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Spatial Planning as an Instrument of Influencing the Protection of Natural Resources and Real Estate Management

Planowanie przestrzenne jako instrument oddziaływania na ochronę zasobów naturalnych i gospodarkę nieruchomościami

SUMMARY

In view of growing threats in this respect, the protection of natural resources is undoubtedly becoming a serious challenge, both for the state and for each citizen. Therefore, this article is supposed to draw attention to the problem of searching for optimal instruments for the protection of these resources. This is about creating and developing appropriate standards in legal regulations regarding environmental protection, protection of nature, water, air, national and landscape parks, nature monuments, etc. as well as protection of natural resources in cities and human settlements. Undoubtedly, spatial planning is of paramount significance in this matter, in particular local spatial development plans and the appropriate instruments of action resulting from them. Their significance should be considered particularly important because they are generally applicable law as acts of local law.

Keywords: natural resources; spatial planning; local spatial development plans; environment protection; nature protection; local law

I.

The protection of natural resources constitutes an important element of human functioning and a human sense of security in personal and social dimensions. This is related to the proper implementation of constitutional values, standards and principles that meet current requirements and expectations. They are based on such values and principles as the principle of sustainable development, the principle of environmental protection and the principle of nature protection, the principle

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of proportionality, the principle of legal certainty, etc. In the light of Article 74 (2) of the Polish Constitution of 1997 protection of the environment shall be the duty of public authorities. It is the duty of the state that cannot be exempt from. The obligation of legislative authorities to lay normative foundations and legal means of action securing optimal protection is of key importance in this context. Of course, the problem of protecting natural resources imposes specific normative obligations on the state (the legislature and public authorities in general), which have an appropriate scope of public powers in this respect. In this context, it should also be noted that, regardless of the state's obligations, the duty of due care in the sphere of natural resources protection also applies to citizens and other legal entities, because in the light of Article 86 of the Polish Constitution everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute.

The important role in shaping the legal order (including spatial order) related to the protection of natural resources is played by various types of planning acts. The nature of various types of plans is very complex, which has been pointed out by scholars of administrative law for years. An extensive analysis of views in this respect has been carried out by M. Górski and J. Kierzkowska[1]. Issues regarding the nature of planning norms and the legal consequences of their functioning raise certain doubts, because in most cases they are not of a legal nature. In such a situation one can speak of a kind of strategies and forecasts of a political nature.

Spatial development plans (and strategies) are important in this regard, which, as a rule, can perform various functions. A number of important references can be associated with their creation. Firstly, they identify problems related to the protection of natural resources and the shaping of spatial order. Secondly, they indicate current or potential obligations that may concern key values relating to natural resources, including environmental protection, nature protection, water protection, etc. Thirdly, they provide an important point for the legislature in designing the legal system for the protection of those values. The nature of these plans allows the development of appropriate measures for the protection of natural resources and regulatory instruments.

Spatial planning acts are undoubtedly key documents among various planning acts. A general planning act constituting a kind of planning forecast, namely the "Concept of the nation-wide spatial development policy" and various "programmes

[1] M. Górski, J. Kierzkowska, *Strategie, plany i programy*, [in:] *System Prawa Administracyjnego*, t. 7: *Prawo administracyjne materialne*, red. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2017, pp. 179–220. See also M. Górski, *Charakter prawny planów gospodarki odpadami*, „Przegląd Komunalny" 2004, nr 7; Z. Niewiadomski, *Planowanie przestrzenne. Zarys systemu*, Warszawa 2003; Z. Duniewska, M. Górski, B. Jaworska-Dębska, E. Olejniczak-Szałowska, M. Stahl, *Plany, strategie, programy i inne zbliżone formy prawne działania administracji*, [in:] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z konferencji naukowej poświęconej jubileuszowi 80. urodzin Profesora Eugeniusza Ochendowskiego*, Toruń 2005, etc.

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containing government tasks" have special significance at the central government level. At the level of regional government (voivodeship), the primary importance is attached to non-normative acts: the regional development strategy and the regional spatial development plan. Both poviats (districts) and municipalities (communes) participate in their drafting. Importantly, these plans are not generally applicable normative acts. They are not acts of internal law either[2].

Undoubtedly, two types of acts adopted by a resolution of the municipal council are essential in terms of the protection of natural resources: study on municipal spatial development conditions and directions and the local spatial development plan. The former will not be discussed herein, since it is not a generally applicable normative act. The second case is different, as they are acts of local law, hence generally applicable normative acts. However, it is a quite peculiar normative act. I maintain the position I took in the past that:

> The need for local spatial development plans is not objectionable if their existence entails the need to ensure the spatial order (even though the Polish Constitution does not explicitly refer to this order). Its content should be shaped in relation to Article 5 of the Polish Constitution (the principle of sustainable development) and the entirety of constitutional provisions, including the preamble. Such a conclusion seems necessary due to the fact that completely ungrounded suggestions for the complete abolition of local spatial development plans have been put forward recently. These plans are a crucial and very important element of spatial governance and the systemic principle of sustainable development. The reasonable grounds for the existence of local spatial development plans do not mean that their legal structure does not raise objections. Doubts arise primarily when we try to reconstruct the elements which provide an opportunity to limit constitutionally protected values, such as the ownership right (or other property rights). This is so, because for the possibility of confronting values relating to ownership (property rights), it is necessary to be able to fully define the values which, in local spatial development plans, make more specific the contents of spatial order which justify the introduction of such a restriction[3].

A similar position is taken by some other scholars in the field. For example, according to Z. Niewiadomski:

> Planning acts are not legally unambiguous. They do not contain generally applicable norms in the classic form. Nor are they individual acts (administrative decisions). Their place is situated between classical normative acts and administrative decisions. Until recently, it was claimed that the local plan was located closer to the normative act than to the administrative decision. This was the decision of the legislature, as expressed in Article 14 (8) of the Act on Spatial Planning and Development, under which the competent local government authorities are obliged, when drafting a spatial development plan, to make the statements of the plan universally binding, obviously not in their entirety and not necessarily in the classic form of legal norms[4].

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[2] See Z. Niewiadomski, *Planowanie przestrzenne. Zarys…*, p. 354.

[3] M. Zdyb, *Miejscowy plan zagospodarowania przestrzennego jako instrument ograniczania praw rzeczowych (prawa własności)*, [in:] *System Prawa Administracyjnego*, t. 7: *Prawo administracyjne materialne*, red. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2012, p. 577.

[4] Z. Niewiadomski, *Planowanie przestrzenne. Zarys…*, pp. 106–109.

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II.

The issue of spatial planning as a means of protecting natural resources may occur in planning at different territorial reference planes. Therefore, the problem arises for their functioning in relation to different territorial divisions, from municipalities, poviats, regions, and finally to national plans and strategies, including international acts, also EU ones. These acts are of quite diverse nature, and their degree of generality is quite often very high. Undoubtedly, an important achievement is that the Polish legislature has taken up the problem of planning at the poviat, regional and national levels. Perhaps, this situation will lead, over time, to their full (or fuller) harmonisation. Nonetheless, this is in the benefit of optimally protecting natural resources and the need to harmonise legal, political and economical measures to optimise all solutions in this matter.

Given the complexity of various normative acts and other acts embodying the idea of protecting natural resources and the diversity of strategies and programmes, it would be difficult to analyse them comprehensively. Therefore, I consider it appropriate, in the perspective of this article, to present this issue primarily in the context of local spatial development plans, also because they are acts of local law which are generally applicable normative acts. In adopting these acts, it should be taken into account that the appropriate legitimacy is based on the following. Firstly, the principles of complementarity and subsidiarity. These principles are very often combined or used interchangeably. I discussed these problems more broadly elsewhere, stressing that:

> It should be assumed that both terms mean essentially the same, but the complementarity principle emphasizes the place of the individual as a subject of rights and freedoms as part of the public order within society (local community, the state, system of states that are interconnected in many ways), while in the concept of subsidiarity emphasis is primarily put on the systemic relationship between individuals and collective structures or between communities approached from hierarchically diverse planes of the functioning of organized society. Given the state of law and prevailing legal scholarly views, it can be assumed that these concepts are so intertwined that it is not reasonable to divide them only for methodological conceptual purity[5].

Bearing in mind the principle of subsidiarity (complementarity), the State (state bodies) intervenes in the sphere of natural resources protection to an extent that cannot be sufficiently achieved by local government units, including municipalities. This makes it possible for the State (state bodies) to implement it more fully. The principle of subsidiarity (complementarity) has not been explicitly enshrined in the Polish Constitution or in other statutory laws. However, there is no doubt that it is

[5] M. Zdyb, *Wspólnotowe i polskie publiczne prawo gospodarcze*, t. 1: *Wolność i reglamentacja działalności gospodarczej. Handel zagraniczny*, Warszawa 2008, p. 359 ff.

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one of the fundamental principles of the legal system. With such an understanding, it has been derived from the preamble to the Constitution and from the axiological foundations of the public order developed in Poland and the so-called legal life of the state community or local community[6]. Thus, the formal lack of references to this principle does not prejudge its absence or the impossibility of attributing normative content to it. The statements of the scholarly opinion, with particular emphasis on the social teachings of the Church, are important in this matter[7]. There is no doubt that, from the point of view of the protection of natural resources, this principle is of particular importance, because it is ultimately the local communities who determine, to a large extent, the possibilities for their optimal protection.

Secondly, the principle of sustainable development. The scholars in the field have pointed to the principle of sustainable development for many years. However, it seems that the way this term is interpreted is questionable, despite the fact that this principle is directly embodied in the Constitution of the Republic of Poland of 2 April 1997[8], where it is stated in Article 5 that the Republic of Poland shall safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development. This principle is explicitly articulated also in several other acts, including, among others: Article 1 of the Act of 27 April 2001 – Environmental Protection Law[9] ("The Act sets out the principles of environmental protection and the conditions for the use of environmental resources, taking into account the requirements of sustainable development, and in particular: the rules of determining: a) the conditions for the protection of environmental resources, b) the conditions for the introduction of substances or energy into the environment, c) the costs of using the environment […]"); Article 1 of the Act of 27 March 2003 on Spatial Planning and Development[10] (Article 1 (1) of the Act indicates that the principles take them into account "considering spatial order and sustainable development as the basis for these activities"); Article 1 of the Act of 20 July 2017 – Water Law[11] ("The Act governs water management in accordance with the principle of sustainable development, in particular the formation and protection of water resources, water use and management"), etc.

There is no doubt that the constitutional principle of sustainable development is an important spatial planning instrument, as far as local spatial development plans

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[6] Idem, *Pomocniczość*, [in:] *Encyklopedia samorządu terytorialnego*, red. K. Miaskowska-Daszkiewicz, B. Szmulik, Warszawa 2010, pp. 574–577.

[7] See, among others, *Encyklika Piusa XI Quadragesimo Anno*, [in:] *Dokumenty nauki społecznej Kościoła*, red. M. Radwan, L. Dyczewski, A. Stanowski, cz. 1, Rzym–Lublin 1987, p. 85; J. Nagórny, *Posłannictwo chrześcijan w świecie*, Lublin 1998, pp. 182–183.

[8] Journal of Laws 1997, No. 78, item 483 as amended.

[9] Consolidated text Journal of Laws 2018, item 799 as amended.

[10] Consolidated text Journal of Laws 2017, item 1073 as amended.

[11] Consolidated text Journal of Laws 2017, item 1566 as amended.

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are concerned, in the context of the protection of natural resources and real estate management. Quite often, it is approached in the perspective of statutory solutions with regard to broadly understood environmental protection problems, which, in fact, would not raise problems with the appropriate systematic understanding of this protection. However, this problem affects other areas related to, *inter alia*, running a business under the conditions of constitutionally protected economic freedom, construction law and energy law, etc. Bearing this in mind, the Constitutional Tribunal in its judgement of 6 June 2006 stated that:

> The principle of sustainable development covers not only nature protection or shaping spatial order but also due care for social and civilisational development, associated with the need to build appropriate infrastructure necessary for human life and individual communities taking into account civilisational needs. Thus, the idea of sustainable development comprises the need to take into account various constitutional values and to balance them appropriately[12].

The complexity of legal problems related to the principle of sustainable development in the context of the protection of natural resources and implementation of other constitutional values was also addressed by the scholarly opinion[13]. In this context, it makes sense to include the principle of sustainable development even in the preamble to the Act of 6 October 2018 – Entrepreneurial Law[14]. The importance of problems related to planning sustainable development in the perspective of protecting natural resources is stressed in the document adopted in New York in 2015, entitled "Transforming Our World: The 2030 Agenda for Sustainable Development"[15]. It seems important in this context, while maintaining the principle of proportionality, to balance the values on which the public order is based. An important instrument for balancing different constitutionally protected values is provided by various forms of planning public and spatial order, especially plans, which are universally applicable normative acts (local spatial development plans).

Thirdly, the principle of taking into account and complying with various normative acts in the field of nature protection, environmental protection, spatial planning, etc. These are such acts as the Act of 27 April 2001 – Environmental Protection Law[16],

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[12] Judgement of the Constitutional Tribunal of 6 June 2006, K 23/05, OTK-A 2006, No. 6, item 62.

[13] See, i.a., M. Zdyb, *Podstawowe zasady (standardy) ładu gospodarczego w świetle ustawy z 6.3.2018 r. – Prawo przedsiębiorców*, „Monitor Prawniczy" 2018, nr 13 (dodatek specjalny), pp. 5–14; J. Boć, [in:] *Konstytucje Rzeczypospolitej oraz komentarz do Konstytucji RP z 1997 r.*, red. J. Boć, Wrocław 1998, p. 24 ff.; A. Bałaban, *Konstytucyjna zasada zrównoważonego rozwoju*, [in:] *Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje*, red. L. Garlicki, A. Szmyt, Warszawa 2003, p. 19 ff.; P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2008, p. 26.

[14] Journal of Laws 2018, item 646.

[15] See M. Zdyb, *Podstawowe zasady*…, p. 7.

[16] See idem, *Wspólnotowe i polskie publiczne prawo*..., p. 359 ff.

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Act of 27 March 2003 on Spatial Planning and Development[17], Act of 3 February 1995 on the Protection of Agricultural and Forestry Land[18], Act of 16 April 2004 on Nature Protection[19], Act of 13 April 2007 on the Prevention and Repair of Environmental Damage[20], Act of 14 December 2012 on Waste[21], Act of 22 June 2001 on Genetically Modified Micro-organisms and Organisms[22], Act of 9 June 2011 – Geological and Mining Law[23], Act of 18 December 2003 on Plant Protection[24], etc.

In connection with spatial planning, including local spatial development plans, the principles and values expressed in the Act on Spatial Planning and Development should be taken into account in determining their content, but also all the regulations standards aimed at protecting natural resources. In this context, it can be said that the body adopting a local spatial development plan is obliged to ensure that, when having in mind economic freedom, energy law, construction law, mining and geological law, etc. the natural resources are adequately protected, including that nature and the natural environment are protected, since, in the light of Article 74 of the Polish Constitution, it is the constitutional duty of the State to ensure environmental security. It should serve not only the today, but also the future generations. The State cannot be relieved from this obligation, even if the responsibilities in this regard are transferred to local government communities. Of course, local authorities should bear special attention in this regard, even if their tasks are based on national or transnational normative acts.

III.

The basic legislative act on spatial planning and drafting local spatial development plans is the Act of 27 March 2003 on Spatial Planning and Development[25], which by its very nature does not explicitly regulate the substantive content relating to the specific aspects of the protection of natural resources and refers in that regard to specific laws relating, in the light of Article 1 of the Act, to the substantive content relating to, among other things, standards of spatial order; landscape and architectural qualities; nature protection requirements and environmental protection in a broad sense; economic values of space, property rights; protection of monuments

[17] See idem, *Pomocniczość*, pp. 574–577.
[18] Consolidated text Journal of Laws 2017, item 1161 as amended.
[19] Consolidated text Journal of Laws 2018, item 1614 as amended.
[20] Consolidated text Journal of Laws 2018, item 954 as amended.
[21] Consolidated text Journal of Laws 2018, item 21 as amended.
[22] Consolidated text Journal of Laws 2017, item 2134.
[23] Consolidated text Journal of Laws 2017, item 2126 as amended.
[24] Consolidated text Journal of Laws 2017, item 2138 as amended.
[25] Consolidated text Journal of Laws 2017, item 1073 as amended.

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and objects of contemporary culture as well as national cultural heritage; health requirements and "safety/security of people and property, as well as disabled persons", etc. The protection of natural resources is undoubtedly an important public interest in this context, providing a basis, of course with the principle of proportionality applied, for the appropriate restrictions on certain rights and freedoms, including ownership right and economic freedom.

There is no doubt that local spatial development plans are very important in terms of the protection of natural resources (and also real estate management), and this is so for several reasons. Firstly, local spatial development plans are planning acts drawn up at the basic territorial division level, where it is easiest to identify any problems related to the protection of natural resources, since the knowledge of the legislative body of the municipality is the most complete. Secondly, they are shaped by bodies expressing the voice of the local community, which makes it possible to identify the most appropriate instruments for building spatial order while respecting the different statutory provisions related to, on the one hand, the nature protection law, environmental law, waste management law, etc., and, on the other hand, activities related to the various spheres of interference necessary (restrictions on those rights), e.g. economic freedom or investments related to the construction of roads, railways and airports, construction law, etc. Thirdly, an important advantage of local spatial development plans is the fact that they are local law, in the light of regulations applicable in Poland, which means that they have the attribute of generally applicable law enshrined in the Polish Constitution. In connection with the last remark, various problems emerged related to the essence of such plans. There is no doubt that these are specific normative acts, the functioning of which requires clarifications of different nature. Referring to the comments expressed by me in my other publications[26], P. Kwaśniak stated:

> Therefore, one should accept that the spatial planning act is an act of special nature, containing elements of both the classic legislative act and an individual act (act of local law and administrative decision). The nature of the local plan could, therefore, be described as a kind of reusable legal act, which also has the characteristics of an individual legal act. As a confirmation of the above, it should be noted that various investment processes in the area covered by the plan begin without the location decision. Moreover, although the local plan was classified as part of the constitutional system of sources of general law, it is impossible not to see that it also regulates the legal status of a particular property. As regards the latter, the characteristic feature of the local plan is noticed, namely it determines, along with other provisions, the manner of exercise of the right to property and may lead to the expropriation of the property, which results from the inclusion in the local public purpose investment plan, resulting in the deprivation of ownership in respect of a particular property[27].

[26] M. Zdyb, *Samorząd a państwo. Nadzór nad samorządem*, Lublin 1993.

[27] P. Kwaśniak, *Plan miejscowy jako podstawowy publicznoprawny instrument realizacji zagospodarowania przestrzennego w Polsce*, Lublin 2006 (doctoral thesis, copied typescript), p. 13.

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The essence of the local spatial development plan was the subject of in-depth analysis by administrative law scholars[28].

Local spatial development plans undoubtedly play the key role in the protection of natural resources, and therefore some doubts about their character require some clarification.

The first issue that needs clarification is, among other things, the fact that local spatial development plans are normative acts of generally applicable law. This is because those plans have abstract contents, but also a content which actually becomes specific and individualised. Undoubtedly, a resolution of the council of a particular municipality level unit is of a legislative nature in the general (descriptive) part, which makes it to be considered in this regard a generally applicable normative act. However, some doubts arise when we look at the problem of local

[28] E. Gdulewicz, *Konstytucyjny system źródeł prawa*, [in:] *Polskie prawo konstytucyjne*, red. W. Skrzydło, Lublin 2004; J. Ignatowicz, *Prawo rzeczowe*, Warszawa 2000; W. Jakimowicz, *Wybrane zagadnienia prawnomaterialne i prawnoprocesowe ustawy z dnia 27.3.2003 r. o planowaniu i zagospodarowaniu przestrzennym (Dz.U. Nr 80, poz. 717)*, „Casus" 2004, nr 31; J. Jeżewski, *Prawne instrumenty realizacji polityki rozwoju regionalnego – próba klasyfikacji*, „Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji" 2004, t. 59; T. Kachniarz, Z. Niewiadomski, *Nowe podstawy prawne zagospodarowania przestrzennego*, Warszawa 1994; K. Kafka, *Planowanie i zagospodarowanie przestrzenne w świetle nowych przepisów*, Katowice 2003; T. Kasiński, *Plany zagospodarowania przestrzennego: szczególny tryb nieodpłatnego wywłaszczania nieruchomości?*, „Monitor Prawniczy" 1997, nr 3; J.S. Langrod, *Instytucje prawa administracyjnego. Zarys części ogólnej*, Kraków 2003; Z. Leoński, M. Szewczyk, *Podstawowe instytucje planowania przestrzennego i prawa budowlanego*, Poznań 1997; eidem, *Zasady prawa budowlanego i zagospodarowania przestrzennego*, Bydgoszcz–Poznań 2002; Z. Niewiadomski, *Planowanie przestrzenne. Zarys…*; idem, *Zagospodarowanie przestrzenne*, Warszawa 2003; idem, *Nowe prawo o planowaniu i zagospodarowaniu przestrzennym*, Warszawa 2003; idem, *Samorząd terytorialny a planowanie przestrzenne*, „Samorząd Terytorialny" 1995, nr 6; idem, *Planowanie przestrzenne miejscowe w świetle nowych rozwiązań prawnych*, „Casus" 2004, nr 31; E. Ochendowski, *Prawotwórcza rola gminy*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1991, nr 2; W. Pańko, *Własność gruntowa w planowej gospodarce przestrzennej. Studium prawne*, Katowice 1978; E. Radziszewski, *Planowanie i zagospodarowanie przestrzenne. Przepisy i komentarz*, Warszawa 2006; A. Rembielińska, *Z problematyki zadań powiatu w sferze zagospodarowania przestrzennego*, „Studia Prawno-Ekonomiczne" 2000, nr 61; H. Rot, K. Siarkiewicz, *Zasady tworzenia prawa miejscowego*, Warszawa 1994; J. Siegień, *Prawo budowlane po nowelizacji. Ustawa o planowaniu i zagospodarowaniu przestrzennym*, Zielona Góra 2003; K. Sikora, *Istota i charakter prawny aktów prawa miejscowego w zakresie ich sądowoadministracyjnej kontroli*, Lublin 2017; J. Stelmasiak, *Miejscowy plan zagospodarowania przestrzennego jako prawny środek ochrony środowiska*, Lublin 1994; W. Szwajdler, *Ochrona prawna interesu indywidualnego w procesie budowlanym*, Toruń 1993; W. Szwajdler, T. Bąkowski, *Proces inwestycyjno-budowlany. Zagadnienia administracyjno-prawne*, Toruń 2004; M. Świetlik, *Planowanie przestrzenne w gminie*, [in:] *Ustawa o planowaniu i zagospodarowaniu przestrzennym. Przepisy, omówienia, komentarze*, red. G. Buczek, M. Tetera-Jankowska, Warszawa 2003; M. Tetera, *Władztwo planistyczne w stosunkach sąsiedzkich gmin*, „Samorząd Terytorialny" 2003, nr 1–2; *Ustawa o planowaniu i zagospodarowaniu przestrzennym. Komentarz*, red. Z. Niewiadomski, Warszawa 2004; A. Wasilewski, *Administracja wobec prawa własności nieruchomości gruntowych*, Kraków 1972.

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spatial development plans from the perspective of annexes thereto, which define specific possibilities for the use of real estate and introduce specific restrictions on this use due to considerations of protection of natural resources, protection of the environment and nature, protection of forests, water, air as well as spatial and urban order, etc. It seems that by concretisation of e.g. the requirements of protection of natural resources and, therefore, the personal and subjective individualisation associated with these fragments of the local spatial development plan, we deal with the phenomenon of the formation of not a general but an individual legal norm, i.e. with a double concretisation of the law, typical of administrative decisions. It is, therefore, legitimate to adopt the thesis that in such situations we face a phenomenon of collective administrative decisions or so-called acts of application of the law.

Secondly, in the context of local spatial development plans, doubts arise as to whether the Act on Spatial Planning and Development provides grounds for various restrictions due to the need to protect natural resources. The Polish Constitution requires (Article 31 (3)) that restrictions on property rights be based on laws, while respecting the principle of proportionality and for reasons of important public interest, and undoubtedly the protection of natural resources, including protection of the environment, is such important public interest. The currently applicable Act on Spatial Planning and Development does not specify what elements of natural and environmental resources give rise to the introduction of rigours restricting property rights because of the need to protect them. It must be borne in mind, however, that the implementation of the Act on Spatial Planning and Development is not aimed at identification of all the instruments for the protection of natural resources, as it regulates, above all, systemic and procedural issues. Therefore, a systemic view on the law is reasonable and necessary here. In view of the above, it is the obligation of the council of the local authority of the basic level, when adopting a resolution on the local spatial development plan, it the preparation of this act taking into account the legal requirements provided for by the Act on Nature Protection, Act Water Law, Act on Real Estate Management, etc. These predominantly determine the content of local spatial development plans and administrative decisions issued on their basis.

Thirdly, although the planning acts at higher levels (poviat, voivodeship, nationwide) are not, as a rule, generally applicable acts of law, they should constitute an important element of shaping the content of local spatial development plans, as they point to an important public interest, which may or even should form a basis for possible limitations of the ownership right in the scope of development and use of specific real properties. Thus, the ownership right is subject to restrictions justified by the simultaneous need to protect other important constitutional values. In such a situation, we can, in a sense, talk about normativisation through local spatial development plans of various types of supra-municipal plans, regarding the area covered by the local spatial development plan. In such a situation, this

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may result in an enhancement of the legal protection of natural resources, but also its weakening. Therefore, one should expect that both the entities (authorities) entitled to planning beyond the boundaries of the municipality and the authorities (municipal councils) adopting local spatial development plans will act responsibly and will sensibly take into account the values that are in some kind of disharmony with the protection of natural resources. In extraordinary cases, when the owner is not able to exercise the basic attributes of the ownership right (i.e. the possibility to use it as an owner or to dispose of it) there must be the option of expropriation available, at the request of not only the competent state authority but also the land owner. This will always be the case when a restriction (also for the considerations of natural resource protection) results in a violation of the essence of the fundamental right of ownership. Bearing in mind that an expropriation breaches this essence, the possibility of carrying out the expropriation had to be set out at the level of the Polish Constitution (Article 21).

Fourthly, the necessity to take into account the defined legal states related to the established zones subject to obligatory protection. I agree with A. Ostrowska in this respect that such situations are primarily related to the establishment of "a national park, nature reserve, landscape park, protected landscape area, Natura 2000 area, nature and landscape complex, ecological site, documentation site, natural monuments and their buffer zones", as well as "areas of limited use", "quiet areas" and "conditions of water use in the water region and catchment area and the establishment of protection zones for water intakes"[29]. Such restrictions due to the protection of natural resources are imposed by such acts as the Act on Environmental Protection, Act of Nature Protection and Act Water Law.

Considering the civilisational growth, as well as the principles of market economy, the need to protect natural resources and preserve them for the next generations, it is reasonable to pay attention to the fact that the planning, in terms of the appropriate use of natural resources, should become one of the priorities in the activities of both the central and local government administrations. A special role in this should be played by local spatial development plans. It does not seem prudent to abandon the obligation to draw up such plans. As normative acts of an abstract and general nature, they constitute a normatively shaped basis for developing the spatial order and also for developing a kind of consensus in relations between colliding planes, protection of natural resources and the environment, various political and social aspects related to economic development and economic considerations. concerning costs related to ecological security. The need to take into account all environmental problems in the local spatial development plan provides the basis

[29] A. Ostrowska, *Ochrona środowiska w planowaniu i zagospodarowaniu przestrzennym (materiały dydaktyczne)*, https://phavi.umcs.pl/at/attachments/2015/1109/075604-dr-a-ostrowska-ochrona-srodowiska-w-planowaniu-i-zagospodarowaniu-przestrzennym.docx [access: 10.02.2020].

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for introducing various restrictions in relation to, among other things, the exercise of economic freedom, property rights, construction law and urban planning freedom. The protection of natural resources (especially the protection of nature and the environment) may entail the need to introduce solutions regarding other aspects of the protection of natural resources.

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STRESZCZENIE

Nie ulega żadnej wątpliwości, że ochrona zasobów naturalnych – w obliczu coraz większych zagrożeń w tej materii – staje się poważnym wyzwaniem, zarówno dla państwa, jak i każdego z obywateli. Stąd też celem niniejszego artykułu stało się zwrócenie uwagi na problem poszukiwania optymalnych instrumentów dotyczących ochrony tych zasobów. Chodzi tu niewątpliwie o stworzenie i ukształtowanie stosownych standardów w regulacjach prawnych dotyczących ochrony środowiska, a także o ochronę przyrody, wód, powietrza, parków narodowych i krajobrazowych, pomników przyrody itd. oraz o ochronę zasobów naturalnych w miastach i siedliskach ludzkich. Niewątpliwie bardzo duże znaczenie w tej materii ma planowanie przestrzenne, a w szczególności miejscowe plany zagospodarowania przestrzennego i wynikające z nich stosowne instrumenty działania. Ich znaczenie uznać należy za szczególnie ważne, ponieważ jako akty prawa miejscowego są prawem powszechnie obowiązującym.

Słowa kluczowe: zasoby naturalne; planowanie przestrzenne; miejscowe plany zagospodarowania przestrzennego; ochrona środowiska; ochrona przyrody; prawo miejscowe