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Articles

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Protection of the Public Interest in the Spatial Planning Law of Poland and Slovakia – Threats and Prospects

Ochrona interesu publicznego w prawie planowania przestrzennego Polski i Słowacji – zagrożenia i perspektywy

ABSTRACT

The article has a scientific-research character, and its main objective is an attempt to determine the conditions of public interest protection in the Polish and Slovak spatial planning systems. The accomplishment of this task foremost required the presentation of dilemmas related to capturing

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the essence of public interest, not only from the legal perspective, but also from the perspective of planning theory. It was the starting point for determining to what extent the legal regulations in force in Poland and Slovakia that normalise the sphere of spatial shaping influence the level of protection of public interest in this field. The need to address the title issue is determined predominantly by the awareness that the shaping of space is an extremely conflictual sphere, called an arena of struggle between people with different needs, goals and interests. The assumptions associated with the article were realised as follows. First, the concept of public interest, related approaches and its status in the spatial planning system were analysed. Next, the spatial planning systems in Poland and Slovakia were characterised. In both cases, key levels related to the existence of public interest and possible problems and challenges were diagnosed. The article concludes with remarks on the position of public interest in the spatial planning systems of both countries.

Keywords: public interest; spatial planning in Poland; spatial planning in Slovakia; spatial planning act; supervision of spatial planning acts

INTRODUCTION

The primary objective of this article is to answer the question of the dilemmas related to the protection of public interest in Polish and Slovak spatial planning law. The accomplishment of this research task required, foremost, the presentation of issues related to the definition of the essence of public interest, not only from the legal perspective, but also from the perspective of planning theory. These considerations were made the basis for determining to what extent the legal regulations in Poland and Slovakia normalising the sphere of shaping space affect the level of protection of public interest. The research was carried out with the use of the dogmatic method, dominant in the methodology of legal research, consisting of the analysis of legal regulations in force in Poland and Slovakia, as well as previous achievements of the doctrine of administrative law and the science of administration. The juxtaposition of Polish and Slovak legislation is a purposeful exercise. Reaching out to foreign legal systems on the grounds of planning and spatial development, so firmly rooted in geographical, social, economic and cultural reality, it is worth considering the "common denominators", and Slovakia is undoubtedly a country with many conditions in common with Poland, which may constitute a field of reflection for the Polish legislator. Similar history, trends related to urbanisation, and a similar level of planning culture should be considered as common elements.

The findings made it possible to formulate, using deductive reasoning, generalising statements. The research intends to develop an optimal model of the legal protection of the public interest in the sphere of planning and spatial development. In turn, the dissemination of the obtained results will lead to an increase in public awareness of the formation of spatial order and sustainable development. The need to take up the title issue was determined primarily by the awareness that the shaping of space is an extremely conflictual sphere, called an arena of struggle between

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people with different needs, objectives and interests. The finiteness of the space in which they are realised makes access to its resources, quality and functions a subject of conflict.[1] The parties to the spatial conflict can be public and private actors and only public actors with different concepts of developing an area or only private actors. Thus, the classic and most frequently analysed spatial conflict in doctrine and jurisprudence is the conflict between public interest and individual interest.[2]

This topic is all the more up-to-date as the views of planning theorists and lawyers on the public-private interest conflict are gradually polarising and radicalising – from positions that there is no such thing as a public interest – to views that the principle of the primacy of public interest over individual interest should be introduced in the sphere of planning and spatial development.

The assumptions associated with the article were realised as follows. First, the concept of public interest, related approaches and its status in the spatial planning system were analysed. Next, the spatial planning systems in Poland and Slovakia were characterised. In both cases, key levels related to the existence of public interest and possible problems and challenges were diagnosed. It concludes with remarks on the position of public interest in the spatial planning systems of both countries.

THE PUBLIC INTEREST – A UNIVERSAL VALUE OR A CONVENIENT PRETEXT FOR RESTRICTING INDIVIDUAL RIGHTS?

The public interest is a concept so firmly inscribed in the sphere of law that its use by representatives of the doctrine and practice of law and judicial decisions is common and often automatic, mainly where it is referred to the rationing of certain goods or restrictions on individual rights and freedoms. Representatives of the doc-

[1] A. Grochowska, *Konflikty przestrzenne w planowaniu przestrzennym obszarów metropolitalnych na przykładzie Wrocławskiego Obszaru Metropolitalnego*, Wrocław 2016, pp. 17–18.

[2] Therefore, it is pointless to "recognize the relationship between the individual and the state in terms of a zero-sum game, i.e. in terms of full competitiveness, assuming that if the state gains something, the individual loses, or vice versa. These interests do not have to be competitive. However, the lack of competition does not exclude their conflict" (M. Zdyb, *Prawny interes jednostki w sferze materialnego prawa administracyjnego. Studium teoretyczno-prawne*, Lublin 1991, p. 209). In other words, resolving the conflict between the public interest and the individual interest does not consist in simply choosing one without the other, but in attempting to harmonize them according to the principle: "The higher the degree of violation or non-fulfillment of one of the conflicting goods, the more important it must be to achieve the other good" (R. Alexy, *Theorie der Grundrechte*, Baden-Baden 1985, p. 146). The authorities competent in spatial planning matters, taking over the burden of resolving the conflict of interests, must be guided by the public interest. However, if possible and justified, they also consider individuals' interests to the greatest possible extent. See M. Woźniak, *Interes publiczny jako przesłanka działań organów planistycznych*, [in:] *Przestrzeń i nieruchomości jako przedmiot prawa administracyjnego. Publiczne prawo rzeczowe*, ed. I. Niżnik-Dobosz, Warszawa 2012, pp. 82–83.

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trine of administrative law agree on the importance of the category of public interest, defining it as the goal of human actions, which constitutes the essence of modern public administration, and as an instrument of legitimacy for all actions of public authorities, including actions in the sphere of spatial planning, and at the same time the primary criterion for their assessment.[3] The public interest formula is constantly used to justify, defend and argue for interventions and reforms in every sphere of social life. The public interest determines the permissible interference of public authorities in social and economic relations regarding individual rights and freedoms.

Nevertheless, the decades-long difficulties in grasping the essence of the public interest, manifested in the creation of various definitions of the concept and proving the impossibility of capturing this category by means of a simple formula, have caused a kind of confusion and scepticism among European representatives of planning theory and legal doctrine, and consequently even the rejection of the concept by some of them.[4] As early as the 1970s, the view was expressed that, under social conditions characterised by the divergence of goals and desires of different individuals and groups in terms of access to the limited resources available, the public interest is a completely inadequate criterion for planning intervention and that the interests of individuals and groups in our societies are too divergent to show any significant area of commonality.

It is therefore not possible for public action to benefit everyone at the same time. According to J. Simmie, "there is no such thing as a single public interest. Rather, there is a range of different and competing interests".[5] Applying this to the sphere of space planning, H.J. Gans stated that "in a pluralistic society, it is difficult to identify common goals because they turn out to be shared by only part of the population; for example, open space is usually considered to be in the public interest, but does not necessarily benefit those who are too far away to use it, those who do not want to use it, or those who want limited resources to be allocated to more pressing needs such as housing".[6]

Undoubtedly, the concept of public interest is not unambiguous. It is a fluid, delicate and context-sensitive category. The concept of public interest is inevitably

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[3] N. Taylor, *Mistaken Interests and the Discourse Model of Planning*, "Journal of the American Planning Association" 1998, vol. 64(1), pp. 64–65; E. Alexander, *Planning, Policy and the Public Interest: Planning Regimes and Planners' Ethics and Practises*, "International Planning Studies" 2010, vol. 15(2), p. 162; P. Heywood, *Social Justice and Planning for the Public Interest*, "Urban Policy and Research" 1990, vol. 8(2), pp. 67–68; H. Dadashpoor, A. Sheydayi, *Defining Public Interest in Planning: A Review*, "Journal of Planning Literature" 2021, vol. 36(4), p. 2, 14; M. Tait, *Planning and the Public Interest: Still a Relevant Concept for Planners?*, "Planning Theory" 2016, vol. 15(4), p. 343.

[4] A comprehensive review of the various definitions of the public interest in planning theory and practice was made by H. Dadashpoor and A. Sheydayi (*op. cit.*, pp. 2–19).

[5] J. Simmie, *Citizens in Conflict*, London 1974, p. 125.

[6] H.J. Gans, *Commentary*, "American Institute of Planning Journal" 1973, vol. 39(3), p. 10.

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linked to a particular space and time, and reflects cultural, professional and personal values. In a democratic state under the rule of law, the public interest, often referred to as the common good, is admittedly seen as a universal and cognisable value, but there is no doubt that it requires concretisation in the sphere of specific phenomena and situations. The content of the public interest is not defined once and for all. What one generation defines as the "common good" may not correspond to the needs of subsequent generations, which is particularly noticeable in the sphere of spatial planning.[7]

The public interest belongs to that category of concepts which, by their very nature, should not be harnessed to the tight, limited framework of legal definitions. However, it is worth highlighting some of its features which, in a particular place and time, will allow its content to be decoded. The first of these derives from the adjective "public", defined as "generally available, intended for general use". If one assumes that interest is the relationship between an objective state of affairs (present or future) and the assessment of that state from the point of view of the benefits it brings or may bring to certain entities, then one concludes that the public interest is the relationship between an objective state of affairs and the assessment of that state from the point of view of the benefits it brings or may bring to the general public (as opposed to individual interest, which is the relationship between an objective state of affairs and the assessment of that state from the point of view of the benefits it brings or may bring to an individual). In other words, a public interest, as opposed to a private interest, is one that has no direct relation to any specific person or persons, but may affect any member or members of the community.[8]

In assessing whether something is in the public interest, it is therefore a question of whether it is in the interest of potentially everyone, but not literally everyone. The public interest is something that is in the interest of every individual, regardless of their membership of any particular interest group: it is the interest of any randomly selected individual.[9] "Public policy should therefore not be a decision to grant X to B, but to grant X to everyone under such and such conditions".[10]

The (broad) perspective of the public policy sciences, in which, although the understanding of the concept of public interest is also based on legal regulations,

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[7] Conceptualisations of the public interest emerge within a particular constellation of values over time and space. In the 1950s, the general consensus saw the public interest as growth and progress. Planners advised those in power to demolish neglected neighbourhoods, to separate pedestrian and vehicular traffic. Years later, they realised that these solutions spawned new problems: urban sprawl, traffic jams, barren landscapes. The failure of urban renewal and community building projects exposed the falsity of the post-war concept of the public interest.

[8] G.C. Lewis, *Remarks on the Use and Abuse of Some Political Terms*, London 1832, p. 233, quoted after S. Moroni, *The Public Interest*, [in:] *The Routledge of Planning Theory*, eds. M. Gunder, A. Madanipour, V. Watson, London 2018, p. 77.

[9] N. Taylor, *Environmental Issues and the Public Interest*, *Values and Planning*, [in:] *Values and Planning*, ed. H. Thomas, Aldershot 1994, p. 95, 97.

[10] B. Barry, *Political Argument*, New York 1990, p. 192, 197.

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is understood much more broadly than in the legal sphere, may also prove useful here. Representatives of these sciences start from the theory of justice, adding that the right of equitable access to basic goods is realised in space. It is the state of development that determines access to these goods. The public interest is linked to the concept of public goods, i.e. tangible and intangible products of human activity, the consumption of which, in the case of a fully public form, involves zero costs and zero marginal costs of their provision in the event of the emergence of an additional number of consumers. The public interest should be observed precisely through the prism of a complex stream of tangible or intangible goods characterised by different fulfilment of the characteristics of a public good.[11]

It is also important to establish who decodes the content of the public interest. Is this the prerogative of a certain group of professionals, experts in a given field, who, by virtue of their training and acquired experience, have acquired a "secret knowledge" allowing them to identify what is good for the general public, or on the contrary, is it the task of every legal entity? The first approach was present on the grounds of the traditional, substantive conception of planning, whose proponents assumed that it was "comprehensive planners who understand the general public interest".[12] In a democratic rule of law, however, the problem is much more complex.[13] Taking into account the normative context of space planning, one can observe the phenomenon of hierarchical determination of the content of the public interest. In the first place, this task belongs to the legislator (the constitution), then to the ordinary legislator and at the lowest level to the public administration bodies. However, it is clear that in both Polish and Slovak spatial planning law, the determination of the content of planning acts is mainly the responsibility of professional planners employed for this purpose by administrative bodies. Many planning theorists emphasise the negotiating role of the planner through the conflict management procedure.[14]

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[11] T. Markowski, *Teoria sprawiedliwości i interes publiczny jako podstawa budowania regulacyjnego systemu planowania przestrzennego – konceptualizacja problemu*, [in:] *Badania miejskie i regionalne. Doświadczenia i perspektywy*, ed. F. Kuźnik, Warszawa 2013, pp. 13–18; idem, *Funkcjonowanie systemu gospodarki przestrzennej – założenia budowy modelu zintegrowanego planowania i zarządzania rozwojem*, [in:] *System planowania przestrzennego i jego rola w strategicznym zarządzaniu rozwojem kraju*, ed. T. Markowski, P. Żuber, Warszawa 2011, pp. 25–44. On the subject of space as a public good, see also D. Drzazga, *Systemowe uwarunkowania planowania przestrzennego jako instrument osiągania suspensywnego rozwoju*, Łódź 2019, pp. 47–54; K. Kuciński, *Geografia ekonomiczna*, Kraków 2009, pp. 55–56.

[12] J. Grant, *Rethinking the Public Interest as a Planning Concept*, "Plan Canada" 2005, vol. 45(2), p. 48.

[13] S. Žižek, *For They Know Not What They Do: Enjoyment as a Political Factor*, New York 2002, p. 280; J.A. Nagy, *Planning and the Public Interest: A Critical Review*, "Romanian Review of Regional Studies" 2015, vol. 11(2), pp. 117–120.

[14] This is brilliantly put by J. Grant (*op. cit.*, p. 49), according to whom "the role of planners is to reveal problems and options both to those who make decisions and to those affected by those

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Moreover, in both countries analysed, planning procedures are open to members of the public, which – at least in theory – makes them actors in the decoding of the public interest.[15] Further actors that decode the essence of the public interest are the supervisory and control bodies for spatial planning acts. However, their competence is considerably narrower than that of the planning authorities, as the supervision and control of planning acts takes place only from the point of view of legality, and therefore the examination of other criteria such as purposefulness, reliability or economy of the solutions adopted in the plans does not come into play.

When determining what is in the public interest, public authorities, planners and other participants in planning procedures at the various levels of this thought process should not do so by arbitrarily applying some objective scheme or algorithm, but carry out this determination by means of a reliable, empathetic, assertive, systemic analysis of all material sources of public interest, taking into account and respecting the capabilities of the state. In doing so, they should be aware of the risk of relativising the content of the public interest to the current socio-political situation and, even more so, to the current policies of a given ruling team.

From the perspective of the spatial public policy sciences, the protection of the public interest is identified with the protection of spatial order (a concept with a very broad meaning, but translatable into the context of public goods).[16] Spatial order is examined both from the point of view of the characteristics of the structure forming the order and from the point of view of its functioning.[17] The protection of the public interest in the spatial management system is therefore based on a comprehensive, systemic protection of spatial order (related to the concept of public goods).

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decisions. They should not serve anyone's long-term interest or assume that they know the recipe for a good community. They need to communicate why they believe certain strategies are the right ones to achieve specific community goals – and be prepared for history to prove them wrong".

[15] Although the participants do not enter the process in search of the public interest, as they take into account the various interests, the proposals move closer to something that can be seen as lying in the common good.

[16] M. Nowak, *Interes publiczny w systemie gospodarki przestrzennej*, "Annales UMCS sectio G (Ius)" 2020, vol. 67(1); A. Kowalewski, *Interes publiczny i przestrzeń – kilka uwag*, [in:] *Zarządzanie rozwojem współczesnych miast*, eds. J. Danielewicz, D. Sikora-Fernandez, Łódź 2019, p. 276; P. Śleszyński, *Wskaźniki zagospodarowania i ładu przestrzennego w gminach*, "Biuletyn Komitetu Przestrzennego Zagospodarowania Kraju PAN" 2013, no. 252, pp. 180–182; P. Śleszyński, M. Stępniak, D. Mazurek, *Oszacowanie skutków presji inwestycyjnej i nadpodaży gruntów budowlanych w strefie podmiejskiej Warszawy na przykładzie gmin pasma zachodniego*, "Przegląd Geograficzny" 2018, vol. 90(2), pp. 233–234.

[17] P. Fogel, *Wskaźniki oceny polityki i gospodarki przestrzennej w gminach*, "Biuletyn Komitetu Przestrzennego Zagospodarowania Kraju PAN" 2012, no. 250; J. Parysek, *Lokalna gospodarka przestrzenna w Polsce – prawo i rzeczywistość*, [in:] *Teoretyczne i praktyczne aspekty prawa gospodarki przestrzennej*, eds. W. Ratajczak, M. Szewczyk, J. Weltrowska, Poznań 2017.

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PROTECTION OF THE PUBLIC INTEREST IN THE SPATIAL PLANNING SYSTEM FROM THE PERSPECTIVE OF POLAND AND SLOVAKIA

In Poland, a manifestation of the special importance given to the protection of the public interest in the sphere of shaping space was the legislator's breakneck, though decidedly inept, attempt to define this interest. The public interest is a typical example of a general clause, hence it is inherently wrong to explain its meaning by means of a legal norm. The purpose of the introduction of general clauses is to supplement the content of the legal norm with extra-legal factors, allowing the authorities to take into account those determinants of decisions which cannot be expressed universally through the rigid language of the law. Nevertheless, in Article 2 (4) of the Act of 27 March 2003 on spatial planning and development[18] the public interest was considered to be the general purpose of aspirations and actions taking into account the objectified needs of the population or local communities related to land use development. Apart from the fact that it was intrinsically wrong to attempt to define the public interest, due to the ambiguity of the terms used in this definition, it does not fulfil the purpose for which legal definitions are formulated. It only contains the "added value" that, by distinguishing between public needs and local community needs, it confirms that not only the interests of the local community but also the national interests are taken into account in municipal spatial planning, and thus that the category of public interest is not a homogeneous category; national needs may coincide with the needs of the local community or may conflict with them.

At the level of planning and spatial development, the special position of the public interest is also evidenced by the distinction of this interest as a separate value requiring protection in the process of making and applying the law (Article 1 (2) (9) SPD), alongside architectural and landscape values or environmental protection requirements. The real need for such an emphasis on the public interest may be questioned. Its prominence results directly from the importance which the legislator gives to the principle of spatial order and sustainable development, making them the basis of all planning and spatial development activities (Article 1 (1) SPD). Such "prominence" of the public interest is, as it were, contrary to the paradigm of harmonising different, often conflicting interests, which is reflected in Article 1 (3) SPD (the principle of weighing the public interest and the individual interest when determining the use of land or defining the potential manner of its development).

In Slovakia, on 27 April 2022 was adopted a new legal regulation on spatial planning – Spatial Planning Act,[19] which is generally applicable since 1 April 2024. This

[18] Consolidated text, Journal of Laws 2024, item 1130, as amended, hereinafter: SPD.

[19] Act of 27 April 2022 on spatial planning (Journal of Laws 2022/200, as amended).

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Act establishes the term "public interest" in Section 5 (v) as the interest expressed in spatial planning documentation, which mainly benefits the public with regard to sustainable territorial development, which ensures territorial cohesion, social cohesion and non-discrimination, the interest of children and socially excluded or threatened communities, a territorial system of ecological stability, ecological connectivity, green infrastructure, preservation values of the natural and cultural heritage, protection and effective use of natural resources and other features of the territory, nature protection, water protection and preservation of biodiversity, environmental protection, public health protection, state defense, state security, civil protection, fire protection and takes into account the conditions of climate changing and adaptive capacity. The persons ensuring spatial plans and processing spatial documentation shall take into account the public interest. The concept of public interest is also defined in Article 3 (2) of the Constitutional Act of 26 May 2004 on the protection of public interest in the exercise of functions by public office holders[20] according to which a public interest is an interest that brings a pecuniary or other benefit to all citizens or many of them. By contrast, according to the first sentence of Section 2 (2) of the Act of 6 November 2003 on the performance of work in public interest,[21] it is an interest that benefits all citizens or a majority of them financially or otherwise.

J. Grman points out that the public interest does not have a general legal definition. Its decoding is very difficult and must be considered in relation to the current situation. He also adds that the public interest must not be contrary to the law.[22] I. Kanárik states that public interest is a vague legal term, although it is used in many legal acts. It is synonymous with the concept of public interest.[23] R. Rapant notes that various definitions of the concept of public interest can be found in theory, but the term has not been defined in a way that is universally accepted.[24] In Slovakia, the protection of the public interest is directly related to the nature of spatial planning. The planning legal framework would not make sense if the public interest was not taken into account. Spatial planning deals with the use of land in a coherent and comprehensive manner. It proposes activities that may affect the environment, ecological stability, cultural and historical values and the development of the site. The main principle is to achieve sustainable development of the site.

Spatial planning should create conditions for the compatibility of all activities in the area. The Spatial Planning Act aims to systematize and create conditions for balanced and sustainable spatial development. This means that the territory should

[20] Journal of Laws 2004/357, no. 151, as amended.

[21] Journal of Laws 2003/552, no. 226, as amended.

[22] J. Grman, *Verejný záujem ako ústavnoprávny a zákonný predpoklad vyvlastnenia*, "Justičná revue" 2011, no. 5.

[23] I. Kanárik, *Verejný záujem v právnom štáte*, "Právny obzor" 1997, no. 3, pp. 256–262.

[24] See M. Čič, *Komentár k ústave Slovenskej Republiky*, Košice 1997, p. 124.

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be used efficiently, economically, aesthetically, ethically and democratically, taking into account natural and cultural heritage, as well as the quality of the environment and the well-being of the population.[25] The main objective of spatial planning should be the alignment of interests and activities that may affect development, environmental and ecological balance. It can be seen from the above that the legislator in the Slovak Republic has chosen to "work" with specific values instead of the uncertain concept of public interest. This is confirmed by the directions of the law changes in spatial planning in Slovakia in recent years.[26]

Thus, in both analysed legal orders, the thesis posed above is confirmed that the guarantee of protection of the public interest is not to define it categorically once and for all. This protection is ensured by each discovery, "decoding" of this interest in the context of the values constituting public order and sustainable development in specific temporal and spatial conditions. Both legislations also emphasise the pursuit of a balance of competing interests in space.

The Polish law on spatial planning was amended in 2023. However, the effects of the reform are still at the implementation stage – so the focus is on the earlier solutions, which can be more widely evaluated. At the national level, a national spatial development concept is being developed,[27] at the level of the self-governing voivodeship – the voivodeship spatial development plan, and at the level of the municipality – the study of the conditions and directions for spatial development of the municipality[28] and the local plan of spatial development. The essential role is played by the spatial planning acts issued at the municipality level, while the acts issued at higher levels have the value of internal acts of a conceptual and informative nature, binding the municipalities only to a very narrow, even marginal extent. For this reason, it is the municipal authorities that bear the main burden of implementing the principle of protecting the public interest in spatial planning. However, for the last 20 years, the planning authority of municipalities has been systematically depleted by means of the so-called "special acts", which modify or exclude the application of general instruments from the Spatial Planning and Development Act and the Act

[25] E. Marišová, K. Hodossy, L. Mura, *Construction Legislation – Current and Future in the Legal System of the Slovak Republic*, "EU Agrarian Law" 2023, vol. 12(1), p. 24.

[26] M. Nowak, A. Mitrea, G. Lukstiņa, D. Jukneliene, E. Jürgenson, K. Filepné Kovács, Z. Ladzianska, E. Maruniak, Y. Palekha, A. Petrişor, K. Põdra, J. Przedańska, C. Sârbu, V. Simeonova, J. Valciukiene, P. Yanchev, M. Blaszke, *Directions of Change in Spatial Planning Systems in Central and Eastern Europe after 1989*, "Planning Practice & Research" 2024, vol. 40(1).

[27] On 30 November 2020, the Concept for Spatial Management of the Country 2030 ceased to have legal force. Until the adoption of the Concept of the Spatial Management of the Country, which is supposed to combine spatial planning with socio-economic planning, no nationwide governmental spatial policy act is in force in Poland.

[28] Studies of the conditions and directions for spatial development of the municipality gradually expire in individual municipalities as a result of the aforementioned implementation of the spatial planning law reform. They are gradually being replaced by new planning acts – master plans.

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of 7 July 1994 – Construction Law,[29] with regard to the location and granting of permits for the implementation of infrastructural investments (roads, motorways, railway infrastructure, public use airports, telecommunications, wind farms, more recently also multi-family housing, etc.).[30] The purpose of their introduction into the Polish legal system was to shorten and simplify administrative procedures related to the implementation of infrastructure investments, which traditionally consist of several time-consuming and costly proceedings (planning, expropriation, division, construction law). The implementation of these investments is a priority for public authorities, which is justified both by the requirements of modern technology and society's lifestyle, as well as by the need to use EU funds in a timely manner and the desire to catch up in this respect with the backlog from previous decades.

In the Slovak Republic the levels of spatial planning documentation according to the provision of § 18 (4) of the Spatial Planning Act are: the concept of territorial development of Slovakia, the concept of spatial development of the region, the microregion land-use plan, the spatial plan of the municipality, the zoning plan.[31] One of the most progressive changes brought by the Spatial Planning Act is the obligation of all municipalities to have a municipal spatial plan, while the only exceptions to this obligation are the cases where the entire territory of the municipality is part of the microregion land-use plan, and the cases when two or more municipalities agree that they will have a common spatial plan. All these planning acts contain a normative (binding) and a directive (non-binding) part. The extent to which a planning act will be binding is determined by the authority that issues it. Spatial planning documentation is hierarchical in its structure. The binding part of the spatial planning documentation of a higher level is binding for the lower level of spatial planning documentation. The binding part of the spatial planning documentation of a lower level must be in accordance with the binding part of the spatial planning documentation of a higher level, otherwise, it is invalid in this part.[32]

[29] Consolidated text, Journal of Laws 2024, item 725, as amended.

[30] Some special acts concern the preparation and implementation of specific public purpose investments, e.g. the Act of 10 May 2018 on the Central Communication Port (consolidated text, Journal of Laws 2024, item 1747, as amended), the Act of 19 July 2019 on investments in the construction of the Museum of Westerplatte and the War of 1939 – Branch of the Museum of the Second World War in Gdańsk (consolidated text, Journal of Laws 2024, item 100, as amended).

[31] The new legislation brings one relatively modified type of spatial planning documentation – the concept of spatial development of the region, and one completely new type – spatial plan of the microregion.

[32] V. Jakušová, M. Michalovič, *The Current and New Legal Regulations of Spatial Planning in the Legal Conditions of the Slovak Republic with an Emphasis on Spatial Planning Documents and Spatial Planning Documentation*, "Prawne Problemy Górnictwa i Ochrony Środowiska" 2023, no. 2, p. 12, 14.

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The Slovak legislature, analogous to the Polish one, has placed the essential spatial planning powers in the hands of the municipal authorities,[33] which decide on the designation and use of individual areas.[34] Plans adopted at the municipal level constitute – both in Poland and Slovakia – the legal basis for administrative decisions, including building permits. Undoubtedly, their determinations directly affect the sphere of exercise of the right to property ownership. In both countries, therefore, although the municipality is the undisputed basic link in spatial planning, in Slovakia, unlike in Poland, the planning authority of the municipality is not restricted in favour of the government administration by special laws.

In Poland, the reasons for the implementation of the public interest through special laws can be seen in the marginalisation of the role of spatial policy acts created at the provincial and central level. The voivodeship's spatial development plan or government programmes for the implementation of public purpose investments are rarely binding when drawing up plans at the municipal level. They do not contain specific spatial solutions that would provide a basis for the actions of local authorities. No amendment to the Spatial Planning and Development Act has strengthened the role of these acts, confirming their status only as informative, scientific and study acts. Coordination of spatial policy at the level of government administration for the purpose of allocating specific areas for public investment, instead of the current "locking" of planning arrangements within individual ministries or government agencies, and the adoption of consistent planning arrangements at individual levels of the spatial planning system, would be an opportunity for a more coherent, rather than a system of state spatial policy consisting of fragmented, uncoordinated activities.

In both Poland and Slovakia, the drafting of individual territorial plans is a complex and usually lengthy procedure. The wide range of issues to be regulated requires a range of detailed data and specialised knowledge from various fields. For this reason, local government bodies create draft territorial plans by contracting private entities (planners) to prepare them. The responsibility of local government bodies comes down to the selection of persons with sufficient skills and experience, and this responsibility is purely political. In both systems, the procedure for adopting plans at the municipal level is, at least in principle, socialised. Any interested party, regardless of whether they have a right to the land subject to the planning procedure, can participate in the procedure – in Poland in the form of applications

[33] The local self-government is created on two levels. It consists of more than 2,500 municipalities and 8 self-governing regions. The municipalities also include towns. The special situation is in Bratislava and Košice, where the urban areas also belong to the self-government units. To the local government of the Slovak Republic see in details P. Škultéty, *Verejná správa a správne parvo*, Bratislava 2008, pp. 31–34.

[34] For more on spatial planning acts in Slovakia, see A. Bieda, K. Pukanská, B. Sala, *Spatial Planning in Localities with Special Historic Values on Examples of Poland and Slovakia*, "Geomatics and Environmental Engineering" 2018, vol. 12(1).

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and comments, in Slovakia in the form of objections – and take part in the public discussion (in Slovakia, there are certain limitations in this respect only in the procedure for adopting detailed zoning plans – the municipality invites interested parties to submit any comments and agrees future planning intentions with entities whose rights may be affected by the arrangements of the plan). The positions expressed by the interested persons must be considered and their disregard must be justified. The comments submitted are not binding on the planning authorities. Moreover, there is no tool that guarantees the submitters of comments any legal protection against abuse by the authorities that consider them. For this reason, public participation in the spatial planning process in both Poland and Slovakia is perceived as a mere "formality" without any real impact on spatial governance.

One of the main shortcomings of municipal spatial planning in both countries is the façade treatment of participation, despite the fact that the legal provisions ensure broad public participation in the local planning procedure. The common denominator, as far as the shortcomings of participation are concerned, is not the defectiveness or inadequacy of the forms of participation provided for in the laws, but rather the fact that they are launched too late, resulting in the lack of real influence of the stakeholders' positions on the content of the solutions adopted in the planning acts by the municipal authorities. The basic problem of participation is revealed in these countries not at the level of legal regulations, but boils down to the well-established bad practices of municipal bodies (to the often inappropriate, incompatible with the purpose of these regulations, purely mechanical application of participatory tools) and the mental barriers of society (passivity, apathy, lack of habitual interest in community affairs).[35] Hence the conclusion that even if participation has a solid legal and financial basis, the instrumental way in which it is treated by the authorities makes citizens contestants of social reality rather than co-creators of it.

Another level of consideration of the level of protection of the public interest in the sphere of spatial planning is the supervision over spatial planning acts. In Poland, this supervision is exercised in two ways: by the government administration body, i.e. the voivode, who assesses the legality of each spatial planning plan, and before the administrative courts, which assess the legality of these acts when an authorised entity successfully challenges them. "The supervision of local self-government units should be the guardian of their statutorily designated independence".[36] It should support the self-government in the performance of its tasks

[35] A. Ostrowska, *Niepewność sytuacji prawnej jednostki w sferze stanowienia i obowiązywania miejscowego planu zagospodarowania przestrzennego*, Lublin 2020, pp. 358–359; M. Finka, L. Jamečný, D. Petríková, *Spatial Planning in Slovak Republic*, [in:] *Participative Planning in Planning Culture of Slovak Republic and Switzerland*, eds. J. Schöffel, M. Finka, V. Ondrejička, Rapperswil 2014, pp. 29–32.

[36] S. Fundowicz, *Decentralizacja administracji publicznej w Polsce*, Lublin 2005, p. 158.

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and not contribute to limiting its activities. In this context, the doctrine of Polish law postulates the verification of the current model of supervision, mainly by considering the replacement of the voivode by another body dealing exclusively with the exercise of supervision free from the influence of the political factor, having a stable position in the system and appropriate professional qualifications (such as the regional chamber of accounts).[37] In fact, the exercise of supervision by the voivode, who is a political body – part of the provincial government administration machine – may sometimes raise concerns about his/her impartiality.

The low level of supervision of spatial development plans is the subject of harsh criticism from parts of the legal doctrine in Slovakia. The state can only control territorial plans through the public prosecutor's office, which is a separate hierarchical system of state bodies.[38] The public prosecutor is authorised to challenge the applicable parts of the territorial plans if they contradict the law, and is therefore only authorised to control the legality of these acts. If the local government units do not amend the plans in accordance with the public prosecutor's request (so-called protest), he can file a complaint with the administrative court. The public prosecutor, therefore, has no real power that would result in ordering local government bodies to repeal or amend unlawful plans. Such a power belongs exclusively to the administrative courts, but administrative court proceedings can take up to several years. In Slovakia, a municipal planning act, although it has some characteristics of an individual act, is a normative act and, as such, cannot be challenged by an individual in court. A planning act may be subject to judicial review only in one case – when the public prosecutor takes the initiative for a review, doing so within the framework of his competence to assess the legality of the action of public administration bodies. However, it must be emphasised that both the lodging of a protest and the initiation of a judicial review procedure depend exclusively on the will of the public prosecutor. However, it is worth noting that, unlike in Poland, in Slovakia the supervisory authority has the right to examine the legality of a draft planning act before its enactment, which is a manifestation of the so-called preventive supervision and, in principle, reduces the risk that the planning act will be eliminated from legal circulation already after its entry into force.

Against the background of the presented Slovak legal solutions, the Polish regulations on access to court in cases of local acts of spatial planning appear to be

[37] J. Korczak, *W sprawie rewizji modelu nadzoru ogólnego nad działalnością komunalną*, [in:] *Decentralizacja i centralizacja administracji publicznej. Współczesny wymiar w teorii i praktyce*, eds. B. Jaworska-Dębska, E. Olejniczak-Szałowska, R. Budzisz, Warszawa–Łódź 2019, pp. 240–241, 243.

[38] The Prosecution of the Slovak Republic is the system of state bodies. It protects the rights and legal interests of natural persons, legal entities, and the state. The Act of 1 September 1992 – Constitution of the Slovak Republic (Journal of Laws 1992/460, no. 92, as amended) and the Act of 28 March 2001 on Public Prosecution Service (Journal of Laws 2001/153, as amended) contain the basis of its legal regulation.

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exceptionally liberal. In Poland, there are no such far-reaching barriers to challenge spatial planning acts of subjective nature (there is no limitation to a specific category of complainants, e.g. the prosecutor). A resolution may be challenged by anyone whose legal interest has been violated by it, as well as the provincial governor as the supervisory authority, the public prosecutor and the Ombudsman.

In Slovakia, the subjective limitation of the right to complain was introduced in order to maintain the balance between the protection of the individual's interest and the protection of the public interest, which consists in guaranteeing the stability of legal relations shaped by the spatial planning act. Besides, in the long run, the broad possibilities of the addressees to challenge this act may increase the uncertainty of the legal situation of themselves and other individuals. The invalidation of a territorial plan may violate the principle of legal certainty. This may affect proceedings in which decisions on the plans in question are taken (e.g. building permit proceedings). Furthermore, the cancellation of existing territorial plans does not have the effect of restoring the legal force of previous plans. Individual land is then left without spatial regulation. This can also have a detrimental effect on protected public interests. It is also difficult to replace a cancelled territorial plan with a new one. The procedure for their preparation and enactment is very complicated and time-consuming. It is unlikely that local government units will adopt a new plan in a short period of a few weeks or months. In the process of supervising spatial planning acts, it is therefore necessary to take into account the consequences of eliminating an act from legal circulation, representing an interference with legal certainty, including the legal status of spatial development.

In turn, the Polish doctrine of administrative law points to the lack of flexibility in the application of supervisory measures to defective plans, as well as the lack of participation of the voivode as the supervisory authority in the early stages of the planning procedure by signalling potential threats of violation of the law (the voivode assesses the legality of the "final product" in the form of a resolution, which often results in its invalidation in whole or in part, thus definitely prolonging the processes of effective plan adoption[39]) as an important shortcoming of the system of supervision over spatial planning acts. In addition to the unquestionable benefits that such a solution could bring (signalled above in the case of Slovakia), one cannot, however, lose sight of the fact that the consequential (verification) model of supervision is one of the basic, strongly-established features of the system of supervision over the local government in Poland, irrespective of the field of local government activity, the change of which requires deeper systemic solutions, going

[39] K.M. Ziemski, *Ocena dorobku naukowego dr Anny Ostrowskiej, w tym zwłaszcza monografii pt. „Niepewność sytuacji prawnej jednostki w sferze stanowienia i obowiązywania miejscowego planu zagospodarowania przestrzennego", Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, Lublin 2020*, Poznań 2021, https://www.umcs.pl/pl/postepowania-habilitacyjne,442.htm (access: 26.3.2025), p. 12.

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far beyond the sphere of shaping space. Moreover, the introduction of directive (prior) supervision elements could significantly lengthen the already tedious, multi-stage procedure of enacting planning acts.

CONCLUSIONS

There is no foundation on which a universal, spatio-temporally-proof definition of the public interest can be formulated. On the contrary, increasing social and cultural diversity perpetuates the widespread belief that such a definition cannot be constructed. Diverse depictions of the public interest arise depending on who formulates them, for what purpose they do so and by what procedure. However, the diversification of needs, values and interests by no means implies the absence of a need to separate and identify the public interest. In the sphere of space shaping, there is no other way than to seek and refer to the public interest, including the universal values that comprise this interest, such as the protection of human life and health, the environment, nature, monuments or cultural heritage. If the notion of "public interest" were to be discarded, another category would have to be invented to justify public interference,[40] intended to curb the diversity of aspirations and interests in a valuable and finite space. At the same time, the public interest must not serve as a convenient pretext for limiting the rights of individuals, as a keyword that opens up to the authorities the unfettered possibility of any interference with property rights.

On the contrary, it requires the discovery, the reference to specific constituent values preferred by the participants of planning procedures in a specific place and time. Hence, in Poland and Slovakia, the legislator has imposed an obligation on planning authorities to assess the validity of spatial plans periodically.[41] It is related not only to the dynamics of social and spatial changes but also to possible changes, assumed by the legislator, in the perception of what is in the public interest at a given time and which values should be given special protection.

The clear analogies between the spatial planning systems in Poland and Slovakia allow for the formulation of some general conclusions on the dilemmas related to the protection of public interest in the sphere of spatial planning.

Firstly, in Poland and Slovakia, the critical link in spatial planning is the municipality, whose bodies are most familiar with the socio-spatial conditions and needs of the population in the area. However, while in Slovakia the strong position of the

[40] "We can, of course, abandon the notion of 'public interest' if we don't like it, but if we do, we will simply have to address the same problem under a different name: defining legitimate public intervention in the face of diversity is central to any political order" (R.B. Flathman, *The Public Interest*, New York 1966, p. 13).

[41] However, this obligation is not effectively enforced in both countries.

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municipality in this respect is unquestionable, in Poland the role of the municipality in spatial planning has been systematically weakened over the last two decades by granting governmental bodies the competence to locate public purpose investments of crucial importance for the state's economy. The difference between the two countries' systems in this respect may be due to the stronger in Slovakia and very weak in Poland link between the spatial planning acts drawn up at the different levels: municipal, regional and national. In Poland, the unique acts as an antidote to inefficient, lengthy, traditional planning procedures. The attitude of lawyers, urban planners and space users in Poland to the peculiar division of planning competencies between municipalities and government administration bodies is ambivalent. On the one hand, the solution is criticised as a gradual dismantling of the system by successive depriving municipalities of their planning authority and excessive restrictions on the rights of property owners to pursue the public interest. On the other hand, its effectiveness is recognised through the acceleration and shortening of procedures aimed at issuing permits to realise public investments strategic for the state's economy.

Secondly, in Poland and Slovakia, three main problems of the spatial planning system are emphasised: the excessive duration of planning procedures, the façade of public participation in planning procedures and the lack of adequate supervision over the legality of spatial planning acts. It should be noted, however, that the issue of the façade of public participation is not so much the result of inadequate legal regulations but the aftermath of the bad practices of the bodies organising the planning procedures and the mental sphere of a large part of the society still convinced of the lack of any influence of its activity on the shape of space. In the sphere of supervision in Poland, the lack of preventive supervision (the lack of influence of supervisory bodies on the content of the planning act before its enactment) and making the voivode, i.e. a political body belonging to the division of government administration, the supervisory body, are also perceived as shortcomings.

Thirdly, if the permanence and stability of the legal state introduced by a spatial planning act are seen as an element of protection of the public interest, this protection is much more robust in Slovakia than in Poland. We refer to two significant differences between the analysed systems in the sphere of supervision and judicial control of spatial planning acts. First, in Slovakia, there is preventive supervision of spatial planning acts, which provides an opportunity to eliminate law violations in these acts before they are enacted and entered into force. Secondly, in Slovakia, the standing to sue is limited to the public prosecutor, who will depend on challenging a planning act. In Poland, on the other hand, the supervision of planning acts is only consequential. In turn, the right to lodge a complaint with the court is available to the supervisory authority, the public prosecutor and the Ombudsman, and anyone whose legal interest has been violated by the planning regulations.

On the one hand, this constitutes a strong guarantee for the protection of the rights of individuals against abuse by the bodies adopting plans, but on the other

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hand, it weakens the stability of legal transactions. It is, therefore, legitimate to conclude that even instruments so strongly associated with the idea of the rule of law, such as an individual's access to court, may ultimately destabilise the legal system and consequently negatively affect the certainty of the legal situation of individuals. This conclusion is all the more justified because, as in Slovakia, in the case of the annulment of a Spatial Planning Act, the legal force of the Act previously in force in the area is "not revived".

The analysis of Polish and Slovak planning and spatial development law in the context of the protection of the public interest leaves no doubt that positive law is one of the keys – although not the only[42] – guarantors of the realisation of this interest in the sphere of spatial planning. A deep reflection of an ethical nature is necessary for the practical realisation of this interest. Both spatial planning bodies and planners, as well as all users of space, should begin to view property rights not through the prism of being able to take unfettered actions to serve particular interests, but as responsibility for space for its current state and sustainability. While the role of positive law is to give an actual dimension to the values that make up spatial order, the formation of the proper moral attitudes through the exchange of views and visions on the development of specific spaces and the building of a spatial planning culture strengthens the effectiveness of the law.

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[42] See more J. Jabłońska-Bonca, *Problemy ze spójnością prawa i regulacjami pozaprawnymi a siła sprawcza państwa – zarys tematu*, "Krytyka Prawa" 2016, vol. 7(1).

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ABSTRAKT

Artykuł ma charakter naukowo-badawczy, a jego zasadniczym celem jest próba określenia uwarunkowań ochrony interesu publicznego w polskim i słowackim systemie planowania przestrzennego. Realizacja tego zadania wymagała przede wszystkim zaprezentowania dylematów związanych z uchwyceniem istoty interesu publicznego, z perspektywy nie tylko prawnej, ale również teorii planowania. Stanowiło to punkt wyjścia dla ustalenia, w jakim stopniu obowiązujące w Polsce i Słowacji regulacje prawne normujące sferę kształtowania przestrzeni wpływają na poziom ochrony interesu publicznego w tej dziedzinie. Potrzebę podjęcia tytułowego zagadnienia determinuje szczególnie świadomość, że kształtowanie przestrzeni jest sferą niezwykle konfliktową, nazywaną areną zmagań ludzi o różnych potrzebach, celach i interesach. Mając to na uwadze, założenia związane z artykułem zrealizowano w następujący sposób. W pierwszej kolejności przeanalizowano pojęcie interesu publicznego, związane z nim podejścia oraz jego status w systemie planowania przestrzennego. Następnie dokonano charakterystyki systemów planowania przestrzennego w Polsce i Słowacji. W obu przypadkach zdiagnozowano kluczowe płaszczyzny związane z występowaniem interesu publicznego oraz możliwe problemy i wyzwania. W podsumowaniu przedstawiono wnioski dotyczące pozycji interesu publicznego w systemach planowania przestrzennego obu państw.

Słowa kluczowe: interes publiczny; planowanie przestrzenne w Polsce; planowanie przestrzenne w Słowacji; akt planowania przestrzennego; nadzór nad aktami planowania przestrzennego