

Legal opinion

Role of the Study of land use conditions and directions in the spatial planning system

The Act of 27 March 2003 on Spatial Planning and Land Use (consolidated text: Journal of Laws of 2021, item 741, with subsequent amendments) (henceforth “the Act”) imposes an obligation on local governments and central government authorities to pursue spatial planning and land use policies that respect the principles of spatial order and take into account the public interest, private interests, and economic, environmental and social analyses. The Act also establishes a system of spatial planning documents that has a cascading structure.

The document that sets out general land use policy for a municipality is the Study of land use conditions and directions (henceforth “the Study”). To specify the intended use of a given land and to define the manner of its development and construction, municipalities adopt local spatial development plans (henceforth “Local plans”). In areas for which Local plans have not been adopted, projects are permitted on the basis of one of two types of administrative decision, depending on the nature of the project: decision on land use conditions, or decision on the location of a project of public purpose (henceforth “Decisions”). These Decisions were envisaged by the Act’s authors as merely an ancillary legal instrument allowing for the execution of projects in areas without Local plans. It was assumed that such a system would ensure that the above principles of spatial planning and land use policy were respected. However, the insufficient number of Local plans in force makes the described system complicated. Moreover, the relationship between Decisions and the Study has been a matter of controversy and legal debate. The Act states explicitly that Local plans have to be consistent with the Study, but it does not say

the same about Decisions. Meanwhile, the Act indicates that Local plans are acts of local law, but that the Study is not.

In late 2020, doubts over the relationship between the Study and Decisions were the subject of an official parliamentary question that one of MPs submitted to the Ministry of Infrastructure. The reply was issued by the Ministry of Development, Labour and Technology. The Ministry stated that Decisions do not have to be consistent with the Study. It was emphasized in the given justification that administrative decisions cannot be issued on the basis of acts of internal regulations, and the Study constitutes such an act.

In the case law, too, the view has emerged that, under the Act, Local plans have to be consistent with the Study, but that Decisions abstract from the Study and its contents. As a result, incompliance with the Study cannot constitute grounds for rejecting an application for issuing a Decision.

However, the case law is not unanimous on this issue. There is an opposite view present. Without questioning the constitutional concept of the sources of law and the legal nature of the Study, it argues that the fact that the Study constitutes an act of internal regulations does not mean that Decisions can contradict its provisions. The Study is the foundation of a municipality’s land use policy, and its authorities are bound by its contents in adopting Local plans. Local plans, on the other hand, constitute the basis for land development in the municipality (whether for the purpose of locating public investment projects or otherwise). Abstracting from the Study when issuing Decisions would create a situation where the Study would be in force in areas with Local plans, but would lack force in similar areas without Local plans. It appears that this would result in discrimination against the owners of properties in areas with Local plans, thus creating unwelcome hostility among the public towards Local plans and leading to lack of trust in local governments. The case law highlights that the interpretation under which there is no requirement for Decisions to comply with the Study is difficult to reconcile with the principles of the spatial planning system and unacceptable in a democratic state under the rule of law.

In the case law indicating that Decisions do not need to be compliant with the Study, it is posited that where a Decision proves to be incompliant with a Local plan adopted later, the Act clearly indicates that such a Decision should be pronounced expired. In many cases, however, the project will have been completed by then. It should also be noted that under the Act, Decisions are binding for the authorities granting building permits.

There are two conflicting approaches within the system of spatial policy making. One says that there is no clear legal basis for rejecting an application for issuing a Decision as long as the application meets all the conditions mentioned in the Act, even if the application contradicts with the Study. That is because the Study is not an act of local law and, as such, cannot constitute a legal basis for issuing an administrative decision.

The other approach is that consistency between the Study and Decisions follows from the general principles of spatial planning policy, namely the principle of a coherent state policy regarding spatial planning and the principle of mutual coherence of spatial planning regulations. Municipal authorities cannot contradict their binding internal regulations, also in administrative proceedings resulting in issuing decisions applicable to external parties, thus the administrative decisions. Although the addressees of the administrative decisions are not bound by such regulations, the municipal authorities are, and they should not undertake actions that contradict the implementation of previously adopted municipal policy.

With Local plans remaining rare, the persisting controversy over the role of the Study in the spatial planning system creates considerable uncertainty for investors and for owners of adjacent properties, as well as for local communities. Since the process of adopting the Study includes local consultation and participation, therefore it enables a local community to shape the development of areas important for the community, the above described state of affairs is undesirable from the local community standpoint.

An amendment to the Act therefore seems to be necessary in order to eliminate the aforementioned interpretive issues, and eventually to contribute to a better planning culture in Poland.

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