

ANALYSIS OF IMPLEMENTATION OF THE ACT ON TRANSFORMATION OF RIGHT OF PERPETUAL USUFRUCT INTO PROPERTY OWNERSHIP TITLE

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Abstract

Perpetual usufruct is a right in rem between ownership right and limited property right. It was introduced into the Polish law by the Act of July 14, 1961 on land management in cities and residential areas. This right was established in the period when the principle of a uniform, indivisible national property fund was in force and it was conceived as a kind of a substitute for ownership. At the time, it was not possible to acquire state-owned lands. Establishing the right of perpetual usufruct was the only legal form allowing non-state entities to carry out construction investments on public land. Thus, after the change of the political system, Poland saw the possibility of transforming this right into ownership title. The currently binding Act of July 29, 2005 on transformation of the right of perpetual usufruct into property ownership title has been amended several times. This research paper analyzes the subjective and objective amendments to the content of the Act as well as the jurisdiction of the Constitutional Tribunal. The structure of the land let for perpetual usufruct in Poland as well as quantitative changes since the current Act on transformation of the right of perpetual usufruct into property ownership title became legally binding, were also examined. Then, the Authors focused on two provincial cities - Kielce and Krakow. The scope of transformation of the right of perpetual usufruct into property ownership title was analyzed, with particular attention paid to the number of applications submitted and decisions issued, as well as the relevant proceeds for the City budget.

Keywords: perpetual usufruct, public land, public property management

Introduction

Perpetual usufruct is a right in rem between ownership right and limited property right. It was introduced into the Polish law by the Act of July 14, 1961 on land management in cities and residential areas (USTAWA, 1961). Pursuant to Article 40 of this Act, temporary ownership title, development right, long-term lease, land use as perpetual right, land (property) management and its use, established for entities other than state-owned ones and existing on the day this law was made effective, were transformed into the right of perpetual usufruct (GRABOWSKA-TOŚ, WANCKE, 2016). Its shape was further clarified by the provisions of the Act of April 23, 1964 – the Civil Code (USTAWA, 1964). The land owned by the State Treasury and local self-government units may be subject to perpetual usufruct (KWARTNIK-PRUC, TREMBECKA, 2012, NOGA, BALAWĘJDER, NOSEK, 2018). It consists in letting a land property that is owned by a public entity for use to a natural or legal person for a period of 40 to 99 years by way of a civil-law contract. The perpetual usufructuary is obliged pay the initial fee (15-25% of the value of the property) and then annual fees (0.3-3% of the value of the property), depending on the manner of its use. Under the regulation of Article 233 of the Civil Code, to the extent defined by the laws, principles of social coexistence, and by the contract, the perpetual usufructuary may use the land with the exclusion of other persons, and may, to the same extent, exercise their right. The usufructuary is restricted only by the period of time which this right was established for, and the manner of managing the property, as determined by the content of the contract with the land owner (GDESZ, TREMBECKA, 2013).

Perpetual usufruct was established in the period when the principle of a uniform, indivisible national property fund was in force (Article 128 of the Civil Code) and it was conceived as a kind of a substitute for the ownership title. At the time, it was not possible to acquire state-owned lands. Establishing the right of perpetual usufruct was the only legal form allowing non-state entities to carry out construction investments on public land. Therefore, the possibility of transforming this right into ownership title after the change of the political system was a specific form of remedy offered by the state. Despite this possibility, the institution of perpetual usufruct still raises a lot of controversy and questions, both as to the law itself (SKWARE, 2008, ŻRÓBEK et al., 2006., TRUSZKIEWICZ, 2006,) as well as the possibility of its transformation into the ownership title (HERNIK, KIJANIA, 2001, KWARTNIK-PRUC, TREMBECKA, 2014, GONET, 2012, TREMBECKA, 2015). There are even voices postulating the revocation of this law (BRZOZOWSKI, 2003, PODLEŚ, 2007).

The first act providing the possibility of transforming the right of perpetual usufruct into the ownership title was passed on September 4, 1997 and concerned only natural persons (USTAWA, 1997). The second normative act regulating this issue was the Act of July 26, 2001 on acquisition of property ownership rights by perpetual usufructuaries (USTAWA, 2001). It referred to the areas recovered by Poland after World War II. The currently binding Act of July 29, 2005 on transformation of the right of perpetual usufruct into property ownership title (USTAWA, 2005) is the third normative act on this issue. As it was the case with the previous legislature, the entities that have the right of perpetual usufruct may demand that it be transformed into the ownership title.

With view to the profound evolution of the right of perpetual usufruct over the last twenty years as well as the provisions of the Act of 2005 which were imprecise, often amended, and contrary to the Constitution, this research paper analyzes the subjective and objective amendments in the content of the Act and the jurisdiction of the Constitutional Tribunal. The structure of the land let for perpetual usufruct in Poland as well as quantitative changes since the current Act on transformation of the right of perpetual usufruct into property ownership title became legally binding, were also examined. Then, the Authors focused on two provincial cities - Kielce and Krakow. The scope of transformation of the right of perpetual usufruct into property ownership title was analyzed, with particular attention paid to the number of applications submitted and decisions issued, as well as the relevant revenue for the City budget.

Entities entitled to transformation

The first issue subject to significant modifications since the Act on transformation of the right of perpetual usufruct into property ownership title has been in force, was the catalog of entities that could apply for the transformation of their right of perpetual usufruct into ownership title. The changes are presented in Table 1.

As it results from the above comparison, until 2011, the legislator consistently expanded the group of entities that were entitled to a transformation claim. Initially, this Act made the transformation possible almost exclusively for the natural persons who on October 13, 2005 were perpetual usufructuaries of the properties developed with residential buildings or garages, intended for such type of development, or agricultural properties. The only legal entities who were allowed to do so were housing co-operatives and owners of premises.

On 7 September 2007, the Act amending the Act on transformation of the right of perpetual usufruct into property ownership title and some other acts was passed (USTAWA, 2007). Under its provisions, Article 1 of the Act on transformation of 2005 was supplemented with Article 1a, pursuant to which natural persons who remained perpetual usufructuaries on 13 October 2005 may seek transformation of their rights, if the right of perpetual usufruct was granted:

- in exchange for expropriation or taking over of land property for the benefit of the State Treasury based on other titles before 5 December 1990;
- under Article 7 of the decree of October 26, 1945 on ownership and use of land on the territory of the Capital City of Warsaw (Journal of Laws No. 50, item 279).

For these entities, the right to transformation was granted regardless of the intended use of the property. It was possible to request transformation before 31 December 2012.

Another change is the Act of July 28, 2011 on amendment to the Act on real estate management and some other acts (USTAWA, 2011). This Act changed the subjective, objective and time scope of the transformation. All natural and legal persons who were perpetual usufructuaries of the real property on October 13, 2005, as well as their legal successors, became entitled to such transformation, regardless of the intended purpose of the property. In addition, the time limits for possible transformations were annulled. Therefore, the Act ceased to be a specific form of remedy offered by the state to perpetual

usufructuaries who were granted this right prior to 1990, allowing entities that were granted the right of perpetual usufruct later, under a voluntary civil law agreement, to be entitled to transform it into ownership title as well.

Table 1. Changes concerning entities entitled to transformation of their right of perpetual usufruct into ownership title.

from 13 October 2005 to 31 December 2007	from 1 January 2008 to 8 October 2011	from 9 October 2011 to 16 March 2015	since 17 March 2015
Natural persons (legal successors of natural persons) who, on the day the Act entered into force, were perpetual usufructuaries of the following properties: a) developed for residential purposes, b) built-up with garages, c) intended for residential purposes or construction of garages, d) agricultural properties	Natural persons (legal successors of natural persons) who, on the day the Act entered into force, were perpetual usufructuaries of the following properties: a) developed for residential purposes, b) built-up with garages, c) intended for residential purposes or construction of garages, d) agricultural properties	Natural and legal persons who on 13 October 2005 were perpetual usufructuaries of the properties	Natural persons (legal successors of natural persons) who, on the day the Act entered into force, were perpetual usufructuaries of the following properties: a) developed for residential purposes, b) built-up with garages, c) intended for residential purposes or construction of garages, d) agricultural properties
	Natural persons (legal successors of natural persons) who, on the day the Act entered into force, were perpetual usufructuaries of the properties regardless of its intended use, if the right of perpetual usufruct was granted: - in exchange for expropriation or taking over of land property for the benefit of the State Treasury based on other titles prior to 5 December 1990, - pursuant to Article 7 of the decree of October 26, 1945 on ownership and use of land on the territory of the Capital City of Warsaw (Journal of Laws No. 50, item 279).	Natural persons (legal successors of natural persons) who, on the day the Act entered into force, were perpetual usufructuaries of the properties regardless of its intended use, if the right of perpetual usufruct was granted: - in exchange for expropriation or taking over of land property for the benefit of the State Treasury based on other titles prior to 5 December 1990, - pursuant to Article 7 of the decree of October 26, 1945 on ownership and use of land on the territory of the Capital City of Warsaw (Journal of Laws No. 50, item 279).	Natural persons (legal successors of natural persons) who, on the day the Act entered into force, were perpetual usufructuaries of the properties regardless of its intended use, if the right of perpetual usufruct was granted: - in exchange for expropriation or taking over of land property for the benefit of the State Treasury based on other titles prior to 5 December 1990, - pursuant to Article 7 of the decree of October 26, 1945 on ownership and use of land on the territory of the Capital City of Warsaw (Journal of Laws No. 50, item 279).
Natural and legal persons (legal successors of natural and legal persons) who are owners of premises whose share in jointly owned property includes right to perpetual usufruct, regardless of the date of the acquired right.	Natural and legal persons (legal successors of natural and legal persons) who are owners of premises whose share in jointly owned property includes right to perpetual usufruct, regardless of the date of the acquired right.	Natural and legal persons (legal successors of natural and legal persons) who are owners of premises whose share in jointly owned property includes right to perpetual usufruct, regardless of the date of the acquired right.	Natural and legal persons (legal successors of natural and legal persons) who are owners of premises whose share in jointly owned property includes right to perpetual usufruct, regardless of the date of the acquired right.
Housing co-operatives who own residential buildings or garages.	Housing co-operatives who own residential buildings or garages.	Housing co-operatives who own residential buildings or garages.	Housing co-operatives who own residential buildings or garages.

Source: Own study.

The amendment of 2011, regarding Article 1 clauses 1 and 3 of the Act on transformation of the right of perpetual usufruct into property ownership title, was appealed to the Constitutional Tribunal by three municipalities. In the judgment of March 10, 2015 (Reference No. Akt K 29/13 29/3/A/2015, Journal of Laws of 2015 item 373), the Tribunal accepted the argument of the local self-government units stating that the questioned provision created unjustified property privileges for selected groups of entities. These privileges are exercised at the expense of public property: state-owned property if the property is owned by the State Treasury, or local government units if they are the owners of the real properties covered by this provision. Therefore, there was a violation of the principle of trust in the state, its laws and principles of social justice (Art. 2 of CONSTITUTION 1997). In the Tribunal's opinion, the amendment of 2011 which, surprisingly for municipalities, resulted in a significant extension of the group

of entities entitled to demand the transformation of the right of perpetual usufruct into ownership title, is a model example of a breach of trust of a local government unit in the state (Art. 165 section 1 of CONSTITUTION 1997). Thus, as of 17 March 2015, the provisions of Article 1 clauses 1 and 3 were revoked as contrary to the Constitution.

Payment for transformation – discounted fees

Transformation of the right of perpetual usufruct into property ownership title is carried out against payment. The fee is determined in the transformation decision, and it is the difference between the value of the property ownership title and the value of the right of perpetual usufruct. These values are determined by a certified property appraiser in the appraisal report. The value of land property as the object of perpetual usufruct right for transformation purposes is defined as the product of the value of undeveloped land as the object of ownership title and the adjustment coefficient determined according to Formula contained in §29 section 3 of the Regulation of the Council of Ministers of September 21, 2004 on property valuation and appraisal report preparation (REGULATION, 2004).

The value of the property and the value of the right of perpetual usufruct are determined as of the day the decision is issued. In exceptional cases, if the annual fee for perpetual usufruct was updated within the last two years before submitting the application for transformation of the right of perpetual usufruct into the property ownership title, the value of the property right determined for the purposes of this update is adopted for calculating the fee (Article 4 section 13, USTAWA, 1997). The value of the right of perpetual usufruct is determined as of the effective date of the decision.

The authority competent to issue the decision may grant a fee discount if the property is owned by:

- the State Treasury - based on the district governor's order;
- local government units – based on the resolution of a competent council or regional council.

The resolution or ordinance should specify the conditions for granting discounts and the percentage rates. The subject of such a document is not to agree to the granting of a discount, but to define the principles for their granting. The act shaping the principles for granting discounts may be of a general nature, referring to all perpetual usufructuaries, and there are no obstacles to being addressed to individual entities, either, e.g. to specific housing co-operatives.

As it was in the case of the entities entitled to transformation, also with reference to granting discounts on the conversion fee, the legislator significantly extended this right within the period of this Act being effective (USTAWA, 2005). The list of amendments is presented in Table 2.

The Amending Act of 2007 (USTAWA, 2007) introduced the possibility of granting a very high, 90% discount on the fee (Art. 4 clause 7) in the Act on transformation of the right of perpetual usufruct into property ownership title. This particular case concerned those natural persons whose monthly income per household member did not exceed the average monthly salary in the national economy for the last six months of the year preceding the year in which the transformation of the right of perpetual usufruct into the property ownership title was demanded. In addition, the property was to be developed for housing purposes or intended for this type of development. This and the subsequent provisions (Art. 4, clauses 8 and 9) were appealed to the Constitutional Tribunal by three municipalities. In the judgment of January 26, 2010 (Ref. No. K 9/08, Journal of Laws No. 21 item 109), the Constitutional Tribunal stated that Article 4 clauses 8 and 9 of the Act (USTAWA, 2005), to the extent that they stipulate that granting a discount is the responsibility of the local self-government body competent to issue a transformation decision, are contrary to Article 165 section 1 and Article 167 sections 1 and 2 of the Constitution. In the opinion of the Constitutional Tribunal, this mechanism constitutes an unlawful interference with the ownership right, which is vested in local self-government units directly subject to the provisions of the Constitution (Art. 165). It would deprive these entities of any control over real estate let for perpetual usufruct, forcing them to automatically accept any application for granting a discount, regardless of the assessment of the purpose of such a transformation. The Constitutional Tribunal also decided that granting an obligatory discount for the transformation of the right of perpetual usufruct into ownership title shall result in a decrease in the revenue of local government units, and this decrease is neither accompanied by the reduction of self-government tasks, nor any form of compensation, nor gaining any additional sources of revenue. Article 167 sections 1 and 2 of the Constitution clearly indicates that public self-government units are guaranteed a share in public revenues, respectively to the tasks they perform, and these revenues may also include own income (including income from municipal property). Pursuant to the above-mentioned judgment, as of August 9, 2011, the provisions of Article 4 clauses 8 and 9 lost their legal force with regard to the land owned by local government units. Two months later, the legislator revoked Article 4 clause 8 with reference to the real properties owned by the State Treasury.

The second of the disputed provisions of Article 4 clause 9, referring to the possibility of granting

a 50% discount on the conversion fee to natural persons who obtained the right of perpetual usufruct prior to December 5, 1990 and to their legal successors, remained. It was clearly indicated that it referred only to the properties owned by the State Treasury.

Table 2. Discounts provided by legislator under Act on transformation of the right of perpetual usufruct into property ownership title.

from 13 October 2005 to 31 December 2007	from 1 January 2008 to 8 August 2011	from 9 August 2011 to 9 October 2011	since 9 October 2011
If transformation of the right of perpetual usufruct into ownership title concerns agricultural property, the authority competent to issue a decision may grant a discount on the conversion fee.			
	The authority competent to issue a decision may grant a 90% discount on the conversion fee to a natural person whose monthly income per household member does not exceed the average monthly salary in the national economy for the last six months of the year preceding the year in which the transformation of the right of perpetual usufruct into the property ownership title was requested, provided that the real property is developed for housing purposes or intended for this type of development.	For <u>the land owned by the State Treasury</u> , the authority competent to issue a decision may grant a 90% discount on the conversion fee to a natural person whose monthly income per household member does not exceed the average monthly salary in the national economy for the last six months of the year preceding the year in which the transformation of the right of perpetual usufruct into the property ownership title was requested, provided that the real property is developed for housing purposes or intended for this type of development.	
	Natural persons, who obtained the right of perpetual usufruct prior to December 5, 1990, as well as their legal successors, are entitled to a 50% discount on the conversion fee granted upon their request by the authority competent to issue a decision.	Natural persons, who obtained the right of perpetual usufruct prior to December 5, 1990, as well as their legal successors, are entitled to a 50% discount on the conversion fee granted upon their request by the authority competent to issue a decision.	For <u>the land owned by the State Treasury</u> , natural persons, who obtained the right of perpetual usufruct prior to December 5, 1990, as well as their legal successors, are entitled to a 50% discount on the conversion fee granted upon their request by the authority competent to issue a decision.
	For the real property or its part entered into the register of monuments, the fee is reduced by 50%.	For the real property or its part entered into the register of monuments, the fee is reduced by 50%.	For the real property or its part entered into the register of monuments, the fee is reduced by 50%.
	The authority competent to issue a decision may grant a higher discount on the conversion fee <u>upon the consent</u> of a relevant province governor, competent council or regional council, respectively	The authority competent to issue a decision may grant a higher discount on the conversion fee <u>upon the order</u> of a relevant province governor or <u>the resolution</u> of a competent council or regional council.	The authority competent to issue a decision may grant a higher discount on the conversion fee <u>upon the order</u> of a relevant province governor or <u>the resolution</u> of a competent council or regional council.

Source: Own study.

No amendments have been introduced to the obligatory 50% discount of 2007, granted to the real properties which are entered, as a whole or in part, into the register of monuments.

The right of perpetual usufruct is transformed into the ownership title free of charge (Art. 5) for the benefit of:

1. natural persons or their legal successors who, on 13 October 2005, were perpetual usufructuaries of the properties if the right of perpetual usufruct was granted:
 - a. in exchange for expropriation or taking over of land property for the benefit of the State Treasury

- based on other titles prior to 5 December 1990,
- b. pursuant to Article 7 of the decree of October 26, 1945 on ownership and use of land on the territory of the Capital City of Warsaw (Journal of Laws No. 50, item 279);
2. housing co-operatives or their legal successors who are perpetual usufructuaries or perpetual co-usufructuaries of the real properties, and who were granted the right of perpetual usufruct in the manner specified in points a and b above.

Analysis of the scope and consequences of transformation of the right of perpetual usufruct into property ownership title

As it was demonstrated above, during the period of the Act on transformation of the right of perpetual usufruct into property ownership title being effective, the legislator repeatedly changed the subjective and objective scope of the Act, as well as the rules for determining conversion fees. Therefore, the Authors of this research paper found it reasonable to examine these amendments and their consequences. Their objective was to verify whether the implementation of the legal regulation allowing the transformation of the right of perpetual usufruct into ownership title affected the amount of land which remained in perpetual usufruct, and also whether the above amendments to the Act influenced the number of initiated proceedings in any way. The subject of the analysis was the territory of Poland with respect to the surface area of the land which had been in perpetual usufruct since 2003 and two large cities - Kielce and Krakow.

Quantitative research carried out on the territory of Poland

The performed analysis covered the data since 2003, i.e. before the Act on transformation of the right of perpetual usufruct into property ownership title (USTAWA, 2005) became effective. The main purpose was to verify whether its entry into force had significantly affected the reduction in the amount of land let for perpetual usufruct and whether the objectives of the Act were implemented.

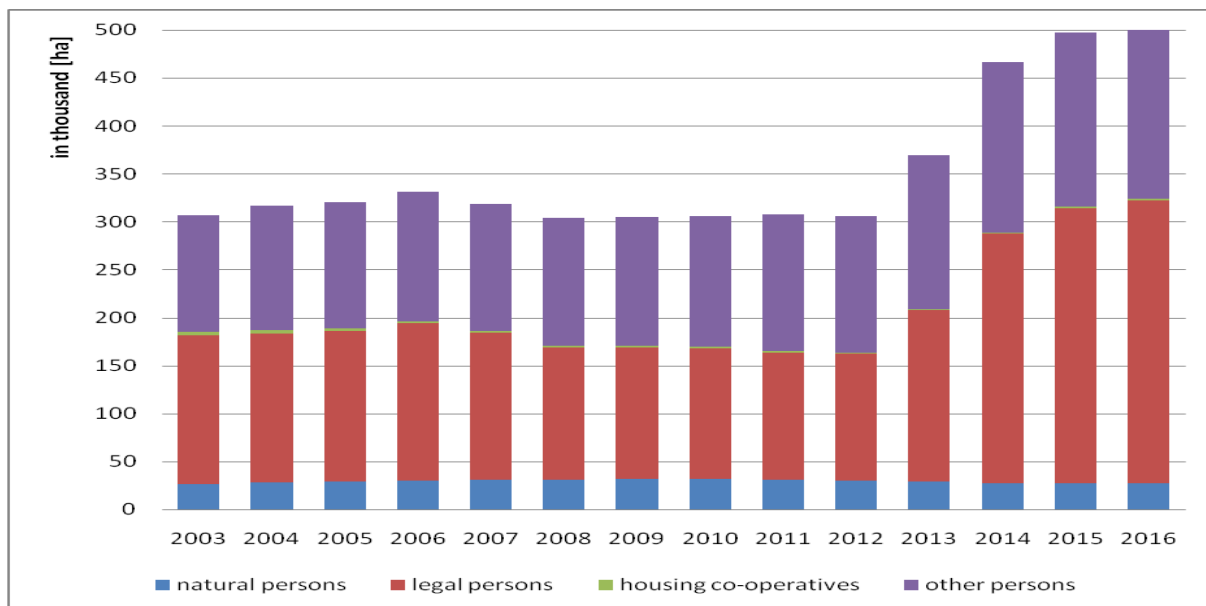


Chart 1. Surface area of land owned by State Treasury let for perpetual usufruct to various entities.
Source: Own study.

As is appears from the above bar chart, the perpetual usufructuaries of the land owned by the State Treasury are predominantly legal persons and other persons. As far as the land owned by the State Treasury is concerned, there are no significant trends correlated with the Act on transformation of the right of perpetual usufruct into property ownership title becoming effective, or amendments to this Act. It can be noticed, however, that the surface area of the land let for perpetual usufruct to natural persons and housing co-operatives is decreasing, which is in line with the objective of the analyzed Act.

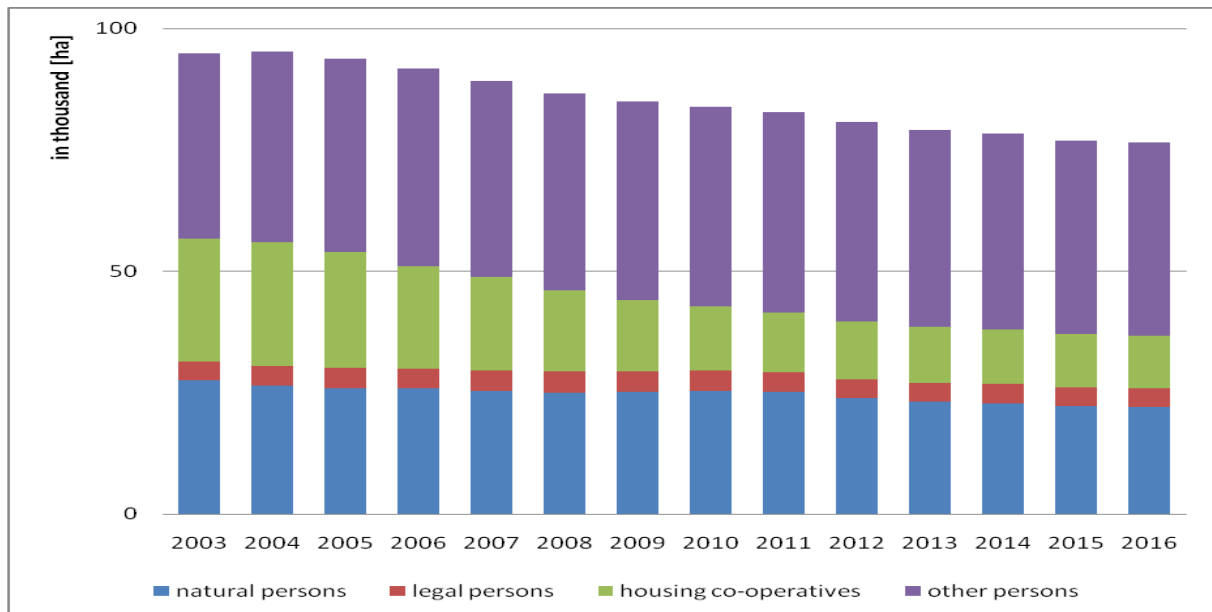


Chart 2. Surface area of land owned by municipalities let for perpetual usufruct to various entities.
Source: Own study.

The structure of perpetual usufructuaries of municipal land is completely different. Municipal legal entities are only a fraction here. A steadily decreasing amount of land in the hands of perpetual usufructuaries - natural persons, and a very significant decline in the group of housing co-operatives, are clearly noticeable.

In view of the above, it was considered reasonable to analyze in detail the two groups of the entities entitled to transformation - natural persons and housing co-operatives.

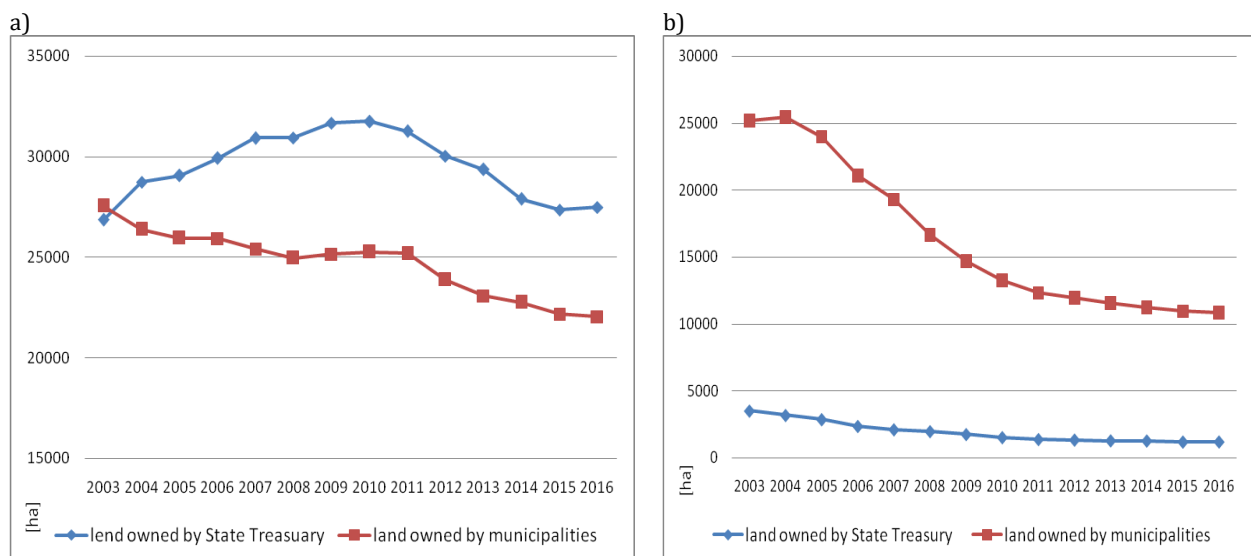


Chart 3. Surface area of land let for perpetual usufruct to natural persons and housing co-operatives in years 2003-2016.
Source: Own study.

In 2003, perpetual usufructuaries - natural persons – were in possession of a similar amount of the land owned by the State Treasury and by the municipalities. As it is illustrated in Chart 3a, the surface area of the land owned by the municipalities and possessed by natural persons is slowly, but steadily, decreasing. As far as the land owned by the State Treasury is concerned, the trend until 2010 was different – it was increasing, although more discounts could be granted for the land owned by the State Treasury. Since 2011, regardless of the type of possessor, the tendency is very similar - the surface area of the land in the hands of perpetual usufructuaries - natural persons – has been decreasing, and with regard to the

public land in the hands of housing co-operatives, the trend is decreasing as well (Chart 3b). The discrepancy mainly results from the difference in surface areas of the land let to these entities by the municipalities and the State Treasury. It can be stated that as far as housing co-operatives are concerned, the purpose of the Act on transformation of the right of perpetual usufruct into ownership title has been satisfied to the fullest extent.

Research studies in Kielce area

Kielce was the first city to be analyzed in detail. As illustrated in Figure 1, the majority of the land owned by the State Treasury and let for perpetual usufruct is located in the central and north-western part of the city. The land owned by the municipality is definitely more dispersed – mostly in the central and eastern part of the agglomeration.

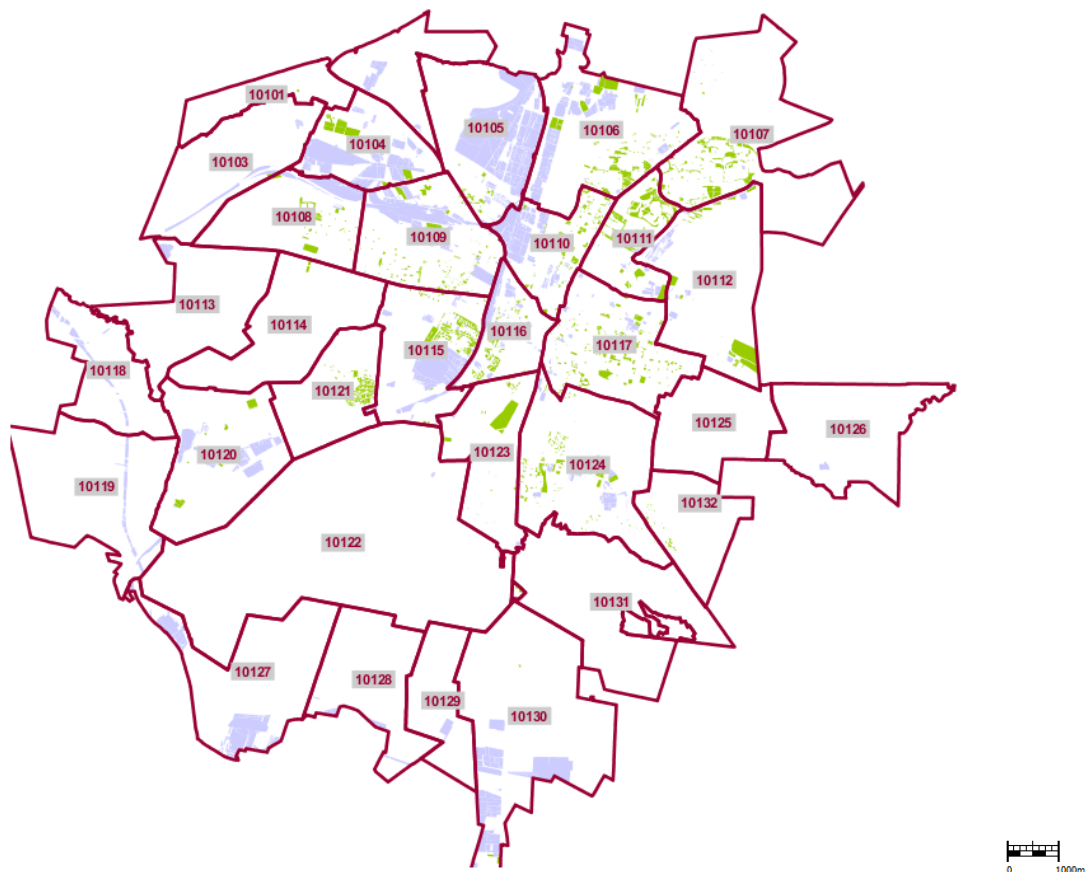


Fig. 1. Spatial distribution of land in perpetual usufruct. The land owned by Municipality of Kielce is marked in green; the land owned by State Treasury is marked in gray.
Source: <http://www.gis.kielce.eu>.

The next step involved the examination of the structure of the land. According to the analyzed data, almost half of all the land in Kielce is held by natural persons, which is currently accounting for 1,350 ha. As many as 244 ha of the land owned by the municipality, and 700 ha owned by the State Treasury land remain in perpetual usufruct. The conducted analysis demonstrated that the structure of perpetual usufructuaries, as it was the case for the whole Poland, varied depending on the owner of the land.

2004 was the year in which Kielce had the most land let for perpetual usufruct: it was 789 ha owned by the State Treasury and 561 ha owned by the municipality, respectively.

Since then, the surface area of the land owned by the State Treasury let for perpetual usufruct was systematically decreasing, until 2014, when the surface area of the land let for perpetual usufruct to other persons increased (Chart 4). As far as the land owned by the State Treasury in Kielce is concerned, the land remaining in perpetual usufruct of other persons is of fundamental importance. Currently, it constitutes 79.5% of all the land owned by the State Treasury and let for perpetual usufruct. They are followed by natural persons - 13.7%, then state legal persons - 6.7%. Since 2014, housing co-operatives

have not been perpetual usufructuaries of the state-owned land in Kielce. Throughout the entire analyzed period, the structure of perpetual usufructuaries of the state-owned land in Kielce was similar.



Chart 4. Surface area of land within the city of Kielce, owned by State Treasury and let for perpetual usufruct to various entities.
Source: Own study.

Since 2003, a steady decrease in the surface area of the land owned by the municipality has been noted (Chart 5). The most significant is the land let for perpetual usufruct to housing co-operatives. In 2004, it was the area of 397 ha which accounted for 70.8% of all the land let for perpetual usufruct by the municipality. This area was decreasing dynamically from 2005 to 2010, and was reduced to only 136 ha. The further decline was definitely slower, until it reached the level of 111 ha in 2016, which accounted for 45.5% of the total area of the land let for perpetual usufruct by the Municipality of Kielce.

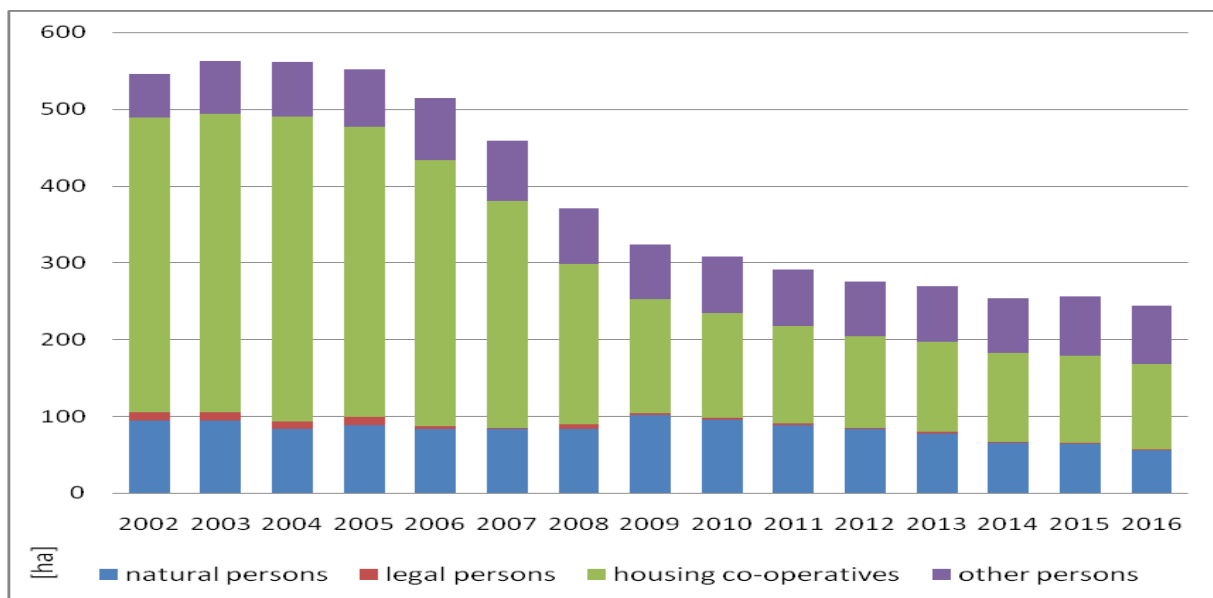


Chart 5. Surface area of land owned by Municipality of Kielce let for perpetual usufruct to various entities.
Source: Own study.

The share of other entities has been maintained at a similar level since 2005. In the case of natural persons, however, the maximum surface area of the land let for perpetual usufruct (102 ha) was observed in 2009. It decreased to 56 ha in 2016 (Fig. 5), which accounted for 23% of all the municipal land let for perpetual usufruct.

The next step was to examine the transformation proceedings themselves. The analysis of the

number of submitted applications and issued decisions covered the last ten years and concerned the properties owned by the Municipality of Kielce (Chart 6).

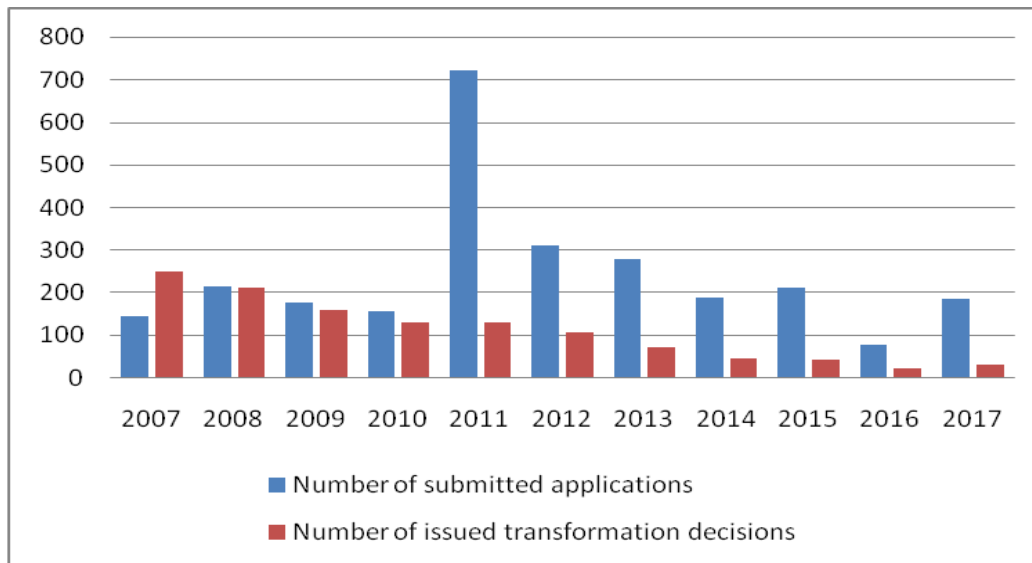


Chart 6. Number of decisions on transformation of land owned by Municipality of Kielce in years 2007-2017.
Source: Own study.

In the analyzed period, the majority of the decisions on the transformation of the right of perpetual usufruct into ownership title were issued in 2007. Then, the number of the issued decisions was gradually decreasing. 2011 was the year in which the record number of applications were submitted - as many as 720. This did not directly affect the number of decisions issued, though (132 decisions), which remained at a similar level as in 2010. In subsequent years, until 2015, a lot of applications for transformation were submitted - two or three times more than the number of the decisions issued. However, the number of the decisions issued has been decreasing each year.

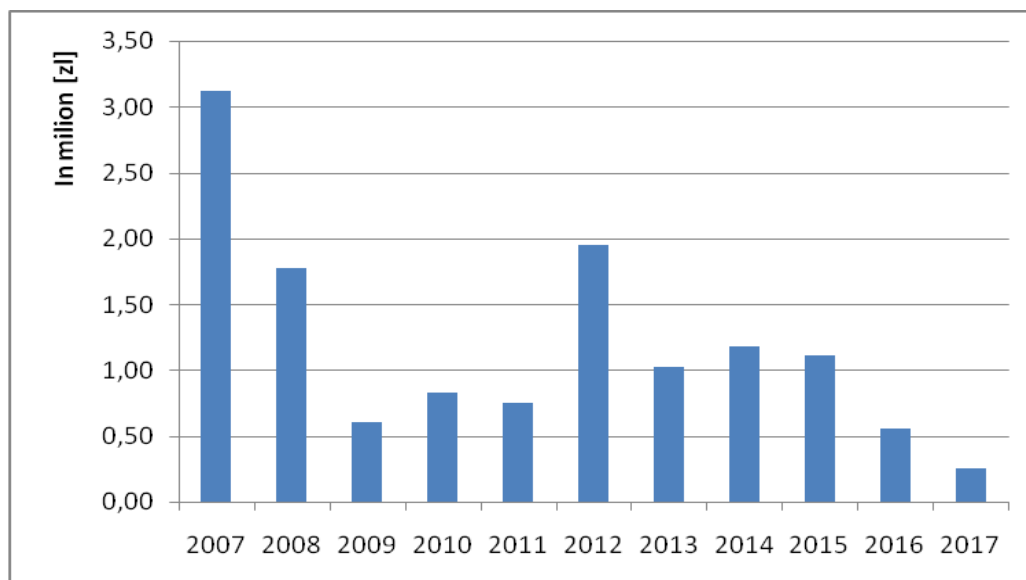


Chart 7. Conversion fees for land owned by Municipality of Kielce in years 2007-2017.
Source: Own study.

The inflow to the municipal budget from conversion fees for properties owned by the municipality is an interesting issue (Chart 7). As it appears from the chart, the greatest revenues were obtained from the transformation of the right of perpetual usufruct into ownership title in 2007 - amounting to PLN 3,117,188.80. Then, these revenues are decreasing quite rapidly, but in 2012 they rise

again, to the level of PLN 1,947,105.30. Since 2014, however, the income is decreasing to reach PLN 255,728.67 in 2017.

Research studies in Krakow area

The second city to be analyzed in detail was Krakow (Fig. 2). It is noticeable that a significant part of the land owned by the State Treasury let for perpetual usufruct is located under the ArcelorMittal Poland plant and in its vicinity. Other areas are located in the central and northern parts of the city. The land owned by the municipality is definitely more dispersed – mostly in the northern and southern parts of the agglomeration.

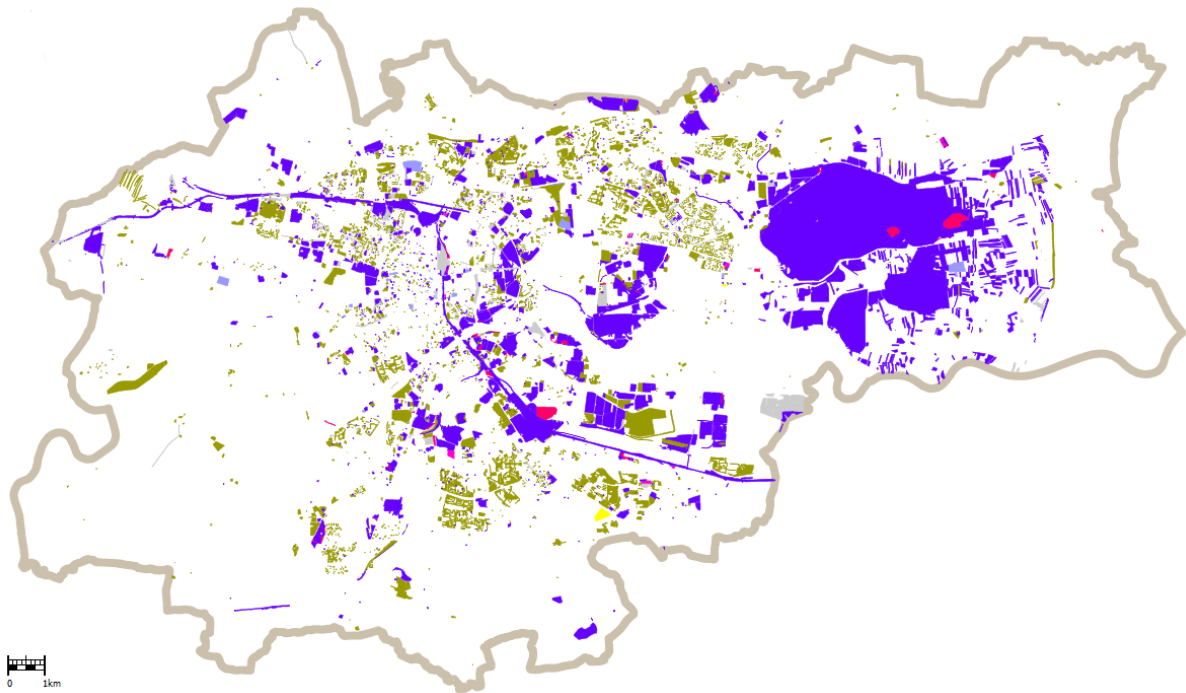


Fig. 2. Spatial distribution of land in perpetual usufruct in Krakow. The land owned by Municipality of Krakow is marked in green; the land owned by State Treasury is marked in pink and purple.

Source: <http://msip.um.krakow.pl/obserwatorium>.

The next step involved the examination of the structure of the land. According to the analyzed data, almost half of all the land in Krakow is held by natural persons, which is currently accounting to 14,652 ha. 2004 was the year in which Krakow had the most land let for perpetual usufruct. This applied both to the land owned by the municipality and by the State Treasury. It was 3,639 ha owned by the State Treasury and 1,463 ha owned by the municipality, respectively. Currently, 3,143 ha of the land in perpetual usufruct is owned by the State Treasury and 1,042 ha is owned by the municipality. The conducted analysis demonstrated that the structure of perpetual usufructuaries, as it was the case for the whole Poland, varied depending on the owner of the land.

Before 2010, the surface area of the land owned by the State Treasury and let for perpetual usufruct was fluctuating. Since 2011, however, a slow downward trend was adopted, and it continued until 2016 (Chart 8).

As far as the land owned by the State Treasury in Krakow is concerned, the largest area before 2014 was occupied by the land in perpetual usufruct of state legal persons (Chart 8). This trend changed in 2016. Currently, the surface areas in perpetual usufruct of state legal persons and other persons are virtually equal and amount to 1,418 ha and 1,484 ha, respectively, which accounts for 45.1% and 47.2% of the land owned by the State Treasury let for perpetual usufruct in Krakow. They are followed by natural persons - 7%, then housing co-operatives 0.7%.

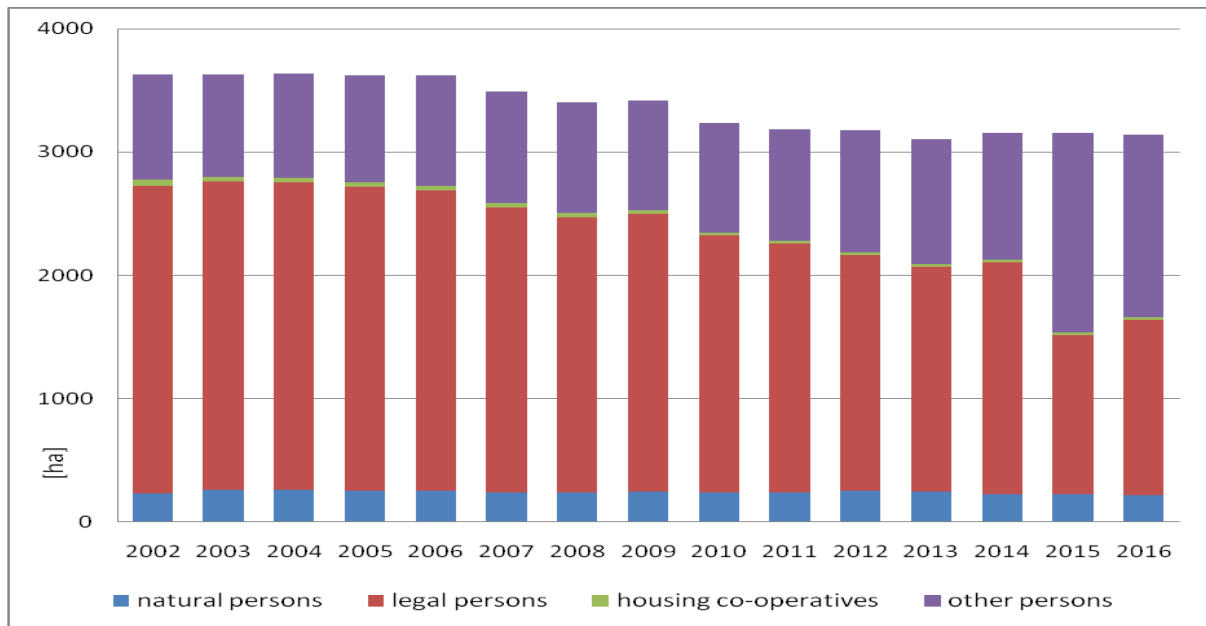


Chart 8. Surface area of land within the city of Krakow, owned by State Treasury and let for perpetual usufruct to various entities.
Source: Own study.

The surface area of the land owned by the municipality and covered by this law has steadily declined since 2003 (Fig. 9). As it was the case in Kielce, the municipal land let for perpetual usufruct to housing co-operatives is of the greatest importance (Chart 9). In 2004, it was the area of 856 ha, which accounted for 58.5% of all the land let for perpetual usufruct by the municipality. This area was gradually decreasing from 2005 to reach the level of 397 ha in 2016, which accounted for 38.1% of the total surface area of the land let for perpetual usufruct by the Municipality of Krakow.

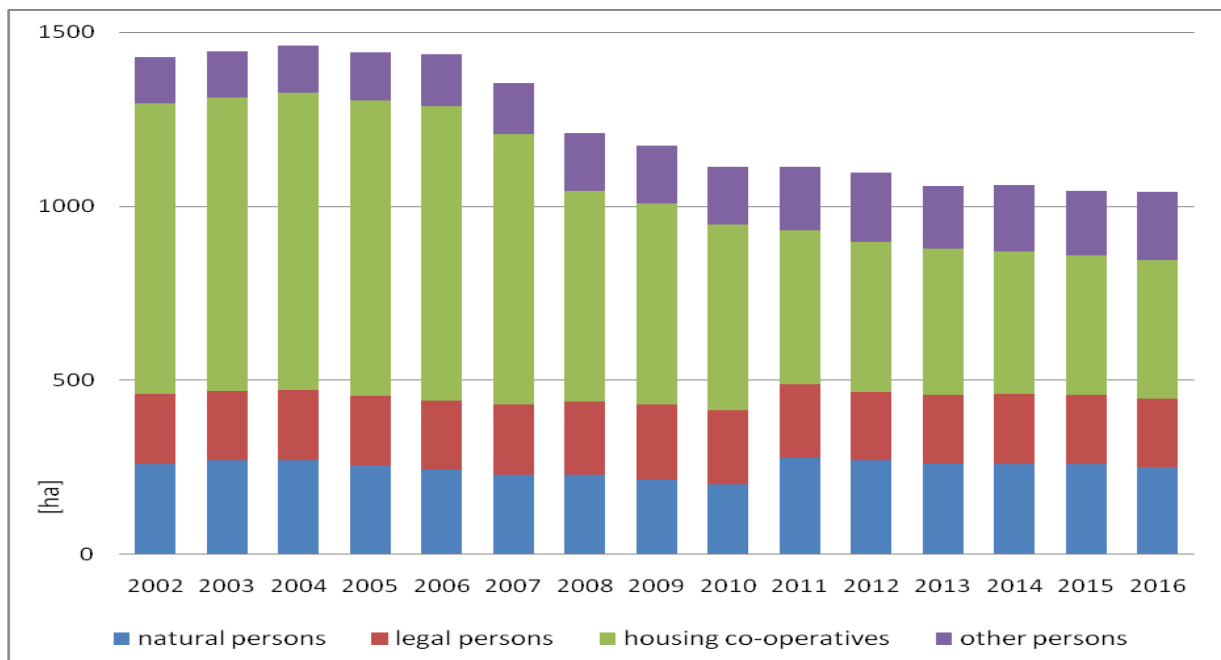


Chart 9. Surface area of land owned by Municipality of Krakow let for perpetual usufruct to various entities.
Source: Own study.

The share of other entities has been maintained at a similar level since 2005. Slightly larger fluctuations could be observed only in the case of natural persons. The minimal surface area of the land owned by the municipality and let for perpetual usufruct to natural persons was recorded in 2010 - it was 200 ha. It increased stepwise to the level of 279 ha in the next year, then it was gradually decreasing and

reached 250 ha in 2016.

The next step involved the examination of the transformation process itself. The analysis of the number of applications submitted and decisions issued covered the last ten years and concerned the properties owned by the Municipality of Krakow (Chart 10). For the years 2007 and 2008, it was not possible to capture any data on the number of applications which were submitted.

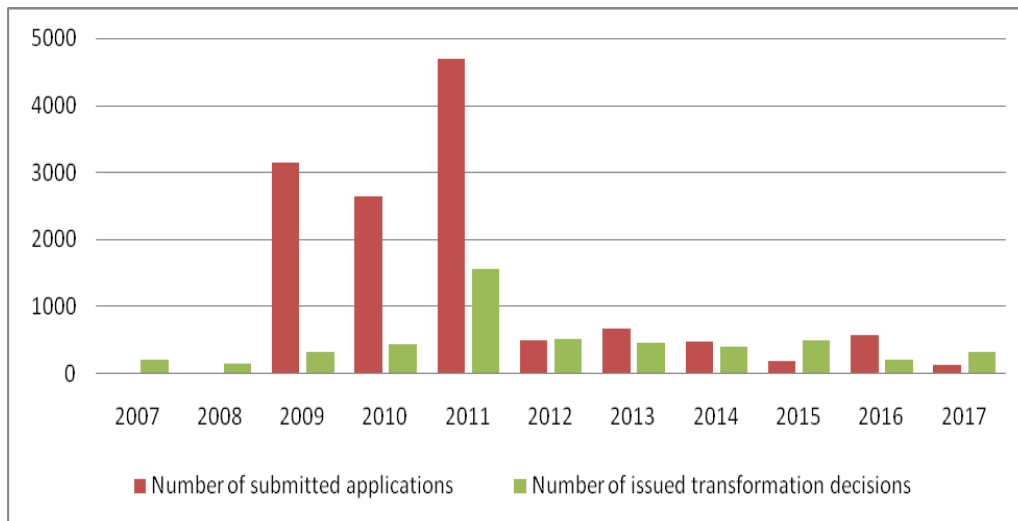


Chart 10. Number of decisions on transformation of land owned by Municipality of Krakow in years 2007-2017.
Source: Own study.

In the analyzed period, the majority of the decisions on the transformation of the right of perpetual usufruct into ownership title were issued in 2011 – 1,567 decisions, which was a natural response to a record number of applications – 4,690. Then, the number of the issued decisions was gradually decreasing. 2016 was the record year when only 201 decisions were issued, compared to 568 submitted applications.

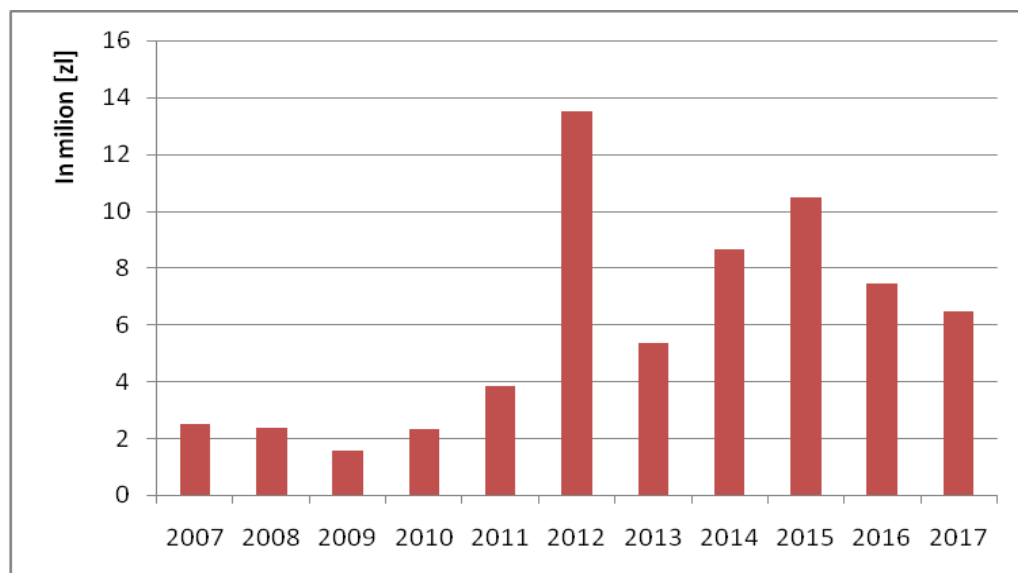


Chart 11. Conversion fees for land owned by Municipality of Krakow in years 2007-2017.
Source: Own study.

The inflow to the municipal budget from conversion fees for properties owned by the municipality is the next issue to be discussed here. As it is illustrated in the chart, the income from conversion fees was steadily increasing since 2009. In the record year 2012, it amounted to PLN 13,511,138. In 2013, it fell to the level of PLN 5,354,495 only to increase to PLN 10,488,249 in 2015. Since then, the income has been slowly decreasing.

Conclusions

The Act on transformation of the right of perpetual usufruct into property ownership title is aimed primarily at natural persons. However, it does not follow from the performed analyzes that they make use of this claim they are entitled to. A practical impediment is that it is necessary for all the shareholders of a given real property to submit the application. After the Act became effective, the surface area of the land let for perpetual usufruct to natural persons has not decreased significantly. Even the possibility of being granted a 90% discount on the conversion fee introduced in 2008 did not increase the number of applications submitted in Kielce. What is more, a certain decrease could be noted. In Krakow, it was not possible to capture relevant data on the number of applications submitted in years 2007-2008, therefore, it is not known whether there was an increase or not, but there is a significant difference in the number of applications submitted before and after 2011. In both cities in 2011, a record number of applications for the transformation was received. One year earlier, in the judgment of January 26, 2010, the Constitutional Tribunal decided that the provision introducing a 90% discount on the conversion fee was contrary to the Constitution and it lost its legal force as of August 9, 2011. However, all the applications submitted before that date could have included a request to apply this discount, which was equivalent to granting it. The Amendment to the Act on transformation of the right of perpetual usufruct into property ownership title, extending the group of entities entitled to transformation, did not affect the number of submitted applications, either.

The entities which clearly benefited from the Act on transformation of the right of perpetual usufruct into property ownership title were housing co-operatives. In Poland, the total surface area of the land in perpetual usufruct of housing co-operatives decreased from 25,426 ha in 2005 to as little as 10,837 ha in 2016. In both cities, this trend is consistent with the data captured from the whole Poland. In 2004 in Kielce, it was the area of 397 ha, which accounted for 70.8% of all the land let for perpetual usufruct by the municipality, and in 2016 it reached the level of only 111 ha, which constituted 45.5% of the land owned by the Municipality of Kielce. In Krakow, on the other hand, the land in perpetual usufruct of housing co-operatives decreased from 856 ha, which accounted for 58.5% of the total land let for perpetual usufruct by the Municipality of Krakow, to 371 ha in 2016, which accounted for only 38.1% of the total surface area of this land. However, in Krakow, housing co-operatives acquire property rights subject to civil law transactions using a high discount (98%) granted by the Krakow City Council.

The revenue inflows into the municipal budget from conversion fees are different in both cities and are not associated with the number of applications received. High revenues in 2012 are a consequence of a large number of applications that were received a year earlier. The consequence of the transformation process, however, is the problem of reduced future revenues from annual fees for perpetual usufruct.

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