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THE ROLE AND EFFECTS OF CASE-LAW IN THE SPATIAL COMPETITION. AN ANALYSIS OF SELECTED CASES

Abstract: The aim of this article is to analyze selected administrative court rulings from the perspective of concepts and processes related to the spatial competition and to define the role of these courts as well as some of the current legal regulations in the spatial competition. The cases (current in the context of the case line) pending before the administrative courts, closely related to spatial conflicts have been meticulously analyzed. The cases concerning local zoning plans and decisions along with land development have been selected. Their results and excerpts of the justification have been combined with the rules of the spatial competition, consequently precisely defining the role of public authorities in determining specific land development.

Keywords: Case-law, local zoning plans, *spatial competition*, zoning decision.

JEL codes: H11

Introduction

Spatial competition can be considered from diverse perspectives. One of them is the legal perspective. It should be noted that legislation is extremely significant; however, limiting to its analysis while aiming at a comprehensive

diagnosis of spatial management system would be insufficient. Other issues, such as the impact of real estate market participants, the degree of disability of public authorities, and the level of social capital, should be all taken into account. The above mentioned limitation does not change the fact that even in legal terms, many (perhaps too many) issues related to planning and zoning are settled.

In the vast majority of cases this happens at the level of the public administration. However, in strategic situations the final evaluation will be made at the level of the administrative courts. From the perspective of the *spatial competition* reality, it should be noted that this will be the case if:

– individual stakeholders in the *spatial competition* are truly concerned about a specific development of the area
– and consequently there is a serious spatial conflict.

The consequence of the above mentioned aspect is the lack of acceptance by at least one stakeholder of the final results of the application of a given spatial policy tool (especially the decision on land development and zoning or the local zoning plan). Referring the complaint to the court should be treated as a final attempt to resolve the spatial conflict. The aim of this article is to analyze selected administrative court rulings from the perspective of concepts and processes related to the *spatial competition* and to define the role of these courts as well as some of the current legal regulations in the *spatial competition*. The range of varied disputes is exceptionally wide. However, only rulings in which the parties of spatial conflicts and their intentions could be identified to the fullest extent have been selected for the analysis. At the same time, it must be assumed that the role of the interpretation of specific regulations is less essential, while the fundamental is the perspective of the stakeholders in the *spatial competition.*

1. Detailed analysis of selected court cases regarding local zoning plans

First of all, several selected court rulings concerning local zoning planning have been thoroughly analyzed. The legislator intends these are the basic tools in the spatial management system, nonetheless they are only binding in a small part of the country [Wierzbowski, Plucińska-Filipowicz 2016: 73; Niewiadomski 2008: 39]. Due to their universally binding nature [Nowak 2013: 30], they will cause much more controversy than acts which are internally binding studies of conditions and directions of spatial development. To start

with, a judgment of the Supreme Administrative Court of 9th June 1995 (IV SA 346/93, Lex), issued before the entry into force of the effective Spatial Planning and Land Development Act (but still valid), should be referred. The problem was that a large group of residents of one of the cities demanded a change to the implemented local land development plan, expecting a new demarcation of one of the streets. The current boundaries of this street, in the belief of the applicants, have made their properties "worthless". The city officials replied that the charges were utterly groundless. The residents have filed a complaint against the present plan to the court. Finally, the Supreme Administrative Court found the complaint in question to be unfounded. By justifying this point, the court pointed out that the municipality has the exclusive competence for local planning and therefore can (provided that it operates within the limits and under the law) independently shape the way of planning the area under its own planning authority.

This case-law thesis, despite the fact that it was published many years ago, is still an important point of reference. Indeed, it determines in practical terms what the municipality's planning authority is, and that power can also be exercised without the expectations of selected space users. It is worth noting that in the present case the participants of the spatial conflict did not directly express the will to realize specific investments. They were primarily concerned about the fact that the local plan led to a reduction in the value of the property, taking away some of the opportunity for a specific land development. The municipality authorities do not have to, however, take into account such requests. The above mentioned ruling confirms the specific role of the municipal authorities in shaping the spatial policy. They are not, consequently, one of the equivalent stakeholders in the *spatial competition*. They should be considered as the moderators of the competition, whose natural right is to impose a specific vision on other stakeholders. From the perspective of the latter, it will not be sufficient enough to only deny this vision, especially when using only the arguments related to specific obstacles in the development of a real estate. The above case illustrates the potential consequences of the activity of space users consisting of submitting to the municipal authorities the applications requesting a change in the local plans. Such applications may (but do not have to) be indicative of the existence of spatial conflicts, nonetheless, they are not always a substantial reflection of some of the inherent rights of the entities in the spatial management system.

A similar spatial conflict, with only a slightly different perspective, took place before the judgment of the Supreme Administrative Court on July

18th, 2016 (II OSK 478/16, LEX). In this case, a complaint against the local spatial development plan was filed by the company being the perpetual lessee of land. The local plan provided for the land a temporary use of real estate, prohibiting the adaptation and modernization of buildings that would require a building permit. The office buildings of the company were in poor condition and a renovation was not enough according to the company. In this situation, both the Provincial Administrative Court and the Supreme Administrative Court dismissed the complaint. In the justification the Supreme Administrative Court found that the protection of property or perpetual lease cannot be understood to extremities that any interference in the sphere of these rights would constitute a violation of the Constitution. The court pointed out on this occasion that spatial planning usually results in a conflict of different values and interests. In the present case, the argument for limiting entrepreneurs' rights was environmental issues. In the vicinity of the real estate in question, there were plans to adapt the land and convert into a park. The spatial conflict was reduced to varied, difficult to reconcile concepts of land development. One of them concerned the actual maintenance of status quo, while maintaining the possibility of increasing business conditions (and at the same time protecting them from deteriorating), while the second one – the protection of environmental values in a wider scope than currently. The municipal authorities fully supported the latter concept, limiting the entrepreneur's ability to develop the neighboring areas to those subject to special protection. The Supreme Administrative Court considered that the municipal authorities have the right to do so, provided that it is substantively justified. The statutory framework does not provide for a precise definition of when such justification is sufficient. It can be assumed that the evaluation of the rationality of the actions of spatial policy entities will be crucial in this context. In doubtful situations, it can be subjected to judicial review.

However, it should be emphasized that the role of the courts in the *spatial competition* is, among other things, an analysis of the correctness of legally binding decisions contained in the local plans. Under the established (but also numerous comparable) approach, the municipal authorities are the main decision maker in terms of possible constraints as well as the basic entity that balances rational spatial action. This is consistent with the principle of planning autonomy of the municipality.

This part of the text analyses in more detail the content of one more judgment – the judgment of the Supreme Administrative Court of 1st October 2015 (II OSK 269/14, LEX). The owner of real estates located by the river

has filed a complaint with the local spatial development plan. The local plan, in his opinion, forbade him to use the estates as intended, as it prohibited their fencing 10 meters from the shoreline. The legislation was more rigorous than the statutory regulations. According to the owner of the properties, such regulations limit the constitutionally protected principle of property ownership. The representatives of municipal authorities replied that such a restriction was dictated by the need to protect the natural values of the protected landscape. Finally, the Supreme Administrative Court found that such action was justified. In its opinion, the local zoning plan while shaping the spatial policy at the municipality level often requires resolving conflicts between:

– the public interest and the private interest
– contradictory individual interests.

If such a collision takes place one should give the primacy of one interest over another by comparing the protected values and the ones that are to be restricted. As the court found – granting of primacy to one of equal interests requires "consideration and motivation". The Supreme Administrative Court considered that the documentation and elaboration gathered by the municipality implies an unambiguous need to protect the environmental values of the site by introducing a wider ban on fencing. Therefore, the restriction is justified. It is worth noting that in such a situation yet again the assessment is primarily made by the municipality, and the basis for such an assessment – are the results of specific analyses (included *e.g.* in the framework of eco-physiographic studies). Hence, one can emphasize the role of specific evidence and analyses in the *spatial competition*. The municipal authorities are not at the same time a very arbitrary decision maker – they are obliged to demonstrate and prove their position.

2. Detailed analysis of selected case laws concerning the zoning decisions and plans

The decision on land development and zoning was repeatedly criticized as a tool for spatial disorder. From the point of view of the spatial management system, it is a tool that is largely ineffective, which in many cases even provokes spatial conflicts rather than some systematized solution to them [Markowski 2010: 16–19; Nowak 2015: 19–37]. One of the biggest problems will be the interpretation of the principles of continuation of the function and good neighborhood, related to the search in the immediate vicinity of the planned investment for areas built-up in a functional and technical manner similar to

the planned investment [Izdebski, Zachariasz 2013: 325–329; Sosnowski *et al.* 2014: 371–374]. A separate issue is the direct consequence of issuing the decision, for the owners of neighboring properties [Leoński *et al.* 2012: 239].

When taking into account the *spatial competition*, a number of case law statements may be included in this context, including the judgment of the Supreme Administrative Court of 17th January 2017 (II OSK 1048/15, LEX). The administrative proceedings completed with the final building permit have been resumed. The consequences of the investments related to limiting access to light, increasing noise and pollution, breaking land conditions and reducing living conditions on the neighboring properties have all been considered. The court, however, found that the consideration of these issues in connection with the possibility of resumption of proceedings for determining the conditions for land development was erroneous. It is inadmissible to declare the allegations related to these issues submitted by the users of space at the stage of issuance of the land development decisions. These accusations can only be investigated in the proceedings leading to the issuance of a building permit. A similar position was taken by the Provincial Administrative Court in Opole in the judgment of 17th January 2017 (II/Op. 401/16, LEX), pointing out unambiguously that the issues of protection of possible interests of third parties are resolved at the stage of issuing a building permit. Then it comes to the substantiation of the solutions protecting the interests of third parties.

On the practical side, the neighboring property owners who are reluctant to the establishment of a particular investment are trying to block a land development decision. And it can be added that they do so primarily for the reasons outlined above – regarding the immediate consequences for their properties. In such cases:

– the more prepared space users are trying to seek formal arguments concerning directly the method of issuing land development decisions
– the less prepared space users, already at the stage of the land development decision making, will make comments on the further consequences of the planned investment. In such cases, procedurally, their arguments will not be used at all in any way.

As a consequence of the above mentioned facts, the spatial conflict will be multi-stage and will not be completed when the land development decision is final. A separate stage of the conflict involves the building permit procedure. In the same place, to the local public authorities solving the conflicts besides the commune head/mayor/mayor of the city, a locally appropriate district governor should be included.

The case law has on various occasions repeatedly analyzed the above mentioned function continuation principle (according to Article 61 paragraph 1 of the Spatial Planning and Land Development Act it is possible to issue a land development decision if at least one land plot accessible from the same public road is developed in a way that allows to define the requirements for new development in terms of continuation of functions, parameters, echoes and indicators of land development and zoning). In this context, the judgment of the Provincial Administrative Court in Łódź of 14th December 2016 (II SA/L 321/16, LEX) may be recalled. The dispute concerned whether it was possible to allow a business building within a housing area with a service function. The court found that there was a possibility and that a more rigorous interpretation would unduly restrict ownership. Accordingly, through the land development decision, one can accept investments that are slightly different from the surroundings, even if the neighboring property owners do not accept it. In such cases, a detailed assessment will be made by the municipality legal entities responsible for issuing the decision (and simultaneously using the urban analysis prepared with this procedure).

It is challenging, however, from the formal-legal side to accept that the commune head/ mayor / mayor of the city is at this stage (as during the adoption of local plans) considerably free to designate the area being analyzed and ascertain whether or not the principle of continuation of function applies in this case. The land development decision is a related decision, which means, among other things, that the commune head/mayor/mayor of the city is bound by detailed legal regulations related to urban planning analysis, whose derogation is only possible in exceptional, urbanistically motivated cases. It will be a problem to determine whether this is the case. And in spite of the statutory assumptions, in the context of the results of this urban planning analysis, the situation is changing and there are informal possibilities in which the commune head/mayor/mayor of the city may arbitrarily decide on the disputable cases, including the consideration of more problematic applications for establishing the land development conditions. Thus, contrary to the assumptions of the spatial planning system, when issuing a land development decision, the municipality's executive body is not so much a rule-maker but rather a significant decision-maker. The stakeholders of the *spatial competition*, in principle, perceive the role of this entity, thus preventing it from moving to the positions provided for in the directive on planning and spatial development.

Summary

The analysis of the selected court cases prompts the conclusion that the real framework of the *spatial competition* is co-created not only by the law itself, but also by judicial decisions. Providing the mutual differentiation of the case laws (which is one of the problems of the spatial management system) one has to point out that their role in the *spatial competition* is:

– the final settlement of spatial conflicts
– strengthening the position of public administration bodies as decision makers in the *spatial competition.*

Particular attention should be paid especially to the second issue. The stakeholders in the *spatial competition* in the case of disagreement with the municipal authorities, or if their goals are not implemented by the municipality – undermine not only the correctness of the municipal authorities' actions, but also their legitimacy to do so. These examples of the court rulings related to the local spatial development plans lead us to the conclusion that in such situations the courts strongly shape a large range of municipal planning authority. Subsequently, if that is not contradictory with the principle of proportionality – and is justified by the analyses carried out in the municipality – the municipal authorities can impose concrete solutions to the spatial conflicts. On the other hand, when applying the land development decision, the position of the municipal authorities is not so strong. However, when these authorities act freely while making urban evaluations, they are difficult to verify and correct by the courts. These are primarily focused on the procedural errors. Accordingly, the procedural errors are at this stage the main object of the allegations, although the intentions of the stakeholders in the *spatial competition* are in fact related only to the effects that are formally considered only at the stage of issuing building permits.

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