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Legal Titles to Property for the Location of Solar Photovoltaic Installations in Poland and Hungary

Keywords: photovoltaics, renewable energy sources, property, civil law

Summary. Investments in renewable energy sources play an important economic role, which justifies the need for in-depth analysis of the legal issues accompanying them and a broader discussion on the shape of the applicable regulations. One of the first elements of investing in renewable energy sources is securing legal title to real estate (determining the success and stability of the investment). The aim of this article is to discuss models for obtaining legal title to real estate for the location of photovoltaic installations in Poland and Hungary. This allows for the identification of problems that arise in connection with the practical application of individual legal titles as presented in a comparative legal context. *De lege lata*, the application of property law instruments, is legally complex and depends on the specific situation. *De lege ferenda*, it is necessary to strengthen the legal certainty of investors, which can only be achieved by promoting long-term instruments of securing legal title to real estate.

Tytuły prawne do nieruchomości w celu lokalizacji instalacji fotowoltaicznych w Polsce i na Węgrzech

Słowa kluczowe: fotowoltaika, odnawialne źródła energii, nieruchomość, prawo cywilne

Streszczenie. Inwestycje w odnawialne źródła energii odgrywają istotną rolę gospodarczą, co uzasadnia potrzebę pogłębionej analizy towarzyszących im zagadnień prawnych oraz szerszej dyskusji nad kształtem obowiązujących przepisów. Jednym z pierwszych elementów inwestowania w odnawialne źródła energii jest zabezpieczenie tytułu prawnego do nieruchomości (determinujące sukces i stabilność inwestycji). Celem artykułu jest omówienie modeli pozyskiwania tytułu prawnego do nieruchomości pod lokalizację instalacji fotowoltaicznych w Polsce i na Węgrzech. Zakreślony cel pozwolił na identyfikację problemów pojawiających się w związku z praktycznym stosowaniem poszczególnych tytułów prawnych, które zostały przedstawione w kontekście prawnoporównawczym. *De lege lata*, stwierdzono, że stosowanie instrumentów prawa rzeczowego jest prawnie złożone i uzależnione od konkretnej sytuacji. *De lege ferenda*, uznano, że konieczne jest wzmocnienie pewności prawnej inwestorów, co można osiągnąć jedynie przez promowanie długoterminowych instrumentów zabezpieczenia tytułu prawnego do nieruchomości.

1. General comments

Investments in renewable energy sources play an important economic role, which justifies the need for in-depth analysis of the legal issues accompanying them and a broader discussion on the shape of the applicable regulations¹. Currently, renewable energy investments involve not only theoretical analysis across various areas of interest, but also, above all, evaluation of their effectiveness. It is worth noting that renewable electricity generation alone does not guarantee a secure supply. Centralised electricity systems, originally based on fossil fuels and large power plants, are not always able to cope with decentralised ever-expanding and increasingly renewable electricity generation.

The electricity grid is a bottleneck, with growing demand on both the supply and demand sides. The satisfaction of increasing demand in variable (sometimes extreme) weather conditions causes a high level of uncertainty in the electricity grid. The dominant role of renewable sources results in a weather-dependent system with frequent negative prices and extremely high 'price spikes'. Network development, digitalisation, energy storage solutions and generation management services² play a key role in ensuring stable and predictable operation so that the electricity grid can continue to cope with the burden of increased generation of renewable energy. Although photovoltaic systems, for example, are very popular, a significant problem in this case is, among other things, the unprofitability of so-called household-sized power plants. Under the current gross billing system, owners of small home power plants receive a significantly lower price for electricity fed into the grid. The spread of the technology was facilitated by the extremely favorable annual saldo system, thanks to which so many small power plants of household size were built, that the European Union prescribed phasing it out³.

Implementing investments related to renewable energy sources involves numerous legal issues, such as construction permits required for the installations, limitations resulting from planning/zoning laws, permits required from the energy regulatory perspective and environmental protection regulations⁴. Also, securing legal title to the property is crucial when starting an investment (which

¹ For example see: H. Zsiborács, A. Vincze, I. Háber, G. Pintér, N. Hegedüsne Baranyai, *Challenges of Establishing Solar Power Stations in Hungary*, „Energies” 2023, No. 16, p. 530, <https://doi.org/10.3390/en16010530>.

² In short, production management means the efficient operation of production and service systems.

³ See Article 15(4) of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

⁴ For example see: P. Krzyż, *Instalacje fotowoltaiczne w procesie inwestycyjnym*, „Prawne Problemy Górnictwa i Ochrony Środowiska” 2023, No. 2, p. 3.

determines its success and stability)⁵. Later in the study, the authors focus on the legal title to the property for the location of solar photovoltaic systems, considering photovoltaics (a significant and popular source of renewable energy) as an interesting case from the point of view of individuals, and therefore worth further discussion.

2. Solar photovoltaic installation

In order to comprehensively discuss the issues raised, it is necessary to clarify the term “solar photovoltaic installation” (there is no simple and common legal definition). In Polish law, the main document regarding renewable energy sources is the Act of 20 February 2015 on Renewable Energy Sources (Journal of Laws of 2024, item 1361). This Act defines “renewable energy source” (Article 2, point 22⁶) and “renewable energy source installations” (Article 2, point 13⁷). It is assumed that a solar photovoltaic installation is a set of devices that the regulatory regime calls a “renewable energy source installation”⁸. The discussed Act distinguishes installations based, among other things, on installed capacity, namely small installation (Article 2, point 18), i.e. a renewable energy source installation with a total installed electrical capacity greater than 50 kW and not more than 1 MW connected to a power grid with a rated voltage lower than 110 kV or with a combined thermal capacity greater than 150 kW and less than 3 MW, in which the total installed electrical capacity is greater than 50 kW and not more than 1 MW; and a micro-installation (Article 2, point 19), i.e. a renewable energy source installation with

⁵ A. Siwkowska, *Zabezpieczenie gruntu pod przedsięwzięcie OZE*, [in:] *Przedsięwzięcia OZE. Aspekty prawne*, 2025, Legalis; J. Niedziela, *Lokalizacja instalacji odnawialnych źródeł energii – aspekty prawne*, „Studia Iuridica” 2020, no. 86, p.197.

⁶ That is renewable, non-fossil energy sources including wind energy, solar energy, aerothermal energy, geothermal energy, hydrothermal energy, hydropower, wave energy, current and tidal energy, ambient energy, energy obtained from biomass, biogas, agricultural biogas, biomethane, bioliquids and renewable hydrogen; this definition is compatible with art. 2 (1) of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.

⁷ According to the aforementioned article, a renewable energy source installation is an installation constituting a separate set of: a) devices used to generate electricity, heat, or cooling described by technical and commercial data, in which electricity, heat, or cooling is generated from renewable energy sources, or b) buildings and facilities constituting a technical and operational unit used to generate biogas, agricultural biogas, biomethane, or renewable hydrogen – as well as an electricity storage facility, biogas storage facility, or storage facility connected to this set within the meaning of Art. 3, item 10a of the Energy Law Act used to store agricultural biogas, biomethane, or renewable hydrogen.

⁸ P. Krzyż, *op. cit.*, p. 10; judgment of Voivodeship Administrative Court in Gliwice of May, 10, 2023, II SA/GI 517/23, LEX no 3554790.

a total installed electrical capacity of no more than 50 kW connected to a power grid with a rated voltage of less than 110 kV or with a combined thermal output of no more than 150 kW, in which the total installed electrical capacity is no more than 50 kW. The regulatory regime therefore covers both prosumer⁹ micro-installations and photovoltaic farms¹⁰. Photovoltaic systems are used both in individual households and for business purposes involving the production of electricity¹¹.

In Hungarian law, the main legal document governing renewable energy sources is Act LXXXVI of 2007 on Electricity [2007. évi LXXXVI. törvény a villamos energiáról]. This Act provides the legal framework for electricity generation, distribution and trade, including the integration and promotion of renewable energy sources. Pursuant to Section 3(45), a renewable energy source [*megújuló energiaforrás*] means energy from non-fossil sources such as wind, solar, geothermal, hydropower, biomass, landfill gas, sewage treatment plant gas, and biogas. The mentioned Act also regulates renewable electricity generation facilities [*megújuló energiaforrást hasznosító erőművek*], including photovoltaic systems. These installations are subject to licensing and grid-connection requirements depending on their capacity and purpose of use. In practice, Hungarian law distinguishes between household-sized power plants [*háztartási méretű kiserőmű, HMKE*] – defined in Section 3(24) as electricity generation units with a capacity not exceeding 50 kVA, primarily used to meet the energy needs of a household or small consumer, typically using solar photovoltaic systems; small power plants [*kis erőművek*] – installations not exceeding 50 MW, often operated by small or medium-sized enterprises¹²; and large power plants [*nagy erőművek*] or renewable energy farms [*megújuló energiafarmok*] – with capacities exceeding 50 MW, subject to full-scale regulatory and environmental permitting, including grid access approval by the Hungarian Energy and Public Utility Regulatory Authority (HEPURA) [*Magyar Energetikai és Közmű-szabályozási Hivatal, MEKH*]. In addition, from 1 September 2025, Section 66/B of Act LXXXVI of 2007 allowed for the establishment of

⁹ See Article 27a of the Act on Renewable Energy Sources.

¹⁰ The term photovoltaic farm is used in legal transactions, for example see D.J. Kościuk, *Stosowanie art. 61 ust. 1 pkt 1 i 2 w zw. z ust. 3 ustawy o planowaniu i zagospodarowaniu przestrzennym w sprawach ustalania warunków zabudowy dla farm fotowoltaicznych. Glosa aprobująca do wyroku Wojewódzkiego Sądu Administracyjnego w Łodzi z 15 lutego 2023 r. (II SA/Łd 48/23)*, „Orzecznictwo w Sprawach Samorządowych” 2023, No. 2, p. 128; judgment of Supreme Administrative Court of October 12, 2022, II OSK 1482/21, Orzecznictwo Naczelnego Sądu Administracyjnego i Wojewódzkich Sądów Administracyjnych 2023, no 3, poz. 43; judgment of the Supreme Court of October 10, 2015, II OSK 372/14, LEX no 1987234.

¹¹ M.A. Panek, *Obowiązek zwrotu nieruchomości po zakończeniu dzierżawy gruntu pod farmę fotowoltaiczną*, „Przegląd Ustawodawstwa Gospodarczego” 2024, no. 12, p. 36.

¹² Section 3(32).

an energy community¹³ in the case of condominiums [*társasházak*] and housing cooperatives [*lakásszövetkezetek*]. An energy community for condominium members shall be established by written agreement between the owners of at least two apartments or non-residential units¹⁴. An energy community for condominium members is not an independent legal entity, but a form of cooperation where people living in condominiums or housing cooperatives jointly produce, use and share electricity, typically from renewable energy sources (e.g. using solar panels). In the future, the installation of solar panels will also be simplified, because according to the Act, the installation of solar panels in jointly owned buildings qualifies as modernization, so a simple majority will suffice for the decision of the general meeting¹⁵.

In further considerations it was assumed that solar photovoltaic installation constitutes a technical and legal complex covering a set of devices converting solar radiation energy into electrical energy, regardless of the installation capacity as well as other division criteria. As a rule, the type of photovoltaic installation has no impact on the issue of models for obtaining legal title to real estate for its location.

3. Models for obtaining legal title to real estate for the location of solar photovoltaic installations

Based on the above considerations, it might be stated that solar photovoltaic systems are a significant source of renewable energy. As mentioned, the implementation of investments related to their construction is associated with many legal issues. The foundation among these is the legal title to the property (land) on which the photovoltaic installation is to be located. Investors cannot proceed to the next stages of the investment unless they have a legal title entitling them to the location of a renewable energy source. The following sections of the study discuss the models for obtaining legal title to real estate for the location of photovoltaic installations in Poland and Hungary, indicating the results of a comparative analysis.

¹³ Citizen energy communities are considered to be a category of cooperation of citizens or local actors that should be subject to recognition and protection under EU law. The provisions on citizen energy communities do not preclude the existence of other citizen initiatives such as those imposed from private law agreements. Citizen energy communities may take any form of entity, for example that of an association, a cooperative, a partnership, a nonprofit organisation or a small or medium-sized enterprise, provided that the entity is limited to exercise rights and be subject to obligations in its own name; see recital (44) of Directive (EU) 2019/944.

¹⁴ The tenant of a dwelling may also be a member of the energy community of a condominium if the owner of the dwelling has given his or her consent in writing.

¹⁵ See Section 25/A of Act CXXXIII of 2003 on condominiums.

3.1. Polish law

Under Polish law, the ability to locate and operate (use) a photovoltaic installation on real estate depends on the investor's legal title to the property. This stems primarily from the Act of 20 February 2015 on Renewable Energy Sources, but also from the Construction Law Act (Journal of Laws of 2025, item 418) and the Act of Energy Law (Journal of Laws of 2024, item 266). Legal title to real estate generally means the entity's right to dispose of the property in a specific manner and within a specified scope. A legal title constitutes a legal relationship between an entity, i.e. a natural or legal person, and a specific claim or entitlement. The legislature does not specify what type of rights created such a legal title. Under civil law, it encompasses both property rights (e.g. ownership, perpetual usufruct, limited rights in rem) and contractual rights (e.g. lease, tenancy, lending)¹⁶. The indicated legal titles are – as a rule – also applicable to locate photovoltaic installations; however, this is not directly regulated and it is justified to conduct an in-depth analysis in this regard.

3.1.1. Property rights

3.1.1.1. Ownership

The primary legal title to real estate for the location of a photovoltaic installation is ownership (e.g. its acquisition under a sale contract). Ownership is the broadest property right. The content of the right of ownership is defined in art. 140 k.c.¹⁷, according to which (within) the bounds prescribed by acts and the principles of social cohabitation an owner may, while barring other persons, use a thing in accordance with the socio-economic intended use of its rights; in particular it may collect the fruits and other income from the thing and it may dispose of the thing within these very same bounds¹⁸. The owner is, of course, limited by legal requirements regarding the location of the photovoltaic installation. However, with such legal title, the owner is the sole decision-maker when it comes to the location of the photovoltaic installation, and his/her rights are unlimited in time, which eliminates

¹⁶ I. Przybojewska, *Commentary to art. 4a*, [in:] *Odnawialne źródła energii. Rynek mocy. Inwestycje w zakresie elektrowni wiatrowych. Promowanie energii z wysokosprawnej kogeneracji oraz w morskich farmach wiatrowych*, t. 2: *Komentarz*, ed. M. Czarnecka, T. Oglódek, wyd. 2, Legalis 2023; T. Dąbrowski, A. Łozińska-Piekarska, *Brak spełnienia warunków niezbędnych do przyłączenia nieruchomości do sieci energetycznej jako przyczyna odmowy zawarcia umowy przyłączeniowej w świetle orzecznictwa sądowego*, „*Nieruchomości*” 2023, no 2, p. 122.

¹⁷ Act of April 23, 1964, The Civil Code (consolidated text, Journal of Law of 2020, item 1740, as amended), hereinafter: k.c.

¹⁸ Wider about ownership, for example: A. Kledyńska, *Ownership*, [in:] *Civil Law Institutions (general part on property law) according to Polish legal regulations*, eds. A. Bieranowski, E. Lewandowska, Warsaw 2025, p. 164 *et seq.*

many legal issues. On the other side, not every property is suitable for locating a photovoltaic installation (due to its shape or location, for example). Moreover, the decision to purchase real estate at an early stage of investment implementation, when the investor is not yet sure whether he will be able to complete it, may not be a solution that meets the investor's business expectations¹⁹. Finally, in some cases using ownership as a legal title to real estate is not economically justifiable (for example, due to the high purchase price of the property and high risk of success of the project).

3.1.1.2. Perpetual usufruct

Another legal title to real estate for the location of a photovoltaic installation may be a property right referred to as perpetual usufruct, regulated in the provisions of art. 232-243 k.c.²⁰ Perpetual usufruct is the right between ownership and limited rights in rem; it is an institution that has virtually no equivalent in European systems. Currently, perpetual usufruct is losing its importance (perpetual usufructuaries are increasingly transforming their rights into full ownership).

What is important is that within the limits set by the laws and the principles of community life and by a contract on giving land owned by the State Treasury or by local government units or their associations in perpetual usufruct, the usufructuary may use the land to the exclusion of other persons. Within the same limits, the perpetual usufructuary may dispose of his right (art. 233 k.c.). In view of this, in practice, photovoltaic installations can be (and are) implemented on properties covered by perpetual usufruct, but not arbitrarily. The limits of this right, which in fact constitute an element of its content, are constituted by the law, the principles of social coexistence, and the agreement on granting land for perpetual usufruct²¹. In particular, the location of the photovoltaic installation may require the consent of the landowner. Due to the transformation of perpetual usufruct into ownership, this is currently not a common legal title. It can be assumed that this is one of the reasons why in practice examples of photovoltaic installations being located within perpetual usufruct are not found, and the legal literature does not analyze this issue.

¹⁹ A. Siwkowska, *Przedsięwzięcia OZE. Aspekty prawne*, Warsaw 2025, Legalis.

²⁰ According to art. 232 § 1 k.c. Land owned by the State Treasury and located within the administrative boundaries of cities and land owned by the State Treasury located outside those boundaries but included in the city's master plan and allocated for performance of the tasks of its economy, as well as land owned by local government units or their associations may be given in perpetual usufruct to natural and legal persons.

²¹ M. Balwicka-Szczyrba, *Commentary to art. 233*, [in:] *Kodeks cywilny. Komentarz aktualizowany*, ed. A. Sylwestrzak, LEX/el. 2025.

3.1.1.3. Limited rights in rem

The limited proprietary rights are: usufruct, servitude, pledge, the cooperative ownership right to a residential unit and mortgage (art. 244 § 1 k.c.). Among the listed usufruct, land and transmission servitudes are considered for the location of a photovoltaic installation.

Usufruct (art. 252–284 k.c.) is a right giving the entitled party control over a thing. Its content encompasses the entitlement to use someone else's thing and collect fruits (art. 252 k.c.). It can be argued that usufruct encompasses almost the entire ownership right to use the property. Furthermore, it is a right characterized by considerable stability, which should undoubtedly be considered beneficial for the siting of photovoltaic installations²². Unfortunately, it is non-transferable (art. 254 k.c.), which can be problematic for the investor. Meanwhile, in practice usufruct is not used as a legal title to real estate for the purpose of locating a photovoltaic installation, which may be caused by 1) its essence being similar to a lease agreement, although a lease agreement rather serves the purpose of producing things, whereas usufruct basically serves consumption (alimony) purposes²³, 2) from the point of view of the real estate owner, usufruct essentially covers the entire use of the real estate or its designated part, to which the exercise of the right is limited, which has the effect of limiting the possibility of using the real estate by him personally²⁴.

Servitudes provide for usage of someone else's real estate to a limited extent. Polish civil law distinguishes three categories of servitude: predial servitudes (art. 285–295 k.c.), personal servitudes (art. 296–305 k.c.) and transmission servitudes (art. 305¹–305⁴ k.c.). There is no category such as photovoltaic servitude in Polish law. The issue of admissibility and suitability of servitudes for the location and operation of a photovoltaic device is discussed in detail by Adam Bieranowski²⁵. This author questions the possibility of establishing a predial servitude as a legal title for a photovoltaic installation. In his opinion, establishing a predial servitude is possible when it is objectively useful to the owner of the dominant property. Meanwhile, a “photovoltaic” predial servitude meets the needs of a specific entity (it is purely personal in nature) without expanding the limits of the property's economic use²⁶. Furthermore, following A. Bieranowski, personal servitude as a legal title for

²² In the case of legal entities, it can actually last forever.

²³ E. Gniewek, [in:] *System prawa prywatnego. Prawo rzeczowe*, vol. 4, ed. E. Gniewek, Warsaw 2021, § 19, nb 6.

²⁴ See A. Bieranowski, *Służebności fotowoltaiczne w prawie polskim z odniesieniami komparatystycznymi*, „Rejent” 2021, no. 12(368), p. 64.

²⁵ *Ibidem*, p. 9 *et seq.*

²⁶ *Ibidem*, p. 17–24.

the installation of photovoltaic devices, due to its characteristic limitations – in particular the lack of transferability and a narrow circle of authorized entities – should be considered to be a problematic and unattractive solution in practice²⁷. Finally, according to this author the use of transmission servitude as a legal title for the installation of photovoltaic devices is not suitable²⁸. The author analyzes whether the elements included in the photovoltaic system constitute devices indicated in art. 49 § 1 k.c. As a result, he states that the structure of a photovoltaic system is complex and contains various devices whose classification is not uniform. In particular, this indicates that panels are an element of a system intended to produce/generate electricity and not to transmit energy²⁹.

3.1.2. Contractual rights

3.1.2.1. Purely contractual model

A typical Polish practice for obtaining legal title to the location of a photovoltaic installation is the contractual model, which involves establishing an obligation enabling the use of the property. However, the contractual model raises a number of doubts, including as to the legal nature of the contract, its lack of durability (possibility of termination), and the lack of investor protection in the event of potential enforcement action against the real estate.

In practice and in doctrine, it is usually assumed without in-depth analysis that the contract concluded for the location of a photovoltaic installation is a lease (*dzierżawa*)³⁰. Meanwhile, it seems that in reality it is rather a contract similar to a lease. By a lease contract, the lessor undertakes to deliver the thing to the lessee for use and to collect profits from it for a specified or unspecified period, and the lessee undertakes to pay the agreed rent to the lessor (art. 693 § 1 k.c.). In such a case, it is necessary to determine whether in the case of a photovoltaic contract the *essentialia negotii* includes the collection of fruits. According to the jurisprudence, solar energy does not constitute real estate benefits within the meaning of k.c., because the energy does not originate from the land, but from technical devices installed on it. This implies that we are dealing with an innominate contract, to

²⁷ *Ibidem*, p. 33.

²⁸ In other studies, transmission servitude is indicated as a legal title to implement the investment, but no broader analysis is carried out in relation to photovoltaic installations, see B. Czajka-Marchlewicz, *Rola służebności przesyłu w realizacji inwestycji*, LEX/el. 2019; M. Drewek, *Dopuszczalność ustanowienia służebności przesyłu w przypadku istnienia umowy o korzystanie z nieruchomości w zakresie inwestycji w elektrownie wiatrowe. Głosa do postanowienia Sądu Najwyższego z 5.02.2021 r., V CSKP 13/21*, „Przegląd Sądowy” 2022, no. 10, p. 101 *et seq.*

²⁹ A. Bieranowski, *op. cit.*, p. 13–17, 33.

³⁰ For example M.A. Panek, *Zabezpieczenie wykonania obowiązku usunięcia urządzeń w umowach o dzierżawę gruntu pod farmę fotowoltaiczną*, „Przegląd Sądowy” 2025, no. 4, p. 87.

which, to the extent not covered by it, the provisions of the k.c. on lease may apply accordingly³¹. In turn, the doctrine is divided on this matter. In the opinion of Ł.M. Wyszomirski, if a given contract contains the right of one of the parties to use the land (...) and collect benefits in the form of energy (...), such a contract should be considered a lease contract within the meaning of art. 693 k.c.³² On the contrary, according to M. Drewek, the contract constituting the legal title for the location of an installation should be properly defined as a contract for the use of real estate (innominate contract)³³. Meanwhile, according to A. Bieranowski, regardless of the perception of the concept of benefits (strict or liberal), a contract enabling the paid provision of real estate for the construction and operation of a photovoltaic farm can hardly be considered an innominate contract³⁴. In the analyses conducted so far, there is a noticeable lack of consideration of an alternative legal qualification of the contract constituting the legal title for the location of a photovoltaic installation in relation to the lease contract. The hypothetically adopted approach could direct reflection toward the structure of the lease contract, which deserves an in-depth discussion in a separate study. The above does not change the fact that in Poland there is a contractual model of obtaining a legal title for the location of a photovoltaic installation, and at the same time there remains a current legal dilemma as to the qualification of the contract.

3.1.2.2. „Proprietary” model

The basis for obtaining the title to the location of a photovoltaic installation in the so-called proprietary model is an obligation agreement, with the receivable resulting from it being secured by a personal servitude or land servitude³⁵. Additionally, the contract includes a clause under which the entity providing the property undertakes to establish a transmission servitude for the investor (enabling the use of the property for grid maintenance). As a result, the parties are in a mixed relationship resulting from the contract combined with the transmission servitude³⁶.

³¹ Although the above-mentioned theses concern investments in renewable energy sources other than photovoltaic installations, they remain relevant in this case as well; see, e.g. judgment of Supreme Court of October 5, 2012, IV CSK 244/12, Legalis no. 546126; judgment of Supreme Court of February 7, 2013, II CSK 230/12, Legalis no 701208; see also M. Drewek, *op. cit.*, p. 102.

³² See Ł.M. Wyszomirski, *Zobowiązania – umowa dzierżawy – pożytki naturalne i cywilne – przetwarzanie energii wiatrowej na energię elektryczną za pomocą turbin wiatrowych posadowionych na gruncie oddanym w dzierżawę. Głosa do wyroku SN z dnia 5 października 2012 r., IV CSK 244/12, „Orzecznictwo Sądów Polskich” 2013, no 10, p. 95.*

³³ See M. Drewek, *op. cit.*, p. 102-103.

³⁴ A. Bieranowski, *op. cit.*, p. 66.

³⁵ *Ibidem*, p. 67.

³⁶ M. Drewek, *op. cit.*, p. 102.

It should be noted that the indicated model was generally not approved by the Supreme Court. In the Court's opinion, since the party already has the appropriate contractual right, repeating it under a different legal construction (a transmission servitude) would essentially constitute superfluity³⁷. Therefore, a transmission company's claim for the establishment of transmission servitude (art. 305¹ § 1 k.c.) does not arise when, under an obligation agreement concluded with the property owner, a stable right is guaranteed to that property for the purpose of locating and operating transmission facilities.

3.2. Hungarian law

Under Hungarian law, the possibility of locating and operating a photovoltaic (PV) installation on real estate likewise depends on the investor's legal title to the property. There is no single act specifically regulating this issue in relation to renewable energy installations. The legal basis for the use of land for photovoltaic purposes derives primarily from Act LXXXVI of 2007 on Electricity and Act V of 2013 on the Civil Code (Ptk.)³⁸. Hungarian law does not provide an explicit statutory definition of a "legal title for renewable energy installations" nor does it expressly regulate the types of rights that may authorize their location. Consequently, determining the appropriate legal title remains within the general framework of civil law property and contractual relations. This decentralized model offers flexibility but may create legal uncertainty in large-scale investment practice.

3.2.1. Rights in rem

3.2.1.1. Ownership

Under Hungarian law, the primary legal title to the property on which the photovoltaic installation will be located is ownership (e.g. acquisition through a sales contract)³⁹. Ownership is regulated in the Civil Code⁴⁰. Ownership gives the owner the broadest right to use the property in accordance with its socio-economic purpose. The owner shall have full and exclusive power of control, subject to limitation by law and by the rights of others, over the object of his ownership. The owner shall in particular be entitled to the right to possess, use, exploit, collect the benefits of and the right to dispose of⁴¹. The right to acquire the benefits of the thing, which

³⁷ Resolution of the Supreme Court of February 5, 2021, V CSKP 13/21, Legalis no 2533885.

³⁸ Hungarian Civil Code [2013. évi V. törvény a Polgári Törvénykönyvről], hereinafter: Civil Code.

³⁹ The acquisition of real estate by foreigners, including photovoltaic investors, is subject to special regulations, including Act LXXXVI of 2007 on Electricity.

⁴⁰ See Title IV Content and protection of property rights (Section 5:21. and following) of the Civil Code.

⁴¹ Section 5:13.

can be based either on an in rem title (e.g. usufruct) or an in personam title (e.g. lease agreement) belongs to the right of utilization but not to the right to use⁴².

Ownership is unlimited in time. However, photovoltaic investments, even for landowners, can be difficult or even impossible due to zoning regulations, environmental protection and other administrative requirements. Furthermore, not every property is suitable for a photovoltaic installation due to its shape, location or other factors. For example, the ownership of the building shall be held by the owner of the land unless the owners of the building and of the land agree otherwise⁴³.

3.2.1.2. Limited rights in rem

Among the limited property rights⁴⁴, usufruct and servitudes are worth noting as legal titles for the location of a photovoltaic installation. Usufruct⁴⁵ provides a broad right to use real estate and obtain benefits, but it is a limited (incomplete) right in rem, and its specific nature makes it an unpopular legal title for photovoltaic investment purposes⁴⁶. In the case of servitudes, it should be noted that in the Hungarian Civil Code they are regulated primarily in the part concerning property rights (the provisions are quite scattered⁴⁷). The Hungarian model provides for one category of servitude (it does not distinguish photovoltaic servitude). In addition, a number of reasons for establishing servitude are determined in the Civil Code. Though the legislator also indicates “any other similar purpose that brings benefits to the actual possessor of the land”⁴⁸, it is indicated that servitudes apply to traditional forms of use of real estate, such as rights of passage and access to water or utilities. Among other things, on this basis the application of easements in the case of siting energy-generating installations is doubtful.

⁴² J. Benke, *The Law of Ownership Rights*, [in:] *The Fundamentals of Hungarian Private Law*, ed. J. Benke Pécs 2020, p. 47.

⁴³ Section 5:18.

⁴⁴ L. Leszkoven, *Korlátolt dologi jogok [Limited Rights in Rem]*, [in:] *Civilisztika II (Dologi jog – Felelősségtartás) [Civil Law II. (Law of Rights in Rem – Liability)]*, eds. T. Barzó, T. Papp, Dialóg Campus Kiadó, Budapest 2019, pp. 171–190.

⁴⁵ Regulated in Title VIII User rights section 5:145. § and following of the Civil Code; more about T. Méhes, M. Varga, *Polgári jogi alapismeretek [Limited Rights in Rem]*, I. Tózsá (Serie Editor), Budapest 2021, pp. 84–86.

⁴⁶ Section 5:148 [Relinquishing the exercise of usufruct] (1) The usufructuary shall not transfer the usufructuary right, but may relinquish the exercise of the right of possession and use and the collection of benefits.

⁴⁷ Generally servitudes are regulated in Fifth book The right in rem (Ötödik könyv Dologi jog), for example in Section: 5:27., 5:160., 5:161., and following; about servitudes see T. Méhes, M. Varga, *op. cit.*, pp. 86–87.

⁴⁸ C. Kiss, *Chapter (case study) Hungary*, [in:] *The Use of Conservation Easements in the European Union. Report to NABU (ELCN)*, eds. I. Račinska, S. Vahtrus, Berlin 2018, p. 56.

3.2.1.3. Building right

In order to increase the competitiveness of the economy, Act XXXIX of 2023 amended Act V of 2013 on the Civil Code and introduced building right⁴⁹, which was already part of classical Hungarian private law in the first half of the 20th century. It appeared in Hungarian civil law for Austrian and German influence, and also for economic reasons at that time. In the past, the Civil Code allowed for a separation of ownership of the land and the building in the event of such an agreement between the parties, which meant a real and full ownership right for the installer of the building. However, the building right also allows for the construction, operation or utilization of a building on the property, which would not otherwise be recorded in the land register as an independent property.

A building right is a tradable right attached to immovable property, which means that it can be transferred and encumbered and, in addition, may be the subject of any other type of succession until it is terminated. Building rights are most comparable to usufruct rights over immovable property but, unlike usufruct rights, they are transferable, encumberable and subject to succession. The building right gives the right holder a more powerful right than the usufruct right because, in addition to the right to use and utilize, it also grants the right to dispose freely of the building to be constructed and its components within the framework of an agreement concluded with the owner.

When analysing the building right, it should be indicated that the holder of this right may construct a building not only on or above the surface of the immovable property, but also below the surface of the immovable property. The building right may be based not only on the construction of a building, but also on the utilization of an existing building that has already been constructed. The building right shall allow the holder to construct or utilize a building on or under the surface of the immovable property. In doing so, the holder is entitled to construct the building or to use the property for this purpose, and he/she is also entitled to own, use and collect the benefits of the building that has been constructed or already exists on the property⁵⁰.

Also worth mentioning is that the building right extends to the building constructed or exploited on the basis of it as well as its constituent parts⁵¹. According to the law in effect: The ownership of the building is independent of the transfer of building right. However, the land owner and the building right-holder could agree upon the fate of the building (or other construction)⁵².

⁴⁹ See Chapter XXXII/A of the Civil Code.

⁵⁰ Section 5:159/A(1).

⁵¹ Section 5:159/A(2).

⁵² Section 5:159/E.

Then in accordance with the regulation, the right to dispose of a building right is close to the right to dispose of a property right since, as a tradable right, other limited rights in rem may be encumbered, and other rights of obligation (rights of pre-emption, repurchase, purchase and sale) which restrict the right to dispose of a building right, including rights in rem, may be stipulated. However, it may be stipulated in the contract establishing the building right that the right holder may not dispose of or encumber the building right without the consent of the owner of the property⁵³.

It should be also noted that a building right may have several holders at the same time, in which case there is a community of rights [*jogközösség*] between them⁵⁴. In the case of such a community of rights, the exercise of the rights and performance of the obligations of rightholders shall be governed by the rules on joint ownership⁵⁵. Due to the nature of the building right, a building right may be established over real estate in co-ownership only if it encumbers jointly the ownership proportions of all co-owners⁵⁶.

Since the building right holder restricts the rights of the owner to the greatest extent possible in relation to other limited rights in rem, the charges (including the risk of damage to the building) relating to the immovable property or the building constructed thereon are borne by the building right holder, who also bears the obligations relating to the use and exploitation of the immovable property and the building constructed or existing thereon⁵⁷.

Regarding to the establishment of a building right, a contract or other title to that effect is required. The detailed content of the building right may be freely determined by the parties in their contract (construction, use, utilization, etc.), including any limitations on the exercise of the right within the framework of the provisions of the law and other legislation (e.g. construction, land register). The contract relating to building rights shall be drawn up in writing, but the owner of the immovable property may, by unilateral declaration, establish a building right for his/her own benefit. In addition, for a building right to be created, it is also necessary to register the building right in the land register for the benefit of the rights holder⁵⁸.

The building right may not only cover the whole of the immovable property but may also be limited to a part of the territory determined by agreement between the

⁵³ Section 5:159/E(2).

⁵⁴ Where the building right is acquired jointly by a contract, by inheritance or by another form of succession.

⁵⁵ Section 5:159/A(4).

⁵⁶ Section 5:159/B(5).

⁵⁷ Section 5:159/E(3).

⁵⁸ Section 5:159/B(1)–(2).

parties. Land use rights⁵⁹ may overlap in whole or in part with a building right that is much more extensive. A building right may be established over a part encumbered with the land use right of real estate exclusively to the benefit of the holder of the land use right, but deleting his land use right at the same time⁶⁰.

According to the period of building right, first of all, it should be pointed out that the analyzed right may be established for a fixed period⁶¹. By its purpose and nature, legal history, legal comparison and practical arguments all support the creation of a building right for a longer period of time. However, a building right may not exist for more than 50 years (i.e. the building right ceases to exist 50 years after its establishment, even if it has been established for more than 50 years⁶²).

Meanwhile, regarding payment, there is nothing to prevent the owner from establishing a building right for the benefit of the right holder free of charge. In the case of a reciprocal contract [*visszterhes alapítás*], the right holder is liable to pay the owner a one-off and/or periodically recurring payment obligation ('building fee') in return for the owner, which, in terms of its amount and due date, must also be specified in the contract establishing the building right⁶³.

However, it is necessary to emphasize that where national assets are involved, the establishment of a building right may only be based on a fixed term (35 years) and may only take place for consideration [*visszterhesen*] by paying the market value of the building right. In the contract for the establishment of a building right affecting national property, the parties must also agree on the physical characteristics of the building that the right holder can construct on or under the property and on the conditions of its use⁶⁴.

The Civil Code also regulates termination of the building right. According to its provisions, the building right shall expire if the holder does not exercise it for a period of 15 years. In this case, the rules on the termination of easement [*telki szolgáalom megszűnése*] shall apply mutatis mutandis to the calculation of the 15-year period⁶⁵. In such a case, the building owner shall be deemed to have abandoned his right and transferred it to the owner of the immovable property, thereby completing his right to dispose of it as owner. Termination of the building right requires a written declaration of waiver (resignation) [*lemondó nyilatkozat*] by the holder of the right and the removal of the building right from the land register⁶⁶. Since

⁵⁹ Section 5:145(2).

⁶⁰ Section 5:159/B(3).

⁶¹ Section 5:159/B(1).

⁶² Section 5:159/C(4).

⁶³ Section 5:159/E(4).

⁶⁴ Section 11/C(2)-(3) of Act CXCVI of 2011 on national assets.

⁶⁵ Section 5:163.

⁶⁶ Section 5:159/C(3).

the extinction of the building right may harm the long-term (possibly pecuniary) interests of the owner, there is nothing to prevent the contract establishing the building right from making the possibility of waiving the right subject to the consent of the owner of the property.

A building right is a limited right in rem, which is created by its establishment and therefore cannot be terminated solely on the ground of breach of the founding contract. If the owner of the building right has committed a serious breach of the rules governing the exercise of his rights or a serious breach of his obligations, the court may terminate the building right on the basis of an action brought by the owner⁶⁷.

During the term of the building right, the transfer or encumbrance of the immovable property concerned shall not affect the building right and the transfer or encumbrance of the building right shall not affect the ownership right in the immovable property⁶⁸. A building right is a tradable right, which means that it can be transferred and encumbered and, in addition, may be the subject of any other type of succession until it is terminated. In the case of the creation of a building right for a non-owner and the transfer of a building right, the acquirer of the building right shall be liable for payment of a fee [*illeték*]⁶⁹.

Finally, regarding the practical importance of building rights, a building right is a tradable right relating to immovable property, which can therefore be encumbered and which can serve as the basis for a mortgage that can also be registered in the land register. The advantages of building rights are also apparent in the case of the use of state or municipal property, as these properties cannot otherwise be charged or given as a guarantee [*biztosíték*]. The provisions of the Civil Code relating to buildings must be applied mutatis mutandis to other structures, therefore the rules relating to buildings can also be applied to solar power plants that can be considered as 'structures'⁷⁰. In the case of solar power plant investments, it is a specific obstacle if the property concerned does not provide sufficient collateral or if the investor does not own the property concerned and the building or construction to be constructed in the future is not eligible for a mortgage or is not accepted by banks as eligible for a mortgage. This is particularly true in cases where the value of the investment is given not by the asset to be installed but by the power plant license and long-term take-over guarantee linked to the land in question. Funding of solar power plant investments by credit institutions can be achieved, for example, by the establishment of building rights, which also makes bank financing of such

⁶⁷ Section 5:159/C(5).

⁶⁸ Section 5:159/D(1)-(2).

⁶⁹ See Section 18 of Act CXII of 1990 on duties.

⁷⁰ Section 8:1(6).

investments much easier. With the introduction of the building right, a new legal possibility has been added to the toolbox of owners and property users wishing to utilize their real estate, which can be used primarily not in connection with agricultural land [*termőföld*], but in connection with inland real estate [*belterületi földek*] that can otherwise be built on. However, building rights also provide users of agricultural land with a good opportunity to finance their investments (for example from application sources), in a more stable legal situation than before⁷¹.

3.2.1.4. Shared property

However, the Civil Code does not exclude the possibility for land owners to agree on land use in the case of shared property [*osztott tulajdon*] between the land and the building. An agreement on the construction of a building and the use of land may have a material effect if it is entered in the land register⁷². However, the detailed operational rights of the investor can be more precisely and better defined in the agreement concluded by the parties⁷³. This is also why investors continue to use land use agreements to adequately secure their rights when investing in solar power plants on other properties rather than building rights that have existed since 2023.

In the case of shared property, there is an eventual or permanent separation between the property and partial ownership rights (or a defined set of partial ownership rights)⁷⁴. Civil law also treats the separate ownership of land and one of its accessories (in particular the building) as a form of shared ownership. If the ownership of the land and the building erected on the land is separated, the landowner shall have a right of pre-emption over the building and the owner of the building over the land⁷⁵. Ownership of the building shall be vested in the landowner unless otherwise agreed upon between the owner of the building and the land owner⁷⁶. The developer may acquire ownership of the building only by

⁷¹ R. Pusztahelyi, D. Dávidházy: *Some thoughts on the economic significance of building rights and some open issues of regulation [Some Reflections on the Economic Importance of the Right of Superficies and Some Unresolved Issues of Regulation]*, „Miskolci Jogtudó” 2024, no. 3., TDK special issue, p. 180.

⁷² Section 5:19

⁷³ E.A. Szücs: *Biztosítékok alapítása a kezdetektől az üzemeltetés végéig – Napelemparkok létesítésével kapcsolatos ingatlanjogi kérdések – 4. rész [Establishment of safeguards from the beginning to the end of operation – Real estate issues related to the establishment of solar parks – Part 4]*, Advocatus – DLA Piper Hungary’s legal and business blog, 7.03.2025, [https://blogs.dlapiper.com/advocatus/2025/03/biztositek-alapitasa-a-kezdetektol-az-uzemeltetés-vegéig-napelemparkok-letesitesevel-kapcsolatos-ingatlanjogi-kérdések-4-rész/](https://blogs.dlapiper.com/advocatus/2025/03/biztositek-alapitasa-a-kezdetektol-az-uzemeltetes-vegéig-napelemparkok-letesitesevel-kapcsolatos-ingatlanjogi-kerdések-4-rész/) [access: 7.03.2025].

⁷⁴ G. Kiss, *A tulajdonjog általános szabályai [General Rules of Ownership]*, [in:] *2013. évi V. törvény a Polgári Törvénykönyvről kommentárja [Commentary of Act V of 2013 on the Civil Code]*, eds. B. Bodzás, B. Tókei, Budapest 2021, p. 1079.

⁷⁵ Section 5:20.

⁷⁶ Section 5:18(1).

a written agreement with the landowner and by entering it in the land register⁷⁷. However, the owner of the land may, by unilateral declaration, require the land and the building built on the land to be registered in the land register as independent immovable property⁷⁸. A building may be recognised as an object of independent ownership if it is registered in the land register as an independent property. In the case of larger solar power plants, it is also possible to register them as separate real estate under a separate land registry number. However, it cannot be inferred from the mere purpose of the lease agreement concluded between the developer and the landowner that the agreement between the contracting parties was intended to create shared property⁷⁹.

3.2.2. Contractual rights

Under Hungarian law it is possible to conclude a long-term lease agreement for the duration of the photovoltaic installation or longer⁸⁰. Hungarian law does not define a separate contract category for PV installations. Leases are not subject to registration in the land registry, and the agreement can be oral or written, which affects the durability and protection of the investor's rights. Particular attention should be paid to so-called rooftop renting ('rent-a-roof') permitted in the legal system discussed.

It can be indicated that the provisions of the Civil Code relating to buildings [*épületek*] shall apply *mutatis mutandis* to other constructions [*építmények*]⁸¹. However, the Civil Code still does not define either the building or other constructions. These terms were defined in Act LXXVIII of 1997 on the formation and protection of the built environment⁸², and the definitions also applied to the Civil Code. Under Act LXXVIII of 1997, a stationary technical work created by a construction activity or delivered to the construction site as a finished product, irrespective of its intended purpose, structural design, material, stage of completion and extent, was a construction resulting from the modification or installation of the terrain level, the water or the ground below it, or the airspace above it⁸³. This umbrella term also included buildings and artifacts [*műtárgyak*] (e.g. solar power plants on immovable property⁸⁴). Pursuant to Section 2(8) of Act LXXVIII of 1997 on

⁷⁷ EH 2005.1301.

⁷⁸ Section 5:18(2).

⁷⁹ BH 2021.11.310.

⁸⁰ <https://cms.law/en/int/expert-guides/cms-cee-expert-guide-to-solar-panel-installation/hungary> [access: 7.03.2025].

⁸¹ Section 8:1(6) of Civil Code.

⁸² This act is replaced by a new act: Act no. C of 2023 on Hungarian Architecture.

⁸³ Paragraph 2(8); from 15th January 2025, the same definition can be found in Section 16(34) of Act C of 2023 on Hungarian Architecture.

⁸⁴ 3233/2021. (VI. 4.) AB Decision, Explanatory Memorandum [38].

the formation and protection of the built environment, certain elements of solar power plants placed on properties were classified as constructions on the basis of their attachment to the ground. In the absence of an agreement, the owner of the building has a right to use the land and collect its benefits to the extent necessary for using the building⁸⁵.

Despite the fact that Hungarian law already does not prevent solar power plants from becoming more widespread through rooftop renting, 'rent-a-roof' solutions cannot be considered to be widespread⁸⁶. If the owner of the property builds and operates a solar power plant, this requires a major capital investment on his or her part, but he or she can use all or part of the electricity produced by the solar power plant to cover his or her own electricity consumption. If the owner has no sufficient resources to carry out the solar investment, he or she can rent the roof of the building to a person with the necessary capital and expertise to install and operate the solar power plant. In this case, the owner of the solar power plant does not install the solar panels on the property he or she owns, but rents the roof of a building from someone else and builds the solar power plant on it, which he or she will then operate as his or her own property. In general, the property owner does not even benefit directly from the electricity produced by a solar power plant as it is fully fed into the public grid by the investor and sold on the energy market in order to recoup the investment. However, it may indirectly benefit from the investment if the investor pays rent to the building owner in exchange for the use of the roof.

For roof rental to become widespread, a number of economic and technical conditions must be met. First of all, a roof surface of sufficient size is needed so that a rental solution can be considered at all. The size of the roof basically determines whether the investment can generate enough revenue to cover the investment costs. If it follows from all the circumstances of the case that the solar panels installed on the roof can be regarded as movable property, the owner of the property as the landlord and the owner of the building installed on it as the tenant may conclude a lease agreement. In this case, the 'construction' of the solar power plant will be considered as movable property, which must be decommissioned and removed by the tenant upon termination of the lease period, unless otherwise agreed upon by the parties.

⁸⁵ Section 5:145.

⁸⁶ J. Faragó, *Erőmű a háztetőn: kié a napelem?* [Rooftop power plant: who owns the solar panel?], Real estate blog, 2.12.2021, <https://www.retivarszegipartners.hu/eromu-a-hazteton-kie-a-napelem/> [access: 7.03.2025].

4. Comparative analysis results

Summarizing the above observations, in both Poland and Hungary ownership is the broadest legal title available to a photovoltaic investor. Despite its numerous advantages, ownership does not guarantee investment success, as it may be limited by other legal regulations in force in the given legal systems. It should be noted that Hungarian law lacks an equivalent to the institution of perpetual usufruct, which in Polish law is an intermediate right between ownership and limited property rights and can constitute a legal title to real estate for the purpose of locating photovoltaic installations (although it is generally not used for this purpose). In turn, Polish law lacks an institution similar to the Hungarian building right, which is specifically dedicated to investments in renewable energy sources. Furthermore, the Hungarian model does not distinguish between servitudes (land/personal/transmission), nor does the Polish legislature. Photovoltaic servitudes are not regulated in either legal system. The contractual models used in both countries to establish legal title to real estate for the purposes of siting photovoltaic installations are similar. Lease agreements are commonly used in both countries. In Hungary, these agreements are tailored to the needs of investors and have varying degrees of durability and legal protection compared to Polish leases.

De lege lata, both legal systems offer investors a lot of legal options for locating and operating photovoltaic installations. *De lege ferenda*, however, it is essential to strengthen investors' legal certainty through appropriate, dedicated regulations promoting long-term solutions for securing legal title to real estate. Legal experience demonstrates that current legal solutions do not fully address investor needs and market challenges.

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