Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

Articles

Studia Iuridica Lublinensia vol. XXX, 4, 2021
DOI: 10.17951/sil.2021.30.4.605-619

Michał Zalewski
Maria Curie-Skłodowska University in Lublin, Poland
ORCID: 0000-0001-7010-3476
michal.zalewski@umcs.pl

Civil Law Status of Transmission Equipment (Article 49 of the Polish Civil Code)

Cywilnoprawny status urządzeń przesyłowych (art. 49 Kodeksu cywilnego)

ABSTRACT

The article provides an analysis of the civil law status of transmission equipment (devices) referred to in Article 49 of the Civil Code (transmission devices). Conducting business activity by a transmission entrepreneur in the field of utility services and waste disposal requires the use of transmission devices. These devices are located on real estate which are not owned by the entrepreneur and in a typical situation they remain permanently connected to such real estate. According to Article 49 of the Polish Civil Code, such devices do not constitute component parts of real estate if they are part of an enterprise. The assessment of the entry of transmission equipment into the composition of the enterprise and their ownership status, especially after entering the composition of the enterprise raises interpretation doubts. Determining who is the owner of transmission equipment is important because the owner of the equipment may be granted (Article 305^1 of the Civil Code) a transmission easement, which is a right related to the ownership of these devices. In this article, an attempt was made to resolve the aforementioned interpretation doubts.

Keywords: transmission equipment; transmission easement; real estate; enterprise; ownership

CORRESPONDENCE ADDRESS: Michał Zalewski, PhD, Assistant Professor, Maria Curie-Skłodowska University (Lublin), Faculty of Law and Administration, Institute of Law, Plac Marii Curie-Skłodowskiej 5, 20-031 Lublin, Poland.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

INTRODUCTION

This article discusses issues related to the civil law status of the equipment (devices) referred to in Article 49 of the Polish Civil Code[1] (transmission equipment, hereinafter also referred to as transmission devices). These issues used to be the subject of keen interest in literature[2] and quite numerous statements by the judicature.[3] This was connected with the occurrence of disputed factual situations in

[1] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2020, item 1740), hereinafter: CC.

[2] M. Balwicka-Szczyrba, *Korzystanie z nieruchomości przez przedsiębiorców przesyłowych – właścicieli urządzeń przesyłowych*, Warszawa 2015, pp. 79–85; G. Bieniek, *Jeszcze raz w sprawie statusu prawnego urządzeń przesyłowych*, "Monitor Prawniczy" 2008, no. 20, pp. 1071–1077; idem, *Urządzenia przesyłowe. Problematyka prawna*, Warszawa 2008, pp. 11–49; idem, *Z problematyki stosowania art. 49 kc*, "Nowy Przegląd Notarialny" 2001, no. 3, pp. 11–21; R. Dziczek, *Służebność przesyłu i roszczenia uzupełniające. Wzory wniosków i pozwów sądowych. Przepisy*, Warszawa 2013, p. 16, 27, 33; J. Frąckowiak, *O konieczności dalszych zmian prawa cywilnego szczególnie w odniesieniu do podmiotów i umów w obrocie gospodarczym*, "Przegląd Prawa Handlowego" 1999, no. 3, pp. 7–13; D. Kokoszka, *Prawna problematyka urządzeń przesyłowych (art. 49 k.c.) na tle propozycji Komisji Kodyfikacyjnej Prawa Cywilnego (cz. I)*, "Rejent" 2007, no. 6, pp. 102–118; idem, *Prawna problematyka urządzeń przesyłowych (art. 49 k.c.) na tle propozycji Komisji Kodyfikacyjnej Prawa Cywilnego (cz. II)*, "Rejent" 2007, no. 7–8, pp. 118–132; M. Krzyszczak, *Własność urządzeń, o których mowa w art. 49 k.c.*, "Monitor Prawniczy" 2000, no. 10, pp. 638–642; Z. Kuniewicz, *Sytuacja prawna urządzeń przesyłowych wymienionych w art. 49 k.c.*, [in:] *Księga jubileuszowa Profesora Tadeusza Smyczyńskiego*, Toruń 2008, pp. 49–59; G. Matusik, *Własność urządzeń przesyłowych a prawa do gruntu*, Warszawa 2011, pp. 252–253; M.J. Nowak, *Służebność przesyłu*, Warszawa 2015, p. 15; P. Lewandowski, *Służebność przesyłu w prawie polskim*, Warszawa 2014, pp. 96–97; A. Olejniczak, *Uwagi o pojęciu części składowej nieruchomości na tle art. 49 k.c.*, [in:] *Współczesne problemy prawa prywatnego. Księga pamiątkowa ku czci Profesora Edwarda Gniewka*, Warszawa 2010, pp. 410–418; idem, *Własność urządzeń przyłączonych do sieci przedsiębiorstwa energetycznego (uwagi o wykładni art. 49 k.c.*), "Ruch Prawniczy, Ekonomiczy i Socjologiczny" 2000, no. 4, pp. 19–33; J. Pokrzywniak, *Artykuł 49 k.c. po nowelizacji – głos w dyskusji*, "Rejent" 2009, no. 12, p. 70; P. Przeździecki, *Przesłanki wprowadzenia zmian w art. 49 k.c. oraz ustanowienia służebności przesyłu*, "Jurysta" 2007, no. 6, pp. 11–14; R. Rykowski, *Status prawny urządzeń przesyłowych z art. 49 k.c. – uwagi na tle nowelizacji kodeksu cywilnego*, "Przegląd Prawa Handlonwego" 2009, no. 7, p. 46; A. Stępień-Sporek, *Status prawny urządzeń wskazanych w art. 49 k.c.*, "Monitor Prawniczy" 2008, no. 14, pp. 735–743; R. Trzaskowski, *Z problematyki stosunków własnościowych na tle art. 49 k.c.*, "Kwartalnik Prawa Prywatnego" 2001, no. 3, pp. 551–590.

[3] Resolution of the Constitutional Tribunal of 4 December 1991, W 4/91, OTK 1991, no. 1, item 22; judgement of the Supreme Court of 23 June 1993, I CRN 72/93, "Monitor Prawniczy" 1993, no. 4, p. 115; resolution of the Supreme Court of 13 January 1995, III CZP 169/94, OSNC 1995, no. 4, item 64; judgement of the Supreme Court of 20 September 2000, I CKN 608/99, LEX no. 51641; judgement of the Supreme Court of 26 February 2003, II CK 40/02, "Biuletyn SN" 2003, no. 8, item 7; judgement of the Supreme Court of 25 July 2003, V CK 192/02, LEX no. 795789; judgement of the Supreme Court of 13 May 2004, III SK 39/04, "Orzecznictwo Izby Pracy, Ubezpieczeń Społecznych" 2005, no. 6, item 69; judgement of the Supreme Court of 3 December 2004, IV CK 347/04, LEX no. 578161; resolution of the panel of 7 judges of the Supreme Court of 8 March 2006, III CZP 105/05, OSP 2007, no. 7–8, item 84; judgement of the Supreme Court of 22 January 2010, V CSK 195/09, OSNC 2010, no. 7–8, item 116;

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

the practice of economic trade consisting of the use by transmission entrepreneurs of such devices located on properties of other persons.

Currently, the legal framework for the use by entrepreneurs of equipment located on third-party real estate is provided for by the transmission easement institution introduced more than 10 years ago into the Civil Code. The wording of Article 305[1] CC points to the link between the ownership of transmission equipment and the transmission easement. This right is established for the benefit of an entrepreneur who is the owner of equipment referred to in Article 49 CC (transmission equipment) located on someone else's property (or an entrepreneur who intends to place such equipment on someone else's property).[4] According to Article 305[3] § 1 CC, the transmission easement is transferred to the acquirer of these facilities,[5] referred to Article 49 CC, which means that the transmission easement is legally bound with the ownership of these facilities.[6]

MATERIALS AND METHODS

For this article, the classical research methods developed within the framework of legal sciences were used and the formal dogmatic method was used as the main method. To analyse, interpret and assess the existing civil law, it was necessary to apply the rules of legal linguistic and teleological interpretation.

RESEARCH AND DISCUSSION

The considerations made in the introduction determine the importance of the arrangements concerning the civil law status of the equipment referred to in Article 49 CC, and in particular determining who their owner is. The vast majority of

judgement of the Supreme Court of 22 January 2010, V CSK 206/09, LEX no. 578047; judgement of the Supreme Court of 7 March 2014, IV CSK 442/13, Legalis no. 99462; judgement of the Court of Appeal in Szczecin of 17 June 2014, I ACa 147/14, LEX no. 1488686; decision of the Supreme Court of 6 November 2014, II CSK 101/14, LEX no. 1573970; judgement of the Supreme Court of 19 November 2014, II CSK 169/14, LEX no. 1604626; judgement of the Court of Appeal in Szczecin of 20 January 2015, I ACa 635/14, Legalis no. 1285025; judgement of the Supreme Court of 4 March 2015, IV CSK 387/14, LEX no. 1651002; judgement of the Supreme Court of 25 May 2016, III CSK 137/15, LEX no. 2023160; judgement of the Court of Appeal in Katowice of 20 May 2016, V ACa 535/14, LEX no. 2061834; judgement of the Court of Appeal in Katowice of 21 October 2016, V ACa 99/16, LEX no. 2151522; judgement of the Court of Appeal in Kraków of 18 May 2018, I AGa 129/18, LEX no. 2533678.

[4] P. Lewandowski, *op. cit.*, pp. 96–97; B. Rakoczy, *Służebność przesyłu w praktyce*, Warszawa 2012, p. 68.

[5] R. Dziczek, *op. cit.*, p. 33; P. Lewandowski, *op. cit.*, p. 106.

[6] P. Lewandowski, *op. cit.*, p. 106.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

the transmission devices located on real estate have a permanent connection to the ground. This circumstance *prima facie* determines the assessment of their civil law status on the basis of the provisions of Article 47 § 2, Article 48 and Article 191 CC. According to the provision of § 2 of Article 47 CC, a component part of a thing is something which has such a strict physical and economic connection with a thing that[7] cannot be separated from it without damaging or substantially altering the entire thing or without damaging or substantially altering the separated object. Pursuant to the wording of the provision of Article 48 CC, the components of real estate include, in particular, buildings and other facilities permanently connected with the ground.[8]

In the light of the legal provisions mentioned above, transmission devices should be considered as component parts of the real estate on which they are located. Treating transmission devices as component parts of real estate would also determine their ownership status.[9] According to the wording of Article 191 CC, the ownership of immovable property extends to a movable connected with immovable property in such a way that it is a component part of it (principle of *superficies solo cedit*). This would mean that the owner of the transmission equipment is the owner of the immovable property on which these devices were placed.[10]

However, the status of transmission equipment must not be assessed in this manner due to the fact that the provision of Article 49 CC is in force.[11] Its current wording was shaped by the Act of 30 May 2008 amending the Civil Code Act and

---

[7] J. Ignatowicz, K. Stefaniuk, *Prawo rzeczowe*, Warszawa 2012, p. 24.

[8] The mutual relationship between the provisions of Article 47 § 2 and Article 48 CC raises some controversies in literature. There is a view according to which the provision of Article 48 CC extends the concept of a component part of a thing also to those objects that can be separated from real estate without changing or damaging both the whole thing and the detached object (see A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, Warszawa 2018, p. 287; T. Dybowski, *Części składowe*, "Nowe Prawo" 1969, no. 1, p. 89). In accordance with a more rigorous position, the premises specified in the provision of § 2 of Article 47 CC are fully applicable also with respect to the components of the real estate, which means that the object may be considered a component part of the land only if the circumstances specified in the provision occur (see J. Ignatowicz, [in:] *Kodeks cywilny. Komentarz*, vol. 1, Warszawa 1972, p. 138; E. Skowrońska-Bocian, M. Warciński, [in:] *Kodeks cywilny*, vol. 1: *Komentarz do art. 1–449[11]*, ed. K. Pietrzykowski, Warszawa 2018, p. 241). Transmission facilities could be qualified as components of the real estate on which they are located, regardless of which of the above-mentioned positions will be considered accurate. Disconnecting the transmission equipment from the real estate would make it impossible to use the equipment in accordance with its intended use, which means that the transmission equipment also meets the prerequisite referred to in the provision of § 2 of Article 47 CC.

[9] The fact that material rights concerning objects that have become part of a component expire and rights concerning the main extend to it is brought to attention by T. Dybowski (*op. cit.*, p. 80).

[10] J. Ignatowicz, K. Stefaniuk, *op. cit.*, p. 24.

[11] See judgement of the Court of Appeal in Szczecin of 17 June 2014, I ACa 147/14, LEX no. 1488686.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

some other acts.[12] According to § 1 Article 49 CC transmission equipment do not belong to the components of real estate if they are a part of an enterprise.[13] Appropriate claims relating to transmission equipment are provided for in § 2 Article 49 CC. According to sentence 1 of this provision, "a person who has incurred costs in constructing the transmission equipment and owns that transmission equipment" is entitled to a claim to acquire, against relevant remuneration, the ownership of these facilities from the entrepreneur who connected equipment to his network.

According to sentence 2 of the provision in question, an entrepreneur may also request the transfer of ownership of the equipment. The provision of Article 49 § 1 CC, therefore, provides for an exception to the principle of *superficies solo cedit*. Transmission facilities lose their status as a component part of the real estate from the moment they enter the company's composition.

Therefore, their inclusion in the company's composition is of crucial importance for the assessment of the civil law status of transmission equipment. The interpretation of this wording raises some doubts. According to the dominant view of the judicature[14] and literature,[15] the entry of transmission equipment into an enterprise is a matter of fact and is done by connecting the equipment to the installations or transmission networks of the entrepreneur. A different view is that transmission equipment is part of an enterprise when the entrepreneur acquires ownership or other

[12] Journal of Laws 2008, no. 116, item 731.

[13] The wording of § 1 of Article 49 CC corresponds (except for minor amendments) to the content of Article 49 CC before the 2008 amendment.

[14] Judgement of the Supreme Court of 23 June 1993, I CRN 72/93, "Monitor Prawniczy" 1993, no. 4, p. 115; resolution of the Supreme Court of 13 January 1995, III CZP 169/94, OSNC 1995, no. 4, item 64; judgement of the Supreme Court of 7 November 1997, II CKN 424/97, OSNC 1998, no. 5, item 77; judgement of the Supreme Court of 20 September 2000, I CKN 608/99, LEX no. 51641; judgement of the Supreme Court of 26 February 2003, II CK 40/02, "Biuletyn SN" 2003, no. 8, item 7; judgement of the Supreme Court of 25 July 2003, V CK 192/02, LEX no. 795789; judgement of the Supreme Court of 3 December 2004, IV CK 347/04, LEX no. 578161; judgement of the Supreme Court of 2 March 2006, I CSK 83/05, LEX no. 369165; resolution of the panel of 7 judges of the Supreme Court of 8 March 2006, III CZP 105/05, OSNC 2006, no. 10, item 159; judgement of the Supreme Court of 7 March 2014, IV CSK 442/13, Legalis no. 99462; judgement of the Supreme Court of 19 November 2014, II CSK 169/14, LEX no. 1604626; judgement of the Court of Appeal in Szczecin of 20 January 2015, I ACa 635/14, Legalis no. 1285025. See also resolution of the Constitutional Tribunal of 4 December 1991, W 4/91, OTK 1991, no. 1, item 22.

[15] G. Bieniek, *Z problematyki…*, p. 13; idem, *Jeszcze raz w sprawie statusu prawnego…*, p. 1073; R. Dziczek, *op. cit.*, p. 27; E. Gniewek, [in:] *Kodeks cywilny. Komentarz*, eds. E. Gniewek, P. Machnikowski, Warszawa 2017, p. 120; M. Krzyszczak, *op. cit.*, p. 640; E. Skowrońska-Bocian, M. Warciński, *op. cit.*, p. 243; A. Stępień-Sporek, *op. cit.*, p. 736; Ł. Żelechowski, [in:] *Kodeks cywilny. Komentarz. Część ogólna. Przepisy wprowadzające. Prawo o notariacie (art. 79–95, 96–99)*, ed. K. Osajda, Warszawa 2017, p. 420.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

rights to the facilities; rights which fall within the material scope of the enterprise within the meaning of Article 55[1] CC.[16]

The majority view should be considered more convincing, albeit with a certain reservation. The incorporation of the facilities into an enterprise means that they become a part of the company and there is no doubt that this concerns and enterprise in the material sense.[17]

According to the provision of Article 55[1] CC, an enterprise in this sense is a set of tangible and intangible component parts used to conduct business activity. There is a list of these components in sentence 2 of the aforementioned provision. It includes the name of the enterprise, property rights relating to movable and immovable property, subjective rights of a relative nature, concessions, licences, patents, copyrights and related rights, business secrets, books and documents. The catalogue of enterprise components is open to the public.[18]

It can be noticed that it is formed by both rights (e.g., ownership, rent, lease, receivables) listed in the second sentence of Article 55[1] CC and certain conditions that are not rights (e.g., business secrets, name). Therefore, possession may also be included in the components of the enterprise. The latter statement is of fundamental importance for the assessment of the entry of transmission equipment into the composition of the enterprise, as it makes it possible to consider the discussed event as occurring already at the moment when the entrepreneur takes over this equipment in actual possession, regardless of obtaining the legal title to the devices in question.[19]

Although judicial decisions emphasise that the entry of equipment into an enterprise takes place at the time when it is connected to the installation or transmission network,[20] it seems that the taking-over of the facilities by an entrepreneur should not be identified exclusively with these events. The possession of the equipment by an entrepreneur may consist in undertaking various behaviours in relation to the equipment and it does not seem justified to limit it exclusively to using it for transporting utilities. An entrepreneur becomes the possessor of the facilities when he builds a device or even erects some of its elements. Already then, the entrepre-

[16] A. Kaźmierczyk, [in:] *Kodeks cywilny. Komentarz*, vol. 1: Część *ogólna (art. 1–125)*, eds. M. Hadbas, M. Fras, Warszawa 2018, p. 384; W. Katner, [in:] *Kodeks cywilny. Komentarz. Część ogólna*, eds. M.P. Księżak, M. Pyziak-Szafnicka, Warszawa 2014, commentary on Article 49 CC; R. Trzaskowski, *op. cit.*, p. 565, 658; A. Olejniczak, *Własność urządzeń*..., pp. 30–33.

[17] A. Kuniewicz, *op. cit.*, p. 53; A. Olejniczak, *Własność urządzeń*..., p. 25; A. Stępień-Sporek, *op. cit.*, p. 737.

[18] E. Gniewek, *op. cit.*, p. 118; R. Morek, [in:] *Kodeks cywilny. Komentarz. Część ogólna. Przepisy wprowadzające. Prawo o notariacie (art. 79–95 i 96–99)*, ed. K. Osajda, Warszawa 2017, p. 465; E. Skowrońska-Bocian, M. Warciński, *op. cit.*, p. 254.

[19] M. Balwicka-Szczyrba, *op. cit.*, p. 80.

[20] Resolution of the panel of 7 judges of the Supreme Court of 8 March 2006, III CZP 105/05, OSP 2007, no. 7–8, item 84. See also other rulings mentioned in footnote 13.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

neur may exercise *de facto* power over the facilities by performing activities in the construction process, preparing the facilities for its use, performing technical acceptance.[21] The entrepreneur becomes the possessor of the equipment when he builds the equipment or even erects some of its elements.

Therefore, in the case of the abolition of transmission equipment by the owner of real estate or a third party it may be considered that their entry into the enterprise takes place at the moment when the equipment is connected to the installation or the network, because only then does the entrepreneur become the possessor of the equipment. By contrast, if these devices are constructed by the entrepreneur their entry into the enterprise takes place much earlier. The entrepreneur becomes the possessor of the equipment already upon the commencement of its construction and at that very moment the equipment becomes part of the enterprise, with the effects provided for in Article 49 CC.[22]

Transmission devices that are part of an enterprise do not have the status of components of immovable property and should be treated as movable property. However, the question arises as to who owns this transmission equipment. The linguistic interpretation of the provision of Article 49 CC does not give an unambiguous answer to this question and various interpretative variants seem possible.[23]

It seems that *de lege lata*[24] two concepts for assessing this issue are relevant. According to the first one, in order to determine the ownership status of transmission devices, it is important that they temporarily remain a component part of the real estate on which they are located. Therefore, the assignment of the ownership of transmission equipment takes place according to this concept on the basis of the criterion of the component part. The second concept provides that the owner of the transmission equipment is the person who incurred the costs of their construction (the decision on the ownership status of the equipment is therefore made according to the cost criterion).

The first concept is based on the assumption that the actual incorporation of transmission facilities into the enterprise takes place as soon as they are connected to the installation or network. For technical reasons, each transmission device is

[21] G. Matusik, *op. cit.*, p. 252; J. Pokrzywniak, *Artykuł 49 k.c. po nowelizacji…*, p. 78; idem, [in:] *Kodeks cywilny*, vol. 1: *Komentarz. Art. 1–449[11]*, ed. M. Gutowski, Warszawa 2016, p. 293. Cf. M. Balwicka-Szczyrba, *op. cit.*, p. 81.

[22] G. Matusik, *op. cit.*, pp. 252–253.

[23] *Ibidem*, pp. 177–264; Ł. Żelechowski, *op. cit.*, pp. 420–427.

[24] After the entry into force of the Act of 30 May 2008 amending the Civil Code and some other Acts amending Article 49 CC, the concepts assuming that transmission devices which were connected to the installation should be considered a component of the enterprise or a component of the installation or the network, and therefore the property of the entrepreneur have become obsolete. See judgement of the Supreme Court of 25 February 2015, III CSK 137/15, LEX no. 2023160; Ł. Żelechowski, *op. cit.*, p. 425.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

first placed on or below the surface of a property (built) and then connected to the network. During the period between the placement on the real estate and the connection to the system or network (the membership of enterprise), the transmission facilities should be treated as component parts of the real estate (Article 48 CC).

The provision of Article 191 CC has a determining influence on the indication of the owner of the equipment in such circumstances. Due to its wording, it should be assumed that the transmission devices, from their construction until their entry into the composition of the enterprise, are the property of the owner of the real estate on which they were placed.[25]

At the same time, it does not matter who paid for the construction of the equipment. The status of the devices in question changes when they become a part of an enterprise. Pursuant to the wording of the provision of § 1 of Article 49 CC, the equipment loses its character of a component part of the real estate as a result of this event. The entry of the equipment into the composition of the enterprise does not cause any changes in their ownership status.[26] This position is based on the doctrinal view that the ownership of a thing that has become a part of another thing remains with the owner of the main thing even after its separation.[27]

There are two types of exceptions to this rule.[28] First of all, ownership of a component part of a thing after its separation from the main thing may pass to a third party as a result of the conclusion of a relevant contract by that person and the owner of the thing. Second, a special rule may provide for the loss of ownership of the disconnected thing. For example, the provision of Article 227 § 1 CC may be considered to be such a rule. According to its wording, an owner-like possessor of an object obliged to deliver it in connection with the collection claim may, by restoring the previous state, take the objects which he has connected with the thing, even if they have become its component parts. The owner of the detached objects will not be considered the owner of the main thing, but its owner-like possessor. This means that the owner-like possessor of the thing will regain ownership of the things (*ius tollendi*).

The literature formulates a view that the Civil Code does not contain a provision according to which the ownership of transmission facilities after their entry into the composition of the enterprise would be transferred to an entity other than

[25] G. Bieniek, *Jeszcze raz w sprawie statusu prawnego…*, p. 1071.

[26] Resolution of the Constitutional Tribunal of 4 December 1991, W 4/91, OTK 1991, no. 1, item 22.

[27] T. Dybowski, *op. cit.*, p. 91. The author makes a definite claim that property right of a component thing "is transferred forever to the owner of the main thing". See also E. Skowrońska-Bocian, M. Warciński, *op. cit.*, p. 240; resolution of the Supreme Court of 26 January 1988, III CZP 2/88, LEX no. 1223001. As far as transmission equipment is concerned, see Ł. Żelechowski, *op. cit.*, pp. 427–428.

[28] T. Dybowski, *op. cit.*, p. 91.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

the owner of the real estate on which these facilities are located.[29] Article 49 CC is not such a provision.[30]

Adopting the view above would lead to the conclusion that, since it is impossible to identify a civil law event which would result in a change in the owner of the transmission facilities after their entry into the composition of an enterprise and loss of the status of component parts of the real estate, it should be assumed that the ownership status of the equipment is identical to that prior to the event in question.[31] This would mean that this equipment, as movable property, belong to the owner of the property,[32] who could sell it to the entrepreneur.[33]

However, the above interpretative concept cannot be reconciled with the *ratio legis* of the provision of Article 49 CC.[34] The special regulation of the status of transmission facilities in the aforementioned provision seems to be an expression of the legislator's aspiration to ensure the integrity of transmission enterprises.[35]

Due to the fact that transmission facilities have been recognised to be things separate from the real estate on which they are located, it is possible to trade in them, in particular it allows the entrepreneur to obtain their ownership. The fact that the entrepreneur holds a legal title to the facilities enables him to run, without disturbance, business activity consisting in supplying and removing the media. The legislator's involvement in ensuring the implementation of the above goal results from the fact that the entrepreneur's activity makes it possible to satisfy collective needs, which makes it quasi-public.[36]

The reference to the *ratio legis* of the regulation does not give an answer to the question as to who, after its entry into the enterprise, the owner of the transmission equipment is after its entry into the company. Contrary to some opinions,[37] certain indications in this respect seem to follow from § 2 Article 49 CC, which provides for a claim for the transfer of the ownership of transmission equipment.[38]

---

[29] A. Olejniczak, *Uwagi o pojęciu części składowej…*, p. 415.

[30] *Ibidem*.

[31] E. Skowrońska-Bocian, M. Warciński, *op. cit.*, p. 243. See also A. Kaźmierczyk, *op. cit.*, p. 383.

[32] A. Olejniczak, *Uwagi o pojęciu części składowej…*, p. 413.

[33] See *ibidem*, p. 416; E. Skowrońska-Bocian, M. Warciński, *op. cit.*, p. 2403; Ł. Żelechowski, *op. cit.*, pp. 427–428.

[34] G. Bieniek, *Jeszcze raz w sprawie statusu prawnego…*, p. 1073.

[35] R. Trzaskowski, *op. cit.*, pp. 554–555.

[36] A. Gill, A. Nowak-Far, *Korzystanie przez przedsiębiorstwa ciepłownicze z sieci i urządzeń przesyłu energii cieplnej usytuowanej na cudzym gruncie*, "Przegląd Sądowy" 1999, no. 7–8, pp. 73–74.

[37] A. Olejniczak, *Uwagi o pojęciu części składowej…*, p. 415.

[38] M. Balwicka-Szczyrba, *op. cit.*, p. 85; decision of the Supreme Court of 6 November 2014, II CSK 101/14, LEX no. 1573970; judgement of the Supreme Court of 19 November 2014, II CSK 169/14, LEX no. 1604626.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

In accordance with sentence 1 of the provision above, the person who may make this claim is a person who "has incurred costs in constructing the transmission equipment referred to in § 1 and owns that transmission equipment", and the claim would be against an entrepreneur who connects the transmission equipment to their network. In accordance with sentence 2 of this provision, a claim for the transfer of the ownership of that transmission equipment may also be made by the entrepreneur (against a person who has incurred costs in constructing the transmission and owns that transmission equipment).

It follows from this provision that it is possible that not only the owner of the land but also other persons are the owners of the transmission devices. This thesis is based on the wording used by the legislator – indicating in sentence 1 of Article 49 § 2 CC who has the right to claim the purchase of the equipment by an entrepreneur. It seems that the use of the term "a person who incurred the costs of construction of the equipment referred to in § 1 and is its owner" is not a matter of chance.

In view of the above, it may be assumed that Article 49 CC is a provision which determines who the owner of transmission equipment is after it has lost its status as a component part of the real estate. As mentioned above, the provision of Article 49 § 2 (sentence 2) CC states that the purchase of the equipment by the entrepreneur may be demanded by a person who has both incurred the costs of construction of the transmission equipment and is its owner, and that this claim is against an entrepreneur who has connected the equipment to his network.

It also can be concluded that the owner of the equipment is the person who incurred the costs of constructing the equipment and that this ownership was acquired after the equipment entered into the composition of the enterprise. This is because it is not before this moment that the claim in question arises, and since the person who incurred the costs of building the device is may make this claim, from this moment on this person should be treated as the owner of the device. The above arguments seem to justify the premise that the provision of Article 49 CC provides for an exception to two rules: the *superficies solo cedit* principle and the rule that the effects of applying this principle (in the form of the recognition of the real estate owner as the owner of the transmission device) persist after the device loses its status as a component part of the real estate. Therefore, the person who has incurred the costs of constructing a transmission device should be considered to be the owner of the transmission equipment after their entry into the composition of the enterprise.[39]

[39] M. Balwicka-Szczyrba, *op. cit.*, pp. 84–85; G. Bieniek, *Urządzenia przesyłowe…*, p. 46; idem, *Jeszcze raz w sprawie statusu prawnego…*, p. 1073; R. Dziczek, *op. cit.*, p. 16; A. Wolter, J. Ignatowicz, K. Stefaniuk, *op. cit.*, p. 288; judgement of the Supreme Court of 22 January 2010, V CSK 195/09, OSNC 2010, no. 7–8, item 116; judgement of the Supreme Court of 22 January 2010, V CSK 206/09, LEX no. 578047; judgement of the Court of Appeal in Szczecin of 17 June 2014, I ACa 147/14, LEX

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

CONCLUSIONS

De lege lata, what seems to be the most appropriate way to assess the civil law status of transmission equipment, in that in which the dividing line is its entry into the composition of the enterprise. This notion should be understood as a factual event – the taking over of the transmission equipment by the entrepreneur. If the equipment is erected by a transmission entrepreneur, it takes place already at the moment of commencement of the construction of the equipment, and in the case of equipment construction by the owner of the real estate or a third party – at the moment of connecting the equipment to the installation or the network by the entrepreneur. From the moment of entering the composition of the enterprise, the transmission equipment, despite its actual connection with the real estate, is treated as a self-contained movable property (they lose their status as components of the real estate) under Article 49 § 1 CC. Moreover, the person who incurred the costs of its construction is deemed to be its owner due to Article 49 § 2 CC.

It is worth recalling that the interpretation doubts concerning the civil law status of transmission equipment were noticed by the legislator; the legislator attempted to clarify the normative regulation of the status of transmission equipment. Proposals in this respect were formulated by the Civil Law Codification Commission attached to the Minister of Justice.[40] And the Polish Sejm of the 6th and 7th term of office[41] conducted legislative works on government draft legislation amending, i.a., Article 49 CC and introducing interim regulations concerning the status of transmission equipment. According to both drafts, transmission equipment was to lose its status of a component part of the real estate at the moment of entering the composition of any enterprise. It was also proposed that the amended regulation should explicitly stipulate that transmission facilities are part of the enterprise once the entrepreneur has permanently connected them to their network. According to

no. 1488686; decision of the Supreme Court of 6 November 2014, II CSK 101/14, LEX no. 1573970; judgement of the Supreme Court of 19 November 2014, II CSK 169/14, LEX no. 1604626; judgement of the Court of Appeal in Szczecin of 20 January 2015, I ACa 635/14, Legalis no. 1285025; judgement of the Supreme Court of 4 March 2015, IV CSK 387/14, LEX no. 1651002; judgement of the Supreme Court of 25 May 2016, III CSK 137/15, LEX no. 2023160; judgement of the Court of Appeal in Katowice of 20 May 2016, V ACa 535/14, LEX no. 2061834; judgement of the Court of Appeal in Kraków of 18 May 2018, I AGa 129/18, LEX no. 2533678. See also E. Gniewek, *op. cit.*, p. 113.

[40] *Sprawozdanie z działalności Komisji Kodyfikacyjnej Prawa Cywilnego w kadencji 2006–2010*, https://arch-bip.ms.gov.pl/pl/dzialalnosc/komisje-kodyfikacyjne/komisja-kodyfikacyjna-prawa-cywilnego [access: 16.08.2020].

[41] See Druk sejmowy nr 3595, 10.11.2010, http://orka.sejm.gov.pl/Druki6ka.nsf/0/A0EB3767DD1EC986C12577E400477227?OpenDocument [access: 16.08.2020]; Druk sejmowy nr 74, 7.12.2011, www.sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=74 [access: 16.08.2020].

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

the drafts, the issue of the ownership of transmission equipment was to be resolved on the basis of the criterion of the construction costs incurred.[42]

In the drafts discussed above, a transitional regulation was also included, which was to decide on the ownership status of transmission facilities existing on the date of entry into force of the draft act. It resulted from the fact that the owner of such facilities was to be the person who incurred the construction costs.

The Polish Sejm of the 7th term of office also conducted legislative work on a draft amendment to Article 49 CC proposed by Members of Parliament.[43]

The proposers suggested that transmission equipment should lose its status as a component of real estate "if it is permanently connected to a network forming part of an enterprise or if it has been built for this purpose" (§ 1 of the proposed Article 49 CC). According to the drafted § 2 of Article 49 CC, the owner of transmission equipment, who incurred the costs of their construction, was to be entitled to a claim for their purchase by the transmission entrepreneur. An analogous claim was also to be submitted by an entrepreneur. According to the proposers, the acceptance of the proposed solutions was supposed to ensure that transmission devices would not be considered as components of real estate from the very beginning of its construction. Instead, the ownership of these devices was to be decided "on the basis of general provisions on the ownership of movable property" (the proposal did not specify which particular provisions were applicable).[44]

[42] The proposed § 3 of Article 49 CC was to read as follows: "If the costs of construction of the devices referred to in § 1 were incurred by an entrepreneur, the devices are his property, also after a permanent connection with someone else's real estate, and before entering the enterprise", the planned § 4 of Article 49 CC was to constitute: "If the costs of construction of the devices referred to in § 1 were incurred by the owner of the property with which they are permanently connected, the owner of the property may demand that the entrepreneur acquires their ownership against appropriate remuneration if the devices were included in the enterprise, unless the parties agreed otherwise in a contract. A request for transfer of ownership of such devices may also be made by an entrepreneur". The draft provision of § 5 of Article 49 CC was to have the following wording: "If the costs of construction of the devices referred to in § 1 were incurred by a person other than that referred to in § 3 or § 4, the devices shall become the property of that person even after a permanent connection with another person's real estate. Such a person may demand that the entrepreneur acquires their ownership against appropriate remuneration if the devices were included in the enterprise, unless the parties agreed otherwise in a contract. A request for transfer of ownership of such devices may also be made by an entrepreneur". Such wording of the proposals for change was justly cruticised for being too detailed and specific (P. Lewandowski, *op. cit.*, p. 228).

[43] Druk sejmowy nr 760, 25.07.2012, http://orka.sejm.gov.pl/Druki7ka.nsf/0/3492826155FE3B98C1257A8B00319EE1/%24File/760.pdf [access: 16.08.2020].

[44] See the explanatory memorandum to the Draft Act amending the Civil Code Act and the Act on Real Estate Management in *ibidem*.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

Legislative work did not result in the adoption of an amending law.[45] The very fact that they were undertaken and conducted may be considered as a confirmation of the existence of doubts as to the interpretation of Article 49 CC. In particular, they concern the determination of who is the owner of the transmission devices which in connection with entering the composition of the enterprise are not treated as components of the real estate. It seems justified to resume the legislative initiative which would correspond to the direction of interpretation of Article 49 CC attributing the ownership of transmission facilities to the person who incurred the costs of their construction.

REFERENCES

Literature

Balwicka-Szczyrba M., *Korzystanie z nieruchomości przez przedsiębiorców przesyłowych – właściciele urządzeń przesyłowych*, Warszawa 2015.

Bieniek G., *Jeszcze raz w sprawie statusu prawnego urządzeń przesyłowych*, "Monitor Prawniczy" 2008, no. 20.

Bieniek G., *Urządzenia przesyłowe. Problematyka prawna*, Warszawa 2008.

Bieniek G., *Z problematyki stosowania art. 49 kc*, "Nowy Przegląd Notarialny" 2001, no. 3.

Dybowski T., *Części składowe*, "Nowe Prawo" 1969, no. 1.

Dziczek R., *Służebność przesyłu i roszczenia uzupełniające. Wzory wniosków i pozwów sądowych. Przepisy*, Warszawa 2013.

Frąckowiak J., *O konieczności dalszych zmian prawa cywilnego szczególnie w odniesieniu do podmiotów i umów w obrocie gospodarczym*, "Przegląd Prawa Handlowego" 1999, no. 3.

Gill A., Nowak-Far A., *Korzystanie przez przedsiębiorstwa ciepłownicze z sieci i urządzeń przesyłu energii cieplnej usytuowanej na cudzym gruncie*, "Przegląd Sądowy" 1999, no. 7–8.

Gniewek E., [in:] *Kodeks cywilny. Komentarz*, eds. E. Gniewek, P. Machnikowski, Warszawa 2017.

Ignatowicz J., [in:] *Kodeks cywilny. Komentarz*, vol. 1, Warszawa 1972.

Ignatowicz J., Stefaniuk K., *Prawo rzeczowe*, Warszawa 2012.

Katner W., [in:] *Kodeks cywilny. Komentarz. Część ogólna*, eds. M.P. Księżak, M. Pyziak-Szafnicka, Warszawa 2014.

Kaźmierczyk A., [in:] *Kodeks cywilny. Komentarz*, vol. 1: Część *ogólna (art. 1–125)*, eds. M. Hadbas, M. Fras, Warszawa 2018.

Kokoszka D., *Prawna problematyka urządzeń przesyłowych (art. 49 k.c.) na tle propozycji Komisji Kodyfikacyjnej Prawa Cywilnego (cz. I)*, "Rejent" 2007, no. 6.

Kokoszka D., *Prawna problematyka urządzeń przesyłowych (art. 49 k.c.) na tle propozycji Komisji Kodyfikacyjnej Prawa Cywilnego (cz. II)*, "Rejent" 2007, no. 7–8.

Krzyszczak M., *Własność urządzeń, o których mowa w art. 49 k.c.*, "Monitor Prawniczy" 2000, no. 10.

Kuniewicz Z., *Sytuacja prawna urządzeń przesyłowych wymienionych w art. 49 k.c.*, [in:] *Księga jubileuszowa Profesora Tadeusza Smyczyńskiego*, Toruń 2008.

[45] In the case of the Sejm of the 6th term of office, this was related to the expiry of the term of the Sejm, while the Sejm of the 7th term ceased to work on projects. See Druk sejmowy nr 74, 7.12.2011; Druk sejmowy nr 760, 25.07.2012.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

Lewandowski P., *Służebność przesyłu w prawie polskim*, Warszawa 2014.
Matusik G., *Własność urządzeń przesyłowych a prawa do gruntu*, Warszawa 2011.
Morek R., [in:] *Kodeks cywilny. Komentarz. Część ogólna. Przepisy wprowadzające. Prawo o notariacie (art. 79–95 i 96–99)*, ed. K. Osajda, Warszawa 2017.
Nowak M.J., *Służebność przesyłu*, Warszawa 2015.
Olejniczak A., *Uwagi o pojęciu części składowej nieruchomości na tle art. 49 k.c.*, [in:] *Współczesne problemy prawa prywatnego. Księga pamiątkowa ku czci Profesora Edwarda Gniewka*, Warszawa 2010.
Olejniczak A., *Własność urządzeń przyłączonych do sieci przedsiębiorstwa energetycznego (uwagi o wykładni art. 49 k.c.*), "Ruch Prawniczy, Ekonomiczy i Socjologiczny" 2000, no. 4.
Pokrzywniak J., [in:] *Kodeks cywilny*, vol. 1: *Komentarz. Art. 1–449[11]*, ed. M. Gutowski, Warszawa 2016.
Pokrzywniak J., *Artykuł 49 k.c. po nowelizacji – głos w dyskusji*, "Rejent" 2009, no. 12.
Przeździecki P., *Przesłanki wprowadzenia zmian w art. 49 k.c. oraz ustanowienia służebności przesyłu*, "Jurysta" 2007, no. 6.
Rakoczy B., *Służebność przesyłu w praktyce*, Warszawa 2012.
Rykowski R., *Status prawny urządzeń przesyłowych z art. 49 k.c. – uwagi na tle nowelizacji kodeksu cywilnego*, "Przegląd Prawa Handlonwego" 2009, no. 7.
Skowrońska-Bocian E., Warciński M., [in:] *Kodeks cywilny*, vol. 1: *Komentarz do art. 1–449[11]*, ed. K. Pietrzykowski, Warszawa 2018.
Stępień-Sporek A., *Status prawny urządzeń wskazanych w art. 49 k.c.*, "Monitor Prawniczy" 2008, no. 14.
Trzaskowski R., *Z problematyki stosunków własnościowych na tle art. 49 k.c.*, "Kwartalnik Prawa Prywatnego" 2001, no. 3.
Wolter A., Ignatowicz J., Stefaniuk K., *Prawo cywilne. Zarys części ogólnej*, Warszawa 2018.
Żelechowski Ł., [in:] *Kodeks cywilny. Komentarz. Część ogólna. Przepisy wprowadzające. Prawo o notariacie (art. 79–95, 96–99)*, ed. K. Osajda, Warszawa 2017.

Online sources

Druk sejmowy nr 74, 7.12.2011, www.sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=74 [access: 16.08.2020].
Druk sejmowy nr 760, 25.07.2012, http://orka.sejm.gov.pl/Druki7ka.nsf/0/3492826155FE3B98C1257A8B00319EE1/%24File/760.pdf [access: 16.08.2020].
Druk sejmowy nr 3595, 10.11.2010, http://orka.sejm.gov.pl/Druki6ka.nsf/0/A0EB3767DD1EC986C12577E400477227?OpenDocument [access: 16.08.2020].
Sprawozdanie z działalności Komisji Kodyfikacyjnej Prawa Cywilnego w kadencji 2006–2010, https://arch-bip.ms.gov.pl/pl/dzialalnosc/komisje-kodyfikacyjne/komisja-kodyfikacyjna-prawa-cywilnego [access: 16.08.2020].

Legal acts

Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2020, item 1740).
Act of 30 May 2008 amending the Civil Code Act and some other acts (Journal of Laws 2008, no. 116, item 731).

Case law

Decision of the Supreme Court of 6 November 2014, II CSK 101/14, LEX no. 1573970.
Judgement of the Court of Appeal in Szczecin of 17 June 2014, I ACa 147/14, LEX no. 1488686.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 23/11/2026 14:40:07

Judgement of the Court of Appeal in Szczecin of 20 January 2015, I ACa 635/14, Legalis no. 1285025.
Judgement of the Court of Appeal in Katowice of 20 May 2016, V ACa 535/14, LEX no. 2061834.
Judgement of the Court of Appeal in Katowice of 21 October 2016, V ACa 99/16, LEX no. 2151522.
Judgement of the Court of Appeal in Kraków of 18 May 2018, I AGa 129/18, LEX no. 2533678.
Judgement of the Supreme Court of 23 June 1993, I CRN 72/93, "Monitor Prawniczy" 1993, no. 4, p. 115.
Judgement of the Supreme Court of 7 November 1997, II CKN 424/97, OSNC 1998, no. 5, item 77.
Judgement of the Supreme Court of 20 September 2000, I CKN 608/99, LEX no. 51641.
Judgement of the Supreme Court of 26 February 2003, II CK 40/02, "Biuletyn SN" 2003, no. 8, item 7.
Judgement of the Supreme Court of 25 July 2003, V CK 192/02, LEX no. 795789.
Judgement of the Supreme Court of 13 May 2004, III SK 39/04, "Orzecznictwo Izby Pracy, Ubezpieczeń Społecznych" 2005, no. 6, item 69.
Judgement of the Supreme Court of 3 December 2004, IV CK 347/04, LEX no. 578161.
Judgement of the Supreme Court of 2 March 2006, I CSK 83/05, LEX no. 369165.
Judgement of the Supreme Court of 22 January 2010, V CSK 195/09, OSNC 2010, no. 7–8, item 116.
Judgement of the Supreme Court of 22 January 2010, V CSK 206/09, LEX no. 578047.
Judgement of the Supreme Court of 7 March 2014, IV CSK 442/13, Legalis no. 99462.
Judgement of the Supreme Court of 19 November 2014, II CSK 169/14, LEX no. 1604626.
Judgement of the Supreme Court of 25 February 2015, III CSK 137/15, LEX no. 2023160.
Judgement of the Supreme Court of 4 March 2015, IV CSK 387/14, LEX no. 1651002.
Judgement of the Supreme Court of 25 May 2016, III CSK 137/15, LEX no. 2023160.
Resolution of the Constitutional Tribunal of 4 December 1991, W 4/91, OTK 1991, no. 1, item 22.
Resolution of the panel of 7 judges of the Supreme Court of 8 March 2006, III CZP 105/05, OSP 2007, no. 7–8, item 84.
Resolution of the panel of 7 judges of the Supreme Court of 8 March 2006, III CZP 105/05, OSNC 2006, no. 10, item 159.
Resolution of the Supreme Court of 26 January 1988, III CZP 2/88, LEX no. 1223001.
Resolution of the Supreme Court of 13 January 1995, III CZP 169/94, OSNC 1995, no. 4, item 64.

ABSTRAKT

Artykuł obejmuje analizę statusu cywilnoprawnego urządzeń, o których mowa w art. 49 Kodeksu cywilnego (urządzeń przesyłowych). Prowadzenie przez przedsiębiorcę przesyłowego działalności w zakresie doprowadzania mediów i odprowadzania nieczystości wymaga korzystania z urządzeń przesyłowych. Są one zlokalizowane na nieruchomościach, które nie stanowią własności przedsiębiorcy i w typowej sytuacji pozostają trwale połączone z tymi nieruchomościami. Z uwagi na art. 49 Kodeksu cywilnego urządzenia takie nie stanowią części składowych nieruchomości, jeżeli wchodzą w skład przedsiębiorstwa. Wątpliwości interpretacyjne wzbudza ocena wejścia urządzeń przesyłowych w skład przedsiębiorstwa oraz ich statusu właścicielskiego, zwłaszcza po wejściu w skład przedsiębiorstwa. Ustalenie, kto jest właścicielem urządzeń przesyłowych, jest istotne z tego powodu, że na rzecz właściciela urządzeń może zostać ustanowiona służebność przesyłu (art. 305^1 Kodeksu cywilnego), która jest prawem związanym z własnością tych urządzeń. W niniejszym artykule podjęto próbę rozstrzygnięcia wskazanych wyżej wątpliwości interpretacyjnych.

Słowa kluczowe: urządzenia przesyłowe; służebność przesyłu; nieruchomość; przedsiębiorstwo; własność