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ABANDONMENT OF A THING: THE LEGAL CONSTRUCTION AND THE POSSIBILITY TO EXERCISE THIS RIGHT IN POLISH LAW[1]

Abstract

The article is intended to show, using the examples from Polish law, how strongly the owner's right to abandon a thing is limited. First of all, the legal structure of the abandonment and its current, very universal legal form are presented. Next, some categories of things that cannot be abandoned in Polish law are distinguished, and further examples of relevant private and public law regulations are provided. Finally, the conclusion is drawn that, despite the granted right to abandon a thing, it is usually not problematic to abandon only completely safe things of low economic value.

KEYWORDS

abandonment of a thing, property law, *ius dereliquendi*, dereliction, Polish civil law, ownership

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SŁOWA KLUCZOWE

porzucenie rzeczy, prawo rzeczowe, *ius dereliquendi*, zaniedbanie, polskie prawo cywilne, własność

1. INTRODUCTION

The modern world is accustomed to the immediate realization of its material needs and this is by no means a feature of the 21st century. The progressive development of consumerism has been observed for at least several centuries[2]. This statement, however, is not meant to be just a bitter remark about the present day. The observed phenomena in the social and economic areas related to the production and distribution of goods (conceived in the broadest sense) have a concrete impact on the problem of abandonment addressed in this article. The easiness of purchasing goods, their wide availability, as well as a high level of economic development and prosperity intensify the tendency for people to get rid of the ownership of unnecessary things and buy new ones immediately. The quickest way to achieve such a result seems to be the simple act of abandonment of a thing, which has far-reaching consequences in the sphere of property-law relations: as the ownership is completely abolished, the thing becomes ownerless (*res nullius*) and can be acquired.

We are aware of this last effect even without legal education – after all, we abandon the thing because we no longer want to be the owner; we want to abolish the bond between us and the thing. As practice shows, this is not always easy, and sometimes it is even prohibited. On the one hand, the possibility of abandoning a thing itself is blocked, and on the other, the possibility of appropriation of an ownerless thing is hindered. Contemporary abandonment, although instinctive and seemingly not juridically complicated, by its effect of abolishing property raises many practical challenges. The actual possibility of exercising this right is therefore effectively blocked by legal regulations, especially in the field of public law.

This article is intended to show, using examples from Polish law, how strongly the owner's right to abandon a thing is limited. First of all, the legal structure of the abandonment and its current, very universal legal form will be presented. Next, I will distinguish some categories of things that cannot be abandoned in Polish law, and will provide further examples of relevant private and public law regulations. This will lead me to the conclusion that, despite the granted right

[2] More on this subject see F. Trentmann, *Empire of Things. How We Became a World of Consumers, from the Fifteenth Century to the Twenty-First*, 2016.

to abandon a thing, we usually do not have a problem with abandoning only the completely safe things of low economic value.

2. LEGAL CONSTRUCTION OF THE ABANDONMENT IN POLISH LAW

The right to abandon a thing (*ius dereliquendi*) is one of many attributes of the right of ownership defined positively, i.e. by listing the individual rights the owner has over the item[3]. According to Art. 180 of the Polish Civil Code[4], the owner of a movable thing may divest himself of its ownership by abandoning a thing with this intention. The legal construction of abandonment, which has been known since Roman times[5], presupposes the simultaneous existence of two elements: the objective one, which is the actual disposal of possession of a thing, and the subjective one (*animus dereliquendi*), which is the intention to get rid of that thing. Then the thing is effectively abandoned and becomes *res nullius*, i.e. an ownerless thing[6]. In turn, the lack of any of the above-mentioned elements will result in ineffective abandonment. It is worth noting that the Civil Code does not impose any further restrictions on the manner of abandonment or the place where an item can be abandoned.

Under Polish civil law, the abandonment of a thing is generally considered by the whole doctrine to be a unilateral, dispositive legal act of a real nature. Therefore, effective performance of a legal act of abandonment is also connected with the necessity to take into account the general provisions of civil law, e.g. in terms of the entity's capacity to perform legal acts or defects in the declaration of intent[7]. What is important, the expression of the intention to abandon a thing can be done implicitly, e.g. by leaving the item in a place indicating that the owner renounces ownership, e.g. near a dumpster[8]. Abandoning an item also requires the owner to give up his or her possession in a way that allows everyone to obtain

[3] E.g. M. Orlicki, *Komentarz do Art. 140*, (in:) M. Gutowski (ed.), *Kodeks cywilny.* Vol. 1. *Komentarz do Art. 1–352*, LEX/el. 2018; T. Dybowski, *Ochrona własności w polskim prawie cywilnym (rei vindicatio – actio negatoria)*, Warszawa 1969, p. 60 *et seq.*

[4] Act of 23 April 1964 – Civil Code, "Journal of Laws" 2022, item 1360 with amendments.

[5] S. Romano, *Studi sulla derelizione nel diritto romano. Con una "nota di lettura" di Lelio Lantella*, "Rivista di Diritto Romano" 2002, No. II.

[6] P. Księżak, *Rzeczy niczyje*, „Rejent" 2005, No. 4.

[7] See e.g. J. Kępiński, *Komentarz do Art. 180*, (in:) M. Gutowski (ed.), *Kodeks cywilny.* Vol. 1. *Komentarz do Art. 1–352*, LEX/el. 2018; E. Gniewek, *Nabycie i utrata własności*, (in:) E. Gniewek (ed.), *Prawo rzeczowe.* Vol. 3. *System prawa prywatnego*, Legalis 2013. However, these circumstances apply universally to all legal acts, so I will not focus on them in this article.

[8] P. Księżak, *Komentarz do Art. 180*, (in:) K. Osajda (ed.), *Kodeks cywilny. Komentarz*, Legalis 2018.

it. Therefore, transfer of control over the object generally cannot be considered as abandonment[9].

It should also be stressed that in very legal construction of abandonment, a certain stability and invariability can be discovered over the centuries – especially looking at other countries belonging to the European legal tradition, which duplicate the described two-element construction[10]. Polish law also regulates abandonment of a thing in such typical way. The main regulation, as befits the proprietary right, is contained in the Civil Code and is not extensive – currently consisting of only one provision of Art. 180. By virtue of this provision, the owner is allowed to abandon ownership of only the movable item. Thus, this provision makes a clear distinction between movable and immovable property, with the latter being excluded from abandonment. At this point, it is worth presenting why the Polish regulation is shaped in such a way.

3. ABANDONMENT OF IMMOVABLE PROPERTY IN POLISH LAW

The possibility of abandoning the immovable property has been known under Polish law at least since the times of the Second Republic of Poland[11]. After World War II, Property Law of 1946 provided that every owner could renounce his or her ownership of immovable property in the form of a notarial deed (Art. 60). Then, such a property was granted to the State Treasury (acting in the civil-law sphere), which was responsible for obligations to the value of the immovable property[12]. Later, in the early 1960s, it was decided that the legal act of renouncing the immovable property would require the consent of a public authority (presidium of the district/city national council)[13]. It should be mentioned that the mere necessity of obtaining consent may undermine the actual ability of the owner to exercise the right to abandon a thing, as this legal act is subject to the control of a third, usually public party.

The possibility of renouncing the immovable property was also limited to individual or personal property, excluding the possibility of renouncing e.g. coop-

[9] See judgment of the Supreme Court of 19 May 1948, C I 235/48, PiP 1948/11/166.

[10] Cf. e.g. § 959 of German Civil Code (BGB) or § 386 of Austrian Civil Code (ABGB).

[11] See Art. 61 of the project of Property Law from 1937, *Projekt prawa rzeczowego, uchwalony w pierwszym czytaniu przez Podkomisję Prawa Rzeczowego Komisji Kodyfikacyjnej*, book 1, Warszawa 1937.

[12] R. Sztyk, *Zrzeczenie się własności nieruchomości*, „Rejent" 1999, No. 2, p. 60.

[13] Later, it was the head of the district public administration body, and at the beginning of 1999 – a staroste. See J. M. Kondek, *Czy możliwe jest zrzeczenie się własności nieruchomości?*, „Studia Iuridica" 2010, No. 52, p. 86.

erative property[14]. At that time, there was a strong emphasis on the social dimension of ownership; immovable property was also understood as a piece of land, whose task is to fulfil certain socio-economic functions. Therefore, the idea of recognizing the immovable property as ownerless was excluded *a priori* – without the owner, such land could not be used according to its inherent purposes[15]. Such approach was also reflected in the regulation of Art. 179 of the Civil Code of 1964, regarding the renunciation of the ownership of immovable property.

In accordance with the cited provision in its latest version[16], the owner of an immovable property may have divested himself of its ownership by renouncing it. The renunciation required a form of a notarial deed. The immovable property which the owner relinquished, was becoming the property of the municipality within the area of which the property was located, unless separate regulations provided otherwise. If this property was located in the territory of several municipalities, the immovable property became the property of the municipality where the major part of the property was located. The municipality was liable for the immovable property's encumbrances, limited to up to the value of the acquired property as at the moment of acquisition and at market prices at the moment of satisfaction of the creditor. Therefore, a return to the solution known from the Property Law of 1946 can be observed in this regard: the property could have been abandoned independent of anyone's consent and this activity was left to the discretion of the owner.

As it was indicated, the municipality had to bear the burden of taking care of the "unwanted" immovable property, often risking its financial condition. This has resulted in the challenge of the aforementioned provision of Art. 179 of the Civil Code to the Polish Constitutional Tribunal, which, by virtue of the judgment of 15 March 2005, file signature K 9/04[17], removed from the Polish legal system the possibility to renounce the ownership of immovable property. The main idea behind the court's decision was to protect the municipalities from the excessive financial burden of maintenance of indebted or dangerous properties[18]. As a consequence, the protection of municipalities and their property integrity was placed higher than the owner's right to relinquish his ownership. The continuation of such an approach in Polish law may be, for example, the replacement of the legal institution of abandonment (regulated previously in Art. 179 of the Civil Code) with an agreement on the transfer of immovable property under Art. 902[1] and

[14] R. Sztyk, *op.cit.*, p. 61. This distinction made sense only in the times of socialism and it lost its meaning with the political transformation and subsequent changes in law.

[15] *Ibidem*, p. 60; J. M. Kondek, *op.cit.*, p. 90 and Seweryn Szer's opinion quoted therein that "the state of existence of stray properties was contrary to the social character of the property".

[16] In the wording given by the amending act of 14 February 2003, "Journal of Laws" 2003, No. 49, item 408.

[17] "Journal of Laws" 2005, No. 48, item 462.

[18] See the justification to the judgment.

Art. 902[2] of the Civil Code. The latter institution belongs to the sphere of contract law and assumes that the involvement of the municipality or the State Treasury is necessary for effective conclusion of this agreement.

Although it is sometimes stated in legal doctrine that abandonment of the immovable property is possible under Polish law[19], the practical feasibility of exercising this right should generally be questioned – especially bearing in mind the legal requirement of making the renunciation in the form of a notarial deed and the possible refusal of a notary to perform such notarial act[20].

To sum up, since the entry into force of the Constitutional Tribunal's judgment (K 9/04), the division between movable and immovable property has been clearly made. In relation to the latter, there is no effective abandonment *a priori*. Abandonment is therefore only possible in the case of movable things and this is the group I will focus on later in this article. Taking a closer look at this group, one will discover that there are also some other categories of things for which the possibility of abandonment is restricted under special provisions. According to the framework of the study, I will concentrate on two of them: waste and motor vehicles.

4. WASTE

An excellent, and at the same time perhaps the most instinctive example of an abandoned thing is waste. In Polish law, its main regulation is contained in the Act of 14 December 2012 on waste[21], implementing the regulations of EU law in this area[22]. According to the statutory definition, waste is understood as any substance or object which the holder discards or intends to discard or is required to discard (Art. 3 para 1 point 6 of the "Waste Act"). In the scope of the analyzed subject, the situations covered by this first legal situation appears to be the most important, as the word "discards" will be synonymous with the word "abandons"[23]. For further deliberations, also a definition of a waste possessor should be provided. He or she is, in accordance with the statutory definition (Art. 3 para 1 point 19 of the "Waste Act"), a waste producer or a natural person, legal person or organizational entity

[19] See more on this topic: J. M. Kondek, *op.cit.*

[20] See Art. 81 of the Act of 14 February 1991 – Law on Notaries, "Journal of Laws" 2022, item 1799 with amendments.

[21] "Journal of Laws" 2022, item 699 with amendments, the "Waste Act".

[22] See J. Rudnicki, *Gdzie szukać rzeczy niczyich, czyli do czego służy kodeks cywilny*, „Forum Prawnicze" 2014, No. 25, p. 23.

[23] M. Matuszczak, *Prawo własności odpadów komunalnych*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2014, No. 5, p. 129.

not being legal person in possession of waste. The landowner is presumed to be the owner of the waste located on his or her property[24].

The "Waste Act" defines different categories of waste[25], which are often subject to separate provisions. It is impossible to refer to a complete regulation of waste within one study, so I will therefore focus on the general principles of waste management and their impact on the actual restrictions on abandonment of a thing in private law. Undoubtedly, at least part of the waste can be defined as a thing within the meaning of civil law[26].

The "Waste Act" is essentially administrative in its nature. It specifies measures to protect the environment, as well as human life and health, by preventing generation of waste and limiting its amount. These measures protect them also by limiting the negative impact of generation and management of waste, of the overall effects of resource use and by improving the efficiency of such use, in order to transition to a circular economy (Art. 1 of the "Waste Act"). The purpose of this regulation is therefore to define how waste is managed and what obligations are placed on the possessor of the waste. For example, this act introduces a hierarchy of waste management in Art. 17: first of all, everyone is obliged to prevent waste generation; when it is not possible, to prepare it for re-use, then recycle it or make it available for other recovery processes, and finally, neutralize it. Consequently, we are given a whole procedure for dealing with things that we do not want and that seemingly have no economic value. The possibility of free disposal of waste is also limited due to the category of waste and its harmfulness – which is intuitive, the more dangerous the waste is to people and the environment, the more specific obligations are imposed on its possessor. As an example, very harmful PCB waste (polychlorinated biphenyls) can be mentioned here[27].

The most natural restriction on the abandonment of waste is the ban on leaving it in places not intended for this purpose – generally, it can be said that everyone simply must not litter. This aspect is evident in many parts of the law – an example may be waste storage, the manner of which is determined by the chemical and physical properties of the waste, including the state of aggregation, and the danger it may cause[28]. The storage of waste may also take place only in the area to which the possessor of the waste has a legal title (Art. 25 of the "Waste Act"). The possessor of waste is also obliged to immediately remove the waste from a place not intended for storing it (Art. 26 para 1 of the "Waste Act"). This all means that the freedom of choice of the place where waste is abandoned is significantly limited, obviously for understandable reasons – it is justified by protection

[24] This notion of waste possessor is completely incompatible with the notion of possessor as defined in the Civil Code. See J. Rudnicki, *op.cit*., pp. 23–27.

[25] For example, municipal waste, medical waste, green waste, and waste from accidents.

[26] M. Matuszczak, *op.cit*., p. 123.

[27] See Art. 85–89 of the "Waste Act".

[28] See D. Danecka, W. Radecki, *Ustawa o odpadach. Komentarz*, LEX/el. 2020.

of the environment, its basic components, or areas of particular cultural or natural significance[29].

A natural consequence of the fact that we are dealing with public law regulations in the scope of the "Waste Act" is the inevitability of sanctions for violation of statutory obligations. In the case of waste, the entire Section X of the "Waste Act" is devoted to this topic, indicating criminal regulations (e.g. violation of provisions concerning waste management is subject to arrest or fine – see Art. 171 of the "Waste Act") and administrative fines, which may reach up to one million zlotys at a time (Art. 194 of the "Waste Act").

The broadly understood littering – the abandonment of things that are waste in places not intended for this purpose – can also violate penal provisions situated in some other acts. In this regard, at least two groups of legal acts can be made. The first one consists of the provisions of the Code of Petty Offences[30]: Art. 145 ("Whoever pollutes or litters railroad area or places accessible to the public, in particular the road, street, square, garden, lawn or greenery, shall be subject to fine of not less than 500 zlotys"), Art. 154 ("whoever throws stones, waste, scrap metal or carrion which are not waste, or other garbage into the field land, which does not belong to him, is liable to fine of not less than 500 zlotys") or Art. 162 para 1 and 2 ("Whoever contaminates soil or water in the forest or throws stones, waste, scrap metal or carrion which are not waste, or other waste into the forest, or otherwise litters the forest, shall be liable to the penalty of limitation of liberty or fine of not less than 500 zlotys. If the perpetrator's act involves burying, dumping, discharging into the ground in the forest or otherwise storing waste in the forest, the perpetrator shall be liable to arrest, penalty of limitation of liberty or fine of not less than 1000 zlotys")[31].

The second group is formed by the provisions of the Criminal Code[32], relating to the protection of the environment. As an example, Art. 183 of the Criminal Code can be indicated, according to which "whoever, contrary to regulations, stores, removes, processes, collects, neutralizes, transports waste or substances or recovers waste or substances under such conditions or in such a way that it may endanger human life or health or cause a reduction in the quality of water, air or land surface or destruction in the plant or animal world, shall be subject to the penalty of deprivation of liberty for between 1 and 5 years".

To conclude, also the criminal provisions significantly affect the owner's right to abandon a movable thing that can be classified as waste (within the meaning of

[29] *Komentarz do Art. 16*, (in:) D. Danecka, W. Radecki, *op. cit.*

[30] Act of 20 May 1971 – Code of Petty Offences, "Journal of Laws" 2021, item 2008 with amendments.

[31] In this case, exemplary damages can be imposed: up to an amount equal to the costs of soil remediation, water purification, extraction, excavation, removal from the forest, as well as destruction or neutralization of waste. See para 3 of the cited provision.

[32] Act of 6 June 1997 – Criminal Code, "Journal of Laws" 2022, item 1138 with amendments.

the "Waste Act"). Despite the formal possibility of abandoning a thing in a civil-law sense, in the case of waste, we are not able to carry out this legal act without being exposed to criminal sanctions related to improper waste management or simple littering of public or another person's space. Hence, the owner's freedom to divest himself of the ownership of waste is not illimitable.

5. VEHICLES

An interesting example concerning restrictions on the abandonment of a movable thing may be the regulation contained in the Act of 20 June 1997 – the "Traffic Law"[33]. Motor vehicles abandoned in public space can be particularly burdensome in larger cities, where they often block precious parking space or make it difficult to travel on public roads. As it turns out, a special kind of administrative procedure of removing the abandoned vehicle is imposed, making it difficult for the owner to achieve the effect of abandonment, which is to divest the ownership of property – despite the actual relinquishment of a possession combined with the expressed intention of abandonment[34].

According to Art. 50a para 1 of the "Traffic Law" Act, a vehicle[35] left without number plates or a vehicle whose condition indicates that it is not in use may be removed from the road by the municipal police or the Police at the expense of the owner or possessor. It is legally recognized that such vehicles may have been abandoned; as may be deduced, abandoned within the meaning of Art. 180 of the Civil Code. While the lack of number plates is a fact that is not subject to assessment, the condition indicating non-use of the vehicle is definitely a blurred criterion, subject to the judgment of the entities cooperating in the field of removing these vehicles[36].

Noteworthy is this specific solution, consisting in a certain "deferred" effect of abandoning the vehicle. After the removal of the vehicle on the basis of a written disposition (para 3 of the cited Regulation), the municipality immediately takes steps to determine the owner of the vehicle. The vehicle removed and not collected at the request of the municipality by an authorized person within six months from the date of removal is considered abandoned with the intention of

[33] "Journal of Laws" 2022, item 988 with amendments, the „Traffic Law" Act.

[34] See chapter II of this article.

[35] That is, in accordance with the wide statutory definition, a means of transport designed to move on the road and a machine or device adapted for that purpose (Art. 2, point 31).

[36] In accordance with para 2 of the Regulation of the Minister of the Interior and Administration of 22 June 2011 on the removal of vehicles left without number plates or whose condition indicates that they are not used ("Journal of Laws" 2011 No. 143, item 845), these entities include, among others, the Police, municipal police or road administrator.

disposal[37]. The vehicle becomes the property of the municipality by law. The same effect occurs if the person authorized to collect the vehicle cannot be identified within the aforementioned six month period.

Thus, the "Traffic Law" Act interferes with the owner's right to relinquish a movable thing. From the owner's point of view, the possibility of execution of this right is effectively blocked – despite the actual relinquishment of the possession with the intention to abandon a thing, the main effect of abandonment does not occur, i.e. the ownership is not abolished and a thing does not become ownerless. The right of ownership remains with the owner for six months from the removal of the vehicle by the municipality (and it should be remembered that the order to remove the vehicle, obviously, cannot be issued immediately after the owner has got rid of the vehicle). What is more, even after six month period and granting by presumption that the vehicle was given up with the intention to abandon it, the vehicle becomes by law the property of municipality (which does not acquire it in the meaning of Art. 181 of the Civil Code). Thus, using the same wording as in Art. 180 of the Civil Code, a specific mode of transfer of the left (because not abandoned in the civil-law sense) vehicle is introduced. Such transfer must meet at least one of the two statutory criteria: the lack of number plates or a condition indicating non-use[38].

To summarize, the owner's freedom to abandon a motor vehicle is strongly limited or even excluded – the owner cannot lead to a situation in which, by renouncing the possession of the vehicle in any place and expressing his or her intention to abandon it, he or she will allow another entity to acquire such movable thing[39]. By excluding the automatic abolition of the ownership in the event of abandonment, the maintenance of order on public roads is ensured and the "littering" of urban space with non-used vehicles is prevented[40].

6. CONCLUSIONS

The complication of social relations inevitably led to the complexity of the law itself. In the sphere of property law, in the face of growing problems with waste, out of concern for ecology and proper economy, the individualistic right of the owner to do whatever he or she wants with the thing is being consecutively

[37] This provision shall not apply if the vehicle was not collected for reasons beyond the control of the authorized person. See Art. 50a, para 3 of the "Traffic Law" Act.

[38] P. Księżak, *Komentarz...*

[39] See judgment of the District Court in Toruń of 21 March 2012, VI Ga 47/12, Legalis, where the court considers the problem of abandoning the car, e.g. in a parking lot.

[40] See the statutory delegation to issue the regulation from Art. 50a of the "Traffic Law" Act.

limited with different legal acts. It seems that existing regulations in Polish law have such far-reaching effects in the sphere of the owner's entitlement to abandon a thing that they often make this legal act either invalid (as in the case of abandonment of immovable property), or by allowing for a civil-law effect, they expose the owner to a penal sanction (*lex minus quam perfecta*, as in the case of waste).

Consequently, in the case of abandonment, the social aspect of the property is exposed, as well as the obligations that rest with the owner to the community[41]. However, this is not highlighted for every type of thing – particular "interest" is attracted to things of high economic value or those that may pose a threat to people and the environment. Without denying the rationale behind described limitations, they surely exist and weaken the actual significance of the juridical construction of the abandonment (in the meaning of Art. 180 of the Civil Code) for the whole conglomerate of rights granted to the owner of a particular thing. Within the scope of discussed right, it looks as if the owner's individualistic attitude towards the ownership would be changing: in order to increase the responsibility for objects that belong to us, to make us conscious of the consequences of abandonment, to raise awareness of environmental issues and to protect the safety and interests of not only our own but also third parties. All these considerations reflect certain values that – in the case of abandonment – are aimed to be protected by our legal system.

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[41] More remarks on this topic in the Polish literature, e.g. *Ograniczenia dotyczące treści i zakresu ochrony prawa własności. Funkcja socjalna własności*, (in:) S. Jarosz-Żukowska (ed.), *Konstytucyjna zasada ochrony własności*, Kraków 2003.

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