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Summary

The responsibility for damage caused by spatial planning
(Odpowiedzialność za szkodę planistyczną)

The Ph.D. dissertation prepared
in the Department of Civil Law
under the supervision of
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Łódź 2022

SUMMARY

The doctoral dissertation deals with the liability for damage caused by the spatial planning. The liability for this kind of damage may occur when the local planning authority undertakes a legally binding act affecting the rights of owners of real estates. The ownership could be restricted by the different types of legal acts issued in order to fulfil statutory duties imposed on the local administration authorities to achieve objectives of the development planning. In the Polish law a legal act referring to the spatial planning which could result in the damage is a local development plan. This is a common feature in the European legal systems to link the potential responsibility only with the specific kind of legal act delivered by the local planning authority in the spatial planning issues. The liability for the spatial planning is regulated in the act passed on 27th March 2003 *ustawa o planowaniu i zagospodarowaniu przestrzennym* (hereinafter: the Planning Act).

The PhD thesis has been divided into two parts. The first one is a general description of the fundamental issues concerning the liability for effects of passing the local development plan. The second is a detailed description of the claims which could be laid if the local development plan regulates rights of the owners in the unfavourable way.

In the first chapter the historical point of view on the liability for damage caused by the spatial planning is presented. It should be noted that at the beginning in the legal systems there was no liability for damage resulted from legal acts of the authority, nor specific rules regulating the damages compensating the negative effects for owners of the entrance into force of spatial planning acts. The origins of regulations concerning the liability for the spatial planning policy was linked to deep changes in the society, economics, ownership as well as in the concept of organisation and exercising of the public authority. After the feudal system had collapsed, the whole new idea of the ownership was conceived. Not only a king could be an owner of the land. Facing the industrial revolution and the population explosion in the nineteenth century created favourable circumstances for the more exceeded legal control over the development of the land. Finally, the increase in the number of legal rules providing the building and planning matters occurred. The more regulated the space was, the bigger problem with violating rights of owners arose.

The development of the legal basic of the liability for damage resulted from the local planning plan was different in the European countries. The English law, contrary to the previous legal acts regarding to the spatial planning and the responsibility for damages resulted from it, provides for the rule that no compensation is due if the local development plan stipulates unfavourable for the owner of the real estate regulation. The liability for damage caused by the spatial planning is limited only to several situations when the right to develop a piece of land which had been stated in the planning permission was restricted. The exception to this rule although does not regard to the local development plan. In the French law the rule is also that the owner is not entitled to demand compensation for damage resulted from the passing the local development plan. Unlike the English law, there are however few exceptions to the principle of no liability for restriction of the rights to the real estate by the local development plan. It should be noted that they are subject to the narrowing interpretations in practice. On the other hand there are legal systems, in which the responsibility for the spatial planning is relatively wide. The German law states that the limitations of the ownership which came into force as a consequence of the local development plan have to be compensated. The opposite, rare situation is an exception to this rule. The right to the real estate is protected by a variety of legal remedies.

In the second chapter starts with the presentation of the administrative aspects of the spatial planning. The status of the local development plan as a legal generally binding act is revealed. After the description of the administrative background the analysis of the impact of this plan on the civil rights to the real estate is provided. The restrictions of the ownership have found to be statutory, referring directly to the rights of the owner, not only to the way they are being exercised and affecting the legal or factual possibility of the usage of real estates. The chapter ends with the draft definition of the planning damage.

The third chapter introduces to the main information about the liability for damage resulted from passing a local development plan. The type of legal remedies, the characteristics of legal relationship, position of the creditor and debtor along with basic rules of the responsibility for damage are explained. The question about the axiological and constitutional fundamentals of the liability is raised in the last part of the chapter. The values justifying the responsibility for legal acts issued in the spatial planning matters manifests in the conviction that individual should not be imposed by disproportionate public burden. The French and German theories concerning the liability for legal acts of authority are suitable. Nevertheless the axiological

basis, in the constitutional perspective there is no principle of liability for damage caused by the spatial planning. The Polish lawgiver decided to regulate the scope of the responsibility for enacting local development plan fully in the specific laws.

The fourth chapter includes the detailed characteristic of the liability for damage which is a consequence of the passing the local development plan. The analysis leads to the conclusions that this kind of responsibility is opposite to appearing from the illegal acts of the authority, should be viewed as a part of private law of obligations and as an example of the *quasi-tort*. The specific rule of the civil liability additional to three traditionally recognised in the tort law could be distinguished for the purposes of the responsibility for damage caused by the spatial planning. It might be called the rule of legality. The legal claim for the compensation could be generally transferred to the other legal or natural persons in the legal action or inheritance. The creditor is may bring suit to the civil court until the prescribed time passes.

In the fifth chapter the basic claim in the liability for the spatial planning stated in the article 36.1 of the Planning Act is analysed. It is available for the creditor if he was entitled to the real estate at the day the local development plan entered into force. It may be either a new local planning act or just an amendment to the already binding local planning act. The creditor may demand the right to the compensation in money or transferring the title to the real estate on the subject responsible for the damage in exchange for its price. The condition to lay this claim is that his rights to the real estate have been restricted in a such way that the usage of it has been at least severely limited or impossible because of the local development plan.

The sixth chapter deals with the second claim in the liability for the spatial planning, which is regulated in the article 36.3 of the Planning Act. The creditor may demand for a compensation in money for the loss of the value of the real estate which is linked to the local development act. This claim could be exercised only if the owner sold the real estate affected by provisions of the new or amended local development plan after it had come into force. The loss of the value should occur in the five-years-time starting from the day the local development plan began to be the binding legal act.

In the seventh chapter the problems of the procedure of realisation of the claims are presented. There are two stages of the exercising of this rights. The first one starts with the writ from the creditor containing the precise demand and the circumstances of the damage. It gives debtor

the possibility to fulfil the obligation to repair the damage caused by the local planning act voluntarily. The debtor may check the value of the real estate and has a chance to reach an agreement with the creditor. The second stage begins with the creditor submitting the formal complaint to the civil court. The creditor should take this legal actions in the prescribed time in order to exercise his rights effectively. The both claims are limited in six-years' time. After the expiration of the period of limitation of the claim the creditor might sue the debtor. The defendant may however submit that the prescribed time for initiating the lawsuit has run out. In this situation the court would dismiss the claim.

The whole seven chapters of the PhD thesis provide the essential information on the liability for damage resulted from enacting of the local development plan. Considering it from the abstract perspective, the Polish law should be perceived as giving the owner of the real estate wide protection against negative consequences of passing the binding local law in the spatial planning matters. The Polish regulation of the liability for damage caused by spatial planning has therefore similar regulations to the German law in the analysed matters.

A handwritten signature in black ink, appearing to read 'Joanna Kaminarska'. The signature is written in a cursive, flowing style with some loops and flourishes.