REAL INVESTMENT IN THE VIRTUAL SPATIAL PLANNING PROCESS – QUALITY OF URBAN SPACE IN CONTEMPORARY LEGAL REGULATIONS IN POLAND

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Abstract
City spatial planning is a complicated process with several targets such as the quality of space and proper urban development. Important aspect of this process is the scope of planning tasks required to be done. Another one is the transposition of prepared, virtual plans into the process of real building investments’ creation. The article approaches the problem of chosen existing and newly proposed, legal instruments of spatial planning in Poland, formulating the general thesis, that current polish legislation does not focus on its actual outcome - the quality of investments and its surroundings. Seeking potentially most convenient, legislative solutions, two alternative ways of possible changes have been analyzed.

The first way, “the descriptive way”, is a way to provide in local spatial development plans, much more detail inscriptions (than it is now) concerning obligatory features of potential investments. The first way also leads to a greater level of different restrictions inscribed in city’s planning documents and gives less opportunities for architects.

The second way, “the evaluating way”, is a way which assumes much smaller degree of planning restrictions in local plans and greater opportunities for architects, but it also allows proper public authorities (other than conservator’s office) to evaluate and possibly reject particular design, not only on the objective, legal grounds but also on the subjective grounds of spatial harmony and visual appearance of the project.

The analysis of these two seek the most proper solutions for possible changes in Polish legislation system, considering them either as the alternative ways or as the combination of both at the same time. The research also leads to the underestimated role of urban - architectural competitions. The implementation of this instrument into Polish planning system, (as a legal instrument) can potentially have the highest impact on the quality of designed space and be widely approved by the society.
Introduction

The ability to create high quality urban spaces on the basis of legal regulations is one of key issues of each spatial planning system. In the Polish legislation of the 21st century, this issue becomes a considerable challenge. Contemporary building investments implemented in the space of cities reveal the weakness of the existing legal frames.

Under the Act on Spatial Planning and Development each construction investment should be consistent with the regulations of the Local Spatial Development Plan, or if there is no such plan, with a location approval administrative decision called Conditions for Construction and Land Development, issued by the authority on the basis of an urban planning analysis of the neighbouring area. Observing numerous contemporary projects, it is however difficult not to get an impression that many of new investments are being designed to create the quality only for themselves. These way of designing, obvious and natural from the investors’ point of view, rarely go hand in hand with the quality of space that appears as a result of such investments. The objectives of the presented studies are, therefore, the necessary directions of changes in the Polish law, which could improve the quality of contemporary urban space in Poland.

Legal frames of the Polish spatial planning system in the context of actual creation of urban spaces

The presented issue of the creation of ‘urban spaces’ in the context of legal regulations requires a reference to specific legal frames. The notion of ‘urban spaces’ does not appear in the Polish legislation at all. The Act on Spatial Planning and Development that is currently in force adopts a term of ‘a public space area’, which should be understood as ‘an area of special significance for satisfying the needs of residents, improving the quality of their life and establishing social contacts due to its location and functional/spatial properties, defined in the study on development conditions and directions’. According to art. 10 section 2 item 8 of the Act on Spatial Planning and Development, all public spaces must be covered and regulated by a local spatial development plan/plans which must correspond with all the inscriptions of the above mentioned study and must be passed by the commune.

The notion of a city / town, in compliance with a definition provided in the Act on Official Names of Towns and Physiographic Objects, stands for ‘a settlement unit, with the prevalence of compact development and non-agricultural functions, granted with municipal rights(...)’. Therefore, it should be assumed that the notion of the quality of urban spaces in the Polish

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1 Notice of the Speaker of the Sejm of the Republic of Poland dated 5 February 2015 on the announcement of a consolidated text of the Act on Spatial Planning and Development, Official Journal 2015, item 1999
2 Local spatial development plans within the meaning of art. 4 section 1 of the Act on Spatial Planning and Development
3 Decision on the determination of Conditions for Construction and Land Development within the meaning of art. 4 section 2 of the Act on Spatial Planning and Development
4 Public spaces within the meaning of art. 2 item 2 of the Act on Spatial Planning and Development
5 Study on development conditions and directions in communes within the meaning of art. 9 section 1 of the Act on Spatial Planning and Development
6 In accordance with art. 2 item 3 of the Act on Official Names of Towns and Physiographic Objects, Official Journal 2003, No. 166, item 1612 as amended.
legislation should be referred to the quality of public spaces located within the territory of settlement units granted with municipal rights.

It is also worth pointing out that the definition of public spaces quoted above concerning the special significance of these spaces incorrectly suggests that areas of all public roads together with their surroundings in general do not constitute a public space. This rule, indirectly resulting from the inscriptions of the Act on Spatial Planning and Development, as well as from the Act on Public Roads, is extremely important for the entire system of urban spaces' creation in Poland.

**Instruments in force and their effect on the quality of urban spaces**

**Act on Spatial Planning and Development**

The fundamental legal instrument speaking terms of the urban development process is the aforementioned Act on Spatial Planning and Development. The Act introduces a general principle according to which 'the determination of the intended use of an area, arrangement of a public-purpose investment and definition of the land development types and conditions is formulated in the local spatial development plan (…)'.

The local spatial development plan obligatorily determines elements such as: 'intended use of the land, lines that demarcate areas of different uses (…), principles of the spatial order and environmental protection, (…), requirements resulting from the needs to form public spaces, principles of designing buildings, (…) the maximum and minimum plot ratio, the minimum share of the biologically active area (…), the maximum height of buildings, (…) as well as build-up lines and sizes of the buildings'.

Simultaneously, only depending on current needs, the local spatial development plan defines the way in which individual buildings are to be arranged towards streets, the colours of buildings and types of roofs, principles of street furniture and fences arrangement, as well as sizes and material standards that are to be applied.

In practice, despite the relatively large number of requirements which may be specified in the local spatial development plan, its inscriptions often are quite general. Considerable freedom is reached due to the fact that only the maximum height of buildings must be define in the plan. Practice also shows that authors of the plan often do not require specific building materials or colours. Thus, the degree of the investor's freedom in the designing process of new buildings, also those forming the quality of public spaces, is relatively high.

Discussing the existing legal regulations, it is worth paying attention to the provision of art. 16 of the Act on Spatial Planning and Development, according to which ‘the local spatial development plan must be drawn up in the scale of 1:1000, using official copies of the master maps’. At the

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7 In accordance with the definition of a public road within the meaning of art. 1 of the Notice of the Speaker of the Sejm of the Republic of Poland dated 27 February 2015 on the announcement of a consolidated text of the Act on Public Roads, Official Journal 2015, item 460.
8 In accordance with art. 4 sections 1 and 2 of the Act on Spatial Planning and Development
9 In accordance with art. 15 section 2 of the Act on Spatial Planning and Development
10 In accordance with art. 15 section 3 of the Act on Spatial Planning and Development
same time, in compliance with the relevant secondary legislation\textsuperscript{11} it is only admissible (but not required) to use maps in the smaller scale of 1:500 for plans covering public space areas. In current legislation the scope of prepared planning documents has been, therefore, limited to flat drawings done in a relatively large scale and written inscriptions. The Act on Spatial Planning and Development imposes an obligation to pass a local spatial development plans for any public space areas shown in the communal study on development conditions and directions. The manner of defining these spaces in the legal act is however responsible for the fact that communal studies rarely point out the location of public spaces.\textsuperscript{12} Therefore, communes do not have to develop local plans for them.

In case where no local spatial development plan has been established, ‘the determination of development types and conditions’ is being established in the decision on conditions for construction and land development. This decision, issued by an administrative authority on the basis of an analysis of direct vicinity in compliance with the relevant secondary legislation\textsuperscript{13} specifies the admissible surface of the area to be developed, build-up lines, height of the building and its roof geometry, as well as the width and height of its front elevation. The requirements specified in this regulation do not address issues of the required materials or colours of the newly planned buildings. The urban analysis that precede issuing the decision, prepared by the authorised public office worker, evokes concerns as to the objectivity of these findings. The decision is being granted as a response to individual investor’s application, yet legal frames which regulate the process of granting the decision marginalise the issue of surrounding space quality which will be created with the erection of new building.

It is also worth noticing that public space that accompanies buildings is most often the space of an adjacent public roads or squares. If these spaces are not being covered by any any local spatial development plan, if they are situated beyond areas of monument conservation protection, and they are located within the existing boundary of public roads, all changes in their area can be done in a simple administrative procedure called ‘reporting of planned construction works’, i.e. without a building permit, by the road administrator, according to the principles defined by administrator itself. In the reconstruction of the public space performed in this procedure, the only element that actually links the public space of the road with all surrounding private spaces it is the location of exits and entrances to private properties.

The location decision on the conditions for construction and land development that exists in the national legal system has, therefore, a very limited area of impact on the quality of the urban space. Considering the fact that the Act on Spatial Planning and Development does not impose an unconditional obligation to pass new plans for entire territories of communes, the actual care of high quality urban spaces in Poland seems to be questionable.

\textsuperscript{11} In compliance with § 6 section 2 of the Regulation of the Minister of Infrastructure dated 26 August 2003 on the Required Scope of the Draft Local Spatial Development Plan, Official Journal 2003, No. 164 item 1587

\textsuperscript{12} Buczek, Grzegorz. Przestrzeń publiczna a jakość życia i zamieszkania. On the basis of the chapter Definicja ustawowa a praktyka planistyczna, Warsaw, 10 May 2011, Internet publication http://www.urbanistyka.info/content/przestrze%5C%84-publiczna-jako%5C%9B%C4%87-%C5%BCycia-i-zamieszkiwania

\textsuperscript{13} In compliance with § 1-9 of the Regulation on the Method of Determining Requirements Concerning New Land Development and Construction in Case of Lack of the Local Spatial Development Plan, Official Journal 2003 No. 164 item 1588
‘Landscape’ Act\textsuperscript{14}

The Act on Amending Some Acts in Connection with Strengthening of Landscape Protection Tools, referred to the Landscape Act, is a legal act whose initial goal was ‘landscape protection by a comprehensive approach to issues so far dispersed’\textsuperscript{15}.

From the point of view of this analysis, the act has introduced the notions of ‘landscape’, ‘priority landscape’, ‘view corridor’, ‘exposition forefield’ and ‘vantage point’, but these definitions have been placed within the Act on Nature Protection\textsuperscript{16}, with their key role of strengthening the protection of landscape parks. Therefore, these provisions have not been translated into the method of urban space development.

An important issue are articles 37a-e added to the Act on Spatial Planning and Development, which enable communes to introduce principles of ‘arranging street furniture, advertising boards and advertising devices, as well as fences, their sizes, quality-related standards and types of construction materials they can be made of’. Under the act, the principles passed by communal councils are provided with a rank of the local law. The resolution can determine ‘conditions and time limits for adjustment of existing street furniture, fences and advertising boards (…)’. This way an aforementioned legal instrument allows to subordinate the structures located in communal and private plots and to adjust them to new requirements in the established time limit. It is worth pointing out, though, that the principles described in art. 37 a-e are facultative, and therefore the commune does not have to enforce them. Furthermore, implementation of these regulations by the commune, with no local spatial development plan, may not bring the intended effect. The richness and diversity of spaces is difficult to govern by general written inscriptions of a single resolution.

\textit{Act on Revitalisation}\textsuperscript{17}

Discussing existing legislation with an impact on the quality of urban space in Poland, one should have a closer look at the regulations of the Act on Revitalisation, passed in 2015. This Act – under art. 2 – refers to the process of ‘dealing with the crisis in degraded areas in a comprehensive way, by integrated actions for the benefit of local communities, space and economy (…) on the basis of the communal revitalisation programme’. On the basis of the section 37f introduced in the Act on Spatial Planning and Development the communal council can pass a local revitalisation plan for a revitalisation area, which constitutes a special form of the spatial development plan.

The local revitalisation plan, besides elements which are always included in the local plan, additionally determines - depending on the needs - ‘principles of spatial composition of new development and harmonising of the planned development with the existing development.

\textsuperscript{14}Act dated 24 April 2015 on Change of Some Acts in Connection with Strengthening of the Landscape Protection Tools, Official Journal 2015, item 774

\textsuperscript{15}The government’s standpoint submitted to the Sejm of the Republic of Poland to the President’s bill on change of some acts in connection with strengthening of landscape protection tools, the Sejm form No. 1525, Warsaw, 3 March 2014, p. 1

\textsuperscript{16}In compliance with art. 5 item 15 a-c of the Act dated 16 April 2004 on Nature Protection, Official Journal 2004, No. 92, item 880 as amended

\textsuperscript{17}Act dated 9 October 2015 on Revitalisation, Official Journal 2015 item 1777
inscriptions concerning characteristic features of building elevations, detailed arrangements referring to the development of public space areas, including the arrangement and location of greenery, the concept of traffic organisation on public roads and sections of streets’. The graphic part of the revitalisation plan is to be drawn up in the scale of 1:100 to 1:1000. Furthermore, during the preparation of the local revitalisation plan, ‘visualisations of the planned solutions must be presented and published, consisting of at least an urban planning concept, a 3D model of the area spatial structure, and a view of the street elevations.’ On the background of previously presented legal regulations, inscriptions of the Act on Revitalisation, introduce the most far-reaching, legal solutions to affect urban spaces. They include plans and sections of streets’ interiors drawn in urban and architectural scales, visualisations of concepts, and even alternative traffic organisation. Nevertheless, one should bear in mind that these regulations apply only to areas which are in a crisis situation, which fall under a facultative communal revitalisation programme.

**Act on the Protection of Monuments and the Guardianship of Monuments**

Discussing the process of urban space development, one should also focus on exceptional regulations of the Act on Protection of Monuments and the Guardianship of Monuments. Under art. 36 of this Act, a permit of the provincial monument Conservator is necessary for ‘conducting construction works in the vicinity of a monument’. Thus, shaping of the urban space in the vicinity of monuments is governed by this Act. Furthermore, according to other accompanying regulations, in order to obtain a permit for construction works it is obligatory to submit in the conservator’s office of a design project of proposed changes. The scope of project should be sufficient to evaluate by Conservator’s office the effect of the planned construction works on the monument.

In the context of the subject matter, the essence is the lack of defined legal rules according to which the regulatory office should assess the project documentation submitted for this purpose. The documentation can be consistent with the local spatial development plan or the decision on the conditions for land development, and yet it may not be given a permit of the Conservator. This arbitrariness is explained in a verdict of the Provincial Administrative Court of Warsaw dated 26th of March 2015. According to its justification, the notion of principles of the conservation protection ‘does not appear in legal regulations; nevertheless, these rules are a heritage of the doctrine of monument protection and conservation. They constitute a substantial basis for the evaluation of investment projects and their impact on a monument. (…) These evaluation in form of administrative decision (…) is issued in form of the administrative recognition.’

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19 In accordance with § 4 sections 1 and 2 of the Regulation of the Minister of Culture and National Heritage dated 14 October 2015 on Conducting Conservation Works, Restoration Works, Construction Works, Conservation Research, Architectural Research, and Other Activities at a Monument Entered to the Inventory of Monuments and Archaeological Research and the Search of Monuments, Official Journal 2015, item 1789
20 Excerpt from the justification of a ruling of the Provincial Administrative Court in Warsaw dated 26 March 201, file ref. VII SA/Wa 866/14, Internet publication: http://www.orzeczenia-nsa.pl/wyrok/vii-sa-wa-866-14/zabytki/531fa8.html
The essence of the legal acts discussed herein is their exceptionality on the background of the entire spatial planning system in Poland. This system, through legal requirements specified in a descriptive and graphic form, attempts to obtain the highest level of the expected spatial order possible, and the formal fulfilment of these requirements by a potential investor opens the path to the implementation of an investment. The assessment of a building aesthetics and of the quality of the space created around it can not become the foundation for a refusal to issue a building permit by an administrative authority. An exception here is a situation where the planned construction works are to be performed within a monument or in its vicinity. The investment project then falls under a subjective assessment - the administrative recognition of the Conservator's office. This subjective assessment conditions obtaining a building permit for the potential construction works.

Planned legislative changes and their potential

_Bill on the change of the Act on Spatial Planning and Development_21

The bill on change of the Act on Spatial Planning and Development and some other acts is a bill proposed by the polish government in 2015.

On September 7th 2015 it was submitted to parliamentary proceedings. According to the bill’s justification22, its key objective is to ‘strengthen of the planned space management and the connection between the spatial policy of the commune (the study) with its actual needs (…)’, ‘to determine the principles of effective space management, including principles of a compact, low-emission city, friendly towards pedestrians and cyclists’, and to ‘improve the quality of local spatial development plans (…)’. The bill contains proposals of new legal regulations, such as e.g. increase of social participation in the process of preparation of new spatial development plans and numerous limitations in the process of issuing decisions on the conditions for land development. In the area of interest of this analysis, the bill does not introduce any essential changes that would aim to the improve of the quality of public spaces within cities’ boundaries.

_Construction Code_

The second bill discussed herein is a bill concerning the Construction Code. For the purposes of its preparation, on the 26th of July 2012 the Council of Ministers appointed a Codification Committee of the Construction Code23. Its goal was to develop a comprehensive legal regulation concerning entire investment and construction process. On the 27th of October 2015, the Codification Committee submitted a project of the bill concerning the second part of the Construction Code, entitled ‘Urban Planning Book Chapters I-VI’24.

22Justification of the bill as above, pp. 6-7, Internet publication: https://legislacja.rcl.gov.pl/docs//2/12271105/12282759/dokument175238.pdf
23In accordance with § 7 of the Regulation of the Council of Ministers dated 10 July 2012 on the Creation, Organisation and Operation of the Codification Committee of Construction Code, Official Journal 2012, item 856
The document in art. 5 § 2 introduced a rule according to which ‘restrictions in the intended land use, conditions for its development due to the legally protected values can be defined in the local spatial development plan, and restrictions in land development – can be defined also in local urban planning regulations’. Thus, the bill proposes to liquidate the decision on conditions for construction and land development that has functioned so far, and to replace it with the so-called urban planning regulations.

In art. 3 of the bill a new glossary of terms has been provided. A definition of ‘a compact urban complex’ was added, which stands for ‘a group of not fewer than 10 buildings, with the exception of buildings with exclusively utility functions, between which the largest distance of each buildings located next to each other can not exceed 10 metres’. ‘Social infrastructure’ is another newly added term, meaning ‘buildings where social or cultural services are provided, especially in the scope of safety, education, science, sports, social welfare, and healthcare, as well as public greenery areas’. Among other changes, the definition of ‘public space’ that has functioned so far has been removed. For unknown reasons, it has not been replaced with any new definition, although the obligation concerning the location of these spaces in the study on the development conditions and directions and in the local spatial development plan has remained. According to art. 27 of the bill, the amended study on the development conditions and directions should determine three fundamental types of areas, i.e. ‘urbanised area’, ‘restricted development area’, and only if necessary ‘area of development’. The last type of area would be established only after thorough analysis indicating the actual need. Each of the area would be then divided into specific functional use zones.

The urbanised area would include the single-family and multi-family residential function, services, warehousing, production, sports and recreation, ecologically active functions, and public-purpose investments. The restricted development area would include the following functions: agriculture, forestry, sports and recreation, a single-family residential function, including services and underground exploration. The area of development, on the other hand, would repeat the functions listed for the urbanised area. Establishing a spatial development plan would be obligatory only for areas of development. According to art. 33, preparation of a development plan would also be obligatory for areas of public spaces determined previously in the study on development conditions and directions. Urbanised areas, as well as restricted development areas, would not have such obligation.

Analyzing the scope of information to be included in new local spatial development plans drawn up under the Code, most requirements included presently in the Act on Spatial Planning and Development have been duplicated. An essential exception however is the provision of art. 34 § 3, according to which ‘in the event referred to § 2 item 7, an integral part of the local spatial development plan would be an urban planning concept, which would define the following elements in a graphical and descriptive form:

1) principles of spatial composition of the new development, view corridors and compositional axes;
2) characteristic architectural features of the planned buildings, their sizes and heights, and – if necessary – architectural details characteristic for the region;
3) principles of harmonisation of the planned development with the existing one,
4) public greenery areas, pedestrian routes and passages;
- and it would contain visualisations presenting the proposed urban planning and architectural solutions.

Therefore, the tools proposed to be applied in the process of drawing up local spatial development plans are similar to those discussed above in the Act on Revitalisation. This concerns the possibility of creating urban planning concepts as an integral part of the plan, the goal of which is to harmonise the new and existing development with the surroundings. Such a concept would take into account principles of urban planning composition and spatial relations between covered areas on one hand and public greenery areas and pedestrian routes on the other. The condition for the creation of such concepts with reference exclusively to § 2 item 7 of the Code, i.e. to the types of ‘temporary development’ defined in local spatial development plans is however completely unclear. Seems that this inscription is an obvious error of the author and it needs to be corrected immediately.

In areas deprived of the local spatial development plan, all investments would have to satisfy the requirements of the so-called local urban planning regulations, defined in art. 37 of the bill, as long as such regulations are passed by the commune. If there are no such regulations, the investment implementation would fall under the regulations of chapter IV of the Code.

In urbanised areas (and only within such areas), under art. 37 § 1 the commune could pass its own urban planning regulations, which would constitute an act of local law. They would define ‘principles of new investments (...) in compliance with the existing function’. Within each functional area, under section 38 § 2 the regulations would determine the maximum plot ratio, the minimum ratio of biologically active surfaces, admissible number of storeys, the required number of parking spaces, and the minimum sizes of construction plots. Furthermore, under art. 38 § 3 communal regulations could facultatively define additional development features, such as location of a building on a plot of land, the maximum and minimum height of the upper edge of the front elevation, the size of the roof and the location of its ridge towards the adjacent road, colours of elevations and architectural details of buildings. Local urban planning regulations would include a graphic part in a scale similar to the one in the local spatial development plan. The bill places all issues connected with the location of street furniture, fences, and advertising boards under a separate resolution of council, following the model of the resolution established in the Landscape Act.

In urbanised areas and in restricted development areas, in case of no no local spatial development plan and no communal urban planning regulations, investments could be made based on the requirements described in art. 84-109 of the Code, defining the so-called ‘general spatial order’.

According to the proposed regulation, the determination of conditions for potential development and construction on the basis of the general spatial order could be possible after a prior determination of the existing function of the land property where the investment is planned (art. 84). In urbanised areas this determination would be ‘based on the dominating type of use of adjacent properties, bordering on the territory of the planned investment, and in restricted development area – on the previously valid type of use for this very property’ (art. 85). The Code determines in a descriptive way the principles of conducting the necessary analysis. It defines uniform rules of shaping individual types of development for the entire country, particularly in the scope of restricted development areas. It also establishes – in art. 88 § 1 – an
institution of a ‘location promise’, i.e. an administrative decision issued by the authority, confirming the compatibility of the planned investment with the general spatial order. Therefore, it is difficult to deny that despite the liquidation of the decision on conditions for construction and land development, the bill partially leaves it in a slightly different form in the legal system. The general principle of the proposed Building Code defined in art. 5 § 2, according to which ‘restrictions on the intended use of land (…) can be determined in the local spatial development plan, and restrictions on construction and land development - also in local urban planning regulations’ is not being fully respected within the actual inscriptions of the bill. Summarising the above issues, it should be concluded that the aforementioned error in art. 34 § 3 and incorrectly removed definition of a public space bring up doubts as to the actual concern of the urban spaces’ quality in the project of this legal act. The proposed principles of the ‘general spatial order’ and of the ‘location promise’ do not guarantee the improvement of spaces’ quality. The code regulations (as presented by the Codification Committee) do not define the time in which communes should update their study on the development conditions and directions. The rules of a transitory period were also not determined.

Potential directions of changes

As it is demonstrated in this analysis, the question of quality of urban spaces is still waiting to become a key issue in the Polish spatial planning system. Location of public spaces in the city should be determined in planning documents; nevertheless, even their previous, defective definition was somehow removed from the bill presented in 2015. In case of no spatial development plan, the institution of the decision on conditions for construction and land development currently in force, as well as the proposed legal alternatives, do not fully guarantee the quality of the created space. All the above leads to the informal principle according to which the private interest dominates the public one in the spatial planning process of Poland. In this context a question concerning necessary directions of law changes arises. Based on the currently valid and the planned legislation presented above, two potential directions of change can be distinguished.

First direction – ‘descriptive’

The first direction of the national spatial planning system evolution, called ‘descriptive’ and based on the German planning system, stands for an attempt to provide within the plans more precise features of all newly constructed investments. This direction would develop the practice applied so far, enforcing the existing law and limiting freedom and ambiguity of numerous planning regulations concerning urban spaces. The descriptive direction would entail the need to draw up analyses and urban planning concepts, defining much more precisely than today the parameters of the admissible development. It could also define in a graphical form the types of admissible architectural

25 Izdebski Hubert, Nieliicki Aleksander, Zachariasz Igor. Zagospodarowanie Przestrzenne, Polskie prawo na tle standardów demokratycznego państwa prawa, Efficient State Ernst & Young Programme, Warsaw 2007, Chapter I.1.1., German spatial development planning system, p. 14
details, street furniture, elements of fences, etc. The descriptive direction would potentially strengthen the role of the architect in the spatial planning process, and simultaneously it would limit the architect’s freedom designing individual construction investment. Plans would have to be drawn up with participation of designers with considerable, professional experience. The descriptive direction would also require more time to prepare good draft of a local spatial development plan. The time that communes already do not have.

**Second direction – ‘evaluative’**

The second direction, more revolutionary one, was generally never adopted in the national spatial planning system. Its assumptions could be partially based on those functioning in the United Kingdom. This ‘evaluative’ direction, assumes significantly less restrictive limitations and significantly higher creative opportunities for the architect designing the concept plans of individual investment. This direction also assumes an opportunity to evaluate the solutions proposed in the concept design by properly appointed authorities. Their evaluation would be carried out in terms of the consistency with the law, as well as the quality of the proposed concepts. The quality of public space created by construction project would have to be evaluated with particular care. It would be, therefore, an evaluation with considerable dose of subjectivity, done by the administrative authority with relevant qualifications. A negative assessment by this authority would result in a refusal to issue a building permit due to its insufficient aesthetic and spatial values. This solution, however, would be unfamiliar in polish law enforcement practice and difficult to implement, due to social distrust to any decisions basing on a subjective assessment done by the authority. It is not difficult to imagine accusations of partiality or even corruption in the decisions taken. Nevertheless, one must remember that ‘administrative recognition’ has functioned quite well for years in the national legal system concerning monuments’ conservation protection. The concept of using the institution of administrative recognition to cover issues concerning public spaces and urban design should not be, completely abandoned, especially if a specific decision would be collective, and the individuals taking this responsibility could represent high professional standard.

**Summary and final conclusions**

Summarising the issues related to the quality of Polish urban spaces in contemporary legal conditions, it should be concluded that contemporary legislation, despite its ‘descriptive’ character, has not formulated an effective model of forming such spaces. The emanation of the problem is the lack of a legal definition providing a comprehensive description of a public space, both in the existing and the planned legal acts.

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26 In compliance with the Act dated 9 May 2014 on Facilitating Access to the Performance of Some Regulated Professions, Warsaw, 10 June 2014, Item 768, the Chamber of Polish Urban Planners was liquidated and the requirements conditioning access to this professions were lowered.

27 Izdebski Hubert, Nielicki Aleksander, Zachariasz Igor. Zagospodarowanie Przestrzenne, Polskie prawo na tle standardów demokratycznego państwa prawa. Efficient State - Program Ernst & Young Programme, Warsaw 2007, Chapter I.1.2, English spatial development system, p. 16
The statutory necessity to indicate public spaces in the study of development conditions and directions and in local spatial development plans is difficult to enforce, considering the fact that according to the currently valid definition, hypothetically, such spaces may not even occur at all. Important problems that influence the quality of urban spaces concern also demoralisation of the society by the existing regulations, especially the decision on the conditions for construction and land development, the misunderstood freedom of construction and imprecise inscriptions of many development plans.

The newly proposed regulations which may replace the decision on the conditions for construction and land development, seem to be a direction of changes which will not sufficiently protect the quality of urban spaces. They focus on general parameters of building investments themselves, and thus they do not guarantee the proper protection of surrounding public spaces.

In this contest, the following final conclusions should be formulated:

− Space formation along public roads and squares, which is of key importance for the way it is perceived, calls for the improvement of the existing legal instruments. This space should be understood and defined as a form of an urban interior, made of public road area and parts of private properties that are adjacent to it, together with the existing and potential development, determining its final shape. This interior should be treated with special attention and protection by all urban planners.

− The national spatial planning system at the level of the commune requires additional instrument in the form of a ‘Masterplan’ of spatial development covering entire territory of the commune. This document could even replace the existing studies on the development conditions and directions. The masterplan, besides conditions referring to the required and possible intended land use, general development and necessary infrastructure, would also determine the principles of designing new buildings along roads and public squares. It could also indicate areas for which ‘detailed plans’ would have to be drawn up.

‘Detailed Plans’, on the other hand, could have a similar scope to the local revitalisation plan discussed previously. Simultaneously, in a situation where there are no ‘Detailed Plans’, ‘masterplans’ could constitute an appropriate foundation for coordinated planning activities and for issuing by an administrative authority a form of a location promise or a decision on the conditions for construction and land development, necessary for obtaining building permit.

− In the context of public space quality, the role of architectural and urban planning competitions, much underestimated in Poland, calls for a considerable support. A wider application of this instrument is necessary, in terms of planning investments financed from the public budget. Competition entries could essentially develop the discussion and knowledge on the possibilities of spatial development in the commune. A legally binding decision of a professional jury would constitute a form of administrative recognition discussed above. This subjective decision, due to the collective judgement of a professional jury and the rank of the competition, would be difficult to question by the society. In case of planning solutions, competition results could establish the
grounds for future spatial development plans. Architectural and urban planning competitions, appropriately authorised by the Act on Spatial Planning and Development and the Act – Public Procurement Code28 could, therefore become the most socially accepted instrument of planning and development of urban spaces, combining two potential directions of changes in the national legislation: the descriptive and the evaluative one.

Literature and legislation


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