

## ANALYSIS OF THE PROCESS OF PUBLIC PROPERTY DISPOSAL. MUNICIPALITY OF KRAKOW – THE CASE STUDY

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### ABSTRACT

This research paper analyses the process of public property disposal on the example of the Municipality of Krakow, especially focusing on the scope of the real properties covered by this process in years 2017–2019, the disposal methods used and the revenues obtained.

The research problem is to answer the question of how the scope of real properties disposed of by the Municipality, the forms of their disposal and the revenue obtained have changed when compared to the previous years, i.e. the period 2010–2014. This paper also attempts to identify the conditions hindering the process.

In order to assess the trend of changes, a comparative analysis of the data on the disposal process in the analysed years was performed. Part of the research area was devoted to limitations in real property disposal in terms of former owners' claims for restitution.

**Keywords:** municipal real property management, modes of property disposal, revenue, claims for restitution

### INTRODUCTION

Real property management is a term which covers all factual and legal actions performed with respect to real properties. The Act of 21 August 1997 on Real Estate Management specifies the types of these activities in relation to the properties that belong to public resources.

Competent authorities are obliged to manage public properties in accordance with the law and, at the same time, in a rational manner. This means that it is necessary to analyse the benefits and losses for the local government unit or the State Treasury resulting from the actions taken, as well as the

assessment of other factors that affect the legitimacy of taking a specific action.

One of the goals of proper real estate management is to invest effectively in order to achieve maximum benefits and the greatest social utility. However, it should also be taken into consideration that public property resources may include some properties that do not generate income, e.g. those that are protected due to their social purposes, used for the performance of public tasks, or intended for use by all residents.

Proper management also includes making rational decisions regarding the disposal and purchase of real estate, taking into account both economic aspects and the necessity to perform public tasks. In the disposal process, it is important for public entities

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not only to obtain income but also to organise the spatial structure of the properties and to regulate their legal status for the benefit of owners in order to prevent the process of acquisitive prescription.

One of the sources of the municipal revenue is the sale of their property. Not always, however, the planned revenues will support their budgets because, first of all, legal regulations, secondly, the desire to obtain the highest possible price, and thirdly, the expectations of a potential buyer, often form an insurmountable barrier. As a result, the municipality does not generate income that could be spent on investments, and moreover, it incurs additional costs related to the property that could not be sold [Kotlińska, 2013].

In the light of the provisions of the Act on Real Estate Management, as well as other acts, public property should be managed as follows [Bończak-Kucharczyk, 2020], and in particular:

- according to the law;
- respecting the principle of purposefulness and economy;
- rationally in economic terms and effectively;
- observing the principle of openness;
- enabling social control over whether the manner of managing these assets serves the achievement of socially accepted goals and principles.

According to Kotlińska, it is advisable to prepare:

- a multiannual document defining the (physical and legal) condition of local government properties, their value, related financial flows, etc., with the detail enabling to decide which of them should be included in the local government resource because they are necessary or useful, and for which there is no place in this resource;
- an annual reporting document on the management of local government properties, which would be helpful in the assessment of this economy and the entities conducting it [Kotlińska, 2014].

The subject of Marona [2018] is the management of municipal real properties as an area of theoretical considerations and empirical research within the subdiscipline of public management. The aim of the study of Hełdak [2009] is to present the legal

conditions for managing the municipal real property resource and to evaluate the management of real properties included in the urban-rural real estate resource of the commune of Gostyń. The paper of Nalepka [2008] analyses the organisational problems of managing the municipal real property resource.

The issue of real estate management, especially in theoretical terms, has been tackled in numerous works, including [Bończak-Kucharczyk, 2020, Jaworski et al., 2009, Klat-Górska & Klat-Wertelecka, 2015].

The commentaries to the selected procedures regarding real estate management are presented in the book [Żróbek et al., 2012]. The publication [Trembecka, 2015] lists proposed methods to be implemented in the process of practical real estate management, taking into account surveying and legal problems that may emerge.

An important factor limiting public property disposal are the provisions on the rights of former owners of expropriated real estate. The publication [Trembecka & Kwartnik-Pruc, 2018] deals with the effect of the claims for the restitution of expropriated real properties on the process of public property management. The restitution of expropriated properties is known in many countries. Should the expropriating authority fail to use the property within a specified time for the intended purpose, the property may return to the former owner, e.g. in Canada under the Act respecting the expropriation of land [Act respecting the expropriation of land, 1985] or in Germany under the Baugesetzbuch [Baugesetzbuch, 1960]. On the other hand, in France, the Code de l'expropriation pour cause d'utilité publique [2015] provides for a retrocession for 30 years in relation to property expropriated and not developed within five years. This issue regarding the post-communist countries before 1990 is discussed in [Lux & Mikeszova, 2012, Padure & Tutuianu, 2015, Triantis, 2018].

The aim of this research paper is to analyse the disposal process of public properties on the example of the Municipality of Krakow, in particular to determine the scope of the properties covered by this process in years 2017–2019, the modes that were used and the revenues that were obtained.

The research problem involves providing the answer to the question of how the scope of real properties disposed of by the Municipality, the forms of their disposal and the revenues obtained have changed when compared to the period 2010–2014. This paper also attempts to identify the conditions hindering the process, especially the effect of potential claims of the former owners on the scope of the properties planned for disposal.

In order to assess the trend of changes in the scope of the municipal properties being disposed of, the data on the disposal process from the period 2017–2019 was compared with the data from the period 2010–2012 as far as tender procedure is concerned, and with the data from the period 2012–2014 with regard to a non-tender mode.

The research hypothesis is the statement that one of the reasons limiting the process of public land disposal is the obligation to notify former owners about the possibility of restitution of the expropriated properties.

This study is a continuation of the research of Trembecka [2014 & 2016] on the process of real property disposal performed by the Municipality of Krakow. The research material consisted of the data collected from the City Treasury Department of the Municipal Office of Krakow on the implementation of tasks in property management in years 2010–2019, the budget of the City of Krakow and the legal acts on public property management, both generally applicable and those constituting the local law.

## **LEGAL FORMS OF PROPERTY MANAGEMENT IN THE MUNICIPALITY OF KRAKOW**

Real property management of the Municipality of Krakow is based on generally applicable legal acts [Act on Real Estate Management, 1997, Civil Code, 1964], separate provisions concerning real estate management contained in Article 2 of [Act on Real Estate Management, 1997] as well as acts of local law included e.g. in the resolutions of the Krakow City Council [Resolution on the real estate management,

2003, Resolution on the sale of commercial premises, 2006, Resolution on the rules of disposal of residential premises, 2008].

As of 31 December 2019, the area of land in the resources of the Municipality of Krakow amounted to 5,535 ha, with 3,039 ha remaining in the permanent management of municipal organisational units and in the statutory management as roads. The publication [Trembecka, 2017] presents the importance of this form of managing public land in the city of Krakow.

Public properties may be object of trade [Trembecka, 2015], including in particular:

- disposition, i.e.: sale, exchange, donation, renunciation, making in-kind contributions to companies, bestowing on established state enterprises, transferring as property of established foundations;
- letting into perpetual usufruct;
- encumbrances with limited material rights, i.e. right-of-way, usufruct, mortgage;
- free of charge transfer by contract to a private partner or company, for the duration of the project under public-private partnership;
- bond agreements, i.e. rental, lease, lending;
- letting into permanent management.

The activities listed above are defined in Article 13 sections 1 and 1a of the Act on Real Estate Management [1997] with the term “real estate transactions”. In this context, it should be understood as any legal action leading to a change of the entity that is entitled to any right to real estate which, before this action (and often also after its execution), was owned by the State Treasury or owned by a local government unit.

The catalogue of legal forms contained in Article 13 section 1 of the Act on Real Estate Management [1997] is a non-exhaustive one as there is no prohibition on concluding contracts not listed therein, including unnamed contracts (e.g. leasing contracts). The basic activities of real property resource management include its sale and purchase, mainly aimed at ownership right transfer [Hełdak, 2009].

This research paper will present the process of managing the properties owned by the Municipality of Krakow in terms of their disposal and the attempts to identify the conditions hindering the process,

especially the effect of potential claims of the former owners on the scope of the properties planned for disposal.

The conducted analyses demonstrate that in years 2017–2019, the properties owned by the Municipality of Krakow were most frequently sold. They were also let into perpetual usufruct, but to a very limited extent. Other forms of disposal including donation, renunciation, making in-kind contributions to companies, bestowing on established state enterprises or transferring as property of established foundations were not used. As far as real estate exchange is concerned, these procedures were used in exceptional cases and therefore they were omitted from further analysis.

### **DISPOSAL OF REAL PROPERTIES OWNED BY THE MUNICIPALITY OF KRAKOW UNDER TENDER PROCEDURE**

The freedom to intend a given property for disposal is limited – the municipality is obliged to separate properties for administrative purposes that are necessary for its proper functioning as well as for public purposes such as urban greenery, sports and recreation areas, roads [Cymerman, 2009].

The decision on the form of property disposal depends on many factors, including e.g.: property type, its location, configuration, area, legal status, land use or the current method of use, as well as possible limitations in exercising the ownership right.

The disposal of real properties or letting land into perpetual usufruct was implemented by public tender (which is the general statutory rule) or without the tender procedure.

The tender procedure for selecting a buyer is primarily to ensure full transparency in this activity and contribute to the maximisation of profit from the distribution of the property right by a public entity [Sanakiewicz, 2015].

In 2017–2019, under the public tender procedure, the Municipality disposed of 15 undeveloped land properties with a total area of 2.9427 ha and obtained the revenue of approximately PLN 8.8

million, 18 built-up land properties with a total area of 2.3860 ha of land and 3,868 m<sup>2</sup> of usable floor space of buildings and earned over PLN 35 million. The Municipality also sold 95 premises (including 73 residential premises) with a total usable floor space exceeding 5,305 m<sup>2</sup> for over PLN 11 million (see Tab. 1–3). The total sale price of municipal real estate exceeded PLN 55 million. For example, in 2005–2007, the commune of Gostyń sold 48 properties for the price of approximately 2.8 million [Hełdak, 2009].

In each case, these were open oral tenders, and the starting price was determined at the market value specified by a property appraiser plus 23% VAT if the sale of such real estate was taxable. If the first tender ended with a negative result, the starting price in the second tender procedure was set lower than its value, but not less than 20% of this value (pursuant to Article 67 section 2 clause 2 of Act on Real Estate Management [1997], the reduction may not exceed 50%).

The majority of these activities required the consent of the governing body of the Municipality, as the Krakow City Council, in its resolution [Resolution on the real estate management, 2003], reserved to its competence to consent to the disposal and perpetual usufruct of real properties under the tender procedure, except for those intended for single-family housing, for the construction of garages with an area not exceeding 50 m<sup>2</sup> and for the implementation of technical infrastructure. Investment areas suitable for independent development are usually disposed of in this mode.

**Table 1.** Undeveloped land properties disposed of by Municipality of Krakow under tender procedure in years 2017–2019

| Years | Number of properties | Total area of undeveloped land [ha] | Revenue from disposal of undeveloped land [PLN] |
|-------|----------------------|-------------------------------------|-------------------------------------------------|
| 2017  | 10                   | 1.3313                              | 6,664,661                                       |
| 2018  | 4                    | 1.3975                              | 1,532,982                                       |
| 2019  | 1                    | 0.0835                              | 141,000                                         |
| Total | 15                   | 2.9427                              | 8,780,156                                       |

Source: own elaboration.

**Table 2.** Developed land properties disposed of by Municipality of Krakow under tender procedure in years 2017–2019

| Years | Number of properties | Total area of developed land [ha] | Usable floor space of buildings [m <sup>2</sup> ] | Revenue from disposal of developed land [PLN] |
|-------|----------------------|-----------------------------------|---------------------------------------------------|-----------------------------------------------|
| 2017  | 5                    | 0.3146                            | 1,683.9                                           | 15,800,370                                    |
| 2018  | 6                    | 1.5427                            | 1,044.24                                          | 8,222,006                                     |
| 2019  | 7                    | 0.5287                            | 1,140                                             | 11,809,744                                    |
| Total | 18                   | 2.3860                            | 3,868.14                                          | 35,390,607                                    |

Source: own elaboration.

The research confirmed the changes in the type of real estate disposed of over time, including a decrease in the number of undeveloped land offered for sale and an increase in the number of premises. In years 2017–2019, the Municipality of Krakow disposed of only 15 undeveloped land properties, while in 2010–2012 it was a total of 67. On the other hand, as many as 73 residential premises were sold in the analysed period, and in 2010–2012 this number was 31.

The total revenues from the disposal of municipal properties in the analysed period exceeded PLN 55 million, while in the period 2010–2012 it was approximately PLN 100.5 million.

The local government income from property disposal is determined by numerous factors. Firstly, the local government resource must contain such property that can be intended for sale. Secondly, the tender procedure of sale must be followed, which usually lasts for many months. Thirdly, there must be entities willing to buy the property, who will have the appropriate financial resources [Kotlińska, 2013].

The above conditions can also be applied to the process of property disposal carried out by the Municipality of Krakow.

In addition, an important factor responsible for the reduction in the number of real properties intended for disposal in Krakow are claims of third parties, i.e. mainly of the former owners, for the restitution of the expropriated real estate. This issue will be discussed in the next Chapter.

Real properties with priority rights are excluded from the tender [Article 34 sections 1 and 6 of Act on Real Estate Management, 1997]. Pursuant to this provision, in the case of disposal of properties owned by the State Treasury or local government units, priority in their purchase (Tab. 4) is granted to a person who meets certain conditions (the so-called statutory priority). It covered a wide range of tenants of residential premises, if the lease was concluded for an unspecified period.

**Table 3.** Disposal of premises by the Municipality of Krakow under tender procedure

| Years | Type of premises | Number of premises | Total floor space of premises [m <sup>2</sup> ] | Revenue from disposal [PLN] | Total annual revenue from disposal [PLN] |
|-------|------------------|--------------------|-------------------------------------------------|-----------------------------|------------------------------------------|
| 2017  | residential      | 26                 | 2,195.43                                        | 12,011,010                  | 1,281,730                                |
|       | commercial       | 2                  | 50.61                                           | 256,852                     |                                          |
|       | garages          | 8                  | 202.45                                          | 467,425                     |                                          |
|       | attic            | 1                  | 91.9                                            | 82,020                      |                                          |
| 2018  | residential      | 35                 | 1,592.93                                        | 12,164,642                  | 1,274,657                                |
|       | commercial       | 3                  | 104.46                                          | 506,651                     |                                          |
|       | garages          | 2                  | 24.74                                           | 75,270                      |                                          |
| 2019  | residential      | 12                 | 958.22                                          | 8,392,530                   | 8,772,462                                |
|       | commercial       | 2                  | 31.97                                           | 224,264                     |                                          |
|       | garages          | 4                  | 67.96                                           | 155,668                     |                                          |
| Total |                  | 95                 | 5,305.66                                        | 11,328,849                  | 11,328,849                               |

Source: own elaboration.

**Table 4.** Statutory (obligatory) and discretionary (optional) priority

| Entities with obligatory (statutory) priority right                                                                                    | Entities who may be entitled to discretionary (optional) priority right                                  |
|----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| Persons with a claim for the purchase of a property under the Act on real estate management or separate regulations                    | Tenants or lessees of commercial premises                                                                |
| Previous owners of the property subject to disposal, deprived of the ownership of this property before 5 December 1990, or their heirs | Tenants or lessees of residential and commercial premises which are entirely subject to tenancy or lease |
| Tenants of residential premises if the tenancy was concluded for an unspecified period                                                 | Tenants of residential premises with contracts concluded for a specified period                          |

Source: own elaboration.

The right of priority should be distinguished from the right of preemption and repurchase regulated in other legal provisions. Priority may be exercised by the entitled persons only when the State Treasury or a local government unit allocates a given property for sale, publishing its catalogue.

In addition, the Act allows for the possibility of extending the right of priority in the purchase of premises to tenants other than those listed in Article 34 section 1 clause 3, or lessees. The decision on granting this priority is made, respectively, by the provincial governor by way of an ordinance, or by the municipal or county council or the regional assembly, in the form of a relevant resolution (optional priority). In the case of the Municipality of Krakow, the decision-making body gave priority to tenants of commercial premises [Resolution on the sale of commercial premises, 2006] and to tenants of residential buildings which are entirely subject to tenancy [Resolution on the sale of residential buildings with one premises, 1997].

The Act makes the exercise of priority by the person who is entitled to the claim dependent upon two conditions [Bieniek et al., 2013]:

- the entitled person must submit an application for acquisition before the expiry of the period specified in the property list, not shorter than 6 weeks prior to that date;
- the authorised person makes a declaration that he or she agrees to the price determined in the manner specified in the Act.

## **DISPOSAL OF PROPERTIES OWNED BY THE MUNICIPALITY OF KRAKOW WITHOUT TENDER PROCEDURE**

The non-tender procedure may only be applied in cases indicated directly in the provisions of the Act on Real Estate Management, and an extended interpretation is impermissible. Exceptions to the obligation to dispose of a property in the tender mode are unambiguously listed in Article 37 section 2 of [Act on Real Estate Management, 1997]. Some of them, by their nature, cannot be subject to tender [Jaworski et al. 2009]. These include: donation, exchange, real estate as an in-kind contribution to a company, others are associated with the entity purchasing the real estate. In addition, there is a possibility of optional exemption from the tender procedure in certain cases, with the consent of the provincial governor with regard to properties owned by the State Treasury and, respectively, of the council or the regional council in relation to properties owned by local government units.

In the period 2017–2019, as part of the real estate management policy, the Municipality of Krakow disposed of a total of 222 cadastral parcels with a total area of 4.4705 ha without the tender. 215 parcels with a total area of 4.1680 ha were sold (Tab. 5). From the sale, the Municipality of Krakow earned a total of approximately PLN 22.9 million, and for the first perpetual usufruct fee (set at 25% of the price of the land property) it was approximately PLN 1.11 million. Total revenues from the disposal of cadastral parcels without the tender procedure in the period 2017–2019 amounted to over PLN 23.2 million.

**Table 5.** Number, area and price of cadastral parcels disposed of by the Municipality of Krakow in 2017–2019 without tender procedure

| Year  | Form of disposal                | Number of parcels | Area of land [ha] | Total area of land disposed of in a year [ha] | Property price [PLN]                             |  | Total price of disposed land plots [PLN] |
|-------|---------------------------------|-------------------|-------------------|-----------------------------------------------|--------------------------------------------------|--|------------------------------------------|
|       |                                 |                   |                   |                                               | 1 <sup>st</sup> fee for perpetual usufruct [PLN] |  |                                          |
| 2017  | sale                            | 108               | 2.8930            | 2.9798                                        | 15,302,392                                       |  | 15,527,008                               |
|       | letting into perpetual usufruct | 2                 | 0.0868            |                                               | 224,616                                          |  |                                          |
| 2018  | sale                            | 53                | 0.6487            | 0.7190                                        | 3,817,035                                        |  | 3,857,109                                |
|       | letting into perpetual usufruct | 4                 | 0.0703            |                                               | 40,004                                           |  |                                          |
| 2019  | sale                            | 54                | 0.6263            | 0.7717                                        | 3,798,318                                        |  | 3,816,724                                |
|       | letting into perpetual usufruct | 1                 | 0.1454            |                                               | 18,406                                           |  |                                          |
| Total |                                 | 222               | 4.4705            |                                               | 23,200,841                                       |  |                                          |

Source: own elaboration.

For comparison, in the period 2012–2014, both the number of parcels disposed of without the tender procedure (220) and the total price of 22.8 million were similar. However, the area of the land differed significantly, which previously was 8.7865 ha, and currently 4.4705 ha. It follows that the Municipality obtained comparable revenue for the land with almost twice as small area. The main reason is the increase in real estate prices compared to the period 2012–2014. The form of disposal is also different: sales predominate, and only 7 parcels were let into perpetual usufruct (previously it was 49). Importantly, the non-tender procedure is a consequence of the submission of an application by interested parties and the fulfilment of statutory requirements by the applicants. For this reason, unlike in the tender procedure, it is not possible to predict property disposal in this mode, which makes it difficult to plan revenues.

Within the analysed period, the Municipality of Krakow disposed of the largest number of land plots, i.e. 198, without the tender procedure, in order to improve the conditions for the development of the adjacent property, under the so-called “complement” procedure (Tab. 6) pursuant to Article 37 section 2 clause 6 [Act on Real Estate Management, 1997].

This legal norm can be applied if the following three conditions are met jointly:

- the property is to improve the conditions for the development of only one adjacent property;
- the owner or perpetual user expresses the will to purchase this property;
- the property intended for disposal may not be developed as a separate property.

This procedure may be used when only one person is interested in the purchase, because organising a tender would not make sense then. Should this property subject to disposal, or a part of it, have a functional relationship with more than one adjacent parcel, such sale procedure is impermissible. This view results from the judicial and administrative judgements [Judgement of the Supreme Court of 2006, Judgement of the Supreme Court of 2009].

The fact that individual plots of land cannot be developed should not be justified only by their small area. The adoption of such reasoning would lead to the possibility of multiple separation of a small part of a given plot of land, always with the justification of the inability to develop it as a separate property, which suggests that this premise is circumvented [Klat-Górska & Klat-Wertelecka, 2015].

Land plots disposed of under the “complement” procedure usually had a small area (from 0.0020 to 0.0300 ha) or an unfavourable shape, which meant that they could not be developed as separate

**Table 6.** Number and area of land plots disposed of by Municipality of Krakow in order to improve conditions for development of neighbouring properties and the price obtained

| Year  | Form of disposal                | Number of land plots | Area of land [ha] | Total area of land disposed of in a year [ha] | Property price [PLN]                         | Total price for property disposal [PLN] |
|-------|---------------------------------|----------------------|-------------------|-----------------------------------------------|----------------------------------------------|-----------------------------------------|
|       |                                 |                      |                   |                                               | 1 <sup>st</sup> perpetual usufruct fee [PLN] |                                         |
| 2017  | sale                            | 96                   | 0.9211            | 1.0079                                        | 4,715,514                                    | 4,940,130                               |
|       | letting into perpetual usufruct | 2                    | 0.0868            |                                               | 224,616                                      |                                         |
| 2018  | sale                            | 47                   | 0.4522            | 0.5225                                        | 2,926,360                                    | 2,966,364                               |
|       | letting into perpetual usufruct | 4                    | 0.0703            |                                               | 40,004                                       |                                         |
| 2019  | sale                            | 49                   | 0.4494            | 0.4494                                        | 2,404,614                                    | 2,404,614                               |
|       | letting into perpetual usufruct | 0                    | 0                 |                                               | 0                                            |                                         |
| Total |                                 | 198                  |                   | 1.9798                                        | 10,311,108                                   |                                         |

Source: own elaboration.

properties. These lands were often occupied without a legal title, and therefore their disposal contributed to the ordering of the legal and geodetic status of the property.

The number of cadastral parcels disposed of in order to improve the conditions for the development of an adjacent property was comparable to the period 2012–2014, however, there was a significant difference in their area. In 2017–2019, for the plot of land with an area of almost twice as small, i.e. 1.9798 ha (c.f. 3.7745 ha), the price was higher by over PLN 1.5 million.

The data on the number of parcels of the Municipality of Krakow disposed of under the non-tender procedure for the benefit of individual entities, their area and prices are presented in Table 7.

The Municipality of Krakow concluded 14 contracts for the sale of properties to perpetual users, which resulted in the expiry of the right of perpetual usufruct and separate ownership of buildings and facilities located on this land. This group included only those properties for which there were no conditions for the transformation under the Act on the transformation of the right of perpetual usufruct into ownership title.

The non-tender procedure is widely used in relation to persons who have priority in the acquisition

**Table 7.** Number, area and total revenues from disposal of parcels owned by Municipality of Krakow under non-tender procedure for the benefit of individual entities (except for the “complement” procedure)

| Purchasing entity                                                                       | Number of parcels | Land area [ha] | Total price obtained [PLN] |
|-----------------------------------------------------------------------------------------|-------------------|----------------|----------------------------|
| People who carry out non-profit charity, care, cultural, medical, scientific activities | 2                 | 0.2584         | 1,126,813                  |
| Perpetual users                                                                         | 14                | 2.1865         | 11,298,734                 |
| Autonomous possessors                                                                   | 7                 | 0.1126         | 430,186                    |
| Total                                                                                   | 23                | 2.5575         | 12,855,733                 |

Source: own elaboration.

of public properties, including tenants of residential premises who, in the analysed period, acquired 1,154 premises for a total price of approximately PLN 29.2 million (Tab. 8). This price included the discount granted by the Krakow City Council, which predominantly was 90% of the price. Tenants have priority in the acquisition only if tenancy has been concluded for an unspecified period. In the period 2012–2014, a total of 2,505 residential premises were sold for a total price of over PLN 56.5 million. These numbers were more than twice lower than in the period 2012–2014 because the sale prices



of premises to tenants remained at a similar level. It was associated with high discounts granted by the Krakow City Council, which was not profitable for the municipality from the budgetary point of view.

**Table 8.** Number of premises disposed of in 2017–2018 to their tenants and the total price

| Years | Number of premises | Total price for premises (including discounts) [PLN] |
|-------|--------------------|------------------------------------------------------|
| 2017  | 527                | 12,199,063                                           |
| 2018  | 554                | 14,077,556                                           |
| 2019  | 73                 | 2,917,338                                            |
| Total | 1,154              | 29,193,957                                           |

Source: own elaboration.

The sale of residential premises to tenants is a continuation of the long-term policy of privatisation of municipal flats. Other large Polish cities, e.g. Szczecin, also grant such high discounts [Sawicka, 2012].

## CONDITIONS LIMITING MUNICIPAL PROPERTY DISPOSAL

Revenues from real property disposal in the Municipality of Krakow in 2019 (Tab. 9) constituted a small share in the income related to property management. It results from the successively decreasing area of the land offered for disposal.

The conducted research allowed to identify the reasons for limiting the process of public property disposal. In addition to the common requirements of the validity of a legal act, in particular its form and the prohibition of performing activities contrary to the act or aimed at circumventing the act [Article 58 § 1 of the Civil Code, 1964], the limitations may result from specific provisions.

One of the restrictions on public property disposal are the provisions contained in the so-called “Special Acts” excluding such possibility with respect to the properties intended for the implementation of a specific public purpose investment. An example of a provision introducing such a limitation

**Table 9.** Revenues from the Municipality of Krakow’s property management in 2019

| Revenue source                                                                                         | Revenues [PLN] |
|--------------------------------------------------------------------------------------------------------|----------------|
| Permanent administration, usufruct and right-of-way                                                    | 14,271,364     |
| Rent and lease of assets as well as other contracts of a similar nature                                | 114,764,806    |
| Conversion of the right of perpetual usufruct vested in natural persons into                           | 45,017,284     |
| Acquisition of the ownership right for consideration and the right of perpetual usufruct of a property | 34,961,570     |
| Sale of assets                                                                                         | 251,111        |
| Fees for perpetual usufruct                                                                            | 28,260,347     |
| Penalties and damages under the concluded contracts                                                    | 11,751,100     |
| Total                                                                                                  | 249,277,582    |

Source: own elaboration based on information on the state of municipal property.

is Article 11d section 9 of the Special Road Act, which establishes the invalidity of a legal act performed in breach of this restriction. According to this provision, upon the effective notification of the initiation of the procedure subject to the application for a permit for the implementation of a road investment until the decision on such a permit becomes final, any change in the legal status of the property owned by the State Treasury or local government units is unacceptable. In the analysed period, 60 decisions were issued on the permit for the implementation of a road investment in Krakow.

The most important limitation is the obligatory restitution of the expropriated property to the former owner in a situation where this property has not been used for the purpose of the expropriation.

If the property was acquired by expropriation, then before its disposal it is necessary to determine whether the purpose of the expropriation has been implemented and whether the former owners are entitled to claims for restitution, and then take steps to notify them of the possibility of such restitution. The obligation to notify former owners is a consequence of the guideline contained in Article 136 section 1 of Act on Real Estate Management [1997],

under which the expropriated property can not be used for any purpose other than the one specified in the expropriation decision.

Due to the imprecise definition of the purpose of expropriation in the former expropriation decisions and the lack of source documentation, it is currently difficult to assess its implementation and, as a consequence, notify the entitled persons. Moreover, finding former owners and their addresses requires arduous, long-lasting search, which does not always bring the desired results.

According to the research conducted over the period of 3 years [Trembecka & Kwartnik-Pruc, 2018], the former owners and their heirs were notified of the possibility of restitution due to the failure to implement the purpose of expropriation in relation to 29 properties planned for disposal by the Municipality of Krakow (by tender procedure). As a consequence, it eliminated these properties from the disposal process. The number of the properties covered by this notification constituted approximately 25% of those planned for disposal. This meant that they could not be sold or used for investment by the city.

The legislator has currently extended the scope of the regulations on restitution as a result of which, with the amendment to the Act on Real Estate Management, restitution of a share in the property or of its part is also possible since 14 May 2019. Previously, restitution was not permissible where the application came from an incomplete circle of heirs.

The procedure for public property disposal may not apply to properties in relation to which proceedings are pending to declare the invalidity of the decision based on which the State Treasury or local government unit purchased the property, the resumption of proceedings in similar cases, or an action to update the contents of the land and mortgage register according to the actual legal status.

The process should also take into account the right of priority [Article 34 of the Act on Real Estate Management, 1997], including claims by various entities for “enfranchisement” under the Act on Real Estate Management and other acts [e.g. Article 231 of the Civil Code, 1964], which are to resolve the problem

of the transformation of property relations as a result of the political transformation.

A separate factor that limits the revenues is property sale with a discount on the price. Apart from the cases of optional granting of the discounts set forth in Article 68 section 3 of the Act on Real Estate Management (with the consent of the decision-making authority), there is an obligatory discount applied to the sale price of the property or its part entered into the register of monuments. The amount of the discount is 50% of the price, however, the competent authority may increase or decrease the discount with the consent of the provincial governor or the regional council, respectively. In the analysed period, the Krakow City Council determined the discount at the level of 5% when selling historic properties. Discounts for the sale of residential premises to tenants were adopted at the level of 90%.

Another limitation is the necessity to act in accordance with the public interest, which means that in the event of an intended disposal, an assessment must first be made of the use of the property for the performance of public utility tasks by public entities. The economic factor cannot be decisive in many cases, which means that e.g. it is a rational management decision to leave a property of high natural, historical or cultural importance in the municipal resources so that it is available to the residents, regardless of the decreased revenue. In the current legal system, as far as the real estate management process is concerned, it is difficult to speak of a uniform, objective and universal catalogue of principles of rational economy.

The legislator does not indicate whether in problematic situations, when making a decision on the method of disposing of a given property, one should be guided by economic or social presumptions, to name but a few [Sanakiewicz, 2015].

## SUMMARY AND CONCLUSIONS

The analysis of the scope and structure of the disposed properties owned by the Municipality of Krakow has demonstrated that in the period 2017–2019, a total of 9.7992 ha of land was sold, with 5.3287 ha sold under

the tender procedure and 4.4705 ha without the tender procedure. This is a small part of the total area of land in the resources of the Municipality of Krakow, which accounts for 5,535 ha (as of 31 December 2019).

The research on the structure of the Municipality of Krakow's income in 2019 has revealed that the revenues from the sale of properties account for about 14% of all income related to property management. The revenues of about PLN 34 million are more than 2 times lower than those planned in the 2019 budget for the sale of the municipal properties, which were planned at the level of PLN 89 million.

On the other hand, the transformation of the right of perpetual usufruct into the ownership title in 2019 generated an income of approximately PLN 45 million, which was more than 30 times the amount planned in the budget. The reason lies in the fact that the new regulations on the transformation entered into force on 1 January 2019 [Act on the transformation of the right of perpetual usufruct, 2018] and the resolution on a discount granted in the event of paying a one-off fee in the year in which the transformation took place was adopted by the City Council. These regulations resulted in great interest in paying the one-off transformation fee in 2019, instead of extending the payment for a period of 20 years.

The conducted research has allowed for the conclusion that there are many reasons behind the reduced number of properties offered for disposal by the Municipality of Krakow by public tender, including:

- a limited number of properties that would be suitable for independent development;
- undetermined legal status of properties (necessity to take appropriate surveying and legal actions);
- unspecified land use of properties due to the lack of a land use plan;
- a tendency to change the land use of municipal properties to public greenery in the local land use plan;
- no access to a public road;
- an obligation to notify former owners of the expropriated properties about the possibility of their restitution;

- property restitution proceedings;
- other re-privatisation claims (e.g. the annulment of expropriation).

The above conditions limit the rational property management or hinder the possibility of property disposal and, consequently, impede the planning of the municipal revenues.

As far as the non-tender procedure was concerned, the disposal in order to improve the conditions for the development of the adjacent property was the most frequent. It covered 198 plots of land with a total area of 1.9798 ha. In these cases, the sale was triggered by the request of the interested entity and was of a regulatory nature: its purpose was to bring the actual status into compliance with the legal status, stop the course of acquisitive prescription by spontaneous possessors and improve the spatial structure of the area.

The analysis of the process has revealed that the prices of the properties sold were almost twice as high compared to the period 2010–2014, which reflected the trends prevailing on the real estate market.

The claims of the former owners constitute a significant obstacle in the disposal process.

The conducted research has confirmed the formulated thesis that one of the reasons for limiting the process of public land disposal is the obligation to notify the former owners about the possibility of restitution of the expropriated properties. Lengthiness of the restitution proceedings results in the final settlement involving a decision on restitution or refusal of restitution being issued, taking several years. During this time, these properties cannot be developed in a way that prevents their restitution or changes their value.

## REFERENCES

- Act respecting the expropriation of land (R.S.C., 1985, c. E-21) (Canada).
- Baugesetzbuch (BauGB), 23 VI 1960 (2017 BGBl. I S. 3634) (Germany).
- Bieniek, G., Gdesz, M., Rudnicki, S. (2013). *Nieruchomości. Problematyka prawna (Real estate. Legal issues)*. Warszawa, LexisNexis.

- Biuro ds. Ewidencji Mienia Urzędu Miasta Krakowa. (2020). *Informacja o stanie mienia komunalnego (Information on the state of communal property)*, [https://www.bip.krakow.pl/?bip\\_id=1&mimi=43](https://www.bip.krakow.pl/?bip_id=1&mimi=43), date: 04.10.2020.
- Bończak-Kucharczyk, E. (2020). *Ustawa o gospodarce nieruchomościami. Komentarz (The Act on real estate management. Commentary)*. Lex.
- Code de l'expropriation pour cause d'utilité publique. (2021), JORF n° 0035 du 10 février 2021 (France).
- Cymerman, J. (2009). Aktywna gospodarka nieruchomościami a dochody gmin (Active Management of Real Estates at the Local Government and Communal Income). *Studia i Materiały TNN*, 17(3), pp. 29–46.
- Jaworski, J., Prusaczyk, A., Tułodziecki, A., Wolanin, M. (2009). *Komentarz do ustawy o gospodarce nieruchomościami (Commentary on the Real Estate Management Act)*. Warszawa, C.H. Beck Publishing House.
- Klat-Górska, E., Klat-Wertelecka, L. (2015). *Ustawa o gospodarce nieruchomościami (The Act on real estate management. Commentary)*. Komentarz. Lex.
- Heldak, M. (2009). Gospodarowanie gminnym zasobem nieruchomości – studium przypadku. (Municipal real estate management – a case study). *Studia i Materiały TNN*, 17(3), pp. 19–28.
- Kotlińska, J. (2013). Sprzedaż majątku samorządowego w kontekście limitu zadłużenia i zadań jednostek samorządu terytorialnego w Polsce (Sale of local government property in the context of debt limits and tasks of local government units in Poland). *Zeszyty Naukowe Wyższej Szkoły Bankowej w Poznaniu*, 47(2), pp. 43–59.
- Kotlińska, J. (2014). Endogeniczne uwarunkowania gospodarki nieruchomościami samorządowymi (Endogenous determinants of local government real estate management). *Roczniki Ekonomiczne Kujawsko-Pomorskiej Szkoły Wyższej w Bydgoszczy*, 7, pp. 172–191.
- Lux, M., Mikleszowa, M. (2012). Property restitution and private rental housing in transition: The case of the Czech Republic. *Housing Studies*, 27(1), pp. 77–96.
- Marona, B. (2018). Zarządzanie nieruchomościami gmin jako obszar teoretycznych rozważań i badań empirycznych w ramach zarządzania publicznego (Municipal real estate management as a basis for theoretical considerations and empirical research within public management). *Zeszyty Naukowe Uniwersytetu Ekonomicznego w Krakowie, Seria Specjalna, Monografie*, 258, pp. 225.
- Nalepka, A. (2008). Modele zarządzania gminnym zasobem nieruchomości (Models of municipal real estate management). *Zeszyty Naukowe Uniwersytetu Ekonomicznego w Krakowie*, 792, pp. 57–69.
- Padure, L.A., Tutuianu, A. (2015). Ways in Which Some Countries Which Have Totalitarian Regimes Have Solved the Issue of Restitution of the Properties Abusively Confiscated. In: *5th International Conference Lumen 2014, Transdisciplinary and Communicative Action (Lumen-TCA 2014)*, pp 535–539.
- Remann, B. (1997). The transition from people's property to private property: Consequences of the restitution principle for urban development and urban renewal in East Berlin's inner-city residential areas. *Applied Geography*, 17(4), pp. 301–313.
- Sanakiewicz, Ł. (2015). Szczególne formy obrotu nieruchomościami publicznymi – zagadnienia prawne (unpublished doctoral dissertation) (*Special forms of public real estate trading – legal issues (unpublished doctoral dissertation)*). Katowice, Uniwersytet Śląski w Katowicach. <http://www.sbc.org.pl/Content/209584/doktorat3618.pdf>, date: 05.10.2020.
- Sawicka, D. (2012). Selected problems of management of municipal residential properties on the example of Szczecin. *Study and Materials of the Real Estate Scientific Society*, 20(4), pp. 147–155.
- The judgement of the Supreme Court of 5 July 2006, ref. No. IV CSK 98/06, LEX No. 459229.
- The judgement of the Supreme Court of 6 March 2009, ref. No. II CSK 589/08, LEX No. 530697.
- Trembecka, A. (2014). Analysis of the process of real estate disposal by public tender and related legal and surveying actions on the example of the city of Krakow. *Geomatics and Environmental Engineering*, 8(1), pp. 75–84.
- Trembecka, A. (2015). *Gospodarka nieruchomościami. Teoria i praktyka (Real estate management. Theory and practice)*. Kraków, AGH.
- Trembecka, A. (2016). Analysis of disposal of public property without tender procedure on the example of the Municipality of Krakow. *Real Estate Management and Valuation*, 24(2), pp. 5–12.
- Trembecka, A. (2017). Permanent management as a form of managing public properties on the example of the city of Krakow. *Acta Scientiarum Polonorum. Administratio Locorum*, 16(3), pp. 215–222.

- Trembecka, A., Kwartnik-Pruc, A. (2018). Problems of real estate management with respect to claims for restitution of expropriated properties. *Real Estate Management and Valuation*, 26(3), pp. 105–112.
- Triantis, L. (2018), The post-socialist restitution of property as dispossession: Social dynamics and land development in Southern Albania. *Land Use Policy*, 71, pp. 584–592, doi: 10.1016/j.landusepol.2017.10.056.
- Uchwała Nr LXXVI/745/97 Rady Miasta Krakowa z dnia 16 kwietnia 1997 r. w sprawie sprzedaży nieruchomości zabudowanych budynkami mieszkalnymi, w których znajduje się jeden lokal (Resolution NO LXXVI/745/97 of the Krakow City Council of 16 April 1997 on the sale of real estate developed with residential buildings in which there is one premises) (Dz. Urz. Woj. Mał. 2017, item 740) (Poland).
- Uchwała nr XV/99/03 Rady Miasta Krakowa z dnia 7 maja 2003 r. w sprawie zasad gospodarowania nieruchomościami Gminy Miejskiej Kraków (Resolution No. XV/99/03 of 7 May 7 2003 of Krakow City Council on the real estate management of the City of Krakow) (Dz. Urz. Woj. Małop. 2017, item 741) (Poland).
- Uchwała nr CX/1099/06 Rady Miasta Krakowa z dnia 24 maja 2006 r. w sprawie sprzedaży lokali użytkowych stanowiących własność Gminy Miejskiej Kraków (Resolution No. CX/1099/06 of the Krakow City Council of 24 May 2006 on the sale of commercial premises owned by the Municipality of Krakow) (Dz. Urz. Woj. Małop. 2016, item 8112) (Poland).
- Uchwała nr XLVI/568/08 Rady Miasta Krakowa z dnia 11 czerwca 2008 r. w sprawie zasad zbywania lokali mieszkalnych stanowiących własność Gminy Miejskiej Kraków oraz określenia warunków udzielenia bonifikaty i wysokości stawek procentowych (Resolution No. XLVI/568/08 of the Krakow City Council of 11 June 2008 on the rules of disposal of residential premises owned by the Municipality of Krakow and determination of the conditions for granting discounts and the percentage rates) (Dz. Urz. Woj. Małop. 2016, item 7759) (Poland).
- Uchwała nr CXV/3022/18 Rady Miasta Krakowa z dnia 7 listopada 2018 r. w sprawie warunków udzielania bonifikat od opłat jednorazowych z tytułu przekształcenia prawa użytkowania wieczystego gruntów stanowiących własność Gminy Miejskiej Kraków w prawo własności tych gruntów i wysokości stawek procentowych tych bonifikat (Resolution No. CXV/3022/18 of the Krakow City Council of 7 November 2018 on the conditions for granting discounts on one-off fees for the transformation of the right of perpetual usufruct of land owned by the Municipality of Krakow into the ownership right to this land and the percentage rates of these discounts) (Dz. Urz. Woj. Małop. 2018, item 7736) (Poland).
- Ustawa o gospodarce nieruchomościami. Komentarz (The Act on real estate management. Commentary)* (2012). G., Bieniek, M., Gdesz, S., Kalus, G., Matusik, E., Mzyk (eds. Kalus, S.). Warszawa, LexisNexis.
- Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny (Civil Code of April 23, 1964) (Dz.U. 2020, item 1740) (Poland).
- Ustawa z dnia 21 sierpnia 1997 r. o gospodarce nieruchomościami (Act of 21 August 1997 on Real Estate Management) (Dz.U. 2020, item 65 as amended) (Poland).
- Ustawa z dnia 20 lipca 2018 r. o przekształceniu prawa użytkowania wieczystego gruntów zabudowanych na cele mieszkaniowe w prawo własności tych gruntów (Act of 20 July 2018 on the transformation of the right of perpetual usufruct of the land developed for residential purposes into the ownership title to this land) (Dz.U. 2020, item 139) (Poland).
- Żróbek, S., Żróbek, R., Kuryj, J. (2012). *Gospodarka nieruchomościami z komentarzem do wybranych procedur (Real estate management with a commentary on selected procedures)*. Katowice, Gall.

