

THE RIGHT OF PERPETUAL USUFRUCT AND THE PRINCIPLES OF A MARKET ECONOMY

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ABSTRACT

The right of perpetual usufruct is deeply rooted in the Polish legal system. Perpetual usufruct has a long history, and it is unlikely to be abolished in the near future. Therefore, the extent to which the right of perpetual usufruct is consistent with the principles of a free-market economy should be determined. In the present study, this issue has been examined comprehensively by describing the economic aspects of this right. The fees associated with perpetual usufruct can attract individuals who have an interest in establishing this right. However, these fees can also discourage potential usufructuaries. Despite the above, perpetual usufruct fees constitute a steady source of income for territorial self-governments which grant the right to perpetual usufruct of municipal land. In addition to a comprehensive overview of perpetual usufruct fees, this study also involved a survey to determine the extent to which territorial self-governments exercise the legal rights associated with the collection of perpetual usufruct fees.

Keywords: perpetual usufruct, perpetual usufruct fees, real estate management

INTRODUCTION

Real rights include the right of ownership, limited real rights, as well as the right of perpetual usufruct. Perpetual usufruct is conceived as a right in rem over a third party's property, and it can be established solely on land that constitutes the property of the State Treasury or territorial self-governments. The right of perpetual usufruct was introduced to the Polish legal system after World War II pursuant to the Act of 14 July 1961 on land management in cities and residential districts (Journal of Laws, 1961, No. 32, item 159). Perpetual usufruct offers an alternative to ownership, and it was introduced to meet social needs,

in particular the demand for housing (Bużowicz, 2016; Ciepła, 2018; Kucharska-Stasiak et al., 2006), as well as the demand for industrial sites, services, and other facilities. In addition to catering to the demand for land for residential development, perpetual usufruct was implemented to consolidate various forms of land ownership and tenure in territories that had been recovered after the partitions of Poland.

On the other hand, most of the land that was transferred for perpetual usufruct was undeveloped, as a direct result of the functions for which this institution was established. In most cases, this was land for which the municipality had no long-term plans or lacked the financial resources to develop it.

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In this case, they were able to carry out their own functions through other bodies by transferring unused land to them for development without giving up ownership.

A perpetual usufructuary acquires the right to use land and erect buildings on that land, and the constructed buildings constitute the usufructuary's property. Perpetual usufruct provides the usufructuary with the same right to use and manage property as the right of ownership, but land-use rights are established on property that is owned by a third party, i.e. the State Treasury or territorial self-governments (Żróbek et al., 2014). Thus, the State or local authorities do not relinquish ownership of the land, but in return for making it available to their citizens and others, they have the possibility of charging fees, which are regulated by the Land Management Act of 21 August 1997. Perpetual usufruct has been a part of the Polish legal system for more than 60 years, and it has attracted considerable criticism for both substantive and historical reasons (Jędrzejewski, 2019).

This applies in particular to the situation that arose after the political transformation that took place in Poland at the turn of 1989 and 1990 and the transition of the country's economy to a market economy. The discussion that is taking place in broad legal forums, among politicians, local governments and researchers, concerns the question of whether this law has a market character and can continue to exist in a market economy at the stage that Poland is currently at (Bużowicz, 2016; Majorowicz, 1999; Żróbek & Banaszek, 2004; Żróbek et al., 2014).

Taking into account the current trends and tendencies emerging in the discussion on the future of the right of perpetual usufruct, it can be hypothesised that this right will gradually be marginalised and evolve over time.

The right of perpetual usufruct is widely applied, and more than 400,000 properties are currently held in perpetual usufruct in Poland. Perpetual usufruct fees are one of the most important sources of income for territorial self-governments. The area of land held in perpetual usufruct in Polish voivodeships (in hectares) is presented in Figure 1.

As can be seen from the above, the area of land held in perpetual usufruct has been gradually decreasing since 2015. The biggest change in 2019 is due to the entry into force of the Act of 20 July 2018 on the transformation of the right of perpetual usufruct of land developed for residential purposes into ownership of such land (Journal of Laws, 2023, item 904). As a result of this law, almost all of the land granted in perpetual usufruct for residential purposes was converted into ownership of such land.

The discussion on the market character of the right of perpetual usufruct has given rise to research from the perspective of the benefits that the State Treasury and local government units receive or can receive from land leased under perpetual usufruct. The issue of revenue to local government budgets from the lease of land for perpetual usufruct has been the subject of repeated studies, as has the issue of the burden on perpetual usufructuaries arising from the payment of annual fees for the duration of the perpetual usufruct. It is sufficient here to refer to the following studies Kokot, 2009; Żróbek & Banaszek, 2004; Żróbek et al., 2014; NIK, 2012; Kotlińska, 2009. On the other hand, the degree of implementation of the legal provisions of the Act of 21 August 1997 on the management of real estate with regard to the possibility of additional increases in the budgets of local authorities has not been the subject of in-depth analyses.

The State Treasury and territorial self-governments impose various fees on land held in perpetual usufruct. The present study was undertaken to determine the percentage of local budgetary revenues derived from perpetual usufruct fees in selected Polish municipalities and to assess the extent to which the local authorities exercise the legal rights associated with:

- expiry of the right of perpetual usufruct and termination of perpetual usufruct agreements;
- the right to impose additional fees on land that has not been developed by the date indicated in the perpetual usufruct agreement;
- the right to impose additional fees if the usufructuary applies for changes in the purpose

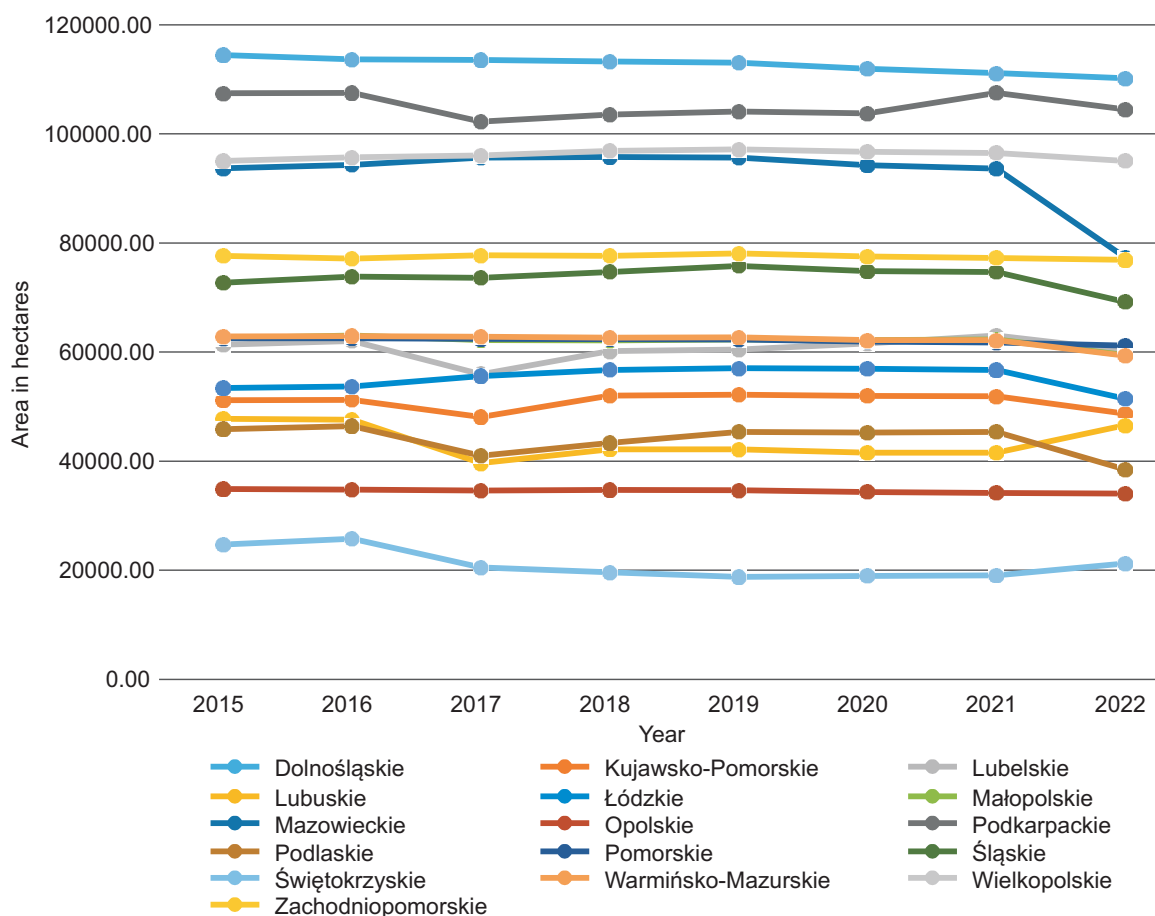


Fig. 1. The area of land held in perpetual usufruct in Polish voivodeships (in hectares)
 Source: own elaboration based on Statistics Poland data.

of land development indicated in the perpetual usufruct agreement.

As previously indicated, around 400,000 properties are held in perpetual usufruct in Poland. Therefore, this study was undertaken to determine whether the State Treasury and territorial self-governments derive revenues from perpetual usufruct fees and the percentage of budgetary revenues derived from this source. The sale of land held in perpetual usufruct may increase municipal income on a one-off basis (Trojanek, 2018). However, perpetual usufruct is, in the long-term, a source of income to the budget from annual fees and the above charges.

The right of perpetual usufruct is strongly rooted in the Polish legal system, but numerous amendments have been introduced over the years, including legal

acts enabling usufructuaries to convert the right of perpetual usufruct into an ownership right. The Act of 26 May 2023 amending the Act on the municipal self-government, the Act on the development of public housing, the Act on real estate management (A.r.e.m.), the Act on the tax on civil law transactions, and other acts (Journal of Laws, 2023, item 1463) came into force on 31 August 2023. The act amended the existing regulations applicable to real estate management, and it introduced new provisions enabling usufructuaries to convert the right of perpetual usufruct into an ownership right.

Research on perpetual usufruct or long-term leaseholds addresses many issues related to this right (Tong & Bounjough, 2017). A number of studies have examined the impact of public leasehold on land

use patterns and the efficiency of land use from the perspective of property rights (Li et al., 2017; Ye et al., 2018). Handing over land in long-term leaseholds can have a positive impact on urban expansion (Murakami & Chang, 2018). The issue of long-term leaseholds fees in different countries has been widely discussed in the literature (Tong et al., 2019; Wu et al., 2017). Discussions are also undertaken on the value of land given in long-term leaseholds (Korthals Altes, 2019; Pope et al., 2023).

The right of perpetual usufruct has several equivalents in the legal systems of other countries. Various types of long-term leaseholds have been introduced in Sweden, Finland, the Netherlands, Israel, China, Australia, Poland, and Ukraine (Bourassa & Yu-Hung, 2002; Nystrom, 2007). These solutions were implemented to minimize land speculation, cater to the demand for affordable housing, maintain land reserves for the future development of housing and public services, and promote selected land-use types (Żróbek et al., 2014).

In Sweden, long-term leasehold was introduced to capture the increase in land value and, partly, to promote selected planning goals. Site leasehold was introduced in response to a severe housing shortage. Municipalities were hoping to promote housing development by offering favorable leasehold rents (Nystrom, 2007). The maximization of lease revenues was an equally important motive. In Finland, public land lease was introduced to promote the development of municipalities and public housing. In this case, the maximization of lease revenues was not the main goal of public land leasing. The scheme involved attractive land rents for private developers, which decreased the initial capital investment (Nystrom, 2007). In the Netherlands, the main goal of long-term land lease was to ensure greater control over land use and development, and to provide a source of income for municipalities (Bourassa & Yu-Hung, 2002; Nystrom, 2007).

The duration of long-term land lease differs across countries. In Sweden, public land is leased for a period of 60 years for housing development, 50 years for commercial development, and 20–30 years for industrial development. In Finland, long-term lease

agreements are signed for a period of 100 years for housing projects, 50 years for commercial projects, and 20–30 years for industrial projects (Żróbek et al., 2014). In the Netherlands, public land was initially leased for 50 years and later for 75 years, and the lease could be renewed or extended on new terms. In Israel, land lease agreements are generally concluded for two periods of 48 years (98 years), and some leases cover two 98-year periods (Benchetrit & Czamanski, 2004; Bourassa & Yu-Hung, 2002; Nystrom, 2007).

Rents are determined based on market principles or through negotiation, and they are adjusted during the term of the lease, although various rent adjustment methods are applied in different countries. In Sweden, the initial rent usually remains unchanged for 10 years, after which it can be adjusted every 5 or 6 years. In Finland, rents for 100-year leases are adjusted every 30 years (for housing development), whereas commercial and industrial land rents are adjusted annually based on the estimated value of land (Nystrom, 2007). In the Netherlands, a discount is offered on long-term land rents that are bought one-off. However, the Dutch authorities faced considerable opposition when very high rent increases were applied after being flat for 50 to 75 years. Land rents are also increased when a site is redeveloped by the lessee, leading to changes in the intensity of land use or land-use type and, consequently, an increase in the value of land. This practice is considered fair by the public, and it has been met with little opposition (Nystrom, 2007). In Finland, discounts are offered on specific types of land rents, and some organizations even pay zero rent.

In summary, the popularity of long-term leaseholds has decreased in Sweden and the Netherlands, and the demand for public land lease continues to dwindle in these countries. At present, municipalities are less interested in maintaining public leaseholds. Under pressure from the public, selected Dutch municipalities have given up some of the financial advantages of public land lease (Bourassa & Yu-Hung, 2002; Nystrom, 2007). Finland appears to be the only country where both the lessors and the lessees are satisfied with the public leasehold system (Nystrom, 2007).

The following research question was formulated: to what extent do urban municipalities, including cities with county rights, have been exercising their legal right to collect perpetual usufruct fees after the relevant legal regulations had been amended in 2019? The present study is innovative because it offers a comprehensive theoretical and practical approach to analyzing perpetual usufruct fees. This study aims to determine if, and to what extent, municipalities, including cities with district rights, have exercised their legal right to charge perpetual usufruct fees following the amendment of the relevant legislation in 2019.

RESEARCH METHODS

The legal acts associated with the right of perpetual usufruct, in particular perpetual usufruct fees, were examined in the first stage of the study. The provisions of the Polish Civil Code (Journal of Laws, 2023, item 1610) and the A.r.e.m. (Journal of Laws, 2023, item 344) were analyzed. The literature on the subject and the relevant jurisprudence were also discussed. In the next stage of the study, 303 survey questionnaires were forwarded to urban municipalities, including cities with county rights.

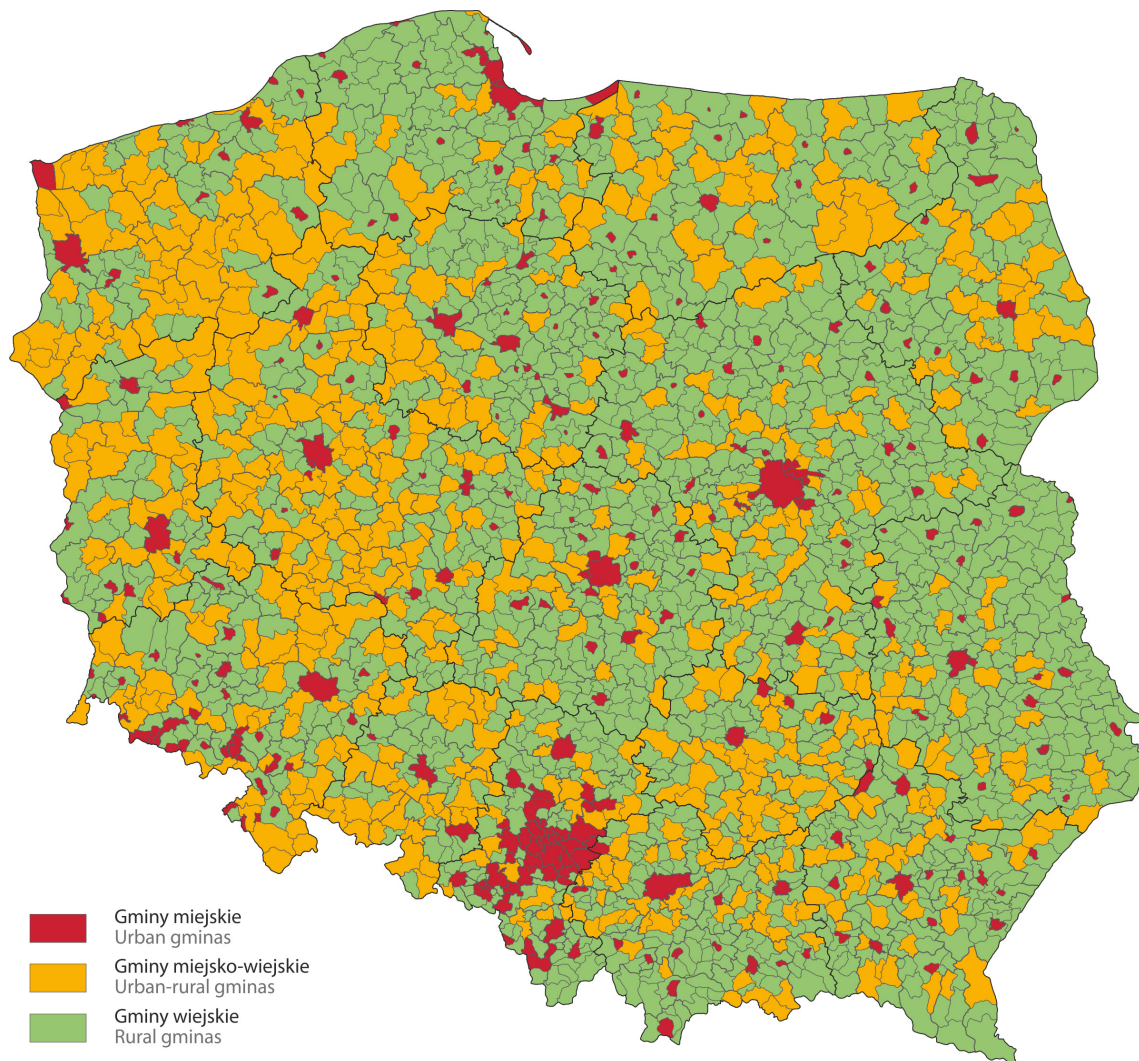


Fig. 2. Urban municipalities on a map of Poland
Source: Statistic Poland <https://stat.gov.pl/en/>.

The questionnaires were forwarded in digital form, and completed questionnaires were returned in digital or paper form. Completed questionnaires were returned by 148 out of the 303 targeted urban municipalities. The remaining municipalities refused to participate in the survey by arguing that the requested information does not constitute public information pursuant to the provisions of the Act of 6 September 2001 on access to public information (Journal of Laws, 2022, item 902).

Poland has a three-tier system of territorial administration. The country is divided into 16 voivodeships. Voivodeships are divided into counties, and counties are further divided into municipalities. Poland has a total of 2477 municipalities, including urban, urban-rural, and rural municipalities. Only urban municipalities were selected for this study. In urban municipalities, public land can be leased to a perpetual usufructuary for various purposes, and some land-use types may be subject to higher perpetual usufruct fees. The territorial division of Poland into municipalities is presented in Figure 2. Urban municipalities (targeted in this study) are marked in red.

The questionnaire forwarded to urban municipalities comprised 16 questions, including open-ended and closed-ended questions. The questionnaire is attached to the article (Appendix 1). From the total number of 148 returned questionnaires, 139 questionnaires with the highest number of answered questions were selected for analysis, and the results were processed. The results of the analysis were used to answer the main research question.

The survey was carried out in 2023. It covered regulatory changes that have taken place since 2019.

PERPETUAL USUFRUCT

Perpetual usufruct

As previously mentioned, perpetual usufruct is a real right that has been incorporated into the Polish legal system more than 60 years ago. Perpetual usufruct can be granted on land that constitutes

the property of the State Treasury, territorial self-governments or their associations. According to Article 232 § 1 of the Civil Code, the right of perpetual usufruct may be established for the benefit of natural and legal persons on land that is owned by the State Treasury and located within the administrative boundaries of cities, on land that is owned by the State Treasury, located outside the administrative boundaries of cities, but included in the urban master plan, as well as on land that is owned by territorial self-governments or their associations.

Pursuant to the provisions of Article 233 of the Civil Code, the perpetual usufructuary may:

- use the land to the exclusion of other persons;
- may dispose of his/her right.

According to the literature, a perpetual usufructuary has the right to use the land and its components, and to derive profits and other incomes from land (Balwicka-Szczyrba, 2023). The right of perpetual usufruct can be transferred to a different party or bequeathed through a last will. This right can also be transferred through the division or sale of inherited property, as well as through the abolition of joint perpetual usufruct. Perpetual usufruct can also be encumbered by limited real rights such as a mortgage, land-use rights, easements, and liabilities. In this case, claims are made against the right of perpetual usufruct rather than the property held in perpetual usufruct, and all encumbrances expire upon the expiry of perpetual usufruct (Balwicka-Szczyrba, 2023). According to the Supreme Court's decision of 9 April 2015 (No. V CSK 393/14; LEX No. 1751289), Article 233 of the Civil Code, which provides the perpetual usufructuary with the right to use land, suggests that the usufructuary is entitled to renounce his/her right. The right of perpetual usufruct has been formulated in highly general terms, without enumerating specific rights, which suggests that it involves the right of renunciation as a fundamental right. In a decision of 23 August 2006 (No. III CZP 60/06), the Supreme Court ruled that specific regulations are not required to renounce the right of perpetual usufruct. The above ruling does not contradict the provisions of Article 16 of the of the A.r.e.m. or Article 17 of the Act on

the management of the agricultural property of the State Treasury, which explicitly state that a perpetual usufructuary can renounce his/her right, because the introduction of separate principles for managing public property is justified by the fact that public property constitutes a separate category of property that requires competent management at the level of the central government and territorial self-governments (legal persons). Therefore, these regulations exemplify the general right to renounce the right of perpetual usufruct. Renunciation is also justified by the function of perpetual usufruct because the purpose of and the economic rationale behind perpetual usufruct would be undermined if a perpetual usufructuary were unable to renounce his/her right. In turn, the provisions of Article 246 of the Civil Code suggest that if a limited real right can be waived by the holder, the same principle should apply to other rights, including the right of perpetual usufruct.

The limitations on the right of perpetual usufruct and ownership rights are defined by the existing legislation, in particular the Act of 21 August 1997 on real estate management, as well as the Act of 27 March 2003 on spatial planning and management (Journal of Laws, 2023, item 977), the Construction Law of 7 July 1994 (Journal of Laws, 2023, item 682), the Environmental Protection Law of 27 April 2001 (Journal of Laws, 2022, item 2556), the Forest Act of 28 September 1991 on forests (Journal of Laws, 2023, item 1356), the Act of 3 February 1995 on the protection of agricultural land and forests (Journal of Laws, 2022, item 2409), and the Nature Conservation Act of 16 April 2004 (Journal of Laws, 2023, item 1336). The limitations on the right of perpetual usufruct are also defined by general clauses which set forth the accepted norms of social conduct. These clauses play an important role in the legal system because they provide legal regulations with a specific meaning and act as a bridge between legal norms and a wide range of non-legal norms. Social norms include ethical and moral norms that relate to human interactions and guide human behaviors during such interactions. An agreement

establishing the right of perpetual usufruct imposes a significant limitation on perpetual usufruct. This limitation constitutes the main difference between the right of perpetual usufruct and ownership rights. The concluded agreement enables the property owner to control the manner of land use.

Perpetual usufruct is a temporary right, and it is usually granted for a period of 99 years or, in special cases, 40 years. The perpetual usufruct agreement can be renewed. The perpetual usufructuary may request an extension in the last five years of the period stipulated in the agreement.

Similarly to ownership rights, the right of perpetual usufruct is a legally protected right. A perpetual usufructuary can lodge *rei vindicatio* and *actio negatoria* claims.

The market characteristics of perpetual usufruct and municipal revenues

Despite the fact that perpetual usufruct is problematic for municipal authorities (Kucharska-Stasiak et al., 2006; Żróbek et al., 2014), it continues to attract the interest of investors, in particular individuals who purchase public land to satisfy own housing needs. Perpetual usufruct is also an attractive option for other entities, including legal persons, because it decreases the value of the initial capital investment to 15–25% of the agreed price and involves annual payments on the terms stipulated in Article 72 section 3 of the A.r.e.m. The annual fee is determined by the purpose of perpetual usufruct, and it can reach 0.3%, 1%, 2%, or 3% of the negotiated tender price.

As previously mentioned, the first annual fee is calculated as a percentage of the transaction price if the right of perpetual usufruct was established by way of tender. If the right of perpetual usufruct was established without a formal tender process, the first annual fee is determined based on the market value of land specified for the land ownership right.

Depending on the purpose of perpetual usufruct, the annual fee is calculated with the use of the following formula (1):

$$O_{R_i} = SR \cdot C_N \quad (1)$$

where:

- O_{R_i} – annual fee for the i -th year,
- SR – annual fee as the percentage of the market value of land,
- C_N – price of land.

According to economic analyses, perpetual usufruct generates smaller revenues for municipalities than the transfer of ownership (Żróbek & Banaszek, 2004). However, by establishing the right of perpetual usufruct to public land, municipalities do not dispose of their ownership rights to that land. Perpetual usufruct constitutes a regular source of income for territorial self-governments (Kucharska-Stasiak et al., 2006; Żróbek & Banaszek, 2004; Żróbek et al., 2014). The revenues derived from perpetual usufruct continue to increase because annual fees are adjusted at intervals indicated in Article 77 section 1 of the A.r.e.m.

Annual fees can be adjusted based on the existing legal regulations or upon the perpetual usufructuary's request, but not more frequently than once every 3 years (Article 77 section 3 of the A.r.e.m.). Annual fees are adjusted based on the market value of land which is determined by a licensed appraiser by examining the transaction prices of similar land plots that are traded on the market (through transfer of ownership). Therefore, only the market value of land changes over time, whereas the annual fee, i.e. the percentage of the market value of land, remains constant. However, the percentage rate can also be modified. Such a modification can be introduced if the percentage rate stipulated in the perpetual usufruct agreement is higher than the rate indicated in the of the A.r.e.m.

Regardless of annual fees, municipalities that grant perpetual usufruct of public land can also generate revenues from additional annual fees (special fees), which are imposed pursuant to the provisions of Article 63 section 2 of the A.r.e.m. (Żróbek et al., 2012), as well as fees for changing the purpose of perpetual usufruct which are imposed pursuant to the provisions of Article 73 section 2c of the A.r.e.m. These fees are imposed in addition to the annual fee if the usufructuary fails to manage the property by the

date indicated in the perpetual usufruct agreement (special fee) or if the usufructuary requests a change in the purpose of perpetual usufruct.

The additional annual fee is set at 10% of the value of land specified for the land ownership right, and it is increased by another 10% in each successive year during which the usufructuary fails to develop the property by the agreed date. The additional annual fee is calculated with the use of the following formula (2):

$$O_S = 10\% \cdot W_{RN} \quad (2)$$

where:

- O_S – additional annual fee,
- W_{RN} – market value of land.

The fee for changing the purpose of perpetual usufruct can be negotiated by the parties, but it may not exceed 200% of the annual fee established for the entire period of perpetual usufruct. Changes in the purpose of perpetual usufruct may also lead to changes in the applicable percentage rate of the market value of land and, consequently, the annual fee itself.

The number of agreements establishing the right of perpetual usufruct on public land continues to decrease in most urban municipalities in Poland. The above can be attributed mainly to the introduction of legal solutions for converting the right of perpetual usufruct into an ownership right, both at the usufructuary's request and *ex officio*. These regulations were introduced by the following legal acts:

- Act of 21 August 1997 on real estate management: Articles 69 and 69a state that a perpetual usufructuary can acquire full ownership of used land by way of a notarial deed;
- Act of 29 July 2005 on the conversion of the right of perpetual usufruct into an ownership right (Journal of Laws, 2019, item 1314): the right of perpetual usufruct can be converted into an ownership right by way of administrative proceedings and the decision on the conversion of the right of perpetual usufruct into an ownership right;
- Act of 20 July 2018 on the conversion of the right of perpetual usufruct to land developed for residential purposes into an ownership right (Journal

of Laws, 2023, item 904): as of 1 January 2019, the right of perpetual usufruct to land developed for residential purposes is converted into an ownership right that can be registered in the land and mortgage register.

The above regulations decreased the area of land held in perpetual usufruct in Poland, including in cities with county rights, and the observed decrease is presented in Figure 3.

The data presented in Figure 3 indicate that the introduced legal regulations decreased the area of land held in perpetual usufruct in all Polish regions, including in the capital cities of Polish counties. The enforcement of the Act on the conversion of the right of perpetual usufruct to land developed for residential purposes into an ownership right was a visible turning point because the area of land held in perpetual usufruct decreased markedly at the turn of 2019 and 2020, and in the following years. Article 13 of the above act states that if a residential building is commissioned for use after 1 January 2019 on a land plot which is held in perpetual usufruct and which has been developed for residential purposes according to the provisions of the Construction Law of 7 July

1994 (Journal of Laws, 2021, item 2351, as amended), the right of perpetual usufruct to that land plot will be converted into an ownership right as of the date that building is commissioned for use.

RESEARCH STUDY AND RESULTS

Structure of land held in perpetual usufruct in the analyzed municipalities

The questionnaire was forwarded to 304 urban municipalities in Poland. Completed questionnaires were returned by 139 urban municipalities, and the results were processed and analyzed. For the needs of the study, these municipalities were arbitrarily divided into subgroups of cities with the following population:

- up to 10,000,
- 10,100 to 20,000,
- 20,100 to 50,000,
- 50,100 to 100,000,
- 100,100 to 250,000
- 250,100 to 500,000,
- above 500,000.

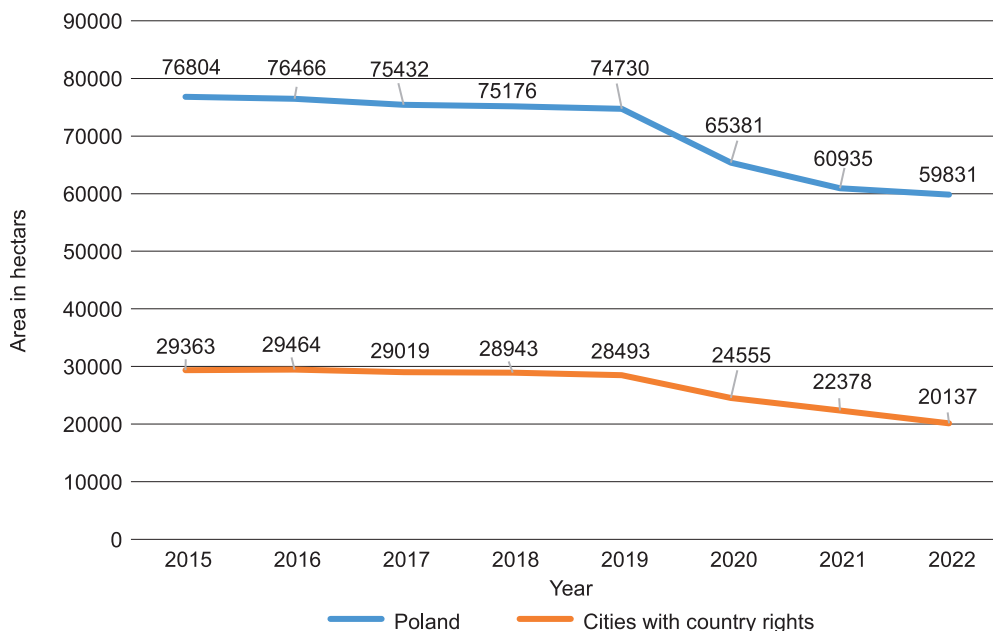


Fig. 3. Decrease in the area of land held in perpetual usufruct (in hectares)
 Source: own elaboration based on Statistics Poland data.

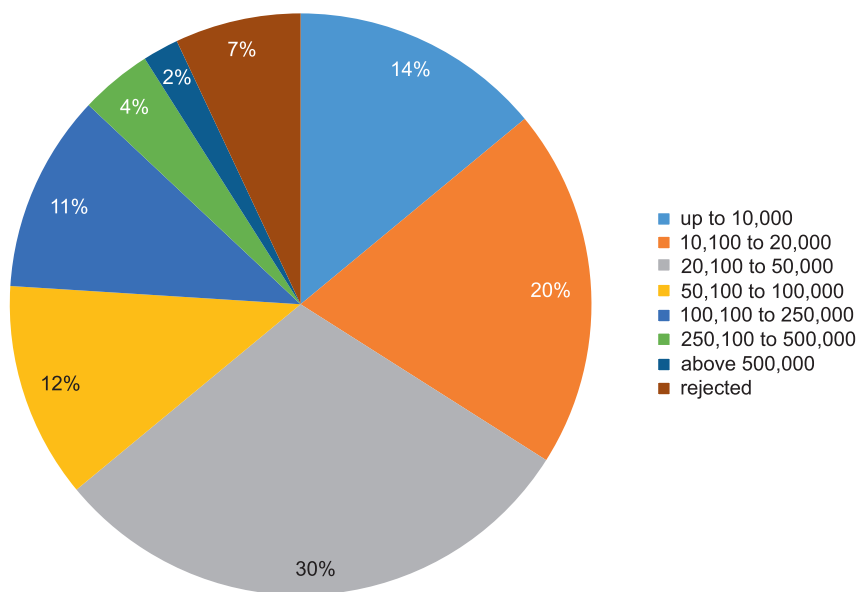


Fig. 4. Percentage of respondents in each subgroup
Source: own elaboration.

Urban municipalities with a population of 20,000–50,000 were the largest group of respondents that accounted for 30% of all municipalities participating in the study. The second largest group consisted of small urban municipalities with a population of 10,000–20,000 (20%), and the third largest group consisted of very small urban municipalities with a population of up to 10,000 (14%). Small and very small urban municipalities accounted for 34% of all respondents. Large and very large urban municipalities, as well as urban agglomerations were less well represented in the study or did not participate in the survey. The percentage of respondents in each subgroup is presented in Figure 4.

As shown in Figure 4, large and very large urban municipalities accounted for 12% and 11% of the total number of respondents, respectively. Urban municipalities with a population of 250,000–500,000 and above 500,000 accounted for only 4% and 2% of all participants, respectively. In the total number of returned questionnaires, 7% were incomplete and inconsistent, and these questionnaires were eliminated from the analysis.

Percentage of municipal land held in perpetual usufruct

The average percentage of land held in perpetual usufruct in the total administrative area of urban municipalities in each subgroup was determined in the initial stage of the survey. The percentage of land held in perpetual usufruct in the land resources of urban municipalities was determined in the second stage of the study. The results of the analysis are presented in Table 1.

The data presented in Table 1 indicate that land held in perpetual usufruct accounted for 2.59% of the administrative area of urban municipalities on average, and this value ranged from 1.55% to 3.9% in subgroups. Very small urban municipalities (with a population of up to 10,000) were characterized by the smallest proportion of land held in perpetual usufruct (1.5%). The proportion of land held in perpetual usufruct was similar in urban municipalities with a population of 10,000–20,000 (2.82%) and 50,100–100,000 (2.58%). The percentage of land held in perpetual usufruct in the administrative area of the surveyed municipalities was highest in urban municipalities with a population above 500,000

Table 1. Average percentage of land held in perpetual usufruct in the total administrative area and in the land resources of urban municipalities

Population of urban municipalities	Average area of an urban municipality [ha]	% of land held in PU* in the total administrative area of an urban municipality [%]	Average area of land held in PU in LRUM [ha]	% of land held in PU* in LRUM** [%]
Up to 10,000	2389	1.51	166	8.4
10,100 to 20,000	2006	2.82	288	13.0
20,100 to 50,000	3448	2.03	450	12.7
50,100 to 100,000	5559	2.58	1004	13.6
100,100 to 250,000	10309	3.15	2101	13.9
250,100 to 500,000	17816	2.12	3848	11.8
Above 500,000	29400	3.90	7584	15.0
Average		2.59		12.63

*PU – perpetual usufruct

**LRUM – land resources of urban municipalities

Source: own study.

(3.9%) and in municipalities with a population of 100,100–250,000 (3.15%). An analysis of the percentage of land held in perpetual usufruct in the land resources of urban municipalities in each subgroup yielded similar results. This parameter was lowest (8.4%) in very small urban municipalities (with a population of up to 10,000) and highest (15% on average) in urban agglomerations with a population above 500,000. In the remaining subgroups, the percentage of municipal land resources held in perpetual usufruct ranged from 12% to 14%. The results of the analysis indicate that on average, 12.6% of municipal land resources were held in perpetual usufruct.

Purpose of perpetual usufruct

The annual fee in virtue of perpetual usufruct, calculated as the percentage of the market value of land, is stipulated in Article 72 section 3 of the A.r.e.m. The percentage rate is determined by the purpose of perpetual usufruct indicated in the agreement. The percentage rates determined based on the transaction prices of land, depending on the purpose of perpetual usufruct, are presented in Table 2.

The percentage of land on which the right of perpetual usufruct was established for various purposes in urban municipalities was determined

Table 2. Percentage rates of annual fees depending on the purpose of perpetual usufruct

Percentage rate	Purpose of perpetual usufruct
0.3	National defense and national security, including fire protection; sites of religious worship, including the accompanying buildings, parish buildings in diocesan parishes and monasteries, diocesan archives and museums, seminaries, monasteries, and headquarters of church authorities and religious unions, including sites used for charitable and non-profit activities such as care institutions, cultural facilities, healthcare facilities, educational facilities, scientific facilities, and research and development facilities.
1	Residential development, construction of technical infrastructure, public utility sites, agricultural production, sports facilities, garages and parking facilities that are not used for commercial activities, or property used for the above purposes.
2	Tourist services
3	Other purposes, including commercial, recreational, etc. In this case, the percentage rate can be increased before the right of perpetual usufruct is established (Article 76 section 1 of the A.r.e.m.).

Source: own elaboration.

based on the provisions of the A.r.e.m. and the results of the questionnaire survey. The average percentage of land on which perpetual usufruct was established for different purposes in the analyzed subgroups of urban municipalities is presented in Table 3 and Figure 5. In this case, the analysis was conducted based on the percentage of land, declared by the respondents, where annual fees were calculated pursuant to the provisions of Article 72 section 3 of the A.r.e.m.

The data presented in Table 3 and Figure 5 indicate that more than 50% of land owned by urban municipalities was held in perpetual usufruct for the purpose of residential development, construction of technical infrastructure, public utility sites, agricultural production, sports facilities, and garages that not used for commercial activities. Land developed for the above purposes accounted for 48–64% of the total land owned by urban municipalities on which perpetual usufruct was established. Perpetual usufruct was

also established on land with the aim of developing services, retail, commerce, recreational, or industrial sites. Land used for these purposes accounted for 30–46% of the total land owned by urban municipalities on which perpetual usufruct was established. Land subjected to annual fees amounting to 0.3% and 2% of its market value was the smallest category of land in perpetual usufruct. On average, these land categories accounted for 2.47% and 1.72% of municipal land resources, respectively. On average, 32% of the surveyed municipalities established the right to perpetual usufruct on around 54% of their land resources for the purposes that are subject to the 1% annual fee. In 31% of the examined municipalities, perpetual usufruct was established on land earmarked for commercial development. On average, this category of land accounted for around 37% of municipal land resources on which perpetual usufruct was established.

Table 3. Purpose of perpetual usufruct based on the percentage rates of annual fees

Population of urban municipality	Percentage of land held in perpetual usufruct for different purposes based on annual fees calculated according to Article 72.3 of the A.r.e.m.									
	0.3% [%]	Number of municipalities in [%]	1% [%]	Number of municipalities in [%]	2% [%]	Number of municipalities in [%]	3% [%]	Number of municipalities in [%]	Different rate [%]	Number of municipalities in [%]
Up to 10,000	3.26	10	48.47	38	6.27	7	39.05	38	2.95	7
10,100 to 20,000	0.40	14	52.62	40	3.74	3	41.11	36	2.14	6
20,100 to 50,000	0.60	14	48.91	38	1.70	3	46.30	38	2.49	8
50,100 to 100,000	0.88	23	50.83	31	0.02	2	35.42	31	12.85	12
100,100 to 250,000	6.23	20	58.66	30	0.14	11	30.03	27	4.94	11
250,100 to 500,000	5.67	27	54.71	27	0.08	9	33.37	27	6.17	9
Above 500,000	0.26	20	64.66	20	0.08	20	35.00	20	0.00	20
Average	2.47	18	54.12	32	1.72	8	37.18	31	4.50	10

Source: own study.

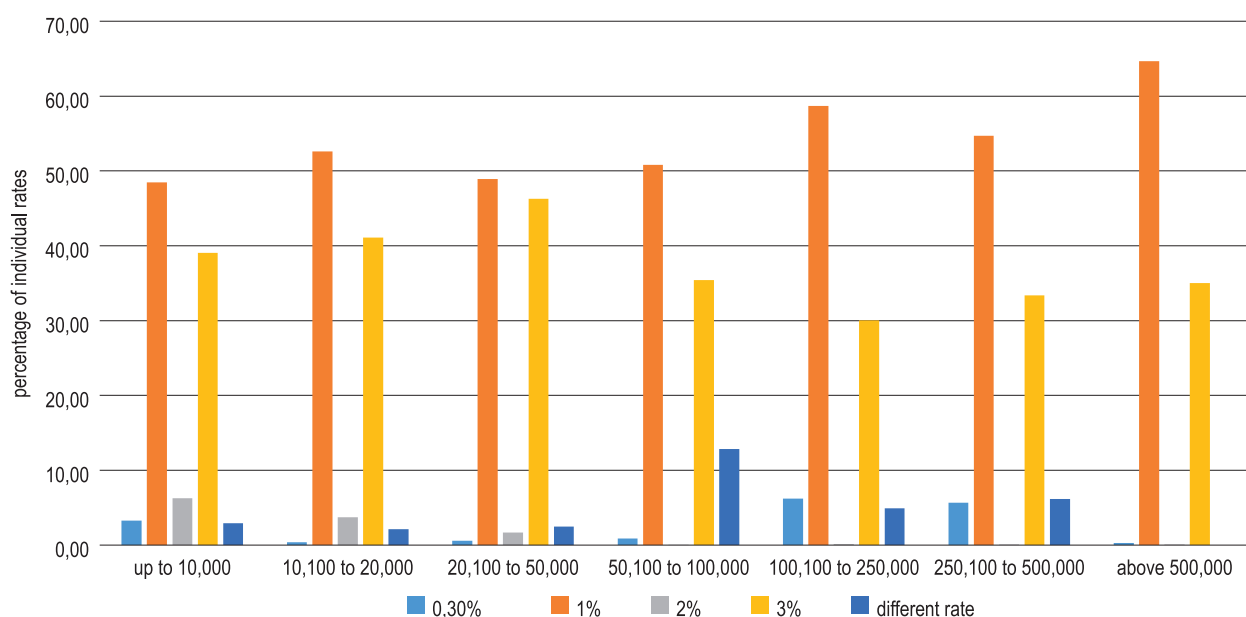


Fig. 5. Percentage of land held in perpetual usufruct for different purposes in the land resources of urban municipalities
Source: own study.

Expiry or termination of perpetual usufruct and additional fees

Pursuant to the provisions of Article 33 of the A.r.e.m., the right of perpetual usufruct expires on the date stipulated in the agreement, and the perpetual usufruct agreement can be terminated before the expiry date. The perpetual usufruct agreement can be dissolved on the terms stipulated in Article 240 of the Civil Code. According to the above article, a competent authority may request that the perpetual usufruct agreement be terminated before expiry if the usufructuary uses the land in violation of contractual provisions or if land has not been developed by the indicated date pursuant to the provisions of Articles 62–66 of the A.r.e.m.

The answers to the below questions were analyzed to determine the extent to which the above regulations were observed by the surveyed municipalities:

- in the past 5 years, were there any instances in which the right to perpetual usufruct was terminated before expiry?
- in how many instances was the right to perpetual usufruct terminated before expiry?

- what was the reason for the termination?
- were additional annual fees charged?

The right of perpetual usufruct was terminated before expiry in only 36 out of the 139 surveyed urban municipalities (26%). Perpetual usufruct was terminated before expiry in a total of 99 cases. Detailed information is presented in Table 4 and Figure 6.

The data presented in Table 4 and Figure 6 indicate that the percentage of perpetual usufruct agreements that were terminated before expiry was highest in cities with a population of 20,100 to 50,000 (8 urban municipalities). In this subgroup, a total of 15 perpetual usufruct agreements were terminated before the contractual expiry date. An analysis of the number of termination proceedings indicates that such proceedings were most often initiated in large cities (with a population of 100,100 to 250,000) and urban agglomerations (with a population above 500,000), which jointly accounted for more than 20% of all termination cases. Based on the provided responses, cities with the highest number of terminations were singled out in each subgroup:

- cities with a population above 500,000 – Kraków, 14 termination cases;

- cities with a population of 250,100 to 500,000 – Szczecin, 11 termination cases;
- cities with a population of 100,100 to 250,000 – Wałbrzych, 14 termination cases;
- cities with a population of 20,100 to 50,000 – Świdwin, 12 termination cases.

The survey revealed that in the group of 36 municipalities where perpetual usufruct was terminated before expiry, only three municipalities charged additional annual fees for the usufructuary's

failure to develop the land by the indicated date. In Człuchów and Złotów, additional fees were imposed one year after the perpetual usufructuary had failed to develop the land by the indicated date. In Kraków, additional fees were levied three years after the usufructuary had failed to meet this contractual obligation.

The results of the questionnaire survey were also analyzed to identify the most frequent reasons for terminating perpetual usufruct agreements. Various

Table 4. Termination of perpetual usufruct before expiry in the surveyed municipalities – number of cases

Population of urban municipality	Number of cities	[%]	Number of terminations	[%]	Additional fees	Number of additional fees
Up to 10,000	4	11	4	4	No	-
10,100 to 20,000	6	17	9	9	Yes	1
20,100 to 50,000	8	22	15	15	No	-
50,100 to 100,000	5	14	15	15	No	-
100,100 to 250,000	6	17	23	23	No	-
250,100 to 500,000	4	11	14	14	No	-
Above 500,000	3	8	19	20	Yes	1
Total	36	100	99	100		2

Source: own study.

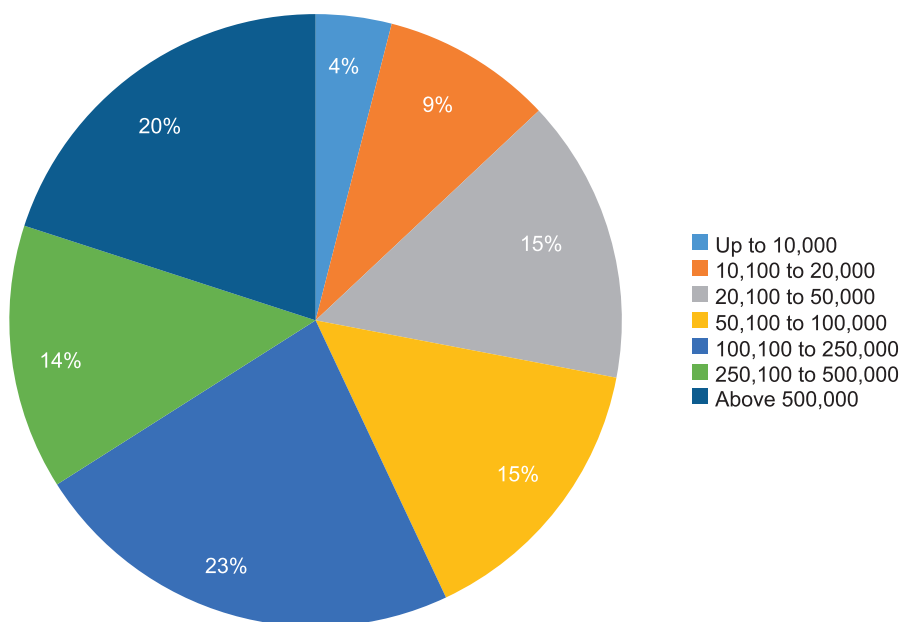


Fig. 6. Percentage of perpetual usufruct agreements terminated before expiry in the analyzed subgroups of urban municipalities

Source: own study.

Table 5. Standardized reasons for terminating perpetual usufruct agreements

Reason	[%]
Perpetual usufruct was terminated before expiry because the property was donated to the municipality or the parties reached mutual agreement	20.0
Perpetual usufruct was terminated by a decision of the court	2.5
The property was a part of a road, was used for public purposes or for the construction of transport routes	15.0
The property was not utilized by the perpetual usufructuary and was relinquished on behalf of the municipality	12.5
The perpetual usufructuary failed to develop the property by the indicated date	30.0
The right of perpetual usufruct was converted into an ownership right	5.0
The perpetual usufruct agreement was not renewed upon expiry	2.5
The purpose of perpetual usufruct was changed	5.0
The property was not used for the purpose indicated in the perpetual usufruct agreement	7.5

Source: own study.

reasons were given by the respondents, and their answers were standardized (Table 5). The percentage of cases where perpetual usufruct agreements were terminated for each identified reason is also given in Table 5.

As indicated in Table 5, most perpetual usufruct agreements were terminated before expiry because the usufructuary failed to develop the property by the indicated date (30%) or because the property was donated to the municipality or the parties reached mutual agreement (20%). In 7.5% of the cases, perpetual usufruct was terminated because the property was not used for the purpose indicated in the agreement. In the smallest number of cases (2.5%), perpetual usufruct was terminated by a court decision or the perpetual usufruct agreement was not renewed upon expiry.

Changes in the purpose of perpetual usufruct

According to Article 73 section 2b of the A.r.e.m., a usufructuary can apply for changes in the purpose of perpetual usufruct, provided that the proposed changes comply with the provisions of the urban master plan applicable to the land held in perpetual usufruct.

The results of the questionnaire survey were also analyzed to determine the types of land where usufructuaries applied for changes in the purpose

of perpetual usufruct. The analysis revealed that very few usufructuaries applied for changes in the purpose of perpetual usufruct in the studied urban municipalities. Such requests were submitted in only 18 out of the 139 surveyed municipalities (13%). The percentage of change requests submitted in each subgroup is presented below:

- cities with a population of up to 20,000 – 20%,
- cities with a population of 21,000 to 50,000 – 35%,
- cities with a population of 101,000 to 250,000 – 20%,
- cities with a population of 251,000 to 500,000 – 15%,
- cities with a population above 500,000 – 10%.

Most requests were submitted to change the purpose of perpetual usufruct to commercial operations and services. Such requests were submitted in 45% of the surveyed municipalities. The second most frequent category involved requests to change the purpose of perpetual usufruct to residential development, construction of technical infrastructure, public utility sites, and sports facilities (35%), recreational facilities and other commercial purposes (12%), and tourist services (8%).

According to Article 73 section 2c of the A.r.e.m., if the requested change in the purpose of perpetual usufruct leads to decrease in the annual fee, the usufructuary may be required to pay a one-off fee in an amount that does not exceed 200% of the annual fee in virtue of perpetual usufruct. The surveyed municipalities were asked to describe the adopted method of calculating the one-off fee for changing

the purpose of perpetual usufruct. In 48% of the cases, the amount of the additional fee was set by mutual agreement between the parties. The additional fee was calculated arbitrarily in 16% of the cases. The additional fee was set at 200% of the annual fee in 32% of the cases, and at less than 200% of the annual fee in 4% of the cases.

The analysis revealed that in the previous five years, only some of the surveyed municipalities collected additional fees for changing the purpose of perpetual usufruct. The results are presented in Table 6.

Additional fees for changing the purpose of perpetual usufruct were collected mostly by large and very large cities (with a population of up to and above 500,000). Kraków and Szczecin collected additional fees each year in the past five years. The total value of additional fees collected between 2017 and 2021 amounted to PLN 2,604,308 in Kraków and PLN 905,325 in Szczecin.

Table 6. One-off fee for changing the purpose of perpetual usufruct

No.	Number of cities	% of cities collecting additional fees	Year	Total amount [PLN]	Average amount per city [PLN]
1.	7	40	2021	569,577	81,368
2.	4	20	2020	200,119	50,030
3.	6	35	2019	371,074	61,846
4.	4	20	2018	2,012,774	503,194
5.	4	20	2017	450,032	112,508

Source: own study.

Average intervals for adjusting the annual fees for perpetual usufruct established for different purposes

The annual fees in virtue of perpetual usufruct are adjusted based on the provisions of Article 77 sections 1 and 2 of the A.r.e.m. The annual fee may be adjusted once every three years if the market value

Table 7. Intervals at which annual fees for perpetual usufruct are adjusted in the surveyed municipalities, subject to the purpose of perpetual usufruct

No.	Purpose of perpetual usufruct	Intervals at which annual fees for perpetual usufruct are adjusted (code)*									Total
		1	2	3	4	5	6	7	8	9	
1	National defense, national security, fire protection	2	2	1	4	6	0	3	2	0	20
2	Charitable and non-profit activities	2	6	1	6	4	0	3	2	0	24
3	Sites of religious worship and the accompanying buildings	2	5	1	5	3	0	3	2	0	21
4	Garages and parking sites	2	7	5	15	3	1	3	4	0	40
5	Residential development, construction of technical infrastructure, public utility sites, sports facilities	2	6	9	15	7	1	3	4	0	47
6	Tourist services	2	5	1	5	2		3	3	0	21
7	Commerce and services	2	7	8	14	6	1	3	4	0	45
8	Recreational facilities and other commercial purposes	2	7	3	12	2	1	3	2	0	32
	Total	16	45	29	76	33	4	24	23	0	

*1 According to need

2 Every 3 years

3 Every 3 to 5 years

4 Every 5 to 10 years

5 Every 11 to 15 years

6 Every 16 to 20 years

7 Arbitrarily

8 Whenever the market value of land increases

9 Upon the perpetual usufructuary's request

Source: own study.

of land changes. The annual fee is not adjusted if the market value of land on the date of the adjustment is lower than the price of land determined by way of tender. These provisions indicate that the annual fee in virtue of perpetual usufruct may be adjusted at time intervals longer than 3 years.

The surveyed municipalities were asked to indicate the actual time intervals at which annual fees are adjusted, whether the annual fees for all land held in perpetual usufruct are adjusted on the same date, or whether annual fees are adjusted on different dates, depending on the purpose of perpetual usufruct. The results are presented in Table 7.

As indicated in Table 7, the surveyed municipalities use different approaches to adjust annual fees in virtue of perpetual usufruct. In most cases, annual fees are adjusted every 5 to 10 years. This interval is relatively long because due to a large number of municipal plots on which the right of perpetual usufruct is established, urban municipalities find it difficult to initiate administrative proceedings by the statutory dates. It should also be noted that every adjustment requires a property valuation report, which entails additional remuneration for a property assessor.

DISCUSSION AND CONCLUSIONS

The study demonstrated that perpetual usufruct is a right that is actively exercised in Poland. Territorial self-governments grant perpetual usufruct of municipal land for various purposes. The questionnaire survey revealed that in urban municipalities, perpetual usufruct is usually established for the purposes that fall subject to a 1% annual fee:

- land used for agricultural production;
- land used for the construction of garages and parking facilities that are not used for commercial activities, or property used for the above purposes;
- land used for residential development, construction of technical infrastructure, public utility sites, and sports facilities.

The second most popular category involved land where perpetual usufruct was established for the purposes that fall subject to a 3% annual fee.

The surveyed municipalities do not make full use of the options available pursuant to the provisions of the A.r.e.m., and not all municipalities collect fees for changing the purpose of perpetual usufruct. Such fees could constitute an extra source of income. In many municipalities, the annual fees in virtue of perpetual usufruct are adjusted at longer intervals than the minimum statutory interval. Municipalities could increase their revenues by adjusting annual fees more frequently.

As regards the termination of perpetual usufruct agreements before the expiry date, in the vast majority of the surveyed municipalities, perpetual usufruct agreements are terminated early due to the usufructuary's failure to develop the property by the indicated date. Therefore, the failure to develop the land by the contractual date is the main reason for the expiry of the right of perpetual usufruct.

Article 20 of the Constitution of the Republic of Poland (Journal of Laws, 1997, No. 78, item 483) defines the principles of a social market economy and states that "a social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland". This Article identifies three constituent elements of a social market economy:

- freedom of economic activity,
- private ownership,
- solidarity, dialogue and cooperation between social partners.

According to the literature, the social market economy, as the basis of a country's economic system, constitutes the framework that guides the development of a country's economic system. On the one hand, this principle prohibits the implementation of a communist or a socialist system, where economic processes are controlled exclusively by the state. The constitutionalization of the social market economy marks a clear departure from the economic system of the People's Republic of Poland. On the other hand, the discussed principle prevents the introduction of a pure market economy, where the government's only role is to guarantee the freedom of economic

activity (Tuleja, 2021). In a decision of 9 January 2007 (P 5/05; OTK-A 2007, No. 1, item 1), the Constitutional Tribunal stated that this principle has been recognized to play a particularly important role for the economic system of the state. This principle guides the development of the economic system of the Republic of Poland and sets the direction for the government's economic policies.

In reference to the present study and the principles of a market economy, it appears that the right of perpetual usufruct is becoming somewhat marginalized. The legislator creates laws that enable the conversion of the right of perpetual usufruct into an ownership right. The surveyed municipalities do not collect all fees that are provided for under that the applicable laws. The area of land on which the right of perpetual usufruct is established continues to decrease. Financially, the lower cost of perpetual usufruct over ownership can make it attractive to investors. At the same time, perpetual usufruct generates a steady source of revenue for municipalities without depriving them of land ownership.

However, the legislator has not made any conclusive decisions regarding the continued existence or elimination of perpetual usufruct. On the one hand, the legislator has created three laws enabling the conversion of the right of perpetual usufruct into an ownership right. On the other hand, radical measures to abolish perpetual usufruct have not been implemented. Therefore, the legislative outlook on the right of perpetual usufruct in Poland remains inconclusive, and the question that arises is *Quo Vadis?*

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Note: The results of this study have been previously presented in a different form, such as a poster/abstract at a conference.

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Appendix 1

Question		Answer				
1.	Area of municipal land held in perpetual usufruct.	Total area of municipal land resources [ha]			Area of land held in perpetual usufruct [ha]	
		
2.	Percentage of municipal land held in perpetual usufruct for various purposes based on the annual fee [%] according to Article 72 section 3 of the A.r.e.m.	0.3%	1%	2%	3%	Above 3%
	
3.	In the past 5 years, were there any instances in which the right to perpetual usufruct was terminated before expiry according to Article 33 of the A.r.e.m.?	Yes*			No*	
4.	If the answer to question 3 is affirmative, please indicate the number of such cases.	.....			.....
5.	If the answer to question 3 is affirmative, please indicate the three most common reasons for terminating perpetual usufruct.	..... ..... .....			
6.	In the past 5 years, were additional fees charged for the failure to develop land by the indicated date, according to Article 63 section 1 of the A.r.e.m.?	After one year		After two years	After three and more years	
		Yes – No*		Yes – No*	Yes – No*	
7.	If the answer to question 6 is affirmative, please indicate the number of such cases.					
8.	If the answer to question 6 is affirmative, please indicate the three most common reasons for terminating perpetual usufruct.	..... ..... .....			
9.	If the answer to question 6 is affirmative, please indicate the total amount of additional fees charged in each year.	2021	2020	2019	2018	2017
	
10.	Did the usufructuary's failure to develop the land by the indicated date lead to the expiry of the right of perpetual usufruct?	Yes*			No*	
11.	If the answer to question 10 is affirmative, please indicate the number of such cases in each year.	2021	2020	2019	2018	2017
	
12.	Please indicate the manner in which the one-off fee for changing the purpose of perpetual usufruct was calculated before and after the amendment of Article 73 of the A.r.e.m.	Before amendment			After amendment	
		Arbitrarily*		By mutual agreement *	Arbitrarily*	By mutual agreement *
		One-off fees were not collected*			One-off fees are not collected*	
13.	Please indicate the amount of the one-off fee for changing the purpose of perpetual usufruct, as indicated in Article 73 of the A.r.e.m.	Please indicate the manner in which one-off fees were calculated			Less than the maximum fee	Maximum fee amounting to 200% of the annual fee

cont. Appendix 1

14.	Please indicate the total amount of fees for changing the purpose of perpetual usufruct that were collected in each year.	2021	2020	2019	2018	2017
	
15.	Please indicate the categories of land which are subject to the most frequent changes in the purpose of perpetual usufruct.	1. National defense, national security, fire protection; * 2. Charitable and non-profit activities; * 3. Sites of religious worship and the accompanying buildings; * 4. Garages and parking sites; * 5. Residential development, construction of technical infrastructure, public utility sites, sports facilities; * 6. Tourist services; * 7. Commerce and services; * 8. Recreational facilities and other commercial purposes. *				
16.	Please indicate the intervals at which the annual fees for perpetual usufruct are adjusted.	National defense, national security, fire protection;				.....
		Charitable and non-profit activities;				.....
		Sites of religious worship and the accompanying buildings;				.....
		Garages and parking sites;				.....
		Residential development, construction of technical infrastructure, public utility sites, sports facilities;				.....
		Tourist services;				.....
		Commerce and services;				.....
Recreational facilities and other commercial purposes				.....	