



Restrictions on land use vs. protection of environmental values

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Abstract: The purpose of this paper is to identify both the real and optimal place of environmental issues within the spatial management system. The focus was primarily on the key spatial policy tool – local spatial management plan. It was outlined how environmental constraints are taken into account in these plans and the actual facts were evaluated. In the spatial management system, a special protection is given to the environmental values of the area. The principle of spatial order expressed in the Spatial Planning Act refers, among others, to issues related to the protection of the environment.

Keywords: environmental values, spatial management system, spatial planning act

1. Introduction

In the spatial management system, a special protection is given to the environmental values of the area. The principle of spatial order expressed in the Spatial Planning Act refers, among others, to issues related to the protection of the environment. There is also no doubt that certain land management (enabled in the local spatial development program) can lead to significant environmental impacts. This is confirmed by the increasingly widespread implementation of procedures on the assessment of environmental impacts.

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2. The role of the local spatial development plan in the spatial management system

Local spatial development plans in a binding manner determine the destination of a given area. Besides that, their important function will be to define the environmental rules. It must be remembered that plans cannot limit the constitutional principle of proportionality, which means that any land use restrictions contained therein must be justified both by the content of the statutory provisions and by the real need in this regard [1].

It should be recognized that one of the main tasks of local plans should be to limit an excessively broad development. The requirements related to preservation of spatial order induce the conclusion that the protection of both architectural and environmental values will be possible only at the introduction of such restrictions into the local plans. In practice, it is not always possible to implement them quickly. The reason for the majority of plans are the conclusions and expectations of space users. This is a little in the contrary to the above as-

sumptions [2]. It can be stated that in this way, the real influence on the local plans is exerted by individual real estate market participants. And in such cases, the role of protection of environmental values will not be so important. The intention of most applicants seeking to adopt or to change a local plan may be primarily to allow for the specific development of a given area. This development will usually be implemented in such a way that it will destroy at least some of the environmental values of the site. This does not mean a complete ban nor excessive restriction for development. It would be important, however, to work out some broader frameworks than the present ones – also from a systemic perspective. Some positive direction (requiring deepening) may be the introduction of a balance of development areas, within which a certain time perspective is determined, based on, among others, economic and environmental analysis of the need for development in the municipality.

In many cases, the municipal authorities do not decide to adopt local plans. Then the problems in question seem even more serious. The decision on the development conditions then becomes a counterpart of the plans. During its release, needs related to environmental values are taken into account to a lesser extent.

3. Environmental restrictions in local spatial development plans – present condition

According to Art. 15 of the Spatial Planning Act, one of the elements of the local plan will be environmental, nature and landscape protection. It should be understood that it is necessary to establish certain rules and standards, which will refer to the future. Their role is typically planning. Their more detailed interpretation will be possible under the law of environmental protection. According to Art. 73 of the Act, the local plans should include, among others, restrictions resulting from the establishment of particular forms of nature conservation (under the Nature Conservation Act), creation of limited use areas, industrial zones, quiet areas outside the agglomeration, or conditions for use of waters in a region or catchment area. Based on Art. 72 of the Act, the local plans must include, among others, conditions for maintaining the natural

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balance and rational management of environmental resources, among others by means of:

- establishing programs for rational use of land surface;
- providing a comprehensive solution to urban and rural development problems;
- the need to protect water, soil and land from pollution in connection with farming;
- providing protection of landscape values of the environment and climatic conditions.

Therefore, during the preparation of the local plan, it is necessary to analyze all the issues identified above in a very broad way [3]. As it was rightly pointed out in the doctrine that it cannot be maintained that the requirement to include a given element in the planning act is already fulfilled, if anything about it has been written and has been defined somehow. This requirement will only be fulfilled if it is written in such a way to result in specific directives, ensuring a coherent spatial management system [4]. The authorities of the municipality should keep in mind the above when preparing local plans.

Art. 74 of the Act also introduces the principle of economical use of land. This requirement was addressed primarily to designers and public administration bodies setting out the conditions for land development and area management as well as the authorities responsible for the expropriation of real estate. This provision should be treated as a general guideline, comparable in terms of precision to the principle of sustainable development [5]. This does not mean that it should be ignored. On the contrary: in relation to a local plan grossly violating this principle, a charge of Art. 74 of environmental law violation can be raised during proceedings in an administrative court.

In the case of preparing the local spatial development plans, one more environmental issue should be remembered. The above-mentioned environmental requirements should be determined on the basis of eco-physiographic studies, according to the characteristics of particular natural elements and their interrelationships [6]. Article 72 sec. 5 of the Environmental Protection Act defines eco-physiographic studies as documentation prepared for the needs of local spatial development plans, spatial development directions, and spatial development plans of the province, characterizing particular natural elements in the area covered by a given planning act and their interrelations. The problematic eco-physiographic development should be elaborated in the case of a need for a more detailed recognition of the characteristics of selected natural elements or determination of the magnitude and extent of specific environmental and human health hazards.

4. Environmental restrictions in local spatial development plans – proposals for changes

Current system solutions do not adequately protect the environmental values of particular areas [7]. Even if the analysis also takes into account issues related to strategic envi-

ronmental assessment, there is still insufficient guarantee of full protection of environmental values. Present solutions help to eliminate (or correct) investments that are blatantly contradictory to the concept of sustainable development, and significantly negative for the environment. The negative effects of excessively wide development of individual areas must be treated differently.

In addition to strengthening the role of local spatial development plans (while limiting or eliminating the development decisions), strengthening the role of regional environmental directors in the spatial planning system should be considered. Consideration should be given to whether or not they should have a much broader competence in agreeing the local plans – not only with respect to forms of nature protection but also other environmental values (the scope of which would be diagnosed in the spatial development plan of the province by local government). A natural consequence of the above would be to limit the role of real estate market participants in the spatial management system. A separate issue is the significant strengthening and clarification of the above-mentioned mandatory guidelines.

5. Conclusions

The state of the environment is determined by spatial policy tools. The subject of numerous studies is how certain investments influence on soil, water or air. It is worth remembering that the “earlier” step consists in determining the appropriate purpose and management of the area, which determines the implementation of a given investment (and then learning its impact). Therefore, the issue of improving the spatial management system should be considered crucial also from an environmental perspective.

References

- [1] Z. Leoński, M. Szewczyk, M. Kruś, *Prawo zagospodarowania przestrzeni*, Wolters Kluwer Business, Warszawa, 2012, p. 93–95.
- [2] K. Małysa-Sulińska, *Normy kształtujące ład przestrzenny*, Wolters Kluwer Business, Warszawa, 2008, p. 57–62.
- [3] M. Górski, M. Pchałek, W. Radecki, J. Jerzmański, M. Bar, S. Urban, J. Jendrośka, *Prawo ochrony środowiska. Komentarz*, Beck, Warszawa, 2014, p. 250–274.
- [4] B. Poskrobko, T. Poskrobko, *Zarządzanie środowiskiem w Polsce*, PWE, Warszawa, 2012, p. 121–128.
- [5] A. Fogel, *Prawna ochrona przyrody w lokalnym planowaniu przestrzennym*, Instytut Gospodarki Przestrzennej i Mieszkalnictwa, Warszawa, 2011, p. 72–93.
- [6] P. Korzeniowski, *Instytucje prawne ochrony środowiska a proces inwestycyjno-budowlany*, Difin, Warszawa, 2012, p. 221–260.
- [7] A. Zielińska, *Gospodarowanie na obszarach przyrodniczo cennych w Polsce w kontekście rozwoju zrównoważonego*, Wydawnictwo Uniwersytetu Ekonomicznego we Wrocławiu, Wrocław, 2013, p. 122–131.