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## The Issue of Compensation for Loss of Rights to Property Plots Parcelled out for Public Roads Based on the Example of Cracow\*\*

### 1. Introduction

Plots of land parcelled out for public roads:

- the commune,
- district,
- provincial and national roads –

from the property, the division of which was conducted upon the request of the owner, are legally transferred for the benefit of a commune, district, voivodship or the State Treasury respectively, on the day on which the decision approving the division has become final or the adjudication on the division has become legally binding (article 98, paragraph 1 of the *Real Estate Management Act of 21 August 1997* [1]).

On this date also expires the right of perpetual use of the land with respect to a property plot parcelled out for a public road, in the event of a request submitted by a perpetual usufructuary of the real property.

For the plots of land parcelled out for roads, one is entitled to a compensation in the amount agreed between the owner or perpetual usufructuary and a competent authority. The compensation may take a form of a granted replacement property. In case of an agreement failure, at the request of the owner or perpetual usufructuary, the compensation is determined in the administrative mode according to the regulations governing the expropriation of property.

This article presents some issues associated with determining compensation for loss of property or perpetual usufruct rights to the plots parcelled out for public roads, as well as the status of compensation claims mentioned above, based on the example of the city of Cracow.

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## 2. Procedure under *Civil Law* for Determining Compensation for Plots of Land Parcelled out for Public Roads

Firstly, the amount of compensation is agreed between the former owner or perpetual usufructuary and a competent authority. This agreement is subject to the civil law, with the consequence of the parties acting as equal entities.

In the case of civil law procedures of determining the compensation, the competent authority are the executive bodies of local governments or the governor acting in the name of the State Treasury. According to article 4 clause 9 of the *Real Estate Management Act* [1] the above authorities are competent in the matters of real estate management owned respectively by the said units or the State Treasury.

The negotiations involve mainly the terms of amount, form and timing of compensation payments. Compensation may either take a financial form or a form of a replacement property with a possibility of additional payment. In the negotiations conducted by the representatives of the Municipality of Cracow, the opinion of a real estate appraiser constitutes the basis.

The negotiations can be conducted exclusively upon the decision approving the division of property being final. In the case of a positive outcome of negotiations, the parties conclude a relevant agreement. If, however, the compensation takes a form of a replacement property, the transfer of the rights to the replacement property must be executed by means of a notarial act.

A negative outcome of the negotiations should be documented in the files in a form of the minutes.

## 3. Administrative Procedure for Determining Compensation for the Plots of Land Parcelled out for Public Roads

If negotiations fail to result in the conclusion of the civil law agreement, the former owners or perpetual usufructuaries are entitled to claim determining compensation by way of an administrative decision.

A relation under administrative law is based on inequality of the parties and entitlement of one party (public administration organ) to the authoritative shaping of its content, and the other hand, the obligation for the other party to behave in accordance with its terms.

Determining compensation ensues by way of administrative proceedings in accordance with the rules and procedures governing the real estate expropriation. Therefore, the authority conducting the proceedings, i.e. a mayor executing the tasks of government administration is obliged to apply the rules of compensation procedures stipulated under the *Real Estate Management Act* [1].

Compensation is in the financial form, however, it may also take a form of a replacement property with a possibility of additional payment, if a public law entity liable for payment will indicate such a property.

The basis for determining the amount of compensation is the market value of ownership right to the property which was transferred for the benefit of an entity governed by public law, or the value of perpetual usufruct rights, which expired on the date the decision approving the division of the subject property becomes final.

The decision determining the compensation is preceded by obtaining an opinion of a real estate appraiser (article 130 section 2 of the act [1]). The execution of property valuation is based on the provisions of the *Act of 29th January 2004, the Public Procurement Law* (consolidated text, Official Journal of 2007, no. 223, item 1655) at the request of the authority conducting proceedings.

The amount of compensation is determined by a competent authority, which must, however, assess the reliability of the expert opinion obtained. Determining the value of a real estate requires expertise that a real estate appraiser has. However, if the estimated value of a property, as presented in the valuation, raises reasonable doubt, then the authority is obliged to undertake additional actions in this respect. It may, inter alia, turn to a professional organization of real estate appraisers to assess the correctness of the property valuation.

However, the submission by of an appraisal made at the party's own request, which often occurs in practice, does not mean having to turn to the professional organization of appraisers for their opinion.

Pursuant to article 89 paragraph 2 of *Administrative Proceedings Code*, in the course of carried out procedure, it is justified to hold an administrative hearing.

That provision constitutes that the authority should hold a hearing if it is necessary to negotiate the interests of the parties and in case it is needed to clarify the matter with the participation of witnesses or experts, or by way of visual inspection. This form allows the presentation of evidence, expert opinion, the questioning of the parties as well as familiarization with the collected documentation. This is an implementation of the principles of quickness, simplicity, economy, purposefulness and overtness of all procedural activities comprising an administrative evidence hearing. In order to provide explanations, the real estate appraiser should participate in the hearing on determining the compensation.

#### **4. Determining the Value of Plots of Land Parcelled out for Public Roads**

In the course of administrative proceedings the amount of compensation shall be based upon the market value of the property determined by a real estate appraiser. In determining the market value of the property the following in

particular are taken into account: its nature, location, usufruct, purpose, availability of technical infrastructure, its condition, as well as current real estate prices.

The principles for determining the value of property plots parcelled out for public roads are set forth in paragraph 36 of the *Ordinance of the Council of Ministers on property valuation and preparation of the appraisal report* (Official Journal No. 207, item. 2109, as amended) [2].

Under the above provision, while determining the market value of the plot of land designated or occupied for public roads, a comparative approach is applied, assuming the transaction prices obtained from the sale of plots designated or distrained for public roads, respectively.

In the absence of prices, the value of land is determined as follows:

- 1) The value of plots of land designated for new public roads or the widening of existing roads is determined by multiplying the value of 1 m<sup>2</sup> of land from which those plots of land were parcelled out, and their surface. However, if the designation of the land from which the plots for new public roads or the widening of existing roads were parcelled out results in lowering its value, as compared with the value of the land parcelled out for roads, the value determined in such a manner is increased by 50%.
- 2) The value of plots of land distrained for public roads shall be determined by multiplying the value of 1 m<sup>2</sup> of land of usufruct predominant among adjacent plots of land and the surface. However, if the designation of the adjacent land results in lowering its value, as compared with the value of the land parcelled out for roads, the value determined in such a manner is increased by 50%.

The condition of the property, from which road plots were parcelled out, is assumed to be the day of the issuance of the decision approving the division, and the price as of the date of the compensation decision.

Currently, an amendment is being prepared for the wording of paragraph 36 of the *Ordinance of the Council of Ministers on property valuation and preparation of the appraisal report* [2], which introduces modifications in the manner of determining the value of plots of land parcelled out for roads.

## **5. Waiver of Compensation for Property Plots Parcelled out for a Road**

The possibility of waiver of compensation for the plots of land parcelled out for roads was the subject of much controversy in case law.

Eventually, a view resulting from the decision of the Court of Appeal in Poznań (case I ACa 521/06 of 31st October 2006), under which it is possible to renounce the amount of any future compensation for the plots of land parcelled out for public roads, referred to in article 98 section 3 of the *Real Estate Management Act* [1].

A conclusion may be drawn therefrom that the compensation will be determined in the administrative procedure if between the parties no arrangements referred to in section 1 of this article have been made, or the owner has not renounced the compensation.

## **6. Analysis of Effects of Property Division Regarding Compensation Claims for Property Plots Parcelled out for Public Roads Based on the Example of Cracow**

The analysis of compensation claim implementation process of former owners and perpetual usufructuaries for property plots parcelled out for public roads on the territory of Cracow in the period from the year 2000 to 1st September 2009, allows to draw the following conclusions:

- 1) In the period from 2000 to 2002, the compensation for plots of land parcelled out for roads on the territory of Cracow – with few exceptions – have not been paid. It was primarily due to attempts undertaken by the Municipality of Cracow regarding the annulment of the decisions approving the division of real estate properties within the scope of the decision on acquisition of road plots for the benefit of the Municipality of Cracow, as well as the lack of financial resources in the city budget for this purpose.
- 2) The procedure of determining compensation for the plots parcelled out for roads in Cracow (including those not having the status of public roads) was resumed in 2003 and since that date a gradual realization of submitted claims has been implemented.
- 3) Currently, compensations for plots of land parcelled out for roads through subdivision surveys conducted in previous years, i.e. before the year 2000, are also being paid out.
- 4) The vast majority of compensations are paid under civil law procedure as a result of a positive outcome of negotiations (97.5% of cases).
- 5) The base for determining the compensation in both procedures (civil law and administrative) are property valuations prepared by real estate appraisers.
- 6) Since the year 2000 no compensation in the form of real property replacement has been granted for plots of land parcelled out for roads.

- 7) The status of the claims for roads parcelled out through subdivision surveys and acquired for the benefit of public law entities since the year 2007 to 30th June 2009 are presented in table 1 (for civil law procedure) and table 2 (in relation to administrative procedure).
- 8) In recent years (2008–2009), as a result of property divisions associated with investments relating to, among others, commercial objects and office buildings, large areas of land for roads were parcelled out, which generates claims for payment of very high compensations in the following years.
- 9) As of 1st September 2009, 54 cases are pending the determination and payment of compensations for roads parcelled out through subdivision surveys.
- 10) The unsatisfied compensation claims regard the total land area of 7.3058 ha (Tab. 3).
- 11) Assuming an average price of 1 m<sup>2</sup> of land parcelled out for roads in Cracow at around 350 zloties, compensation claims for the total land area of 7.3058 ha amounts to 25,570,300 zloties.

**Table 1.** The status of satisfying compensation claims for former property owners resulting from the loss of rights to property plots parcelled out for roads in Cracow – civil law procedure

The period of satisfying claims	Entity acquiring ownership of the land parcelled out for a road	Area of the plot parcelled out for a road [ha]	Number of civil law contracts on determining and payment of compensation
2007	The Municipality of Cracow	0.5259	11
2008	The Municipality of Cracow	1.1849	12
	The City of Cracow with county rights	0.3639	3
From 1st January 2009 to 30th June 2009	The Municipality of Cracow	0.7490	36
	The City of Cracow with county rights	0.0349	12
Total		2.1845	74

**Table 2.** The status of satisfying compensation claims for former property owners resulting from the loss of rights to property plots parcelled out for roads in Cracow – administrative procedure

The period of satisfying claims	Entity acquiring ownership of the land parcelled out for a road	Area of the plot parcelled out for a road [ha]	Number of administrative decisions on determining and payment of compensation
2007	The Municipality of Cracow	0.0045	1
2008	The Municipality of Cracow	0.0730	2
From 1st January 2009 to 30th June 2009	The City of Cracow with county rights	0.0041	1
Total		0.0816	4

**Table 3.** The scope of unsatisfied compensation claims for loss of rights to property plots parcelled out for roads in Cracow as of 1st September 2009

Number of unsatisfied claims on determining compensation	Entity acquiring ownership of the land parcelled out for a road	Area of the plot parcelled out for a road [ha]
54	The Municipality of Cracow	6.7216
	The City of Cracow with county rights	0.5842
Total		7.3058

## 7. Conclusion

One of the results of approving subdivision survey projects of a property is transfer of ownership rights to plots of land parcelled out for roads for the benefit of the State Treasury or local government units, and thus payment of compensation.

This situation causes numerous problems to public law entities since they do not have the financial means for this purpose and, by virtue of the law, they acquire land where, in a given period, no road investment is planned.

## References

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