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Analysis of Legal Regulations Concerning the Division of a Building Lot, with a Building on it, in View of Geodesic and Building Regulations**

1. Introduction

The inspiration for the writing of this article was the question of whether the new facilities established after the division of a developed building lot, including the division of the building built on it, can be still referred to as buildings, in view of geodesic and building regulations. In order to answer that question, we shall analyse in detail the notions of property, lot, building and division procedures, so as to verify, whether they are sufficient to provide the new facilities, established after the division, with the rank of buildings.

In view of present regulations, the rules governing the division and future provision of utilities, in the phase of issuing the decision concerning the division of the lot and building, are still not regulated.

2. Building and Civil Structure – Definitions, in View of Binding Regulations

The following chapter provides definitions of building and civil structures, as laid out in the binding regulations.

- 2.1. The *Building Code* [3] includes definitions of building and civil structures. However, both definitions are interdependent, since a civil structure is defined using the notion of a building, while building is defined using

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the notion of a civil structure. Therefore, consequently, art. 3 provides the following definitions:

a **civil structure** – it is to be understood as a **building**, including all systems and technical appliances, while a **building** is defined as such a **civil structure**, which is permanently connected to the land and separated from its surroundings, using wall barriers, as well as being equipped with foundations and roofs.

- 2.2. The ordinance concerning the classification of tangible assets [2], part III, group I, reads as follows:

buildings are **civil structures**, connected permanently to the land, separated from the surrounding space, using wall barriers, and equipped with foundations and roofs.

This definition is an accurate quotation from the *Building Code*. Since the *Building Code* has not introduced strict divisions between the notions of building and civil structures, this confusion of definitions is further transferred into subsequent legal documents.

- 2.3. In the ordinance concerning land and property register [1], par. 2.1, we find the following definition:

a **building** – a **civil structure**, which is considered a **building**, in view of the standard classification and terminology.

It is therefore clear that the afore-mentioned document defines building using the notion of civil structure, which is simultaneously defined using the notion of building, which further contributes to the interdependence of both notions, being subsequently transferred into geodesic regulations.

- 2.4. The ordinance concerning technical conditions to be met by buildings [4] contains the definition of conditions that are to be satisfied by a building, in order for it to be considered as a separate (autonomous?) building. Par. 210 of the ordinance reads:

The parts of the building separated perpendicularly with fire division – from the foundations to the roof covering – can be treated as separate buildings.

However, it is not unequivocal, whether the mentioned separation is understood in the technical sense, or in the aspect of register books.

- 2.5. *The Polish Classification of Types of Construction* (PKOB) [9] has systematised the notions of building and civil structure, as well as the notion of autonomous and separate building.

Chapter I.2 of the classification, under the title of “Basic definitions”, contains the following definitions:

- **Civil structures** are understood as **structures** connected to the land in a permanent way, and constructed using building materials and components, and resulting from building work.
- **Buildings** are roofed **civil structures**, including in-built systems and technical appliances, used for permanent needs.
- In the case of interconnected **buildings** (for example: semi-detached or terraced houses), such a building is considered as an **autonomous building**, if it is separated from other units with a fire partition wall, from the foundations to the roof. If there is no fire partition wall, the interconnected buildings are considered as **separate buildings**, provided that they have their own entrances and have all systems, used separately.

The first two definitions have unambiguously separated the notion of building from the notion of civil structure, while the third definition introduced a difference between autonomous and separate buildings. However, one must inquire into the purpose behind such differentiation. The probable reason was the diversification of the notion of autonomous building, in the technical sense (possible demolition of one of the parts) and separate building, in the aspect of recording purposes (issuing of separate identification numbers for various reasons).

3. Property and Record Parcel – Definitions, in View of Binding Regulations

Binding regulations use the notions of property and parcel interchangeably, which often contradicts their definitions.

3.1. The notion of property is defined in the *Civil Code* [8], in art. 46:

Properties are parts of land areas that constitute a separate subject of ownership rights (lands), as well as building connected permanently to the land, or parts of such buildings, if, by virtue of detailed regulations, they constitute a subject of ownership, separate from the rights to the land.

3.2. The ordinance concerning land and property register [1], par. 9.1, defines the notion of record parcel:

Record parcel is a continuous land area, located within the boundaries of a single section, homogeneous in the legal aspect, and separated from the surrounding, using borderlines.

The definitions quoted above are unambiguous and mutually independent. Were they used consistently, according to their wording, in other legal acts, there would be no ambiguities in the interpretation of regulations.

4. The Equalisation of Land Property / Record Parcel and Building / Civil Structure Notions

The interchangeable usage of the aforementioned notions can be found in many regulations. They are often legal provisions, which serve as the basis for the establishing of instructions and technical guidelines for the detailed drawing-up of geodesic work. For this reason, it seems particularly important to provide precise and unambiguous definitions.

- 4.1. The first example of the substitute usage of the notion of property, in the aspect of record parcel, is the ordinance concerning land and property register [1]. Item 5 of par. 9 defines record parcel, in the context of property division, and provides the rule of numbering record parcels after the division:

in the case of **property** division, the newly established **record parcels** are numbered in the form of q/p fraction, where q is a natural number designating the number of the original record parcel subject to division, while p is the smallest natural number that enables the singling out of every new record parcel.

The inaccuracy here is that land property does not have to correspond to a single record parcel, but it may contain a number of record parcels. Consequently, a single parcel cannot contain a number of land properties. The division of real properties is made in view of land and mortgage register, on the basis of separate legal acts. In the geodesic aspect, only a record parcel and, possibly, including the facilities built on it, can be subject to division.

- 4.2. Article 5 of the law concerning real estate management [5] defines the notion of land property and allotment, which corresponds to the notions used in the land and property register. However, subsequent chapters of the law use both notions interchangeably.
- 4.2.1. Article 93, item 3, reads that:

the division of properties is not allowed, if the allotments intended for the division,

which clearly refers to the geodesic division of record parcels. Such division may also result in the dividing of properties, should a new land and mortgage register be established for the divided properties. However, the establishing of new land and mortgage registers results from the selling of one of the newly established parcels. It clearly shows that it is not advised to use the notion of dividing property and dividing record parcel, since both actions do not have to coincide.

4.2.2. Equally ambiguous is the regulation included in art. 95, item 1:

Regardless of the decisions included in the local plan, the division of properties may take place in order: to annul the co-ownership of the developed property, by the establishing of at least two buildings, erected on the basis of building permits, if the principle of division is to mark off buildings, including the allotments necessary to ensure the proper usage of such buildings, for each individual co-owner.

The regulation does not specify the type of division unambiguously. The division may refer to a property comprised of two parcels, with two buildings on it, strictly in the context of land and mortgage register, when the property is divided. In this case, there is no need for a geodesic division. However, if the buildings are located on a single record parcel, it is required to start with geodesic division, followed by a division in the context of land and mortgage register, as the second phase of the division process.

- 4.3. The equalisation between property and record parcel notions is also present in the ordinance concerning the division of property [6]. Par. 4.1 of the ordinance reads:

If the subject of the division is a developed **property**, and the suggested division leads to the division of the building, then the boundaries of the **allotments** intended for the division should run along the vertical planes created by fire partition walls, located along the entire depth of the building, from the foundations to the roof covering. In the case of buildings that do not have fire partition walls, the boundaries of the allotments planned for the division should run along vertical planes, created by the walls located along the entire depth of the building, from the foundations to the roof covering, and which clearly divide the building in two parts, used separately, with individual entrances and equipped with separate systems.

This paragraph includes the description of the division of a developed property. However, from the geodesic point of view, the division refers to a single, developed record parcel.

The analysis of the type of buildings (civil structures?) and conditions of division is even more dubious. The aforementioned regulation leads to the conclusion that the primary condition of the building division is the dividing along the fire partition wall. If there is no such wall, it is sufficient to provide the building with separate entrances and systems, to be able to receive an approval for the division. It brings to mind the logical question, whether the presence of individual entrances and systems should not be considered as the condition *sine qua non* for the buildings divided along the fire partition wall? It is most probable that the regulation in question had

been phrased according to PKOB [9], where the mentioned incomplete statements are also present, although it at least makes it clear that the buildings divided along the fire partition wall should be ranked as autonomous, while building without the fire partition wall can only be ranked as separate. Those phrases can be interpreted in the following way: autonomous in the technical sense, and separate in the context of register books. It is, however, advisable to consider, whether the absence of the requirement to provide buildings with fire partition walls and with separate entrances and utilities, results in an erroneous classification as technically autonomous buildings.

In relation to par. 240 of the ordinance concerning technical conditions to be met by buildings and their location [4], as quoted in item 2.4, the confusion concerning the notions of autonomous/separate buildings, in comparison to the terminology applied in PKOB [9], is clearly visible.

5. Numeration of Buildings after the Division of Parcel with Building on It

Every building listed in the land and property register is given a separate identification number and an identifier. Both notions have been defined in the ordinance concerning land and property register [1] and, consequently, the G-5 instruction [7]. Par. 63.1 of the ordinance [1] reads:

The record data concerning the building, which constitutes a component of the land, is:
1) an identification number, which constitutes a component of the building identifier.

Annex 1 to the ordinance [1] and par. 17 of the G-5 instruction [7] contain the rules for the establishing of a building identifier. One of the identifier elements is the identification number of the building, determined as a natural number. The building identifier may take one of the following forms:

- 1) **WW.PP.GG_R.XXXX.NDZ.Nr_BUD**
- 2) **WW.PP.GG_R.XXXX.AR_NR.NDZ.Nr_BUD**
- 3) **WW.PP.GG_R.XXXX.Nr_BUD**

Each first segment of the identifier refers to the province, district, commune and section. However, it is diversified in segment two. In the case of the first two examples, the building identifier is directly dependent on the number of the record parcel, on which the building is located at the time of being assigned the identifier. In the third case, identifiers are not dependent on the numbers of record parcels, since they are unique only within the boundaries of a single land section.

The selection of the identifier assignment method is the responsibility of the staroste, as the body responsible for the registering of land and buildings. If the buildings are assigned identifiers for the first time, the selection of the first or second method may seem clearer, since it is easier to find a building, having the number of the parcel it is located on. However, this clarity is disturbed when division activities are required. According to par. 17.13 of the G5 instruction [7], “the building identifier is not changed due to the dividing of a record parcel, or the combining of two adjacent record parcels into a single record parcel”. It is obvious that the numbers of the newly established record parcels are changed, as they no longer correspond to the segment of the building identifier that concerns the number of the parcel. Consequently, it hampers the advantage of the swift tracking of a building, using the number of the parcel. In relation to the above, the principle that makes building identifiers independent from the changes introduced to the records is principle no. 3 – assigning unique numbers, as part of the land section.

The fundamental difference between principle 1 and 2, in comparison to principle 3, is the regulation found in the G5 instruction, par. 17. 8, 9 that read as for principle 1 and 2:

the identifier in the **...NDZ.Nr_BUD** and **...AR_NR.NDZ.Nr_BUD** forms, is used in the cases when identification **numbers** of the building are unique only within the area of a single record **parcel** or a **group of adjacent record parcels, which belong to a single property**.

As for principle 3, par. 17.10, it reads that:

the identifier in the **...Nr_BUD** form, is used in the case when the numbers of record parcels and identification numbers of buildings are unique within the area of a cadastral district.

Since it is known that neither a group of parcels, nor property has a unique number, and in relation to the “or a group of adjacent record parcels, which belong to a single property” regulation, the first two principles become unclear, as to which **number** – of the group of parcels or the property – is to be entered in the building identifier, in the **NDZ** item? Such ambiguity is not found in principle 3.

On the basis of the aforementioned discussion, it is to be concluded that the selecting of principle 3 seems the best option for the registering of buildings, which minimises conflicts and confusion (avoiding chaos). Since nowadays the registering of land and buildings is carried out only via computerised systems, it becomes clear that all the changes pertaining to the divisions of parcels and buildings are registered as the history of changes. Therefore, it is not required to follow the changes, using the **NDX** parcel number entered in the building identifier.

6. Summary

When dividing a parcel with a building on it, it is advisable to provide a clause (made by the office), which specifies the character of the newly established buildings. Such a clause would specify whether the newly established buildings are to be considered separate only in the records, or that they also meet the technical requirements for autonomous buildings. In the case of separate buildings, it is required to provide detailed technical conditions which must be met in order to enable both newly established parts of the building to be ranked as autonomous buildings, in the technical view. In view of the presently binding legal regulations, there is no provision which would clearly read that appropriate authority should take into consideration the technical conditions of the building's division capability, at the phase of giving opinion on the project. The opinion pertains only to the conformity between the planned division and the decisions contained in the land utilisation plan.

Although there are no precise provisions, some offices have already noticed the need for the formal regulating of the rules for the division of utility systems, so as to avoid potential conflicts between new owners. The conditions of the building division would clarify why it is required to make access (enable the using of) to utility systems available, for example in the case of selling the property.

The land and property register is carried out in computer programs which were tested by GUGiK (Office for Surveying and Cartography). However, arbitrary selection of the principle for the assignment of building identifier by district authorities may lead to lack of uniformity between each individual district. In future, this may lead to further inconveniences, should the administrative boundaries in Poland change.

References

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- [2] *Rozporządzenie Rady Ministrów z dnia 30 grudnia 1999 roku w sprawie Klasyfikacji Środków Trwałych (KŚT)*. Dz. U. z 1999 r. Nr 112, poz. 1317; z 2002 r. Nr 18, poz. 169; z 2004 r. Nr 260, poz. 2589.
- [3] *Ustawa z dnia 7 lipca 1994 roku – Prawo budowlane*. Tekst jednolity Dz. U. z 2003 r. Nr 207, poz. 2016 z późn. zm.

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 - [7] *Instrukcja techniczna G5: Ewidencja gruntów i budynków.* GUGiK, Warszawa 2003.
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 - [9] *Rozporządzenie Rady Ministrów z dnia 30 grudnia 1999 roku. Polska Klasyfikacja Obiektów Budowlanych (PKOB).* Dz. U. z 1999 r. Nr 112, poz. 1316 z późn. zm.