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PUBLIC LAW RESTRICTIONS ON REAL ESTATE OWNERSHIP RIGHTS IN THE INVESTMENT AND CONSTRUCTION PROCESS

Summary

Real estate development is an investment and construction process. It is the duty of the legislator to create rules and legislation enabling the owner to exercise his right of ownership including the right to develop, while protecting the third parties right of ownership, other rights or freedoms and ensuring protection of values related to the public interest. Every way of developing private property will affect its surroundings. In order to avoid chaos, disorder and ugliness, spatial management must be planned accordingly. This task can only be performed by the public authority by administrative law and appropriate procedures secured by the state.

When I started my research, I put forward a thesis that in the current legislation the scope of public law shaping of real estate ownership rights in the investment and construction process is far-reaching and above all, it is connected with the expansion of special laws which significantly lower the standard of protection of ownership rights. The subject of my thesis were the limitations of real estate ownership rights in the investment and construction process resulting from public (administrative) law. At the center of my deliberations is the ownership right of the investor. The aim of the dissertation is analyzing the public-law restrictions on the ownership of real estate in the investment and construction process in the current legislation, describing the reasons why the legislator limited the ownership right in this particular way, the legal tools used by the legislator, assessing their constitutionality and whether the constitutional standard of ownership has been preserved.

Public law restrictions on the right of ownership of real estate have their roots in the distant past. Their scope increases as society develops in the technological and economic sphere. Until recently the Polish legislator provided for systemic solutions in the area of public law ownership restrictions, creating a compact system of planning acts in order to maintain the cohesion of planning solutions and guarantee their implementation. As a result of the legislator's departure from

systemic solutions in favor of special acts, the system of planning and spatial development was decomposed. The solutions concerning investments were simplified and shortened in order to speed up the investment process, but this was done at the expense of the standard of protection of the rights of owners (perpetual usufructuaries) participating in these proceedings. Instead of creating predictable and stable planning solutions, the legislator focused on speed in the development and implementation of new investments, often at the expense of spatial order. The legislator not only "reversed" the priorities, but made the danger of unconstitutional solutions real. In fact, the most important factor concerning investments on the basis of special laws became ensuring their financing, as the effort to create systemic solutions fell away. In my opinion, it is necessary to return to systemic solutions; a special law should be an exception and not a rule of space management.

Another consequence of the lack of planning regulations is the low standards of space. It is often irreversible or difficult to revert in the foreseeable future, especially visible in emerging and contemporary residential districts, both single- and multi-family buildings. The consequences of lack of planning regulations are shortage of hardened streets, lack of infrastructure, kindergartens and schools, mixing of development functions, multi-family buildings between single-family buildings.

It should be remembered that the functioning of the right to real estate development as an element of the ownership right is the result of consensus on such a perception the ownership right by the citizens, established in the provisions of the Constitution. An important guarantor of such a perception is the judicial control of administrative decisions, both of an individual nature and of the generally applicable law (local law acts). As a result of the research conducted in this area, I have come to the conclusion that the current model of this control is optimally shaped. Another issue is the limitation of the standards of judicial control of administrative decisions issued on the basis of special acts concerning large scale investments. What is important is that the administrative court has to assess ad casum, i.e. taking into account the sensitivity of particular judges to the shape of ownership right limitations. The usefulness of judicature is limited as the circumstances and distribution of interests are different in each case. Therefore, discrepancies in both the interpretation of the planning authority and the concretization of the general legal and spatial order by the individual composition of administrative courts are unavoidable,

which is an undesirable phenomenon. The constitutional requirement of a two-instance judiciary makes it possible to verify decisions issued in the first instance, being the most complete way to secure the rights of property owners. Moreover, a two-instance administrative judiciary makes it possible to eliminate the most extreme ways of interpreting the boundaries of both institutions by the courts of first instance as well as the principle of collegial examination of cases in administrative court proceedings. In my opinion, the legislator has established a proper standard of judicial control of public law restrictions on the ownership rights.

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22-06-2020 r.