

## Local spatial development plan and violation of the essence of property rights

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**The basic tool for regulating spatial development is the local plan.** The local spatial development plan contains generally applicable provisions regarding land use, development and development conditions, which constitute a direct basis for issuing building decisions and expropriating land for public purposes. The provisions of the local plan should be precise and detailed enough to be used on their basis to:

- 1) prepare a building design;
- 2) ensure, when issuing administrative decisions, the implementation of statutory tasks in the field of spatial order, environmental protection and others

Local planning is optional, because the legislator does not establish the act of adopting a local plan as a mandatory task of the local government. Local plans are prepared depending on its need.

According to article 14 sec. 8 Act on spatial planning and development the local plan is the act of local law. The Constitution of the Republic of Poland lists the sources of universally binding law which are: Constitution, acts, ratified international agreements, regulations and acts of local law

Despite the unambiguous qualification, it should also be noted that the provisions of the local plan, **although they refer to an abstract addressee, regulate the legal status of specific properties located in the area of the plan.** In this approach, the local plan is a kind of collection of individual acts establishing the conditions for the development of specific properties, adopted by way of a resolution of the municipal council. The legal consequences of adopting a local development plan are significant both for the municipality and for property owners and investors.

The local plan primarily determines the intended use of the land and as such determines restrictions on property rights. **The right to property is not an absolute right.** According to Article 140 of the Civil Code, within the limits set by statutes and principles of social coexistence, the owner may, to the exclusion of other persons, use the thing in accordance with the social and economic purpose of his right. Within the same limits, he may dispose of the thing. It follows from Article 140 of the Civil Code that there are three determinants of the limits of the content of property rights: provisions of statutes, principles of social coexistence and the social and economic purpose of each property. Statutory restrictions on ownership, they result from both civil law provisions and administrative law provisions, and also from the Spatial Planning and Development Act.

As indicated by court decisions, the provisions of the plan may limit the owner's rights to the land, including the manner of its development. The provisions of the local plan shape, together with other regulations, the manner of exercising the right of ownership of real estate. The legislator has therefore granted the commune the right to shape and conduct spatial policy on its territory, and this right, which finds its source in art. 3 sec. 1 of the Act, is commonly referred to as planning authority.

The right to develop real estate in accordance with the owner's intention is not an absolute right and is subject to restrictions both through the provisions of local law, such as local development plans, as well as through generally binding normative acts (*Judgment of the Provincial Administrative Court in Opole of 12 October 2023, II SA/Op 219/23*).

The content of the provisions of the plan together with other provisions determines the manner of exercising ownership, and in extreme cases, when using land for purposes designated in the plan for the implementation of public purposes, it may lead to the expropriation of ownership rights. When adopting a local plan, the commune may allocate for the implementation of public purposes not only municipal land or land belonging to the State Treasury, but may also allocate for such purposes land owned by natural and legal persons (*Unpublished Judgment of the Supreme Administrative Court of 3 November 1999 IV SA 1678/98 in A. Niewiadomski (red), Planowanie i zagospodarowanie przestrzenne. Komentarz, wyd. 13, Warszawa 2023*)

Article 31 section 3 of the Constitution of the Republic of Poland introduces the requirement that restrictions on the exercise of freedoms and rights, including property rights, must be imposed by statute and must not violate the essence of freedoms and rights. **The essence of property rights** is based on the assumption that within each specific right and freedom, it is possible to distinguish certain basic elements (core, nucleus), without which such a right or freedom would not be able to exist at all, as well as certain additional elements (envelope), which can be captured and modified in various ways by the ordinary legislator without destroying the identity of a given right or freedom. The Constitutional Tribunal believes that the definition of the "essence" of property rights must refer to the basic components of this right, as they have been shaped in the history of its development. They include in particular the possibility of using the subject of ownership and collecting benefits. These possibilities may be subject to various types of restrictions by the legislator, and these restrictions are permissible if they satisfy the requirements specified in Article 31, Section 3, Sentence 1 of the Constitution. However, if the scope of restrictions on property rights takes on such a size that, by destroying the basic components of property rights, it hollows them out of their real content and transforms them into a semblance of this right, then the basic content ("essence") of property rights will be violated, and this is constitutionally inadmissible. The assessment of each specific regulation interfering with property rights must be made against the background of all existing restrictions. In order to determine whether the "essence" of property rights has been preserved, it is necessary to analyze the sum of the restrictions established by law (*Judgment of the Constitutional Tribunal of 12 January 2000, P 11/98 and Resolution of the Constitutional Tribunal of 2 March 1994 W 3/93*)

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