Małgorzata Szalewska*

Personal scope of the obligation to maintaining cleanliness and order on the property

http://dx.doi.org/10.12775/PYEL.2019.001

Abstract:
Pursuant to the Act on Maintaining Cleanliness and Order on Real Estate, the statutory obligations related to maintaining cleanliness and order on real estate – including the payment obligations resulting from the legal model of municipal waste management – have been assigned to the real estate owner. At the same time, for the purposes of this particular legal regulation, the legislator has introduced a separate definition of the real estate owner, thus including not only the owner from the civil perspective, but also other entities managing the real estate, including co-owners, perpetual usufructuaries and organizational units and persons managing or using real estate. The adoption in the Act on Maintaining Cleanliness of a broad, scope definition of the owner of real estate causes, in specific factual situations, serious doubts as to the actual scope of personal obligations under the Act on Maintaining Cleanliness. The subject of this article is to present the definition of the property

* PhD, Nicolaus Copernicus University in Toruń.

owner adopted in the Act on Maintaining Cleanliness as a determinant of the scope of obligations arising from this Act.

Keywords: property owner, real estate, maintenance of cleanliness and order;

1. Introduction

The basic legal act governing the maintenance of cleanliness and order on real estate in Poland is the Act of 13 September 1996 on Maintaining Cleanliness and Order in Communes. The Act defines, *inter alia*, the tasks of the municipality and the obligations of property owners concerning maintenance of cleanliness and tidiness.[1] The duties of property owners have been defined primarily in Article 5 of the Act and include equipping the real estate with bags or containers for municipal waste collection, maintaining these containers in a proper sanitary, orderly and technical condition and maintaining the waste collection places in a proper sanitary and orderly condition, connecting the real estate to the existing sewage system or equipping the real estate with a septic tank for liquid waste or household sewage treatment plant selective collection of municipal waste produced on the property, collection of liquid waste in non-waste containers, disposal of municipal waste and liquid waste collected on the property in a manner compliant with the regulations, removal of mud, snow, ice and other contaminants from pavements located along the property. Supervision over the implementation of these obligations is exercised by the mayor of the municipality, who in the case of non-compliance has the power to issue a decision ordering the execution of the obligation. With the reform of the municipal waste management system introduced in 2012[2] the owners of inhabited properties were also obliged to pay a fee for municipal waste management to the municipality (Article 6h of the municipal waste management system) and to submit a declaration on the amount of the fee for municipal waste management to the head of the commune (mayor,

[1] Journal of Laws 2019, item 2010, hereinafter referred to as the Act on maintenance of cleanliness or by the abbreviation AoMC

[2] See Act of 1 July 2011 amending the Act on Maintaining Cleanliness and Order in Municipalities and certain other acts, Journal of Laws of 2011, No. 152, item 857.

president of the city) (Article 6m, item 1 of the municipal waste management system).

An important element for the proper implementation of the legal norms contained in the Act on Maintaining Cleanliness and Order in Communes is to ascertain the scope of obligations determined by the concept of a real estate owner. This results from the fact that under the analyzed legal regulation the legislator introduced content scope of this notion differing from the civil approach.

2. Statutory definition of property owner

Pursuant to Article 2, item 1, point 4 of AoMC, whenever the Act refers to owners of real estate, it also refers to co-owners, perpetual usufructuaries, organisational units and persons holding real estate under management or usufruct, as well as other entities managing the real estate. The aforementioned definition has a scope character – it lists particular categories of entities which may be deemed to be owners of real estate in the statutory meaning. It should be emphasised at this point that the definition of „owners of real estate" and „real estate" in the AoMC is different from that used in the civil law and deviates from the strict meaning of these terms in this branch of law[3]. The definition of the owner of real estate, contained in Article 2, item 1, point 4 of AoMC, has been based on various relations of a given entity with respect to real estate – the legislator has used here both the criterion of the rights to the property – ownership, perpetual usufruct or usufruct, as well as the actual state – possession of the real estate under management or ownership of the real estate. While such notions as co-owner, perpetual usufructuary or usufructuary are clearly provided in the Civil Code[4] and are characteristic for a broader category of rights *in rem* to real estate, the construction of possession of real estate under administration or ownership of real estate creates a relatively broad scope of interpretation.

Under Polish law, the notion of real estate management may be referred to at least several separate legal institutions – permanent management,

[3] Cf. judgment of the WSA in Olsztyn of 11 September 2019, I SA/Ol 507/19, CBOSA.

[4] Act of 23 April 1964 – Civil Code, Journal of Laws of 2020, item 1740, hereinafter referred to as the Civil Code or abbreviated as k.c.

as referred to in Articles 43-50 of the u.g.n.[5] The notion of real estate management under Polish law may be referred to at least several separate legal institutions – permanent management referred to in Articles 43-50 of the u.g.n., real estate management as one of the types of professional real estate management activities (Articles 184a-190a of the u.g.n.), or even management of real estate seized in the course of enforcement proceedings or taken over by a receiver in the course of bankruptcy proceedings. Pursuant to Articles 43, item 1 of the u.g.n. permanent management is a legal form of holding real estate by an organisational unit, i.e. a state or a local government organisational unit without legal personality. The literature on the subject indicates that in the light of the Act on real estate management, permanent management is neither a property right nor a form of civil law contract authorizing to administer real estate, but is rather a public law form of administering real estate by a public sector organizational unit.[6] It should be doubtless that the organizational unit for the benefit of which the permanent management of the real estate is established is an owner within the meaning of Article 2, item 1, point 4 of AoMC Management of real estate seized in enforcement proceedings or taken over by a receiver in the course of enforcement proceedings should be assessed in a similar manner. The entity managing the real estate, in such cases, takes possession of it, depriving the owner of the power over the thing. On the other hand, a serious controversy is aroused by the thesis that the notion of the owner of real estate within the meaning of Article 2, item 1, point 4 of AoMC also includes a real estate manager understood as an entrepreneur running the business activity of real estate management (Article 184a of the u.g.n.).[7] In this case real estate management constitutes the subject matter of a contractual relationship. The scope of the management of the real estate is set forth in the real estate management agreement concluded with the real estate owner, residential community or other person or organisational unit to which the real estate is entitled, with a legal effect directly for such person or organisational unit. This means that the real estate manager performs legal and factual actions

[5] Act of 21 August 1997 on real estate management, Journal of Laws of 2020, item 65, abbreviated as u.g.n.

[6] Cf. E. Bończak-Kucharczyk, in: Ustawa o gospodarce nieruchomościami. Komentarz, ed. E. Bończak-Kucharczyk, Warszawa 2018, el. ver. Lex.

[7] Cf. B. Rakoczy, Utrzymanie czystości i porządku w gminie w prawie polskim, Warszawa 2012, el. ver. Lex.

on behalf and for the benefit of the real estate owner.[8] In connection with the obligatory nature of the legal relationship of real estate management, as defined by the provisions of the Real Estate Management Act, one should have serious doubts as to the possibility of including real estate managers within the meaning of the term „real estate owner" in the context of the obligations arising from the Act on Maintaining Cleanliness. In other words, it should be assumed that the subject of these obligations is the owner of the real estate *sensu stricte,* for and on whose behalf the real estate manager acts. A party to the substantive administrative-legal relationship, the content of which includes obligations concerning maintenance of cleanliness is the owner of the real estate, who through an obligation relationship may entrust their performance to another entity, i.e. the administrator. Such entrustment is, however, irrelevant for the shape of the administrative-legal relationship.

The complementary element of the scope definition of the owner of real estate, within the meaning of Article 2, item 1, point 4 of AoMC, is „another entity in possession of the real estate". This category refers to the actual state – the possession of the real estate. The possession of a thing is *inter alia* a defining element of the possession which is a specific factual state protected by law. Pursuant to Article 336 of the Civil Code: „The possessor of a thing is both the one who actually wields it as the owner (spontaneous possessor) and the one who actually wields it as a user, pledgee, lessee, tenant or having other right which involves specific authority over another's thing (dependent possessor)." In the doctrine of civil law it is even indicated that the actual authority over a thing constitutes the essence of possession.[9] Both the jurisprudence and the literature underline that in order to establish the possession of a thing it is not necessary to use the thing effectively in the economic sense – for the existence of possession it is not necessary to actually use the thing but only the possibility of such use.[10] Legislator's use of the category of „other entity in possession of the property" in Article 2, item 1, point 4 of AoMC on keeping the property clean of litter allows to assume that the notion of the owner of the

[8] Cf. L. Bielecki, Zarządzanie nieruchomościami a trwały zarząd nieruchomością, Rocznik Administracji Publicznej, 2015 (1), p. 16.

[9] Cf. A. Stelmachowski, Istota i funkcje posiadania, Warsaw 1958, p. 37, S. Kołodziejski, Istota, treść i rodzaje posiadania, Palestra 1966, No. 10, p. 16.

[10] Cf. ruling of the Supreme Court of 3 June 1966, III CR 108/66, OSPiKA 10/67, S. Rudnicki, Komentarz do Kodeksu Cywilnego, Księga Druga: Własność i inne prawa rzeczowe, Warszawa 1996, p. 378.

property within the meaning of the Act on keeping the property clean also includes holders of the property, both self-owners and dependent holders (e.g. lessees, tenants, users). While the possession of a thing (real estate) is a constructive element of possession, the mere Possesion itself does not exhaust all cases of possession of a thing. The provisions of the Civil Code also refer to the normative category of tenancy. Pursuant to Article 338 of the Civil Code, whoever actually wields a thing on behalf of someone else is a tenant. Unlike in the case of possession, a person leasing a thing does not rule it for themself, but for and on behalf of someone else. Transferring and making a building site available by an investor to a building contractor is a special type of tenancy. A particular type of authority over a thing, including the possession of real estate, is precarium. Precarious dominion is characterised by actual dominion over another person's thing, lack of legal ties between the giver and the taker and free revocability.[11] It is based on a relationship of courtesy in which the possessor wishes to do a favour to another person by allowing the thing to be used for a specific purpose.[12] The relationship between the giver and the recipient is purely factual and does not constitute a legal relationship. A situation of precarious dominion cam be attributed even in the case of making the property available within the framework of family or friendship relations.

The reference by the legislator to the category of „other entities that have the right to administer real estate" significantly expanded the scope of the statutory definition of the owner of real estate to include both the entities whose status is determined by a legal-legal relationship (owner, co-owner, perpetual usufructuary, usufructuary) or a contractual relationship (lessee, tenant, lender) and the entities whose relationship with the real estate has only an actual dimension, which is included in the formula of the possession of the real estate (holder, usufructuary, precarium-keeper).

3. Plurality of obliged entities

The scope definition of the owner of real estate adopted in the Act on Maintaining Cleanliness, which includes a number of entities of varied nature, causes significant difficulties in concretising the scope of the obligations

[11] P. Księżak, *Precarium* w prawie polskim, Rejent z 2007 r., Nr 2, s. 61.

[12] S. Rudnicki, op. cit., 383.

defined by the Act, including *inter alia* tribute obligations. The complexity of legal relationships relating to real estate may lead to situations in which there is a whole group of entities encompassed by the statutory definition of the owner of real estate, potentially obliged to fulfil the obligations arising from the Act (owner, perpetual usufructuary, lessee, possessor, etc.). In specific factual situations, several entities may simultaneously fulfil the conditions for being deemed the owner of real estate within the meaning of Article 2, item 1, point 4 of AoMC

This issue became among those raised in the complaint to the Constitutional Tribunal, resolved by the judgment of 28 November 2013.[13] In that judgment, the Tribunal found that the legislator did not explicitly resolve which of the entities listed in Article 2, item 1, point 4 of AoMC are burdened with the obligations attributed in the Act to the owner of real estate in the event that several entities meet the statutory criterion of „owner of real estate". The legislator has not explicitly regulated possible joint and several liability of owners of the real estate on which waste is produced, in the event of failure to fulfil the obligations arising from the provisions of the Act. In the opinion of the Constitutional Tribunal, this does not mean, however, that on the basis of the binding provisions of law it is not possible to determine the persons who are subject to the statutory obligations and the consequences of their faulty performance or non-performance.

Administrative courts have also taken a similar stance, indicating that several entities may simultaneously satisfy the conditions for being deemed owners of the real estate within the meaning of Article 2, item 1, point 4 of AoMC. This does not mean that all the entities mentioned may simultaneously have such status with regard to the obligation connected with a specific real estate. Therefore, in order to determine which entity in a specific case should be deemed the owner obliged to file a declaration on municipal waste management fee, reference should also be made to other legal acts, including the provisions of the Civil Code, the Act on Ownership of Premises and in regards to the possibility of recognizing a housing cooperative as such an entity, also the Act on Housing Cooperatives.[14]

[13] Judgment of the Constitutional Court of 28 November 2013, K 17/12, OTK-A of 2013, No 8, item 125.

[14] Judgment of the WSA in Szczecin of 27 March 2014, I SA/Sz 1291/13, CBOSA, Judgment of the WSA in Rzeszów of 21 May 2014, II SA/Rz 208/14, CBOSA, Judgment of the WSA in Olsztyn of 11 September 2019, I Sa/Ol 507/19, CBOSA.

In particular, there is no basis to derive from the content of Article 2, item 1, point 4 of AoMC any hierarchy of obliged entities or order in which these entities should fulfil their obligations under the Act.

Doubts appearing in practice as to the scope of the obligations defined in the Act on maintaining cleanliness prompted the legislator to add, as of 1 February 2015, to Article 2 AoMC item 2a according to which: „If the obligations indicated in the Act may simultaneously concern several entities from among those indicated in item 1, point 4, the entity or entities actually in charge of the real estate are obliged to perform them. In such a case, the entities referred to in item 1, point 4 may, by means of an agreement concluded in writing, designate the entity obliged to perform the obligations under the Act."[15] It has been pointed out in court rulings that this provision is of a clarifying nature and does not constitute a normative change[16]; it articulates *expresiss verbis* the legal state resulting from the systemic interpretation of previously binding provisions of law[17]. This provision expresses the principle that the obligation to fulfil the duties assigned by the legislator to the owner of the real estate is imposed on the entity or entities that actually administer the real estate. In the case of obligations relating to municipal waste management, these are directly the waste generators, which in turn is consistent with the fundamental principle of environmental protection – the „polluter pays" principle.

This leads to the conclusion that the definition of the owner of the real estate contained in Article 2, item 1, point 4 of AoMC, being a definition in scope, indicates entities which only potentially may be burdened with obligations of the owner of the real estate. In relation to a specific real estate and a specific actual state, the determination of the entity obliged to fulfil these obligations will take place pursuant to Article 2, item 2a of AoMC in connection with Article 2, item 1, point 4 of AoMC. In other words, the

[15] Article 1(2)(a) of the Act of 28 November 2014 amending the Act on Maintaining Cleanliness and Order in Municipalities and certain other acts, Journal of Laws 2015, item 87.

[16] Cf. the judgment of the Supreme Administrative Court of 17 October 2019, II FSK 3721/17, CBOSA.

[17] Cf. the resolution of the Supreme Court of 22 June 2017. III CZP 22/17, OSN of 2018, No. 3, item 28.

entity obliged to fulfil the obligations of the owner of real estate will always be the entity or entities actually administering the real estate.[18]

In terms of determining the circle of entities which are subject to the obligations of the owner of the real estate, serious doubts as to the interpretation may be raised by the content of the second sentence of Article 2, item 2a. of AoMC. Pursuant to this provision where the obligations specified in the Act may simultaneously concern several entities from among those indicated in Article 2, item 1, point 4 of AoMC, these entities may, by way of a contract concluded in writing, designate the entity which is obliged to perform the obligations arising from the Act. First of all, a fundamental question arises as to the admissibility of contractual modification of the scope of public-law obligations, in particular the obligation to pay the so-called „waste" fee. This fee is undoubtedly a public levy covered by the constitutional norm contained in Article 217 of the Constitution of the Republic of Poland[19]. Pursuant to this provision, taxes, other public levies, entities, tax subjects and tax rates, as well as rules for granting reliefs and remissions and categories of entities exempt from taxes, are imposed by way of an act. This means that the constitutional legislator has reserved the exclusive statutory competence, *inter alia*, to determine the entities obliged to pay public levies. The question arises in connection with this what legal effects, if any, such an agreement will have, including in particular whether the agreement may effectively release the entity entering into it from its statutory obligations. In other words, if the entity indicated in the agreement fails to perform its obligations as the owner of the real estate within the meaning of the Act on Maintaining Cleanliness, the municipal authorities may enforce their performance against other entities having the status of the owner of the real estate. Finally, the question arises as to the subjective scope of this agreement.

Referring to the last of the questions posed, I believe that the agreement referred to in Article 2, item 2a, sentence 2 of AoMC may only be concluded between entities that actually administer the real estate, therefore it refers to the situation where there is a plurality of entities that actually administer the real estate. In my opinion, it is the legislator who in Article 2, item 2a of

[18] Cf. the judgment of the WSA in Gliwice of 21 June 2018. I SA/Gl 1367/17 and the judgment of this court of 28 March 2018. I SA/Gl1362/17, CBOSA.

[19] Act of 2 April 1997 Constitution of the Republic of Poland, Journal of Laws of 1997, No. 78, item 483.

AoMC resolved that the obligations ascribed to the owner of the real estate are imposed on those entities listed in Article 2, item 1, point 4 of AoMC which actually administer the real estate. In this situation, I do not see any possibility of contractual modification of the scope of subjective public-law obligations, including in particular the obligation to pay taxes. The essence of article 2, item 2a, sentence 2 of AoMC should be sought in the creation by the legislator of the possibility to indicate by the entities which are burdened with the same public-law obligation the entity which will actually perform it. At the same time, this entity does not take over this obligation as its own, but only performs it in a way on behalf and for the benefit of the remaining entities. This means that in the event this obligation is not fulfilled, the public administration bodies may enforce its fulfilment from all entities obliged pursuant to the Act.

4. Real estate with a multi-apartment building and the subjective scope of the obligation to cleanliness and order of the real estate

Pursuant to Article 2, item 3 of AoMC, if the real estate is developed with a multi-apartment building in which separate ownership of premises has been established, the obligations of the owner of the common real estate and the owner of the premises shall be borne by a housing association[20] or a housing cooperative. The current wording of Article 2, item 3 of the Act on maintaining cleanliness and order in municipalities results from the amendment of the Act on maintaining cleanliness and order in municipalities made in 2014[21], which was aimed at clarifying the solutions adopted earlier and eliminating significant doubts appearing in practice, jurisprudence and doctrine. The amendment to Article 2, item 3 of the Act on maintaining cleanness and order in municipalities replaced the collective notion of a „person who manages a joint property", as defined in the provisions of the

[20] Pursuant to Article 6 of the Act on Ownership of Premises of 24 June 1994, Journal of Laws of 2020, item 1910 (hereinafter referred to as the Act on Ownership of Premises or abbreviated to u.w.l.), a residential community is formed by all owners whose premises comprise a given real estate. A residential community may acquire rights and incur obligations, sue and be sued.

[21] Act of 28 November 2014 amending the Act on maintaining cleanliness and order in municipalities and some other acts, Journal of Laws 2015, item 87.

Apartment Ownership Act, with an enumerative indication of two entities that are under obligation – a housing community and a housing cooperative. In the jurisdiction of administrative courts the view that the amendment of Article 2, item 3 of the Act was, as it results from the justification of the draft amendment, only a clarifying change and not a normative one,[22] which in turn allows for the assumption that also before the amendment entered into force, the actual intention of the legislator was to assign the duties of property owners to housing communities and housing cooperatives respectively and not to persons performing management of real estate.[23]

As it results from the clear wording of Article 2, item 3 of AoMC, a housing community or cooperative is charged with both the obligations of an owner of common property and owners of individual premises. This means that the fees are borne by the community (housing cooperative) and it is the community (housing cooperative) that is unlimitedly liable for the obligations (concerning both each residential unit and the common parts)[24]. Pursuant to Article 2, item 3 of AoMC, owners of individual premises pay fees in turn in a proportion corresponding to the proportion adopted in that provision, depending on the method of fee determination chosen in a given municipality.

When determining the scope of statutory obligations in the case of housing communities, the provisions of the Act on maintaining cleanliness do not distinguish between the so-called small or large housing communities. This means that also in the case of the so-called small housing communities (communities composed of no more than 3 owners of premises), the duties of the property owner are assigned to the housing community. The significant difference between a small and a large housing community, however, relates to the manner of its representation, and thus also the manner of fulfilling the obligations resulting from the Act on Maintaining Cleanliness and Order. In the case of multi-apartment properties, where the number of separate premises and non-separated premises exceeds three, the owners of premises are obliged to adopt a resolution on the election of a one-person

[22] Cf. *inter alia* the judgment of the WSA in Gliwice of 30 March 2017, I SA/Gl 187/16, CBOSA and the judgment of the NSA of 17 October 2019, II FSK 3271/17, CBOSA.

[23] Cf. judgment of the WSA in Wrocław of 11 January 2018, I SA/Wr 585/17, CBOSA.

[24] A. K. Modrzejewski, Zmiana koncepcji właściciela nieruchomości w kontekście nowelizacji ustawy o utrzymaniu czystości i porządku w gminach z 28.11.2014 r., Samorząd Terytorialny z 2015 r., No. 9, p. 19.

or several-person management board. In those communities, it is the board that will perform the owner's obligations under the Act on Maintaining Cleanliness. The duties of the management board will include submitting the declaration. At the same time, the management board will perform those duties on behalf and for the benefit of the housing community. As the WSA in Krakow correctly pointed out, the wording „burden" used in Article 2, item 3 of the Act does not make the person managing the joint property the „payer" of the fee for municipal waste management because under this Act the construction of the „payer" is not applicable. This means that the housing community may not be treated as an intermediary (between the authority and owners of separated premises) in fulfilling its tax obligations – calculating and collecting (as a payer) the due municipal waste management fees. The housing community undoubtedly is a taxpayer, i.e. an entity obliged on its own to declare and pay due fees, subject to settlements with owners of separate premises pursuant to Article 2, item 3a of AoMC.

In small housing communities (up to three premises) the owners May – but have no obligation to – appoint a management board. Pursuant to Article 19 of the u.w.l., if the number of separate premises and non-separated premises still belonging to the current owner is not greater than three, the provisions of the Civil Code on joint ownership apply accordingly to the management of the joint property. In this case the view of A.K. Modrzejewski should be shared that in such a situation the declaration should be submitted by all the owners for the entire community (and not separately by each of the owners for his premises)[25]. Moreover, in this case it is the community and not the owners of individual premises that will bear public law obligations of the real estate owner assigned by the Act on Maintaining Cleanliness.

In Article 2, item 3 of AoMC, the legislator explicitly indicated a housing cooperative as an entity that is charged with the duties of the owner of real estate, referring, however, only to the buildings in which separate premises were separated. This raises the question about the status of a housing cooperative as an owner of real estate in the situation where separate premises have not been separated. Pursuant to Article 2, item 3b of AoMC, a person who has a cooperative right to premises, or a person who actually inhabits premises belonging to a housing cooperative, is not

[25] A.K. Modrzejewski, Zmiana ..., op. cit., p. 21.

obliged to perform the duties of the owner of the real estate under the Act. Therefore, it should be assumed that in the case where in a multi-apartment building owned by a housing cooperative separate ownership of premises has not been established, the obligations of the owner of the real estate are imposed on the housing cooperative and not on the residents. The legal status of a housing cooperative as an owner of real estate within the meaning of the provisions of the Act on Maintaining Cleanliness in this case results directly from Article 2, item 1, point 4 of AoMC.

5. Summary

Pursuant to the Act on Maintaining Cleanliness and Order on Real Estate, the statutory obligations related to maintaining cleanliness and order on real estate – including the payment obligations resulting from the legal model of municipal waste management – have been assigned to the real estate owner. At the same time, for the purposes of this particular legal regulation, the legislator has introduced a separate definition of the real estate owner, thus including not only the owner from the civil perspective, but also other entities managing the real estate, including co-owners, perpetual usufructuaries and organizational units and persons managing or using real estate. The adoption in the Act on Maintaining Cleanliness of a broad, scope definition of the owner of real estate causes, in specific factual situations, serious doubts as to the actual scope of personal obligations under the Act on Maintaining Cleanliness. This applies in particular to situations where there is a multiplicity of entities included in the statutory definition of the owner of real estate, i.e. where it is possible to indicate at least two entities that have a legal title to the real estate (ownership, perpetual usufruct, easement), a mandatory title (lease, tenancy), or actually rule the real estate, regardless of the legal basis (possessor). With regard to these very situations, the legislator assumed that the entity or entities actually in possession of the real estate are obliged to fulfil the statutory obligations. This concept is consistent with the basic principles of environmental law, including in particular the „polluter pays" principle, which in the Waste Act[26] is based on a detailed legal basis. Under Article 22 of the Waste Act, the costs of

[26] Act of 14 December 2012 on waste, Journal of Laws of 2020, item 797.

waste management are borne by the original waste producer or by the current or previous waste holder. At the same time, this concept constitutes a significant difficulty for public administration bodies performing their statutory tasks in the area of municipal waste management, in particular with regard to enforcement of statutory obligations of property owners. It is the public administration authority (municipality authority) that is obliged to make detailed findings as to the actual scope of the normative category of the owner of the real estate in a specific factual situation by establishing the entity that actually owns the real estate. As T. Brzezicki rightly points out, easy determination of the entity obliged to pay the fee from the procedural point of view eliminates practical difficulties connected with fulfilment of this obligation, both on the part of public administration bodies and the obliged party itself.[27] An unambiguous indication by the legislator of the entity obliged to fulfil public-legal duties not only facilitates administration of a particular section of social relations, but most of all, it constitutes the basis for the feeling of certainty and indispensability of these duties, contributing to their voluntary fulfilment and elimination of disputable situations. This is particularly important in the case of obligations with a high degree of universality, relating to a very wide range of entities Such obligations undoubtedly include those related to municipal waste management which are imposed on property owners.

[27] T. Brzezicki, Opłata administracyjna. Konstrukcja prawna, Toruń 2019, p. 93.