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## Separateness of underground garage premises (selected issues)

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### 1. Initial remarks

Space is a limited good. As a result, solutions should be adopted in the implementation of construction projects that facilitate its efficient use. Spatial efficiency should be a common concern for authorities on both the central and local government levels, as the commitment to spatial efficiency requires action in the regulatory area on these two levels. Moreover, a proper policy on the application of existing law, mainly at the local government level, is needed, even when it is fraught with deficiencies.

Processes with regard to efficient land use must also take into account the needs for the provision of vehicle parking spaces. Procuring an adequate number of parking spaces is an ever-growing challenge in the national context. It arises in connection with the development of residential and commercial buildings. The problem is particularly pronounced in urban areas, especially in city centres. Current attempts to address the parking deficit are not yielding satisfactory results.

The issue of insufficient parking spaces represents a problem. It arises for two main reasons. Firstly, the number of individual

means of transport is constantly increasing. Secondly, owing to the intensive use of land for development in city centres, objective difficulties emerge with developing new parking spaces, particularly of a ground-based nature.

Underground car parks are one way of solving this problem. In technical terms, this kind of solution does not pose any particular engineering challenge today. In many cases, however, difficulties arise when it comes to establishing the autonomy of underground car parks as separate premises.

Given the lack of any clear legal regulation in this respect, as well as the standardized practice of the authorities issuing certificates of autonomy of premises, the article addresses two issues that generate controversy in practice. The first part analyzes the capacity of recognizing an underground car park as a building within the meaning of the Construction Law, regardless of whether other buildings have been constructed above it. In the second part, reference is made to the feasibility of considering an underground car park as separate non-residential premises. In particular, consideration has been given to the situation in which an applicant seeks a certificate on premises separation for more than one set of premises in a building where, in addition, provision is made for passage and travel between the premises. Such an arrangement is necessary in multiple cases, first, owing to the impossibility of arranging independent entrances to underground car parks, and second, because there are cases where the premises are to be used to serve buildings which belong to different owners.

## 2. The qualification of the underground garage as a building

Pursuant to Article 3(2) of the Act of 7 July 1994 Construction Law<sup>1</sup> (hereinafter: Construction Law or ConstrL), the definition of a building is to be understood as a structure permanently con-

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<sup>1</sup> Consolidated text: Journal of Laws of 2023, item 682 as amended.

nected to the ground, separated from the space by means of wall barriers and possessing foundations and a roof. The above conditions must be met jointly in order for a structure to be positively classified as a building.<sup>2</sup>

The terms ‘wall barrier’ and ‘separation from space’ are not normatively defined. There can be no doubt that what is meant is that a building is separated in such a way that it can be clearly established which part of the building belongs to it and which part constitutes an external space.<sup>3</sup> The legislature has also indicated that said separation must have a physical form. In fact, the legislator has assumed that the manner of separation is to take place by means of wall barriers.<sup>4</sup> Thus, separation from space presupposes that a building is delimited in its three dimensions: length, width, and height.<sup>5</sup> This allows for the determination of its surface area and volume.

An additional element contributing to the understanding of separation from space is the condition set by the legislator whereby a building is required to have a foundation.<sup>6</sup> In this situation, one should assume that separation from space should denote a building with a structure both above and below ground.<sup>7</sup> Had it been the legislator’s intention to restrict the concept of space only to buildings above ground, this element would have been introduced into the definition of a building. However, no such measure has taken place.

The definition of a building further assumes its having a roof. The function of the roof in the case of underground car parks is

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<sup>2</sup> Z. Niewiadomski et al. (eds.), *Prawo budowlane. Komentarz*, 12<sup>th</sup> ed., Warszawa 2024, pp. 25–26.

<sup>3</sup> Judgment of the Supreme Administrative Court of 28 May 2019, II OSK 2529/18, Lex No. 2713973.

<sup>4</sup> Judgment of the Provincial Administrative Court in Warsaw of 10 February 2022, VII SA/Wa 2109/21, Lex No. 3354845.

<sup>5</sup> Judgment of the Provincial Administrative Court in Kielce of 24 May 2012, I SA/Ke 172/12, Lex No. 1170250.

<sup>6</sup> Judgment of the Provincial Administrative Court in Gdańsk of 5 January 2022, II SA/Gd 525/21, Lex No. 3288377.

<sup>7</sup> Judgment of the Supreme Administrative Court of 4 November 2014, II FSK 2967/14, Lex No. 1591870.

performed by the ceiling. No requirement exists for the roof to be based solely on a traditional roof truss structure.<sup>8</sup> The ceiling is therefore a horizontal barrier which serves as a roof (the so-called flat roof). In addition to its own weight, it transfers imposed loads to the walls, while at the same time acting as horizontal bracing for its structure. The flat roof is therefore a barrier that encloses the building from above. Like the roof in the traditional sense, it protects the building from precipitation, wind, ultraviolet radiation, and noise, and reduces heat loss.

Thus, the underground car park meets the requirements for it to be deemed a building. It constitutes a building in the underground part. Above it are normally the above-ground parts. It is undisputed that it constitutes a structure separated from space by wall barriers and one with a foundation. It is also undisputed that this type of built structure fulfills the requirement of being permanently attached to the ground. Consequently, an underground car park is a constituent part of the land within the meaning of Article 47 § 2 of the Civil Code.<sup>9</sup>

### 3. Garage premises

#### 3.1. The concept of non-residential premises

Article 2, section 2 of the Act of 24 June 1994 on Ownership of Premises<sup>10</sup> (hereinafter: O.P.A.) provides a legal definition of an independent residential unit. In the light of this definition, an independent residential unit is a chamber or a group of chambers, separated by permanent walls within a building, intended for the permanent stay of people, which, together with auxiliary rooms, serves to satisfy residential needs. Given the differences in the

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<sup>8</sup> Judgment of the Provincial Administrative Court in Gdańsk of 24 September 2014, I SA/Gd 761/13, Lex No. 1375832.

<sup>9</sup> Act of 23 April 1964 (consolidated text: Journal of Laws of 2023, item 1610 as amended).

<sup>10</sup> Consolidated text: Journal of Laws of 2021 item 1048 as amended.

purposes, functions, and related technical standards, the statutory definition of an independent residential unit should, in accordance with the second sentence of Article 2(2) of the O.P.A., be applied *mutatis mutandis* to premises for purposes other than housing.<sup>11</sup>

Proper application of the law is one of the most difficult issues in the legal art of interpreting the law (alongside interpretation by analogy). This is linked to the fact that in such an interpretative model, the legislator shifts the burden of assessing the scope of application of the referring provision to the interpreter, requiring that the interpreter appropriately relates regulatory prerequisites to factual situations other than those that are directly specified in the provision.

Proper application of provisions consists in the possibility of their applicability to other facts in whole, in part, or in the absence of their applicability within the scope of the reference.<sup>12</sup> The requirement of proper application of a provision therefore entitles one to depart from its literal wording. In many cases, this is necessary for a coherent and logical interpretation of the provisions within the reference.

Thus, proper application of the provisions on residential premises to premises of a different nature should be understood only as the possibility of partial application of the requirements provided for residential premises or the lack of their applicability at all, as there is no possibility of applying the entirety of the building separation requirements provided for residential premises to premises of a different nature within the framework of the reference provided for in Article 2(2) of the O.P.A. In practice, applying the provisions for residential premises directly to commercial premises would result in failure to obtain a certificate of separation in respect of a large number of non-residential premises.

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<sup>11</sup> R. Dziczek, *Komentarz do art. 2 u.w.l.*, in: *Komentarz. Wzory pozwów i wniosków sądowych*, 8<sup>th</sup> ed., Lex.

<sup>12</sup> More broadly see: J. Nowacki, „Odpowiednie” stosowanie przepisów prawa, *Państwo i Prawo* 1964, No. 3, pp. 367–376.

As a consequence, the presence of chambers or a group of chambers, the use of the premises for permanent human habitation, and the presence of ancillary premises serving residential needs will be ignored in order to establish the separate nature of non-residential premises. Meanwhile, the requirement to separate premises within a building will continue to apply to non-residential premises. Taking into account the specific nature of non-residential premises, the requirement for the premises to be separated by permanent walls will also remain in place.

The basic division of premises in the light of the O.P.A. therefore assumes a distinction between premises intended for residential purposes and those intended for other purposes (the so-called non-residential premises). It should be recognized that the second category includes both premises intended for conducting business activity, as well as premises intended for other functions not necessarily related to such activity.<sup>13</sup> As pursuant to the definition in § 3(14) of the Regulation of the Minister of Infrastructure on the technical conditions to be met by buildings and their location,<sup>14</sup> non-residential premises should be understood as one room or a group of rooms which is separated by a permanent wall barrier and which is not a dwelling, technical room, or utility room. According to § 3 point 9 of the Regulation, a dwelling is understood to be a group of residential and ancillary premises with a separate entrance, separated by permanent wall barriers, enabling permanent human habitation and the conduct of an independent household. In turn, a technical room, in the light of the aforementioned executive act, is understood to be a room intended for equipment used for the functioning and maintenance of a building (§ 3 point 12). By contrast, a utility room is understood to be a room located outside a dwelling or non-residential premises used for the storage of objects or food products of the users of the building, materials, or equipment related to the operation of the building, as well as fuel or solid waste (§ 3 point 13). The above

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<sup>13</sup> I. Szymczak, *Własność lokali. Komentarz*, Warszawa 2020, pp. 34–42.

<sup>14</sup> Regulation of 12 April 2012 (consolidated text: Journal of Laws of 2022, item 1225 as amended).

summary of the terms used by the legislator clearly indicates that in the case of an underground car park, one is dealing with premises of a utility nature.

Accordingly, non-residential premises are an enclosed space, separated by permanent wall barriers, with adequate infrastructure to enable their use in accordance with their intended purpose. Given the fact that the premises' architectural and construction requirements are not set out in the Premises Ownership Act, it is necessary to refer to the criteria arising in particular from the Construction Law and the executive regulations issued on its grounds.<sup>15</sup>

### 3.2. Prerequisites for the separation of an underground garage unit

In the aforementioned Article 2(2) of the O.P.A., the legislator established the requirements to be met by premises in order to be recognized as separate. An explicit requirement of separateness set out in this provision is that it be delimited by permanent walls within the building. Since underground car parks may be classified as buildings within the meaning of Article 3(2) of *CostrL*, there is no doubt that this type of facility remains separated by permanent wall barriers. In the case of underground car parks, their external walls constitute a permanent demarcation of the premises/locations located therein from the external space.

Other features of the premises' separation have not been normatively specified in more detail. Nevertheless, it is accepted in doctrine and jurisprudence that the said separation consists in free access to premises by their owners and other authorized persons.<sup>16</sup> In the case of a dwelling covered by the above definition, this access concerns persons. In the case of premises intended for

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<sup>15</sup> I. Szymczak, *Komentarz do art. 2 u.w.l.*, in: *Własność lokali. Komentarz*, 2<sup>nd</sup> ed., Lex.

<sup>16</sup> Judgment of the Supreme Administrative Court of 1 February 2011, I OSK 1479/10, Lex No. 964678.

the parking of motor vehicles, it is also required to provide for the entry of vehicles.

An additional criterion adopted by the jurisprudence and the judicature for recognizing that premises fulfill the characteristic of separateness is the existence of the condition of the possibility of using the premises, in accordance with their purpose, without having to use other separate premises.

In light of the above, reference must therefore first be made to the purpose of the underground car park. This follows directly from the definition in the regulation on the technical conditions to be met by buildings and their location. According to § 3 point 25 of the regulation, a car park should be understood as a separate area of land intended for parking cars, consisting of parking spaces and access roads connecting these spaces, should such access roads exist.

Secondly, it is necessary to address an issue which raises doubts of interpretation in practice expressed by the authorities issuing certificates of premises' separation with regard to the possibility of separating two or more premises in one building in the event that provision is made for passage and access between them. This issue presents two fundamental questions. The first concerns whether, in the case of two or more dwellings with the possibility of passage and access between them, the condition of separation of these dwellings by permanent walls is fulfilled. The second issue is whether, in above cases, a situation does not arise in which the use of one set of premises requires the use of another/other independent premises.

With reference to the issue of separation of non-residential premises by means of permanent walls, which is expressed *verba legis* in Article 2(2) of the O.P.A., the requirement may be directly applied only to premises of a residential nature. In the case of premises for such purpose, one deals with chambers which are to be separated by permanent walls so that the chambers and the premises as a whole can properly fulfill the residential function assigned to them. The satisfaction of housing needs implies the necessity to equip the premises with adequate installations and



facilities for people's living needs, i.e. heating, lighting, and access to running water and sewage disposal. The dwellings are also required to comply with certain technical conditions and building standards. This applies in particular to indicators such as appropriate ventilation, and lighting and heating levels, including thermal transmittance. The walls and ceilings of buildings are planned according to this.<sup>17</sup> Solid walls in a dwelling also ensure the privacy of its occupants.

Thus, in the case of dwellings, it is imperative that they are separated by means of durable walls in order to meet the requirements set by the legislator for dwellings, and, therefore, also for dwellings to be designated as residential. Of course, in many cases, also premises of a non-residential function will be separated by means of permanent walls. However, this does not represent the only means of separating {out?} non-residential premises within a building.

According to the aforesaid definition of non-residential premises, this concept should be understood as one room or a group of rooms separated by fixed wall barriers. The role of wall barriers is thus to separate the premises from other premises in the building. The building partition is, therefore, the element of the building separating the premises within it. As such, wall barriers define the boundaries of the premises. What is materially and functionally important is the purpose of wall barriers, irrespective of the material and technology used to erect them. By definition, the only characteristic of a wall barrier is its stability. Also, wall barriers should be provided at the design stage of the building.<sup>18</sup>

The concept of a wall barrier used for the purpose of defining non-residential premises cannot therefore be narrowed down to include walls in the traditional sense of the word. This category should also include structural elements of a building, such as e.g. pillars, columns, and beams, which in a structural sense have

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<sup>17</sup> Decision of the District Court in Kamienna Góra of 13 April 2022, I Ns 378/18, Lex No. 3410428.

<sup>18</sup> Judgment of the Provincial Administrative Court in Gliwice of 7 February 2012, I SA/GL 604/11, Lex No. 1125252.

the same function as a wall and which structurally separate the space of a dwelling within a building.<sup>19</sup> It is in fact sufficient for the existing partitions to delimit the premises, making it possible to determine the usable area on the basis of the relevant floor plans. The legislator does not in any way make the qualification of a separate non-residential unit dependent on the construction technique of the wall barrier. Thus, it may also be of a partial character.<sup>20</sup> The assumption that a wall barrier should have the attribute of 'completeness' would contradict the rationality of the legislature, which, if it had wanted to, would have used the phrase 'a complete wall barrier' or 'complete' in the definition of a non-residential premises. It used only the phrase permanent. It should therefore be concluded that a wall barrier should be understood to include, in addition to walls, also pillars, columns or beams which, in a structural sense, perform the same function as walls.

Note should also be taken that in the case of the concept of a building contained in the Construction Law, the legislature also uses the concept of wall barriers to separate a building in space. Therefore, if a building may be separated by means of wall barriers, all the more so may the premises contained therein be separated by means of such partitions. The separation of non-residential premises in a technical sense should therefore be assessed in the context of the overall structural and technical fabric of the building. It is thus a question of assessing whether the premises are physically separated in the building and not whether they are enclosed in a three-dimensional space on each side by a solid wall. This is because this understanding of technical independence applies only to premises of a residential nature.

The Act on Local Taxes and Fees<sup>21</sup> in Article 1a(1)(1) also employs the concept of a wall barrier. The understanding of the term 'wall barrier' developed under this provision may also be utilized,

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<sup>19</sup> Judgment of the Supreme Administrative Court of 11 May 2016, II FSK 1581/15, Lex No. 2032356.

<sup>20</sup> Judgment of the Provincial Administrative Court in Gorzów Wielkopolski of 10 October 2013, I SA/Go 440/13, Lex No. 1386530.

<sup>21</sup> Act of 12 January 1991 (consolidated text: Journal of Laws of 2023, item 70 as amended).

in a subsidiary manner, for the interpretation of this concept under the provisions of the regulation on technical conditions to be met by buildings and their location. This is because the understanding of the same concepts used in the regulations should be unified. The fundamental principle of interpretation of the law is the rule prohibiting the so-called homonymous interpretation. This implies the prohibition, in the absence of a statutory definition, of assigning different meanings to the same concepts by way of interpretation. Assigning different meanings to the same concepts would lead to semantic chaos.

On the basis of the Act on Local Taxes and Fees, the concept of a wall barrier is also not equated exclusively with a wall in the traditional sense.<sup>22</sup> Naturally, one has to agree with the view that it is not permissible to apply the provisions of the tax law for the purposes of proceedings for the issuance of a certificate of separation of premises.<sup>23</sup> On the other hand, a clear distinction should be made between the situation where tax law provisions are invoked as a basis for determining the separate status of premises and the situation where the interpretation of the same concepts found in various provisions is invoked alternatively through a systemic interpretation.

The second issue in connection with the separateness of two or more units with an established road easement<sup>24</sup> is whether the use of one unit does not fit into the negative premise of sep-

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<sup>22</sup> E.g.: judgment of the Provincial Administrative Court in Gdańsk of 7 June 2022, I SA/Gd 6/22, Lex No. 3360608; judgment of the Supreme Administrative Court of 24 February 2022, 4994/21, Lex No. 3325262; judgment of the Provincial Administrative Court in Łódź of 28 January 2022, I SA/Łd 865/21, Lex No. 3319036; judgment of the Provincial Administrative Court in Białystok of 22 May 2018, I Sa/Bk 163/18, Lex No. 2505217; judgment of the Provincial Administrative Court in Warsaw of 25 October 2016, III SA/WA 2429/15, Lex No. 2159236; judgment of the Supreme Administrative Court of 25 September 2015, 2086/13, Lex No. 1798487.

<sup>23</sup> Judgment of the Provincial Administrative Court in Gdańsk of 24 April 2020, III SA/Gd 332/20, Lex No. 3009302.

<sup>24</sup> The problem of the establishment of an easement has been deliberately omitted in the article for clarity. However, the possibility of establishing an easement of passage through the premises for the benefit of any future owner of the parking space should be clearly indicated. The establishment of the easement should take place prior to the submission of the application for the

aration, which is the use of another separate unit. This premise does not allow, e.g. a unit to constitute a separate dwelling if its use requires the use of a kitchen belonging to another adjoining unit. Even if it were hypothetically possible to establish an easement of passage through the premises in order to gain access to the kitchen, the unit without such an easement would still lack the characteristic of separateness. This is because access to the kitchen does not in itself mean that the premises are separate, as the kitchen will remain a component of the other premises. However, this type of reasoning, specific to the separation of residential premises, cannot be transferred to non-residential premises.

The situation is fundamentally different with non-residential premises for which a passage and travel easement may be established. This is so because the garage premises have all the technical and utilitarian characteristics to fulfill the function ascribed to them and to be used in accordance with their purpose, even despite the encumbrance of the easement. In addition, a drive from one premises to another or further premises does not constitute use of the premises in accordance with its intended purpose. After all, the primary intended use of the garage premises is the parking of vehicles, not the traffic function. Thus, the establishment of an easement is not designed to compensate for the lack of functionality of the unit(s) for which the easement is established.

After all, the right of way and passage represents only an additional burden on the premises. In consequence, the premises perform the garage function assigned to them in an independent manner. The fact of having, e.g. one entrance and a further common circulation system does not nullify the fact of the separateness of the garage premises.

It is only in the case of non-residential premises that it is possible to establish an easement between premises without depriving the premises for the benefit of which the easement was established of the ability to use it for its intended purpose. In practice, there occur situations, in particular in older structures, in which,

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certificate of premises' separation, cf. judgment of the Supreme Administrative Court of 29 January 2020, OSK 3777/18, Lex No. 2775490.

e.g. to use the services of a shoemaker, it is necessary to pass through the premises where tailoring services are provided. This does not mean that by passing through premises with tailoring services, we are in fact utilizing those services. We are only benefiting from the additional accessibility of those premises and not from their primary function. Nor does passing through the premises with tailoring services mean that the premises with shoemaking services cannot be used for their intended purpose and therefore cease to have the characteristic of separateness.

Likewise, the fact that vehicles other than those of the owners of the parking spaces on the premises will pass through the premises/garage premises does not mean that the parking spaces on those premises are no longer designated for the sole use of their owners. The characteristic feature of non-residential premises is specifically the possibility of use by others, including non-owners. Assuming that non-residential premises can only be used by their owners is a transfer of the mindset inherent in the concept of separateness of residential premises and non-residential premises. Such transposition is impermissible, as it does not fall within the concept of separateness of non-residential premises.

The above indicates that doubts as to the separateness of garage premises are principally a consequence of adopting in relation to non-residential premises the same criteria for separateness which the legislature, jurisprudence, and doctrine apply when assessing the separateness of residential premises. Such an approach is incompatible with the second sentence of Article 2(2) of the O.P.A., which prescribes the application of criteria applicable to residential premises only in a manner appropriate to non-residential premises. This is because it is necessary to take into account the separateness in purpose of non-residential premises, in particular such as garage facilities.

The above suggests that an underground car park building may contain more than one commercial unit with a car park function. This is related to the increasingly common situation where a development is built on a single foundation slab. The above is also reflected in the case law of the Supreme Administrative Court,

which, in one of its judgments, stipulated that: “Buildings of the same or different investors may be built on a single foundation slab [...]”.<sup>25</sup> In another judgment, the court observed, “[...] presently, owing to technical possibilities, it is common practice to build entire housing estates consisting of several buildings on the same foundation slab [...]”.<sup>26</sup> Consequently, garage premises may serve buildings of different investors, possibly even with different functions.

## 4. Conclusion

The analysis undertaken in this article demonstrates that an underground car park constitutes a building which may comprise one or more commercial premises with the attribute of separateness within the meaning of Article 2(2) of the O.P.A. It should be concluded that such premises are eligible for the issuance of a certificate of separation. It should also be noted that jurisprudence also upholds the possibility of establishing an easement of way and passage through the neighbouring premises in order to allow free access to other premises.

Note should also be taken of the fact that the separation of the garage units is not solely the realization of the investor’s interests. Separation of premises and the possibility of sharing parking spaces, including with third parties, also serve the public interest. In particular, in town and city centers, it contributes to improving the parking situation. Thus, the provision of additional parking spaces in the city center contributes positively to the implementation of urban parking policies and will be well received by the public. This type of investment therefore demonstrates the feasibility of private investment in line with the public interest.

Meanwhile, the current legal environment with regard to the normalization of the separateness of underground garage premises indicates that the situation is far from stable. This is attributable to discrepancies in the interpretation of the provisions by the

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<sup>25</sup> Judgment of 4 September 2019, II OSK 56/18, Lex No. 2751907.

<sup>26</sup> Judgment of 27 March 2019, II OSK 1187/17, Lex No. 2673693.

authorities competent to issue certificates of separation of premises. Therefore, regulatory changes are imperative to eliminate ambiguities and standardize the practice of the issuance of certificates.

A more far-reaching issue, one which might optimally affect the regulation of the legal situation of buildings located under the ground, including garage premises, would be the introduction into the Polish legal system of the institution of strata ownership.<sup>27</sup> The law in question provides for the possibility of developing buildings under the ground, on one or several adjacent properties, under a legal title separate from the ground. Strata property law should no longer be treated in terms of the futurology of property rights. Solutions of this type are known and successfully applied in foreign law. It is present, inter alia, in German,<sup>28</sup> French,<sup>29</sup> and American<sup>30</sup> law. Therefore, the introduction of the strata ownership right to the catalogue of rights in rem should be treated as a realistic proposal of *de lege ferenda* nature.

## SUMMARY

### Separateness of underground garage premises (selected issues)

The subject of the analysis in this article is the problem of fulfillment by an underground car park of the prerequisites of separateness of premises within the meaning of the Act on ownership of premises. The first part of the article relates to the possibility of recognizing an underground car park as a building within the meaning of the Construction Law. The second part refers to the possibility of considering a garage facility as

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<sup>27</sup> More broadly on this subject see *Prawo własności warstwowej. Zagadnienia wybrane*, eds. J. Jaworski, B. Szmulik, Warszawa 2022.

<sup>28</sup> L. Dawid, *Wprowadzenie prawa zabudowy w Polsce w kontekście rozwiązań stosowanych w Niemczech*, "Infrastruktura i Ekologia Obszarów Wiejskich" 2016, No. 2, pp. 264–267.

<sup>29</sup> Bureau of Sejm Analyses, *Informacja na temat prawa „własności warstwowej” w wybranych państwach europejskich*, Warszawa 2020, pp. 8–9.

<sup>30</sup> M.A. Landis, C.B. McGratch, L.L. Smith, *Transferring Development Rights in New York City*, "New York Law Journal" 2008, September 28, pp. 7–10.

a separate non-residential unit. In particular, a situation was taken into account in which the investor requests a certificate of separateness for more than one set of premises in the building while the possibility of pedestrian crossing and vehicle passage is foreseen between the premises.

**Keywords:** The Construction Law; Premises Ownership Act; separateness of commercial premises; underground parking; strata property rights

## STRESZCZENIE

### Samodzielność podziemnego lokalu garażowego (wybrane zagadnienia)

Przedmiot analizy w niniejszym artykule stanowi problematyka spełnienia przez parking podziemny przesłanek samodzielności lokalu w rozumieniu ustawy o własności lokali. W pierwszej części artykułu odniesiono się do kwestii możliwości uznania parkingu podziemnego za budynek w rozumieniu Prawa budowlanego, w drugiej zaś do kwestii uznania lokalu garażowego za odrębny lokal użytkowy. W szczególności uwzględniono sytuację, w której inwestor występuje o zaświadczenie o samodzielności więcej niż jednego lokalu w budynku, a dodatkowo pomiędzy lokalami przewidywana jest możliwość przejścia i przejazdu.

**Słowa kluczowe:** Prawo budowlane; ustawa o własności lokali; samodzielność lokalu użytkowego; parking podziemny; prawo własności warstwowej

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