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ASKING ABOUT THE FUTURE OF SPATIAL MANAGEMENT IN POLAND

(THIRTEEN YEARS ON FROM THE 2003 LEGAL REGULATION)*

I. INTRODUCTION

The 13 years of spatial management in Poland, governed by the Spatial Planning and Spatial Development Act of 27 March 2003,[1] are, it would seem, a long enough period to assess the effects the legislation has had on land development. Moreover, the assessment takes on greater importance, because work is continuing on a new legal instrument to regulate—to keep to the 2003 terminology—spatial planning and spatial development. Actually, however, the new instrument should endeavour to regulate all those activities that make up spatial management, broadly understood. What is more, to reflect on the practical effects of the SPSDA currently in force is important for yet another reason: work is in progress on a new piece of legislation, with a bearing on spatial management, namely the 'Building Code'.

A completely different question is the need to regulate matters related to socio-economic development, especially as it is primarily this development that is the driving force behind changes in land development. It may be sensible, therefore, for the Sejm (Polish parliament) to draft and pass a bill entitled 'Development Planning Act' especially as ever more firmly established local self-governments are obliged by law to care for both socio-economic and spatial development.[2] Furthermore, in favour of considering the idea of drafting such legislation (development planning), there is a need to return to integrated planning such as drafting integrated development plans for local self-government units or, alternatively, integrating the planning process. This need, which has become ever more pronounced, one can argue is supported further by logical necessity, following on from the legislation in force in order to refer in various planning documents to strategies

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[1] Journal of Laws of the Republic of Poland (JL RP) 2003, No. 80, item 717, as amended (hereinafter 'SPSDA' or 'the Act').

[2] Commune Self-Government Act of 8 March 1990, JL RP No. 16, item 95, as amended (hereinafter 'CSA') — Article 7; Provincial (Regional) Self-Government Act of 5 June 1998, JL RP No. 91, as amended (hereinafter 'PSA') — Article 11(1), and the Spatial Planning and Spatial Development Act of 27 March 2003.

of socio-economic development.[3] The scholarly literature, too, often emphasises the necessity for cooperation between public authorities at various levels in pro-development efforts.[4] The idea, in this context, of 'integrated development' has been enshrined in the European Union documents concerning regional and urban policies. These issues, however, go beyond the scope of this article, which is chiefly devoted to the description of the Polish system of spatial planning and assessment of its effectiveness, and therefore will not be discussed here. It is worth remembering in this context that spatial planning is the first stage of spatial management—it is a prospective stage with respect to managing space and managing in space (spatial management in the strict sense of this term), the final effect of which is spatial development.[5]

II. THE POLISH SYSTEM OF SPATIAL PLANNING UNDER THE SPATIAL PLANNING AND SPATIAL DEVELOPMENT ACT OF 27 MARCH 2003

1. System elements

Despite the generally critical opinion of spatial planning under the SPSDA, this Act, it must be admitted, still defines the Polish system of spatial planning and management. Obviously, various models of planning system can be developed and a tolerably reasonable model should emerge from the expected changes.[6] As with any system, the system of spatial planning in Poland is made up of elements: objects of planning (plannees), planning entities (planners), planning documents, relationships between these elements and the planning system environment.

In Poland, objects of planning (and of spatial management as well) include the territorial (division) units of the country: the country as a whole, provinces (*województwa*) and communes (*gminy*) or parts of communes marked out for the purpose of drafting local spatial development plans (physical plan). In a sense, the objects of spatial management and planning comprise also metropolitan areas for which autonomous studies of determinants and directions of spatial development are drawn up, as well as the urban functional areas of provincial centres, but their development plans form part of provincial development

[3] SPSDA.

[4] K. Kokocińska, *Prawny mechanizm prowadzenia polityki rozwoju w zdecentralizowanych strukturach władzy publicznej*, Poznań: WN UAM, 2014; eadem, Współdziałanie podmiotów władzy publicznej na rzecz rozwoju, *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 77(3), 2015, 181–191.

[5] J. Parysek, *Wprowadzenie do gospodarki przestrzennej*, Poznań: WN UAM, 2006.

[6] The model of the Polish system of spatial planning according to the law as stated on 1 December 2001 is presented by Z. Niewiadomski in *Planowanie przestrzenne. Zarys systemu*, Warszawa: LexisNexis, 2001.

plans. The law distinguishes also other functional areas but does not consider them explicitly objects of spatial planning and spatial development (see Chapter 2a and 4a SPSDA). In another place, however, the term 'problem areas' is used, alas without defining the relationships between the concepts defined. The planning entities, in turn, include the Council of Ministers, for the country as a whole (in an executive role, the minister for regional development matters), provincial (regional) self-governments (*sejmiki*) for provinces, and commune councils for communes. A new planning entity in a sense, an indeterminate 'metropolitan union',[7] is, under the SPSDA, responsible above all for a spatial policy within a relevant territorial division unit (Chapter 1, Article 3 SPSDA). The Act mentions also the self-governments of districts (*powiaty*), one task of which is to conduct analyses and studies in the area of land development. This, however, can hardly be considered a planning power within the field of spatial planning or management.

One can speak of seven basic categories of planning documents in the Polish spatial planning system whose character and significance vary. On the national level, it is (1) a country spatial management conception, on the provincial level—(2) a provincial (regional), spatial development plan, (3) a study of the determinants and directions of spatial development of a metropolitan union area, (4) a spatial development plan of the urban functional area of a provincial centre, (5) a landscape audit, drafted at least once in 20 years—a document hitherto unknown to Polish planning practice, and on the commune (local) level—(6) studies of determinants and directions of spatial development of communes and (7) local, spatial development plans (physical plans). Changes to land development and management within a commune are also introduced by the administrative decision on 'buildup and land development conditions', although it can hardly be called a planning document.[8] The country spatial management conception (SMC) is a set of spatial policy goals of the State and a certain vision, rather poorly sketched in comparison to former national plans of spatial development. As a document, it does not have the force of law; its function above all is to form overall concepts, devise strategies and provide information. It is, in the first place, an overall vision of the state of development in the country to be achieved by a set time horizon as a result of achieving the aims set out in the document. Similar functions are fulfilled by the provincial development plan, which is the development conception of a specific region. An important part of this plan is the development plan of an urban functional area of a provincial centre, in particular because of the ongoing suburbanisation processes and the rise of metropolitan structures. Spatial solutions adoptable in the provincial (regional) spatial development plan will be restricted by the landscape audit—a new document in Polish planning practice—serving in a sense as a pre-planning study, known from planning

[7] The metropolitan union is defined by the Metropolitan Union Act of 9 October 2015, JL RP 2015, item 1890.

[8] Regulation by the Minister of Infrastructure of 26 August 2003, JL RP No. 164, item 1588.

methodology. Provincial spatial development plans (to a lesser degree than the SMC) fulfil also a strategic function but their purpose is above all to form concepts and make decisions. Both these regional-level planning documents (audit and plan) are only internal management documents, providing guidelines for provincial self-government bodies with respect to spatial policy and spatial management.

A framework study of the determinants and directions of spatial development of the metropolitan union area is not a legal act, either. Actually, the SPSDA does not specify what kind of planning entity the metropolitan union is. The spatial policy of a commune, in turn, may and should be formulated pursuant to the study of determinants and directions of spatial development of the commune. This is a set of determinants and land development directions set out in compliance with them. This is also a document of internal management although completely different in terms of its nature and contents from those mentioned earlier. Theoretically, the future development of the territory of a commune should be decided in a local plan (physical plan), which is a local bylaw binding on the inhabitants and business entities residing or domiciled in the commune. A local, spatial development plan has primarily decision-making and realisation functions. Under the spatial management law currently in force and considering its cohesion, this is the only ground for making changes in land development.[9] Unfortunately, land development is increasingly determined by administrative decisions on buildup and land development conditions, and not plans. It must be added in this context that the legislator assumes that on all the levels of spatial management, subsequent analyses, studies, programmes, forecasts and conceptions will be carried out or formulated, as they are useful or even indispensable for conducting spatial policies. The number and scope of such undertakings, it seems, are left to the discretion of planning entities (self-government bodies).

2. Systemic relationships

These planning documents have a hierarchical structure, with the principle of superiority-inferiority being laid down by the Act. Generally speaking, the assumptions underlying a country development plan must be taken into account in the spatial development plans of provinces (regions) and communes, while the formulations of a provincial, spatial development plan must be taken into account by the local, spatial development plans of communes forming part of a given province. This is particularly true of public projects and guarantees the cohesion of the spatial planning system. Furthermore, there are other relationships that require that landscape audit results be taken into consideration in a provincial development plan and that the contents

[9] Z. Leoński, M. Szewczyk, *Zasady prawa budowlanego i zagospodarowania przestrzennego*, Poznań and Bydgoszcz: Oficyna Wydawnicza Branta, 2002, 54–60.

of this plan be taken into account in a framework study of the determinants and directions of land development of a metropolitan union area and the development plan of an urban functional area of a provincial centre.

The relationships mentioned above have been in a sense formalised in the approval and coordination procedures related to planning. For instance, the studies of the determinants and directions of spatial development of communes must be agreed with a respective provincial cabinet (at the drafting stage) as far as their compliance with the provincial development plan is concerned (Article 11 SPSDA). Next, the adopted study is sent to the governor (*wojewoda*) who assesses if it complies with the law. A similar procedure applies to a local plan, the draft of which is agreed with the governor, provincial cabinet, as well as with the district cabinet in particular in respect of central government and self-government tasks (Article 17 SPSDA). The adopted plan is submitted to the governor for assessment if it complies with the law (Article 20 SPSDA). The same procedures of ensuring compliance and approval apply to the provincial development plan. A draft plan must be given a favourable opinion by the provincial urban-development and architecture commission. Other required opinions include those by 'proper institutions and bodies' such as the governor, district cabinets, and chief executive officers (*wójt*) of communes and mayors or presidents of towns and cities located within the province, as well as public administration bodies in areas adjacent to the borders of the province. Next, the draft plan is submitted to the minister (of building, spatial management and housing for assessment) if it complies with the country, spatial management plan. These procedures do not infringe in any way the planning independence of communes or their planning powers which are vested only in the bodies of such a territorial unit as the commune (urban, urban-rural, rural).[10] Of course, the central government has the duty, on the one hand, to implement spatial policies on the national scale, and on the other hand, to coordinate the attainment of public goals of more than local significance, which is known as the principle of competence of the central government administration in formulating the spatial policies of the State.[11] Hence, it can be said that the systemic relationships in the Polish planning system follow from task decentralisation and system cohesion in which each level of spatial planning (spatial management) has its specific tasks and fulfils specific functions.[12]

The above relationships, albeit only the most important ones among those provided for in the SPSDA, are of an intra-systemic nature (concern the planning system). However, in the existing system of spatial planning, external relationships must be taken into account. They tie the spatial planning system elements to the elements of other planning systems,

[10] Z. Niewiadomski, *Planowanie przestrzenne*; J. Parysek, *Wprowadzenie*.

[11] Z. Niewiadomski, *Planowanie przestrzenne*.

[12] Z. Leoński, M. Szewczyk, *Zasady prawa budowlanego*; Z. Niewiadomski, *Planowanie przestrzenne*; J. Parysek, *Wprowadzenie*.

forming the environment of the Polish spatial planning system. These are above all, relationships connecting land development plans and the studies of determinants and directions of development (to a lesser extent, landscape audits) to the strategies of the socio-economic development of territorial units, natural environment protection and shaping plans, Revitalisation Act, Metropolitan Unions Act and other pieces of legislation. The importance and significance of such relationships follows from the fact that it is socio-economic development that generates needs in the area of land development, while the properties, quality and state of the environment mark the bounds of possible solutions (which is stressed by the provision on the scope of the subject matter of an audit—Article 38a SPSDA). The necessity of modelling these relationships is emphasised by the legislator in the Act under discussion.

3. System surroundings (environment)

It is difficult to describe precisely the surroundings or environment of the planning system. For planning entities, the surroundings are formed by other, external planning entities. For a commune, these are other communes, as well as the province in which the commune lies, and the country as a whole. For a province, the surroundings (environment) are formed by other provinces and the country, while for the country, these are neighbouring countries, Member States of the European Union and the other countries of the continent. For spatial management and spatial planning, the surroundings comprise the economy in general and the spatial management of the country's territorial division units, external in relation to the given unit. The surroundings for the draft planning documents of land development include other draft planning documents concerning the object of spatial planning such as socio-economic development strategies, economic programmes, local revitalisation programmes, local natural environment protection and shaping plans and programmes.

In the entire planning system described above, pride of place is taken by the commune within which spatial management actually takes place. The planning power and competence of the commune authorities to determine to what use land is to be put are unequivocal and enjoyed to the exclusion of all other spatial management entities. Admittedly, in the studies of the determinants and directions of the spatial development of communes and sometimes in local development plans, too, consideration is given to the assumptions of the spatial policy of the State and the conception of spatial development of a province (and of other planning documents), but the realisation of supra-local aims in combination with local ones takes place in the commune. Hence, in the Polish spatial planning system, the design of which leaves much to be desired, the commune is the key element in relation to both spatial planning and spatial management. It is the only planning entity with the force of law behind it and which takes advantage of the law (local, spatial development plan).

III. THE SCOPE OF THE SUBJECT-MATTER AND THE ROLE OF PRINCIPAL PLANNING DOCUMENTS

1. A country spatial management conception (SMC)

Under the SPSDA, Article 47, a country spatial development conception, taking into account aims set in government strategic documents, is drafted by the minister for regional development affairs. The conception should abide by the principles of sustainable development following from natural, cultural, social and economic development determinants. Pursuant to the SPSDA, Article 47(2): 'The country spatial development conception specifies the determinants and directions of the sustainable development of the country and actions necessary to achieve it […]'. It focuses, in particular, on issues related to the settlement network, environment and historical monument protection questions, distribution of technical and social infrastructure of national and international significance, and of strategic water resources. In addition, it pinpoints problem areas, including those calling for detailed studies and plans.

2. Landscape audit (provincial, regional)

This is a new instrument of spatial planning at the provincial level. A landscape audit should be carried out at least once in 20 years and precede the drafting and adoption of a provincial development plan (Article 38a(2) SPSDA). 'The landscape audit identifies landscapes to be found across the province (region), specifies their characteristics and assesses their value'. In particular, it lists landscapes to be found in the province and locates cultural parks, national parks, nature reserves, natural scenic areas, protected landscape areas, objects listed on the UNESCO World Heritage List, UNESCO Biosphere Reserves. Moreover, it identifies threats to the preservation of the value of landscapes and objects, gives recommendations and draws conclusions concerning the modelling and protection of landscapes (including landscapes within the designated areas or objects), in particular, by indicating areas to which nature protection measures should be extended (as defined in the Nature Protection Act), and lists local architectural forms within the landscapes (Article 38a). The recommendations and conclusions cannot be inconsistent with the aims of area and object protection and measures to this effect, as defined in the Nature Protection Act[13] or the Protection and Guardianship of Monuments Act.[14] Furthermore, the landscape audit may indicate the areas covered by nature protection measures that are in need of a thorough analysis to determine if it is worthwhile to continue their pro-

[13] Nature Protection Act of 16 April 2004, JL RP 2004, No. 92, item 880, as amended.

[14] Protection and Guardianship of Monuments Act of 23 July 2003, consolidated text: JL RP 2014, item 1446.

tection owing to a significant drop in the landscape value (Article 38a). The Council of Ministers will lay down by regulation detailed rules for carrying out landscape audits and the scope of their subject. The purpose of such an audit is to 'ensure the proper protection of landscapes and the possibility of shaping them, and preserving those which are the source of identity of the Polish nation'. An audit report is drafted subsequently by the provincial cabinet and adopted by the provincial assembly (*sejmik*) once the opinion-gathering and consultation procedures are completed (Article 38b(2) SPSDA).

3. Provincial (regional) spatial development plan

A resolution to commence work on a provincial (regional) development plan is adopted by the provincial assembly (Article 39(1) SPSDA), while the document is drafted by the provincial cabinet (Article 39(2) SPSDA). The provincial, spatial development plan defines specifically: the settlement network and its elements together with their infrastructure and transport links, system of protected areas (of the environment, nature, cultural landscape, resorts, cultural heritage, historical monuments and contemporary culture assets), distribution of supra, or above-local public projects, boundaries and development principles of the functional areas of above-regional and regional significance, special flood-hazard areas, boundaries of off-limits areas and their protection zones, as well as documented mineral deposit areas and the documented complexes of underground carbon-dioxide storage (Article 39(3) SPSDA).[15]

As already mentioned, a provincial spatial development plan takes into account the country spatial development conception, including in particular public projects of above-local significance (Article 39(5) SPSDA). The minister for regional development defines by order the required scope of a draft provincial development plan, paying special attention to the requirements concerning planning materials, cartographic components, designations used, nomenclature, standards and the manner of documenting the planning works (Article 40 SPSDA).

A part of the provincial, spatial development plan is formed by the spatial development plan of an urban functional area of a provincial centre, which may also cover areas lying beyond the boundary of an urban functional area (Articles 39(6) and 39(7) SPSDA). It must be stressed in this context that before the plan is adopted by the provincial assembly, the head of the provincial cabinet (*marszałek*) negotiates the plan with entitled entities and obtains opinions provided for in the SPSDA (Article 41). The adopted plan is an instrument for pursuing the spatial policy in the province.

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[15] As some provisions of the original version of the SPSDA have been abrogated, in enumerating the aims, tasks and duties, etc., the abrogated provisions (e.g. item 5 in Article 39(2)) have been left out.

4. Framework study of the determinants and directions of spatial development of a metropolitan union area

The study is drafted by a metropolitan union, taking into account the provisions of the provincial development plan. The object of this document (plannee) is the 'entire metropolitan area' (Article 37o SPSDA). The document specifies the principles and areas of the development of transport and technical infrastructure systems, and locates other public projects of metropolitan significance. Moreover, it specifies the principles and areas of natural environment protection (landscape, ecological corridors) and those of the protection of resorts, cultural heritage and historical monuments, and contemporary culture assets. Further, the study incorporates decisions following from the principles of development and protection of lands located within the metropolitan area and determines the maximum size of areas designated for development, divided according to development kinds and among member communes. Consideration is given in this context to the needs and development possibilities of the metropolitan area, referring to economic, environmental and social studies, demographic forecasts, the fund-raising capacity of communes and the metropolitan union to finance projects serving the execution of tasks for which these units are responsible, and finally, the balance of building land.

The Act makes it absolutely clear that the determinations of a metropolitan study cover only those elements which are necessary to give proper guidance to the spatial policy of the communes belonging to the union in order to ensure the spatial and socio-economic cohesion of the metropolitan area. The decisions are binding on the chief executive officers of communes or mayors or presidents of towns or cities, when drafting their respective studies, although the metropolitan study does not have the force of a local bylaw.

5. Planning documents on the communal level (instruments of spatial policy and spatial planning)

As already mentioned, only commune authorities have been endowed by the legislator with planning powers, which means that communal self-government has been considered the principal entity of the existing spatial planning system in Poland.[16] Hence, pursuant to the SPSDA, Article 1, working out and adopting the principles of spatial policy, the commune, as a unit of territorial self-government, adopts a study of the determinants and directions of spatial development (study), whereas determining the scope and manners of designating land for specific purposes (zoning) and laying down the principles of developing the land and building it over, the commune adopts local development plans (physical plan, local plan). However, it also makes administrative decisions—decisions on buildup and land development conditions. The main, in principle, obligatory scope, in terms of subject matter, of both planning documents is given in Table 1.

[16] Z. Niewiadomski, *Planowanie przestrzenne*; J. Parysek, *Wprowadzenie*.

Table 1

Determinants and aims of spatial development and the obligatory part of the plan

Study of determinants and directions of spatial development		**Obligatory content of local development plan**
Major determinants	**Directions and areas**	
• Current purpose and service infrastructure • State of spatial governance • State of the natural environment and agricultural production space • State of cultural heritage monuments • Conditions and quality of life of inhabitants • Hazards to the safety of people and property • Needs and possibilities of economic development • Legal status of land • State of technical infrastructure and transport systems • State of power engineering, water, sewage and waste management • Occurrence of protected objects and areas • Occurrence of documented deposits of minerals and waters • Occurrence of geological hazard areas and mining areas • Tasks designed to realise above-local public goals	• Directions of changes in spatial structure • Directions of land use • Directions of development of infrastructure and transport systems • Directions and principles of modelling agricultural and forest production space • Directions and rules of natural environment and resource protection • Protected areas of the natural environment • Protected areas of the cultural environment • Areas where public projects of a local and above-local significance will be located • Areas of geological, geotechnical and hydrological hazards • Areas of mining safety pillars • Areas of Holocaust monuments and protection zones • Areas requiring transformation, rehabilitation and restoration • Off-limits areas and protection zones • Areas for which it is obligatory to draft local development plans • Other problem areas	• Designation of land for specific purposes (zoning) • Modelling principles of spatial governance • Protection principles of the natural environment • Protection principles of the cultural landscape • Protection principles of cultural heritage, historical monuments and contemporary culture assets • Designation of land for public space • Development modelling indicators (lines, overall dimensions, development intensity) • Designation of areas requiring protection and principles of their development • Special principles of land development • Principles and conditions of consolidating and dividing immovables • Principles of expansion and modernisation of technical infrastructure and transport systems • Manner and time-scale of temporary land use • Boundaries of functional areas and other areas having special functions

Source: drafted on the basis of the Spatial Planning and Spatial Development Act of 27 March 2003 (original version of 27 March 2003).

5.1. Study of determinants and directions of spatial development

As the name suggests, the study is for the most part a set of development determinants and consequent development directions, although the latter may follow also from other documents such as the country spatial management conception (SMC), strategic country development documents, provincial (regional) spatial development plan, landscape audit, strategy of socio-economic development of the province, strategy of commune development and others. The study, albeit obligatory, may not form the basis for any land development decisions for it is only an act of internal management and not a local bylaw. Nonetheless, the study binds the planners drafting local development plans (Article 9 SPSDA). Neither is it a substitute for former master plans, the drafting and adoption of which are not, unfortunately, provided for in the SPSDA of 2003.

5.2. Local spatial development (physical plan)

Allowable land use, public project location and the manners and conditions of spatial development and buildup are all included, as already mentioned, in the drafted and adopted local, spatial development plans (Article 4(1) SPSDA). The plans are not required to cover the entire territory of a commune but only those areas that have been indicated in the 'study' by the commune authorities, and others for which plans are required under other regulations (Article 9(2) SPSDA). Although the Act does not provide for drafting development plans for the entire territory of a commune, there is nothing to prevent, it seems, planners from drafting and adopting such plans, as special cases of local plans (physical plans). It is unclear, at least for the present author, if such a document can be considered a local bylaw and if the entire territory of a commune can be designated as the object of a local plan in the 'study'.

Only recently (after the passage of the Revitalisation Act of 9 October 2015, JL RP, item 1777), has the local revitalisation plan become a special form of the local, spatial development plan (Article 37a). In the event that there is no local spatial development plan and the coverage of the commune territory with local plans varies, the determination of land development and buildup conditions is done by way of an administrative decision in respect to these.[17] Public projects, in turn, are located by way of another administrative decision, namely the decision on the location of a public project (Article 4(2) SPSDA).

[17] P. Śleszyński et al., Stan zaawansowania planowania przestrzennego w gminach, Prace Geograficzne 211, Warsaw: Instytut Geografii i Przestrzennego Zagospodarowania PAN, 2007.

Table 2

Description of Polish planning system
under the Spatial Planning and Spatial Development Act of 27 March 2003

Characteristic	Consequences for land development
Duality	The spatial development of a town and commune is carried out pursuant to two inconsistent planning documents of a different and illogical legal status (study of determinants and aims of land development and local development plan)
Absence of overall conception and system	The absence of the duty to have a master development plan results in spatial development taking place without an overall conception of the commune (town's) spatial-functional structure. The planning entity, such as the commune, town or rural area, is not treated as a whole (spatial system or territorial social system)
Selectivity	Local spatial development plans are drafted for any areas of the town selected for various reasons
Bureaucracy and over-formalisation	The object of planning and spatial management is treated instrumentally and its future characteristics (land development) are described in the briefest possible manner following from the SPSDA
Autarky and particularity	Planning documents are drafted as if a town or commune were autarkic units. No consideration is given to the neighbouring territorial units, in particular the neighbourhood of a large city (commune as part of an agglomeration)
Short-sightedness and temporariness	Issuing spatial planning decisions, the authorities take into consideration only the current, ad hoc interest of the town (commune) and not a longer time perspective
Clientelism and parasitism	Local development plans are drafted in the first place to meet the needs reported by specific investors, ignoring the spatial-functional structure of the commune (town) and the effects of the planned development
Manipulation and corruption-proneness	The fact that it is possible to develop a plot pursuant to an administrative decision on buildup conditions gives space for manipulation in designating the plot for a specific purpose
Non-participation	The possibility of filing comments and objections to the drafted planning documents, provided for in the SPSDA, can hardly be considered making the planning process and spatial management participatory
Illogicality	In the EU Member States, spatial development is conducted in agreement with both general and specific plans. The land to be developed is already provided with utilities and its road network is connected to the transport system of the town. The land is under local government administration. To the specific plot, to its functions provided for in the general plan and its development principles laid down in the specific plan, potential investors must adapt and spatial planning supervision makes sure that they do. In Poland, in contrast, land development decisions are made by land owners and investors. To meet the needs of the latter, buildup conditions are established or local development plans are drafted
Unconstitutionality	The spatial management process conducted in line with the SPSDA guarantees neither sustainable development nor maintaining or introducing any spatial order, which contravenes the Polish Constitution and the provisions of the SPSDA

Source: J. Parysek, Systemowy model planowania przestrzennego wyzwaniem dla gospodarki przestrzennej w Polsce, in: S. Ciok, K. Janc (eds.), *Współczesne wyzwania polityki regionalnej i gospodarki przestrzennej*, Rozprawy Naukowe Instytutu Geografii i Rozwoju Regionalnego Uniwersytetu Wrocławskiego 32.2, Wrocław, 2014, 9–24.

5.3. Determination of buildup and land development conditions

In the event that there is no local, spatial development plan (physical plan), the development of such land, consisting in the location of development objects, performance of other construction works, change of the use of a built feature or part of it, requires first that buildup conditions be determined by decision (Article 59(1) SPSDA). The decision on buildup conditions is issued by the chief executive officer of a commune (*wójt*) (mayor, president of a city) after obtaining suitable approvals and complying with separate regulations (Article 60(1) SPSDA). The decision may be issued only if the following conditions are jointly met—according to Article 61(1) SPSDA: '(1) At least one neighbouring plot, accessible from the same public road, has been built up in the manner permitting the stipulation of the requirements for new buildings concerning function continuation, the parameters, characteristics and indicators of building design and land development, including the overall dimensions and architectural forms of built features, building setback and land use intensity; (2) the plot has access to a public road; (3) existing or prospective service infrastructure, subject to para. 5, is sufficient for the construction project; (4) the plot does not require a permit to change its designation from farmland and woodland to other purposes than farming and forestry or is covered by a permit obtained at drafting the local plans that have been invalidated by Article 67 of the Spatial Development Act of 1994; (5) the decision complies with separate regulations […]'.

The manner of stipulating the requirements applicable to new buildings and spatial development when there is no local plan is to be determined by order by the minister (responsible for building, local planning, land development and housing; Article 61(6) SPSDA).

The provisions of the Act concerning spatial policy and planning in a commune are detailed and very complex. Hence, it is not possible to discuss them in detail as the purpose of this paper is rather a general discussion of the consequences of applying the provisions of the Act to spatial management, and not its juristic analysis.

IV. ASSESSMENT OF THE POLISH PLANNING SYSTEM AND ITS FUNCTIONING UNDER THE ACT OF 27 MARCH 2003

The Act of 27 March 2003 has been continually amended or rather expanded to include new detailed provisions, introducing major changes the purpose of which is sometimes hard to recognise. The major recently introduced amendments and complements concerned the introduction of a landscape audit, replacement of the spatial development plan of a metropolitan union area with the spatial development plan of an urban functional area of a provincial centre, introduction of the framework study of the determinants and directions of spatial development of a metropolitan union area or the introduction, as a special form of the local plan, of the local (communal) revitalisation plan.

There are many other amendments which make the law currently in force increasingly particular, complex and unclear, adding unnecessary complexity to the process of planning and adopting sensible solutions in contentious cases. This systematic extending of the confines of the Act makes it practically impossible to describe in any detail the effects of the Polish system of spatial planning or assess critically the very model of the spatial planning system operating under the Act of 27 March 2003, especially as we are faced every other moment with new legal matter (continual amending of the SPSDA).[18] Apart from these amendments many authors have criticised the Polish planning system and its functioning for several years now. The major criticisms are listed in Table 2.

A study of various opinions on the Polish spatial planning system functioning under the 2003 Act, concerning not so much the system as a whole, as planning at the local level, reveals two categories of opinion: favourable and unfavourable. The authors of favourable opinions are above all, people actively involved in planning procedures, some representatives of local authorities, owners of plots of land, property developers, serious investment capital, property market profiteers and lawyers. Professional planners consider the Polish spatial planning system very rational, but—it seems—above all because of the scope the subject-matter of planning documents and not the consequences of SPSDA application. If there is something that hampers and restricts the proper functioning of the system, it is politicians, investors and ownership. Such assessments are frequently formulated, relying on opinions heard in some media.[19] One cannot help but agree with the latter opinion concerning the obstacles and restrictions to planning. However, it makes life harder and complicates matters for planners if nobody else. For one should not call into question the possibility of achieving the principal goals of spatial management in particular such goals as spatial order and sustainable development. One should not emphasise the weak points of legal regulations, lending themselves to particularist interpretations, either. Such opinions and assessments are shared, unfortunately, by members of academia, including especially those engaged in planning and design work through their own executive teams. This time-consuming activity cannot obviously be conducive to academic work, especially in the area of the theory and methodology of spatial management.[20] The engagement in planning of such people does not incline them to assess critically the model of spatial planning in Poland, if only because the instrumental and formalised approach to the planning process and the broad possibilities of interpreting the SPSDA (especially in relation to planning at the communal level), enable them to draft planning documents relatively quickly. These are often tailor-made to the expectations of the investor or self-gov-

[18] A concise description of the spatial planning system in reference to the 1994 Spatial Development Act, rather modest in size, extended over 226 pages of the publication by Z. Niewiadomski cited earlier (*Planowanie przestrzenne*).

[19] I. Mironowicz, The state of the art of planning in Europe, *disP – The Planning Review* 51(1), 2015, 60–61.

[20] Ibidem.

ernment authorities; generally speaking, the entity paying for the design service. At the same time, they ensure a handsome return on investment, in which, understandably, professional planners are interested.

Local governments, on the one hand, are helped by the legislation currently in force to fulfil their statutory duty of meeting the collective needs of the community. This is done by the location of new business entities in the commune (such as new jobs, compensations, service improvement, communal infrastructure projects) and new residents (taxpayers, social capital), although the latter are often a nuisance for the authorities. On the other hand, the legislation clears the path for local governments to pursue a spatial policy at odds with the general interest of the community but favouring the interests of particular stakeholders, and create conditions for corrupt schemes.

The owners of plots, thanks to the SPSDA provisions, can obtain a satisfactory price on the property market, especially when the demand for buildable plots is high. Lenient provisions (administrative decision on the buildup and land development conditions) are conducive to, first, the easy and inexpensive procurement of buildable plots by developers (ignoring the consequences for future residents), next, obtaining a building permit and, finally, maximising returns from 1 square metre of purchased and developed land. Serious investment capital may practicably purchase suitable land for development in many places, especially as not all the territories of communes are covered by local development plans and the budgets of communes are quite modest.

The imperfect law, quite obviously, opens up ample opportunity for speculation on the property market and corrupt schemes. In addition, the complexity and ambiguity of spatial management law calls for its professional interpretation, especially as it is possible to secure practically any location decision and question every refusal through legal action. This is particularly true of projects in areas not covered by a local, spatial development plan. Hence, there has opened a huge market for legal advice further augmented by other disputes and conflicts related to land use, following from the weakness of spatial management law. Spatial management is thus not only a relatively new but constantly growing, because of bad regulations and continual amending, field of work for lawyers specialising in spatial management law.

The critics of the structure, organisation and functioning of the Polish spatial planning system include above all academic circles (in particular, people engaged in the study of the theory and methodology of spatial management, and questions of socio-economic development, urban management, urban economics, functioning of cities and agglomerations, and the processes of urbanisation or the questions of revitalisation), some representatives of local governments (chiefly of large and medium cities) and other people and organisations.[21] Furthermore, a critical opinion of the Polish planning system

[21] A. Billert, Planowanie przestrzenne a polityka. Trzecia droga do trzeciego świata, in: T. Ossowicz, T. Zipser (eds.), *Urbanistyka w działaniu. Teoria i praktyka. Materiały II Kongresu Urbanistyki Polskiej*, Biblioteka Urbanisty, Urbanista 9, Warsaw, 2006, 240–253; J. Parysek, *Wprowadzenie*; A. Jędraszko, Gospodarka przestrzenna w Polsce wobec standardów europejskich', Biblioteka Urbanisty, Urbanista 13, Warsaw, 2008; Z. Ziobrowski, Polityka przestrzenna a decyzje

and its functioning is shared by people with considerable experience gathered abroad and substantial scholarly achievements in the broad field of planning to their credit, including some planners—practitioners connected to universities. These are, however, mainly such people who are able, on the one hand, to take a critical view of Polish spatial management and, on the other, to combine rationally academic work with practice in particular in relation to the evaluation of planning documents and giving an opinion on them.

V. SPATIAL DEVELOPMENT AND MANAGEMENT AS A CONSEQUENCE OF THE SPSDA

To show the effects brought about in spatial development by the SPSDA of 2003, it is necessary to discuss its strengths and weaknesses, as well as the consequences of its application.

The departure from the 'Conception of Country Spatial Policy' and the adoption (as a document formulating the spatial policy of the State) of a more substantial 'Country Spatial Management Conception 2030' (SMC; Polish: KPZK), generally deserves praise.[22] Presented in the Conception, the vision of Poland's spatial functional structure is more specific and clear, but chiefly owing to maps placed at the end of the printed version. Despite the change of name and other by and large minor modifications, this is still, it seems, a document drafted for the purpose of carrying out a spatial policy at the national level.

In this context, a solution to be aimed at should be a 'country plan'. Such a document, despite the fact that it may provoke associations with the inglorious past when the old political system was in place, was, however, a product of the golden age of spatial planning in Poland. As components of such a plan, maps attached to the current conception could be used as they are a product of ongoing research.[23] Serious doubts are raised by the obsession, mentioned earlier, for introducing new concepts which without contributing anything new or good, cause terminological confusion. For instance, it is not known what is the purpose of distinguishing functional areas in the SMC as objects of spatial management when the entire country is covered by a network of overlapping

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o warunkach zabudowy and Spatial policy and the planning permits, in: *Papers from the conference on the interrelationships between decisions on determinants and aims of spatial development and local development plans*, Kraków, 2009. Conference Proceedings, 21–27; J. Parysek, Urban development policy of the European Union and the discretionary nature of Polish spatial planning, in: P. Churski, W. Ratajczak (eds.), *Regional Development and Regional Policy in Poland: First Experiences and New Challenges of the European Union Membership*, Part I, KPZK PAN, Studia Regionalia 27.1, Warsaw, 2010, 172–184.

[22] The present author does not pretend to be the reviewer of the SMC. The assessment of the document adopted by the Council of Ministers on 13 December 2011 has not been an object of any special interest.

[23] The maps were charted in the Institute of Geography and Spatial Organization Polish Academy of Sciences by a team headed by P. Śleszyński.

areas, not necessarily functional (specifically, functional areas of town impact and structural rural areas).

In the spatial-economic sciences in special-economic science, crucial regions are functional regions. As such there can be considered, in reference to the SMC, the areas affected by selected urban centres. What kind of functional areas then are rural lands, regardless of whether they participate in development processes or not, especially when they cover the entire territory of the country and when such areas are found in the zones affected by urban centres (other functional areas). Nor is it known why planning documents have been stripped of problem areas (which could and did serve various functions) which have been replaced by functional ones. Not every functional area is a problem area and vice versa. There is also a certain difference between a functional area and one fulfilling a function. In the theory of an economic region, a crucial region is a functional one and a homogeneous region is a structural one, although it may fulfil industrial, agricultural, tourist or other functions. Of course, both a functional and structural region may be a problem one. The proposed dichotomous division of the territory of the country into towns (including zones of their impact—functional areas) and villages (rural functional areas), with the country's spatial-functional structure being varied, which can be clearly seen on the maps attached at the end of the SMC, is, bearing in mind the implementation of the spatial policy of the State, a misunderstanding.[24] There are more such debatable proposals in the Conception and one does not need to study it thoroughly to notice them.

Praise is deserved by the scope of the subject-matter of provincial (regional) development plans, but their role in the implementation of the spatial policy of the State, development of provinces and planning on the local level should be even more emphasised. One strange idea is the replacement of a development plan of a metropolitan area with a spatial development plan of an urban functional area of a provincial centre. The very concept of a metropolitan area actually does not disappear but takes the form of a metropolitan union for which a plan is not drafted but rather a study of the determinants and aims of land development. However, there appears without good reason a new, hitherto unknown term 'functional area of a regional (provincial) centre' when the concepts of 'agglomeration' and 'urban region' have been known and used for a long time. It is for such areas that development plans should be drafted as parts of provincial plans.[25] Provided

[24] This is but one example of the weaknesses of the Conception (KPZK 2030) as evidenced by Fig. 40 on p. 196 of the cited government paper.

[25] A. Wróbel, Pojęcie regionu geograficznego a teoria geografii, Prace Geograficzne IG PAN 48, Warsaw, 1965; K. Dziewoński, Teoria regionu ekonomicznego, *Przegląd Geograficzny* 39(1), 1967, 33–50; Z. Chojnicki, T. Czyż, *Metody taksonomii numerycznej w regionalizacji geograficznej*, Warsaw: PWN, 1973; P. Korcelli, Regiony miejskie w systemie osadniczym Polski, in: K. Dziewoński, P. Korcelli (eds.), *Studia nad migracjami i przemianami systemu osadniczego w Polsce*, Prace Geograficzne IGiPZ PAN 140, Warsaw, 1981, 189–212; J. Parysek, *Modele klasyfikacji w geografii*, Geografia 31, Poznań: WN UAM, 1982; P. Śleszyński, Delimitacja miejskich obszarów funkcjonalnych stolic wojewódzkich, *Przegląd Geograficzny* 85(2), 2013, 173–197.

for in the SPSDA, the task of drafting development plans for functional areas of provincial (regional) centres will probably supplant the obligatory drafting of development plans for other agglomerations (besides the agglomerations of provincial capitals).

In the face of advancing suburbanisation, this change is not a good one. The adoption by the provincial (regional) self-government of an agglomeration spatial development plan would be a much better solution which would bolster planning at the regional level. This, as a matter of fact, would be consistent with the regional policy of the European Union and would be a sign of decision decentralisation in spatial management. It is not known what intentions lay behind the introduction of a landscape audit as an obligatory document preceding the drafting of a provincial development plan when the environmental aspect of drafted plans is underscored well enough in the SPSDA and studies done in preparation of a plan (studies, analyses, conceptions, programmes), including environmental ones, are integral to the work done in provincial spatial planning offices (Article 38).

Leaving the scope of the subject-matter of an audit to the provincial self-government therefore would be yet another sign of the decentralisation of decision-making in spatial management, a boost to the sense of regional identity (*sejmik*) and the appreciation of the knowledge and skills of planners working for regional planning services. The Act should give only an overall framework for the (subject-matter) scope of both the provincial (regional), spatial development plan and landscape audit (in the event this document is kept), leaving the details to regional authorities.[26] In this way, the Council of Ministers and the minister for spatial management would be relieved of the duty to draft regulations giving in detail the scope of the subject matter of planning documents to be drafted. In addition, this would contribute towards the curbing of bureaucracy. It is difficult to judge how the statutory modifications introduced over recent years and months will affect the planning process at the regional and national levels, and specifically its effectiveness viewed from the perspective of the interest of the State and that of the inhabitants of the regions, representing all parts of society.

What comes as a surprise is the fact that no power in spatial management has been granted to district (subregional, *powiat*) authorities. A district (*powiat*) is a territorial unit that appears to be an entity potentially well capable of not only sensibly managing local space but also performing local management in general. Serious thought should be given, therefore, to the appropriacy of granting district self-governments competences in socio-economic development planning, spatial management and environment use.

Most unfavourable changes in spatial development are caused by the SPSDA, 2003, at the level of territorial administration at which decisions on

[26] The subject-matter scope of a landscape audit and a provincial development plan provided for in, respectively, Article 38a and Article 39 is, as it seems, absolutely sufficient. Any extension of the scope should relate to the special character of a given province and follow from specific needs.

spatial development are taken, that is at the level of the commune. The Act, Article 1(1), defines: '(1) the principles of spatial policy to be followed by units of local self-government and bodies of central government administration, (2) the scope and manner of proceedings in matters of designating land for specific purposes (zoning) and determining the principles of its development and buildup—adopting spatial order and sustainable development as the foundations of these activities'. Alas, in spatial development, often neither spatial order nor sustainable development are to be seen, whereas chaos is evident. There are several, sometimes interrelated reasons of special significance for the chaos and lack of sustainability in land development.

First, communes lack general spatial development plans, meaning that a commune, as a whole being a territorial social system, is not an object of planning and spatial management. Spatial development plans are drafted and adopted in the first place for areas indicated in a study of the determinants and directions of spatial development or others (deemed important by local authorities). A 'study' is not a general plan of spatial development because it is not a local bylaw but only what is known as an internal management document. Admittedly, the methodology of spatial planning sometimes provides for the drafting of two categories of documents but these are always (1) studies in preparation of plans and (2) land development plans, both general and particular. General plans disappeared in 2005 from the Polish spatial planning system. It is quite obvious, however, that the spatial structure of the whole (including its order and sustainability) will never be the sum of individually modelled parts. In this situation, a legitimate question still remains about what spatial order and sustainable development are supposed to relate to. To the commune or the land under development? For many stakeholders and people, this situation is, however, very convenient as it makes it possible under a local plan or an administrative decision to further their own particular interests. The legislator must have forgotten that a commune is a functional whole, and that its spatial organisation, structure and functioning cannot be modelled without a suitable model of the whole, which a general plan is.

Another result of SPSDA provisions, besides the lack of general land development plans of communes, is the fact that local development plans do not cover communes in full. In consequence, an administrative pathway of land development is sanctioned and functions unhindered. The decision on buildup and development conditions, which was to be an exceptional measure, has become common practice and is the second reason behind the current state of affairs. In practice, it means that it is possible to designate any land for almost any purpose, together with its specific buildup.

The five conditions stipulated in the SPSDA to be met when applying for such a decision can be met in almost any situation and the right to apply successfully for it can be effectively argued by any lawyer, with some idea of spatial management law (Article 61(1)). It is this statutory provision, next to the absence of a general plan and the complete set of local plans, that brings

chaos to the spatial development of towns and communes and deprives local communities and self-governments acting on their behalf of the power to model spatial-functional structures of settlement units, giving undue leverage in this respect to plot owners, housing developers, investors, real estate profiteers, design-construction consortia as well as, alas, irresponsible representatives of local authorities and private planners executing bespoke commissions.[27]

Not without significance for the effects of spatial management is the fact that financial burdens falling on communes related to the drafting of plans and the implementation of adopted plans exceed the financing capacity of many communes with only modest budgets. They are not able to finance the full coverage of their territories with plans, not to mention the costs of their implementation, with the incomes generated by such projects being relatively low (planning and infrastructure development fees, incomes from their own property located in areas covered by the plan). In addition, plan drafting is discouraged by the high cost of infrastructure network construction and the necessity of acquiring land for public projects. In this situation, plans are either not adopted at all or the costs of their drafting are borne by investors. They will more than willingly finance the drafting of a plan which is in their interest or they will apply for an administrative decision on buildup and land development conditions. It is obvious that this kind of legislation is not conducive to the furtherance of society-wide interests, but rather those of a private investor and, to make matters worse, creates an environment open to corruption.

VI. CONCLUSION

In the light of the above analysis, it can be justifiably claimed that the blame for the state of land development, in particular for the lack of spatial order and sustainability of development, and for the primacy of individual over society-wide interests in spatial management, falls squarely on the legislation in force. The legislation is far from simple, clear, transparent, unambiguous, general and stable in time. The continually amended Act promotes an instrumental model of planning (which works like instructions for assembling IKEA furniture), making planning procedures ever more complex and highly bureaucratic. The adoption of other statutes a bearing on spatial management leaves the Act as only one of many instruments regulating the range of possible spatial solutions today (for example the Revitalisation Act and Metropolitan Unions Act have brought about far-reaching modifications of the SPSDA).

[27] J. Parysek, *Urban development*, 172–184.

Each successive amendment, especially one carried through quickly, introduces major but senseless changes, as for instance the replacement of the metropolitan area spatial development plan with the framework study of the determinants and directions of spatial development of a metropolitan union area or the introduction of the spatial development plan of an urban functional area of a provincial (regional) centre and the provincial (regional) landscape audit. It is not known, either, what the sense of introducing new terminology concerning the objects of planning is in a situation where clear, well-defined concepts ('agglomeration' and 'problem area') have functioned for a long time. To make matters worse, it is not the regional authorities (governor, head of provincial cabinet), but the Council of Ministers or a relevant Ministry that are to delineate planning areas and specify in detail the subject-matter scope of particular documents concerning, after all, very different areas in terms of natural conditions, settlement structure pattern, demographic situation, level of economic development, economic structure, land development, potential conditions for development and geographic location.

It seems that all the potential amendments of the dysfunctional Spatial Planning and Spatial Development Act of 27 March 2003 have been exhausted long ago. What we need is a 'spatial management act' written anew: general, clear, unambiguous, stable in time, and based on the theory and methodology of spatial management. It should allow for the autonomy of regional authorities in matters it applies to in compliance with European standards and hark back to the proven tradition in spatial planning by reinstating the national plan and regional, and district development plans (including those of urban agglomerations). These should have two parts: an analytical one (replacing a 'study') and a planning one. General and particular spatial development plans of communes should be reinstated as well. An act is necessary which, in agreement with the decentralisation of powers, will restore planning services in self-government administration units. Only such measures may guarantee respect for enacted law and, consequently, society-wide interests in land development, which will be seen in both spatial order and sustainable development.

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ASKING ABOUT THE FUTURE OF SPATIAL MANAGEMENT IN POLAND (13 YEARS AFTER THE ENFORCEMENT OF THE 2003 LEGAL REGULATION)

S u m m a r y

Thirteen years of spatial economy carried out in Poland pursuant to the Spatial Planning and Spatial Development Act of 27 March 2003 have been long enough for evaluation of the functioning of the Polish spatial planning system and the effects of the regulation on spatial management. Such an assessment is important to be made particularly in the light of a new law being drafted to

regulate spatial planning. This, however, will only add to the complexity and little efficiency of the existing laws, currently being a result of multiple amendments made in recent years to the Act in force today. In this paper, a general reconstruction of the Polish spatial management Act has been made and the planning documents that shape spatial management presented. A discussion of the functioning of spatial management in the context of the regulations currently binding follows and an assessment of the *status quo* of the spatial management as a result of the existing regulation is offered. In the concluding remarks, certain recommendations and suggestions of measures to be taken to improve the current situation have also been made.