before or after the 20 years have elapsed.

An interment space is not a separate property, it is property which is included as part of a larger estate (a cemetery). The civil code defines a "property" as the part of land or facilities firmly connected to the land. Whereas Article 48 of the Civil Code stipulates what should be understood as integral elements of landed estates – these are premises and other facilities firmly attached to the land, as well as trees or other plants, since they were planted or sowed. As far as cemetery property is concerned, funeral houses, ossuaries and sacred buildings are considered integral elements of cemetery property along with headstones erected by interment right holders. Headstones become the object of interment right, *so sui generis* of use vested in the subject of this right. They then share the purpose of a landed estate taken for burying purposes. Other elements of the grave such as memorials, flower pots, lamps and lanterns which are not connected physically to the property, and so could be detached at any time without losing their inherent properties, do not constitute integral elements of cemetery property.

## **Streszczenie**

Przepisy kodeksu cywilnego oraz ustaw szczególnych, nie podają definicji nieruchomości cmentarnych. Autorka przyjęła, że pojęcie nieruchomości uregulowane w kodeksie cywilnym oraz w ustawie o gospodarce nieruchomościami odnosi się również do nieruchomości cmentarnych. Polskie prawo (ustawa z dnia 31 stycznia 1958 r. o cmentarzach i chowaniu zmarłych) traktuje prawo do grobu jako przedmiot prawa cywilnego, obejmujące zarówno uprawnienie majątkowe, związane z poniesionymi opłatami za grób i wydatkami na urządzenie grobu, jak i uprawnienia niemajątkowe: do pochowania zmarłego, do wystawienia nagrobka, do urządzenia wystroju nagrobka i do wykonania zwyczajowo przyjętych innych czynności.