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THEORETICAL APPROACH TO PLANNING AUTHORITY (IN TERMS OF THE MUNICIPALITY'S GENERAL PLAN)

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Abstract
In normative terms, spatial planning constitutes an authoritative means of shaping space. By exercising its planning authority, a municipality influences how property rights are exercised and, in extreme cases, may lead to their deprivation. The law must set limits on this authority by establishing instruments that guarantee adequate protection of property rights. The municipality's general plan is one such legal instrument, fulfilling the constitutional condition for the admissibility of interference with real estate ownership, which may be based on a statute. It must not only specify the manner in which restrictions are to be introduced, but also provide a source of values that justify such restrictions. The municipality's general plan meets these conditions. Thus, it becomes not only an important instrument of planning policy but also a crucial mechanism for protecting the property rights of real estate covered by the planning process.

Keywords: planning authority, municipality, general plan, property protection

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INTRODUCTION

A municipality's planning authority[1] is an important legal element of its functioning. It relates to the quality of public space and, ultimately, to the proper performance of tasks imposed on the municipality. Its effects extend to various areas of activity of legal entities subject to municipal authority. For this reason, it can be analysed from different perspectives. One such aspect is the relationship between this form of public authority and the protection of rights and freedoms, particularly concerning the limits of permissible interference with property rights. Identifying this relationship is legally significant, as property ownership represents a fundamental value of the Polish constitutional order. Moreover, this type of authority can serve as a universal tool for describing the scope and nature of a municipality's law-making activities as a local government unit. With its assistance, it is possible to outline the permissible extent of municipal interference in the rights of entities covered by planning processes and to compare these with the standards set out in the Constitution. The literature indicates that 'planning authority' is a doctrinal concept. Concepts with a similar meaning are also used in case law and doctrine, particularly 'municipal planning autonomy', which refers to the constitutional principle of municipal autonomy. In doctrinal terms, the concept of planning autonomy largely overlaps with that of the municipality's planning authority, although elements of freedom of action and freedom to shape content[2] also emphasised.

The considerations presented herein do not aim to provide a comprehensive overview of the issue. They focus on aspects essential for understanding the limits of a municipality's planning authority from the perspective of property protection. For this reason, they concentrate primarily on identifying and assessing the formal basis for spatial planning by a municipality. The intention is not to generalise existing doctrinal and jurisprudential trends, but to formulate proposals that may serve as a basis for discussion on the content and scope of municipal planning authority.

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[1] This concept is commonly used in the case law of Polish administrative courts; see, e.g. the reasoning of the judgment of the Supreme Administrative Court of 14 October 2020, II OSK 3942/19, *CBOSA*, nsa.gov.pl. When reviewing planning acts of municipal authorities, administrative courts usually rule on whether the limits of planning authority have been exceeded in relation to specific local law standards; see, e.g. judgment of the Supreme Administrative Court of 14 March 2018, II OSK 1281/16, *CBOSA*, nsa.gov.pl, in which, referring to the lack of exceeding the limits of planning authority, it was recognised that the municipal planning authority has the right to introduce prohibitions and restrictions in the local spatial development plan regarding the increase of livestock production in order to limit odour emissions.

[2] Z. Niewiadomski (ed.), *Planowanie i zagospodarowanie przestrzenne. Komentarz*, Warszawa, 2021, p. 21.

SPACE AS AN OBJECT OF SPATIAL PLANNING

Space can be understood in various ways.[3] For the purposes of this discussion, the colloquial meaning of the term has been adopted. In this sense, space is the environment – the material and immaterial world that surrounds us (values, norms). Space understood in this way defines two spheres of human functioning: public and private. Public space is the sphere in which critical discussion takes place. Thus, conflict and the evaluation of an individual's actions increasingly arise from the perspective of criteria defined by public authorities, as these authorities often become not only the organisers but also the hosts of such a sphere, setting the legal norms that govern its functioning.[4] This situation has inevitable consequences, such as the tendency to equate the public interest with the interest of public authorities themselves, rather than with the collective interest of individuals, and the creation of a specifically defined public sphere. This tendency is confirmed by legislation that excessively and bureaucratically interferes with rights and freedoms.

Since the space that surrounds us is part of the public sphere, it represents a valuable asset for contemporary legal systems, which are subject to extensive regulation. Hence, interference by public authorities in this area always appears to have rational grounds. However, practice shows that this need not be the case. A striking example of this is the number of planned roads in Poland, which includes a relatively small number of local plans developed by municipalities, as well as areas designated for over 60 million potential residents, and the design of private roads with public road parameters in such plans. These paradoxes reveal shortcomings in the spatial planning model currently operating under the law, which does not seem to provide the proper mechanisms for meeting genuine social needs and expectations.

Furthermore, in the field of spatial design, public authorities often assume the role of creators of social needs, as well as the means to satisfy them, regardless of whether such needs are actually felt. Consequently, such a dissonance inevitably gives rise to conflicts which could be avoided if, alongside the municipality's freedom to shape space, two other elements were recognised as equally important in planning: greater participation of the local community in planning processes and adequate protection of the rights and freedoms of that community. It seems that the latter element is even more significant, since with proper protection of rights and freedoms, community participation in shaping space may become a secondary issue. There is no doubt that the adoption of a local plan produces multidirectional effects.[5]

Currently, planning authority is no longer primarily focused on eliminating threats from the public sphere and ensuring safety, as it was in the past, but is

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[3] J. Zimmermann points out that, as a rule and in common parlance, when we juxtapose administrative law with space, we mean space in the simplest and most literal sense, as contained in legal regulations concerning spatial development, construction law, real estate law, and other areas of substantive law, see J. Zimmermann (ed.), *Przestrzeń w prawie administracyjnym*, Warszawa, 2013, p. 14.

[4] For a broad discussion of this topic, see J. Habermas, *Strukturalne przeobrażenia sfery publicznej*, transl. Lipnik W., Łukasiewicz M., Warszawa, 2007, pp. 3–94.

[5] This has long been noted in legal doctrine; cf. e.g. L. Leoński, M. Szewczyk, M. Kruś, *Prawo zagospodarowania przestrzeni*, Warszawa, 2012, pp. 166–190.

instead becoming an active co-creator of the phenomena that determine how space is used for various purposes.[6] Under these assumptions, the municipality becomes an actor operating on behalf of different interests or lobbies, and thus, in a sense, loses its legitimacy to invoke the general interest. The result is the introduction of incomprehensible restrictions or legal mechanisms into local plans. Examples include the obligation to connect properties to the sewage system established by the municipality, or the classification of digital telephone stations and wind turbines generating electricity as public purpose investments. With the scope of spatial planning and the municipality's role in this process shaped in this way, the clear definition of the legal framework within which planning objectives may be implemented becomes particularly important. In this respect, it is crucial that any interference with property ownership has a statutory basis and that an effective mechanism of social control over the municipality's planning authority is ensured.

THE LEGAL NATURE OF THE MUNICIPAL PLANNING AUTHORITY

Spatial planning is an organised activity that involves shaping space in order to implement the principle of sustainable development. This activity is one of the municipality's own tasks. Therefore, the municipality, as a local government unit, becomes the entity responsible for shaping space.[7] Assigning such a role to the municipality required identifying a mechanism for the performance of these tasks. To achieve this goal, the classic structure of public law – administrative authority – was employed.

Administrative authority is an attribute of public power. In general terms, it may be understood as the ability to alter the legal status of an entity through the application of state coercion.[8] The essence of authority lies in the unilateral power to decide on the rights and obligations of an entity outside the administration, with the possibility of applying sanctions if a specific action is not performed. Authority understood in this way is based on legal provisions and involves coercion. In modern rule-of-law systems, coercion is generally indirect and potential, meaning that it can be exercised only after the use of measures aimed at achieving the intended objective.[9]

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[6] See H. Huber, *Recht, Staat und Gesellschaft*, Bern, 1954, p. 32, quoted in J. Habermas, *Strukturalne…*, op. cit., p. 288.

[7] In the spatial planning system, the municipality plays a special role, as the local spatial development plan bindingly determines the legal status of the real estate it covers. This follows directly from Article 6 of the Act of 27 March 2003 on Spatial Planning and Development (Journal of Laws of 2024, item 1130, as amended; hereinafter referred to as 'the SPDA'). Plans developed by other entities – the county, province, and state – do not have this effect. As regards the legal basis for the municipality as a planning entity, there are also views which derive the authorisation for such activities from the Act as a whole rather than from its Article 6(1); see H. Izdebski, I. Zachariasz, *Planowanie i zagospodarowanie przestrzenne. Komentarz*, Warszawa, 2023.

[8] For more details, see J. Zimmermann, *Prawo administracyjne*, Zakamycze, 2005, pp. 30–32 and 334–335; also W. Chróścielewski, 'Imperium a gestia w działaniach administracji publicznej (W świetle doktryny i zmian ustawodawczych lat 90-tych)', *Państwo i Prawo*, 1995, No. 6, pp. 50–51.

[9] Similarly: J. Zimmermann, *Prawo…*, op. cit., p. 31.

In the context of spatial planning, the municipality, as a public authority, possesses the legal power to unilaterally determine how local space is developed.[10] This power is granted under Article 7(1)(1) of the Act on Municipal Self-Government.[11] This task is specified in detail in Article 3(1) of the Spatial Planning Act, which states that shaping and implementing spatial policy within the municipality is its own responsibility, excluding internal sea waters, territorial waters, the exclusive economic zone, and closed areas designated by an authority other than the minister responsible for transport. An analysis of the above provisions, in conjunction with the theoretical understanding of administrative authority, leads to the conclusion that the municipality's power as a public authority to determine the use of local space is a specific privilege granted to it by law. The nature of this authority allows the conclusion that it constitutes administrative authority, as it satisfies the definitional criteria of this legal category. It is vested in the public authority as a unilateral power to determine the use of real estate. It should therefore be assumed that the municipality's planning authority is a form of administrative authority, making it legitimate to consider this concept in relation to spatial development. The theoretical dimension of the analysed construct is not in doubt, yet positive law does not employ this term. As a result, even within doctrine, there is no universally accepted definition of this authority.[12] Legal scholarship uses the concept to describe the overall legal situation that arises in the process of shaping public space. The consequence of this authority is the possibility of introducing orders or prohibitions concerning the use of real estate and of attaching sanctions for failure to comply with the rules arising from them.

In planning authority, an issue arises regarding its scope, which results from the principle of optionality and the dualistic system of planning acts.[13] Another issue concerns the possibility of specifying the rules for spatial development in a decision establishing the conditions for development or the location of a public purpose investment.[14] This situation allows the conclusion that the scope of the municipality's planning authority operates on two levels: a general level, which is somewhat optional, and an individual level. Naturally, one may argue whether a decisive manner of shaping space represents an exercise of planning authority. Opinions on this issue may be divided; however, in light of the doubts outlined above, the normative status arising from the SPDA is undoubtedly beginning to diverge from the essence of the concept. Therefore, it seems reasonable to argue that planning authority refers more to a municipality's general competence to act in the

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[10] See Z. Niewiadomski, 'Charakter prawny miejscowego planu zagospodarowania przestrzennego', in: Posłuszny J. (ed.), *Aktualne problemy administracji i prawa administracyjnego*, Przemyśl–Rzeszów, 2003, p. 75; also Z. Niewiadomski (ed.), *Planowanie i zagospodarowanie*…, op. cit., p. 42.

[11] Act of 8 March 1990 on Municipal Self-Government (Journal of Laws of 2024, item 1153; hereinafter referred to as 'MSGA').

[12] See L. Leoński, M. Szewczyk, *Podstawowe instytucje planowania przestrzennego i prawa budowlanego*, Poznań, 1997, p. 32.

[13] This view is presented by Z. Niewiadomski, 'Gospodarowanie przestrzenią w gminach w świetle nowych rozwiązań prawnych', in: Brzozowski A. et al. (eds), *Praworządność – sprawność – rozwój lokalny a samorząd terytorialny*, Zeszyty Naukowe CSSTiRL, Warszawa, 2004, p. 110.

[14] On the dilemmas related to this method of spatial management, see T. Bąkowski (ed.), *Rozprawa z decyzją o warunkach zabudowy*, Gdańsk, 2022.

field of planning and spatial development than to a specific relationship between the municipality and the entities affected by the space it shapes.

Planning is an activity aimed at drawing up a plan, while a plan is the product of this activity.[15] Distinguishing between these categories allows for an assessment of the municipality's competence to undertake and carry out the planning process and to adopt a plan as a general act, and thus as local law, in the exercise of its planning authority. From the perspective of entities covered by the planning procedure, all standards resulting from the plan must have a statutory basis. The fulfilment of this assumption was not, and still is not, evident. The situation was particularly uncertain under the legal framework prior to the 2023 amendment of the SPDA,[16] that is, before the introduction of the institution of the general municipal plan. It also remains unclear how the implementation of this type of plan within the legal system will proceed, especially since the adoption of such plans has been postponed.[17] In practice, this means that spatial planning within municipalities continues to involve the Study of the Conditions and Directions of Municipal Development – an act that is not a statute. This situation violates the fundamental and constitutional conditions for restricting property ownership, which state that the only basis for such actions may be a statute. In legal scholarship, referring to the freedom-based right to develop property and to the content of Articles 64 and 21 of the Constitution, a well-founded view is presented according to which, both property, as a freedom right, and the right to develop property derived from it – which likewise has the character of a freedom – may be restricted only by statute and only to the extent that such restriction does not violate the essence of that right. Interference with the freedom-based right to develop property is permissible only when justified by the public interest.[18]

Against this background, it should be emphasised that planning authority is exercised through the local plan, that is, through an act of law. In the case of a municipality acting in this legal form, control over the scope and manner of exercising its powers is largely illusory. It is limited to assessing the correctness – that is, the formal aspect – of the plan's adoption and does not in any way address the substance of the provisions contained therein. This situation is troubling, as it turns the municipality's planning authority into a sphere in which the substantive provisions adopted, that is the restrictions introduced, cannot be challenged. From a legal perspective, the municipality's freedom in this respect is even broader than that of the legislator, since the latter is always exposed to the possibility of a negative assessment of statutory solutions if a provision of the statute is found unconstitutional. It should be emphasised that the unconstitutionality of a statute concerns both the formal aspect and, above all, the material aspect, namely, the

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[15] For more details, see H. Maurer, *Allgemeines Verwaltungsrecht*, München, 2000; Polish ed.: *Ogólne prawo administracyjne*, transl. Nowacki K., Wrocław, 2003, pp. 221–222.

[16] Act of 7 July 2023 amending the Act on Spatial Planning and Development and Certain Other Acts (Journal of Laws of 2023, item 1688).

[17] See Article 4 of the Act of 22 April 2025 amending the Act on Spatial Planning and Development and Certain Other Acts (Journal of Laws of 2025, item 572).

[18] W. Jakimowicz, *Wolność zabudowy w prawie administracyjnym*, Warszawa, 2012, p. 65.

incompatibility of the adopted solutions with specific values. In the case of local plan review, the legal order does not guarantee such control, and therefore the existing model of review raises serious doubts.

At first glance, stronger protection of property ownership appears to be ensured in decision-making processes concerning spatial planning, since the scope of restrictions on subjective rights is largely influenced by the principle of 'good neighbourliness'. This principle is shaped mainly within the 'authority' of the urban planner preparing the relevant documentation for issuing a decision on development and land use conditions[19] and can be subject to limited control in administrative proceedings. Of course, this is not an ideal solution either, as judicial review remains essentially formal in nature, but it is nonetheless more effective than review conducted at the stage of adopting the plan as local law.

This model of control over planning authority does not comply with the fundamental rule that conflicts between different interests must always be resolved on the substantive level, because only then can criteria such as justice or fairness be invoked, allowing for a reasoned decision on the permissible extent of interference of the common good with individual rights. When the legal order fails to make such an assumption, it effectively grants preference to the general interest over the individual interest. In our view, such a situation is unacceptable under constitutional values, which link the permissible scope of interference by public authorities in individuals' rights and freedoms with principles such as proportionality.

Since the planning authority of a municipality is empowered by law to determine the conditions for spatial development, it is necessary to establish the scope and rules governing its operation in this area. Undoubtedly, the definition of these rules must be based on the contemporary concept of administration as an activity conducted within the limits of the statutes. Therefore, when determining the content of planning authority, the main issue is to define the extent to which the provisions of the statute are binding. This assumption is all the more important because, from the perspective of real estate ownership, a municipality, as a local government unit, is an entity equivalent to other participants in legal transactions.

Under current law, a municipal planning authority may be regarded as a discretionary activity concerning space. However, such an understanding of this authority appears unacceptable. For this reason, views that reduce authority merely to planning recognition – the substance of which would be the municipality's unrestricted power to shape local space – cannot be accepted.[20] In the current legal system, such an approach is particularly untenable where authority must sometimes be exercised outside the local plan and specified by an individual act.[21] In such cases, it becomes

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[19] For more details see W. Maciejko, 'Władztwo planistyczne osoby sporządzającej projekt decyzji o warunkach zabudowy', *Administracja. Teoria, Dydaktyka, Praktyka*, 2015, No. 4, pp. 47–58.

[20] See A. Agopszowicz, 'Raumplanungsrecht, Bergbau und kommunale Planungshoheit in Polen', *Archiv für Kommunalwissenschaften*, 1991, Vol. 30, No. 2, pp. 310 et seq., cited in Z. Niewiadomski, 'Charakter prawny…', op. cit., p. 75.

[21] See judgment of the Provincial Administrative Court in Kraków of 21 July 2008, II SA/Kr 345/08, LEX No. 510194; indirectly, judgment of the Supreme Administrative Court of 26 March 2009, II OSK 439/08, LEX 525855.

essential to identify the limits of this freedom, as these limits, in fact, define the very concept itself. It seems that, under this approach, relying solely on the provisions of the SPDA when construing this term is insufficient. At the same time, even when one confines oneself to the cited Act, it must lead to determining the scope of authority depending on the manner in which that authority is exercised. Regardless of the form in which this authority is exercised, it always requires a statutory basis. The need for such a basis is inseparably linked with the implementation of the plan's objectives. In general terms, when a municipality introduces tasks into the plan, it should simultaneously establish the legal basis for their implementation, and these must have a foundation in statute.[22] Since planning authority serves to shape the use of space, including real estate, in an authoritative manner, it must have a statutory basis. Any other interpretation of this authority would be inconsistent with contemporary legal norms. For this reason, provisions that lack a basis in substantive administrative law cannot form the content of this authority. After all, any authority is merely a means of implementing the norms of substantive law.[23]

Based on the foregoing general remarks, it is necessary to characterise the normative mechanisms operating within the Polish legal system. Of course, such an assessment cannot involve an analysis of individual statutory solutions. Rather, it serves to indicate trends in light of the assumptions described above. It should, therefore, be assumed that a municipality's general plan may represent the first step towards normatively shaping the municipality's planning authority.

THE MUNICIPALITY'S GENERAL PLAN AS A PLANNING ACT

Article 15(2) of the Spatial Planning Act sets out the parameters that shape space, which are determined by the municipality in the local spatial development plan. However, the mere enumeration of these areas does not resolve the issue of the scope and basis of the municipality's activities. The starting point for properly constructing planning authority within the planning process must be the relevant statutory provisions and the assumption that the municipality, as a public authority, may act only when authorised by a statute. This postulate derives from Article 7 of the Constitution of the Republic of Poland.[24] The consequence of this is that statutes determine the content of authority, and only they can serve as the basis for a municipality's actions in the planning process. This is not to suggest that the process itself, merely by being regulated by statute, validates all actions taken

[22] Specifying public objectives in a plan without indicating the time frame for their implementation is a violation of Article 1 of Protocol No. 1; see judgment of the European Court of Human Rights of 23 September 1982, *Sporrong and Lönnroth v. Sweden*, in: M.A. Nowicki, *Kamienie milowe. Orzecznictwo Europejskiego Trybunału Praw Człowieka*, Warszawa, 1996, pp. 409–414.

[23] It seems that a distinction should be made between the manner in which the law is implemented and the form in which it is implemented, e.g. by issuing a decision or other act. Thus, the manner of implementation refers to a series of actions taken by the authorities to enforce orders or prohibitions. Such an action is the planning process

[24] Journal of Laws 78, item 483, as amended and corrected; see also judgment of the Constitutional Tribunal of 7 February 2001, K 27/00, *OTK*, No. 2/2001, item 29.

within it or automatically gives them the character of a statute. The point is that every planning action undertaken in the course of developing a draft plan, and subsequently the plan itself, must have a statutory basis.

Against this background, it must be stated unequivocally that the provisions of the SPDA, in particular Article 15(2) and Article 7(1) MSGA, are not and cannot constitute the basis for determining the content of planning authority, as the norms contained therein are of a competential nature. Although the legislator employed different legislative techniques in their formulation, these provisions are essentially norms that, at most, permit the regulation of specific issues within the plan. Only such an interpretation of these provisions allows for the construction of a concept of authority that complies with constitutional standards.

The need to clearly define the scope of planning authority and to indicate its statutory (material) basis does not mean depriving the municipality of the ability to individualise the planning solutions it adopts. Planning policy must take into account, among other things, the requirements of spatial order, property rights, the needs of the public interest, and the development of technical infrastructure, in particular broadband networks. It should be borne in mind that the public interest in planning is a generalised objective encompassing aspirations and actions that take into account the objective needs of the general public or local communities in relation to spatial development (Article 2(4) of the Spatial Planning Act).

The local spatial development plan, as an act of local law, specifies the manner in which this right is exercised. This follows directly from Article 6 of the Spatial Development Act, which states that the provisions of the local spatial development plan, along with other regulations, determine how the right of ownership of real estate is to be exercised.[25] Therefore, the legal status of real estate is inextricably linked to the restrictions introduced by the plan.[26] This requires the boundaries of planning authority to be constructed in such a way that the constitutional criteria for the protection of property are met. It seems that the only correct approach is to adopt the assumption that the content of a local plan may only include restrictions that can be justified by a statutory provision. This means that a municipality cannot introduce regulations shaping local space into the plan unless they are grounded in substantive law.

The 2023 amendment to the Spatial Planning Act abolishes the study of conditions and directions of municipal development and introduces the institution of a general plan as an act of local law. The content of this general plan does not merely replace the existing study. The introduction of this normative construct is intended by its authors to

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[25] In academia, this statement is not unequivocal; for more details, see H. Izdebski, I. Zachariasz, *Planowanie…*, op. cit., p. 120. The author points out that the provisions of the Spatial Development Act do not meet the standard of decent legislation. A similar view was expressed by Z. Niewiadomski, *Nowe prawo o planowaniu i zagospodarowaniu przestrzennym. Komentarz*, Warszawa, 2003, p. 12; P. Kwaśniak, *Plan miejscowy w systemie zagospodarowania przestrzennego*, Warszawa, 2009, pp. 223–228; and K. Małysa-Sulińska, *Normy kształtujące ład przestrzenny*, Warszawa, 2008, pp. 288 et seq.

[26] See T. Bąkowski, *Ustawa o planowaniu i zagospodarowaniu przestrzennym. Komentarz*, Zakamycze, 2004, thesis 6 to Article 4 of the Act, LEX/el.; Z. Niewiadomski (ed.), *Planowanie i zagospodarowanie…*, op. cit., pp. 27–33.

strengthen planning authority in the field of spatial policy.[27] The mandatory content of a municipality's general plan consists of two elements: the definition of planning zones and municipal urban standards. The second important element of the municipality's general plan, which is optional, is the designation of areas for supplementary development.[28] The literature has positively assessed the requirement to prepare a justification for the general plan, which is to be made publicly available, including in the Public Information Bulletin, to facilitate public access.[29] The general plan will influence other planning instruments, as its provisions will be taken into account when adopting local plans, similarly to the way the study's provisions previously were.[30]

The general plan of the municipality, as an institution introduced into the Polish spatial planning system,[31] allows for a more precise definition of the concept of municipal planning authority from the perspective of the values guaranteed in the SPDA. Of course, this solution is not perfect, but it represents an important step towards standardising the statutory basis for restrictions on rights and freedoms affected by the local spatial development plan. Although the uniform description of restrictions in this plan is primarily formal, it remains linked to statutory provisions and thus serves as a universal method for determining the material basis for restricting property ownership.

Until the introduction of the general plan of the municipality as the basis for defining the framework for spatial development, the study of the municipality's conditions and directions for spatial development was in place. This act was not only internal in nature, although numerous provisions referred to its content as an element shaping various administrative decisions; in essence, however, it was left to the discretion of the municipality, which, within the scope of its authority, could determine its form. In practice, this led to a far-reaching relativisation of the protection of real estate ownership. This resulted from the fact that the municipality, within its planning authority, could establish various ways of exercising or restricting this right. The flaw of such a solution was that none of these measures had any material basis in statute. In other words, from a constitutional perspective, real estate ownership was shaped in a dubious manner, as it was limited not by statute but by a lower-level act. This occurred even where the restriction was linked to the local spatial development plan, since that plan itself had no connection with the statutory grounds justifying the introduction of such restrictions.

The institution of the general municipal plan partially alters this situation, rendering it more consistent with constitutional requirements. The fundamental

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[27] Cf. Sejm print No. 3097, 9th term, https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=3097 [accessed on 24 October 2025].

[28] J. Mrozek, 'Plan ogólny gminy: charakterystyka i zagadnienia problemowe', *Samorząd Terytorialny*, 2024, No. 6, p. 57.

[29] M.J. Nowak, 'Plan ogólny – nowy instrument w planowaniu przestrzennym', *Nieruchomości*, 2023, No. 11, p. 6.

[30] A. Maziarz, 'Plan ogólny gminy w znowelizowanych przepisach ustawy o zagospodarowaniu i planowaniu przestrzennym', *Przegląd Ustawodawstwa Gospodarczego*, 2024, No. 5, p. 29.

[31] Articles 13a–13m of the Spatial Development Act introduced by the Act of 7 July 2023 amending the Act on Spatial Planning and Development and Certain Other Acts (Journal of Laws of 2023, item 1688). See also K. Szlachetko, 'Plan ogólny – nowe (?) narzędzie legislacji planistycznej', in: Bąkowski T. (ed.), *Legislacja planistyczna*, Gdańsk, 2024, pp. 105–116.

change consists in a closer connection between the norms of the local plan and the statute as the source and basis of material restrictions. This means that under the current legal framework, it can be argued that any restrictions on property rights introduced at the level of the local plan have a statutory basis in a material sense, as they derive from the general plan and are therefore universal in character. Although the municipality, within its planning authority, continues to determine the manner of restricting real estate ownership by shaping the parameters of the municipality's general plan pursuant to Article 13a(4) and Articles 13b–g of the SPDA, it must, to a large extent, do so by reference to statutory models. The framework for these models is set out in only general terms, as follows from Article 13m of the aforementioned Act. In other words, it should be stated that, at the level of the general plan, the municipality's planning authority is statutorily determined by outlining the framework of permissible and possible restrictions on real estate ownership. The municipality still retains the freedom to define specific restrictions, but it cannot exceed the universally (statutorily) defined limits. Moreover, the municipality's general plan, as an act of local law and the basis for adopting a local plan, fulfils the requirement of a proper legal foundation for property restrictions, which can only derive from statute.

CONCLUSION

Spatial planning in developed human communities is an essential activity. However, this does not mean that it may be conducted in a manner that disregards other values protected by contemporary legal systems, including real estate ownership. Properly understanding the essence of planning requires defining the content of planning authority and the role of the municipality in this process. It is equally important to correctly delineate the scope and forms of the plan's interference with constitutionally protected values, particularly freedom and property. The pursuit of complete control over public space through planning regulations, by imposing numerous requirements and restrictions on land use, may be anachronistic if it fails to take into account the protection of the rights and freedoms of the entities situated within that space. The municipality's general plan is a legal institution that offers an appropriate means of reconciling the conflict between public and private interests – a conflict inherent in spatial planning. This solution does not provide a definitive answer as to how this conflict should be resolved. However, it establishes limits on the municipality's planning authority within which the conflict is to be addressed and makes the statute the ultimate criterion for reconciling competing interests, thereby meeting the constitutional requirements for restricting the rights and freedoms of legal entities.

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