

Legal aspects of using inland surface waters to satisfy residential needs in Poland

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Abstract

This article attempts to determine the rules for lawful use of floating objects for residential purposes. It presents the currently existing legal solutions applied in Europe for such floating structures. Further, the article describes a classification of residential floating objects from the legal perspective. The existing regulations are analyzed with regard to the provisions of the Water Law Act and the Inland Navigation Act. Moreover, the paper describes three different types of water usage, i.e. common, ordinary and special, and discusses in which of these forms the residential use of public waters falls. The analysis allows for the determination of the directions of further research, so that an accurate procedure ensuring a lawful use of houseboats can be adopted.

Introduction

It is a cliché to say that satisfying a person's residential needs is one of the most fundamental objectives in their life, but this may entail the necessity to implement novel solutions. One common and established way to secure one's residence is to use real estate designed for that purpose. However, the range of options available is actually substantially wider than this. It is becoming more and more common to come up with concepts for locating residential structures in aquatic settings. This way of meeting residential needs has been present on a wider scale in the Netherlands, Sweden and France. "Houseboats" have started to be encountered in Poland, as well, particularly on public inland surface waters, i.e. rivers and lakes.

Different companies are offering to build and sell floating objects that are technically fully adapted to live in, as they are equipped with complete bathroom and toilet facilities, as well as the wiring and heating

systems. They also carry all the required documents allowing such structures to be used on water.

The formal and legal aspects of building and using an object of this sort in Poland are beyond the purpose of this article. Rather, it focuses on determining the rules to follow in order to secure a lawful residential use of floating structures. To this end, the paper endeavors to appropriately classify these structures by type, and then analyze the legal opportunities for using surface waters under the Polish Water Law Act and the Polish Law of Inland Navigation Act, for the purpose of determining the available options for the residential use of public waters.

Existing legal solutions allowing for various forms of residential use of water

In Europe and the USA, the use of houseboats gained momentum in the early 1980s. It came as a response to growing affluence of societies with a simultaneous increase in land prices. In such

countries as the Netherlands, Germany, England and Sweden, riverside towns and cities have seen a growing popularity of the use of floating barges to live on. Poland can already boast a few similar solutions, as well (Każmierczak & Zaremba, 2013).

Some of the most important reasons for riverside town inhabitants migrating towards rivers are the development of urban agglomerations, growing prices of building land, limited resources of building land, growing affluence of societies, environmental-friendly lifestyles or esthetic qualities.

The Netherlands can serve as an example of how architecture can be adapted to the environmental conditions, where approx. 60% of the country's area is below the sea level (Figure 1). Currently, there are 16 thousand floating homes that are legally sanctioned residential buildings. The floor area of a single one of these homes may reach 200 square meters. Until recently, the rules governing the erection of floating buildings were complex, but in 2009 the government passed new resolutions regulating the classification of buildings on water. It is now possible to permanently and legally dwell on them while taking advantage of all the privileges enjoyed by buildings on land, including rights to obtain insurance and credit. The applicable legal regulations have standardized the construction and ownership issues thus adapting them to the needs of the residential use of water (DNW, 2006).



Figure 1. An example of floating residential structure in Amsterdam

In Germany, particularly in Hamburg, the recent years have witnessed extensive investments in developing and managing riverside areas and harbor wharfs, as they have been discovered to contain a huge economic potential. Nevertheless, there are no separate regulations governing the issues of technical conditions for erecting floating buildings and, depending on the location, different rules are

applied. For a house located in the river channel at the entrance to the harbor, the water law and the German inland navigation law are applied, while floating buildings located on urban canal waters are subject to different regulations (DNW, 2006; Sibilak, 2014).

Similarly, the Polish law does not provide for any established set of regulations concerning the residential use of water. Also, there is no standardized approach to interpreting the already existing regulations, which could help in carrying out this sort of investment. The procedures and regulations that apply in any given case are strictly dependent on the structure's parameters, the mooring technique to be used, and the potential mooring places.

Legal classification of floating objects intended for residential use in Poland

A floating object intended for residential use is expected to play an identical role to that of a residential building, i.e. immovable property erected on land in accordance with the requirements of the Building Law Act of 7 July 1994 (Official Journal of 1994) (Ustawa, 1994). However, a mere look at the fact that it is meant to be used and located on water alone, meaning that it has no permanent ties to the land, makes it absolutely clear that it is not immovable property. On the other hand, if it is to be used on water areas as a floating device it should be deemed to be a ship.

According to art. 5.1.1.h of the Inland Navigation Act of 21 December 2000 (O.J. 2013.1458 of 2013.12.06) (hereinafter referred to as the Navigation Act) (Ustawa, 2000), a ship is a floating device with or without a motor drive, including a ferry, a hydrofoil or a hovercraft, meant for use or used on inland waterways, also for residential purposes. The wording of this provision leaves no doubt that ships can be used to satisfy residential needs. This, however, raises the question of what conditions should be met in order to be able to take advantage of this possibility, and what is the actual scope of this option.

The rules for developing lands not covered by waters by erecting buildings and flats on them and using such structures, along with the formal and legal requirements to be fulfilled in this respect, have been made precise and clear by the Polish regulators. The same cannot be said of the legal regulations that could be applied to assessing the lawfulness of using water surface for residential purposes.

An analysis of the regulations applicable in this respect should first of all invoke the provisions of the Water Law Act and the Inland Navigation Act. Such

an analysis leads to the conclusion that permanent residential use of floating objects is not banned by these two statutes, therefore it is allowed and does not violate the law. It can certainly be found that there is no straightforward ban on residing on water. A ban of this sort, for instance, does apply to plots within the premises of Family Garden Plots, and is directly provided for in art. 12 of the Family Garden Plots Act of 13 December 2013 (O.J.2014.40 of 2014.01.09) (Ustawa, 2013).

General rules for use of surface waters, and surface water management options in Poland

The rules for using waters and managing them, as well as administering water resources, are to a considerable extent regulated in the Water Law Act (Ustawa, 2001b). This statute provides that water management should take into account the common interest rule and be implemented through cooperation between public administration authorities, water users and local community representatives so that maximum social benefits can be achieved.

Art. 31 of the aforementioned Act contains general rules determining the manner in which water can be used. According to this provision, water usage is allowed to satisfy the needs of people and economy. Three types of water usage are enumerated: common usage, ordinary usage and special usage (Figure 2). It should be added that none of these forms of water usage may cause deterioration of water condition and

of the ecosystems dependent on such water, or lead to water wastage, water energy wastage, or damage.

The regulators have expressly ruled out the following from the usage right to surface waters:

- 1) extraction of stone, gravel, sand and other material from inland marine waters together with the inland marine waters of Gdańsk Bay and territorial seawaters;
- 2) removal of vegetation from waters or banks;
- 3) extraction of stone and gravel from mountain streams;
- 4) use of water in water bodies intended for breeding and raising of fish and other aquatic organisms, situated on lotic waters;
- 5) inflow of wastewater.

The following have been ruled out from the ordinary usage of water:

- 1) irrigation of soil or crops with groundwater using sprinkler irrigation systems;
- 2) extraction of surface water or groundwater in an amount exceeding 5 cubic meters per 24 hours;
- 3) use of water for the purposes of business activity;
- 4) agricultural use of wastewater or entering of treated wastewater to water or soil if the combined amount of such wastewater exceeds 5 cubic meters per 24 hours.

There is no obligation to obtain the owner's permission, or any special permits, for the common usage of waters, which applies to public waters that are owned by the State Treasury or local government units. However, the special usage of such waters requires that a relevant permit under the Water Law

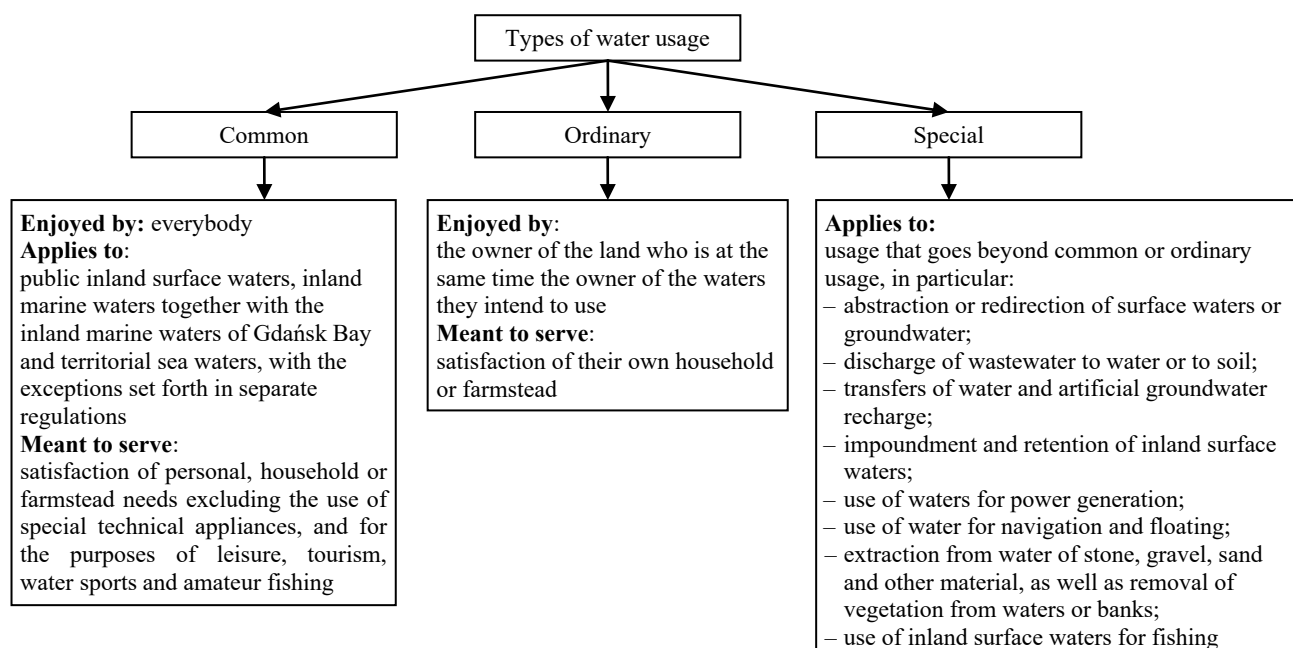


Figure 2. Types of water usage in Poland

Act be obtained. The scope of this paper is limited to public waters.

Residential use of public waters in Poland

This situation calls for an analysis of which of the usage forms discussed in chapter 2 of this article covers the residential use of public waters. Since the purpose of common usage is to satisfy the personal needs of water users, it should raise no doubt that this concept includes satisfying their residential needs, as well. Bearing this in mind, it can be concluded that the holders of a habitable vessel can use it for this purpose on all public waters of their choice.

Nevertheless, this right does not include the possibility of fixing the vessel permanently to some place, i.e. immobilizing it. It is obvious that in order to prevent uncontrolled relocation of the vessel it must be fixed to a designated water facility. According to art. 9.1.19 of the Water Law Act, a water facility shall be any facility used for shaping water resources and using them. Among such facilities, the Act lists wharfs, piers and marinas. Clearly, the practical purpose of the facilities concerned is to allow watercrafts to stop and be properly immobilized. Before these facilities can be built, one is required to obtain the title to the land on which they are to be located and a relevant permit under the Water Law Act. Whether the title to the land covered by public waters can be obtained, and the scope of such a title, will depend on the type of land.

According to art. 14.1 of the Water Law Act, the lands covered by surface waters are property of the owner of such waters. As mentioned before, public inland waters are owned by the State Treasury, or a relevant local government unit. Therefore, it is these entities that hold the freehold title to the lands covered by these waters and the right to dispose of such lands, which are construed so to be the beds and banks of natural flows, lakes and other natural water bodies, within the boundaries of the shorelines. Figure 3 depicts a division of inland surface waters.

This division is of essential importance in terms of the possibility of and rules for trading in land covered by lentic waters or land covered by lotic waters.

Article 14.2 of the Water Law Act provides that lands covered by lotic surface waters may not be used for trading under the civil law, except cases that are expressly named in the Act. Such exceptions are related to r use by fishing districts and other undertakings that are explicitly listed in art. 20.1 of the Water Law Act (Ustawa, 2001b).

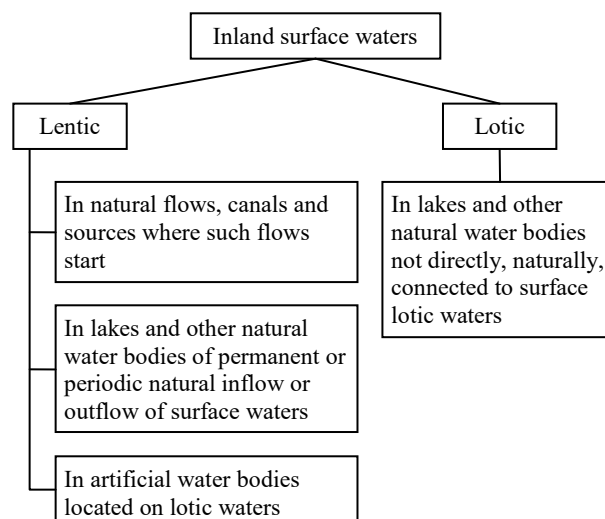


Figure 3. Types of inland surface waters

The provision discussed herein provides that lands covered by waters owned by the State Treasury shall only be released for use only if they are indispensable for the purpose of carrying out undertakings related to:

- 1) water power generation;
- 2) transport by water;
- 3) extraction of stone, gravel, sand and other material or removal of vegetation from water;
- 4) building transport infrastructure;
- 5) building industrial, municipal or agricultural infrastructure;
- 6) activity intended for recreation, tourism, water sports and amateur fishing;
- 7) services designed for other purposes than those specified in point 6 above;
- 8) building telecommunication infrastructure.

Certainly, the building of a facility designed for the parking of a watercraft used for satisfying a specific person's residential needs does not fall within any of the categories listed above. However, pursuant to art. 20.6a of the Water Law Act, lands covered by water that are owned by the State Treasury and are indispensable for the purposes of running undertakings other than those specified in item 1 shall be granted for use under the rules provided for in the Civil Code Act of 23 April 1964 (Ustawa, 1964).

The limitations referred to above do not apply to lands under inland lentic surface waters owned by the State Treasury. Such lands may be sold by the minister having jurisdiction over State Treasury matters upon receipt of permission from the minister with jurisdiction over water management matters and according to the rules provided for in the Real Estate Management Act of 21 August 1997 (O.J.2015.1774

of 2015.11.03) (Ustawa, 1997). In turn, the President of the National Water Management Authority represented by directors of local regional water management authorities is the one with jurisdiction to administer and dispose of the remaining lands covered by water.

As it comes to the necessity of obtaining the Water Law Act permit to build a facility required for mooring a houseboat, art. 122 of the Water Law Act must be invoked. According to item 1.3 of that article, the erection of water facilities requires that the Water Law Act permit be first obtained. The following documents must be attached to the application for the Water Law Act permit:

1. a Water Quality Impact Assessment and Water Management Survey Statement (Polish: *operat wodnoprawny*);
2. a decision on the site location of a public-purpose project or a zoning decision if it is required – in the case of an application for the Water Law Act permit to build a water facility;
3. a description of the intended activity drawn up in non-technical language.

The Water Quality Impact Assessment and Water Management Survey Statement are the basic documents on the grounds of which the permit under the Water Law Act is issued. These documents must be presented in both descriptive and graphical forms. The Statement indicates, among other things, the purpose and the scope of the intended water usage, a specification of the waters covered by the Water Law Act permit, and the water facilities plan, presented in the form of a sketch or on a map.

Not all facilities will require a permit issued under the Water Law Act. Art. 123a of the Water Law Act specifies the building undertakings and the activities that only require to be reported to the competent authority. Hence, depending on the facility chosen to be built, the requirements that secure it is lawfully erected will differ. For instance, the erection of a pier of a total length of up to 25 meter will only need to be reported. The same will be true for floating objects or ships meant for residential or service-related purposes on lotic waters.

As a rule, such reports should be made to the district administrator (head of the country) with jurisdiction over the locality. Only if the planned undertaking is to be carried out in closed areas, as defined by the Environmental Protection Act of 27 April 2001 (O.J.2013.1232 of 2013.10.23) (Ustawa, 2001a), will the report be made to the director of the regional water management authority with jurisdiction over the locality.

The report should be made before the planned commencement date for the works or activities. Pursuant to art. 123a.3 of the Water Law Act, the report should contain the following information:

1. name of the reporting entity, its seat and address;
 2. definition:
 - a) purpose of the planned activities, works or water facilities;
 - b) the impact of such activities, works or water facilities on surface waters and groundwater, particularly on the condition of such waters and on the implementation of the environmental objectives defined for such waters;
 3. description of the planned works, their location, basic parameters, and conditions of performance;
 4. the commencement date for the works or activities.
- Moreover, pursuant to item 4 of the aforementioned article, the following documents should be attached to the report:
- 1) a copy of the up-to-date cadastral map bearing the diagram of the actions planned and the extent of their impact;
 - 2) relevant sketches or drawings;
 - 3) statements of compliance of the planned undertaking with the water usage conditions for the water district and with the requirements provided for in separate regulations;
 - 4) the permission from the owner of the water or the artificial water body.

Case studies of the floating residential structures legalization in Poland

An analysis of the legalization of two floating residential constructions will be described below. The first case concerns a house on the water built by Kamil Zaremba in Wrocław (Kaźmierczak & Zaremba, 2013). The second investment concerns a floating house planned in Szczecin following the initiative of Patrick Paluszek (*wspieram.to*, 2015).

The example of the investment in Wrocław indicates that in Poland there is currently no standardized procedure related to planning such an investment. A lot of time is required to gather information from many different offices (including Municipality, the Regional Water Management Board (RZGW)). The moorage depends on permission from the RZGW. The location of the floating structure in the city center requires an additional verification of the Local Development Plan (whether a site provides residential buildings) and the issue of a building permit. In addition, part of the center of Wrocław is under the protection of the Municipal Conservator,

which requires other permits. In the Office of Inland Navigation there was a problem regarding the classification of the object in order to allocate the appropriate laws regulating its construction and usage.

An investor considered buying and renovating old barges; however, the cost of repairing the hull, classifying the structure in the PRS (Polish Register of Shipping) and providing residential functions, could be considerable (about PLN 1 million) (Każmierczak & Zaremba, 2013).

Comfortable living in the houses on the water requires sufficient infrastructure and connection with running water, sewage disposal, and electricity and gas connections. In the absence of these amenities, a Feasibility Study should be prepared introducing the necessary amendments to the existing Local Development Plan. Naturally, this procedure takes time.

The floating house to be realized in Szczecin will be built with prefabricated elements manufactured near Wrocław. These elements will be transported by road vehicles and placed in a designated place of storage. The expected construction period of the floating house is 3 months. The house is intended to be located on Grodzka island, in Szczecin, behind the bridge of the marina city. It is a place near the city center and also with a nice view. An important aspect is the fact that this section of the Oder experiences minimal freezing during the winter. The house will be a fully autonomous unit, but moorage will allow connection to the media infrastructures. The construction does not possess its own propulsion system for displacement and pushers will be used. The house has been designed by a person who lives in a similar construction in Wrocław (wspieram.to, 2015).

For this investment, the biggest problem was the determination of its legal status and obtaining the necessary permits. By law, house construction was treated as homemade, which allowed to avoid its classification (in this case PRS) and registration in the Polish Yachting Association. The planned mooring place determines which authority should issue appropriate permission. In the case of marine waters, it is the Maritime Office, while in the case of inland waters, it is the Office of Inland Navigation. The same design parameters determine whether it will be considered as a water platform or ship. According to Polish law, the residential address cannot be assigned, which generates residency problems. In addition, there is not possibility of obtaining a mortgage for this type of investment. On the contrary, such a possibility does exist in Western

Europe, so it would benefit to learn from the experience of other countries (wspieram.to, 2015).

The analysis of these cases allows to determine the presence of 3 main stages for this type of investment:

Stage I. Conceptual design of floating residential structures and selection of a mooring place:

- legal classification of the object and definition of its parameters,
- definition of the nature of mooring,
- choice of mooring place.

Stage II. Obtaining the necessary documents and permits:

- water permit or notification,
- the right to use the land,
- necessity of obtaining a building permit,
- registration,
- rules related to flood protection,
- rules related to the protection of the environment,
- the possibility of obtaining credit and insurance.

Stage III. Realization of investments:

- agreements with subcontractors,
- assembly of individual sections,
- furnishing,
- technical acceptance.

The analysis of the law in Poland showed that in case of mooring the house on the water, there is no requirement to obtain a building permit as defined in the Building Law Act of 7 July 1994. In addition, the house on the water, which is not permanently connected with the ground, does not fall within the definition of a building, structure or temporary building, and therefore does not fall under the provisions of the Building Law Act.

Conclusions

As it can be concluded from an analysis of the regulations concerning water construction, the formalities that need to be taken care of in order for the investor to be lawfully allowed to erect a water facility indispensable for immobilizing a houseboat and using such a facility are abundant. However, the lack of precision of the existing regulations does not allow to identify with certainty the specific procedure to be adopted.

In order to choose the appropriate procedure, one should first of all determine the parameters of the watercraft (its size), and define the mooring technique and location, which will then help determine the legal regulations that apply. Before choosing the mooring location, one should check the urban land development plan and verify whether the town/city

already has plans for investments in the given area (for example, the erection of residential estates with access to water, marinas, or others). The choice of location is of crucial importance. If one wants the object to be located on a river or a lake with a naturally flowing tributary, they will be subject to the Water Law Act, in which the ownership of lands covered by water is regulated in different ways, depending on whether the waters are lentic or lotic.

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