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## Acquiring Real Estate for the Construction of Public Roads by the Current Legal Status\*\*

### 1. Introduction

The practice proved, that the fundamental problems during the implementation of road investments were the issues of acquiring real estate for this purpose. On 18th October 2006 the law making amendments to the *Law on Special Rules of Preparation and Implementation of Investments for National Roads* [5] was passed, introducing radical changes in the preparation and implementation, including the purchase of real estate to build all the types of public roads. This allowed extending the law into self-government units implementing the tasks using the funds from the European Union, which definitely speeds up the implementation of these tasks.

The investment process was carried out in two stages. The first stage could be called localization. This ends with issuing the decision on the localization of the road, which replaced the acts occurring in a traditional investment process (acts referring to planning and spatial management - e.g. plans of spatial management, decisions on the conditions of building, decisions on the localization of investments for public goals). The second stage involved issuing the decision on the permit to build.

On 25th July 2008 another amendment to the 2003 Law was made to further simplify the procedure by making an integrated, one-stage procedure establishing all the conditions for carrying out road investments in one administrative decision. Instead of required so far two decisions – on the localization of road and the permit for the construction – one decision was introduced – the permit to make a road investment. Such a solution would simplify and accelerate the works connected with road investments.

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The acceleration of the investment processes in terms of public roads is crucial due to the widely known low level of the development of road infrastructure in Poland, the necessity of its improvement and the necessity of the effective use of the funds from the European Union.

## **2. Acquiring the Land for the Public Roads *Ipso Jure* in the Period of 16th December 2006 – 9th September 2008**

On 16th December 2006 the newly amended *Law on Special Rules of Preparation and Implementation of Investment in the Area of Public Roads* came to power. Introduced on 16th December 2006 (by the *Law of 18th October 2006 on Changing the Law on Special Rules of Preparation and Implementation of Investment in the Area of Public Roads* [5]) regulations caused radical changes in the rules and conditions of the localization of investment and acquiring land for this purpose.

The scope of the law was defined in article 1, according to which, the regulations of the law establish the rules and conditions of preparation the investment referring to all the public roads, as understood in the *Law of 21st March 1985 on public roads*. In this area the law had a special character, excluding the application of general regulations (contained e.g. in the *Law on Real Estate Management or Construction Law*). The form of that regulation continued to be valid after a subsequent amendment. The law also explained precisely the concept of the “preparation of investment” indicating that such a process includes the conditions of the localization of roads, acquiring of real estate and the construction of roads.

### **2.1. Decision on the Localization of Roads and Its Legal Consequences**

To implement road investments, based on the regulations of the *Law on Special Rules of the Preparation and Implementation of Investments in the Area of Public Roads*, in the form required in the period of 16th December 2006 – 9th September 2008, the decisions on the establishment of the localization of roads were made, transferring *ipso jure* the property of land separated with the demarcation lines dividing the area into public subjects. The proper organ to issue the decision, on the request of the proper manager of the roads, was the *wojewoda*, referring to national roads and voivodeship (provincial) roads and the *starosta* referring to powiat (district) roads and commune roads. The time administrative procedures had to be not longer than 3 months from the day of submitting the application by the manager of the roads.

The investor was not obliged to obtain the decision containing the division of the real estate for the construction of roads, because the decisions on establishing the localization of roads contained geodetic divisions of the real estate, according to demarcation lines of the investment. The project of the division had, however, to be made according to separate regulations, i.e. the *Law of 21st August 1997 on Real Estate Management* and the *Enactment of the Council of Ministers of 7th December 2004 on the way and procedures of dividing real estate* (Dz. U. Nr 268, poz. 2663). The map of the division of the real estate should be included into the state geodetic and cartographic resources before issuing a decision on the localization of roads.

After the procedures, the proper organ issued the decision on the establishment of the localization of roads, which contained in particular:

- requirements referring to the links with other public roads, with the definition of their category;
- the definition of lines demarking the area;
- conditions resulting from the needs of environmental protection, protection of cultural monuments or the needs of state defence;
- requirements referring to the protection of justified interests of third persons;
- acceptance of the project of the division of real estate.

Real estate demarked with demarcation lines, became *ipso jure* (article 12 passage 4 of the law):

- 1) the property of the State Treasury – national roads;
- 2) the property of respective units of the territorial self-government – voivodship and commune roads – with the day when the decision on the localization of roads became final, for the compensation established in a separate decision, by the *wojewoda* or *starosta* respectively; the decision on the localization of roads made basis for listing the real estate into the land register and cadastre; this way the time of getting land for the construction of roads became shorter; acquiring the land for public roads by a civil law agreement was possible only before the decision on the localization of the road was made.

With the day when the decision on the establishment on the localization of roads became ultimate, also perpetual usufruct expired, for the compensation established according to the rules defined in the regulations of the *Law of 21st August 1997 on Real Estate Management*.

Moreover, the decision on the localization of roads within the real estate being the property of the State Treasury or the units of territorial self-government made basis for:

- immediate termination by the manager of the roads the agreement of leasing, rent usufruct or lending;
- issuing the decision on the expiration of permanent management (except the cases when the permanent management was established for the proper manager of roads or self-governmental organization unit).

Legal consequences of the decision on the localization of roads, referring to property laws, obligations and permanent management was presented in table 1.

The decision on the localization of the road was given to the applicant (road manager) and announced to other parties by the advertisements in the offices of the communes, proper in terms of the course of the roads, as well as in the local press. Moreover, the information on issuing the decision was sent to the former owner, to the address written in the land register. The information on issuing the decision on the localization of the road contained the information on the place, where the parties could get familiar with the content of the decision.

**Table 1.** Legal consequences of the decision on the localization of the road and the decision on the permission for the implementation of road investment referring to property rights, obligation rights and permanent management

Rights to the real estate covered by the lines demarking road investments	Consequences of the decision on road localization	Consequences of the decision on the permission for the implementation of road investment
Property	Acquiring <i>ipso jure</i> with the day when the decision becomes ultimate	Acquiring <i>ipso jure</i> with the day when the decision becomes ultimate
Perpetual usufruct	Expiration with the day when the decision becomes ultimate	Expiration with the day when the decision becomes ultimate
Limitations of the property rights on the real estate belonging to the State Treasury or the units of the territorial self-government	The decision makes basis for the termination of agreements with immediate consequences	Expiration with the day when the decision becomes ultimate
Permanent management (does not refer to the one established in favour of the road manager)	The decision makes basis for issuing the decision on expiration	The decision makes basis for issuing the decision on expiration
Leasing, rent, lending referring to the real estate of the State Treasury and units of the territorial self-government	The decision makes basis for the termination of agreements by the road manager with immediate consequences	The decision makes basis for the termination of agreements by the road manager with immediate consequences
Leasing, rent, lending referring to the acquired real estate	Expire within 3 months (article 123 of the <i>Law on the Real Estate Management</i> )	Expire within 3 months (article 123 of the <i>Law on the Real Estate Management</i> )

In the case when the decision referred to a built up real estate, the proper road manager was obliged, in the term of actual takeover of the real estate, to indicate a replacement apartment. The decision on the localization of the road could be implemented at once on the request of the proper road manager, if justified by the social or economic interest. Such a justified social and economic interest could be e.g. financing the investment from the European Union, subsidies, etc.

The procedures of establishing the permanent management for the road manager, referring to real estate designed for the construction of public roads was presented in table 2.

**Table 2.** The procedures of establishing permanent management in favour of the road manager for the real estate designed for public roads by the decision on the localization road and the permission for the implementation of road investment

Type of real estate	Decision on the establishment of the localization of the road (ULD)	Decision on the permission for the implementation of the road investment (ZRID)
Real estate being the property of the State Treasury or the units of territorial self-government	Establishing a permanent management <i>ipso jure</i> with the day when the decision becomes ultimate ULD – decision by the declaration of the <i>wojewoda</i> or <i>starosta</i>	Establishing a permanent management <i>ipso jure</i> with the day when the decision becomes ultimate ZRID – decision by the declaration of the <i>wojewoda</i> or <i>starosta</i>
Real estate acquired by the decision ULD and ZRID	Establishing a permanent management <i>ipso jure</i> – based on the ultimate decision ULD	Establishing a permanent management <i>ipso jure</i> – based on the ultimate decision ZRID
Real estate for which the perpetual usufruct expired	Establishing a permanent management <i>ipso jure</i> with the day when the decision becomes ultimate ULD – decision by the declaration of the <i>wojewoda</i> or <i>starosta</i>	Establishing a permanent management <i>ipso jure</i> – based on the ultimate decision ZRID
Real estate being the property of the State Treasury or the units of territorial self-government for which the leasing, rent or lending was terminated	Establishing a permanent management <i>ipso jure</i> with the day of dissolving the agreements – decision by the declaration of the <i>wojewoda</i> or <i>starosta</i>	Establishing a permanent management <i>ipso jure</i> z with the day of dissolving the agreements – by the declaration of the <i>wojewoda</i> or <i>starosta</i>
Real estate being the property of the State Treasury or the units of territorial self-government for which the usufruct expired	Establishing a permanent management <i>ipso jure</i> with the day of dissolving the agreement of the usufruct – decision by the declaration of the <i>wojewoda</i> or <i>starosta</i>	Establishing a permanent management <i>ipso jure</i> – based on the ultimate decision ZRID
Real estate being the property of the State Treasury or the units of territorial self-government for which the permanent management established in favour of other units than the road manager expired	Establishing a permanent management <i>ipso jure</i> with the day of the expiration of permanent management – decision by the declaration of the <i>wojewoda</i> or <i>starosta</i>	Establishing a permanent management <i>ipso jure</i> with the day the expiration of permanent management – decision by the declaration of the <i>wojewoda</i> or <i>starosta</i>

## 2.2. Compensation for the Acquired Real Estate

For the real estate that, *ipso jure*, became the property of the State Treasury or respective units of the territorial self-government the compensation was paid, established in a separate decision, made by the *wojewoda* or *starosta*, respectively (article 18).

The amount of the compensation was established according to the situation of the real estate on the day when the decision on the localization of the road was made by the organ of the first decision level and according to its value on the day of issuing the decision of the amount of compensation. To establish the value of the real estate the regulations of the *Law of 21st August 1997 on Real Estate Management* were applied. The compensation was valorised on the day of payment, according to the rules applied in the case of returning the expropriated real estate.

The party claiming against the decision on the amount of the compensation, in the period of 16th December 2006 – 9th September 2008, could be, on their request, paid the amount defined in this decision. The fact of paying the money did not influence the appeal procedures.

## 3. Acquiring the Land for Public Roads *Ipso Jure* since 10th September 2008

### 3.1. Decision Allowing the Implementation of the Road Investment as the Base for Acquiring the Land for the Construction of Public Roads *Ipso Jure*

The subsequent amendment of the *Law of 10th April 2003 on Special Rules of Preparation and Implementation of the Investment in the Area of Public Roads*, was made on 25th July 2008 by the *Law on Amending the Law on Special Rules of Preparation and Implementation of the Investment in the Area of Public Roads and on Amending some other Laws* [6].

The purpose of the amended law, in power since the day of 10th September 2008, is further facilitation of the procedures connected with the implementation of road investments. Issued before (i.e. according to the legal situation ruling until the day of 9th September 2008) decisions on establishing the localization of roads made basis to (among others) the decisions permitting the construction of roads and reconstruction of existing devices of technical infrastructure following the principles and regulations of the *Building Law*.

The law, as in power since 10th September 2008, has implied one decision on permitting the implementation of the road investment, defining in particular:

- the requirements referring to the linkage of the road with other public roads, with the definition of their categories;
- the definition of the lines demarking the area;
- conditions resulting from the needs of environmental protection, protection of cultural historical monuments and contemporary cultural objects as well as the needs of state defence;
- requirements referring to the protection of justified interests of third persons;
- acceptance of the division of the real estate;
- marking real estate or its part, according to the cadastre of the real estate, which are becoming the property of the State Treasury or a respective unit of territorial self-government;
- acceptance of the construction project;

If necessary, the decision can contain other points referring to e.g.:

- the duty to make the reconstruction of the existing network of the reinforcement of the area,
- the duty of the reconstruction of the roads of other categories,
- defining the restrictions in using the real estate for the implementation of the mentioned above duties,

Thus, the legal consequences caused by the decision permitting the implementation of the road investment, compared to the decision on the localization of the road, were additionally extended by (among others) the acceptance of the construction project. Of course, this is connected with the necessity of making and submitting them with the application for the construction project.

There were no changes in the procedures of acquiring the land for the construction of public roads, valid since 16th December 2006 i.e. in the area of acquiring land for the State Treasury (referring to national roads) or respective units of the territorial self-government (referring to voivodeship or commune roads) *ipso jure*, with the day when the decision on the permission for the implementation of road investment becomes ultimate. The comparison of legal consequences of the decision on the localization of the road and the decision on the permission for the implementation of road investment referring to property rights, obligation rights and permanent management is presented in table 1.

The significant change in the area of the field work, introduced on 10/09/2008 is the duty to define in the decision on the permission for the implementation of the road investment, the limitations in using the real estate e.g. in the connection with the reconstruction of the network of the area reinforcement and the

reconstruction of other category roads. These limitations are defined in the regulations of article 124 passage 4–8 and article 124a of the *Law of 21st August 1997 on Real Estate Management*. The regulation of article 124 of the *Law on Real Estate Management* makes basis for the limitations in the way of using the real estate by making permission to establish on and conducting through the real estate networks of the area reinforcement as well as objects and devices necessary to use these networks. The decision on the permission for the implementation of the road investment allows the reconstruction of technical infrastructure without depriving the owner from the right to the property, just limiting this right. For the limitation of the property right the owner is also eligible to get a respective compensation. Such a construction of the regulations does not require any separate procedures in the area of the permit to make on the real estate the reconstruction of network of the area reinforcement or the reconstruction of other category roads.

The comparison of the procedures of establishing permanent management in favour of the road manager, referring to real estate covered by the decision of the localization of the road and the decision on the permission for the implementation of the road investment was presented in table 2.

### **3.2. Compensation for Real Estate Acquired Based on the *Decision on the Permission for the Implementation of Road Investment***

Referring to the regulations on the compensation for taking over the real estate in the amended law – with the day of 10th September 2008 the changes were introduced. The regulation stating on the possibility of paying to the party complaining about the decision establishing amount of compensation on their request, the money included in this decision was lifted. For the first time also additional regulations were introduced, encouraging the owners to surrender their real estate to the investors.

In the case when the present owner or a person having a perpetual usufruct of the real estate covered by the decision on the permission for the implementation of road investment surrender this real estate immediately, but not later than in 30 days, the amount of compensation increases by 5% of the value of the real estate or the value of the right for the perpetual usufruct (article 11 passage 1e). This is a kind of bonus for the subject deprived from the property rights, if it voluntarily submits to the decision of the authorities and gives up the real estate and empties the indoor areas.

In the case when the decision on the permission for the implementation of the road investment refers to the real estate built up with a living house or the building where an apartment was made, the amount of compensation to the owner or



a person having a perpetual usufruct living in this house or apartment, increases by 10 000 zlotys referring to this real estate. This solution is meant to cover the costs connected with the change of address – first of all the costs of moving.

Moreover, the duty was made to issue the decision establishing the amount of compensation within 30 days from the day, when the decision on the permission for the implementation of the road investment becomes ultimate (article 12, passage 4b).

#### 4. Conclusions

One of the most important consequences of the implementation of the *Law on Special Rules of Preparation and Implementation of Investment in the Area of Public Roads* is the acquiring of the property right to real estate for the construction of public roads, *ipso jure*, in favour of the State Treasury or the unit of territorial self-government with the day when the decision on the implementation of road investments becomes ultimate. These regulations have to be regarded very desirable in the context of occurring so far problems with acquiring the land for the investment. However, it has to be underlined that nowadays it is very important to have accurate geodetic documentation made by surveyors, enclosed to the application for the decision on the permission for the implementation of road investments. Thus it should be considered that the decision, apart from the localization of the road contains geodetic divisions following the lined demarking the investment and indicates the real estate or its parts becoming the property of the State Treasury or respective unit of territorial self-government. Such decisions make basis for the introduction of changes in land inventory and land register.

Thus the conclusion is that the surveyors making the documentation for the decision on the permission for implementation of road investments face great challenges. Their role will be not only making the plans of the division of real estate following the lines demarking the investment, but also making the geodetic and legal documentation for all the real estate within the borders of the road belt (apart from those that are to be divided) in such a way so that in the land register the consequences appearing with the day when the decision becomes ultimate are written, first of all referring to the changes in the ownership and other property rights.

This documentation will be also helpful in the procedures on compensations for the former owners and people having perpetual usufruct or other property rights. The organ is obliged to establish the compensation within 30 days from the time the decision becomes ultimate. Lacks in the geodetic and legal documentation can result in the refusal to write into the land register. The refusal to write

into the land register, from the formal and legal point of view should not cause the refusal of establishing the amount of compensation, but taking into account the correctness and reliability in spending the public finances, the payment of the compensation should occur after showing in the land register the property right of the State Treasury or the units of the territorial self-government.

In practice there are huge problems in the area of the correctness and the completeness of the geodetic and legal documentation, which should be made in the framework of the preparation of application for the decision on the permission for the implementation of road investments, but their analysis goes beyond the framework of this paper.

## References

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- [2] *Ustawa z 27 października 1994 r. o autostradach płatnych.* Dz. U. Nr 127, poz. 627 z późn. zm.
- [3] *Ustawa z 21 sierpnia 1997 r. o gospodarce nieruchomościami.* Dz. U. z 2004 r. Nr 261, poz. 2603 z późn. zm.
- [4] *Ustawa z 10 kwietnia 2003 r. o szczególnych zasadach przygotowania i realizacji inwestycji w zakresie dróg publicznych.* Dz. U. z 2008 r. Nr 193, poz. 1194 z późn. zm.
- [5] *Ustawa z dnia 18 października 2006 r. o zmianie ustawy o szczególnych zasadach przygotowywania i realizacji inwestycji w zakresie dróg krajowych oraz o zmianie niektórych innych ustaw.* Dz. U. Nr 220, poz. 1601.
- [6] *Ustawa z dnia 25 lipca 2008 r. o zmianie ustawy o szczególnych zasadach przygotowania i realizacji inwestycji w zakresie dróg publicznych oraz o zmianie niektórych innych ustaw.* Dz. U. Nr 154, poz. 958.