

Doctoral Dissertation Abstract

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Subject:

„Public purpose investment in the network sector”

The subject of the considerations made in the doctoral dissertation is the term of public purpose investment, which consist in construction of line investments in the energy, telecommunication, railroading, sewerage and post office sector.

The doctoral dissertation is based on the following thesis. Protection of property right is guaranteed if definition of public purpose investments includes a requirement that the endeavour should realize public interest, guaranteeing the realization of the public weal, understood as providing social needs.

The aim of the doctoral thesis is to demonstrate, that the definition of public purpose investments provides, reasonable in the light of constitutional requirements, protection of property rights. As part of the verification of this thesis into consideration is taken the issue, which concerns the possibility of expropriation for public purposes.

Recognition of specific actions as public purpose investments creates possibility of deprivation of property right of natural persons and legal entities in order to realize a specific line investments. In this case, there is a contradiction between the protection of private property and the need to realize the public purpose investments. For this reason, significant importance must be given to the proceedings concerning location of public purpose investment.

The most important part of the dissertation deals with the interpretation of Article 2 Section 5 of the Act on 27 March 2003 on Spatial Planning and Development (Journal of Laws of 2015, item 199 as amended – consolidated text), which includes a definition of public purpose investment. The definition assumes, firstly, that a public purpose investment is an action that has local, supralocal or national significance and, secondly, that pursues public purposes, determined in Art. 6 of the Act on 21 August 1997 on Real Estate Management (Journal of Laws of 2015, item 782 as amended – consolidated text). Third, in this definition is contained caveat that the endeavour can be considered a public purpose investment

regardless of the status of the entity, who takes such action, and regardless of the source of financing of such endeavour.

The interpretation of definition of public purpose investment is questionable in legal doctrine and jurisprudence. On the one side, it is claimed, that the fundamental importance has the content of art. 6 of the Law on Real Estate Management, which determines, what objects are classified as public purposes. It is assumed, that the definition of public purpose investment has subsidiary nature, since it specifies the range of effective influence of endeavour deemed as public purposes (so NSA judgment of 08.04.2011r., II OSK 1133/11, the judgment of the Administrative Court in Gliwice 25.06.2014, II SA/Gl 111/14, <http://orzeczenia.nsa.gov.pl>).

On the other side, there are also views according to which, the finding that the endeavour is a public purpose is not yet a sufficient basis for recognition it as public purpose investment. Premise concluded in Art. 2 Section 5 of the Act on Spatial Planning and Development, according to which, public purpose investment should have local, supralocal or national significance, is determined by many factors, such as the size of the investment, its importance from the point of view of municipal interests and national interests. It should be therefore verified in a separate way (so judgment of the Administrative Court in Krakow 16.01.2009, II SA/Kr 935/08, <http://orzeczenia.nsa.gov.pl>).

The considerations presented in the doctoral thesis are aimed at answering the question which of the presented views are more justified, bearing in mind the need to ensure adequate protection of private property in the course of the implementation of public purpose investment.

In chapters dedicated to specific line investments there are presented considerations concerning the conditions of recognize that the construction and modernization of power lines, telecommunications, railway lines, sewer line and mail objects is a public purpose investment. In this scope the attention is devoted to the relation that should occur between the planned endeavour and assurance the needs of general interest. Relationship between public purpose investment and the implementation of public tasks presupposes the participation of public authorities in carrying out such an undertaking. For this reason it should be assumed that public purpose investment is that which is realized with the participation of public property. The Participation may have direct nature, when the State or the appropriate entity of self-government are directly engaged in the realization of the project. More often, however, this relationship will be indirect, when a specific project will be implemented by private

entities within the framework, provided for by law, participation in the implementation of public tasks.

The considerations taken into chapters on specific line investments are aimed at answering the question, whether it is possible to define the general normative criteria, that indicate that a particular endeavour which enters into the scope of Art. 6 Act Real Estate Management is public purpose investment within the meaning of Art. 2 Section 5 of the Law on Spatial Planning and Development.

The doctoral dissertation was completed the final conclusions, which presents the results of considerations relating to the definition of a public investment. In the summary it is indicated, whether the definition guarantees, first, adequate protection of property rights and, second, that the project deemed a public purpose investment will pursue the public interest.

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