

The consequences of the obligation of the perpetual usufruct holder to maintain buildings in good repair

“The perpetual usufruct holder should exploit the land in accordance with its designated purpose and maintain any buildings on the land in good repair”. The inclusion of this clause in the decision establishing perpetual usufruct often causes doubt as to the true extent of the holder’s rights in respect of the buildings on the land.

Perpetual usufruct is the right most closely resembling ownership (the concept of temporary ownership), restricted only by the period for which it is established (between 40 and 99 years) and obligations arising from the contract or legal regulations. Perpetual usufruct decisions issued pursuant to the Act of 29 April 1985 on administration of land and expropriation of real property (unified text – Journal of Laws of 1989, No. 14, item 74, amended) (“the Act”), very often imposed on the perpetual usufruct holder the obligation to maintain buildings in good repair. There were serious consequences for failure to discharge this obligation: pursuant to Article 30 par. 3 of the Act, a perpetual usufruct contract on a plot may be terminated for failure to maintain in good repair buildings and apparatus granted in perpetual usufruct with the land. It would therefore be useful to have an explanation of what the clause “maintaining buildings on the land in good repair” actually entails.

Let us assume, for the purposes of this article, that the investment intention of the investor who purchased the perpetual usufruct rights with the obligation to maintain in good repair the buildings on the property is to demolish the existing buildings and erect an office building on the plot. In this situation, if the existing buildings were demolished, would this be grounds for the termination of the perpetual usufruct?

First of all, at present the issue of termination of perpetual usufruct is regulated by Article 33 of the Act of 21 August 1997 on administration of real property (unified text – Journal of Laws of 2004, No. 261, item 2603, amended) (further: “the AARP”). The AARP, which superseded the Act, no longer con-

tains a regulation providing for the possibility of terminating a perpetual usufruct contract owing to failure to maintain buildings in good repair. The answer to the question posed in the preceding paragraph is thus reduced to establishing what regulations are applicable to perpetual usufruct agreements established pursuant to the Act now repealed. The AARP does not include clear transition regulations, which means that identifying the relevant intertemporal standard will not enable us to state unequivocally whether the relevant regulations in the AARP apply to a professional usufruct right established pursuant to the Act.

Owing to the brevity of this article, there is no room for extensive discussion of transition regulations and intertemporal standards. There are, however, grounds for offering a few guidelines that we feel provide justification for applying the current regulations to perpetual usufruct established pursuant to the Act now defunct. In creating a new law, the legislator is expressing current legislative policy and has an interest in seeing the two legal regimes unified as rapidly as possible. If, however, we were to assume that a perpetual usufruct established pursuant to an Act no longer binding was subject to the regime of that Act until its expiry, this would produce a situation in which two legal regimes were operating in parallel, which would hinder the full implementation of the authorities’ legislative policy. This could cause legislative chaos and would be unacceptable in terms of the transparency of the legal system. It is also important to point out that in cases of long-term legal relationships, such as perpetual usufruct, new regulations are directly applicable. A further indication in this respect is also Article 240 of the AARP, which indicates that where binding regulations cite acts repealed by Article 241 or make general reference to land administration and property expropriation regulations, the regulations to be applied are those of the AARP as appropriate.

Given that there are no intertemporal laws that provide for a situation in which pepe-

tual usufruct established pursuant to a non-binding Act would be subject to the regime under which that right was established until its expiry, and that in creating a new law the rational legislator is expressing current legislative policy, it is correct to rule that in every case the content and scope of the perpetual usufruct right is defined by binding legal regulations. The regulations in the current AARP make no express provision for the possibility of terminating a perpetual usufruct right due to failure to maintain buildings in good repair. Thus the legislator has changed the premises to be fulfilled in order for the conditions for terminating a perpetual usufruct right to be met, by annulling the premise of failure to maintain in good repair buildings granted in perpetual usufruct with land. As a result, the investor who demolishes existing buildings should not be risking charges of violation of the obligation to maintain the buildings in good repair. However, it is not, of course, possible to rule out a different interpretation of these regulations by a court, which could assume that the obligation imposed to maintain the buildings in good repair remains in force due to the fact that it was founded in law when the perpetual usufruct was established.

As an aside to these questions, it would also be worth analysing a situation in which the perpetual usufruct did expire as a result of termination. In such a case, pursuant to Article 33 par. 2 of the AARP, the holder of the perpetual usufruct will be due remuneration for buildings and other apparatus erected by him, to a value established on the day on which the perpetual usufruct expired. Moreover, pursuant to Article 33 par. 3 of the AARP, if the perpetual usufruct is terminated, the first payment made for the professional usufruct is reimbursed, as is the sum of annual payments made for the period of perpetual usufruct not exploited, valorised as appropriate. However, the maximum reimbursable sum may not exceed the value of the perpetual usufruct right as established on the day on which the perpetual usufruct was terminated. No remuneration is payable for buildings erected in violation of the agreement or of the decision confirming the acquisition of the perpetual usufruct.

Filip Grzesiak
Kancelaria Adwokatów i Radców Prawnych
Miller Canfield W. Babicki A. Chelchowski i
Wspólnicy Sp.k.
grzesiak@pl.millercanfield.com
www.millercanfield.pl