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# COMPLAINT ABOUT INACTION REGARDING FAILURE TO ADOPT THE MUNICIPAL GENERAL PLAN

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Abstract

This study, based on a formal-dogmatic approach and doctrinal interpretation of legal texts, aims to clarify doubts related to the 2023 reform of spatial planning and development in Poland, arising from the new legal institution introduced as part of this reform: the municipal general plan. Specifically, the text analyses the admissibility of judicial review of these spatial planning acts, and in particular the possibility of effectively initiating proceedings before an administrative court in a case arising from a complaint concerning the inaction of a municipal body in failing to adopt a municipal general plan, as well as the admissibility of a public-law claim concerning the municipality's inclusion of optional elements in the general plan, particularly the development supplementation area, which is crucial to the issuance of decisions on development conditions. This analysis is expectation that these issues will soon arise in the adjudicatory practice of administrative courts. Therefore, it is worth considering now the issue of judicial review of municipal general plans, which must be adopted in each municipality by 30 June 2026.

Keywords: municipal general plan, development supplementation area, legislative recognition, legislative inaction, administrative judiciary

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## INTRODUCTION – HISTORICAL CONTEXT AND RESEARCH OBJECTIVES

Although spatial planning and development have a well-established history in Poland,[1] modern regulations in this area, more closely aligned with the requirements of a democratic state governed by the rule of law, were developed only after the political transformation. The key normative acts were the Spatial Planning and Development Act of 7 July 1994[2] and its successor, the Spatial Planning and Development Act of 27 March 2003.[3] The latter Act was recently significantly amended after 20 years in force; given the nature of the changes introduced, it seems justified to speak of a reform of the spatial planning and development system in Poland.

It is significant that, from the moment of its adoption, the Act of 27 March 2003 was subject to clear – sometimes quite radical – criticism. Among the various criticisms levelled against this normative act, it was pointed out that it reflects the interests of lobbyists from the architectural community, focuses on the preparation of very detailed planning acts covering small parts of municipalities, marginalises or completely ignores other elements included in modern spatial planning (e.g. nature conservation, environmental protection, climate protection, noise prevention), eliminates development plans covering the entire municipality (or complexes thereof), is limited, like the 1994 Act, to procedural issues, does not specify sustainable development as the basis for all planning activities, treats spatial order in terms of a local phenomenon, does not contain provisions allowing for the effective counteraction of dispersed development and road construction, etc. Finally, the Act does not address the issue of training staff for spatial management.[4] In conclusion, the competent author of these accusations bitterly stated that 'as a result of systemic changes and the evolution of development regulations, spatial planning in the present European sense of the term ceased to exist in Poland', and that after the breakthrough in 1989 'There was no adaptation of this system to the conditions of the new political order, drawing on the experience and practice of the Member States of the European Union; instead, it underwent progressive dismantling.'[5]

Spatial development studies, intended to serve as long-term instruments, were amended on an *ad hoc* basis, often in individual cases. Consequently, they lost their value as fundamental and at the same time long-term planning documents. The extinguishing, under the Act of 27 March 2003, of spatial development plans adopted before 1995 was a mistake. The costly and complex procedure for adopting new plans led to a situation in which only approximately one-third of Poland's territory was covered by them. Municipal authorities began to replace them with zoning decisions, which became the *de facto* primary instruments for spatial management. The result

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1 See: A. Ostojski, 'Rola norm prawnych w ewolucji planowania i zagospodarowania przestrzennego', *Przegląd Prawa i Administracji*, 2011, Vol. LXXXV, pp. 12–18.

2 Journal of Laws of 1994, No. 89, item 415.

3 Journal of Laws of 2003, No. 80, item 717, as amended.

4 A. Jędraszko, *Zagospodarowanie przestrzenne w Polsce – drogi i bezdroża regulacji ustawowych*, Warszawa, 2005, pp. 439–456.

5 Ibidem, p. 460.

was the destruction of space and the 'sprawl' of settlement units along existing roads.[6] Generally speaking, the planning system in Poland has unfortunately been marked by repeated, yet generally unsuccessful, attempts at reform.[7]

Hence, the urgent need for profound changes to the existing legal framework. By virtue of the amendment of 7 July 2023, alongside modifications to the existing legal norms, entirely new regulations and, in some cases, even new legal institutions were introduced. One of these is the municipal general plan, which the legislature has classified among the fundamental instruments of spatial planning.[8] The general plan is essentially regulated by a block of provisions in Chapter 2 of the Act ('Spatial Planning in the Municipality'), encompassing Articles 13a–13m of the Spatial Planning and Development Act.

The legislative materials explaining the rationale for these changes indicated that its establishment as a new planning instrument was a response to the need to increase the municipality's planning authority in shaping spatial policy.[9] The lawmaker explained that the act – a mandatory planning document covering the entire municipality – is an act of local law, replacing the study of the conditions and directions of spatial development of the municipality, against which the compliance of local spatial development plans and decisions on development and land-use conditions will be assessed.[10]

The purpose of this article is to identify the legal issues that will arise in the area in which general plans are adopted and to attempt to suggest procedures for overcoming them from the perspective of the administrative courts, which exercise control over, among other things, the standard-setting activities of local government units. The specific objective is to answer the question whether a complaint against the legislative inaction of municipal authorities is permissible before the provincial administrative court in a situation where the deadline set by the legislature has passed and the municipality has not adopted a general plan. The answer to this question seems crucial from the perspective of, on the one hand, the implementation of citizens' right to a fair trial, and, on the other, the definition of the limits of the principle of local government autonomy.

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[6] Najwyższa Izba Kontroli, *Informacja o wynikach kontroli. Planowanie i zagospodarowanie przestrzenne w Polsce na przykładzie wybranych miast*, Warszawa, 2023, pp. 10–16; D. Kafar, 'Wprowadzenie', in: Daniel P., Kafar D., Pawlik K. (eds), *Systemowe zmiany w planowaniu przestrzennym*, Warszawa, 2023, pp. XV–XVII.

[7] M. Blaszke, A. Brzezińska-Rawa, M. Ciesielski, M. Feltynowski, A. Fogel, J. Goździewicz-Biechońska, A. Kukulska-Kozieł, M. Leszczyński, M.J. Nowak, K. Rokicka-Murszewska, P. Śleszyński, A.A. Tomczak, R. Warsza, 'Nowelizacja planowania przestrzennego. Czy ciąg dalszy "dróg i bezdroży regulacji ustawowych"?', *Samorząd Terytorialny*, 2024, No. 1–2, p. 8.

[8] See Article 2 (22) of the Act of 27 March 2003 on Spatial Planning and Development, Journal of Laws of 2025, item 527 and 680; hereinafter referred to as the 'SPDA' or the 'Spatial Planning and Development Act'.

[9] *Uzasadnienie rządowego projektu ustawy o zmianie ustawy o planowaniu i zagospodarowaniu przestrzennym oraz niektórych innych ustaw*, print No. 3097, p. 13.

[10] Ibidem, p. 2.

## LEGAL AUTHORISATION TO ENACT LOCAL LAW AND LEGISLATIVE INACTION

The Spatial Planning and Development Act lacks a legal definition of a general plan, but the legislature – in addition to the aforementioned classification of the plan among the fundamental spatial planning acts (it was mentioned here *ab initio*, as the first one) – specifies, *inter alia*, the substantive (structural) elements of the general plan and, importantly, provides that it constitutes an act of local law.[11] The admissibility of challenging inaction in the adoption of a general plan by a municipality therefore fits into the broader issue of combating legislative inaction by local government bodies. The problem is complex because, despite the general rule that the Polish legislature '(…) has expressly abandoned the review of legislative inaction by administrative courts over local government bodies and local government administration bodies',[12] in practice, situations occur in which the jurisdiction of administrative courts also extends to the normative inaction of local government bodies.

This central legal issue – crucial to achieving the research objectives – requires further clarification. The starting point should be the general observation that the enactment of local legal acts by local government bodies (or local government administration bodies) may be optional or mandatory. In the first of these cases, we are dealing with discretionary law-making activities of the public administration. These take the form of a statutory competence norm that provides the relevant administrative body with normative discretion – optional competence – encompassing two more specific elements: (a) discretion relating to the ability to issue a specific normative act; and (b) discretion relating to the timing of its issuance.[13]

A competence norm can be constructed in such a way that the legislature authorises a body to adopt an act of local law, which, however, is not mandatory; most often – though not always – the legislature then expressly indicates that the body 'may issue' (or 'establish', 'specify', 'adopt', etc.) a specific act of local law. The authorised body either issues such an act or fails to do so. In the second of the normatively permitted situations, the body cannot be accused of legislative inaction. An example of optional action is the adoption of a local spatial development plan. An interpretation of the competence norms of the applicable Spatial Planning and Development Act leads to the conclusion that the adoption of a local plan has been left to the discretion of the competent body within the framework of so-called legislative discretion. Pursuant to Article 14(7) SPDA, a local plan is mandatory if required by separate regulations. Therefore, the principle is that its adoption is optional, subject to the exception of an obligation to adopt a local plan. In other words, the municipality's planning competence is not combined here with a specific obligation to act, meaning that the municipal body may issue an act of local law or refrain from doing so, and

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[11] Art. 13a(7) SPDA.

[12] M. Stahl, 'Zagadnienia proceduralne sądowej kontroli aktów prawa miejscowego', *Zeszyty Naukowe Sądownictwa Administracyjnego*, 2013, No. 3, p. 72.

[13] M. Jędrzejczak, *Władza dyskrecjonalna organów administracji publicznej*, Warszawa, 2021, pp. 261–262.

either course of action is lawful.[14] It should be noted that, in this case, the body's refraining from issuing an act of local law constitutes a normatively described and, consequently, lawful omission, consistent with the competence model. The issuance of an act of local law under legislative discretion should be preceded by the authority's deliberation, essentially taking the form of

> 'an informal procedure in which it assesses the advisability and need for introducing a new legal regulation. The public administration authority should thoroughly analyse the factual and legal circumstances. An analysis of the factual circumstances, that is, the entirety of existing social relations, should answer the question whether current social relations require regulation by a generally applicable act. In turn, an analysis of the legal circumstances should enable an answer to the question whether the current legal system is complete and coherent'.[15]

Depending on the outcome of this deliberation, the authority will either issue an act of local law or – legally speaking – refrain from issuing it.

The normative discretion associated with the timing of the act's issuance means that the competent authority has been endowed with discretionary powers, the essence of which is the ability to choose when a given act will be issued and when it will enter into force, thereby becoming binding on its addressees. The discretion discussed here applies to both optional and mandatory statutory authorisations.[16] In the latter case, this is problematic because the administrative body

> 'must absolutely issue the normative act which it has been authorised to issue. At the same time, it exercises discretionary power to set the deadline for its issuance, which leads to a situation in which there are serious difficulties in determining when the legislative obligation becomes effective and when it may be enforced'.[17]

Irrespective of the above dilemmas, the body – if it has been provided by the legislature with discretion regarding the date of issue of the act or the establishment of a *caesura* for its binding force – should conduct a thought process analogous to the one presented earlier. The result of such an evaluative assessment will be a decision based on legislative discretion regarding the date of enactment or entry into force of the local law, which should take into account the task-related norms – formulated in the competence norm or elsewhere in the Act – and the effects that such a normative act will have.

In addition to the normative recognition of lawmaking, provisions of substantive and systemic administrative law may impose an obligation to issue an act of local law or an obligation to issue such an act with due regard to the statutory deadlines for its issuance or entry into force.

If the local legislature has been obliged by the legislature to issue a specific act of local law, then its issuance should be considered formally necessary. This is

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[14] See M. Oleś, *Fakultatywne działania administracji publicznej*, Warszawa, 2018, pp. 352–354.

[15] P. Król, 'Uznanie w tworzeniu prawa administracyjnego', in: Ziemski K., Jędrzejczak M. (eds), *Dyskrecjonalność w prawie administracyjnym*, Poznań, 2015, p. 34.

[16] See M. Jędrzejczak, *Władza dyskrecjonalna…*, op. cit., pp. 265–266.

[17] Ibidem, p. 266.

a situation in which the local legislature acts pursuant to a statutory order, which may also lay down a deadline for issuing the act (it is assumed that this is not a substantive time limit, so failure to comply with it does not result in the loss of normative competence). The legislature may also provide for a sanction in the event of a failure to comply with that order.[18] Such a sanction could be, for example, the issuance by the voivode, acting as a supervisory authority, of a substitute order (e.g. regarding the adoption of a local spatial development plan or its amendment for the area affected by the municipality's inaction, to the extent necessary for the location of a public-purpose investment – Article 13k(2) and (3) in conjunction with Article 67c(5) SPDA). A distinction should be made between the formal necessity thus formed and a situation in which the authority issues an act because it is necessary for the functioning of the authority. It seems, however, that this necessity should also cover cases in which the issuance of an act is necessary to ensure the completeness of the legal system or to implement statutory tasks.[19]

The provisions of the Spatial Planning and Development Act can serve as an illustration of the formal necessity of issuing an act of local law. Specifically, according to Article 14(7) of this Act, a local spatial development plan is mandatory if required by separate regulations. Such provisions include Article 38b of the Act of 28 July 2005 on Spa Treatment, Spa Resorts and Spa Protection Areas, and on Spa Municipalities, according to which a municipality that, pursuant to a decision of the minister responsible for health, obtains confirmation of the possibility of conducting spa treatment within its area, must prepare and adopt a local spatial development plan for Zone 'A' of spa protection, under the terms specified in separate regulations, within two years of the date of receipt of that decision. Other examples include Article 5(1) of the Act of 10 June 1994 on the Development of State Treasury Real Estate Taken Over from the Armed Forces of the Russian Federation,[20] and Article 5(1) of the Act of 7 May 1999 on the Protection of the Sites of Former Nazi Extermination Camps.[21] Both cited regulations require the adoption of local spatial development plans (for real estate taken over from the Armed Forces of the Russian Federation and for the area of the Holocaust Memorial and its protective zone, respectively), although they do not specify time limits for their adoption.

The existence in the legal system of a formal requirement to issue an act of local law, which at the normative level manifests itself in a statutory order to adopt the act (sometimes additionally subject to a deadline for its issuance), raises the question of the enforceability of this obligation when the competent authority fails to exercise its competence to issue an act of local law. It should be noted immediately that not only legal doctrine, as discussed earlier, but also the legislature itself excludes the admissibility of appealing legislative inaction by local government bodies to an administrative court under the provisions of the Law on Proceedings before Administrative Courts. This is because the provisions of that Act do not create grounds for filing an appeal against legislative inaction, a position confirmed by the case law of

[18] D. Dąbek, *Prawo miejscowe*, Warszawa, 2020, p. 120.
[19] Ibidem, p. 121.
[20] Journal of Laws of 1994, No. 79, item 363.
[21] Journal of Laws of 2015, item 2120.

the administrative courts. According to administrative courts, there is no doubt that the inaction of a public administration body may be challenged only to the extent that it is permissible, under Article 3 § 2(1)–(4a) LPAC,[22] to appeal against decisions, rulings, and other acts or actions within the scope of public administration concerning powers or obligations arising from provisions of law, adopted in administrative proceedings and in the proceedings specified in Parts IV, V and VI of the Tax Ordinance,[23] to which the provisions of the Code of Administrative Procedure[24] and the Tax Ordinance apply.[25] In other words, for an authority's inaction to be actionable, its competences would have to include the issuance of: an administrative decision, a ruling in administrative proceedings that is subject to appeal or that concludes the proceedings, as well as a ruling resolving the case on the merits, a ruling issued in enforcement and security proceedings that is subject to appeal, or acts or activities in the field of administration other than those specified in Article 3 § 2(1)–(3) LPAC. The provisions of the LPAC regulating the scope of control over the activities of public administration by administrative courts do not allow for the possibility of adjudicating on complaints concerning inaction in the adoption of acts of local law by local government units and local government administration bodies, referred to in Article 3 § 2(5) LPAC. Inaction and excessive length of proceedings, referred to in Article 3 § 2(8) and (9) LPAC, therefore do not apply to all actions of administrative bodies, but only to those acts and activities listed by the legislature in Article 3 § 2(1)–(4a) LPAC. This means that a complaint concerning inaction can be effectively lodged only in a situation concerning the body competent to issue or undertake the given acts or activities in the procedural forms described above. Therefore, Article 3 § 2 (8) LPAC cannot constitute grounds for filing a complaint against a body's legislative inaction regarding the issuance of an act of local law with the content and subject matter specified by the complainant. Article 3 § 2 (8) LPAC does not refer to the provisions of Article 3 § 2 (5) and (6) LPAC, which pertain to appeals against acts of local law and other acts of local government bodies.[26]

The Spatial Planning and Development Act, in its currently applicable wording, also does not contain any provisions operating as specific rules that could constitute grounds for a complaint against inaction in the adoption of a general plan by a municipality. At the same time, however, an authority that fails to issue an act of local law – including a general plan – fails to comply with the statutory requirement to issue it, provided, of course, that such a requirement exists within the framework of formal necessity. This

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[22] Act of 30 August 2002 – Law on Proceedings before Administrative Courts; consolidated text, Journal of Laws of 2024, item 935, hereinafter referred to as the 'LPAC'.

[23] Act of 29 August 1997 – Tax Ordinance; consolidated text, Journal of Laws of 2023, item 2383, hereinafter referred to as the 'Tax Ordinance'.

[24] Act of 14 June 1960 – Code of Administrative Procedure; consolidated text, Journal of Laws of 2024, item 572, hereinafter referred to as the 'CAP'.

[25] See for example: judgment of the Regional Administrative Court in Wrocław of 31 December 2024, ref. no. IV SAB/Wr 280/24, resolution of the Regional Administrative Court in Poznań of 24 November 2022, ref. no. IV SAB/Po 161/22, resolution of the Regional Administrative Court in Warszawa of 8 February 2024, ref. no. I SAB/Wa 298/23.

[26] Judgments of the Supreme Administrative Court of 25 March 2025, ref. no. II OSK 537/24, resolution of the Supreme Administrative Court of 12 December 2012, ref. no. II GSK 1828/24.

may have negative consequences for the legal interests of the (potential) addressees of local regulations. Therefore, taking into account the constitutional right of access to a court, one should strive to identify regulations that, in the event of a municipality failing to adopt a general plan, will enable the protection of the legal interests of entities affected by the state of legislative passivity of local government bodies.

## GROUNDS FOR A COMPLAINT CONCERNING INACTION CONSISTING IN FAILURE TO ADOPT THE GENERAL MUNICIPAL PLAN

As a preliminary hypothesis, it may be assumed that Article 101a(1) of the Act of 8 March 1990 on Municipal Self-Government may constitute the normative basis in a case where a municipality fails to issue an act of local law in the form of a general plan.[27] However, this preliminary assumption requires verification in order to confirm or disprove it in the context of the conditions that must be met for a complaint filed under this procedure to be admissible and subsequently effective – that is, to be considered by an administrative court and, where necessary, to achieve the desired result.

According to Article 101a(1) of the Act on Municipal Self-Government, the provisions of Article 101 of the Act (i.e. regulations concerning the possibility of appealing to an administrative court against a resolution or order by anyone whose legal interest or entitlement has been violated by a resolution or order adopted by a municipal body in a matter within the scope of public administration) apply accordingly when a municipal body fails to perform actions required by law or when the legal or factual actions taken violate the rights of third parties. Even a cursory analysis of the cited provision indicates that it cannot constitute grounds for filing a complaint in every case. This is dictated by the fact that, for a complaint filed under Article 101a of the Act on Municipal Self-Government to be upheld, there must be a legal norm requiring the municipal body to perform specific actions. Therefore, there must be a statutory obligation for the body to undertake the required actions, so that failure to do so can be considered inaction.[28]

This implies, *a contrario*, that a complaint to an administrative court will be unfounded in a situation where the authority has only the power, and not the obligation, to take the relevant act or action. In other words, this will be the case when – with respect to local law – it acts within the framework of its legislative discretion, and not when the provision explicitly mandates the adoption of local law. Importantly, however, the Supreme Administrative Court takes the view that both case law[29] and legal doctrine[30]

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[27] Consolidated text, Journal of Laws of 2024, item 1940.

[28] For example, judgment of the Supreme Administrative Court of 5 March 2020, ref. no. II OSK 1131/18, resolution of the Regional Administrative Court in Wrocław of 1 August 2023, ref. no. II SAB/Wr 209/23.

[29] Judgments of the Supreme Administrative Court of: 29 January 2013, ref. no. II OSK 59/13; 19 September 2013, ref. no. II OSK 1591/13; 12 March 2020, ref. no. II OSK 3979/19.

[30] P. Mijał, 'Skarga na bezczynność organu samorządu terytorialnego w wydaniu aktu prawa miejscowego', *Samorząd Terytorialny*, 2008, No. 5, pp. 1–12.

uniformly assume that 'actions mandated by law', referred to in Article 101a(1) of the Act on Municipal Self-Government, include resolutions of municipal bodies, provided that the obligation to undertake them arises from provisions of law.[31]

At this point, bearing the above in mind, it is necessary to determine whether the legislature mandates the adoption of general plans. The grammatical and literal interpretation of the provisions of the Spatial Planning and Development Act yields unambiguous results here. The legislature, pursuant to Article 13a(1) SPDA, by classifying the general plan as an act of local law (Article 13a(7) SPDA), imperatively stipulates that 'for the area of the commune (…), the commune council shall adopt the general plan of the commune (…)'. This is therefore a competence norm of a binding nature, leaving no leeway in the creation of the local regulation under consideration – the general plan of the commune. In this norm, the legislature decided not to include a deadline for the adoption of general plans. However, such a deadline can readily be inferred from the act amending the SPDA, namely Article 65(1) of the Act of 7 July 2023 amending the Spatial Planning and Development Act and Certain Other Acts.[32] Under this provision, municipal studies of conditions and directions of spatial development remain in force until the date on which the general plan for a given municipality enters into force, but no later than 31 December 2025, and the current regulations apply to them. If it is known that general plans are ultimately intended to replace condition studies, then the deadline for adopting general plans is 31 December 2025, which in turn is the deadline for the validity of the studies. For the sake of clarity, it should be noted that, under Article 4(2) of the Act of 4 April 2025 amending the Spatial Planning and Development Act and Certain Other Acts,[33] this deadline has been extended to 30 June 2026. Overall, however, the statement that the legislature established a time-bound obligation to adopt general plans should not be controversial.

Additionally, for a complaint to an administrative court filed under Article 101a(1) of the Act on Municipal Self-Government to be effective, it must also be demonstrated that the administrative authority's failure to perform legally mandated actions negatively affects the complainant's substantive rights, meaning that there is a causal link between the municipal authority's inaction in fulfilling this obligation and the infringement of the complainant's legal interest or entitlement.[34] Simply put, the point is to prove that, as a result of legislative inaction, someone's legal interest or entitlement has been infringed. The legal interest referred to in Article 101(1) of the Act on Municipal Self-Government, and to which Article 101a(1) of the Act on Municipal Self-Government refers, must be assessed from a substantive-law perspective and requires the establishment of a connection between the complainant's individual rights and obligations and the challenged act (or the challenged inaction in issuing that act).[35]

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[31] Judgment of the Supreme Administrative Court of 9 February 2023, ref. no. III OSK 6815/21.

[32] Journal of Laws of 2023, item 1688.

[33] Journal of Laws of 2025, item 527.

[34] Judgment of the Supreme Administrative Court of 5 July 2022, ref. no. II OSK 2723/210.

[35] See resolution of the Regional Administrative Court in Olsztyn of 16 November 2022, ref. no. II SA/Ol 765/22, resolution of the Regional Administrative Court in Gorzów Wlkp. of 30 March 2023, ref. no. II SA/Go 83/23, resolution of the Regional Administrative Court in Poznań of 4 April 2023, ref. no. IV SAB/Po 37/23.

It should be emphasised that the assessment of a planning act's infringement of a legal interest does not have to be limited to the provisions of the Spatial Planning and Development Act, as planning resolutions may also encompass rights or obligations within the scope of commercial law, real-estate management, or civil law.[36] Therefore, an infringement of a legal interest can be seen, for example, in the absence of a general plan making planning within the municipality impossible and, consequently, the issuance of individual administrative acts based on the general plan, which in turn affects the value of the property, the possibility of trading in such property, etc. It may be argued that this viewpoint could be challenged on the basis that an interest understood in this way is not, in fact, a legal interest, as we are talking about future and potential events, not current and real ones (whereas a legal interest – as we know – should be, among other things, current and real). On the other hand, the owner of a property not covered by such a plan may argue that the failure to adopt a general plan violates their legal interest insofar as it prevents or limits the disposal of their property. The Supreme Administrative Court's judgment of 4 November 2010, ref. no. II OSK 1065/10, seems interesting in this regard. It concerned the city council's inaction regarding the adoption of a local development plan for a health resort municipality. The adjudicating panel indicated in its ruling that the source of the complainant's legal interest was the provisions of substantive law concerning ownership rights, including the right to possess, use, and dispose of property. Due to the municipality's legislative inaction, the complainant was deprived of the ability to dispose of the properties of which she was the owner or co-owner, and therefore the failure to adopt a local development plan for the health resort area prevented the sale of her plot. There are no obstacles to applying these observations to general plans of municipalities.

## ADMINISTRATIVE COURT RULING UPHOLDING A COMPLAINT CONCERNING LAW-MAKING INACTIVITY FILED UNDER ARTICLE 101A(1) OF THE ACT ON MUNICIPAL SELF-GOVERNMENT

However, it should be taken into account that an administrative court, when ruling on a complaint under Article 101a(1) of the Act on Municipal Self-Government, cannot – due to the lack of relevant legal regulation – set a deadline for the local government unit to issue a normative act, including a general plan.[37] Furthermore, it does not appear that a ruling on this type of inaction would activate the provision of Article 101a(2) of the Act on Municipal Self-Government, according to which, in cases referred to in Article 101a(1), the administrative court may order the supervisory authority to perform the necessary actions on behalf of the complainant, at the expense and risk of the municipality.

[36] Resolution of the Supreme Administrative Court of 22 September 2020, ref. no. II OSK 1781/20.

[37] See M. Wincenciak, 'Zwalczanie bezczynności organów jednostek samorządu terytorialnego w sferze stanowienia aktów normatywnych', in: Dolnicki B. (ed.), *Partycypacja społeczna w samorządzie terytorialnym*, Warszawa, 2014, p. 537.

First of all, an administrative court,

> 'when ruling on a complaint under Article 101a of the Act on Municipal Self-Government, may order the supervisory authority to perform necessary actions on behalf of the complainant at the municipality's expense and risk, but is not obliged to do so. The optional nature of this power stems from the fact that the court will not always be able to 'isolate' the complainant's case'.[38]

A prime example of a situation in which such 'isolation' is impossible is the general plan, which will be adopted for the municipality's area, not for individual, specifically designated properties.

Furthermore, in the context discussed in this study, justified doubts arise from the administrative court's entrusting – or, in fact, ordering – a supervisory authority to act not only on behalf of another authority, but also at its expense and risk. Such action leads to excessive interference with the autonomy of local government. An administrative court cannot, after all, create the content of an act of local law, in this case a general plan, because granting it such authority would violate the model of judicial review of administration and the constitutional principle of the separation of powers. Ordering a supervisory authority to 'independently' adopt a given act instead of the competent municipal body should be interpreted in a similar manner.[39]

As a result, the claim that the norm in Article 101a(2) of the Act on Municipal Self-Government is always engaged when a provincial administrative court rules on the inaction of a local government body, including legislative inaction, is not supported by the interpretation of Article 101a of the Act on Municipal Self-Government. However, even if this rather controversial assumption were to be accepted,

> 'It does not lead to a transfer of the law-making competences of the municipal body to the government administration body, because this competence still belongs to the municipal body. Furthermore, since a complaint (…) is intended to constitute one of the forms of guaranteeing the implementation of the rule of law, any doubts as to the admissibility of legal recourse under Article 101a of the Act on Municipal Self-Government should be interpreted in favour of protecting individual rights and the right to a fair trial.'[40]

## ADMISSIBILITY OF A COMPLAINT CONCERNING THE FAILURE TO INCLUDE A DEVELOPMENT SUPPLEMENTATION AREA IN THE GENERAL PLAN

It is necessary to determine whether a municipality's failure to include certain elements of the plan in the general plan is subject to appeal to an administrative court.

This doubt is justified, since pursuant to Article 13a(4)(1) of the Spatial Planning and Development Act, the general plan specifies: (a) planning zones; and (b) municipal

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[38] Z. Niewiadomski, 'Art. 101a', in: Hauser R., Niewiadomski Z. (eds), *Ustawa o samorządzie gminnym. Komentarz z odniesieniami do ustaw o samorządzie powiatowym i samorządzie województwa*, Warszawa, 2011, p. 822.

[39] See D. Dąbek, *Prawo…*, op. cit., pp. 328–331.

[40] A. Sidorowska-Ciesielska, 'Art. 101a', in: Gajewski S., Jakubowski A. (eds), *Ustawy samorządowe. Komentarz*, Warszawa, 2018, Legalis.

urban standards, while pursuant to Article 13a(4)(2) of the Spatial Planning and Development Act, the general plan may specify: (a) development supplementation areas; and (b) downtown development areas. It is significant that the issuance of a development decision will be possible only if all the legally defined conditions are met, one of which is that the land be located within a development supplementation area (Article 61(1)(1a) SPDA). The conclusion is as follows: under current law, in order to obtain a development decision in the future, a municipality should first adopt a general plan, simultaneously specifying the areas to be developed. However, if a municipality adopts a general plan without this component, development decisions cannot be issued within the area covered by the plan. This could result in public-law claims for the inclusion in the plan of areas to be developed.

The wording of Article 13a(4) SPDA allows for the conclusion that the content of the general plan consists of the mandatory elements specified in point 1 of this provision and the optional elements indicated in point 2. This is clearly confirmed by the way in which the legislature authorised the municipality to regulate the structural elements of the plan: on the one hand, by using a categorical phrase ('the general plan specifies' – point 1), and on the other hand, a non-categorical phrase ('the general plan may specify' – point 2). If so, then the development supplementation area is a possible, but not necessary, content element of the general plan, as its inclusion in the planning act takes place under conditions of the exercise of optional competence. This view is endorsed in the literature, which indicates that

> 'There is no need to designate development areas in the general municipal plan, because it will be up to the municipality to decide whether it wishes to designate such areas where decisions on development conditions will be issued. The municipality may decide that the local spatial development plan will cover the entire area of the municipality, and for this reason, defining the development area will be unnecessary.'[41]

This idea seems rational, because by dividing the elements of the general plan into mandatory and optional, the legislature aimed to give these spatial planning acts a concise form, unlike overly extensive studies of the conditions and directions of spatial development.[42]

As a result, a municipality's inclusion in a general plan of the elements specified in Article 13a(4)(2) SPDA, including development supplementation areas, constitutes an optional action by the local government unit; the municipality may act or refrain from doing so. Therefore, there is no possibility of effectively filing complaints against the inaction of municipal authorities that choose not to designate such areas in general plans.[43] Thus, the failure to designate a development supplementation area in the

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[41] A. Maziarz, 'Plan ogólny gminy w znowelizowanych przepisach ustawy o zagospodarowaniu i planowaniu przestrzennym', *Przegląd Ustawodawstwa Gospodarczego*, 2024, No. 5, p. 28. See also K. Szlachetko, 'Plan ogólny – nowe (?) narzędzie legislacji planistycznej', in: Bąkowski T. (ed.), *Legislacja planistyczna*, Gdańsk, 2024, p. 110.

[42] K. Pawlik, 'Plan ogólny jako nowy akt planowania przestrzennego i podstawa planów miejscowych oraz realizacji inwestycji', in: Daniel P., Kafar D., Pawlik K. (eds), *Systemowe zmiany w planowaniu przestrzennym*, Warszawa, 2023, p. 59.

[43] M. Nowak, 'Plan ogólny – nowy instrument w planowaniu przestrzennym', *Nieruchomości*, 2023, No. 11, p. 4.

general plan cannot constitute an independent, effective objection to the general plan,[44] and such action by the municipality is not subject to appeal to an administrative court. This is because it is a deliberate and intentional action by the local legislature (municipality), which does not constitute law-making inaction within the meaning of this text.

## CONCLUSIONS

According to the analysis, it would be appropriate to support the admissibility of a complaint to the provincial administrative court if, despite the expiry of the deadline set by the legislature, the municipality fails to adopt a general plan. It appears – and this analysis aims to confirm this hypothesis – that the basis for such a complaint could be Article 101a(1) of the Act on Municipal Self-Government. *De lege ferenda*, however, an explicit declaration by the legislature permitting this type of legal remedy would be desirable. If so, a relevant provision should be included in the Spatial Planning and Development Act, which would clearly contribute to ending speculation about the admissibility of complaints concerning the legislative inaction of local government bodies in this regard. Currently, the inadmissibility of such complaints is the rule, while their substantive review by administrative courts is treated as exceptional. In the opinion of the author of this text, the proposed change in normative status will ensure the right to a fair trial, but at the same time an administrative court ruling issued in such a case will not constitute undue interference with the autonomy of local government bodies. It is impossible, however, to agree with the view that entities whose properties will be covered by the provisions of the general plan will have a public-law claim to the inclusion of specific elements in the plan, including, in particular, the development supplementation area. Given that the development supplementation area, the determination of which in the general plan determines the admissibility of issuing decisions on development conditions, is an optional element of the general plan, a complaint to the administrative court concerning the failure to include this element will not be legally effective.

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[44] M. Nowak, J. Dziedzic-Bukowska, *Planowanie i zagospodarowanie przestrzenne – analiza najnowszych zmian*, Warszawa, 2024, p. 16.

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