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# Threats of sustainable development resulting from legal requirements of spatial planning in Poland

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**Abstract:** Man, being one of the elements of the environment, depends on its quality. Currently, the right to a clean environment is included in the basic human rights and the way to maintain it is sustainable development. One element of this development is the preservation and protection of biodiversity, which is the subject to the increasing impoverishment as a result of human activity, including spatial policy. Progressive building of new areas, both as a result of oversupply of investment areas (residential, industrial, etc.) in local plans and decisions on land development conditions causes the degradation of environment by reducing the surface of open areas, depletion of the species composition of plants and animals. Among the reasons of this state of affairs we can mention, among others, faulty spatial planning system and consequent – indirectly - land management. The purpose of this paper is worded as follows: the existing legal solutions of Polish spatial planning system destructively affect biodiversity, and thus sustainable development in Poland.

***Keywords:*** sustainable development, spatial planning, biodiversity protection

***JEL codes:*** R52; K40; Q56; Q57

## 1. Introduction

The aim of this paper is to show that operative legal solutions in Poland, including those concerning spatial planning, badly affect biodiversity and thus the sustainable development.

Man, since the dawn of his history, being part of the environment, has used the goods it

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provided. Its impact on the environment, whether it was global, continental or even in individual countries, was for hundreds of years relatively small. This situation began to change with the development of industry in the nineteenth century, with particular intensity since the mid-twentieth century. As a result of the development of civilization we watch the degradation of almost all the components that make up the environment: land forms, climate, water relations, soil, vegetation and animal world. To counteract these processes, the international community in 1975 at the session of the Governing Council of the United Nations Environment Programme (UNEP) introduced the concept of sustainable development. This development, recognizing the primacy of environmental requirements that can not be disrupted by the rise of civilization and the development of the economy, implements rational production processes, rational consumption and the use of waste and cares about the future consequences of the actions taken, and thus, also about the needs and health of future generations. The concept of sustainable development became popular after the announcement of a report referring to it, drawn up in 1987 by the World Commission on the Protection of Environment and Development of the United Nations, called the Brundtland Report. It was repeated in the Declaration signed in 1992 at the UN conference "The Environment and Development" in Rio de Janeiro. (Urbańska, 2015: 73-74).

Today, the awareness of the role of the environment for human life made the right to good environment classify into the category of human rights and is included in the sentences of the European Court of Human Rights.

One of the conditions for sustainable development is halting the loss of biodiversity. This is due to the fact that the current development of civilization has made huge negative changes in this respect. Biodiversity decrease is observed both at the level of ecosystems, species and genes. As a result of the loss of biodiversity we observe the decrease of the quality of the so-called "ecosystems` services" provided by the environment, and which are an important factor in the functioning of urban areas (Kronenberg, 2010: 11-26; Mader A.; Patrickson S.; Calcaterra E.; Smit J. 2011: 1-8).

The problem is so important that, according to the "Millennium Ecosystems` Assessment", prepared by the UN Secretary General, European ecosystems have suffered more from human-induced fragmentation than those of any other continent. Only 1-3% of Western European forests can be classified as "undisturbed by humans". In the last 60 years, Europe has

lost more than 505 wetland areas and most of the arable land of high natural value. Extinction threatens 42% of native mammals, 43% of birds, 45% of butterflies, 30% of amphibians, 45% of reptiles and 52% of freshwater fish. Little-studied but potentially significant changes in lower life forms concern invertebrate and microbial diversity. Moreover, many once common species show population declines. This loss of species and decline in abundance is accompanied by significant loss of genetic diversity. (Commission of the European Communities, 2006: 6).

The way of land use is of great importance for the functioning of ecosystems and their biodiversity. Not only biologically active area is important but above all, the interaction between different systems. The theory of landscape ecology indicates that high biodiversity at all levels is supported by:

• The territorial extent and the content of spatial structure of zones (large teams of ecosystems with common characteristics (eg. large forest complexes) or vast areas with similar dominant economic functions (eg. agricultural or forest lands)
• Large typological diversity of zones
• Large internal differentiation of zones,
• The large number and wide typological variation of nodes (areas of particular abundance of species, enriching the environment or, in the case of developed land, settlement centers, bringing together high social and economic potential)
• The extent of territorial nodes,
• A dense network of ecological corridors connecting nodes and zones in a common system,
• A big width of ecological corridors.

Especially valuable ecological corridors for many species are river valleys preserved in almost natural state. Such valleys are not only ecological corridors, but also habitats for many species. Areas of higher biodiversity are also contact zones of large landscape units of contrasting natural features (the effect of "landscape ecotone") and other areas of high diversity and a mosaic character. Factors negatively affecting biodiversity in the landscape are:

• Destruction or violation of the ecological structure of nodes and their relationships with the environment,
• Land consumption of the surrounding of ecological nodes,
• Fragmentation of the landscape,
• Narrowing of ecological corridors, especially the regulation of river beds and building of river

valleys,

• Cutting the major ecological zones with technical infrastructure zones.

A particularly devastating impact on the functioning of nature have busy transport routes. For many species they are impassable barriers. Unfortunately, one of the basic features of the spatial development is to increase the density of the road network and intensity of communication traffic. Unluckily, such planning, which would satisfactorily take account of this fact, is used extremely rarely. (System Wymiany Informacji o Różnorodności Biologicznej w Polsce. Zagospodarowanie przestrzenne, 2004)

A particularly important issue closely related to spatial planning is the building of green open spaces, or agricultural areas (fields, meadows and orchards). As a result, plant and animal species are displaced of these areas and those species that remain are reduced in quantity, which in turn leads to exchange genes within a small group of individuals influencing the decreased immunity of individuals. This is true of both the fauna and flora. Chaotic, scattered buildings affects the defragmentation of ecosystems, reducing its resistance to external factors, both natural and anthropogenic. Unfortunately, also a common phenomenon concerning spatial planning and the environment, is a common problem of fencing reservoirs, which prevents migration of animals and also affects the reduction of biodiversity. However, it results not so much from the shortcomings of the law, but from the absence of its execution as a result of staff and financial shortages and forsaking action by the agencies responsible for it. (NIK, 2011: 6).

## 2. The drawbacks of the legal system affecting spatial management

According to the Spatial Planning and Development Act of 2003 (S.P.D.A.) (Ustawa o planowaniu i zagospodarowaniu przestrzennym, Dz.U. 2003, No 80, item 717), a fundamental principle that should be followed in planning is the principle of sustainable development. The most important instrument for implementation of the local spatial policy based on the principle of sustainable development, the law provides the local zoning plan. In case there is no such plan, its role is taken by the decision on building conditions.

Local development plan upholds the spatial order and reflects the local spatial policy. It is prepared in a specific statutory procedure and adopted by the gmina councils resolution. By the

will of the legislature it is an act of local law, an optional document and it does not need to cover the whole area within the administrative borders of the gmina.

The S.P.D.A. introduces the possibility of building land also on the basis of the land development conditions decision in the absence of a local plan. In order to protect the spatial order the legislature has also introduced the concept of "good neighborhood". However, it must be emphasized that the statutory provisions concerning the decisions of land development conditions and their interpretation by administrative courts led to total chaos in the Polish space.

The most important disadvantage resulting from the adopted by the Parliament regulations relating to the decision on land development conditions and their dominant interpretation by administrative courts is the possibility of implementing virtually any building project without the possibility of blocking such an investment by local authorities.

The terms of "good neighborhood", which were to ensure spatial order, contained in article 61 S.P.D.A. are interpreted against all the rules of rational planning. In legal discussions it is argued that "the establishment of the conditions and requirements, the fulfillment of which is subject to the right to develop the site or change the way its development without carrying out works, is, the action of limiting the range of rights to the land to which the investor (or other person) is entitled - this is a limitation of the freedom of citizens (including the freedom of economic activity, education, access to culture etc.), the limitation of the right to exercise the right of ownership, and can be made only for the purposes and on the terms set out in Article 31 of the Constitution. If so, this can occur only if it is necessary in a democratic state for its security or public order, or to protect the environment, health or public morals, or the freedoms and rights of others. These "restrictions" can not - as stated in the cited record - violate the essence of freedoms and rights. (...) .. the restrictions resulting from the Act can not be considered for any other purposes. In particular, they cannot serve realization of the economic policy of the public bodies administering planning rulership (eg. whether in the area of the gmina or city there are to be maintained only buildings and land for agricultural purposes, residential or other, only the gmina council in the local plan has the right to decide, and not the mayor (president) or the mayor in the issued zoning decision"(Kijowski, 2005: 13).

The concept of adjacent plot, the building of which allows to specify requirements for new development in terms of the continuation of the functions, features and indicators of shaping the building and land development in the case of law of administrative courts should be

considered broadly. It is justified by the protection of property rights, as well as declared in art. 6 paragraph. 2 (S.P.D.A) the principle of freedom in developing land. Therefore, the notion of adjacent plot can not be understood as only bordering plot, but you should refer the concept to real estates and areas located in the neighborhood making a certain urban whole "(Chojnacka, 2009: 77). Unfortunately, this approach is reflected in the jurisprudence of administrative courts. Thus:

- "It is sufficient that in the analyzed area there is one object that allows to conclude that the building intention presented in the investors application is acceptable in the light of the requirements of spatial order, which is to serve the principle laid down in art. 61 paragraph. 1 point. 1 S.P.D.A. (judgment of the Administrative Court in Poznań of 17 April 2014, Ref. Act IV SA / Po 264/14)
- One has to make such a search in the area covered by the analysis, if necessary, increasing the area analyzed, to allow adoption of the application of the investor (judgment of the Supreme Administrative Court of 16 March 2011., Ref., Act II OSK 496/10)
- A person entitled to the property can develop it in terms of the law in any way. Admittedly, they must do so in accordance with the terms of the decision of building conditions, but the statements contained herein represent concretizations of regulations that are to be expounded in favor of ownership rights (judgment of the Administrative Court in Lodz from 29 February 2012., Ref. Act II SA / Łd 39/12)
- The understanding of the continuing function of building and land development should be considered broadly, as interpreted by the system, which makes the doubt in favor of the powers of the owner or investor in order to be able to maintain the principle of freedom of land development, including its building "(Kafar, 2014: 23).

The wójt (village mayor), mayor or city president may under art.62, paragraph 1. S.P.D.A. suspend the decision on building conditions, but not longer than for 9 months. As noted by I. Zachariasz (Izdebski, Zachariasz, 2013: 349) “referring to the judgment of the Supreme Administrative Court of 4 July 2008. (II OSK 1222-1207, LEX 484,862), "the period of 9 months (...) defines the term (...) when the proceedings should be taken at the latest. Failure of the proceedings after that date will give the applicant investor the right to lodge a complaint about

the failure, because from that date every reason to suspend the procedure cease to apply under Article. 62 paragraph 1 S.P.D.A. "

As a result of so formulated law and adopted judicature we deal with the following spatial effects and the resulting losses:

a) scattering buildings in rural areas and "sprawl" of the cities - which results in increased spending on the construction of technical infrastructure, transport system not adequate to the needs, increased environmental pollution, increased time of commuting.

b) the devastation of natural and cultural landscape - reducing the open areas, especially in and around cities and in rural areas,

c) the weakening of the resilience of ecosystems to human pressure through their fragmentation.

d) the devastation of the existing urban and architectural values.

These are losses that are both measurable and incommensurable and therefore it is difficult to estimate their size. However, their nature, such as landscape, architectural and urban values are elements of national identity, which is a priceless value and as such should be subject to absolute protection.

Observing the practical operation of the rules governing the operation of the decision of development conditions one can conclude that we deal with a legal instrument for the development of almost every area of virtually any type of investment at any time. It is an instrument, which the mayor of a city or a village has limited possibilities to resist and he is obliged to hand it down. The only possibility to deny the decision is to establish a local plan for the area, which is concerned. However, given the time-consuming procedure for the adoption of the local plan, in practice it is difficult to implement. Therefore, it can be said that this is the instrument directly undermining the foundations of spatial order.

The necessity of establishing a local plan for the entire municipal area just to protect it against development, is at least controversial. Existing plans generally cover only urban areas or those for which it is the duty to establish the plan on the basis of separate regulations. This creates a situation where the majority of the surface of rural communities remain outside the planning sovereignty of local authorities. Rather than adopting local plans to protect the land against development it is enough to introduce an absolute prohibition on issuing building permits for areas outside operating plans.

Assuming that Poland is a country of law, and the courts stand on its guard, the above state of affairs should be read as an evidence of bad law making. It is a symptom of a huge weakness of the state. This shows clearly that the state (legislator), could not and / or did not want to formulate laws that would clearly and with uncertainty formulated the goal it intends to achieve, ie. the order in spatial planning. (Brzeziński, 2015: 116-117)

Other legislation affecting the dispersion of development is the Local Government Act (L.G.A.) (Ustawa o samorządzie lokalnym, Dz.U. 1990, No 16, item 95) and the Act of Maintaining Order and Cleanliness in the Community (A.M.O.C.C.) (Ustawa o utrzymaniu czystości w porządku w gminach, Dz.U. 2013 item 1399) in the context of the act of property management (A.P.M.) (Ustawa o gospodarce komunalnej, Dz.U. 1997, No 115, item 741.)

Article 7 of the L.G.A., states that the gmina own tasks include, among others, matters of gmina roads, streets, bridges, squares, water supply, sewerage, disposal and treatment of urban waste water, cleaning and order, sanitary facilities, landfills and disposal of municipal waste, supply of electricity, heat and gas; activities in the field of telecommunications, and municipal greenery and afforestation of trees. However, these investments are carried out according to the provisions of the Act of Property Management, which sets no time limit in which these projects are to be realized.

The Supreme Court in its judgment of 21 March 2003. II CKN 1261/00, stated that the imposition by the art. 7 (L.G.A.) and art. 3 of the 1996 A.M.O.C.C. a duty to construct the sewage system and wastewater treatment plant does not lead to establishing on the side of gmina`s inhabitant or any other entity (eg. an investor building a housing estate) a subject right, on the basis of which they could claim the construction of such a device by the gmina or the reimbursement of its construction. The Supreme Court stated in the grounds of "the provision of Article. 7 of the L.G.A. stating in the first paragraph that the satisfaction of the collective needs of the gmina is its own responsibility, mentions in point 3 among the tasks of the case, among others, water supply, sewerage and wastewater treatment. Article 3 paragraphs 1 and paragraph 2 point 2 b in connection with Article 2 paragraphs 1 point 2 of the A.M.O.C.C. to the mandatory tasks of gminas include the construction, maintenance and operation of installations and equipment for recovery or disposal of waste. These provisions include, therefore, the mandatory tasks of gminas, among other things building on their premises water and sewer system and sewage treatment plants. The date and method of execution of those tasks is left to their self-

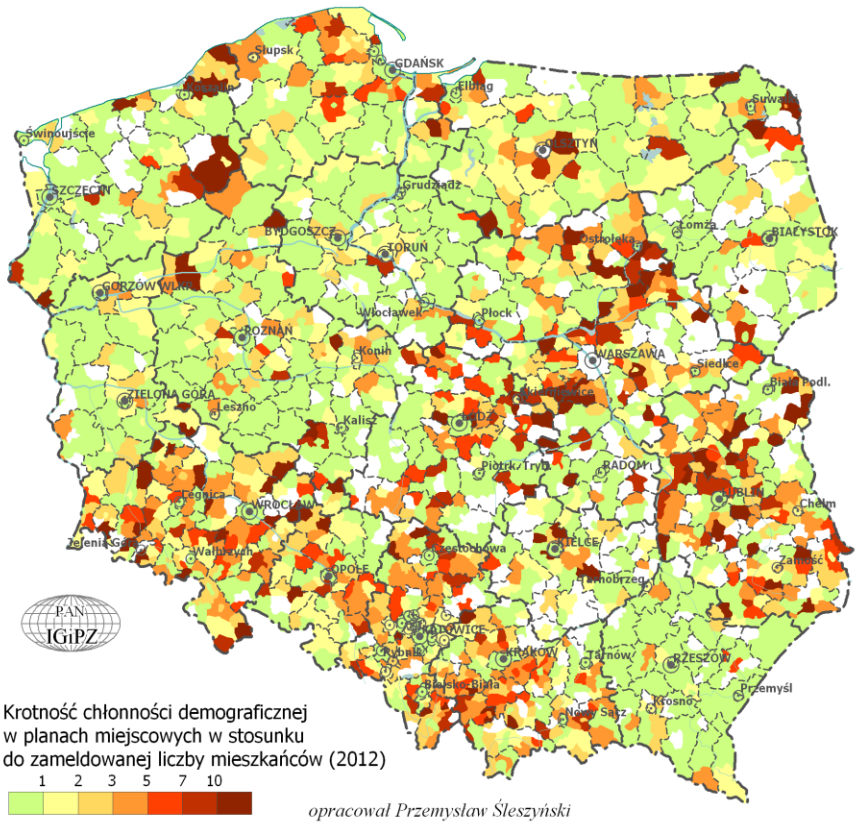
governing disposal, and these tasks must be carried out according to the principles laid down in the Act on Property Management (Dz. U. of 1997. No. 9, pos. 43 ), which does not provide any rigor to decide on the time and the order of carrying out these tasks. (...) The fact that such facilities should be compulsory gmina's own tasks and that a plaintiff bought for the construction of houses land designated for such purposes in the local land development plan providing for duty prior to build in the area of sewage treatment plants, there is no obligation to gmina to build on the sewage treatment in time, place and for purposes connected with the construction carried out by the plaintiff. "(judgment of the Supreme Court (wyrok Sądu Najwyższego) II CKN 1261-1200 (LEX no 78846).

The judgment means that even if the roads and other infrastructure for handling the area covered by the plan have been marked, in adopted local plan, it does not impose an obligation to gmina of its implementation, and to determine the date of its implementation is the responsibility of the gmina. Therefore, the construction of infrastructure may be spread by the gmina for any length of time. This results in far-reaching spatial consequences.

According to MTBiGM (Ministry of Transport, Construction and Maritime Economy) /GUS (Central Statistical Office) at the end of 2012 in Poland there were 41 625 local plans with an area of 8722.3 thousand ha (27.9% of the country). Provided total area of destination of residential areas for data covering 8,289.5 thousand ha (95.0% of the total area) amounted to 1234.4 thousand ha, on the development of a multi-family - 103.1 thousand. ha. Assuming indicators absorbency of 200 persons per 1 hectare (multi-family) and 40 persons per 1 hectare (housing construction), we obtain the total value of the absorption capacity of 43.2 million and 45.5 million people plus 5.0% of the plans for which there is no data on the participation of the authorized surface of housing area. Figure.1.

The estimated total absorption of 62.4 million inhabitants, with assumptions, more than twice the level applies to single-family houses (43.4 million) than multi-family (19.0 million). It also turns out much higher than the number of population of the country according to the criteria of the official check-in (38.0 million people). At the same time it must be emphasized that the plans cover less than 30% of the country and obviously do not include all currently developed land settlement, and therefore the actual absorption is much higher. But there is no data to determine it exactly since it is not known what percentage of the population lives in areas covered by the plans, and what beyond. (Kowaleski et al, 2013: 19-20).

**Figure 1. The multiplicity of demographic absorbency according to records in the local plans in relation to the number of inhabitants registered (2012)**




Source: Kowaleski A. et al. 2013, 19.

The above calculations show that municipalities allocated more areas for development than development needs would indicate. Given that setting new land for development local authorities gain the favor of the inhabitants (increase in the value of land), and are not required to prepare land for development and pass on those costs to residents, it is clear that there exists no direct economic mechanism which obliges local authorities to rational land management. This leads to building sprawl of development in the majesty of law.

## 3. Conclusions and recommendations

The present system of spatial planning in Poland contributes to many negative phenomena in spatial planning, manifested among others in building sprawl both in the operation of land development decision, as well as earmarking under it the areas under the newly enacted local

plans not adequate to the actual needs. These processes occur with particular intensity in the vicinity of large cities and municipalities attractive due to their environmental values. Applicable laws directly or indirectly threaten the objective of EU Biodiversity Strategy for the period up to 2020 "Our life insurance, our natural capital "of halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020 and restoring them as far as possible and increase of the EU's contribution to preventing the loss of global biodiversity (European Commission, 2011: 3).

In order to prevent these negative processes the decision of building conditions must be eliminated and make the issuance of building permits in areas covered by the plan depend on the construction of infrastructure previously provided by gmina. Moreover, an absolute prohibition on issuing building permits outside the local plan must be introduced. This decision will make the municipality become a real "host" of space and buildings will appear only where the local authorities will plan it.

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## *Zagrożenia zrównoważonego rozwoju wynikające z uwarunkowań prawnych planowania przestrzennego w Polsce*

### *Streszczenie*

Człowiek będąc jednym z elementów środowiska jest uzależniony od jego jakości. Obecnie prawo do czystego środowiska jest zaliczane do podstawowych praw człowieka a sposobem aby je zachować jest rozwój zrównoważony. Jednym z elementów tego rozwoju jest zachowanie i ochrona bioróżnorodności, która podlega coraz większemu zubożeniu w wyniku działalności ludzkiej, w tym polityki przestrzennej. Postępująca zabudowa nowych obszarów zarówno w wyniku nadpodaży terenów inwestycyjnych (mieszkaniowych, przemysłowych etc.) w planach miejscowych, jak i decyzji o warunkach zabudowy powoduje degradację środowiska poprzez zmniejszenie powierzchni terenów otwartych, zubożenie składu gatunkowego roślin i zwierząt
Wśród przyczyn takiego stanu rzeczy możemy wymienić m.in. wadliwy system planowania przestrzennego i wynikającą z niego – pośrednio - gospodarka gruntami. Cel artykułu sformułowany jest następująco: obowiązujące rozwiązania prawne polskiego systemu planowania przestrzennego wpływają destrukcyjnie na bioróżnorodność, a przez to na zrównoważony rozwój w Polsce.

***Słowa kluczowe:*** zrównoważony rozwój, planowanie przestrzenne, ochrona bioróżnorodności