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## **PUBLIC INTEREST IN SPATIAL PLANNING IN RURAL AREAS**

### **Abstract**

This article presents the implementation of the principles of respecting public interest in rural spatial planning. It is juxtaposed with the conflict of private interest, primarily the interference with property rights, as well as the conflict between different public interests. Legal solutions for the economic compensation for the violation of private interest (property rights) in the implementation of the planning public interest are evaluated. The private public interest in national regulations on rural spatial planning is also pointed out.

### **KEYWORDS**

agricultural law, spatial planning, public interest, rural areas, agriculture

### **SŁOWA KLUCZOWE**

prawo rolne, planowanie przestrzenne, interes publiczny, obszary wiejskie, rolnictwo

## INTRODUCTION

There are many possibilities to realize public interest in the legal system. In law, each public interest is derived either from legislation or from the current political and economic situation. However, it is not an unambiguous category that can be defined without doubt. Public interest is also present in the spatial management system and, in particular, in spatial planning. Many conflicts arise against the background of its implementation, which has economic consequences. It is already a problem to identify the public interest and determine its validity in relation to the private or public-private interest.

The aim of this article is to identify the public interest in spatial planning in rural areas. It is particularly in rural areas that several phenomena related to the public interest occur. Firstly, those related to its unquestionable primacy. In these areas, the public interest, usually understood as the need to ensure food security, comes first. It also includes the concern for the farmer or for the areas of natural value. In the accumulation of these public interests, the private interest of the agricultural property owner loses much of its importance.

Secondly, it is in rural areas that most conflict situations arise in terms of sustainable development. Rural areas are in the greatest need of large investments such as roads, processing plants and animal husbandry. In this context, there are conflicts over the functions of the land in question – traditional agriculture, on the one hand, and the use of agricultural land for non-agricultural purposes, on the other. Most conflicts against this background arise during the process of spatial planning and later development.

Thirdly, sometimes the public interest in making investments or changing the use of land encroaches on agricultural tradition. Above all, it interferes with the ownership of agricultural property, which has been in some families for several generations. For farmers, the role of being the owner of the farm on which their predecessors farmed is one of the most important roles. The public interest that this ownership interferes with, particularly in the implementation of land-use planning, will be an indicator of trust in the state and the credibility of the actions taken.

## SPATIAL PLANNING AND THE MARKETING OF AGRICULTURAL REAL ESTATE

In addition, agricultural spatial planning has been combined with real estate marketing, which strengthens the public interest in preserving the agricultural character of real estate. Since 2016, i.e., since the enactment of the amendment to

the Act on the Formation of the Agricultural System (Ukur),<sup>1</sup> spatial planning has also influenced the turnover of agricultural real estate,<sup>2</sup> defining whether a given property is subject to the Ukur or not.<sup>3</sup> This is also a manifestation of the realisation of the public interest, because in the final analysis the possibility of selling agricultural real estate will be decided by an administrative body, i.e., the Director General of the National Support Centre for Agriculture.<sup>4</sup> This new function of spatial planning combines public regulation with private law trade in agricultural real estate.<sup>5</sup> It should be made clear that the public interest is in a more important position here due to the shape of the regulations on the acquisition of agricultural real estate. The legislator already interferes not only in the sphere of the use of real estate through spatial planning but also in the sphere of its disposal through restrictions related to the possibility to dispose of real estate. The phenomenon of such public interference is not new in agricultural law<sup>6</sup> but has gained in importance in recent years.

Interference in trading in agricultural real estate remaining in the hands of private owners in the name of public interest, which is the protection of agricultural character of the real estate, significantly affects the economic situation of farmers, the market of agricultural real estate in Poland, as well as its value. This juxtaposition of the provisions of the Act on shaping the agricultural system and the local spatial development plan forms the right to property, both in the sphere of using and disposing of it.<sup>7</sup>

A question arises whether, as a result of the realisation of this public interest, we are still dealing with the classical triad of proprietary rights or whether,

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<sup>1</sup> Act of 14 April 2016 on suspending the sale of real estate of the Agricultural Property Stock of the State Treasury and amending certain acts (Journal of Laws 2022, item 507).

<sup>2</sup> K. Marciniuk, *Pojęcie nieruchomości rolnej jako przedmiotu reglamentacji obrotu własnościowego*, 'Studia Iuridica Lublinensia', Lublin 2017, Vol. 26, pp. 94-114.

<sup>3</sup> More on this topic: A. Niewiadomski, *Rola aktów planistycznych w obrocie nieruchomościami rolnymi*, [in:] *Współczesne problemy prawa rolnego i cywilnego. Księga jubileuszowa Profesor Teresa Kurowskiej*, D. Łobos-Kotowska, P. Gała, M. Stańko (eds.), Warszawa 2018, pp. 419-430.

<sup>4</sup> A. Niewiadomski, *Status prawny Krajowego Ośrodka Wsparcia Rolnictwa*, 'Studia Iuridica', Warszawa 2017, Vol. 72, pp. 279-293; P. Czechowski, A. Niewiadomski, *Wybrane zagadnienia prawa europejskiego w zakresie nabywania i gospodarowania gruntami rolnymi*, 'Studia Iuridica' 2020, Vol. 86, pp. 43-56.

<sup>5</sup> K. Marciniuk, *Pojęcie nieruchomości rolnej jako przedmiotu reglamentacji obrotu własnościowego*, 'Studia Iuridica Lublinensia', Lublin 2017, Vol. 26, pp. 94-114.

<sup>6</sup> A. Lichorowicz, *Uwagi w kwestii usytuowania przepisów o obrocie gruntami rolnymi w systemie prawa polskiego (na tle prawno-porównawczym)*, 'Przegląd Prawa Rolnego', 2008, No. 2(4), pp. 29-50.

<sup>7</sup> E. Ura, K. Heliniak, *Ograniczenia własności nieruchomości w administracyjnym prawie materialnym*, [in:] *Jednostka wobec działań administracji publicznej*, [in:] *Jednostka wobec działań administracji publicznej*, E. Ura (ed.), Rzeszów 2001; M. Szewczyk, *Ingerencja publiczno-prawna w prawa własności jednostki w demokratycznym państwie prawnym*, [in:] *Jednostka w demokratycznym państwie prawa*, J. Filipek (ed.), Bielsko-Biała 2003.

as Andrzej Stelmachowski wrote, we are dealing with *nudum ius*.<sup>8</sup> If this is the case, a question arises as to whether the public interest thus pursued can properly deprive the farmer of his property in such a manner. Undoubtedly, these provisions also affect the economic dimension of the public interest so pursued. Restrictions for farmers on the trading of property, clearly have an impact on property prices, which is supposed to prevent the process of land speculation or land grabbing.<sup>9</sup>

One of the important issues in the dimension of public interests in the planning sphere in rural areas is compensation for the damage suffered. Here, it is not enough only to regulate Article 36 of the Act on Planning and Spatial Development and the compensations or exchanges provided for therein.<sup>10</sup> The agricultural law in this respect finds compensatory solutions in the concept of agricultural property<sup>11</sup> formulated by Andrzej Stelmachowski. It must be clearly emphasised that the farmer has the right to expect state assistance, in return for the fact that he fulfils extraordinary duties towards the society. The main duty mentioned in the doctrine is ensuring food security. In doing so, the public burden is justified in the name of the public interest.

Undoubtedly, a question arises as to whether the current requirements and restrictions still make it possible to indisputably indicate if the agricultural ownership exists. The number of restrictions, not only strictly planning restrictions but also those aimed at shaping the marketing of agricultural real estate seem to turn agricultural ownership into a highly restricted right. In addition, the compensation measures offered to farmers do not promote certainty in the economic turnover or long-term planning of the agricultural activity carried out. *De lege ferenda*, the level of compensation for farmers for the changes introduced in the conduct of agricultural activities, as well as the inability to use agricultural real estate, must be clearly defined.

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<sup>8</sup> A. Stelmachowski, *Treść i wykonywanie prawa własności*, [in:] *System Prawa Prywatnego, Prawo Rzeczowe*, T. Dybowski (ed.), Warszawa 2007, Vol. 3, pp. 187-314.

<sup>9</sup> R. Pastuszko, *Landgrabbing. Podstawowe zagadnienia prawne*, [in:] *Prawne determinanty polityki rolnej*, ed. B. Jeżyńska, R. Pastuszko, 'Studia Iuridica Lublinensia' Vol. XXVI.1, Lublin 2017, pp. 147-156.

<sup>10</sup> H. Izdebski, *Prawo własności w planowaniu zagospodarowania przestrzeni*, [in:] *Kierunki reform planowania i zagospodarowania przestrzennego*, I. Zachariasz (ed.), Warszawa 2012.

<sup>11</sup> T. Kurowska, *Renesans własności rolniczej*, 'Przegląd Prawa Rolnego', 2014, No. 2 (15), p. 33; M. Korzycka-Iwanow, *Ochrona własności rolniczej w nawiązaniu do koncepcji własności rolniczej Profesora Andrzeja Stelmachowskiego*, 'Studia Iuridica Agraria', Białystok 2011, Vol. IX, pp. 123-127.

## PUBLIC INTEREST IN SPATIAL PLANNING

According to the definition contained in Article 2(4) of the Act on Planning and Spatial Development,<sup>12</sup> the public interest should be understood as ‘the generalised aim of pursuits and activities, taking into account the objectified needs of the general public or local communities, related to spatial development’.<sup>13</sup> The doctrine of law indicates that the public interest<sup>14</sup> will be the broadly understood general interest, the welfare of the state.<sup>15</sup> In the science of law, the general interest also includes the welfare and the freedom of the individual.<sup>16</sup>

The public interest will arise wherever a legal provision protects a benefit or a subject of value to an administrative regime.<sup>17</sup> For example, such protection will be given to the environment and the concern for its preservation<sup>18</sup> or to the organisation of public space by means of spatial development plans.<sup>19</sup> The question always arises as to the identification of the protected good.

The problem in rural areas is that not only are planning acts not uniform but their multiplicity means that they often pursue conflicting public interests.<sup>20</sup>

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<sup>12</sup> Act of 27 March 2003 on spatial planning and development (Journal of Laws 2022, item 461).

<sup>13</sup> H. Izdebski, *Interes publiczny a interes prywatny. Uwagi na tle legalnej definicji interesu publicznego w ustawie o planowaniu i zagospodarowaniu przestrzennym*, [in:] *Interes publiczny a interes prywatny w prawie*, T. Giaro (ed.), Warszawa 2012, pp. 149-158

<sup>14</sup> A. Mednis, *Prawo do prywatności a interes publiczny*, Kraków 2006.

<sup>15</sup> E. Modliński, *Pojęcie interesu publicznego w prawie administracyjnym*, Warszawa 1932.

<sup>16</sup> M. Wyrzykowski, *Pojęcie interesu społecznego w prawie administracyjnym*, Warszawa 1986, p. 33.

<sup>17</sup> For example, it is possible to indicate J. Lemańska, *Ochrona prawa własności a obowiązek utrzymania nieruchomości w porządku i czystości*, [in:] *Ochrona człowieka w świetle prawa Rzeczypospolitej Polskiej*, S. Pikulski (ed.), Olsztyn 2002; F. Longchamps, *Ograniczenia własności nieruchomości w polskim prawie administracyjnym*, ‘Przegląd Prawa i Administracji’ 1939, No. 1-2; M. Szewczyk, *Ingerencja publicznoprawna w prawo własności jednostki w demokratycznym państwie prawnym*, [in:] *Jednostka w demokratycznym państwie prawa*, J. Filipek (ed.), Bielsko-Biała 2003; E. Ura, K. Heliniak, *Ograniczenia własności nieruchomości w administracyjnym prawie materialnym*, [in:] *Jednostka wobec działań administracji publicznej*, E. Ura (ed.), Rzeszów 2001.

<sup>18</sup> J. Stelmasiak, *Ochrona interesu indywidualnego w prawie ochrony środowiska (analiza administracyjno-prawna)*, [in:] *Jednostka wobec działań administracji publicznej. Materiały z międzynarodowej konferencji naukowej*, E. Ura (ed.), Rzeszów 2001.

<sup>19</sup> S. Jarosz-Żukowska, *Konstytucyjna zasada ochrony własności*, Kraków 2003; P. Bojarski, *Konstytucyjne podstawy ochrony przyrody*, [in:] *Ochrona środowiska a prawo własności*, J. Sommer (ed.), Wrocław 2000, p. 29 *et seq.*

<sup>20</sup> J. Goździewicz-Biechońska, *Planowanie przestrzenne wobec współczesnych tendencji rozwoju obszarów wiejskich*, ‘Przegląd Prawa Rolnego’, 2015, No. 2; A. Suchoń, *Wpływ miejscowego planu zagospodarowania przestrzennego na prawne formy dysponowania nieruchomościami rolnymi*, ‘Studia Iuridica Agraria’, 2016, Vol. 14, pp. 131-146.

A distinction must also be made between public interests<sup>21</sup> and private interests, as well as social interests.<sup>22</sup> The realisation of public interests such as ensuring food security or preserving the agricultural character of the property is often in line with the interests of individual farmers. The only problem is that other private interests are violated in the pursuit of the public interest. The aforementioned right to property is just one example. Examples include interference in land management, influencing the economic decisions of farmers, or restrictions on agricultural activities.

One rather high-profile example of public interest is the siting of renewable energy sources in rural areas. As a matter of principle, wind power plants and large photovoltaic farms should be specified in the local plan. At the same time, in pursuing the public interest of energy security, the legislator forms special purpose laws to realise this public interest. One example is the Distance Law, the economic impact of which for farmers has not yet been sufficiently assessed.<sup>23</sup> The restrictions introduced by the construction of windmills are clear to property owners who lease or sell their property for these developments. In contrast, there is little scope, apart from the aforementioned Article 36 of the Planning and Spatial Development Act, for other owners who are harmed by these investments, if only through noise emissions. Therefore, in pursuing an important public interest by means of special purpose laws, it would be advisable to specify compensation measures.

## EXAMPLES OF CONFLICTS OF INTEREST IN RURAL AREAS

In addition to the standardisation of renewable energy sources and their location in rural areas, there is also the need to improve the regulation of nature conservation. In this area, too, there are planning regulations resulting from, for example, the Nature Conservation Act.<sup>24</sup> Spatial planning does not only include creating local plans but also planning acts concerning national parks, landscape parks, nature reserves or Natura 2000 areas, to name just a few. The status of

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<sup>21</sup> B. Jeżyńska, *Proekologiczne instrumenty wsparcia zrównoważonego rozwoju obszarów Wiejskich*, 'Studia Iuridica Agraria', Białystok 2012, Vol. X.

<sup>22</sup> K. Chról, M. Szyrski, *Próba modelowania zadań publicznych jednostek samorządu terytorialnego w zakresie wspierania rozwoju odnawialnych źródeł energii (OZE)*, 'Samorząd Terytorialny', 2021, No. 7-8; M. Szyrski, *Rola samorządu terytorialnego w rozwoju odnawialnych źródeł energii (OZE). Analiza administracyjnoprawna*, Warszawa 2017.

<sup>23</sup> A. Cylwik, *Analiza ekonomiczna skutków wprowadzenia postanowień tzw. ustawy odległościowej oraz korzyści z planowanej zmiany regulacji dotyczących rozwoju lądowej energetyki wiatrowej*, 'Internetowy Kwartalnik Antymonopolowy i Regulacyjny', 2021, No. 2(10).

<sup>24</sup> Act of 16 April 2004 on nature protection (Journal of Laws 2022, item 916).

these acts varies. In most cases, they are generally binding acts of law. They pursue one clear public interest – the protection of nature in Poland. Such documents define the functioning of particular forms of nature protection, at the same time imposing quite significant restrictions on farmers in the way they manage their agricultural property.

Against this background, there is a conflict of interest that translates into legal solutions, which in turn affect the economic sphere. Firstly, the traditional conflict between public and private interests is discernible. Where a farmer wants to carry out his activity,<sup>25</sup> he cannot do so because of the restrictions and prohibitions related to nature conservation. In this respect, the legislator has provided for various types of compensation, such as for the restrictions occurring in Natura 2000 areas.<sup>26</sup> The problem is not only their insufficient financial amount but the difficulty in obtaining and claiming them. Therefore, for some farmers, the introduction of nature conservation restrictions is the end of their regular business. This clear conflict of interest between the public and private sphere in this juxtaposition is usually resolved in favour of the public interest. It is the public good that prevails and the farmer must submit to it.<sup>27</sup>

The second conflict of interest<sup>28</sup> in rural areas is the conflict between the public and legal interests. On the one hand, caring for the environment and sustainability, on the other hand, ensuring security and, as far as possible, maximising the use of agricultural property in food production. Reconciling these interests can be a choice between, for example, feeding people or providing them with clean oxygen to breathe. Either of these choices and giving primacy to only one of them will end tragically. Therefore, when introducing restrictions to pursue one public interest, e.g., ensuring food security, it is necessary to take into account others, such as nature conservation. However, it is not possible here to determine the validity of either interest, because giving primacy to only one of them will result in the abandonment of the other.

It is undoubtedly an art, also for the law, to find solutions to the conflicts of interest in the field of public law, as well as private and public law. It can also be pointed out that conflicts also arise in the field of private interests. This is not only exemplified by the well-being of one's own property but also by taking on obligations which are compatible with the exercise of one's own rights. An example of this would be the agri-environmental and climate commitments under the Rural

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<sup>25</sup> J. Ciechanowicz-McLean, *Konstytucyjna zasada wolności gospodarczej a ochrona środowiska*, 'Gdańskie Studia Prawnicze', 2014, No. 1, pp. 99-108

<sup>26</sup> A. Niewiadomski, *Problematyka prawna rekompensat za ustanowienie formy ochrony przyrody - obszarów Natura 2000 na obszarach wiejskich*, 'Studia Iuridica Agraria', Białystok 2014, Vol. XII, pp. 65-76.

<sup>27</sup> A. Barczewska-Dziobek, *Interes publiczny i prywatny w prawie ochrony środowiska. Zagadnienia wybrane*, 'Prawo i Środowisko', 2012, No. 1, pp. 65-76.

<sup>28</sup> P.J. Suwaj, *Konflikt interesów w administracji publicznej*, Warszawa 2009; A.S. Duda, *Interes prawny w polskim prawie administracyjnym*, Kraków 2008.

Development Programme 2014-2022. A farmer, by taking on these commitments himself in the name of his economic interest (because he gets funding for them), restricts his property and farming activities. At the same time, he implements the public interest, which is the protection of nature and the environment.<sup>29</sup>

This intersection of public and private interests and their respective scopes creates a difficult system of choices between different values and goods protected by law.<sup>30</sup> Undoubtedly, laws should be the remedy for resolving these conflicts.<sup>31</sup> Unfortunately, they are not. One of the challenges facing the legislator is to frame this conflict in such a way that no one comes out of it as a total loser. Because it is not in the public interest to prioritise the public interest at the expense of the private interest. If we disregard the latter, citizens' trust in the rule of law will suffer, and it is in the public interest to take care of it. It is therefore necessary to point out the need to seek a balance between public and private interests in the legal system.<sup>32</sup>

The examples given from both the sphere of nature conservation and environmental obligations must take into account the economic factor. While the economic valuation of the public interest of preserving natural biodiversity is highly difficult, determining the value of the restrictions introduced and their impact on agricultural production is already measurable. It is, therefore, necessary to postulate the definition of a framework of compensation for bearing the burdens of agricultural activity, where the public authority, in the name of the public interest, restricts or prevents the realisation of the private interest. However, this requires careful study and analysis, if only in the area of valuation of agricultural real estate and the proper application of the real estate management regulations.

## CONCLUSION

The above considerations lead to several final conclusions. The public interest is dominant in spatial planning, especially in rural areas. In the clash with private property and private interest – the public interest dominates. Whether it is the organisation of space, nature conservation or food security, these are just three basic determinants of the public interest that dominate the Polish country-

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<sup>29</sup> J. Maciejewska, *Bezpieczeństwo ekologiczne jako konstytucyjny obowiązek państwa*, 'Przegląd Prawa Ochrony Środowiska', 2010, No. 2, pp. 59-75.

<sup>30</sup> G. Guzetta, *The Limits of Conflicts Regulations*, [in:] *Conflict of Interest and Public Life. Cross-National Perspectives*, Ch. Trost, A.L. Gash (eds.), Cambridge 2008.

<sup>31</sup> W. Skrzydło, *Ocena rozwiązań prawnych w zakresie zapobiegania konfliktom interesów*, [in:] *Zapobieganie konfliktowi interesów w III RP*, M. Zubik (ed.), Warszawa 2003.

<sup>32</sup> B. Zdziennicki, *Kolizje norm i wartości w sprawach reprivatyzacyjnych*, 'Studia i Analizy Sądu Najwyższego. Materiały Naukowe', Warszawa 2016, Vol. III, p. 64 *et seq.*

side. One can also add the protection of the agricultural character of the land, restrictions in the real estate trade, counteracting land grabbing, and ensuring the profitability of agriculture. These interests take precedence over the ownership of agricultural real estate or the protection of possession. A question arises about the protection of the owner of agricultural property. The imposed planning or related restrictions on the marketing of agricultural real estate do not favour a positive assessment of the public interest that seeks to deprive the essence of the right of ownership.

In addition to the conflict between public and private interests, a clear conflict can be observed between the various public interests (as they can be referred to here in the plural). For example, just looking after nature conservation in rural areas will conflict with investment activities or the development of road infrastructure. An important question arises as to which of these interests should find priority. From the farmers' point of view, it would seem to be the one that is more favourable to them (because this can be called a generalised goal of aspiration). On the other hand, reconciling rural and urban public interests seems to be an extremely difficult task, going far beyond mere legal solutions. In reconciling them, a holistic vision of the development of agriculture and other sectors of the economy is needed. Only then can we speak of the realisation of the public interest.

Finally, the realisation of the public interest in rural areas usually involves burdens for farmers. The value of their property as a result of spatial planning usually loses agricultural value, even if it gains investment value. In this respect, there are a number of compensation solutions in spatial planning, the main shortcoming of which is the problem of property valuation. At the same time, the doctrinal concept of agricultural property, which is already quite embedded in time, can help solve these problems. This concept assumes that, in return for the public burdens incurred for the benefit of society, the farmer can expect state assistance. In this aspect, the implementation of these solutions may prove to be a remedy for reconciling the public and private interests of farmers.

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