

OPPORTUNITIES OF FINANCING LOCAL SPATIAL DEVELOPMENT PLANS FROM PRIVATE RESOURCES – THE STUDY IN TERMS OF POLAND AND THE SLOVAK REPUBLIC*

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ABSTRACT

The subjects concerning possible participation of entities different from local government units in costs of local planning in Poland as well as legal financing resources of local plans in Poland and Slovakia were considered in the paper. These studies were realized on the basis of selected post-control recommendations of the Supreme Audit Office, Regional Chambers of Audit and also legal acts and court judgements. It was revealed in conclusion that financing local plans from investor's resources is in common practice in the Slovak Republic. The investor can cover the costs of preparing planning documentation after signing a relevant agreement with the commune. In Poland, local plans financing matter by private entities raises doubts, is controversial and equivocal, often reaches a trial docket and assessment of legality of financing local plans by an investor requires the detailed analysis of factual and legal conditions in every case.

Key words: planning authority, spatial planning costs, spatial development, land-use plans

INTRODUCTION

A commune as the basic unit of territorial partition is the core of local government system. At the same time, it performs the function of one of state system pillars of Poland and the Slovak Republic. Special responsibility rests with the commune as it is the local government unit closest to the citizens which should recognize the needs of its inhabitants

most accurately and respond to them (Young and Kaczmarek 2000, Petrick and Gramzow 2012).

In order to be able to perform their tasks effectively, communal authorities have to administer financial resources. Commune's financial condition means its financial statement in determined time range. Among other things, ability to perform tasks, to achieve budget balance and also increasing property can evidence of that. Financial situation

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of a commune is composed of, among others, the incomes level, financial independence, the size of investment expenditures, ability to obtain extra-budgetary resources and also financial result (Ossowska and Ziemiańska 2010).

The budget is the most important instrument to manage commune's finances. It is the annual plan of incomes and expenditures and also inwards and outwards. The budget is used to plan, perform and control financial operations of the local government and it is a tool that allows to make it accountable of its activities (Act 2005).

At present, communal governments are the most important subjects of spatial planning, both in Poland and the Slovak Republic. Units of territorial government can take actions that lead to rational and effective space management in accordance with sustainability rules (Hełdak 2009, Mrozik and Wiśniewska 2013, Hełdak and Raszka 2013a).

Sustainable development in spatial aspect also relates to such managing of commune's space which will provide living conditions to the local community at the highest possible level while preserving natural balance. It can be accomplished above all by planning activities which include establishing local plans of spatial development (Hernik et al. 2013, Hełdak and Raszka 2013b).

Spatial politics and real estate management are commune's assignments. Passive activities that consist of issuing decisions in response to investors' applications and also active ones related among others to investments in infrastructure are connected with spatial politics (Żróbek-Róžańska 2011). Accomplishment of spatial politics is also allowed by planning activities that influence transformations in spatial and structural system of the commune (Hełdak and Raszka 2011).

In accordance with regulations of the Act of 27 March 2003 on planning and spatial development (further in Polish short: u.p.z.p.), conducting spatial politics at the area of a commune in Poland including legislation of a communal study and local plans belongs to its own assignments. One of the main principles that result from this act is that expenditures of establishing these documents should be charged to the commune's budget (NIK 2014, Act 2003a).

Financing of local plans in the Slovak Republic was provided a bit differently (Zákon 2011).

The aim of the paper is to analyze possibility of participation in costs of spatial planning by subjects different from territorial government units (with particular reference to Poland) as well as identification of legal sources of funding of local plans in Poland and the Slovak Republic.

MATERIAL AND METHODS

The aim of the paper was chosen on the grounds of numerous doubts raised by selected forms of investors' participation in the costs of resolving local plans, in particular:

1. Proceeding by the investor a finished project of a plan or documentation required to its preparing as a donation.
2. Direct payment (financing) by an investor for works of the planning office (the agreement of an investor with a designer).
3. The financial agreement of the intentional donation or with recommendation between an investor and a commune for planning purposes.
4. Financial payments in favour of a commune that make pretence of a donation but have equivalent character.
5. Donations in-kind, e.g. in the form of lands or buildings in exchange for specified planning activities.
6. Civil-law agreements contracted in the form of „settlements about cooperation” or sponsoring agreements, trilateral ones between a commune, an investor and a plan project's contractor which determine payments of specific amounts of money for the commune by particular planning activities.

It was assumed that established scientific aim will be realized by means of the desk research analysis. This method is also defined as the secondary data analysis (SDA) or the analysis of secondary sources and is used above all for economic reasons – it does not need big financial efforts for data collecting and elaborating (Król 2016, Vartanian 2010).

The source materials for the analysis were selected legal acts and court judgements as well as audit reports of the Supreme Audit Office and Regional Chambers of Audit.

FINANCING OF LOCAL PLANS IN THE SLOVAK REPUBLIC

Land-use planning in Slovakia addresses systematically and comprehensively to the spatial arrangement and functional use of land, lays down its principles, proposes the material and chronological coordination of activities which influence environment, ecological stability, cultural and historical values of land, land development and landscape in accordance with the principles of sustainable development. Land-use planning creates conditions for harmonization of all activities in the territory with particular regard for reaching the ecological balance and ensuring sustainable development, desirable use of natural resources and protection of natural, environmental, civilizational, and cultural values.

According to the Act no 50/1976 Coll. (on Land-Use Planning and Building Regulations – the Building Act), costs connected with the acquisition of land-use planning documentation (UPD) are created by the land-use planning authority involved in the process (Zákon 1976).

Land-use planning authorities are municipalities/villages/communes (2927), self-governing regions (8), district offices established in regions (8), the Ministry of Transport and Construction and the Ministry of Defense of the Slovak Republic.

UPD is processed nationwide (Territorial Development Perspective of Slovakia), regionally (land-use plan of a region), for municipalities (land-use plan of a municipality) and its parts (land-use plan of a zone). Land-use plans of municipalities and zones have 3 stages: concept, draft and proposal of changes and amendments.

The Territorial Development Perspective of Slovakia (in Slovak short: KURS) is acquired by the Ministry of Transport and Construction of the Slovak Republic

Land-use plans of regions are acquired by the regional authorities and must comply with the binding part of the Territorial Development Perspective of Slovakia. Land-use plans for municipalities and zones are acquired by municipalities. UPD may be

made only by a qualified person entered on the list of authorized architects who must have a written contract with the authority.

Land-use planning authorities acquire the following land-use planning documentation:

- on their own initiative,
- on the initiative of other governmental authorities and municipalities,
- on the initiative of individuals or legal entities which may suggest the municipality (as a land-use planning authority) to start the acquisition of UPD.

According to the Act no. 226/2011 Coll. (on the provision of subsidies for the processing of territorial planning documentation of municipalities), the Ministry of Transport and Construction can provide government subsidies for processing of all three stages of the land-use plan of a municipality or a zone (Zákon 2011). The subsidy may be granted in a given financial year, up to 80% of eligible costs. However, the municipality must provide a statement of an account in a bank or in a branch of a foreign bank (on the date of grant application) and the declaration of the applicant to provide own funds for co-financing that amount to at least 20% of eligible costs for grant purposes.

The land-use planning authority may use its own funds or request partial or full compensation of land-use planning documentation acquisition costs from individuals or legal entities whose exclusive need necessitated it (the acquisition of UPD). When providing subsidies, the ministry does not examine (being not interested in that) where the own funds come from.

In the case of providing resources from other individuals or legal entities, a written agreement between the customer (i.e. municipality) and the initiator of the work (i.e. other individuals or legal entities) that concerns the payment for processing UPD is mandatory.

If the other individuals or legal entities want to build something, not contrary to the legislation, in a municipality and citizens do not agree, the result depends only on the decision of municipality representatives (their preferences).

THE LOCAL PLAN OF SPATIAL DEVELOPMENT IN POLAND

One of the most essential planning documents at the local level is a local plan of spatial development called a local plan. It is an act of local law. By means

of that, the local government determines conditions of spatial development in the area covered by the plan. The plan is a legal and technical record of current planning arrangements.

Every process regulated by u.p.z.p. that decides about the space shape i.e. the way of management

Table 1. Selected attributes of local plans in Poland and Slovak Republic

Attribute	Poland	Slovak Republic
Planning act	local plan of spatial development	land-use plans for municipalities (commune)
Legal adjustment	The Act of 27 March 2003 on planning and spatial development, <i>Journal of Laws</i> , 2017, pos. 1073 (Act 2003a)	The Act no 50/1976 Coll. on Land-Use Planning and Building Regulations – the Building Act. The law is effective since 1.10.1976 (Zákon 1976). Updated 36 times (last modified on 17.10.2015)
Characteristics	an instrument of implementing spatial politics of the commune; the document of local law, administrative decisions are made on its basis	land-use plan of municipalities systematically and comprehensively dresses the spatial arrangement and functional use of land, lays down its principles, it covers the principles and limits of spatial arrangement and functional use of the territory of the commune in connection with the surrounding territory, permissible, limited and prohibited functional use of areas, principles and directions of environmental care, land system of ecological stability including green areas, principles and directions of protection and use of natural resources, cultural-historical values and important landscape elements, boundaries between continuously built-up communal area or the area determined for building-up (hereinafter only “built up area”) and the other communal area, principles and directions of public transport and technical facilities and civil facilities, areas for public buildings, for carrying out the sanitation and for protected part of land
Territorial range	established for the whole commune or its selected fragment	Land-use plan of municipalities is elaborated for the land of one commune or for the land of two or several communes. Towns and communes that have more than 2,000 inhabitants are obliged to have the land-use communal plan. If it is a commune with less than 2,000 inhabitants, the land-use communal plan may be produced with details from the land-use plan of the zone. The land-use plan of the zone is produced for the part of the commune.
Impact range	it influences directly the field of references and responsibilities of the entities the estates of which were included in that plan	immediately after the final approval of the plan
Requisiteness	facultative elaboration (with few exceptions)	approved land-use planning documentation is, to given extent, a binding or guiding basis for spatial decision-making and for the preparation of documentation for buildings
Establishing entity	established by the Mayor of the commune or the town or the president of the city; resolved by the county council	territorial plans of municipalities and zones are approved by the municipality and its binding parts are declared by a generally binding regulation
Other	required lack of contradictions between the arrangements of the plan and the arrangements of communal study	the absence of coordination with other territorial studies, e.g. Land consolidation projects
The basic scale of the map	1:1000	the main drawing with the indicated mandatory part at a scale of 1:10000 or 1:5000; additional drawings as cutouts and details at a scale of 1:1000

and purpose of a given area should be interpreted as planning and spatial development.

Arrangements of a local plan together with another regulations form the way of performing the law of property ownership and they can significantly influence their market value:

- the Act on planning and spatial development has driving force to limit rights to properties and a local plan performs statutory laws and regulations;
- everyone has the right to development of the land they have legal rights to, according to the arrangements of a local plan (...), if it is not contrary to protected by the law public interest and the third parties (Act 2003a, art. 6, par. 2, point 1);
- placing the settlement that concerns land purpose as well as the ways of its development and conditions of building in a local plan, a commune regulates in an authoritarian way the form of using properties included in this plan; the local plan gives to the commune possibility to plan public space regardless of existing proprietary relations (file ref. no. II SA/Op 301/13);
- by virtue of u.p.z.p. „the bodies of a commune were not authorized to interfere in the law of ownership of the other entities in order to establish the purpose and rules of development of lands located in the area of a commune” (WSA 2011);
- a plan of spatial development decides about the material scope of using the property – issues of land ownership are not prejudged in planning procedure; „a local plan decides about the way of development of the property and not about that who is allowed to develop it” (file ref. no. II SA/Gd 799/07).

The local plan of spatial development provides information about purpose and rules of land development and it specifies the character of local government politics (Act 2003a, art. 4). It is a significant source of information about the area and properties for inhabitants and investors and also real estate appraisers. Among other things, purpose of lands, rules of environment, nature and cultural landscape’s protection, parameters and indexes of building formation and special conditions of areas’ development as well as restrictions in their using are obligatorily determined

in a local plan (Zaremba 2013). Resolution of a local plan requires commune’s authorities to realize plan’s records accepted by decision of the Act. Selected attributes of local plans in Poland and Slovakia were presented in table 1.

IS PARTICIPATION OF INVESTORS IN COSTS OF PREPARING THE PLANS LEGAL?

Donation on account of preparing and legislation of a local plan

In the light of the provisions of u.p.z.p., legislation of planning documents lies within the exclusive competence of commune’s implementing authority (a mayor, a provost, a mayor of the city). According to art. 3 par. 1 of u.p.z.p., „forming and conducting of spatial politics in the commune’s area including legislation of the study and the local plan of spatial development belong to commune’s own tasks”. According to art. 21 par. 1 of u.p.z.p., costs of preparing local plans charge the budget of a commune.

The cases of financing planning elaborations from private resources arouse controversies and can be a subject to the inspection of Regional Chambers of Audit and the Supreme Audit Office (in Polish short: NIK). They are often considered on the docket as well.

According to art. 4 point 5 of the Act of 13 November 2003 on incomes of the units of territorial government, among other things, inheritances, legacies and donations for the benefit of a commune are the sources of commune’s own incomes (Act 2003b). So the commune can receive a donation in-kind, a donation with special purpose or without it. In the light of the verdict of WSA in Kielce of 29 July 2010 (file ref. no. II SA/Ke 396/10), civil-law agreements signed by units of territorial government on cooperation in the form of settlements or sponsoring agreements which make payment of specific sums of money conditional upon fulfilling a particular condition are not donations or donations with special purpose referred to in the Civil Code because the donation

cannot lead to obligations to any mutual benefits both in the moment of its achievement and also in future.

Pursuant to art. 888 § 1 of the Act of 23 April 1964 – the Civil Code (Act 1964), by the agreement of a donation a donor undertakes to free provision in favour of the recipient at the expense of their assets. In its attitude, the Supreme Court in the verdict of 20 October 2006 (file ref. no. IV CSK 172/06) states that gratuitousness as the significant prerequisite of a donation decides about its legal existence. A donation loses the character of gratuitousness when it is a benefit for a determined equivalent service. The agreement in which the mayor (the provost, the mayor of the city) undertakes to prepare a local plan in return for obligating the investor to transfer a specified amount of money to the commune is not the agreement of donation.

However, the Supreme Court pays attention to the construction of a donation with recommendation which can be a source of the own profit for the commune. It indicates that “the activity under the gratuitous title does not change charging it by the order or putting the duty of determined activity on the recipient or omission without making anyone a creditor”. In the above-mentioned context, it is important to emphasize that fulfilling the order is not treated as repayment for a donor. Similar attitude is represented by Radwański and Panowicz-Lipska (2015) who accent that charging by the order can regard to the interest of specified people including the parties of the agreement, whereby it does not make anyone a creditor. The above-mentioned conclusion gives cause to state that a donation made by the investor in favour of the unit of the territorial division subject to the order duty can be the own profit of the commune the consequence of which can be financing of the local plan of development from the amount of money donated by the outside entities.

The Regional Chamber of Audit (in Polish short: RIO) in Łódź contradicts this attitude in the Resolution of 15 December 2011 (RIO 2011). The purposeful donation contracted within the notarial act and intended for specified planning changes is the same as entering into competencies of a mayor as

the executive body to whom belongs the evaluation of legitimacy whether to start changing the plan and also into competences of the commune’s council as the convening authority which is entitled to establish this change. It is inadmissible in the assessment of RIO to accept a donation with recommendation which breaks the obligatory regulations of u.p.z.p. (Młochowska 2017). Moreover, the content of art. 58 § 1 of the Civil Code: „a legal proceedings contrary to the Act or aimed at abusing the Act is invalid unless the proper regulation provides another result, especially that proper regulations of the Act replace invalid decisions of a legal proceeding” should be taken into consideration.

What results from that, the donations from investors given to cover costs of planning elaborations can raise legal doubts especially because the investors’ interests are not always in line with the interest of local communities.

In turn, the Central Anti-Corruption Bureau (The protocol of inspection... 2013) stated that participation of an outside entity in financing local plans is in accordance with the law if it takes the form of a voluntary donation with simultaneous lack of obligation of any equivalent duty put on the commune.

Thought-provoking is the verdict of NSA of 10 July 2015 (NSA 2015) which is a response to the cassation complaint lodged by the applicant who in the course of the case contested the agreement to finance the change of the local plan of development by the investor while the realized investment did not serve realization of the public purpose. The undeniable surprise was the fact that the commune received the planning documentation as a donation which does not prejudice regulations of the law of public finances which provide for the possibility to receive donations in-kind by the units of territorial government.

What is more, the commune resolving the donated documentation bore the costs of this procedure and also these connected with publishing the intention of preparing changes in m.p.z.p. in the local press. It allowed to state in the control procedure performed by RIO in Szczecin that the activity of using ready documentation was not law circumvention. The body

referred to the content of § 6 par. 1 of the regulation of the Minister of Finance of 5 July 2010 on special rules of accounting and plans of accounts for the national budget, budgets of units of territorial government, budgetary units, local government budgetary institutions, national purpose funds as well as national budgetary units located beyond the borders of the Republic of Poland (Regulation 2010) which says that fixed assets that are the property of the State Treasury or the unit of territorial government received free of charge on the basis of a decision of a proper body can be measured in the value specified in this decision. Valuing the obtained donation in-kind, the Commune (...) took into account provisions of the mentioned-above regulation acting legally in its accepting. The agreement of the donation deposited in the case's files did not oblige the Commune's bodies to its using and its acceptance did not limit competences of both the Mayor and the Municipal Council. Thereby, accepting the donation was not circumvention of art. 21 par. 1 of u.p.z.p. Ultimately, NSA divided the mentioned-above attitude and stated that accepting the documentation by the commune and its usage is not the infringement of the prohibition of financing such plans by the investor who realizes the investment which is not the one of public purpose and it is not circumvention of law. Unexpected position was justified with the fact that art. 21 par. 1 of u.p.z.p. which concerns the costs of preparing the plan financed by the commune from resources included in its budget, limits the commune as it cannot require financing the document by the external entity. However, it does not prejudice acceptance of a voluntary proposal made by an interested investor: „However, it does not mean the prohibition of partial financing of planning procedure elements by an entity other than a commune provided that it acts voluntarily (...) in the current situation covering the costs of preparing project documentation by a potential investor and passing it down to the Commune (...) was in the donation the internal issue of the Commune and cannot be a premise to state the act's invalidity. Using by the Commune (...) in the course of planning procedure the project documentation financed by

a potential investor does not make breaching of art. 21 par. 1 of the Act on planning and spatial development”.

Trilateral agreements

The inspection of the Supreme Audit Office conducted in the period from 29 August 2013 to 14 February 2014 in the range, among other things, of planning activities connected with location and building of land wind farms revealed that only in 6 out of 28 controlled units of territorial government costs of changing planning documentation were financed directly from the communal budget. In the remaining cases, settlements between the commune, the investor and the planning workplace that included co-financing costs of preparing the plans or the costs were incurred by the commune while the investors were transferring donations equivalent to the costs that were contracted. As a consequence, the documents accepted by the commune e.g. a study project, a spatial development plan, projections of influencing the environment or financial effects were related to the necessity of communes' consideration of solutions postulated by the investors (NIK 2014).

During the inspection of the Supreme Audit Office in the range of financing, creating and performing changes in communal planning documentation, doubts were raised especially by:

- the cases of direct financing assumptions of spatial development by the investors,
- the cases of acceptance and resolution of the other planning elaborations financed by the investor and not connected directly with the area of investment,
- transferring donations by the investors which was dependent on performing changes in planning documentation by the commune,
- direct financing of planning documentation for investment location by the owners of land on which it was planned.

The agreements in which the commune commits itself to resolving of a local plan with included arrangements favourable to the investor that financed resolution of this plan involve the risk that collected conclusions and comments will not be considered in

the course of preparing this plan as well as arrangements made during project's preparation but only requirements of the investor. In the interpellation that concerns financing of changes in local plans of spatial development, Młochowska (2017) shows that resolutions of the commune's council adopted on the basis of agreements with the investor and concerning resolution of study or a local plan including specific records should be declared a breach of principles of preparing the study or local plan referred to in 28 par. 1 of u.p.z.p. which in consequence should lead to the statement of their invalidity. However, in the verdict of the Provincial Administrative Court in Gdańsk of 29 October 2008 (file ref. no. II SA/Gd 799/07), it was recorded in the justification that paying the costs of preparing local plans by the entity interested in investments at the given area is the internal issue of the commune and in case the planning procedure was respected, it cannot cause the statement of the resolution's invalidity.

The Regional Chamber of Audit in Kraków in its post-inspection presentation (RIO 2013) concluded that contracting by the commune the trilateral agreement that concerned elaborating the project of changes in the study of conditions and directions of spatial development and changing the local plan of spatial development of the part of Gołcza commune where it was decided that the payment in favour of the executor of the objective project will be realized by a private company is not compliant with 3 par. 1 and art. 13 par. 1 of u.p.z.p.

Moreover, in the Act on communal government (Act 1990) it was provided that units of territorial government conduct their financial economy by themselves on the basis of the budget resolution, however, as Brzezicki (2010) notices, this independence does not give access to the commune to gain financial resources from any sources – „the catalogue of these sources is of a closed type and attempts to implement additional ways of gaining financial resources that do not have explanation in relevant legislation should be recognized as illegal”.

Private financing? Only for investments of public purpose

The costs of preparing the local plan charge not only the commune's budget but also the budgets of the state, a province or a district when it is completely or as a part a direct consequence of intention to realize an investment of public purpose. These costs can be charged by the investor but only in case when they concern an investment of public purpose and in the part in which the plan is a direct consequence of intention to realize this investment (Act 2003a, art. 21). In the same way, in art. 13 of u.p.z.p., the legislator resolved the problem concerning the costs of preparing the study of conditions and directions of commune's spatial development. Moreover, „the body with which the project of the study or the project of a local plan was consulted incurs costs of changing these projects caused by further change of position; The State Treasury pays for changing the study and local plan or their projects only when the change of body's position results from the change of the Act or new settlements of the proper body of governmental administration that bind this body” (Act 2003a, art. 26, par. 1–2). So, the speculation exists that resources for financing the local plans cannot come from the other, extra-budgetary sources.

It can be concluded from the performed analysis of source materials that the statutory regulation in the range of financing the procedure of preparing documents of local planning is of a closed type and does not provide exceptions and, at the same time, it is difficult to say clearly if the communes' chieftains accepting the donations which are the forms of financing local plans or concluding the agreements with investors infringed obligatory legislation. Lackowska-Wandas (2017) reveals that from art. 21 of u.p.z.p. it can be only concluded that the commune has no right to demand financing preparation of the plan or its change from the third bodies. So, the record should not be read as the lack of approval of the legislator to participate in the costs of preparing the plan. Moreover, it notices that the administrative courts take the view that payment for preparing the local plan by the entity other

that the commune does not make autonomous basis for concluding that the resolution on establishing the local plan is invalid (Tab. 2).

The other position is presented by the District Court in Słupsk which stated that financing the local plan of spatial development from private resources is

incompatible with the rules of social coexistence (file ref. no. IV Ca 473/10). It concerns, for example, the owners of properties included in the plan's provisions and also another natural or legal persons interested in preparing the plan so not only investors but also commune's inhabitants (file ref. no. II SA/Lu 556/06).

Table 2. Opinions on financing local plans in Poland from sources different from budgetary ones

Financing local plans from sources different from budgetary ones: legal		
Subject	Source	Opinion, scheme of position
Provincial Administrative Court (WSA)	(file ref. no. II SA/Gd 799/07)	covering the costs of preparing local plans by the external entity at the given area is the internal problem of a commune
Central Anti-Corruption Bureau (CBA)	(The protocol of inspection.... 2013)	legal if it takes the form of a voluntary donation
Lackowska & Roś Law Office	(Lackowska-Wandas 2017)	the legislator does not agree to participation of investors in the costs of preparing planning documentation
K&L Gates Law Office	(Wysoczański 2016)	regulating the ways of financing local plans is ambiguous
Financing local plans from sources different from budgetary ones: illegal		
Subject	Source	opinion, scheme of position
Regional Chamber of Audit (RIO)	(RIO 2011)	accepting the donation with reference is inadmissible. It is the same as entering into competences of the executive body
Supreme Administrative Court (NSA)	(NSA 2015)	the agreement that requires preparing m.p.z.p in return for transferring the amount of money does not constitute art. 4 par. 5 of the Act on incomes of territorial government units
Supreme Chamber of Control (NIK)	(NIK 2014)	doubts in the range of legitimacy of direct financing assumptions of spatial development by investors
Ministry of Administration and Digitisation	(Młochowska 2017)	the basis of invalidity statement of the commune's council resolution that concerns financing m.p.z.p. is included in this range agreement with the investor
Gloss to the verdict of the District Court in Słupsk	(Brzezicki 2010)	the catalogue of income sources of the commune is of a closed type
Provincial Administrative Court (WSA) Ruling of Distric Court (SO)	(file ref. no. II SA/Lu 556/06; file ref. no. IV Ca 473/10)	share of investors incompatible with the rules of social coexistence

CONCLUSIONS

In the Slovak Republic, financing of local plans from investor's resources is commonly practised, it does not raise legal doubts or greater controversies. The investor can pay for planning documentation after signing the relevant agreement with a commune.

There were two predominant positions formed in Poland: the first one maintaining that paying for local plans from the sources which are different from

the commune's budget is in accordance with the law when specific conditions are fulfilled and the second one which questions the legality of such activities. The authors of the paper support the opinion that resources to finance the local plans cannot come from extra-budgetary resources, especially when the planned investment does not serve to perform a public purpose.

Financing local plans in Poland from the other resources that the commune's budget seems to be

reasonable only in the eyes of the lawyers who are looking for lack of legal regulations which establish a particular ban so the quiet permission for free use of sources that come from private investors.

Possibility of direct planning of communal studies and local plans by investors in Poland is threatened by lack of transparency and corruption. It also gives rise to the risk of conflict of interests. This conflict can result from the fact that investor's expectations due to the incurred costs can be put over the stance of local communities. Although the citizens' arguments are collected in the form of applications and comments, however, they do not have to be taken into account in the course of making planning decisions.

Doubts towards legality of various forms of investors' participation in costs of preparing and legislation of local plans will appear as long as mechanisms providing their regulation will be introduced to the Polish law.

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MOŻLIWOŚCI FINANSOWANIA PLANÓW MIEJSCOWYCH ZE ŚRODKÓW PRYWATNYCH – STUDIUM NA PRZYKŁADZIE POLSKI I REPUBLIKI SŁOWACKIEJ

ABSTRAKT

W pracy podjęto temat możliwości partycypacji w kosztach planowania miejscowego w Polsce podmiotów innych niż jednostki samorządu terytorialnego oraz dopuszczonych prawem źródeł finansowania miejscowych planów w Polsce i na Słowacji. Studia te zrealizowano w oparciu o analizę wybranych wystąpień pokontrolnych Najwyższej Izby Kontroli oraz regionalnych izb obrachunkowych, a także aktów prawnych i wyroków sądowych. Wykazano, że w Republice Słowackiej finansowanie miejscowych planów ze środków inwestora jest powszechnie praktykowane. Inwestor może pokryć koszty

sporządzenia dokumentacji planistycznej po podpisaniu stosownej umowy z gminą. W Polsce kwestia finansowania miejscowych planów przez podmioty prywatne budzi wątpliwości, jest kontrowersyjna i niejednoznaczna, często trafia na wokandę, a ocena legalności finansowania przez inwestora miejscowych planów wymaga w każdym przypadku szczegółowej analizy okoliczności faktycznych i prawnych.

Słowa kluczowe: władztwo planistyczne, koszty planowania przestrzennego, zagospodarowanie przestrzenne, plany zagospodarowania przestrzennego