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Spatial policy and the planning permits

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SPATIAL POLICY AND THE PLANNING PERMITS²

Abstract. *Numerous legal defects and a lack of economic instruments make it difficult to implement spatial policy at all levels of management.*

The most acute shortcomings include the following:

- *Land Development Conditions Decisions (Planning Permits) which practically disintegrate space,*
- *Frequent lack of the compliance between Local Physical Plans and the Municipality's spatial policy formulated in the Study of Spatial Development Conditions and Directions,*
- *lack of balancing land needs with the expenditures allocated for transportation and technical infrastructure.*

Key Words: spatial policy, Land Development Conditions Decisions (Planning Permits), Studies of Spatial Development Conditions and Directions, Local Physical Plans, compliance of administrative decisions with spatial policy.

The performance of spatial policy in Poland faces a number of barriers. The most essential of them include economic and community participation instruments and a lack of the political will to implement such instruments. The basic causes of the poor situation in the area of spatial economy and planning are defective legal solutions and non-uniform legal interpretations, with poor government's capability to amend laws. Practice has confirmed that the main shortcomings have been or are as follows:

- In the Law of 1994 – invalidation of Local Physical Plans,
– instruments of objections against the Plan,
- In the Law of 2003 – Land Development Conditions Decisions (Planning Permits),
– limitation of the Regional government's control over planning.

The legal system should protect justified interests of shareholders and the interests of citizens as the users of urbanized environment. Spatial order is a measure of the effectiveness of the current legal system, including the planning system. Contrary to their assumptions, the Studies of Spatial Development Conditions and Directions do not completely determine real municipal policies:

- Land needs are not balanced with the expenditures allocated to transportation and technical infrastructure,
- Land Development Conditions Decisions, in their present form, are the instruments that disintegrate spatial development, and they do not have their counterparts in other European countries,

² Paper read at the conference dedicated to the interrelationships between the arrangements acted in "Studies of Spatial Development Conditions and Directions" and "Local Physical Plans", held in Kraków on 2 October 2009.

- Presently, urban spatial development is governed more by the Land Development Conditions Decisions than by any planned public authority operations.

With reference to the Local Physical Plans:

- The Plans do not determine the goal of such regulations,
- People do not analyse actual demand for building plots,
- Shareholders are not included in the process of preparation of the Resolution concerning commencement of Plan works,
- Plan authors are not obligated to justify their solutions (in the form of the Resolution justification).

An opportunity is presented by stressing spatial policy and increasing its influence on current decisions. According to art. 9.1 of the Polish Law of Spatial Planning and Development of 2003: *To determine the Municipality's spatial policy, including the local spatial development principles, the Municipality Council approves a Resolution of the commencement of works on the Study of Spatial Development Conditions and Directions.* However, the Law does not give any definition of spatial policy. Such a definition is available on the website of the Polish Ministry of Infrastructure:

- Next to social and economic policies, spatial policy is the main component of the development policy, since it implements in equal terms economic, social and ecological objectives and intends to attain the most rational space management possible.
- Spatial policy constitutes a basic element of conducting integrated development policy.

Art. 2. of the Law of the Principles of Conducting Development Policy of 6 December 2006 says that development policy is understood as a complex of mutually related actions implemented for the purpose of ensuring easy and sustainable development of the country, regional and spatial, social and economic cohesion, increase of economic competitiveness and creation of new jobs on the national, regional and local scale.

Ryszard Domański³ described spatial economy as a complex of passive and active operations related to the objects and subjects associated with the organization of land use. The goal of spatial economy is both protection of specific land qualities and rational land shaping by economic process stimulation. In colloquial understanding, spatial policy represents coordinated actions of the agencies which hold the decision-maker status in respect of the object to which the policy is directed in order to attain specific objectives.

Active policy consists in the determination of the directions of spatial development, spatial policy objectives and their performance. Local governments realize their active spatial policies through active participation in the spatial development processes. The instruments used for the spatial policy implementation are as important as the very policy. The tool box of such instruments is quite large. We can distinguish the following direct and indirect instruments:

- Regulations determining the methods of land use, land management regulations, building laws and codes, building property management regulations, and landscape park protection regulations,

³ Ryszard Domański, 2006, *Gospodarka Przestrzenna: Podstawy teoretyczne*, Wydawnictwa Naukowe PWN.

- Local Physical Plans and other plans and programmes including Long-Term Investment Plans (WPI),
- Urban design norms and other codes,
- Land Development Conditions Decisions and other administrative decisions relating to spatial economy,
- Public capital investments,
- Urban design marketing and promotion;

And indirect instruments, mainly economic ones, e.g.:

- Taxes in land and real estate transactions,
- Fees for perpetual usufruct and property leases,
- Information on available lands,
- Principles of urban land appraisal,
- Municipal system of property information,
- Incentives and tax exemptions,
- Real estate tax exemptions,
- Special Economic Zone development.

There are also informal instruments, such as co-operation with shareholders, negotiations, including those with administrative courts and municipal courts of appeal. Despite such a broad selection of instruments, actual results are rather poor. That situation is caused by the following:

- Failure to use available instruments (for various reasons),
- Discontinuation of commenced operations as a result of political objections or a lack of officials' or political will to complete commenced tasks,
- Lack of procedures preventing withdrawal from commenced tasks, without clear justification of withdrawal decisions.

The most severe bad luck is a complete distortion of the use in practice of the principle of "good neighbourhood" in the Land Development Conditions Decisions. What was supposed to be a supplementary solution, applied mainly on the developed areas, serving also the purpose of filling out undeveloped gaps, has become a dominating procedure.

In large cities, more Building Permits are issued based on Land Development Conditions Decisions (70%) than based on Local Physical Plans. About 30% of Building Permit Decisions are contrary to the Studies of Spatial Development Conditions and Directions. 88,000 Land Development Conditions Decisions regarding volumetric facilities were issued in Kraków in 2003-2007, including 76% in compliance with the Study, while 16% partly complied, and 8% failed to comply completely. That 8% was equivalent to more than 700 Decisions, and most of them concerned protected lands.

Popularity of that path of obtaining Building Permits was increased even more owing to awry interpretation of the good neighbourhood principle by administrative courts and a lack of formal connections between Land Development Conditions Decisions and Study arrangements.

In the present situation, if we want to prevent obvious degradation of space in the majesty of law, it would be necessary to introduce small amendments of the Law of Spatial

Planning and Development as soon as possible, in order to determine urban design standards in the Study, and, after the Study approval, the following actions should be taken:

- Approve such standards as a municipal law also applicable to the preparation of the Land Development Conditions Decisions,
- Interconnect Land Development Conditions Decisions and the Study of Spatial Development Conditions and Directions arrangements (that would require solving a legal problem),
- Use the constitutional provision of equal treatment of public and private interests.

At the same time, it would be necessary (possibly without amending laws) to define how to understand the flexibility of the Study arrangements and the compliance of the Local Physical Plan with the Study arrangements.

In my understanding, the arrangements that can be later detailed in Local Physical Plans or administrative decisions can remain flexible. However, the arrangements that cannot be detailed in that manner must remain strictly binding, e.g. in respect of the following:

- transportation system layout,
- natural system boundaries,
- structure and continuity of public spaces,
- principles of the city skyline (panorama) protection,
- planned urbanization boundaries.

The Study should also determine a list of public projects, e.g. those planned for the next ten years, followed by the selection of the most urgent ones based on prioritisation (evaluation) processes. The selected projects should be included in the Long-Term Investment Plan. The evaluation criteria should be specified in the Study.

The establishment of the compliance of the Local Physical Plan with the Study of Spatial Development Conditions and Directions should be subjected to a separate procedure to be determined in the amended law. The essence of that procedure should be as follows:

- Prohibition in the Local Physical Plan to breach the basic division into development lands and the lands not designated for development in the Study, or observation of the full compliance of the respective arrangements,
- Allowing in the Local Physical Plan for deviations (by $\pm 10\%$ - 15%) from internal developed land designation divisions acted in the Study, taking into account also the needs of local natural system designation.

This paper is based partly on the data and information contained in the following:

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