International Journal of Business, Human and Social Sciences
ISSN: 2517-9411
Vol:8, No:2, 2014

The Linguistic and Legal Term "Real Estate" in the Polish Law and Literature

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***Abstract*—**The research objective of the project and article "The Linguistic and Legal Term "Real Estate" in the Polish Law and Literature" is characteristic of legal regulations in contemporary countries is the abundance of legal definitions, which are, in fact, formulated separately for the needs of each legal act. This situation does not create favourable conditions for comprehensibility and effectiveness of the law created. The definition mess leads to various interpretations of the same legal circumstances and does not support normal business trading. It needs to be pointed out that using numerous references within a legal act and to other legal acts results in new legal definitions being created for the needs of a given decision by the authority which issues the decision in question. Such interpretation freedom may lead to the law being misused, not to mention being instrumentalised.

***Keywords*—**Real estate, linguistic, legal term.

I. Introduction

WHAT is characteristic of legal regulations in contemporary countries is the abundance of legal definitions, which are, in fact, formulated separately for the needs of each legal act. This situation does not create favourable conditions for comprehensibility and effectiveness of the law created. The definition mess leads to various interpretations of the same legal circumstances and does not support normal business trading. It needs to be pointed out that using numerous references within a legal act and to other legal acts results in new legal definitions being created for the needs of a given decision by the authority which issues the decision in question. Such interpretation freedom may lead to the law being misused, not to mention being instrumentalised.

In the contemporary science of law there are a number of indications and directives how terms should be defined correctly. It is impossible, however, not to refer to a few basic rules for creating definitions which can be found in treaties of the contemporary logic. Sławomir Lewandowski and Hanna Machińska [1] enumerate basic rules which a correct definition should follow. They include:

- the rule that the definition cannot include the term it defines,
- the definition cannot be formulated by means of words whose meaning is unclear, graphic or ambiguous,
- the definition needs to strictly correspond to the kind defined,
- the definition should provide the closes type and generic difference,
- as a rule, which is not always followed, the definition should not be negative [2].

Knowing the above-mentioned rules, we need to ask ourselves the question whether the legislator used these rules while creating the Legislative Drafting Principles [3].

Using in legal acts legal definitions in compliance with the Legislative Drafting Principles [4] is recommended if a given term is ambiguous; a given term is vague and the extent of its vagueness needs to be reduced; meaning of a given term is not generally understood; due to the area of issues which are regulated there is a need to determine a new meaning of a given term [5]. In this context, the question arises whether understanding of terms which, as a matter of principle, should not raise any doubts as to their interpretation needs to be defined separately in a legal act. The answer to such a question seems to be clear nowadays. In a given legal act a legal definition adequate to the subject of regulation needs to be used. It may be the case that the new definition will directly refer to the existing one.

However, a complicated system of legal reference may sometimes lead to a situation in which a mistake made once in a definition to which a given legal act refers can be repeated. In such a case, we do not have just one incorrect definition, but a number of its modified versions. Contemporary law cannot exist without the precisely defined object of regulation.

II. Linguistic Definitions

In the contemporary legal language there a number of legal concepts which also function in the general Polish language. Some of them have entered daily use to such an extent that we sometimes forget about their proper legal meaning. It also needs to be pointed out that existence of numerous legal definitions in the Polish law does not create favourable conditions for finding the correct meaning of a given word of phrase. One of them is the term *real estate.* Its dictionary and legal meaning is sometimes distorted in the colloquial use. A few dozen currently used legal definitions of this concept, a few hundred different approaches in legal language and a few thousand uses in general language require fast work on standardisation of the term and coming up with one, adequate definition. According to the counters of various legal systems, the term *real estate* can be found in the currently applicable law published in the Journal of Laws in 1,168 legal acts. The situation is even more interesting if we take into account judicial decisions of the most important courts. In this case, the counter indicates that the term in question can be found in 38,532 judicial decisions [6]. It seems obvious that there is no

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way to examine today all possible language uses and constructions which include the term *real estate*. With such a number of uses. one should ask how many definitions of *real estate* can be found in these legal acts. It needs to be pointed out in the beginning that any answer to this question will never be correct, as even a small modification of one of the basic definitions will result in new definitions. Such a procedure may take place even a few times in one extensive legal act. It also needs to be pointed out that apart from the meaning of real estate, such concepts, which have similar linguistic but not legal meaning, as plot of land, construction structure [7], building, land, settlement, building structure are understood and used differently. For legal understanding they are separate concepts which, depending on a given legal act, have different definition meanings. A significant part of them refers to definitions of real estate which already exist.

Dictionary of the Polish language [8] gives the following meanings of "real estate":

1. «land together with buildings being someone's property; also: buildings themselves»
2. «state of immobility».

In the general use, the noun phrase "real estate" is used in the first meaning. According to this definition, real estate is not just the buildings (family house), but also the land on which they are located. The definition provided above emphasises one more important element. "land together with buildings being someone's property." It is an extremely interesting approach to the definition of real estate, in which real estate is treated as someone's property. At this point, one should answer the question what property is, and whether it applies only to an individual or the whole society. It must be noticed here that the above-mentioned definition – emphasising the ownership element – is similar to the approach used in the Civil Code.

The last part of the definition is also significant from a legal point of view. "Buildings themselves" can be understood as part of the buildings separated out under separate regulations when we can talk about premises real estate. Undoubtedly, such a definition of "real estate" is close to the legal understanding of this concept. What, however, remained problematic is how the concept of buildings should be understood. The definition provided above does not include any indications as to whether these buildings have to be permanently fixed to the ground, and neither does it determine what will happen, if these buildings and the land on which they are located are owned by two different legal entities. Unfortunately, linguistic definitions do not give us an answer to these and other questions.

Another linguistic definitions of "real estate" [9] mentions, among other things, «immobile, non-portable estate (yards, buildings, forests, etc.) ». It needs to be pointed out that the definition does not include an element describing ownership, and is more oriented on terms containing adjectives and nouns. Such an approach is characteristic of dictionary definitions. The enumeration used in it indicates, however, that there may be problems with defining what real estate is also in this case. This is due to the fact that while we are able to imagine some immobile estate, imagining a non-portable estate is more difficult. Development of construction techniques in the recent period has shown how illusory describing building real estate as non-portable is. In view of today's technical possibilities, whole buildings can be moved (and not only small ones), and whole forests can be replanted (event the oldest trees). A question arises: what, in fact, real estate is?

III. Legal Definitions in the Law

The basic definition of real estate for the Polish law can be found in Article 46 of the Civil Code [10]. According to it, "real estate is parts of earth's surface constituting a separate object of ownership (land), as well as buildings permanently fixed to the land or parts thereof, if, under specific provisions, they constitute an object of ownership which is separate from the land". In certain cases, legal separation of real estate determines the fact that it really exists. This separation results in such a factual situation in which a given object becomes real estate only by means of relevant acts in law, and not by "being" real estate [11]. We will find it for example, in one of decisions by Provincial Administrative Court (WSA) in Warsaw: A building shares the legal treatment of the land on which it was built (superficies solo cedit principle). In such a case, we should talk about real estate built-up with e.g. a residential building (which, however, does not constitute a separate real estate), and, in consequence, what is the object of trade is not the residential building, but the land real estate on which such buildings have been constructed" [12]. Doubts as to when we deal with two separate real estates and when with one real estate and its constituent parts are frequently met both in literature and in judicial decisions, in particular, in view of interpretation of other definitions in various legal acts to which there are references to Article 46 of the Civil Code [13]. The same was rightly said by the Provincial Administrative Court in Białystok: "As regards the sale of premises, until a separate ownership title to the premises is established we cannot talk about existence of premises real estate, and the premises constitute part of the main object. An ownership title or other rights in rem cannot apply to a constituent part of the real estate, and it shares the legal treatment of the main object. In view of the above-mentioned facts, it needs to be consistently assumed that the right to dispose of such premises cannot be transferred as the owner. Such premises may remain in dependent possession" [14].

In one case of such separation, we deal with a real estate, and in the same case, without such separation, with a constituent part of real estate [15]. This procedure has also a very important factual justification due to the fact that there are a number of regulations which deal with separate ownership of successive parts of land and buildings. Existence of separate ownership should be decided by an entry in the land and mortgage register [16] or another equivalent document confirming the ownership. It is often very difficult to understand the contents of the land and mortgage register. It also happens that a given real estate does not have a land and mortgage register [17]. It happens, for example, when we deal with a separate ownership of residential premises, but the legal status of the land on which the premises with other premises

have been built is unclear. Such a situation takes place in numerous housing cooperatives in Warsaw, where in the previous political system residential buildings were erected on the land owned by the State Treasury, then the residents purchased the premises to become their owners, but they are not able to establish land and mortgage registers, as they are neither owners nor perpetual lessees of the part of the land on which the real estate is located. This situation proves that the land and mortgage register does not determine existence of the real estate. Such premises are the object of economic transactions. It, however, needs to be pointed out that due to the lack of land and mortgage registers their market value is lower. The situation requires urgent intervention of public administration authorities aimed at transferring the land under the buildings to housing cooperatives.

The real estate defined in Article 46 of the Civil Code is so broad that authorities which issue decisions see much more in it than could be read by means of purely linguistic interpretation. According to the Provincial Administrative Court in Warsaw, "from the civil law perspective a roadway is a real estate within the meaning of Article 46 § 1 of the Civil Code" [18]. However, e.g. a garage is, in certain cases, not treated as a separate real estate. Such a decision was made by the Supreme Court in one of its judgments [19], which is, however, questioned in the doctrine. H. Cioch believes that "pursuant to the Act of 1994 [on ownership of premises], a separate, free standing garage may also be premises real estate (provided that it is a constituent part of the land real estate within the meaning of Article 47 § 2 of the Civil Code). Thanks to the above-mentioned regulation, it can be consistently assumed that in an extreme case each of the buildings can be separated out as premises (being a separate object of ownership)" [20]. The very interpretation and decision whether a garage is real estate causes difficulty depending on a legal act. It needs to be pointed out that it is one of the less disputable examples in the Polish science. Nowadays, when technical possibilities enable moving even whole buildings, which happened at Al. Solidarności in Warsaw in the case of one of the churches, it is very difficult to respect Roman ficies solo cedit principle. Today, there is a need to modify the linguistic interpretation of the definition from Art. 46 of the Civil Code.

What remains one of important problems is the issue of permanence of a given real estate's connection with the land. As has already been mentioned, in view of today's technology moving even the biggest buildings from place to place may be costly but is not problematic. A question arises: how to determine that something is a real estate, what determines the permanence of building's connection with the land. There are a lot of judicial decisions related to this aspect. One of the resolutions of the Supreme Count indicates that "a garage permanently connected to the land, purchased by a perpetual co-usufructuary together with residential premises in a small residential house pursuant to Act of 28 May 1957 on Sale of Residential Houses and Construction Plots (Journal of Laws No. 31, item 132) and the Act of 14 July 1961 on Land Management in Cities and Housing Estates (Journal of Laws No. 32, item 159) cannot be treated as a separate real estate" [21]. As can be seen on the basis of the above-mentioned example, even the permanence of the building's connection to the land does not determine whether a given object is a real estate. Another resolution stipulates that "a stone grave permanently connected with the land (tomb) is not the object of separate ownership from the land. The decision to bury a corpse in a grave being a family grave is taken jointly by: the person who incurred the cost of constructing the grave and paid a fee for using the place in the cemetery, and members of the closest family for which the grave has been built, in the case of a dispute, each of these persons may ask the court to resolve the issue" [22]. As everybody knows, despite the fact that in both cases the permanent connection of a given structure (garage or tomb) with the land is mentioned, they do not constitute separate ownership. In this context, one decision of the Local Government Appeal Court in Warsaw seems quite mysterious, according to which: "it is not necessary (when it is determined that a given structure is a building within the meaning of the Act of 12 January 1991 on Local Taxes and Fees) for a building to be permanently connected with the land or to have walls; it is sufficient that it is a spatial construction containing, as one of its elements, "roof covering" which needs to be in some way connected to the land" [23]. How to define at this point "in some way connected to the land"? What seems the most appropriate is the opinion suggesting treatment of the building as permanently connected with the land until the moment when it is physically "moved". There is still "however, a problem what determines that a real estate comes into being, if permanence of connection to the land becomes quite illusory. What, in such a case, is decisive?

It seems that the definition of separate ownership will be the answer. What seems to be decisive here is the issue of constitutive and declaratory nature of entries in the land and mortgage register related to ownership, discussed on many occasions in the doctrine. It is the entry in the land and mortgage register, thanks to its principle of public credibility, which determines separate ownership. It is also confirmed by the doctrine [24] and numerous judicial decisions [25]. Decision of the Supreme Court of 2003 stipulates: "bordering plots of land which are owned by the same person and have separate land and mortgage registers are separate real estates within the meaning of Article 46 § 1 of the Civil Code, They shall lose the separate nature when they are joined in one land and mortgage register" [26]. As can be seen, it is the relevant entry in the land and mortgage register which determines existence of separate ownership. In the event in which a few real estates are joined, they lose their separate nature as of the moment when an entry is made in the land and mortgage register. This opinion is reflected in a verdict of the Supreme Court, which, examining the role of land and mortgage registers and entries made in them, stated that: "two bordering non-built-up plots of land owned by the same owner, for which one land and mortgage register is kept constitute - within the meaning of Article 46 § 1 of the Civil Code - one land real estate" [27]. Naturally, this opinion is not isolated. One should also agree with Beata Janiszewska, who says that "legal and formal separation of the real estate in the land and mortgage register is tantamount to the legal separation of the real estate under Article 46 of the Civil Code. Covering a plot of land with the land and mortgage register therefore results in creating land real estate, even when it borders other land of the

same owner ("priority of the land and mortgage register model of real estate")" [28]. Such an approach seems to ultimately prove the significance of an entry in the land and mortgage register, and, consequently, the actual separation of a real estate.

What remains problematic, however, is the physical separation of the real estate by demarcating or dividing the real estate. Without getting into a longer discussion, one should therefore conclude that these issues frequently result in serious technical problems, and cause never ending court trials, in particular in the countryside. In this respect, one needs to agree with the opinion expressed in a verdict of the Supreme Administrative Court according to which "in order to treat a given part of land as a real estate, it is necessary to separate it out of the other entities, i.e. the land bordering it in this case. For this reason, the land may become real estate as a result of making its subject scope concrete, which takes place when its external borders are determined" [29]. Obviously, the already mentioned land surveying and cartography law helps determine detailed ways of demarcation, but it does not eliminate all contentious issues"[30]. After all, it is demarcation proceedings which lead to lengthiness of the proceedings of the investment process. One needs to agree with Stanisław Rudnicki, who says that "borders are usually demarcated on land surveying maps, but in order for the real estate to exists, within the meaning of the property law, preparation of a land surveying map is not necessary from the perspective of real estate transactions. Borders can be blurred and invisible on the soil, but there is always a possibility of reconstructing them. Therefore, if one talks about separation of part of the earth's surface by means of spatial borders, then the point here is to determine configurations of the real estate which will sufficiently clearly separate it from the bordering real estates. Disputes about the course of the border, which can be resolved by means of reliable documents, and in the case of their absence, the last state of peaceful possession (Article 153 of the Civil Code), are not an obstacle in disposing of the real estate" [31].

Division of a real estate is fraught with as much technical and legal difficulty as its demarcation [32]. While neighbour relations are relatively difficult to reconcile in demarcating the real estate, then its division among relatives becomes virtually impossible on the basis of an agreement. The increasing value of real estate leads to a situation in which its rational division becomes a measurable financial value Detailed regulation of real estate division in legal acts does not seem to be sufficient any longer. Unfortunately, the economic division is not accompanied by the legal one. Still numerous real estates which were divided earlier do not have a clear legal status thanks to relevant entries in the land and mortgage register.

A number of other legal acts refer to the regulation included in the Civil Code [33]. The Act of 21 August 1997 on Real Estate Management refers to the above mentioned definition from the Civil Code in terms of its contents [34]. In the Act "land real estate - shall be understood as the land together with its constituent parts, excluding buildings and premises, if they constitute a separate object of ownership".

It is often the case that definitions created only for the needs of a given legal act are used, primarily aimed at a given regulation [35]. The Act of 12 January 1991 on Local Taxes and Fees is a case in point [36]:

"Article 2. 1. The following types of real estate or building structures are subject to the real estate tax:

1) land;
2) buildings or parts thereof;
3) structures or parts thereof connected with conducting business activity.

2. Cultivated land, land covered with trees and bushes on the cultivated land or forests, except for those used to conduct business activity, are not subject to the real estate tax.

3. The real estate tax also does not apply to:

1) on condition of mutuality - real estate owned by foreign countries, international organisations or leased to them under perpetual usufruct, intended for seats of diplomatic missions, consulates and other missions which use privileges and immunities under acts, agreements or international customs;
2) land under flowing surface water and navigable canals, except for lakes and land occupied for water holding tanks and tanks of water power plants;

2a)land under internal sea waters;

3) real estate or part thereof occupied for the needs of local government units, including district offices, poviat starosties and marshal offices;
4) land occupied for lanes of public roads within the meaning of regulations on public roads, as well as structures located in them - except for those connected with conducting other business activity than operation of toll motorways".

It needs to be pointed out that the very extensive definition provided above is, unfortunately, not an exception in Polish law. Finding the specific understanding and meaning of the term *real estate* seems to be very difficult today.

In the Act on Real Estate Management quoted above, in Article 4 clause 16, there is another definition of real estate, modified by adding the adjective "similar" to it. According to this regulation "similar real estate is a real estate which is comparable to the real estate being the subject of valuation, in terms of its location, legal status, intended use, manner in which it is used, as well as other features affecting its value,". The problem we can notice here is the lack of a legal definition of *real estate* itself. Similar real estate is defined as real estate [37]. However, the Act does not provide a direct answer what should be understood by the term *real estate* in this case [38]. Certainly, as was said by the Provincial Administrative Court in Kraków, "the term real estate is not synonymous with the term record parcel as the smallest unit of the country's surface division for recording purposes" [39]. It needs to be pointed out that the term *real estate* as defined in the Civil Code is indispensable for understanding of the term *similar real estate*. The correct answer can be found only thanks to systemic interpretation, i.e. analysis of all legal regulations which govern a given social issue. One of the best solutions in this respect is to look for the meaning of a given term in legal acts whose nature is basic. In this case, the Civil Code is such a legal act.

Yet another type of modification of the term *real estate* can be found in the Civil Code itself in Article 46^1, which includes the definition of *agricultural real estate*, as "agricultural land – real estate which is or can be used to conduct production

activity in agriculture related to crop and animal production, including horticulture, orchard and fishing production" [40]. This crucial definition for the whole agricultural law is also subject to numerous changes and modifications in other legal acts. It also cannot be understood without acquainting oneself with the meaning of the real estate itself defined in the previous article of the Civil Code [41].

A reference to the term *agricultural real estate* can be found, for example, in the Act on Management of State Treasury Agricultural Real Estate, which defines in Article 1 clause 1 agricultural real estate as "agricultural real estate within the meaning of the Civil Code located in areas which are earmarked in zoning plans for the purposes of agricultural activity, except for the land managed by Lasy Państwowe [National Forests] and land in national parks" [42]. As can be seen, it features a reference to the Civil Code and a relevant clarification for the Act's needs. It is a frequent legislative routine, which, in consequence, creates a brand new legal definition, which consists of the existing definition and relevant modification.

A similar situation can be the case with the Act on the Structure of the Agricultural System [43]. *Agricultural real estate* is defined as "real estate within the meaning of the Civil Code, except for real estate located on the areas earmarked in zoning plans for other purposes than agricultural ones" [44]. The meaning of this term in the Act is crucial for the whole trade in agricultural real estate in Poland. It needs to be pointed out that this is another new definition which contains the above-mentioned elements of the existing definition and modification.

The term *real estate* is sometimes also modified in court decisions. For instance, the verdict issued by Provincial Administrative Court in Gdańsk includes the term 'land and mortgage register real estate' [45]. The verdict stipulates that "in the case of land and mortgage register real estates, it is the contents of the land and mortgage register which determines the number, and objective scope of the real estates". In this respect, real estate exists only when a land and mortgage register has been established for it. As a result of such a definition, all three types of real estate defined in Article 46 of the Civil Code are land and mortgage register real estate.

IV. Conclusion

The above-mentioned examples of a few types of usage of definitions with similar meaning illustrate different nature of *real estate*. The number of uses of the term quoted in the introduction requires the legislator to intervene in the area of regulation. The author is aware of the fact that it is impossible to develop one universal definition which could be used in all possible cases. It is recommended that a few basic definitions of *real estate* are developed which, with consideration given to the characteristic nature of new legal acts, would be slightly modified. Such a solution will prevent the terminological chaos we deal with. Maybe such a solution will help ultimately determine whether a garage is a real estate or not. Today, the answer to this question differs depending on the definition used to assess the factual circumstances. What needs to be emphasised is the fact that neither garage's linguistic definition, not its physical properties change. For this reason, it would be desirable to limit such extreme cases of understanding, as the author is aware of the fact that they cannot be eliminated.

This seemingly funny example is just exemplification of the need of changes in understanding, defining and using the interpretation of terms applicable in Polish law. The efforts for standardisation of the way in which Polish law is understood have been always present in the science of law. These efforts should be continued, and attempts should be made to implement them.

References

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[2] Ibid, p. 53; A. Niewiadomski, *Definicje legalne w świetle prawidłowego redagowania tekstów prawnych*, [in:] *Współczesny język prawny i prawniczy*, ed. A. Niewiadomski, A. Mróz, M. Pawelec, Warszawa 2007, p. 49.
[3] M. Zieliński, *Wykładnia prawa. Zasady, reguły, wskazówki*, Warszawa, p. 198-208; Compare W.S. Jevons, *Logika*, Warsaw 1922, pp. 87-89; K. Pasenkiewicz, *Logika ogólna*, Warszawa 1986, p. 45 and subsequent ones.
[4] Regulation of the Prime Minister of 20 June 2002 on "Legislative Drafting Principles" (Journal of Laws of 2002 No.100, item 908).
[5] J. Warylewski (red.), *Komentarz do zasad techniki prawodawczej,* Warszawa, pp. 479-480; S. Wronkowska, *O cechach języka tekstów prawnych*, [in:] *Język polskiej legislacji, czyli zrozumiałość przekazu, a stosowanie prawa*, Warszawa, 2007, p. 15.
[6] As of 14 September 2010 on the Basis of LEX Search System.
[7] See NSA verdict II FSK 1101/08: "Therefore, construction structures to which the real estate tax applies are, pursuant to Article 1a par. 1.2 of the Tax Act in conjunction with Article 3 clause 3 and 9 of the Construction Law, building structures and construction parts of technical devices as well as foundations under the devices, as separate, in terms of technical aspects, parts of objects which make up the usable entirety, as well as construction devices. At the same time, pursuant to Article 3 clause 1 (b) of the Construction Act, whenever a construction structure is referred to, it should be understood as a structure being a technical and usable whole with construction parts of technical devices, for example installations and construction devices. In view of the above-mentioned regulations, in needs to be stated that wind power stations are not construction structures within the meaning of Article 1a par. 1.2 of the Tax Act in conjunction with Article 3 clause 3 and 9 of the Construction Law**,** as, first of all, they have not been specifically enumerated in this regulation. This is due to the fact that this regulation classifies as construction structures: airports, railway lines, bridges, flyovers, overpasses, tunnels, culverts, technical networks, free standing antenna masts, free standing advertising devices permanently fixed to the ground, land, defence (fortifications), protection, hydro-technical structures, tanks, free standing industrial installation or technical devices; landfills, water treatment plants, retaining constructions, overground and underground pedestrian crossings, utility networks, sports structures, cemeteries or monuments. Consequently, wind power plants not only are not enumerated in Article 3 clause 3 of the Construction Law, but also lack the features similar the construction structures enumerated in this regulation. As a result, they cannot be treated as construction structures.".
[8] www.pwn.pl, 20.03.2012.
[9] *Mały słownik języka polskiego*, Warszawa 1997, p. 502.
[10] The act of 23 April 1964 Civil Code (Journal of Laws of 1964 No.16, item 93, as amended).
[11] Vide. T. Mróz, *Nieruchomość a działka - rozważania na tle pierwokupu gminy*, Rejent 1998, No. 9, p. 20: "In order to determine that part of land is real estate it is necessary to separate it out of other objects, i.e. out of the land surrounding it. We, therefore, deal here with object separation which may take place by means of determining its external borders, but in order for the real estate to exist within the meaning of property law it is not necessary for it to be marked by a land surveyor, nor, in particular, a land-surveying map needs to be drawn up. [...] What also decides about the separate nature of the real estate is subject separation

understood as a different ownership status from the neighbouring land of the part of the earth's surface determined in such a way".

[12] WSA III SA/Wa 2040/09 verdict.

[13] "1. The term "real estate", including land real estate, as used in the Act of 1991 on local taxes and fees, shall be understood in accordance with Article 46 of the Civil Code, which is an argument for adopting the understanding of "building's permanent connection with the land" form Article 48 of the Civil Code. A building, within the meaning of the Act on local taxes and fees, is a constituent part of the land, within the meaning of Article 47 of the Civil Code, or building real estate, within the meaning of Article 46 of the Civil Code. If it is neither building real estate, nor a constituent part of the land, it cannot be the building within the meaning of the Act on local taxes and fees.
2. Each of the spouses should receive a decision in which the tax on their respective real estate is determined, and, apart from that, one copy of the decision on the real estate being part of the married couple's property. Both spouses as tax payers should be mentioned in the decision determining the tax obligation related to the shared real estate in two counterparts; the tax in one amount (undivided). Each of them should receive the decision.
3. Doubts as to the size of the built-up surface should, pursuant to Article 197 of the Tax Law Act, be clarified on the basis of an expert opinion" – WSA I SA/Ol 294/08 verdict;
"1. The contents of Article 46 § 1 of the Civil Code does not provide grounds for saying that premises which occupy the whole building cannot be a separate object of ownership or a separate object of cooperative right to the premises.
2. Commercial premises which occupy the whole retail building is separated out by means of permanent external walls, so it meets the criteria of the independent premises included in Article 2.2 of the Act on Ownership of Premises. Pursuant to Article 2.1 of this Act, each independent premises may constitute separate real estate, so consequently commercial premises which occupy the whole retail building in which they are located" – SN IV CSK 402/07 verdict;
"1. In order to determine that a given part of land is real estate it is necessary to separate it out of other objects, i.e. out of the land surrounding it. For this reason, the land may become real estate as a result of making its subject scope concrete, which takes place when its external borders are determined.
2. The party requests for acquisitive prescription of a given real estate, whose borders have been determined. For this reason, division of this real estate takes place also as part of specific borders of a given plot of land. Therefore, the division cannot exceed its borders in any way. The fact that a given real estate will consists of a few plots of land as a result of the division (Article 4 clause 3 of the Real Estate Management Act) has no influence on the possibility of acquisitive prescription" – NSA I OSK 124/06 verdict;
"1. Both Article 235 § 1 of the Civil Code and further regulations on perpetual usufruct (Article 235 § 2, Article 239 § 2, Article 240 and Article 243 of the Civil Code) apply to buildings and not parts thereof. This is due to the fact the part of the building, within the meaning of Article 46 § 1 of the Civil Code, i.e. an object of ownership separate from the land, is not any physical element of the building, but a part in the spatial meaning which may be object of a separate ownership title, i.e. independent residential premises or premises with a different intended use.
2. Since all participants of the proceedings are building's co-owners, no easement of way through the staircase could arise as a result of acquisitive prescription by some of them" – SN II CK 365/05 decision;
"The admissibility of possession is decided by the admissibility of the right being created. Autonomous possession of constituent parts of an object (parts of buildings, premises) to the extent which corresponds to the owner's rights is not possible, as pursuant to Article 47 § 1 of the Civil Code, a constituent part of an object cannot be a subject of separate ownership right or other rights in rem. If buildings or parts thereof constitute a subject of separate ownership (Article 46 § 1 of the Civil Code), i.e. they are not constituent parts of the land (or of a building which constitutes separate ownership), such buildings (premises) may be subject to autonomous possession, and, over the course of time - acquisitive prescription.
A decision on acquisitive prescription of ownership cannot be issued, if it was to lead to division of a building which is not separate ownership, but rejection of the motion for acquisitive prescription in such a case cannot take place prior to making certain findings as to whether the party submitting the motion has not acquired a share in the real estate's co-ownership by acquisitive prescription" – SN I CR 413/73 decision.

[14] WSA I SA/Bk 30/09 verdict.

[15] Compare SN III CKN 358/97 verdict: "Buildings (and other construction structures) constitute part of land real estate (land) only when they are permanently connected to them. Otherwise, they are movables. Any structures which are only temporarily or impermanently connected to the land do not constitute its constituent part. It, in particular, applies to barracks, kiosks, pavilions, etc.".

[16] B. Janiszewska, *O łączeniu nieruchomości na wniosek użytkownika wieczystego*, ST 2007, No. 11, p. 37: "Legal and formal separation of the real estate in the land and mortgage register is tantamount to the legal separation of the real estate under Article 46 of the Civil Code. Covering a plot of land with the land and mortgage register therefore results in creating land real estate, even when it borders other land of the same owner ("priority of the land and mortgage register model of real estate")"; S. Rudnicki, *Pojęcie nieruchomości gruntowej*, Rejent 1994, No. 1, p. 27: "The definition of real estate from Article 46 § 1 of the Civil Code is broad enough to it includes both real estates which do not have land and mortgage registers, which, at the time when the Civil Code was drafted, was a very common situation, and real estates which have land an mortgage registers, which tends to be a rule nowadays"; B. Swaczyna, *Prawne wyodrębnienie gruntu na powierzchni ziemi*, Rejent 2002, No. 9, p. 88: "The real estate is a uniform area owned by the same person. If, however, fragments of the earth's surface owned by the same person are, pursuant to provisions of the Land and Mortgage Registers and Mortgage Act, recorded in land and mortgage registers, then it is them which determine real estate's existence and borders. It applies both to the situation in which land and mortgage registers cover bordering fragments of the earth's surface, and the case in which plots of land which do not border each other and form an economic whole have been joined in one land and mortgage register (Article 21 of the Land and Mortgage Registers and Mortgage Act)".

[17] Vide B. Barłowski, *Wyważanie otwartych drzwi?*, Rejent 1994, No. 4, p. 82: "I understand the term "division" as [...] creating a new real estate, not in the land and mortgage register meaning, but in the meaning of real estate as" part of the earth's surface constituting a separate object of ownership" (Article 46 § 1 of the Civil Code). There is no need for a land and mortgage register or borders determined for the legal existence of such real estate, but it needs to be a compact and uniform area of land owned by the same owner (the same co-owners). If, from such an area, as a result of an act in law or court decision, two or more such objects (real estates) are created, then we can talk about division which requires approval in the form a prior decision under Article 10 of the Act on Land Management and Expropriation of Real Estate".

[18] WSA VI SA/Wa 883/07 verdict; vide also S. Bogucki, *Glosa do wyroku NSA z dnia 10 czerwca 2009 r., II FSK 265/08*, ZNSA 2010, No. 1, p. 152: "Buildings permanently connected to the land, erected from funds of the user of an allotment in a family allotment garden, constitute a real estate separate from the land (Article 46 § 1 of the Civil Code). Other structures, devices and plantations are objects within the meaning of Article 45 of the Civil Code".

[19] "A garage permanently connected to the land, purchased by a perpetual co-usufructuary together with residential premises in a small residential house pursuant to Act of 28 May 1957 on Sale of Residential Houses and Construction Plots (Journal of Laws No. 31, item 132) and the Act of 14 July 1961 on Land Management in Cities and Housing Estates (Journal of Laws No. 32, item 159) cannot be treated as a separate real estate – SN III CZP 15/88 resolution.

[20] H. Cioch, *Zasada superficies solo cedit w prawie polskim*, Rejent 1999, No. 5, p. 13.

[21] Resolution SN (III CZP 15/88), OSNC 1989/7-8/123.

[22] Resolution SN (II CZP 56/78), OSNC 1979/4/68.

[23] Decision of SKO in Warsaw (KOB/500/F/95), OwSS 1996/3/78.

[24] B. Swaczyna, *Prawne wyodrębnienie gruntu na powierzchni ziemi*, [in:] Rejent 2002/9/88: "Real estate is a uniform area owned by the same person. If, however, fragments of the earth's surface owned by the same person are, pursuant to provisions of the Land and Mortgage Registers and Mortgage Act, recorded in land and mortgage registers, then it is them which determine real estate's existence and borders. It applies both to the situation in which land and mortgage registers cover bordering fragments of the earth's surface, and the case in which plots of land which do not border each other and form an economic entirety have been joined in one land and mortgage register (Article 21 of the Land and Mortgage Registers and Mortgage Act)"; A. Mariański, *Dzierżawca*

(najemca) w podatkach od nieruchomości, rolnym i leśnym, [in:] FK 1999/2/25: "As regards the real estate tax, it also covers categories which are not a real estate within the meaning of the Civil Code or specific acts. For instance, what may be also subject to taxation is land which, within the meaning of the Civil Code, is also a real estate or a building structure which is not permanently connected to the land which is a real estate in view of this Code. Consequently, a question arises whether lessee's liability covers the whose real estate tax or only the part which applies exclusively to the real estate within the meaning of the Civil Code. It needs to be pointed out that the lack of reference to the Act on Local Taxes and Fees results only in the possibility of saying that there are no grounds for a different understanding of the concept of real estate than on the basis of civil law. In the above-mentioned example, the decision on lessee's liability may, therefore, cover only the land tax."; S. Rudnicki *Pojęcie nieruchomości gruntowej*, [in:] Rejent 1994/1/27, "Admitting in Article 21 of the Act (of 1982 on Land and Mortgage Registers and Mortgage) the possibility of joining in the land and mortgage register a few bordering real estates owned by the same owner into one real estate, the Act explicitly indicates that keeping or liquidating the real estate's separate nature (in the substantive law meaning - Article 46 § 1 of the Civil Code) depends on the owner's will"; B. Swaczyna, *Prawne wyodrębnienie gruntu na powierzchni ziemi*, [in:] Rejent 2002/9/88: "One needs to recognise that it is admissible to create by the owner of a land real estate, within the meaning of Article 46 § 1 of the Civil Code, by means of establishing a land and mortgage register for a plot of land which constitutes part of a bigger complex of plots owned by the same person. (…) In the event in which real estates which do not border each other but constitute an economic whole are joined in the land and mortgage register, the entry of ownership in the land and mortgage register has constitutive nature and results in creation of one real estate within the meaning of Article 46 § 1 of the Civil Code".

[25] SN decision (I CR 413/73), LEX No. 7265: "The admissibility of possession is decided by the admissibility of the right being created. Autonomous possession of constituent parts of an object (parts of buildings, premises) to the extent which corresponds to the owner's rights is not possible, as pursuant to Article 47 § 1 of the Civil Code, a constituent part of an object cannot be a subject of separate ownership right or other rights in rem. If buildings or parts thereof constitute a object of separate ownership (Article 46 § 1 of the Civil Code), i.e. they are not constituent parts of the land (or of a building which constitutes separate ownership), such buildings (premises) may be subject to autonomous possession, and, over the course of time - acquisitive prescription.

[26] SN decision (IV CK 114/02), OSNC 2004/12/201.

[27] SN verdict (II CKN 1306/00), LEX nr 83961.

[28] B. Janiszewska, *O łączeniu nieruchomości na wniosek użytkownika wieczystego*, [in:] ST 2007/11/37; compare S. Rudnicki, *O pojęciu nieruchomości w prawie cywilnym*, [in:] PS 1999/9/68: "Joining two real estates, which do not border each other but remain in one economic whole, entered in one land and mortgage register does not mean that we deal with one real estate in the substantive law meaning".

[29] NSA verdict (I OSK 124/06),LEX No. 293155.

[30] It is sufficient to mention here, for example, SN (II CR 361/70), OSNC 1971/6/97 verdict: "Within the meaning of Article 5 of the Act of 25 June 1948 on Division of Real Estate within Cities and Certain Housing Estates (Journal of Laws No. 35, item 248), the real estate is a plot of land separated from other plots of land, irrespective of whether it previously formed a number of separate plots of land which were subsequently joined in one whole (real estate), or whether such a plot of land was added to an already existing real estate, provided that they subsequently form one whole irrespective of whether they are recorded as a whole in the land and mortgage register or have not been recorded in the land and mortgage register at all."; compare B. Janiszewska, *Stosunki własnościowe w wypadku przekroczenia granicy nieruchomości przy wznoszeniu budynku (art. 151 k.c.)*, [in:] PS 2007/6/53: "Given the understanding of the concept of the building based, among other things, on the interpretation of Article 46 and 48 of the Civil Code, it needs to be assumed that the owner of the original real estate is the owner of the whole building during the construction of which the border of the neighbouring land was crossed."; T. Mróz, *Nieruchomość a działka - rozważania na tle pierwokupu gminy*, [in:] Rejent 1998/9/120: "In order to determine that part of land is real estate it is necessary to separate it out of other objects, i.e. out of the land surrounding it. We, therefore, deal here with object separation which may take place by means of determining its external borders, but in order for the real estate to exist within the meaning of property law it is not necessary for it to be marked by a land surveyor, nor, in particular, a land-surveying map needs to be drawn up.

[31] S. Rudnicki, *Pojęcie nieruchomości gruntowej*, [in:] Rejent 1994/1/27.

[32] Compare SN (III CRN 87/81), LEX No. 8327 verdict: "Among the co-owners of one real estate, within the meaning of Article 46 of the Civil Code, divided into a number of plots of land which, in the economic sense, are owned only by the individual co-owners, it is admissible to impose obligatory burdens corresponding to the easement contents (Article 285 of the Civil Code)."; verdict SN (III CRN 206/80), OSNC 1981/5/85: "The contract under which the parties being the seller and buyer enter into an agreement on building's demolition aims at building's liquidation, so, consequently, its aim is not to create a separate object of building's ownership which is not subordinated to *superficies soli cedit* principle, as well as Article 46 and 48 of the Civil Code."; B. Barłowski, *Wyważanie otwartych drzwi?*, [in:] Rejent 1994/4/82: "I understand the term "division" as [...] creating a new real estate, not in the land and mortgage register meaning, but in the meaning of real estate as" part of the earth's surface constituting a separate object of ownership" (Article 46 § 1 of the Civil Code). There is no need for a land and mortgage register or borders determined for the legal existence of such real estate, but it needs to be a compact and uniform area of land owned by the same owner (the same co-owners). If, from such an area, as a result of an act in law or court decision, two or more such objects (real estates) are created, then we can talk about division which requires approval in the form a prior decision under Article 10 of the Act on Land Management and Expropriation of Real Estate"; E. Gąsior, *Uwagi dotyczące podziału nieruchomości*, [in:] Rejent 1998/5/203: "Division of part of the earth's surface which constitutes a separate object of ownership, consisting in the separation out of it the plots of land which make it up, have already been separated out of it physically and marked in the real estate cadastre, does not require a decision approving the division plan."; E. Gąsior, *Najnowsza historia podziału nieruchomości*, [in:] Rejent 2000/11/140: "Division of part of the earth's surface which constitutes a separate object of ownership, consisting in the separation out of it the plots of land which make it up, have been configured in the terrain and marked in the real estate cadastre, does not require a decision approving the division plan.".

[33] Compare to other definitions included in the following legal acts: Act on Real Estate Management (consolidated text: Journal of Laws of 2004, No. 261, item 2603, as amended); Regulation on the Manner and Procedure of Conducting Tenders and Negotiations for Sale of Real Estate (Journal of Laws of 2004, No. 207, item 2108); Regulation on Real Estate Valuation and Preparation of Appraisal Study (Journal of Laws of 2004, No. 207, item 2109, as amended); Regulation on Designation of Types of real Estate Considered to be Indispensable for State's Defence and Safety (Journal of Laws of 2004, No. 207, item 2107); Regulation on the Manner and Procedure of Real Estate Division (Journal of Laws of 2004, No. 268, item 2663); Regulation on Real Estate Reparcelling and Division (Journal of Laws of 2005, No. 86, item 736); Act on Universal Real Estate Taxation (Journal of Laws of 2005, No. 131, item 1092); Regulation on Exercising the Right to Compensation for Real Estate Remaining Outside the Current Borders of the Republic of Poland (Journal of Laws of 2005, No. 169, item 1418, as amended); Regulation on Sample registers Containing Data Related to Exercising the Right to Compensation for Real Estate Remaining Outside the Current Borders of the Republic of Poland (Journal of Laws of 2005, No. 248, item 2101); Act on Transformation of Perpetual Usufruct Right into Ownership Title to the Real Estate (Journal of Laws of 2005, No. 175, item 1459, as amended); Act on Ownership of Premises (consolidated text: Journal of Laws of 2000, No. 80, item 903, as amended); Regulation on the Enforcement Procedure from Premises Constituting Separate Real Estates (Journal of Laws of 1994, No. 136, item 710); Act on Housing Cooperatives (consolidated text: Journal of Laws of 2003, No. 119, item 1116, as amended); Act on Tenant Protection, Commune's Housing Stock and Amendment of the Civil Code (consolidated text: Journal of Laws of 2005, No. 31, item 266, as amended); Act on Purchase of Real Estate by Foreigners (consolidated text: Journal of Laws of 2004, No. 167, item 1758, as amended.); Act on Protection of Persons Acquiring the Right to Use Residential Buildings or Premises for a Pre-Defined Period during Each Year and Amendment of Civil Code, Petty Offence Code and Act on Land and Mortgage Registers and Mortgage (Journal of Laws of 2000, No. 74, item 855, as amended); Land Surveying and Cartography Law (consolidated text:

Journal of Laws of 2005, No. 240, item 2027, as amended); naturally, the list of legal acts in which one can find a definition of *real estate* provided above features just examples of acts and is not the exhaustive catalogue.

[34] Consolidated text, Journal of Laws of 2010 No. 102, item 651, as amended

[35] Compare the definition included in the Regulation of the Minister of Agriculture and Rural Development of 17 February 2010 on the Detailed Procedure for the Sale of Real Estate from the State Treasury Agricultural Ownership Stock and their Constituent Parts, Conditions for Dividing the Purchase Price into Instalments and Estimated Land Prices (Journal of Laws of 2010, No.29, item 151). "§1 clause 4 real estate - shall be understood as the real estate from the Stock earmarked for sale, except for real estate sold in accordance with the procedure set out in the provisions issued under Article 43.3 of the Act". In order to understand this definition, it is necessary to go through the provisions included in the Regulation, and also through the Act on Management of State Treasury Agricultural Real Estate. Such a system of using references creates positive conditions for legislative coherence of a given regulation; in this case provisions on management of state treasury agricultural real estate. Unfortunately, the definition included in the Regulation read on its own is incomprehensible.

[36] Consolidated text, Journal of Laws of 2010, No.95, item 613.

[37] According to a verdict issued by WSA in Lódź "similar real estate is a real estate which is comparable to the real estate being the subject of valuation, in terms of its location, legal status, intended use, manner in which it is used, as well as other features affecting its value. The necessary condition to treat a real estate as similar and to adopt its value as reliable one to determine the value of the land subject to valuation, is the existence of the bond which consists in being similar not in being identical". (II SA/Łd 583/11). Another decision issued by WSA in Warsaw stipulates that "What shall be understood as similar, comparable real estate is such real estate whose legal, physical and functional status is as close to each other as possible. In the event of differences, the valuation which determines the value shall be subject to a relevant adjustment based on identification of important differences, i.e. those which may influence the value". (IV SA/Wa 1221/10).

[38] According to NSA verdict "The term 'land real estate', within the meaning of Article 4.1 of the Act on Real Estate Management, shall be understood as the land together with its constituent parts (excluding buildings and premises), if it constitutes a separate object of ownership, and may be an independent object of legal transactions. Separation of the land requires demarcating of its external borders, which may occur by establishing a land and mortgage register for it. Establishing a land and mortgage register for one plot of land makes it a separate object of ownership with respect to the remaining land of the same owner, who may own a number of neighbouring plots of land. Whether the separate legal nature of the neighbouring real estates is maintained depends only on the owner. The existence of the shared border and of the same object of ownership does not constitute a legal basis for joining the real estates for which separate land and mortgage registers have been established, or when an entry in the land and mortgage register has been made only for one of them, and the owner approves such a state of affairs. Treatment of two neighbouring plots of land which have the same owner as one real estate in the legal sense is admissible only when neither of them has a land and mortgage register". (I OSK 181/05).

[39] WSA III SA/Kr 850/11 verdict. In this context, it needs to be pointed out that the term record parcel and construction plot are two completely different terms. It was indicated by WSA in Poznań "The legal definition of the construction plot understood as a 'built-up plot of land whose size, geometrical features, access to the road and presence of technical infrastructure devices enable correct and rational use of the building and devices located on this plot determines the contents of this term only in the area of regulations of the Act on Real Estate Management. The assessment of compliance of the real estate's division plan with separate regulations takes place by taking into account legal definitions included in the separate regulations. The legislator did not allow modification of the meaning of the separate regulations it indicated as the model for the division plan's compliance assessment. (III SA/Po 817/07).

[40] S. Rudnicki, *Pojęcie nieruchomości gruntowej*, [in:] Rejent 1994/1/27.

[41] This term raised a lot of controversy in Polish judicial decisions. For instance, the SN decision "The agricultural nature of the land shall be determined by its agricultural intended use, and not the manner in which it is currently used". (III CKN 140/98); SN resolution "The land under residential buildings and land necessary to use these building which constitute part of an agricultural farm are agricultural real estate (agricultural land) within the meaning of Article 46^1 and Article 1058 of the Civil Code". (III CZP 47/96).

[42] The Act of 19 October 1991 on Management of State Treasury Agricultural Real Estate (Journal of Laws of 2012, item 1187, as amended).

[43] The Act of 11 April 2003 on the Structure of the Agricultural System (Journal of Laws of 2012, item 803).

[44] This definition also has been widely interpreted in judicial decisions. For instance, SN verdict "Within the meaning of Article 2 clause 1 of the Act of 2003 on the Structure of the Agricultural System, real estate which meets the requirements set out in Article 46^1 of the Civil Code, but in the zoning plan has been earmarked for other purposes than agricultural ones, is not agricultural real estate". (IV CSK 93/12, also II CSK 9/09).

[45] WSA II SA/Gd 86/10 verdict.

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The project was financed from the National Science Centre funds allocated under decision No. DEC-2011/01/N/HS2/03976.