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Neighbourhood relations in terms of Polish Water Law

<http://dx.doi.org/10.12775/PYEL.2012.002>

Contrary to the general view, the Act of 18 July 2001 on Water Law¹ not only governs water related issues but it also materially governs land related issues. Of course the regulations concerning protection of land are determined by the regulations concerning water. Nevertheless, land related issues are a significant element of the Water Law. Among the regulations on real property contained in the Water Law the underlying group of provisions comprises the provisions that govern neighbourhood relations between land owners, in the context of regulations on waters, and between the owners of waters and the owners of land adjoining such waters. This study aims to analyse Polish legal regulations referring to neighbourhood relations set forth in the Act on Water Law.

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¹ Journal of Laws of 2012, item 145 with amendments, further referred to as the Water Law.

The doctrine of the Polish civil law, namely the Civil Code, postulates the existence of the so-called neighbourhood law². The Polish Civil Code contains no separate section referring to neighbourhood law, however, articles 144 through 154 of the Civil Code share a certain common idea, i.e. the governing of legal relationships connected with the fact of neighbourhood of two real properties. For this reason S. Rudnicki remarked that it was possible to identify a separate group of provisions in the Civil Code, which, though formally not separated, includes provisions sharing common axiology. Thus, the so-called neighbourhood law has been separated and defined. This author remarked that 'neighbourhood and mutual interaction of real properties is a source of various legal relationships. Some of these relationships are governed by peremptory norms referred to as »neighbourhood law«³.

Neighbourhood law is a system of peremptory civil law provisions governing issues of the neighbourhood of two or more real properties. Thus, the legislator's attention is focused not on the subjects of the neighbourhood relations but rather on the object, i.e. two or more adjoining plots of land. The structure of solutions adopted under the so-called neighbourhood law attaches no material importance to who is the actual owner of the specific real property. Claims, if any, are neutral to the person in whom they are vested, since the only significant fact is that the specific subject has the status of an owner and that the dispute refers or can possibly refer to neighbourhood relations.

The provisions of the Civil Code concerning the so-called neighbourhood law do not ensure exhaustive treatment of all complex situations which could give rise to a conflict between respective neighbours. A part of the regulations are statutory regulations, e.g. the Construction Law. Thus, articles 144–154 of the Civil Code do not provide exhaustive treatment of all problems related to two or more adjoining real properties.

In literature a limitation can be observed, which is manifested by the views that articles 144–154 of the Civil Code fully govern all issues related to the coexistence of the neighbours in adjoining plots of land. As a consequence, it is virtually not investigated whether apart from articles 144–154 of the Civil Code, any other legal acts whatsoever contain provisions governing

² In: S. Rudnicki, *Sąsiedztwo nieruchomości. Problematyka prawna [Adjoining real properties. Legal aspects]*, Zakamycze 1999, p. 7.

³ Op. cit., p. 7

matters related to neighbourhood law which could be identified as a separate group of provisions. Also, comparative activities should be undertaken to investigate the treatment of specific issues in respective acts of the Polish law.

Undoubtedly, elements of the so-called neighbourhood law can be found in articles 11–30 of the Water Law. Thus, the concept of neighbourhood law in the Water Law is quite extensive and it plays an important role in the shaping of neighbourhood relations. Issues related to neighbourhood relations between owners of real properties are determined and are also a consequence of the existing condition of waters in the area of such real properties. Thus, the Water Law governs only issues related to real properties adjoining in terms of water management and legal relationships connected with adjoining waters and land.

Water management issues are governed by section I of the Water Law – general rules presented accordingly in chapter II – water properties, and in chapter III – obligations of the owners of water and owners of other real properties. J. Rotko has rightly noted that ‘The issue of water properties is crucial in determining the scope of rights and obligations connected with water’⁴.

Interestingly, the issues of neighbourhood relations mentioned in the Water Law are therefore connected with both water property right and obligations of water owners. The combination of the regulation of neighbourhood relations with water property law is particularly interesting. From the point of view of the regulation of neighbourhood relations by the Water Law, the most significant is the delineation of the so-called shoreline, i.e. the subject of article 15 of the Water Law. The said provision stipulates that:

- ‘1. The shoreline of natural streams, lakes and other natural water reservoirs shall be the edge of a river bank or lake/reservoir shore or the line of permanent grass cover or the line determined according to the average water level over at least 10 past years.
2. The shoreline shall be determined, by way of a decision, at the request of an entity having legal or factual interest therein, by:

⁴ J. Rotko, *Podstawy prawne gospodarki wodnej [Legal basis of water management]*, Wrocław 2006, p. 56.

- 1) the competent field marine administration authority – for inner sea waters including inner sea waters of the Bay of Gdansk and territorial sea waters;
 - 2) the competent voivodeship marshal – for boundary waters and inland water routes;
 - 3) the competent starost (head of the powiat) in charge of government administration – for other waters.
3. The shoreline shall be determined on the basis of an applicant's draft boundary survey for water-covered land and adjoining land that, subject to section 4, contains:
- 1) a description designating an applicant, indicating their place of business and address, adopted method of determining the designed shoreline, specifying the legal status of real properties covered by the draft including a designation of owners and indicating their place of business and address and specifying the water management relations pertaining to land adjoining the projected shoreline;
 - 2) an as-built survey map of river/lake training structures or an updated copy of the site map (base map) in the scale identical with the scale of the inland waters training draft, or in the scale 1:500, 1:1.000, 1:2.000 or 1:5.000, marking:
 - a) fixed points of the horizontal control with reference to the state network,
 - b) line of permanent grass cover,
 - c) edges of banks/shores, alluvia, fluvial deposits and islands,
 - d) proposed coastline.
4. The authority referred to in section 2 can, by way of a decision, discharge an applicant from the obligation to include certain information referred to in section 3 of the draft.
5. If the edge is clear, the shoreline coincides with this edge.
6. If the edge is not clear, the shoreline shall coincide with the line of permanent grass cover and if the line of permanent grass cover lies above the water level referred to in paragraph 1 – with the line where the free surface of water intersects adjoining land.
7. If the shores are trained, the coastline shall coincide with the line connecting the external edges of the river/lake training structures and at the wicker plantations on land formed by river/lake training – with the limits of the plantation on the land side.

8. The scope of the decision determining the shoreline includes the zone and banks of the natural stream covered by the training draft.
9. If the shoreline must be necessarily determined in connection with the construction of water structures or new natural stream channels, the proceedings for determining the shoreline will be take place simultaneously with the proceedings for issuing the water permit.
10. The decision on the determination of the shoreline can be issued after the entity has been granted the water permit regarding urgent construction of river training structures.
- 10a. The authority in charge of matters referred to in sections 9 and 10 shall be the authority issuing the water permit.
11. If the shoreline is changed, the decision referred to in section 2 can be changed in the mode and according to principles on which it was issued.
12. If the shoreline is determined in connection with the fact that lotic waters or sea waters permanently and naturally cover land not owned by the owner of such waters, the costs of the draft referred to in section 3, shall be borne by the owner of the waters’.

The shoreline of natural streams, lakes and other natural water reservoirs is the edge of the river bank or lake/reservoir shore or the line of permanent grass cover or the line determined according to the average water level over at least 10 years. This line is determined by one of the three authorities indicated in article 15 section 2 of the Water Law. The determination of the shoreline is of material significance for the shaping of neighbourhood relations since in fact it is equivalent to the separation of the rights and obligations under the property of waters and land adjoining such waters.

The legislator in article 15 of the Water Law has regulated special administrative proceedings, i.e. the proceedings for the determination of boundaries of real property. Such proceedings are instituted at the request of the parties concerned and the boundaries are determined on the grounds of an administrative decision⁵.

Article 15 a) of the Water Law in section I chapter 2 on the Water Property Right is also of material significance. This provision stipulates that:

- ‘1. The determination of boundaries between land that prior to the construction of a water structure had been covered with water and

⁵ Legal and formal aspects are commented by W. Radecki, [in:] J. Rotko (ed.), *Prawo wodne. Komentarz [Water Law. Commentary]*, Wrocław 2002, p. 72–73.

adjoining land will be performed, at the request of the owner of the body of water or the owner of adjoining land, by way of a decision, by the starost in charge of government administration tasks.

2. The determination of boundaries referred to in paragraph 1, shall be accordingly based on article 15, but the basis for the determination of boundaries shall be the documentation prepared for the needs of the construction of a water structure and if absent – available archival materials.
3. If no documentation based on which the boundaries can be determined as referred to in paragraph 1 is available, the land covered by surface waters within the limits of the water structure shall be the area required to maintain the continuum of the stream, in case of liquidation of this structure, assuming the parameters of the channel upstream and downstream the structure, and in case of dammed lakes – the ordinates of water before damming’.

This provision forms grounds for the determination of boundaries between land covered with water and other land, however, it can be only applied before the water structure is built and its sole purpose is to determine the location of the structure. In this case, the boundaries will be determined by the starost, considering the rules following from article 15.

Under the regulations concerning the water property right, Polish legislator has also included issues related to the flooding of adjoining land. The legal effects of the flooding of adjoining land are regulated by articles 16 and 17 of the Water Law. According to article 16 of the Water Law:

- ‘1. The owner of a body of water does not acquire any title to land flooded with water during floods.
2. The owner of land flooded during floods shall not be entitled to any indemnification by this virtue from the owner of the body of water.
3. The owner of land flooded during floods as a result of non-compliance with the provisions of the act by the owner of the body of water or the owner of the water structure shall be entitled to indemnification on terms and conditions provided for in the Act.
4. The owner of land situated within the flood polder, flooded during floods, shall be entitled to indemnification from the owner of the body of water on terms and conditions provided for in the Act’.

Whereas, pursuant to article 17 of the Water Law:

- ‘1. If a body of inland surface lotic waters or territorial sea waters or inner sea waters cover in a permanent and natural manner land that is not

owned by the owner of the body of water, such land will become the property of the owner of the body of water.

2. In circumstances referred to in paragraph 1, the previous owner of the land shall be entitled to receive indemnification from the owner of the body of water on terms and conditions provided for in the Act’.

Article 16 of the Water Law governs neighbourhood relations between the owner of the body of water and the owners of land adjoining the body of water. In fact, we are dealing here with two distinct objects of property – namely, water and land. The rule postulated by article 16 of the Water Law is that if water overflows during floods and covers adjoining land, the owner of adjoining land will not lose title to this land which will not be simultaneously acquired by the owner of the body of water.

Generally, the owner of land will not be entitled to any indemnification in connection with the flooding of such land during floods either. The owner of land shall not be entitled to such indemnification only if the flood was caused by non-compliance with the provisions of the Act by the owner of the body of water or the owner of the water structure.

The owner of land within the boundaries of the flood polder can claim indemnification from the owner of the body of water. On the other hand, if a body of inland surface lotic waters or territorial sea waters or inner sea waters cover land in a permanent and natural manner, such land covered by the waters will become the property of the owner of the body of water. However, the prerequisite is that the flooding must occur in a natural manner. In such a case the previous owner of the land shall be entitled to receive indemnification from the owner of the body of water. J. Szachulowicz remarks that ‘land flooded during flood does not become the property of the owner of the body of water’, which according to this author is an exception from the rule that land covered by lotic waters is the property of the owner of the body of water⁶.

When confronting article 16 of the Water Law with article 17 it is noticeable that both provisions define the status of land flooded by specific waters. Thus, in both cases water must have burst the banks and covered adjoining land that was not the property of the owner of the body of water. The fundamental difference between articles 16 and 17 of the

⁶ J. Szachulowicz, *Prawo wodne. Komentarz [Water Law. Commentary]*, rev. 4, Warszawa 2009, p. 92.

Water Law is the reason for the said flooding. If the adjoining land was flooded by a flood, the applicable rule is that the owner of the body of water does not acquire any title to land flooded by such water; however, if such land has been permanently covered with the water for natural reasons, the owner of the body of water shall simultaneously acquire title to such land. Therefore, the flood is of material significance here since as a reason for the flooding of adjoining land it diametrically changes the legal effects. The flood must also be considered a natural reason for the flooding of adjoining land. However, it is significant that the flood is a special reason for the flooding of adjacent land.

Another group of regulations under the so-called neighbourhood law included in the Water Law, is formed by provisions of section one (General), chapter three (obligations of the owners of bodies of water and owners of other real properties) of the Act. From the point of view under discussion articles 27–30 are of material significance.

In practice, material significance must be attached to article 27 of the Water Law, pursuant to which:

- ‘1. It is forbidden to fence off real property adjoining public surface waters at a distance shorter than 1.5 metre from the shoreline and to impose bans on or prevent crossing of such an area.
2. The ban referred to in paragraph 1 is not applicable to fencing off protection zones established according to the Act and fish breeding precincts established according to the Inland Fisheries Act.
3. The director of the regional water management board can, by way of a decision, revoke the ban referred to in section 1 if necessary for reasons of the defence of the state or public safety’.

This provision introduces a general rule, i.e. the ban on fencing off real properties adjoining public surface waters closer than 1.5 metre from the shoreline. At the same time, the legislator does not allow the owner of land to impose a ban on or prevent crossing such an area which should remain unenclosed. An exception from the ban on fencing off is defined in section 2 and refers only to circumstances which are enumerated in this provision.

A clear limitation of ownership of the owner of land directly adjoining water can be observed, since the owner is required to leave a 1.5 metre wide belt from the shoreline and make it generally accessible. This is clearly

meant to protect public interest consisting in access to public surface waters. At the same time, as remarked by M. Kałużny, the purpose is the protection of rights vested under the general use of waters⁷.

A solution adopted in article 28 is similar. Pursuant to this provision: 'Article 28.

1. The owner of real property adjoining public surface waters is obliged to ensure access to water for the needs of works related to maintenance of the bodies of water and erection of navigation signs or hydrological and meteorological measuring equipment.
2. The owner of real property adjoining waters available for general use is obliged to ensure access to water in a manner facilitating such use; parts of the real property facilitating access to water shall be indicated by the head of the gmina or town or city mayor by way of a decision.
3. The owner of real property referred to in section 1 shall be entitled to receive indemnification respectively from the owner of the body of water or the owner of hydrological and meteorological measuring equipment, and the owner of real property referred to in section 2 – from the budget of the gmina, on terms and conditions provided for in the Act'.

In this case the limitation of the ownership of the real property adjoining public surface waters consists in the obligation to ensure access to water in order to carry out works related to maintenance of the bodies of water and erection of navigation signs or meteorological measuring equipment.

This provision also introduces a limitation related to general use of waters. The ownership title of the owner of the real property adjoining waters available for general use includes an obligation to make part of his real property accessible for the purposes of the general use of waters. In both cases, as a compensation for the limitation of ownership, the owner will receive indemnification.

For the analysis of the neighbourhood law, according to the Water Law, article 29 thereof is also significant. It reads as follows ':

1. The owner of land, unless otherwise stipulated by the Act, must not:
 - 1) alter the condition of waters on land, and in particular change the direction of precipitation water run-off from his land or the

⁷ M. Kałużny, *Prawo wodne. Komentarz [Water Law. Commentary]*, Warszawa 2012, p. 125

direction of run-off from the springs – with prejudice to adjoining land;

- 2) carry water and wastewater off to adjoining land.
2. The owner of land is obliged to remove any obstacles and changes in water run-off which occurred on his land incidentally or as a result of third party activity with prejudice to adjoining land.
3. If changes in the condition of water on land caused by the owner of the land adversely affect the adjoining land, the head of the gmina or town or city mayor can, by way of a decision, order the owner of land to restore the water to the previous condition or employ structures preventing damage and losses⁸.

A legal norm imposes three obligations on the owner of land. The first of these obligations comprises a ban on altering the condition of water on his own land and, most importantly, changing the direction of run-off, but only if such a change is with prejudice to adjoining land. This obligation is highly preventive.

On the other hand, the second obligation comprises a ban on carrying water and wastewater off to adjoining land. This ban is not conditioned by prejudice to adjoining land.

Finally, the third obligation – charged to the owner of land – is the requirement to remove obstacles and changes in run-off which occurred on his land and which may be prejudicial to adjoining land.

Importantly, this obligation is not conditioned by the perpetrator of the changes since it also covers natural changes in run-off as well as changes due to third party activity.

However, article 29 of the Water Law is relative since the owners of land can arrange their mutual relations connected with the change of the condition of water on land in a written agreement. Yet, the subject of such an agreement cannot be the disposal of wastewater into water and soil. Also, the agreement must not cover changes which would adversely affect other real properties or water management. If such changes occurred on other lands, the owner of such lands should be a party to such an agreement. Thus, his consent would eliminate the obstacles to the agreement following from article 30 of the Water Law.

⁸ Cf. I. Koza, L. Osuch-Chacińska, M. Pedła-Sypuła, M. Rytelewski, *Norwe prawo wodne [New Water Law]*, Zielona Góra 2002, p. 27.

To sum up, it must be stated that neighbourhood law according to the Act on Water Law is a very complex issue. This is due to the overlapping problem of the ownership of adjoining plots of land and the ownership of bodies of water. Thus, the legislator must take into account not only the mutual relation of respective real properties but also the effect of water on land.

The determination of boundaries between water and land, by delineating the shoreline, is also a peculiar procedure. The procedure is separate and independent of the boundary determination procedure relating to real property only. Interestingly, the provisions governing neighbourhood relations are regulated in two separate chapters of the Water Law – the water property right and the obligations of the owners of bodies of water and owners of other real properties. It means that the legislator combines respective elements of the neighbourhood law with various and at the same time separate values provided for in the said Act.

However, *de lege ferenda* one should postulate that the provisions of neighbourhood law should be concentrated in a single place and that the regulations, very important for social reasons, should be reinforced.