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TIMESHARING IN EUROPEAN LEGAL SYSTEMS – SELECTED ISSUES

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Summary
The article examines the institution of timesharing within European legal systems, focusing on its origins, legal structure, and practical application. Timesharing, defined as a civil law construct granting temporary use rights, emerged in the 20th century in response to evolving needs for leisure organization and tourism expansion. Despite its widespread adoption, timesharing has not achieved uniform regulation within the European Union's legislation or among most Member States. Certain countries, such as Greece, Portugal, Spain, and Turkey, have introduced varying legal frameworks, treating timesharing either as an obligatory right (e.g., Greece) or a real property right (e.g., Portugal). The article highlights significant differences in national approaches, including the flexibility of floating and mixed timesharing models, which further complicate legal classification. Although timesharing shares features with tenancy, key distinctions exist, particularly regarding the stability of the legal relationship and the transferability of the right to third parties. The analysis addresses issues stemming from deceptive marketing practices that misled consumers into believing they were acquiring ownership rights, leveraging the psychological impact of the concept of "ownership." Ultimately, the study underscores the need for further legal development to clarify the nature of timesharing, balancing economic considerations with effective consumer protection measures.

Key-words: timesharing, European law, consumer protection, property rights, contract law, legal systems, tourism law

Timesharing w europejskich systemach prawnych – wybrane zagadnienia (Streszczenie)
Artykuł omawia instytucję timesharingu w Europejskich systemach prawnych, analizując genezę, konstrukcję prawną oraz praktyczne zastosowanie. Timesharing, jako forma czasowego korzystania z dóbr, szczególnie nieruchomości, ukształtował się w XX wieku w odpowiedzi na rosnące potrzeby związane z organizacją czasu wolnego i turystyką. Mimo szerokiego rozpowszechnienia, timesharing nie doczekał się jednolitej regulacji w prawodawstwie Unii Europejskiej ani w większości państw członkowskich, przy czym poszczególne kraje, takie jak Grecja, Portugalia, Hiszpania i Turcja, przyjęły odmienne rozwiązania legislacyjne. Artykuł wskazuje, że w zależności od kraju timesharing może mieć charakter prawa obligacyjnego (np. w Grecji) lub rzeczowego (np. w Portugalii). Szczególne modele timesharingu, takie jak elastyczne lub zmienne (floating, flexible timesharing), dodatkowo komplikują klasyfikację prawną tej instytucji. Autor zwraca uwagę na trudności w precyzyjnym zakwalifikowaniu timesharingu w istniejących systemach prawa rzeczowego, porównując go z najmem, ale podkreślając istotne różnice, takie jak trwałość stosunku prawnego i możliwość przeniesienia prawa na osoby trzecie. W artykule omówiono także problemy wynikające z nieuczciwych praktyk marketingowych, które mylnie sugerowały nabywcom prawo własności, oraz psychologiczną siłę oddziaływania pojęcia własności. Autor podkreśla konieczność dalszych poszukiwań prawnych rozwiązań dla timesharingu, uwzględniających zarówno specyfikę gospodarczą, jak i ochronę konsumentów.

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Słowa kluczowe: timesharing, prawo europejskie, ochrona konsumenta, prawo rzeczowe, prawo zobowiązań, systemy prawne, prawo turystyczne

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Over the past century, a legal institution of a civil law nature, referred to as timesharing, has been formed. The catalogue of new juridical constructions, which includes, m.in others, factoring, leasing, retting, and consulting, also includes timesharing, which has gained recognition and wide application in numerous legal systems around the world. One of the fundamental elements of the construction of timesharing is the right to use certain goods that are the subject of this legal relationship. This right, known as the timesharing right, arises as a result of concluding an appropriate agreement – a timesharing agreement – which results in the transfer of the right to use the existing rightholder to the person acquiring this right. In the literature on the subject, it is repeatedly emphasized that timesharing is a complex institution in terms of construction, which results from clearly different types of legal relationships occurring within it. Starting from the second half of the twentieth century, the institution of timesharing began to undergo dynamic development. This trend is explained primarily by the growing interest in new forms of organizing free time and leisure. The increase in the availability of transport enabling the travel of long distances has resulted in an increasing number of people deciding to relax in attractive tourist locations, often located in different climatic zones. Timesharing allows buyers to obtain the right to use real estate located in such towns, which in practice takes the form of having a "second apartment" in a selected location.

Timesharing as a civil law institution has not yet been completely uniformly regulated, both in the legal systems of the Member States and in the legislation of the European Union itself[2]. A significant impact on this situation was the existence of many different constructions that appeared in the practice of trading[3]. In countries with tourist areas enjoying great attractiveness, the need to introduce a normative regulation of timesharing has been noticed. Such countries include Greece, Portugal, Spain and Turkey[4]. In the legal systems of these countries, there are separate regulations on timesharing within the scope of existing legislation. However, in each of these countries, the right to periodic use has been included in different legal solutions. Therefore, some systems treat this right

[2] B. Fuchs, Timesharing, op. cit., p.43.
[3] M. Nesterowicz, Timesharing, Private Law Quarterly 1997, Issue 3, p.564.
[4] L. Stecki, Timesharing, op. cit., p.35.

as a special right of obligation, for example, in Greece, where this right is treated as a form of tenancy[5], while other systems treat this right as a separate type of property right, and this is the case, for example, in Portugal, where the current Timesharing Act of 1993 allows for the creation of timesharing relationships of an obligatory or material nature. In the latter case, an appropriate entry in the land register is required[6]. Such countries include, m.in, Spain[7] and Turkey[8].

Regulating timesharing as an institution of law does not necessarily mean that its formation as a law of an obligatory nature is unacceptable. Also in those legal systems of countries that are familiar with legal and material timesharing, its special form of obligation has also been regulated. It is also worth mentioning an unusual regulation that is contained in the French Act of 1986, in which the right of periodic use is treated as related to a share in a company[9]. The Act specifies that it is the acquirer who becomes a partner in the company acquiring the real estate, and the share in the company does not constitute a property right or other property right on the part of the buyer corresponding to his share in the company. The rights of the acquirer are regulated by the regulations concerning companies, with the exceptions provided for in this Act[10].

Timesharing has still not been shaped in most European legal systems as a specific and separate type of subjective right or legal relationship[11]. This issue is left to the practice of trade, case law and doctrine to determine. It can be recognized as a subjective right or as resulting from an unnamed obligatory agreement[12] .

Despite the existence of the principle of freedom to conclude contracts, which gives the parties a wide freedom in shaping the content of the obligatory legal relationships, in practice particular difficulties relate not only to the admissibility of including the right to periodic use under the agreement under the framework of property law, but also to the shape of the legal structure of obligation [13]timesharing. The above-mentioned principle of freedom of contract is expressed in Article 3531 of the Civil Code. This provision states

[5] Ibid., p. 35.
[6] Ibid., p.36.
[7] M. Dziedzic, Legal regulation of timesharing in Spain, Studia Prawnicze 2010, no. 1.
[8] L. Stecki, Timesharing, op. cit., pp. 34-36.
[9] J. Gołaczyński, Timesharing – conflict-of-law issues, Rej. 2001, No. 7-8, p. 68.
[10] Ibid., p. 68.
[11] E.Gniewek, Private Law System, op. cit., p.174.
[12] M. Nesterowicz, Timesharing, Private Law Quarterly 1997, Issue 3, p. 564.
[13] E.Gniewek, Private Law System, op. cit., p. 175.

that the parties concluding the agreement may arrange the legal relationship at their discretion, as long as its content or purpose does not contradict the nature of the relationship, the law or the principles of social coexistence[14]. This regulation is based on the assumption that everything that is not prohibited (exception) is legally permissible. It should be emphasized that only in a few legal systems, including Portugal, France or Spain, the issue of difficulties in the admissibility of including the right of periodic use in the framework of property law, as well as the shape of the legal structure of bond timesharing, has been regulated by statute[15]. This means that in most European legislations the right of periodic use can be established as resulting from an innominate contractual relationship[16]. Despite the apparent similarities between a timesharing agreement and a lease agreement, it can be argued that both under Polish law and many codifications of other European countries, it is not entirely appropriate to search for the essence of timesharing by invoking similarities with a lease agreement[17]. However, the differences between them seem to be so significant that it is rather questionable to shape the bond timeshare as a form of lease. Leopold Stecki emphasizes that the basic element common to both institutions is the right to use things[18]. Therefore, there should be no doubt that the lease can be shaped as a right within the scope of which the tenant of the thing may exercise the right to use the thing at repeated intervals. The scope of exercise of such a right of obligation may be limited in the content of the agreement. In fact, this is the only significant similarity between these agreements[19]. Timesharing is usually established for many years. It may even be a hereditary right, but provided that during all this time the entitled person or his legal successors will be able to use the thing without hindrance, i.e. in particular, they will not be surprised by the earlier abolition of their right as a result of the actions of the other party[20]. However, in the case of lease, such an assumption is impossible to implement, because as a rule, the laws of other countries exclude the possibility of establishing this right for a period of several decades without first introducing a mechanism enabling early termination of the legal relationship between the parties[21]. This means that after a certain period of time, the lease may be abolished by virtue of a unilateral legal act performed by

[14] W. Czachórski, Commitments, op. cit., p. 149.
[15] E.Gniewek, Private Law System, op. cit., p. 175.
[16] Ibid., p. 175.
[17] L. Stecki, Timesharing, op. cit., p.117.
[18] Ibid., p. 116.
[19] E.Gniewek, The system of private law, op. cit., p. 176.
[20] L. Stecki, Timesharing, op. cit., p. 417.
[21] Ibid., pp. 400-401.

each party to the legal relationship. As a consequence, it becomes an impermanent solution that does not provide the entitled person with a stable position enabling him to use the thing undisturbed[22]. Not only the lease is characterized by the lack of durability of the obligation relationship. The Polish Supreme Court in its resolution adequately indicates that after all, "permanence means stabilization, certainty as to one's rights and burdensome obligations", and "the feature of permanent obligations is that they allow you to act in confidence that the resulting rights and obligations will not expire prematurely", but "this stabilization does not have (...) absolute nature, as the regulations directly provide for the possibility of premature termination of a permanent contract concluded for a definite period of time in certain situations. The durability and stability of the legal relationship does not have to exclude the risk of its termination."[23] It is worth noting that in the case of timesharing, the entitled person can freely dispose of his right, which is questionable in relation to rental under Polish law[24]. It should be noted that the difference between timesharing and rental also lies in the multitude of services that make up the content of the timeshare legal relationship, apart from the right to use the property[25]. In the case of timesharing, it is possible for a third party to acquire both the right to use the thing and the rights and obligations associated with it.[26] A translational acquisition means that the acquirer obtains a right with an unchanged content. It is one of the two ways (apart from constitutive acquisition) of derivative acquisition of a subjective right[27]. According to Leopold Stecki, the doctrine indicates that in such a case "it is impossible not to express the opinion that: (...) In fact, we are dealing with a kind of assumption of the contract or accession to the contract."[28] Such a solution, which is alien to Polish civil law[29], is possible in the case of obligatory timesharing under the Timeshare Act, given the general regulation of this institution contained therein[30]. The search for appropriate solutions in the law of obligations is also complicated by the desire to shape timesharing as a relationship under which the entitled person may, according to various rules, determine the date of annual use and indicate various properties that may be the subject of this right[31]. Such constructions are

[22] E. Gniewek, The Private Law System, op. cit., pp. 176-177.
[23] Uchw. SN of 21.11.2006, III CZP 92/06, OSN 2007, No. 7-8, item 102, p. 57.
[24] Z. Radwański, A. Olejniczak, Liabilities general part, 9. Edition, Warsaw 2010, p. 367.
[25] E. Gniewek, The System of Private Law, op. cit., p. 177.
[26] Ibid., p. 177.
[27] A. Kawałko, H. Witczak, Civil law – general part, 4. Edition, Warsaw 2011, p. 68.
[28] L. Stecki, Timesharing, op. cit., p. 300.
[29] Ibid., p. 299.
[30] Z. Radwański, A. Olejniczak, Liabilities general part, op. cit., 367.
[31] E. Gniewek, The Private Law System, op. cit., p. 178.

referred to as floating, flexible timesharing associated with the possibility of swapping its object, and mixed timeshare[32]. At the turn of the 80s and 90s of the twentieth century, numerous entrepreneurs who offered their services on the timeshare market addressed offers to consumers to purchase the right to periodic use formulated in an unclear way. Consumers were convinced that the subject of a given offer was the right of temporary ownership[33]. In Leopold Stecki's opinion, numerous cases were also observed at that time, in which the content of advertisements, brochures, brochures, announcements, as well as statements made during organized advertising events, led to the fact that people who were interested in timesharing were misled[34]. These offers suggested the possibility of acquiring ownership or co-ownership of real estate in very attractive holiday resorts located in different parts of the world, although only obligatory types of timesharing or some limited property rights could be taken into account[35]. Even in the content of the already concluded contracts, one could see provisions on the acquisition of temporary property. Also according to Ewa Łętowska, the offers were formulated vaguely and suggestively, at the same time making them an extraordinary opportunity to acquire a share in co-ownership[36]. In this way, consumers interested in the offer were informed about the purchase of their "own" house, or the "owner's" right, "temporary ownership" of the holiday property[37]. Such actions met with strong disapproval, both social and ethical.[38] Undoubtedly, the main purpose of such practices was to strive to make the offer addressed to the consumer more attractive, inter alia, by indicating that for a price corresponding to a small part of the value of a given property, the entitled person becomes its owner[39]. However, he can only use it to a certain specified extent. According to Leopold Stecki, such a practice may have been caused by the fact that the French literature devoted to property law, as well as its importance in the field of timesharing, draws attention to the occurrence in almost all societies of a certain kind of magic of the term "property". As he emphasizes, this term still has an extraordinary power to affect the mental sphere of man[40]. This enchantment with this term has also manifested itself in the field of timesharing. The aim was to enable the

[32] L. Stecki, Timesharing, op. cit., p. 387.
[33] M. Nesterowicz, Timesharing, op. cit., p. 563.
[34] L. Stecki, Timesharing, op. cit., p. 183.
[35] Ibid., p. 183.
[36] E. Łętowska, Consumer Contract Law, op. cit., p. 342.
[37] M. Nesterowicz, Timesharing, op. cit., p. 563.
[38] L. Stecki, Timesharing, op. cit., p. 183.
[39] Ibid., pp. 417-418.
[40] Ibid., p. 417.

purchasers of the right to occupy positions similar to those of the owners of the property[41]. As a result, the right of ownership began to be invoked. This is the direction in which timesharing practice has been shaped, mainly in the United States of America[42]. Indeed, such solutions aimed at reifying timesharing should not be perceived only from the perspective of the above-described unfair practices of entrepreneurs[43]. It should be emphasized that apart from such cases of inconsistency of terms with the actual content of the concluded contract, there is a desire to ensure the buyer's position as stable and economically advantageous as possible[44]. This should be done by searching for an appropriate structure within the system of absolute property rights[45]. Obtaining such a position is possible under the provisions of property law, taking into account the basic assumptions and principles governing this branch of civil law[46]. Unfortunately, over time, a view has emerged in which timesharing should be considered as a right that is a special form of ownership or as a right similar to property and to some extent similar to ownership in the economic sense[47]. It is not without reason that both in the doctrine and in the French, Italian and Spanish jurisprudence, the term "multipower" or "time ownership" is usually used to describe timesharing[48]. This term has been adopted in some legislations[49]. Subsequently, the search for solutions began that would enable the interested parties to establish the right of temporary use as an ownership right, i.e. being a share in co-ownership or divided ownership[50]. In legislation and in the practice of trading, there are many constructions of timesharing, which in fact make it difficult to find model solutions. They are also an obstacle to specifying the answer about the legal nature of timesharing[51]. Therefore, it is necessary to seek an answer to the question about the legal nature and shape of timesharing, taking into account the trends observed in the practice of trading, as well as taking into account the specific solutions that exist in some European legal systems[52]. At the same time, it is necessary to bear in mind the economic assumptions that determine the

[41] Ibid., p. 418.
[42] Ibid., p. 418.
[43] E. Gniewek, The Private Law System, op. cit., p. 178.
[44] L. Stecki, Timesharing, op. cit., pp. 417-418.
[45] Ibid., pp. 417-418.
[46] Ibid., p. 418.
[47] M. Nesterowicz, Timesharing, op. cit., p. 563.
[48] L. Stecki, Timesharing, op. cit., p. 435.
[49] P. Pogłódek, Use-of-Use, op. cit., p. 83.
[50] E. Gniewek, The Private Law System, op. cit., p. 179.
[51] M. Nesterowicz, Timesharing, op. cit., p. 563.
[52] Ibid., p. 180.

specificity and attractiveness of this solution, which affect the content and scope of the right to periodic use[53].

Taking into account the solutions already existing in practice, it should be emphasized that in some Member States there is no need to unambiguously resolve the legal nature or expressly regulate this subjective right. This is primarily due to the possibility of applying legal solutions already existing in these systems, such as usufruct and lease[54]. Going further, in many legal systems it is difficult to find such normative solutions that could provide the basis for a kind of anchoring of timesharing, thus enabling the content of such a right to be shaped in accordance with the assumptions indicated at the beginning[55]. First of all, it is troublesome to look for the possibility of including timesharing within the framework of property rights already known in some legal systems, such as ownership, usufruct or easement[56].

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[53] Ibid., p. 181.
[54] B. Fuchs, Timesharing, op. cit., p. 45.
[55] Ibid., pp. 45-46.
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AKTY PRAWNE

Dyrektywa Parlamentu Europejskiego i Rady z dnia 14 stycznia 2009r. w sprawie ochrony konsumentów w odniesieniu do niektórych aspektów umów timeshare, umów o długoterminowe produkty wakacyjne, umów odsprzedaży oraz wymiany (Dz. Urz. UE L 2009/33/10.)

Dyrektywa Parlamentu Europejskiego i Rady z dnia 26 października 1994 r. w sprawie ochrony nabywców w odniesieniu do niektórych aspektów umów odnoszących się do nabywania praw do korzystania z nieruchomości w oznaczonym czasie(Dz. Urz. WE L 1994/280/83)

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