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Selected Problems of Regulating Legal Status of Allotment Gardens on Example of city of Krakow**

Abstract: Used by gardeners and residents of the surrounding area, allotment gardens are an integral part of the urban infrastructure. In Krakow, there are about 80 organized and permanently developed allotments located on the grounds with various legal statuses, including private property. The total area of allotment gardens in Krakow exceeds 470 ha of land, which represents approximately 1.5% of the city.

The study aims to analyze the structure of the ownership of allotments within the Krakow area with regards to the individual districts of the city and to analyze the legal title to the real properties that are at the disposal of allotment associations. The result of the research is identifying the problems that occur in the practice in regards to the regulation of the legal status of the land acquired for allotment gardens. The vast majority of the land acquired for allotment gardens does not have a regulated legal status of the land, and the allotment society does not hold any title to the land occupied by the gardens. The undetermined structure of the ownership rights of the land acquired for allotment gardens gives rise to claims for the release of the property by those people entitled to it, consequently resulting in the liquidation of the allotment. The paper presents the regulations introduced in 2013 that enable us to obtain a legal title to a real property that has been occupied by allotment gardens for many years as well as the issues related to the establishment of new gardens. The amended regulations do not, however, solve the numerous problems arising in the practice related to the structure of ownership of the land occupied by gardens, payment for use, claims of former owners for restitution of the property, annulment of expropriation decisions, or acquisitive prescription (among others).

Keywords: allotment gardens, regulation of legal status

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** Work carried out within the statutory research of the Department of Surveying Engineering and Construction No 11.11.150.005

1. Introduction

The development process of municipalities should take into account the existence of allotment gardens as permanent elements of the infrastructure. Allotment gardening constitutes a field of social life that contributes to helping meet the social, leisure, and recreational needs of the society.

The largest group of allotment holders in Poland is the National Allotment Society (Polish Allotment Holders' Association), continuing the more than 120-year tradition of allotment movement throughout the country. According to the information provided on the association's website [1], the Polish Allotment Holders' Association manages 4667 allotment gardens with 917,445 plots accounting for a total area of 40,862 ha (as of December 31, 2016).

Unfortunately, much of the land acquired for allotment gardens has unregulated legal status, resulting in uncertainty as to their further functioning.

This publication aims to analyze the process of regulating the legal status of land acquired for allotment gardens on the example of the city of Krakow in order to identify the geodetic and legal problems occurring as a consequence and to propose amendments to the legislation in force in this regard. The method of research – a case study – was proposed.

The research thesis of this paper is the statement that the Act of December 13, 2013 on allotment gardens [8] does not allow for the regulation of the legal status of all the existing allotments.

The research data was obtained from the Division of the City Treasury and the Division of Geodesy of the city of Krakow. They concerned the ownership structure of land and the procedures aimed at establishing legal titles for allotment associations. The analysis takes into consideration the current legal regulations on this subject.

2. Legislation on Rights to Land Occupied by Allotment Gardens

The basic legal act in this respect is the Act of December 13, 2013 on allotment gardens [8] regulating their legal form and defining legal titles to the real property. An allotment garden is a separated area or areas designed for the purpose of allotment gardens consisting of plots and public space for the general use of the holders equipped with a garden infrastructure.

Currently, the law on allotment gardens [8] provides for two distinct modes of property right acquisition, depending on whether new gardens are being established or the law is to be regulated with respect to the gardens that are already functioning.

In order to establish and manage new allotment gardens, the land owned by the State Treasury or local government units may be, by contract, sold, released for use for an unlimited period of time or for perpetual usufruct, free of charge or for a pay-

ment, to allotment associations – under the Act of August 21, 1997 on real estate management [7]. This recipe identifies the proper form for establishing new allotment gardens, which is an agreement between the association and the land owner. At their discretion, the owner decides whether and in what form they will make their real property available and whether it will be free of charge or for a payment. Once the form of use has been chosen, the contract with the allotment association is concluded without a tender procedure.

These regulations do not apply to the already-functioning allotments, as the legislator in this case provided only for the issuance of the administrative decision on the acquisition of the rights of use by the allotment society without specifying whether it is free of charge or for a payment.

As according to Article 75 of the act [8], as far as allotment gardens located on property owned by the State Treasury or a local government unit are concerned, when the allotment holders' association cannot prove their legal title to it, the owner may decide to liquidate a specific allotment garden within 24 months from the date of this act coming into force.

In the case of failure to issue a decision, after 24 months from the date of this act becoming binding, the allotment holders' association gains the right of use with respect to the real estate occupied by this allotment garden.

Within the meaning the act of the Civil Code [5], the use is a limited property right, the content of which is the use and profit-a-prendre. Acquisition by virtue of law of the rights to use by the association results in regulating the legal status of the land occupied by allotment gardens and provides a legal title to this land.

Although the acquisition of rights to use the real property is by virtue of law, the act on allotment gardens [8] provides for an official mode of acquisition of this right in the form of an administrative decision issued by the district governor if the allotment garden is located on real property of the State Treasury, or by the executive body of the local government unit if the allotment garden is located on real property owned by the local government unit. The decision on the acquisition of rights to use is an administrative decision, within the meaning of the act of Code of Administrative Procedure [4]; nevertheless, in this case, only the allotment association (with the exclusion of allotment holders) is a party to the administrative proceedings.

However, these provisions do not apply to all allotment gardens. As according to Article 76 of the act [8], the real estate owner cannot issue a decision on the liquidation of an allotment garden if it satisfies at least one of the following conditions on the date the act came into force:

- the functioning of the *allotment garden* on the real property is in compliance with the local zoning plan;
- the *allotment garden* has been located on the property for at least 30 years, and the local government unit acquired ownership rights to the real estate in connection with the functioning of the *allotment garden* there;

- the allotment garden has been located on the property for at least 30 years, and the State Treasury acquired ownership rights to the real estate in connection with the establishment of the *allotment garden*, or it had already been functioning on the property when the ownership title to the real estate was acquired by the State Treasury;
- the real property is occupied by the *allotment garden*, which already had this location on the date of the entry into force of the Act of May 6, 1981 on allotments gardens [5], or it became a permanent allotment pursuant to Art. 11, Section 3 or Art. 33 of this act.

On the date of the entry into force of the act [8] (i.e., the day of 19 January 2014), meeting at least one of the above-mentioned prerequisites makes it possible for the association managing a specific allotment to acquire the right of use to the real estate occupied by the allotment garden under the provisions of the act [5]. Under the act [8], the right to a plot is established based on the lease agreement. This agreement is concluded between the allotment association and the adult natural person. Through the *allotment* lease agreement, the association agrees to lend a plot to the allotment holder for an indefinite period of time to use and gain profits-a-prendre from it, and the holder agrees to use the land according to its intended purpose, comply with the regulations, and pay all requisite garden fees. At the request of the allotment holder, the lease may be entered into the land and mortgage register. The *allotment* lease shall be subject to the provisions of the act [5] on the lease.

In addition, according to the rules in the statute, the allotment association may give land in free use to the institutions preoccupied with social, educational, cultural, rehabilitation, charity, or social welfare activity.

3. Ownership Structure of Land Occupied by Allotment Gardens in City of Krakow

The research studies were aimed at determining the ownership structure of the land occupied by allotment gardens in Krakow. The land acquired for allotment gardens are valuable aesthetic and ecological constituents affecting the health of the residents as well as the development of the social and cultural life of the local community.

In Krakow (Tab. 1), there are 87 organized and permanently developed allotments with a total area of approximately 470.3 ha that meet the prerequisites of the act on allotment gardens [8]. There are also gardens that do not meet the conditions – the so-called “wild” ones. The vast majority of the allotment gardens in Krakow are managed by the National Allotment Society – Polish Allotment Holders’ Association.

Table 1. Surface area of allotments in Krakow

Cadastral unit	Number of allotment gardens	Surface area of allotment gardens [ha]
Krowodrza	32	116.8
Nowa Huta	30	196.5
Podgórze	17	138.5
Śródmieście	8	18.5
Total	87	470.3

Source: own study based on data from Krakow City Office

The greatest number of allotment gardens (i.e., 32) are located in the cadastral unit of Krowodrza, and the fewest (i.e., 8) in the city center (Śródmieście). The largest surface area of 196.5 ha is occupied by allotments in Nowa Huta, and the smallest (i.e., 18.5 ha) – in Śródmieście.

The act [8] provides for the establishment of allotment gardens exclusively on the land owned by the State Treasury, local government units, or allotment associations. Table 2 presents the ownership structure of land occupied by allotment gardens in Krakow.

Table 2. Ownership structure of land occupied by allotment gardens in Krakow.

Owner	Surface area of allotment gardens in cadastral units [ha]				
	Śródmieście	Podgórze	Nowa Huta	Krowodrza	summary area
Municipality of Krakow	15.4	110.5	160.0	95.0	380.9
State Treasury	0.8	27.9	28.2	8.2	65.1
Natural persons, legal persons	0.7	0.1	5.5	5.3	11.6
Joint ownership of natural and legal persons	1.6	0	2.8	8.3	12.7
Total	18.5	138.5	196.5	116.8	470.3

Source: own study based on data from Krakow City Office

From an analysis of the legal status of the allotment gardens in Krakow (Tab. 2), it appears that the majority of allotments are located on the real properties owned by the Municipality of Krakow (380.9 ha) and the State Treasury (65.1 ha). However, some of the gardens are located on land owned by natural persons and legal persons (11.6 ha) or co-owned by them (12.7 ha). None of the allotment gardens are located on land owned by the Polish Allotment Holders' Association.

4. Problems of Regulating Legal Status of Allotment Gardens on Example of City of Krakow

In Krakow, most of the allotments are managed by the National Allotment Society – Polish Allotment Holders’ Association, District of Malopolska in Krakow. The performed research studies have demonstrated that the association does not hold any legal title to the vast majority of the land occupied by allotment gardens. The association holds a title to the land subject to the previous regulations [5] in the form of a usufruct or the right of perpetual usufruct on allotment gardens only in the case of eight allotments and a partial title in the case of four allotments. The surface area for which the association holds the legal title is approx. 50 ha, which represents approx. 10% of the total area of the allotment gardens in Krakow (Tab. 3). This data illustrates the scale of the problem and identifies the necessity to take actions regulating the possession of allotment gardens by authorized entities.

Table 3. Types of rights held by Polish Allotment Holders’ Association to land occupied by allotment gardens in Krakow

Rights to land occupied by allotments	Number of allotments	Surface area of allotments [ha]	Number of Association’s applications for acquisition of usufruct	Number of decisions declaring acquisition of usufruct by Association	Number of Association’s appeals against decision on usufruct
Association holds right to land (usufruct, perpetual usufruct) subject to the previous regulations	8, and 4 partially	50	0	0	0
Association holds no title to land	75, and 4 partially	420.3	74	8	8

Source: own study based on data from Krakow City Office

Currently, with respect to the allotment gardens in Krakow, there are 74 administrative proceedings pending (Tab. 3) to determine whether the prerequisites are met to acquire the usufruct by the Polish Allotment Holders’ Association by virtue of law. The assessment of whether statutory grounds exist calls for a careful analysis of the materials collected and submitted by the applicant as well as a query in the archives, a field inspection, a historical outline, and specifying the origins of the allotment gardens. In practice, there are difficulties in proving that a given allotment garden has been functioning for 30 years, which results from the lack of a decision

on a location; it is also necessary to analyze the current real estate denotations for which location decisions have been issued on the cadastral plots.

Not all of the parcels covered by the applications for enfranchisement are fully occupied by the allotment infrastructure; therefore, it is necessary to carry out geodetic subdivisions of the properties.

The regulation process legal status of allotment gardens is complex and time-consuming. So far, eight decisions have been issued declaring the acquisition the rights of use by the association, as of January 19, 2014, under the act [7] to the properties organized as allotment gardens. The appeals were lodged against these decisions to the Local Government Appeal Court, questioning the correctness calculating the annual fees for their use.

The fee for use is one of the major problems occurring in the process of regulating allotment garden issues. The act on allotment gardens [8] does not specify whether the acquisition of the rights of usufruct by the associations is to be free of charge or for a payment. It is therefore necessary in this respect to apply the provisions of the act [6]. Pursuant to Art. 14 of the act [7], limited property rights, such as usufruct acquired under Art. 76 of the act [8] on allotment gardens, may be free of charge only for the State Treasury or local government units. Regardless of the intentions that probably guided the civil bill on allotment gardens [8] to use the land free of charge, they were not reflected in the finally adopted act. Since there is no explicit legal basis for the establishment of free usufruct rights for the associations managing allotment gardens that have been functioning for years, the administrative authorities competent for the management of public properties are obligated to calculate the appropriate fees. A different view was presented in [2] where, in light of Art. 9 of the act [8], the usufruct established subject to the analyzed provision is free of charge and for an indefinite period of time.

The authorities managing the property in Krakow present the view of the obligation to charge fees for usufruct; therefore, in the resolution [3], the Krakow City Council adopted annual fees for the allotment associations using land for the purpose of allotment gardens at an amount of 0.02% of the property value. Based on the fees established in the decisions on the acquisition of the properties occupied by allotment gardens, the Polish Allotment Holders' Association is obligated to pay annual fees.

This issue is a contentious one and currently it is subject to the Local Government Appeal Court with respect to the consideration of the appeals.

In addition to meeting the statutory prerequisites, it is possible to establish a legal title to the functioning allotment gardens for the association, but only in respect of the land owned by the State Treasury and local government units.

Therefore, the obstacle in the regulation process to obtain legal title to a real property that has been occupied by allotment gardens is the legal status of the property indicating the private property as well as claims for restitution filed by

third parties (including former owners). The research has confirmed that there are numerous proceedings pending before administrative public bodies and common courts, which may ultimately result in the city of Krakow and State Treasury being deprived of the ownership rights to the properties on which allotment gardens are situated.

These proceedings concern:

- restitution of the expropriated property to the former owners under the real estate management act [9],
- annulment of the expropriation decisions,
- acquisitive prescription of the land by natural and legal persons.

Restitution of the expropriated property results in the liquidation of the whole allotment garden or of its part, and the entity who owns the property on the date of adjudicating the restitution is obligated to restore the allotment garden and pay the compensation.

The act [8] does not provide for a precise liquidation mode for allotments resulting from the claims of a third party.

5. Conclusions

In order to establish and manage new allotment gardens, the land owned by the State Treasury or local government units may be, by contract, sold, released for use for an unlimited period of time, or for perpetual usufruct free of charge or for a payment to allotment associations.

In practice, most of the problems that arise are associated with regulating the legal status of the land occupied by already-functioning allotment gardens. In this case, the legislator provided only for the issuance of the administrative decision on the acquisition of the rights of use without specifying whether it is free of charge or for a payment. The lack of precise legislation is the reason that the issued decisions binding the user to pay are questioned by the allotment associations.

The studies of the ownership structure of the land occupied by allotment gardens have demonstrated that some of the gardens or their parts have been functioning for many years, occupying land owned by natural or legal persons. Moreover, there are cases reported such as restitution claims for the expropriated property, annulment of the expropriation decisions, acquisitive prescription of land by natural persons, and legal entities. Then, the regulating process of allotment gardens must be suspended until the end of the reclamation proceedings. It may result in the State Treasury or local government units being deprived of property rights and, consequently, the need for the liquidation of the allotment garden.

The act [8] does not provide for a precise liquidation procedure for the allotment gardens resulting from the claims of a third party. There is no indication of the

procedure in the case the allotment garden has been functioning for many years on the land owned by natural or legal persons either.

Despite the legislator's assumptions introduced on January 19, 2014, the provisions of the act [8] do not allow for regulation of the legal status of all existing allotment gardens, which substantiates the adopted thesis.

Therefore, the author claims that it would be advisable to clarify the regulations in the act [8] by:

- specifying whether the acquisition of usufruct rights by the allotment association regarding the existing allotments should be free of charge or for a payment;
- determining the liquidation procedure for allotment gardens in connection with the claims of third parties;
- determining the procedure in the case of the allotment garden functioning for many years on private land.

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Wybrane problemy regulacji stanów prawnych rodzinnych ogrodów działkowych na przykładzie miasta Krakowa

Streszczenie: Rodzinne ogrody działkowe stanowią integralną część infrastruktury miejskiej, służącą działkowcom i mieszkańcom pobliskich terenów. W Krakowie funkcjonuje około 80 urządzonych i trwale zagospodarowanych ogrodów działkowych położonych na gruntach o różnym stanie prawnym, w tym stanowiących własność prywatną. Łączna powierzchnia ogrodów działkowych w Krakowie wynosi ponad 470 ha, co stanowi około 1,5% powierzchni miasta. Celem artykułu jest analiza struktury własności ogrodów działkowych w obrębie Krakowa, w poszczególnych jego dzielnicach, jak również analiza tytułów prawnych do nieruchomości, którymi dysponują stowarzyszenia ogrodowe. Efektem prowadzonych badań jest identyfikacja problemów występujących w praktyce w zakresie regulacji stanów prawnych gruntów zajętych pod rodzinne ogrody działkowe. Zdecydowana większość gruntów zajętych przez ogrody działkowe w Krakowie nie ma uregulowanego stanu prawnego, tj. stowarzyszenia ogrodowe nie legitymują się żadnym tytułem prawnym do zajmowanych przez ogrody gruntów. Nieuregulowana struktura własności gruntów zajętych przez ogrody działkowe powoduje roszczenia osób uprawnionych o wydanie gruntu, a w konsekwencji skutkuje likwidacją ogrodu działkowego. W publikacji omówiono regulacje prawne wprowadzone w 2013 r. umożliwiające uzyskanie tytułów prawnych do nieruchomości od lat zajmowanych przez rodzinne ogrody działkowe oraz kwestie związane z zakładaniem nowych ogrodów. Znowelizowane przepisy prawne nie rozwiązują jednak wielu problemów pojawiających się w praktyce, związanych m.in. ze strukturą własności gruntów zajętych pod ogrody, odpłatnością z tytułu użytkowania, roszczeniami byłych właścicieli o zwrot nieruchomości lub unieważnienie decyzji wywłaszczeniowych bądź zasiedzenia.

Słowa

kluczowe: ogrody działkowe, regulacja stanu prawnego