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LIABILITY FOR FAILURE TO LEAVE SOMEONE ELSE'S LAND PROPERTY

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ABSTRACT

The article presents responsibility for the offense of not leaving the land property despite the request of an authorized person. The purpose of this article is to draw attention to cases where it is legally permissible to enter someone else's land property despite such demand. The article discusses in particular the situation of entities performing geodetic or cartographic works and the scope of their rights to enter the land property and buildings. In addition, the obligations of the owner or the holder of the property on which this type of work is to be carried out and the consequences of obstructing or preventing their performance have been also specified.

Key words: petty offense law, petty offense, geodetic works, request of an authorized person, owner

INTRODUCTION

Nowadays, in the countries of Central and Eastern Europe, including Poland, there is a strong manifestation of a sense of ownership. People's attachment to property has been seen both positively and negatively in human history. On the one hand, it has been pointed out that the desire to accumulate property fosters both the development of human personality and the production of more and more goods and services. On the other hand, property-related conflicts have been noticed, and efforts have been taken to eliminate them (Pipes 2012).

During the socialist period, the citizens of the Eastern Bloc countries did not attach so much importance to property. Private owners or land owners did not ostentatiously demonstrate their rights. The political transformation taking place after 1989 led to the formation of a new ownership order. It is true that in Poland formal and legal regulation of property rights turned out to be very difficult. During World War II, expropriations were carried out by both German and Soviet occupation authorities. The expropriations were also continued after World War II. After the war, legal regulation of these lands in land and mortgage registers was not ensured, because in the socialist realities only real power mattered. As a result, buildings and housing estates were built in areas without regulated property rights (Schulz 2013).

In Article 20 of the Constitution of the Republic of Poland of 1997 (Journal of Laws of the Republic of Poland, no. 78, item 483), the social market economy based on the freedom of economic activity, private property as well as solidarity, dialogue and cooperation of social partners was adopted as the basis for Poland's economic system.

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After the political transformation and ownership transformations, it was clearly visible that property rights were demonstrated, in particular by marking their properties with signs with the inscriptions: "Private property", "Private property. Trespassing of unauthorized persons forbidden".

The right to property and the right to exclusive and free use of places such as: forest, field, garden, pasture, meadow or dike in Poland is protected not only under civil law but also by the Code of Petty Offenses (Zbrojewska 2013). The author of the article draws attention to the protection of the right to use the real estate guaranteed in the Code of Petty Offenses (1971) (abbreviated: CPO) (consolidated text published in Journal of Laws of the Republic of Poland of 2019, item 821). The object of the study is the scope of protection and analysis of cases where the violation of the right to use the property of the owner or the holder by not leaving the property despite the request of the right holder is legally permissible, and the behavior of those who make the violation does not constitute an offense.

MATERIALS AND METHODS

The dogmatic and legal method is used in the work. An analysis of legal acts related to the protection of property rights, responsibility for not leaving someone else's property and entities authorized to perform geodetic and cartographic works, the scope of their rights to enter the property was made. The literature review was used in the analysis of individual regulations.

PETTY OFFENSE – NOT LEAVING SOMEONE ELSE'S LAND PROPERTY

In Article 157 § 1 of CPO (1971), the legislator has been honoring the petty offense of not leaving someone else's land property despite an authorized person's demand to do so. This provision states that anyone who, contrary to the request of an authorized person, does not leave the forest, field, garden, pasture, meadow or dike, shall be subject to a fine of up to 500 PLN or a reprimand. Prosecution takes place at the request of the victim.

Behavior of the perpetrator of a petty offense covered by Article 157 § 1 of CPO (1971) consists in not leaving the places listed in this provision at the request of an authorized person. It does not matter whether the perpetrator was in the given place with the consent or against the will of the authorized person. The fact that the unauthorized party does not leave the place despite the expressed request of the authorized person is important for the liability of the trespasser. The request to leave the place has to be unambiguous and come from the authorized person. Therefore, it refers to the owner, co-owner or bodies authorized to administer the place (e.g. tenant, administrator, dependent or independent owner) and persons authorized to represent their interests (e.g. attorney, employee) (Zbrojewska 2013).

The form of the request does not matter as long as it clearly expresses the will of the entitled person – it can therefore be a request expressed orally, in writing or by means of a gesture. The authorized person may always demand that the perpetrator leave the given land, without having to have any special, justified reasons for formulating such a request (Michalska-Warias 2019).

The provision requires the perpetrator's stay in one of the places listed in Article 157 § 1 of CPO (1971). The first of these sites is forest. The legal definition of the forest given in Article 3 of the Forests Act (1991) (abbreviated: FA) (consolidated text published in the the Journal of Laws of the Republic of Poland of 2020, item 6), differs from the one adopted in biological sciences.

According to Article 3 of FA (1991), forest is the ground:

1. With a compact area of at least 0.1 ha, covered with forest vegetation (forest crops) – trees and shrubs and undergrowth – or temporarily deprived of it:
a) intended for forest production or
b) constituting a nature reserve or forming part of a national park, or
c) entered in the register of monuments.

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2. Connected with forest management, occupied for and used according to the needs of forest management: buildings and structures, water drainage facilities, forest spatial division lines, forest roads, areas under power lines, forest nurseries, wood storage facilities, as well as used for forest car parking lots and tourist devices.

The rules of entering the forest owned by the State Treasury are set out in Chapter 5 of FA. The rule is that forests owned by the State Treasury are made available to the public, however, pursuant to Article 26 Section 2 of FA (1991) permanent access is not granted to forests constituting:

a) forest crops up to 4 m high,
b) experimental plots and seed trees stands,
c) animal habitats,
d) sources of rivers and streams,
e) areas at risk of erosion.

The forest inspector introduces a temporary ban on access to the forest owned by the State Treasury, if:

a) destruction or significant damage to tree stands or degradation of the undergrowth occurred;
b) there is a high fire risk;
economic operations are carried out related to farming, forest protection or logging.

The next places indicated in Article 157 § 1 of CPO (1971) are:

a) field, by which the area of land intended for cultivation is meant,
b) garden understood as a place intended for growing plants; the term also covers orchards and plantations,
c) pasture – it is a land covered mainly with perennial grasses and intended for grazing livestock,
d) meadow – it is arable land on which dense herbaceous vegetation grows with dominance or a significant proportion of grasses,
e) dyke – it is an embankment, most often earth, built to accumulate water to maintain water level in ponds or protect against flooding (Zbrojewska 2013).

The subject of the petty offense may be any person capable of bearing responsibility for the offenses, except for the person authorized to be on a given land (Radecki 2013). This entitlement may result from the ownership right or from a limited right in rem to the land. It may also result from possession or from the right to enter a given land provided for by special provisions. Whoever found themselves in the places indicated in Article 157 § 1 of CPO (1971), e.g. a policeman, fireman, doctor, surveyor in situations where he is authorized by law, does not commit an offense.

Persons carrying out geodetic and cartographic works are statutorily authorized to enter the land and building facilities and to carry out the necessary activities related to the work performed. Pursuant to Article 13 of the Act on Geodetic and Cartographic Law (1989) (abbreviated AGCL) (consolidated text published in the Journal of Laws of the Republic of Poland of 2020, item 276) persons carrying out geodetic and cartographic works have the right to: access to the ground and building and perform necessary activities related to the work performed; coppicing trees and shrubs necessary for geodetic works; placing geodetic, gravimetric and magnetic marks as well as devices protecting these marks on land and buildings free of charge; placing triangulation structures on land and buildings.

This authorization is not arbitrary, but applies only to activities carried out as part of geodetic and cartographic works carried out in accordance with the provisions of the Act, by an authorized entity. Contractors of geodetic and cartographic works may be: entrepreneurs, organizational units and persons with professional qualifications in the field of geodesy and cartography when they perform the functions of a court expert, mining surveyor or mining surveyor's assistant.

According to Article 4 Clause 1 of the Act on Entrepreneurs Law (2018) (abbreviated: AEL) (consolidated text published in the Journal of Laws of the Republic of Poland of 2019, item 1292) an entrepreneur is a natural person, a legal person or an organizational unit which is not a legal person, that is granted legal capacity by a separate act, that performs business activity.

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Partners of a civil law partnership in the scope of their business activity are also considered entrepreneurs – Article 4 Clause 2 of AEL (2018). In the case of performing geodetic and cartographic services in the form of a civil law partnership, the contractors of geodetic and cartographic works are therefore the partners understood as entrepreneurs.

In a situation where the entrepreneur is a natural person, the right to enter the land and building facilities and to perform necessary activities related to the performed geodetic and cartographic works, guaranteed in Article 13 of the Act on Geodetic and Cartographic Law (1989), applies only to them. This means that in relation to persons who assist an entrepreneur who is a natural person, the owner of a land or building structure or other authorized person may always demand that the person accompanying the entrepreneur must leave the given land property. The same situation applies to partners of a civil law partnership, only they are statutorily authorized to enter the land and building facilities, and to carry out the necessary activities related to the work performed. The above results directly from Articles 14 and 13 of AGCL (1989). Only entities indicated in Article 11 of AGCL (1989), the owner or another person possessing the real estate are obliged to enable to carry out geodetic and cartographic works. The above rights constitute intervening in the right to property protected in accordance with Article 21 of the Polish Constitution (1997). It is therefore not permissible to use a broad interpretation.

An entrepreneur may also be a legal person. The legal definition of a legal person is contained in Article 33 of the Polish Civil Code (1964) (abbreviated: CC) (consolidated text published in the Journal of Laws of the Republic of Poland of 2019, item 1145). According to this definition, legal entities are the State Treasury and organizational units to which special provisions grant legal personality. The essence of a legal person is that it is an organizational unit which, pursuant to the provision of the Act, has been equipped with legal capacity. Therefore, any legal person may be subject to civil law relations. The concept of "legal person" is narrower than the concept of "organizational unit", because not all organizational units have special legal personality. Organizational units that are not legal persons, to whom a separate law confers legal capacity may also be entrepreneurs within the meaning of Article 4 of AEL (2018). Organizational units that are not legal persons but have legal capacity are primarily commercial partnerships listed in Article 4 of the Commercial Companies Code (2000) (abbreviated: CCC) (consolidated text published in the Journal of Laws of the Republic of Poland of 2019, item 505), i.e. general partnerships, limited partnerships and limited joint-stock partnerships.

Entrepreneurs may be foreign persons. In accordance with Article 4 Clause 3 of AEL (2018) the rules for undertaking, conducting and terminating economic activity by foreign persons are defined in separate provisions. These provisions are contained in particular in the Act on the Rules for the Participation of Foreign Entrepreneurs and other Foreign Persons in Business Transactions on the Territory of the Republic of Poland (2018) (abbreviated: ARPFE) (consolidated text published in the Journal of Laws of the Republic of Poland of 2019, item 1079). In accordance with Article 3 Item 5 of ARPFE (2018), a foreign person is: a natural person without Polish citizenship, a legal person with headquarters abroad, as well as an organizational unit that is not a legal person with legal capacity, with headquarters abroad.

In the case of geodetic and cartographic works carried out by a legal person or an organizational unit which is not a legal person, the right to access to land and building objects in order to perform the necessary activities related to the performed geodetic and cartographic works applies to employees of these entities or persons with whom the commission contract or the contract of specific work was concluded.

Another entity entitled to enter the real estate property in order to carry out geodetic and cartographic works is a person acting as an expert witness. Not only an expert entered in the list of court experts by the president of the regional court is obliged to perform the function of an expert, but any person

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who the court has appointed to issue an opinion – Article 195 of the Code of Criminal Procedure (1997) (consolidated text published in the Journal of Laws of the Republic of Poland of 2020, item 30) and Article 278 of the Code of Civil Procedure (1964) (consolidated text published in the Journal of Laws of the Republic of Poland of 2019, item 1460). The person indicated in the court's decision to appoint an expert is obliged to prepare an opinion in accordance with the scope and subject matter as outlined by the procedural body. In the case of performing the duties of an expert witness, they have the right to enter the land property and building facilities in order to perform activities to the extent necessary to issue an opinion.

Access to someone else's land property and building by entities indicated in Article 11 Clause 1 of AGCL (1989) is authorized only for the purpose of performing geodetic or cartographic works. In accordance with Article 2 of AGCL (1989) by geodetic works we understand designing and carrying out geodetic measurements, taking aerial photographs, making calculations, preparing and processing geodetic documentation, as well as establishing and updating databases, measurements and photogrammetric, gravimetric, magnetic and astronomical studies related to implementation tasks in the field of geodesy and cartography and the national land information system, while cartographic work is the development, substantive and technical editing of maps and derivative studies and their reproduction.

It is indicated that access to someone else's land property and building is authorized only after reporting the geodetic works to the competent authority. Since the applicable provisions no longer provide for separate confirmation of the submission of works by the authority, the contractor should obtain a confirmation of acceptance of the application in the usual manner (e.g. by obtaining the so-called acceptance stamp on a copy of the application) or obtain a printout of the declaration of submission of the application in electronic form (Lang 2018) .

However, it should be remembered that in accordance with Article 13 Section 3 of AGCL (1989) in closed areas, geodetic works may be carried out only by contractors acting on behalf of the authorities that issued the decision to close the area, or with their consent. The defense and security of the state require special regulations, hence a special procedure is provided for to isolate such areas. Closed areas are determined by competent ministers and heads of central offices by means of a decision. This decision also defines the boundaries of the closed area. Geodetic documentation defining the course of borders and the area of the closed area is forwarded by the authorities issuing decisions to close the area to territorially competent county authorities – Article 4 Clause 2a of AGCL (1989). Separation of closed areas determines the purpose for which they are to serve, and this is the defense and security of the state, other purpose of the area does not allow giving the area the status of a closed area (Karpiuk 2016).

The owner or other person possessing the rights to the property in accordance with Article 14 of AGCL (1989) is obliged not only to tolerate the activities of persons performing geodetic and cartographic works, but also to enable the performance of these works. The Act does not provide for any obligation to assist in carrying out works. Therefore, one should opt for a narrow scope of obligations of the owner or another person holding the property. Undoubtedly, the obligation to allow for the performance of geodetic and cartographic works consists in providing access to real estate and not disturbing the works, as well as moving objects interfering with the performance of measurements, e.g. moving vehicles. The obligation to permit work does not include removing permanent obstacles, such as fences or gazebos, regardless of whether they were built in accordance with applicable regulations. The obligation to allow for geodetic and cartographic works is therefore purely actual, one can say – organizational and ad hoc (Lang 2018).

If the owner of the property hinders or prevents a person performing geodetic and cartographic works from entering a land or building and making

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the necessary work-related activities, their act or failure to act is unlawful and constitutes a petty offense (Kotowski and Kurzępa 2008). Obstructions mean any behavior that causes difficulties, obstacles in geodetic or cartographic work. On the other hand, hindering means disabling entry into the land or a building and inability to undertake and carry out these works at all. This offense is penalized in Article 48 Clause 1 Item 2 of AGCL (1989) and is punishable by a fine. In accordance with Article 24 § 1 of CC (1971), the fine amounts between 20 PLN and 5,000 PLN, unless the law provides otherwise. In this case, AGCL (1989) does not contain different regulations as to the amount of the fine. In a situation where the owner or other person holding the property undertakes this type of behavior, the entity authorized to perform geodetic or cartographic works should use the help of the Police. At the same time, it is the body authorized to conduct proceedings in the case of a petty offense under Article 48 Clause 1 Item 2 of AGCL (1989) and to issue a request for punishment to the court.

Regulation of Article 48 Clause 1 Item 2 of AGCL (1989) to provide protection to entities performing geodetic or cartographic works corresponds with, among others, provisions providing for liability for hindering or preventing the performance of official duties by Police or Border Guard officers regulated in Article 65a of the Code of Petty Offences (1971), or firefighters in Article 82a of the Code of Petty Offences (1971).

CONCLUSIONS

The property right is subject to protection. Violation of the right to use the property of the owner or holder by not leaving the property despite their request is an offense and is punishable by a fine. However, the legislator provides for situations in which the owner or other authorized person can neither effectively demand one to leave the property nor to impede activities performed by authorized entities. It is legally permissible, which is beyond doubt and is widely known, for police officers or Border Guards to enter the property in connection with and during the performance of their duties. Such rights also apply to entities listed in Article 11 Clause 1 of AGCL (1989) but only for the purpose of performing geodetic or cartographic works, which are defined in Article 2 of AGCL (1989). Other entities or those mentioned in Article 11 Clause 1 of AGCL (1989) but not performing geodetic or cartographic work are required to leave the property at the request of the owner or other authorized person. Failure to comply with this request exposes them to liability for a petty offense under Article 157 § 1 of CPO (1971).

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