UDC 330.1 (438)
DOI: 10.31359/2411-5584-2018-34-3-61

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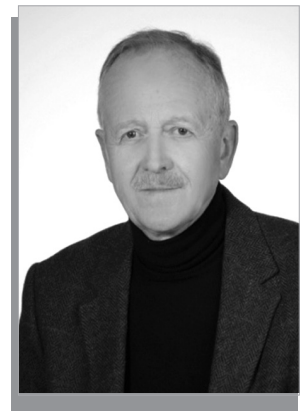

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REGULATING COMMON-POOL RESOURCES: THE PROBLEM OF SOCIAL CAPITAL IN POLAND[1]

The aim of the paper is to present the impact of social capital in Poland on the regulation of common-pool resources (CPRs). The conceptual framework created by Elinor and Vincent Ostrom was used. However, not only «traditional» CPRs, such as pastures, water intakes, and irrigation devices, but also the new ones, i.e. property in common use managed by residential communities, are the subject of our analysis. Polish regulations of both kinds

of CPRs are of formalistic character. In case of «traditional» CPRs this situation is partly caused by specific legal culture influenced by formalistic foreign regulations (dating back to the 19th century) and by bureaucratic administration during the period of central planning. After 1989 similar methods has been applied to regulate new CPRs. In our view, the deficiency of social capital is the reason why such a mode of regulation, thought contrary to the principles described by Elinor Ostrom, is seen by some as not only acceptable, but even desirable. We emphasize, therefore, the role of adequate social capital in the management of CPRs.

Key words: common-pool resources, ownership, Poland, social capital, residential communities.

JEL Classification: K11, K25, K32, L85, Q25.

Problem setting. Previous publications on common-pool resources (hereinafter: CPRs), including the fundamental works of Elinor and Vincent Ostrom, covered mainly traditional environmental resources in common use, such as pastures, water intakes, irrigation devices, etc. In addition, they mainly referred to stable, long-established communities. In this article, we refer the results of the analysis to the development of CPRs legal regulations in Poland. We observe, however, that today's traditional resources available for common use in smaller communities are very limited and shrinking due to expansion of market mechanisms. At the same time, new types of resources that meet the definitions of CPRs should be noted. Residential communities offer an example of joint property in common use. In our opinion, the analysis of «traditional» CPRs can be helpful to understand the specificity of these «new» resources. We illustrate the case with examples of Polish legal regulations. According to Elinor Ostrom, CPRs are managed most effectively if the community exploiting them sets up its own rules for their use. They have to consider sustainability of the resource, i.e. to keeping it in a state allowing constant quality of use over a long time. In Poland in case of residential communities, the framework of the rules is top-down regulated, while the details are determined by the communities themselves. Legal framework of community used water resources, flood prevention and irrigation devices, as well as residential communities reflects past regulations imposing state control over individual initiatives. Consequently, the vast majority of resource management rules is given by the state. We believe, it is related to missing adequate social capital. Were community members strongly involved in creating their own immediate environment, the state rules would be redundant. In the opposite case top-town regulations seem justified.

Analysis of recent research and publications. In analyzing public goods, we took into account primarily the definitions of Stiglitz (1986, 1977). There is quite an extensive literature on «traditional» CPRs. However, the works of Elinor and Vincent Ostrom, which showed the possibility of effective CPRs management by the

communities themselves, deserve a special attention (Ostrom, E., 1990). Moreover, only to a small extent the results of these works were used by legal scholars. In Polish literature, Blicharz (2017) has recently attempted to transfer the results of the Ostrom's research to the field of law, but his work does not refer to Polish law. Polish regulations on community use of resources by «water companies» were the subject of quite detailed analyzes (Paczuski, 1989, 2006), but so far this issue has not been analyzed from the point of view of the CPRs concept. The same is true of the problem of residential community's management, which were not treated as the way of managing the CPRs by previous authors dealing with this subject. Admittedly, there is a very rich literature in English devoted to residential communities, but it deals mainly with the sociological side of the phenomenon. Besides, one can observe an ideological division into community supporters (Foldvary, 1994; Nelson, 2005) and their opponents (Low, 2003). From our perspective, the contributions which analyze housing communities from the side of club economy (Glasze, 2005; Szczepańska, 2014) are important. They indicate that residential communities can be treated as a club, whose members have similar needs as far as goods and services related to housing are concerned. The club offers conditions for the joint consumption of these goods and services, while protecting them against use by the free riders. In our view, the authors of such contributions are partly right. However, they do not take into account the fact that individual members of the community represent very different needs and habits. Social capital in the context of CPRs has not been of primary interest to scholars (Tatlonghari & Sumalde, 2008; Carpenter, 1998; Anderson, Locker, & Nugent, 2002; Gari, Newton, Icely, & Delgado-Serrano, 2017), although Elinor Ostrom herself noticed that issue (Ostrom, 2002).

Paper objective. The aim of the paper is to present the impact of social capital of a particular society on the regulation of common-pool resources. It seems that this factor is underemphasized in the hitherto analyses of the subject. Polish regulation of both typical CPRs (as water resources) and new ones have been chosen as an example to present the mentioned issue.

The main material presentation.

1. The nature of common pool resources

Provision and consumption of private and public goods undergoes clearly defined rules. Private goods are sold at market prices, which reflect their relative scarcity and provision cost. Public goods, due to their nature, cannot be priced and no consumer can be excluded from their use. The marginal cost of their provision is zero, which means that each additional consumer could enjoy it at zero cost and none could be discriminated and banned from its use. Of course, it doesn't mean that the delivery of public goods has no cost. The cost is most often covered by public authorities both national and international (like in case of global public goods) (Stiglitz, 1986; 1977).

Common pool resources (CPR's) are a different type of goods. They are free to a limited number of users living in a defined area and their quantity is also limited. Consequently, excessive consumption by one of the users would leave less for all the other beneficiaries. In case of private resource, the owner has unlimited right to use it (within legal bounds). In case of a CPR, there is no owner defined or the owner left its resource for common use by a group of consumers.

Club goods can be consumed by many persons at the same time, but they are susceptible to congestion (Buchanan, 1965; Boadway, 1980). Both private goods and club goods are left to the scope of private law, the task of the legislator (lawmaker) in their case is to define the property rights (in such a manner as to avoid unnecessary conflicts, litigations etc., i.e. to minimize the transaction costs). Moreover, sometimes the distribution of some private goods may be the subject of antitrust regulation and/or express social preferences.

As Vincent and Elinor Ostrom many times emphasized (Ostrom, E., 1990; Ostrom, E., & Ostrom, 1971; 1977; Ostrom, E., 1998), both in the case of public goods and common-pool recourses, if the individuals who consume a particular good consider only their own interest and they do not take into consideration the interests of the others, the good easily would lose on quality. This statement shows that according to the scholars the *homo oeconomicus* assumption is not working in this case. Profit maximization should not be an objective in the CPRs management, however each of the group members should find his/her acceptable share of benefits in a Pareto-like situation. Reaching such an optimum would require a length of time, which depends on the level of social capital[1] in the country in general and specifically the spirit of cooperation and mutual trust among the group members.

Traditionally CPRs were studied in rather small communities where individuals exploited their small piece of land and additionally had access to locally available free resources like water or «no-man's land» considered to be a communal ground open for all to benefit from. Over time, in the absence of a massive inflow of outsiders, the community worked out its own rules of resource use generally accepted – «we have always done like that». Working out the rules required time to smooth possible conflicts and to work out understanding of mutual needs while preserving the resource for the future and avoiding its overexploitation. In this way sedentary societies built their social capital allowing their survival. Economic development brought about social changes and depletion of social capital, which allowed in the past self-regulated use of CPRs. Therefore, a different type of regulation had to be put in place. Although traditional CPRs still exist, we witness

[1] We understand social capital as the relationships between people that promotes the growth of well-being. In modern societies regulated by law, social capital understood as trust and cooperation between and within networks, plays an important role in efficient use of resources (in local communities, countries and internationally). Its stock, difficult to be measured, changes over time. It takes time to build it, however unexpected events or changes in production modes, might easily destroy it.

new types of CPRs emerging with similar problems in their use where a joint ownership coexists with private property.

Property issue in the case of common-pool resources is of secondary importance. These resources can be public property as well as private property. They can be also owned by local communities or other legal entities. Sometimes they have inconsistent ownership structure. What is important, common-pool resources are not «open access» resources. If there was «open access» to such resources, it would be a result of management failure to protect them (Ostrom, E., 1990; Blicharz 2017).

2. Institutional arrangement of common-pool resources

A characteristic feature of CPRs is their limited nature. Therefore, their use has to be controlled. Otherwise, they would lose their quality for the users or be completely exhausted. Therefore, the management of a CPR is based on such a use, which does not lead to reduction of benefits drown in the long run. It means defining the pattern of use and the amount of the resource that can be used by entitled individuals. This can be done in a top-down manner or by means of the by-laws, i.e. rules shaped in a bottom-up way and unwritten customary rules. Elinor Ostrom who was strongly in favor of the latter way distinguished several categories of rules establishing the legal framework of CPRs. The first of them are operational rules which concern everyday use of a resource, i.e. the withdrawal of its units, monitoring actions of users as well as applying the sanctions. Collective-choice rules are, in turn, about shaping the operational rules by the appropriators, administrators chosen by them and external authorities (Ostrom, E., 1990, p. 52). Constitutional-choice rules are another category of rules which refer to the ways of acting of a group (community) managing a CPR vis-à-vis the state and other bigger organizational structures. These rules concern also the so-called emergency situations.

Certain types of rights correspond with the rules listed above. Schlager and Elinor Ostrom (1992, pp. 250–251) mentioned five types of rights related to CPRs, among which the first two are the most important. These are: right to access to a particular resource and the right to withdrawal the «fruits» or «products» of the resource. The right to «management» includes the entitlement to decide on how a CPR will be used and to introduce certain innovations in this regard, while the right to «exclusion» determines who can use a CPR and how this right would be transferred. Finally, the right to «alienation» means the possibility to sell or lease the rights belonging to four above mentioned types. It should be noted, however, that not in every case, the users have all these rights. In particular, the rights to access and to withdraw may result from the ownership of another property or an administrative decision (a permission) and may be non-transferable. Sometimes, in turn, their transfer requires the consent of all the other users or certain administrative authority and is quite complicated. The most important thing is that the right to manage the CPR is performed jointly by the users, and decisions in this

regard must be made by the majority or even all of them. It assumes democracy in the decision-making process.

3. Regulating the «traditional» CPRs in Poland

Legal framework of CPRs in Poland still contains some relics of old institutions. They are easements and the so-called bank easements (*serwituty*) in the Suwałki region as well as the shared use of pastures in the Gorce and Tatra Mountains. They concern communities with a very stable character and regions in which there were no significant migrations after the World War II. The mentioned easements had been still in force during partitions (mainly legal acts of the Russian tsarist administration). Most often they regulated jointly used forests. The Act of June 29, 1963 on the management of common lands (Polish Journal of Laws [PJL], No. 28, item 169) replaced these easements by obligatory companies. This regulation, adopted under central planning, introduced a rather formalized method of managing the CPRs. Piotr Gołos' research revealed that the so-called land communities in Poland continue to operate in 447 local communes (*gminy*), i.e. in 18.1% of all of them (Gołos, 2008).

Common sheep grazing area in the Tatra Mountains is fully regulated by customary law, although conflicts between this law and the statutory regulations are still noticeable (Korzycka, 2018, pp. 185–187). Currently, the shared use of pastures has been limited due to the establishment of the Tatra National Park in 1954. Korzycka emphasizes that the draft regulation of the Park of 1938, which did not enter into force due to the outbreak of World War II, stressed the need to respect the customary rules («easement's rights») regarding common pastures. The regulations from the period of the Polish People's Republic strongly limited this possibility, and the intention of the authorities was to interfere within «the internal relations of the highlander community». Conflicts between the community and the authorities regarding traditional grazing escalated in the 1960s and 1970s (Korzycka, 2018, pp. 190–192). The actions of the authorities in this period led to the infringement, and often the disappearance of the customary regulations of the CPRs management in rural areas. Traditional rules were seen as incompatible with the model of agricultural production organization, in the country in those days.

The **institution of «water company»** was introduced into Polish legal system in 1922. It was to serve as management of resources like water intakes, flood protection and irrigation devices. The institution was based on *Wassergenosenschaften*, present in both Prussian and Austrian laws. However, while in Galicia where Austrian law was in force, the *Wassergenosenschaften* did not play a major role, in the former Prussian Partition they were of great importance in initiating the irrigation works[1]. The difference was due to ownership structure of agricultural land in those

[1] Two types of water company were known in Prussian law: private law companies and public law companies. The latter had a privileged position, but also the supervision over them from the administration was greater (Dawidowicz, 1959, pp. 47–51).

territories. Large and medium-sized farms dominated in the Prussian Partition, and their owners were directly interested in the success of irrigation works (Dawidowicz, 1959, pp. 13–14, 82–84). Moreover, several water companies established in this territory were still in operation during the period 1945–89 (Paczuski, 1989).

Austrian Act of 1869 became the model for Polish «Water Act» of September 19, 1922 (PJL, No. 102, item 936). Polish act extensively regulated water companies. As many as 72 out of 266 articles were devoted to them, and they introduced quite detailed provisions.[1] Such institutions as the ones introduced by this act were completely unknown in the former Russian Partition (Nowakowski, 2006, p. 454; Dawidowicz, 1959, pp. 18–19). Probably this was the reason for such a vast regulation. However, the casuistic nature of the regulations caused problems in their application (Dawidowicz, 1959, p. 19). Public administration played a major role, because the law enabled authorities to enforce the creation of a compulsory water company (a similar institution existed in the Prussian act of April 7, 1913) (Dawidowicz, 1959, pp. 50–51, 74–79). Legal historians point out that many of water companies had financial problems, although they had been financed extensively by the state (especially since 1925) and had opportunities to get cheap bank loans.[2] Moreover, the irrigation systems built/ maintained by water companies in many cases were not very efficient (Nowakowski, 2006, pp. 456–457; Dawidowicz, 1959, pp. 90–103).

In the period between1945–1989, institution of the water company remained in the legal system. However, during the early period (1950–1955) it completely lost its practical importance. The regulations of the two «Water Laws»: of May 30, 1962 (PJL, No. 34, item 158) and of October 24, 1974 (PJL, No. 38, item 230), strengthened the administrative supervision and allowed to make water company an obligatory form of management of specific resources. Both acts stipulated that the creation of a water company could be a result of an agreement between interested individuals and/or organizations, as well as of an administrative decision (Article 110 of the Act of 1974)[3]. Thus, the imposed organizational form of a water company

[1] Some authors in the pre-war period pointed out that the term used in the act was not accurate because it suggested the connection of this institution to commercial law companies. Therefore, «water associations» or «water unions» were considered to be better terms (Dawidowicz, 1959, p. 47; Bigo, 1928, p. 109). «Levee unions» were a kind of water companies, dealing with the construction and maintenance of flood protection embankments. It is worth noting that the roots of these unions – as a way to manage the common-pool resources – could be traced in Polish lands back to the Middle Ages (Nowakowski, 2006, p. 450).

[2] The legal provisions concerning water company were also abused. In order to obtain a cheaper loan, the factious water companies were created, that jointed lands which were distant from each other and unconnected with each other from economic point of view (Dawidowicz, 1959, p. 85).

[3] The analysis of the regulations of that period leads to the finding that water company was to be the basic form of management of common water resources and water intakes as well as flood embankments, melioration devices and devices for wastewater treatment. Such a conclusion should be deduced from the fact that the members of the water company were owners or users of land in scope of the activity of the company. However, other entities, including state-owned enterprises, could become members of such a company if their

could be implemented without the consent of interested entities. In such a situation, the internal regulation was bestowed upon a water company by the local administrative body (Zwięglińska, 1981, p. 171, 173)[1]. According to art. 112 para. 1 point 2 of the Act of 1962, this could happen if justified by «the reasons of planned water management». Similarly, it was possible to terminate a water company without the consent of its members. A water company was not free to regulate its organizational structure, as there were standard internal regulations (statutes) to be applied. These statutes were quite detailed and indicated that the company performed its tasks under supervision of the state administration (*Prawo wodne*, 1979, pp. 142–143, 146–156; Surowiec, Tarasiewicz, & Zwięglińska, 1981, pp. 270–287). In addition, water companies were considered to be a part of the state-owned sector (so-called *jednostki gospodarki uspołecznionej*), therefore they were included in the whole planning system. In turn it meant that legal regulation became even more bureaucratic and less transparent. The Act of 1962 abolished also the regulations of the levee unions. Thus, a century of gradual development of these unions on the present Polish territory has been squandered. Custom developed rules of the flood protection devices maintenance were replaced by state regulations (Paczuski, 1989, p. 17). In this situation, water companies managed resources put at their disposal like the state property. They would not qualify to be called CPRs by Elinor Ostrom.

Subsequent changes in water company regulations made after 1989 were intended to adapt it to the conditions of the market economy. However, the general nature of the regulation has remained unchanged. It is still quite detailed and formalistic. It also does not allow for flexible regulation of the water company structure, to be adapted to the specific needs of entities using common-pool resources.

Currently, water resources in Poland are becoming scarce. Therefore, the state has established a sort of a monopoly in deciding on water use. In this framework water companies were allocated water quotas to be used according to imposed rules. In the administration of water resources they have to follow the rules established by the state. The provisions on the water company included in the Water Law of

participation in the company was «economically justified» (Article 109 (1) of the Act of 1974). Accession of other entities than owners or users of land to the company caused that the principle that the resource should be managed by entities directly interested in maintaining the quality of the resource was disturbed. Sometimes they could be the entities that could exert a considerable pressure (e.g. large state-owned enterprises). In addition, according to the standard statute, the entities or state-owned enterprises belonging to a water company had more votes at the general assembly than natural persons being members (Surowiec, Tarasiewicz, & Zwięglińska, 1981, p. 282, 284).

[1] Both acts of 1922 and 1962 mentioned also a mixed – partly voluntary and partly compulsory – water company. It was established at the initiative of the majority of owners of the lands to which the company's activity was to relate, but the administrative authority issued a decision regarding the inclusion of other property owners in the company (Sommer, 1998, p. 311). It is worth adding that creation of such a mixed entity was also possible under old Prussian regulations but limited only to very few situations (Prokopowicz, 1926, p. 92).

July 18, 2001 (PJL No. 115, item 1229) – despite all the differences resulting from the change in economic relations – were, to a large extent, quite similar to the previous regulations of 1974. However, the 2001 regulations did not allow public administration bodies to impose obligatory creation of a water company. The scope of public administration supervision over the activities of such organizations was also slightly relaxed. In addition, levee unions as a special type of water companies were restored.

The intention of the new legal arrangement of water companies, contained in the Water Law of July 20, 2017 (PJL, item 1566), was to make them non-profit organizations. Still, the legal regulation of water companies seems not to be in line with the principles laid out by Elinor Ostrom. Today's water companies are highly formalized structures with three types of bodies, i.e. management, general assembly of members, and audit commission (if the water company has more than ten members). Consequently, water companies do not meet the «bottom-up» principles of management. Their structure is quite strict and supervised by the local authorities[1]. The act of 2017 upholds the provision, taken from the previous regulation of 2001, that all the resolutions of a water company management have to be submitted for approval to Starosta (the district administration authority) within 7 days from the date of adoption. For a successful management of a CPR, it is necessary that a group of people or community using a CPR should feel responsible for the resources at their disposal, which is not the case. The structure of a water company guarantees only a limited members participation in management (through general assembly), but it is not certain if this level is sufficient to guarantee sustainability in a long run.

4. New forms of CPRs in Poland

Transition period in Poland has been a reaction to loss of efficiency in resources use considered to be a result of central planning. Badly managed public property and inefficient market mechanisms were results of the decision-making processes. The owner (state) made decisions based on aggregated information while the actual production activities had to deal with production and distribution details not necessarily consistent with instructions received from above. Change of ownership was an important part of a needed solution. Private owner, motivated by profit, was a better guarantee of efficiency. Most of the state assets in industry and services have been privatized. Privatization brought also changes to ownership in housing sector. During the pre-transition period (1988) about 24 percent of the urban population lived in different forms of cooperative apartments, and another 19 percent in service and municipal apartments usually provided on concessional terms (Gałązka, 1998, p. 54). At least ownership of the apartment buildings was clear in

[1] The new Water Law of 2017 realizes the tendency towards centralization of the water resources management. In this regard it has created a superstructure called The State Water Farm «Polish Waters» (Państwowe Gospodarstwo Wodne «Wody Polskie»).

this system. The new laws allowed and encouraged[1] tenants to get into full ownership of the apartments they lived in. Without getting into intricacies of the operation, extended over time and taking different forms adapted to previous institutional ownership, it created a new setup for all concerned. Former owners were not any more responsible for management and maintenance services. New owners, mostly former tenants, became responsible not only for their respective apartments, but also for the common parts of the buildings, connection to utilities, jointly used space, improvements etc. as well as for the associated costs. In this way a new kind of CPRs was created. Property in common use of the residential communities should be treated as CPRs, because it is a resource whose quality directly affects the value of individual apartments owned by members of the community. When common property (staircases, garages, jointly used rooms, etc.) is well maintained, the value of apartments goes up. Therefore, the owners should see their interest in maintaining the common resource in good condition (Szczepańska, 2014, p. 201). Simultaneously, the operating principle of residential communities is to make decisions about this resource in a democratic way as it concerns all their members.

In 2016 as many as 20 percent of all the apartments were in over 325.000 residential communities and their numbers were growing (GUS: Polish Central Statistical Office). Out of this number about 50 percent of communities were composed of one-family houses, while the condominiums share was estimated at 45–48 percent of all the communities. Residential communities in apartment cooperatives were the remaining part of this number (Szczepańska, 2014, p. 199). Such, de facto, newly created communities, if left alone, would have to organize themselves in order to regulate their internal relations in the use of jointly owned/used facilities and agree on the distribution of related cost. Operating problems were further complicated by the fact that most of common facilities in the existing buildings were in the need of repair. Members' material status (poor vs. those better-off) determines difference in expectations to the scope and quality of present and future spending to keep CPRs in adequate shape. Aware of the emerging problems between tenants – group members, and account taken of the scale of the problem, Polish legislators passed a law to regulate operation of «residential communities»[2]. Communities created and in operation under this law represent heterogeneous groups of people, often weekly linked, where rational use of CPRs might be difficult to agree upon, at least at the beginning.

Polish law de facto created this new type of CPR within property in common use (PCU). It is governed by the provisions of the Civil Code (i.e. the amended Act of April 23, 1964, uniform text: PJL of 2018, item 1025) and Act of June 24, 1994 on ownership of premises (consolidated text: PJL of 2018, item 716). If the

[1] Selling at discount prices to registered tenants.

[2] Polish: «wspólnota mieszkaniowa», the term close to the German «Hausgemeinschaft», *condominium*.

residential community has no more than seven apartments, the provisions concerning joint ownership are applied to the shared real estate property – CPR (Article 19 of the Act on the ownership of premises). This means that if it is the wish of the residential community members, it may outsource its management to one of the members (co-owners). The residential community may also entrust management to an external entity, whereby each co-owner might apply to the court for appointment of a manager (Article 203 of the Civil Code). Activities that exceed the so-called ordinary management of a PCU require the consent of all the owners. If it is impossible to reach, co-owners with more than 50 percent of shares in the PCU may address the court to resolve the disputed problem (Article 199 of the Civil Code). Therefore, in case of small residential communities, existing regulations allow for a far-reaching independence in matters of the PCU management. Basically, the role of the court becomes only subsidiary. The court comes in only when the owners are not able to reach compromise in solving their problems.

By law the solution is different in the case of larger communities (composed of more than seven apartments). Here, the members have to select a manager, who would be either a natural person or a legal entity (Article 20 of the Act on the ownership of premises). The manager deals with the day-to day («ordinary») management of PCU, while the majority resolution of the owners is needed only in case of activities exceeding the scope of «ordinary» management (Article 22 of the Act on ownership of premises). It should be emphasized therefore, that in this case, management of the PCU becomes more formalized. The resolutions are adopted by the majority of owners and implemented by management. Larger communities, by law, are obliged to follow the regulations designed for them. They would not be allowed to use the simpler rules which are in force in a community of up to seven apartments (Strzelczyk & Turlej, 2015, p. 489).

The way the PCU is to be managed is determined by its members in a form of a written agreement (a notarial deed), whereas the contract previously concluded already creates a binding legal situation for the owners of newly-separated apartments (in buildings formerly under communal administration). This means that if a specific entity (most often a legal entity – a company) had been a manager under such a contract, when the community had only a few members and the municipality was the majority owner (for example it owned seven out of ten apartments in the residential community), then the entity would automatically remain the manager when the number of community members grows. A change in the way in which the community is managed requires majority decision of the owners drafted by a public notary (Article 18 of the Act on ownership of premises). Through this provision, the legislation explicitly privileges the manager of the PCU designated earlier by the municipality. In the majority of cases the managing entity selected by the municipality retains its position also after selling all the premises

formerly owned by the municipality. The change of the manager requires vote of the owners. If, however, managerial entity fails to perform adequately, each owner has right to request the court to appoint a different manager. Privileged position of the managing entity acting on behalf of a municipality is reflected in the law. The law entitles it to seek court appointment of a manager when members of the newly formed community don't make their decision on this subject (Article 26 of the Act on ownership of premises). Present legal regulations undoubtedly favor the bureaucratic style of managing the PCU.

At this point it should be noted that the professional property managers associations lobby for amendments to the currently applicable law. If successful, the amendments would lead to more detailed regulations on such issues as e.g. parking spaces, as well as would further limit the democratic decision making by the residential community. Property managers propose among others to wave the voting quorum requirement. According to their proposals, biding decisions would be taken by the voting members present at the meeting only (*Stanowisko PSZN*, 2015). As a result of such a change, there would be no need to collect votes from the absentees. It would reduce transaction costs of property managers, but in this way, potentially large group of members would be excluded from the decision-making process. Consequently, the use of resources would be determined by the managers in a top-down manner. It would not fit into our definition of CPRs.

The question might arise: why such a specific legislation was required, while civil law already sufficiently regulates all possible property relations. Since their first emergence, the CPRs, operated on un-written rules and understanding between their beneficiaries worked out over time. No doubt, such an understanding must have been reached after numerous past small conflicts, which led to joint comprehension that only well maintained and reasonably used CPR can offer sustainable benefits. This brings the topic of social capital, extensively discussed and referred to in many publications (Adler & Kwon, 2002; Costa & Kahn, 2003; Ferragina, 2012).

Szczepańska's research on residential communities in Poland (2014) shows that the surveyed community members recognized residential communities as a satisfactory form of premises management. However, the actual involvement of the members in day-to-day community affairs was low. Most often they remained passive (the exception was in communities made up of a larger number of younger, usually well-educated retirees). Szczepańska believes that this might be related to the phenomenon of «potentiality» described in sociological literature: «the owners just need to convince themselves that they are capable to apply the mechanisms of co-management the moment it is necessary» (Szczepańska, 2014, p. 207). Often the members were happy to leave the entire management process to a professional manager. Her research also revealed attitudes indicating a lack of understanding of

what a common resource is. Interviewed, some communities' members presented opinions like: «Why should I pay to repair the leaking roof if it is not dripping in my flat?» (Szczepańska, 2014, p. 210). Needless to say, communities characterized by strong neighborly ties, i.e. by greater social capital, were operating more efficiently and offered more satisfaction to their members. In case of such communities, strict regulations by the state are considered redundant and counterproductive. When the entire management process was in the hands of the outside professional entities, it was difficult to create democratic, effective decision-making mechanisms within communities themselves.

5. Concluding remarks

The cases presented by Elinor Ostrom refer to sedentary societies with adequate social capital built over generations. People know what to expect from one another and have learnt to care for common good, because it has been an essential element of their wellbeing. The right equilibrium has been reached to guarantee sustainability of the CPRs at their disposal.

The situation changes if one or few large users appear. Such users often have short-term commercial interests and act according to the «hit-and-run principle», cashing short term benefits. In such situations and in the absence of appropriate social capital, formal regulations become necessary. They might be of statutory or contractual character.

Expansion of modern market mechanisms reduced importance of traditional CPRs, built on trust and mutual understanding (social capital accumulated over years). Gradually such CPRs have been incorporated into economy's main stream.

Under changing market conditions new organizational forms are created to manage the resources meeting the conditions for recognizing them as CPRs. It is the case of residential communities, which have to manage property in common use. Polish regulations of the traditional CPRs are characterized by high degree of formalism. It can be traced back to specific legal culture influenced by, and to some extent inherited from, formalistic foreign regulations (dating back to the time of partitions in the 19th century) as well as to bureaucracy of the central planning. After 1989 the state continues to apply similar methods of regulation of new CPRs.

It is due to low level of social capital inherited from central planning and further wasted in the transition processes. Residential communities are legally independent. Their decisions are made in a democratic way. However individualistic approach and deficit of social capital, expressed in lack of understanding of the needs of co-members, causes management problems. As a result, the communities often outsource entire property management to professional administrators. There is little place in this environment to develop and agree upon bottom-up rules for the use of common facilities. So, the state remains the basic regulator. Our analysis indicates that in spite all the formal conditions, the majority of residential communities still

do not operate as classical CPRs. We believe, it is the question of time it takes to build self-regulating groups of people having same interests in resources at their disposal. In the short run, community members, impatient to have working arrangements as quick as possible, are ready to accept imposed legal rules. Over time, rules good for all prove not to be adequate to specific expectations of the members. Such a moment would mark the start of real member's involvement in taking responsibility of their CPR.

REFERENCES

Adler, S. P., & Kwon, S. K. (2002). Social Capital: Prospects for a new Concept. *Academy of Management Review, 27*, 17–40.

Anderson, C. L., Locker, L., & Nugent, R. (2002). Microcredit, Social Capital, and Common Pool Resources. *World Development, 30* (1), 95–105.

Boadway, R. (1980). A note on the market provision of club goods. *Journal of Public Economics, 13*, 131–137.

Bigo, T. (1928). *Związki publicznoprawne w świetle ustawodawstwa polskiego [Public law units according to Polish statutory regulations]*. Warszawa: Wydawnictwo Kasy Imienia Mianowskiego [in Polish].

Blicharz, B. (2017). *Commons – dobra wspólnie użytkowane. Prawnoporównawcze aspekty korzystania z zasobów wodnych [Commons – jointly-used goods. Comparative aspects of the use of water resources]*. Bielsko-Biała: Wydawnictwo Od.Nowa [in Polish].

Buchanan, J. (1965). An economic theory of club goods. *Economica. New Series, 32*, 125, 1–14.

Carpenter, S. R. (1998). Sustainability and Common-Pool Resources: Alternatives to Tragedy. *Philosophy and Technology, 3*(4), 36–57

Costa, D. E., & Kahn, M. E. (2003). Understanding the American Decline in Social Capital, 1952–1998. *Kylos, 56*, 17–46

Dawidowicz, W. (1959). *Zagadnienia prawne melioracji wodnych w rolnictwie [Legal issues of melioration in agriculture]*. Warszawa: Państwowe Wydawnictwo Naukowe [in Polish].

Ferragina, E. (2012). *Social Capital in Europe. A Comparative Regional Analysis*. Cheltenham, UK – Northampton, MA, USA: Edward Elgar.

Foldvary, F. (1994). *Public Goods and Private Communities: The Market Provision of Social Services*. London: Edward Elgar.

Gałązka, A. (1998). *Sytuacja mieszkaniowa ludności aglomeracji warszawskiej w latach 1970–1988: zróżnicowania przestrzenne i tendencje zmian [Housing situation of the population of the Warsaw agglomeration 1970–1988: spatial diversity and change trends]*. Warszawa: Continuo [in Polish].

Gari, S. R., Newton, A., Icely, J. D., & Delgado-Serrano, M. M. (2017). An Analysis of the Global Applicability of Ostrom's Design Principles to Diagnose the Functionality of Common-Pool Resource Institutions. *Sustainability, 9*, 1287–1304.

Glasze, G. (2005). Some Reflections on the Economic and Political Organisation of Private Neighbourhoods. *Housing Studies*, *2*(20), 221–233.

Gołos, P. (2008). Wspólnoty gruntowe – tradycyjna forma gospodarowania lasami [The commons – the traditional form of collective management of forests]. *Sylwan, 2*, 54−68 [in Polish].

Kałużny, M. (2016). *Prawo wodne. Komentarz [The water law: a commentary]*. 2 edition. Warszawa: Wolters Kluwer [in Polish].

Kasznica, S. (1946). *Polskie prawo administracyjne. Pojęcia i instytucje zasadnicze [Polish administrative law. Basic concepts and institutions]*. Poznań: Księgarnia Akademicka [in Polish].

Kobus-Ogrodniczak, K. I. (2011). *Korzystanie z wód – problem prawne. [The use of water resources: legal problems]*. Toruń: Dom Organizatora [in Polish].

Korzycka, M. (2018). Z problematyki relacji prawa zwyczajowego do stanowionego w polskim prawie rolnym [Selected issues from the relations of customary law to codified law in Polish agrucultural law]. In D. Łobos-Kotowska, P. Gała, & M. Stańko (Eds.), *Współczesne problemy prawa rolnego i cywilnego. Księga jubileuszowa Profesor Teresy Kurowskiej [Contemporary problems of agricultural and civil law. Festschrift for Professor Teresa Kurowska]* (pp. 183–194). Warszawa: Fundacja FAPA [in Polish].

Low, S. (2003). *Behind the Gates: Life, Security, and the Pursuit of Happiness in Fortress America*. London: Routledge.

Nelson, R. H. (2005). *Private Neighborhoods and the Transformation of Local Government.* Washington, DC: Urban Institute Press.

Nowakowski, M. (2006). Historyczny rozwój spółki wodnej na ziemiach polskich [Historical development of water company on the Polish lands]. *Roczniki Nauk Prawnych, 2*(16), 449–469 [in Polish].

Ostrom, E. (1990). *Governing the commons. The evolution of institutions for collective action*. Cambridge: Cambridge University Press.

Ostrom, E. (1998). Reflections on the Commons. In J. A. Baden, & D. S. Noonan (Eds.), *Managing the Commons* (pp. 95–117). Bloomington and Indianapolis: Indiana University Press.

Ostrom, E. (2002). Common-Pool Resources and Institutions: Toward a Revised Theory. In B. L. Gardner, & G. C. Rausser (Eds.), *Handbook of Agricultural Economics*. (Vol. 2, Part A) (pp. 1315–1339). Amsterdam: Elsevier.

Ostrom, E., & Ostrom, V. (1971). A Theory for Institutional Analysis of Common Pool Problems. In G. Hardin, & J. Baden (Eds.), *Managing the Commons*. San Francisco: W. H. Freeman.

Ostrom, V., & Ostrom, E. (1977). Public Goods and Public Choices. In E. S. Savas (Ed.), *Alternatives for Delivering Public Services; Toward Improved Performance*. Boulder, CO: Westview.

Paczuski, R. (1989). *Spółki wodne. Historia. Podstawy prawne działania. Nowe tendencje. [Water companies: History. Legal basis of their activity. New trends]*. Warszawa: Państwowe Wydawnictwo Rolnicze i Leśne [in Polish].

Prawo wodne oraz przepisy wykonawcze i związkowe według stanu prawnego na dzień 1 stycznia 1979 r. [The Water Law and executive- and associations-regulations as of the 1st of January 1979]. (1979). Warszawa: Wydawnictwo Prawnicze [in Polish].

Sommer, J. (2002). Spółki wodne [Water companies]. In J. Rotko (Ed.), *Prawo wodne z komentarzem [The Water Law: a commentary]* (pp. 307–335). Wrocław: Wydawnictwo Prawo Ochrony Środowiska [in Polish].

Sommer, J. (2002). Spółki wodne i związki wałowe [Water companies and levee associations]. In J. Rotko (Ed.), *Prawo wodne. Komentarz [The Water Law: a commentary]* (pp. 409–438). Wrocław: Wydawnictwo Prawo Ochrony Środowiska [in Polish].

Stanowisko Polskiego Stowarzyszenia Zarządców Nieruchomości w sprawie konieczności nowelizacji Ustawy o własności lokali [Position of the Polish Real Estate Management Association regarding the need to amend the Property Ownership Act]. (2015). Retrieved from http://www.polski-zarzadca.pl/stanowisko-pszn/ [in Polish].

Stiglitz, J. E. (1977). The Theory of Local Public Goods. In M. S. Feldstein, & R. P. Inman (Eds.), *The Economics of Public Services. International Economic Association Conference Volumes*. London: Palgrave Macmillan.

Stiglitz, J. E. (1986). *Economics of the Public Sector*. New York: W. W. Norton.

Strzelczyk, R., & Turlej, A. (2015). *Własność lokali. Komentarz [Ownership of premises: a commentary]*. (4th ed.). Warszawa: C. H. Beck [in Polish].

Szczepańska, M. (2014). Wspólnota mieszkaniowa jako przedmiot zainteresowania socjologii [A residential community as a subject of sociological interest]. *Przegląd Socjologiczny, 63*, 1, 197–216 [in Polish].

Tatlonghari, G. T., & Sumalde, Z. (2008). Formation of Social Capital for Common Pool Resource Management. *Asian Journal of Agriculture and Development, 5*, 2, 21–40.

Zwięglińska, T. (1981). Spółki wodne [Water companies]. In S. Surowiec, W. Tarasiewicz, & T. Zwięglińska (Eds.), *Prawo wodne. Komentarz. Przepisy wykonawcze [The Water Law: A commentary. Executive regulations]*. Warszawa: Wydawnictwo Prawnicze [in Polish].

Article details:
Received: 20 August 2018
Revised: 12 September 2018
Accepted: 20 September 2018

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РЕГУЛИРОВАНИЕ РЕСУРСОВ ОБЩЕГО ПОЛЬЗОВАНИЯ: ПРОБЛЕМА СОЦИАЛЬНОГО КАПИТАЛА В ПОЛЬШЕ

Целью статьи является исследование влияния социального капитала в Польше на регулирование ресурсов общего пользования (РОП). Использовались концепту-

альные подходы, созданные Элинор и Винсент Остром. Однако предметом нашего анализа являются не только «традиционные» РОП, такие как пастбища, водозаборы и ирригационные устройства, но и новые, т. е. имущество, используемое совместно жилыми сообществами. Польские правила обоих видов РОП носят формальный характер. В случае «традиционных» РОП эта ситуация частично вызвана определенной правовой культурой, на которую повлияли формальные внешние правила (начиная с XIX в.) и бюрократическая администрация в период централизованного планирования. После 1989 г. аналогичные методы были применены для регулирования новых РОП. На наш взгляд, недостаток социального капитала является причиной того, что такой режим регулирования и способ мышления противоречат принципам, описанным Элинор Остром, которые рассматриваются некоторыми не только как приемлемые, но даже и желательные. Поэтому мы подчеркиваем роль адекватного социального капитала в управлении РОП.

Ключевые слова: ресурсы общего пользования, собственность, Польша, социальный капитал, жилые сообщества.

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РЕГУЛЮВАННЯ РЕСУРСІВ ЗАГАЛЬНОГО КОРИСТУВАННЯ: ПРОБЛЕМА СОЦІАЛЬНОГО КАПІТАЛУ В ПОЛЬЩІ

Постановка питання. Зазвичай під ресурсами загального користування (РЗК) розуміють традиційні екологічні ресурси загального користування, такі як пасовища, водозабори, зрошувальні системи тощо. Проте ми спостерігаємо, що зараз такі ресурси доступні для спільного використання переважно в малих громадах, дуже обмежені та скорочуються через розширення ринкових механізмів. Одночасно є нові типи ресурсів, що відповідають визначенню РЗК, наприклад, власність у спільному користуванні житлових громад. На наш погляд, аналіз «традиційних» РЗК може бути корисним для розуміння специфіки цих «нових» ресурсів. Причому РЗК управляються найбільш ефективно, якщо спільнота, яка експлуатує їх, встановлює власні правила їх використання.

Аналіз останніх досліджень і публікацій. В аналізі суспільних благ автори статті спиралися насамперед на праці Stiglitz (1977, 1986), а також на різноманітну літературу про «традиційні» РЗК. Однак особлива увага приділяється роботам Elinor Ostrom and Vincent Ostrom, у яких показано можливість ефективного управління РЗК

самими громадами (Ostrom E., 1990). На жаль, результати цих праць лише незначною мірою використовуються юристами. Blicharz (2017) намагався перенести результати досліджень Ostrom до сфери права, але його робота не стосується польського права. Польські правила щодо використання ресурсів громади «водними компаніями» були предметом досить детального аналізу (Paczuski, 1989, 2006), але до цього часу ця проблема не була проаналізована з погляду концепції РЗК. Те саме стосується проблеми управління майном (власністю) житловою громадою. Вона цікавить насамперед соціологів; інколи має ідеологічне забарвлення. Деякі автори аналізують житлові громади з боку клубної економіки (Glasze, 2005; Szczepańska, 2014). Соціальний капітал в контексті РЗК до цього часу не був головним інтересом для вчених, хоча сама E. Ostrom (2002) визнала цю проблему.

Формулювання цілей. Метою статті є дослідження впливу соціального капіталу суспільства на регулювання РЗК.

Виклад основного матеріалу. У статті досліджуються питання:

1. Характер ресурсів загального користування. На відміну від приватних, суспільних і клубних благ, РЗК є безкоштовними для обмеженої кількості користувачів, які проживають у визначеній області, і їх кількість обмежена. Тобто надмірне споживання одним із користувачів обмежить користування для всіх інших бенефіціарів.

У випадку РЗК не визначено власника або власник залишив свій ресурс для загального користування групою споживачів. Проблема власності у випадку РЗК взагалі має другорядне значення. Ці ресурси можуть бути як державною, так і приватною власністю. Вони також можуть належати місцевим громадам або іншим юридичним особам. Іноді вони мають суперечливу структуру власності. Але РЗК – це не «відкритий доступ» до ресурсів.

Максимізація прибутку не повинна бути об'єктом управління РЗК, однак кожен із членів групи повинен знайти свою прийнятну частку вигод у ситуації, подібній до Парето. Досягнення такого оптимуму залежить від рівня соціального капіталу в країні в цілому, а саме від співробітництва та взаємної довіри між членами групи, і потребує певного часу.

2. Інституційна організація РЗК. Оскільки характерною особливістю РЗК є їх обмежений характер, то їх використання слід контролювати. Інакше вони втратять цінність для користувачів або будуть повністю вичерпані. Це можна зробити зверхувниз або за допомогою підзаконних актів (правил), сформованих знизу вгору, а також неписаних звичайних правил. E. Ostrom виділила декілька категорій правил, що встановлюють правові рамки РЗК. У статті вони детально аналізуються.

3. Правове регулювання «традиційних» РЗК у Польщі.

4. Нові форми РЗК у Польщі в перехідний період та їх законодавче регулювання – на прикладі власності у житловому секторі та майна спільного використання (житлових будинків) громадянами. Взагалі це називають кондомініуми.

Висновки. Розширення сучасних ринкових механізмів зменшило важливість традиційних РЗК, побудованих на довірі та взаєморозумінні (накопичений за бага-

то років соціальний капітал). РЗК поступово включаються в основний потік економіки. Поява ж одного або декількох великих користувачів, які часто мають короткотермінові комерційні інтереси і шукають короткострокових вигод, узагалі змінює ситуацію. Тоді, за відсутності відповідного соціального капіталу, стає необхідним формальне регулювання. Воно може мати статутний або договірний характер.

На цей час житлові громади є юридично незалежними. Їхні рішення приймаються демократично. Проте індивідуалістичний підхід і дефіцит соціального капіталу, виражений у відсутності розуміння потреб співучасників, породжує численні проблеми управління. Наприклад, громади часто передають професійному менеджменту всю власність. При цьому держава залишається основним регулятором. Наш аналіз показує, що, незважаючи на всі формальні умови, більшість житлових громад ще не працюють як класичні РЗК. У короткостроковій перспективі члени громади, аби мати якомога швидші робочі домовленості, готові прийняти нав'язані їм зверху правові норми. У довгостроковій перспективі такі правила можуть виявитися неадекватними особливим очікуванням членів громади. Потрібен час для побудови самоврядних груп людей, які мають однакові інтереси у розпорядженні ресурсами. Такий момент ознаменував би початок реальної участі членів громади у прийнятті відповідальності за їх РЗК.

Коротка анотація статті

Анотація. Метою статті є дослідження впливу соціального капіталу в Польщі на регулювання ресурсів загального користування (РЗК) із запровадженням концептуальних підходів, які запропонували Elinor Ostrom and Vincent Ostrom. Предметом аналізу є як «традиційні» РЗК (пасовища, водозабори та іригаційні споруди), так і нові, а саме житлове майно, що використовується спільно громадянами. Польські правила регулювання обох видів РЗК мають формальний характер. У разі «традиційних» РЗК це частково викликане певною правовою культурою, на яку вплинули формальні зовнішні правила (починаючи з XIX ст.) і бюрократична адміністрація в період централізованого планування. Після 1989 р. аналогічні методи були застосовані для регулювання «нових» РЗК. На наш погляд, дефіцит соціального капіталу є причиною того, що такий режим регулювання розглядається деякими як не тільки прийнятний, але навіть і бажаний. Тому ми підкреслюємо особливу роль соціального капіталу в управлінні РЗК.

Ключові слова: ресурси загального користування, власність, Польща, соціальний капітал, житлові громади.

Стаття надійшла до редакції 20.08.2018 р.
Стаття пройшла рецензування 12.09.2018 р.
Стаття рекомендована до опублікування 20.09.2018 р.