

# Analysis of geodetic and legal documentation in the process of expropriation for roads. Krakow case study

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**Abstract:** Amendment to the Act on special rules of preparation and implementation of investment in public roads resulted in an accelerated mode of acquisition of land for the development of roads. The decision to authorize the execution of road investment issued on its basis has several effects, i.e. determines the location of a road, approves surveying division, approves construction design and also results in acquisition of a real property by virtue of law by the State Treasury or local government unit, among others.

The conducted study revealed that over 3 years, in this mode, the city of Krakow has acquired 31 hectares of land intended for the implementation of road investments.

Compensation is determined in separate proceedings based on an appraisal study estimating property value, often at a distant time after the loss of land by the owner. One reason for the lengthy compensation proceedings is challenging the proposed amount of compensation, unregulated legal status of the property as well as imprecise legislation.

It is important to properly develop geodetic and legal documentation which accompanies the application for issuance of the decision and is also used in compensation proceedings.

**Keywords:** expropriation, road development, compensation, geodetic documentation

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## 1. Introduction

In recent years in Poland a number of specific regulations on investments in the scope of planning and construction of roads was introduced. The beginning was the Act on Toll Motorways, which entered into force on 2 January 1995. However, after a few years of its duration, it was considered necessary to introduce further legislative solutions to intensify the development of public roads.

In the classical procedure of road development, the decision-making process consists of several separate procedures, including but not limited to, determining the location of the investment, real property divisions, the acquisition of a property by

public entities (by means of a civil law contract, i.e. an agreement, or by means of an administrative law transaction, i.e. expropriation), a building permit.

To shorten the time to get a green light for starting construction works, on 10 April 2003 a law was passed on special rules of preparation and implementation of investments in national roads (known as the “Special Road Act”) which has already been amended several times.

Significant amendments to the Act came into force on 16 December 2006 (Polish Parliament, 2006). The most important change, in addition to extending the scope to the public roads of all categories, was the introduction of a provision in Article 12 section 4, according to which on the final date of the decisions on the location of the road, real properties intended for the right-of-ways become the property of the State Treasury in the case of national roads, or the local government units in the case of lower category roads.

Another amendment to the Act, significantly simplifying the process of obtaining a building permit, came into force on 10 September 2008 (Polish Parliament, 2008).

The main change was the introduction of a new type of a decision – the decision to authorize the execution of road investments (hereinafter “the decision aeri”).

The decision to authorize the execution of road investments is a kind of a consolidated administrative decision, which has several effects, i.e. mainly:

- it determines the location of a road investment,
- approves real property division,
- expropriates rights to properties located within the boundaries of the investment,
- approves the construction design and grants a building permit,
- limits the use of the adjacent properties in order to reconstruct technical infrastructure and roads of other categories (if necessary).

These regulations resulted in replacing the existing five separate administrative procedures with a procedure ending with one administrative decision

When applying the provisions of the Special Road Act, a commentary published in 2009 proves to be helpful (Wolanin, 2009). Acquisition of property for roads on the basis of a decision to authorize the implementation of road investment is also described by Gdesz and Trembecka (2011) and Trembecka (2011). Some problems concerning the preparation of legal and geodetic documentation have been raised in the publication (Trembecka et al., 2009), This issue, however, requires a wider analysis taking into account the range of real property covered by acquisition and compensation processes, as well as the issues occurring in practice within the conducted survey works.

In this article, based on the research carried out on road investments in the city of Krakow, are presented:

- the effects of the issued decisions to authorize the execution of road investments in the scope of acquisition of property rights by the State Treasury and local government units,
- the land expropriated by the decision to authorize the execution of road investment in the city of Krakow and the status of implementation of compensation claims.

- the progress of claims for damages for property rights acquired by the State Treasury and the Municipality of Krakow,
- types of geodetic and legal documentation developed in order to authorize the execution of road investments and practical problems occurring in the course of its preparation.

## **2. The effects of the decision to authorize the execution of road investment with respect to property acquisition by the State Treasury and local government units**

Special Road Act provisions significantly facilitate the acquisition of land for the development of public roads. According to a classical investment procedure, lack of owners' consent to sell the real property through civil contracts, as well as long-term expropriation proceedings resulted in extending the investment preparation process. Taking into account a specific nature of road investments running through numerous properties, the legislature decided to apply radical solutions in this respect.

Pursuant to the wording of Article 12 section 4 of the Special Road Act, properties or parts thereof intended for the right-of-ways, on the day the decision to authorize the execution of road investments becomes final, are becoming:

- the property of the State Treasury in relation to national roads,
- the property of the respective local government units in relation to regional, county and municipal roads

The acquisition is conducted by virtue of law and it is an expropriation.

If the real property intended for the right-of-way constituting a property of the State Treasury or a local government unit was put in perpetual usufruct, this usufruct eventually expires on the day the decision to authorize the execution of road investments becomes final. On this date limited property rights expire as well if they have been established on the property or perpetual usufruct. Expiry of limited property rights within lines demarcating the right-of-way occurs regardless of their disclosure in the land and mortgage register.

Conducting negotiations with the owners (perpetual users) for the acquisition of the property and thus the contractual purchase of the property for roads can only take place before the issuance of the decision to authorize the execution of road investments. However, in cases where a part of a property is intended for the road, concluding a civil contract before the issuance of the decision to authorize the execution of road investments is not possible because only this decision approves the property division.

Another legal effect of the decision to authorize the execution of road investments results from special rules contained in Article 19 of the Special Road Act in the scope of the expiry of permanent administration and the obligations (Table 1).

The decision to authorize the execution of road investments constitutes the basis for the issue by the governor or the district governor the decision of the expiry of permanent administration on the property of the State Treasury or local government

units (except when the permanent administration is set up for the relevant road manager or local organizational unit). In addition, it is a basis for termination with immediate effect of hire, lease and lending for use by the road manager.

Table 1. Legal effects of the decision to authorize the execution of road investments in the scope of property rights

Rights to properties covered by demarcation lines of road investments	Legal effects of the decision to authorize the execution of road investments
ownership of natural and legal persons	<ul style="list-style-type: none"> <li>– by virtue of law, the properties become the property of the State Treasury or local government units on the day the decision becomes final</li> <li>– by virtue of law, the relevant road management is granted permanent administration on the day the decision becomes final</li> </ul>
limited property rights encumbering the properties owned by natural and legal persons	expiry on the day the decision becomes final
perpetual usufruct	<ul style="list-style-type: none"> <li>– expiry on the day the decision becomes final</li> <li>– by virtue of law, the relevant road management is granted permanent administration on the day the decision becomes final</li> </ul>
limited rights in rem encumbering the properties owned by the State Treasury and local government units	expiry on the day the decision becomes final
permanent administration (does not relate to the one granted to the road manager)	the final decision is the basis to issue a decision on expiry
hire, lease and lending for use encumbering the properties owned by the State Treasury and local government units	the final decision is the basis for termination of the contracts by the road manager with immediate effect
hire, lease and lending for use encumbering the properties acquired by virtue of law	expire at the lapse of 3 months as of the day the decision becomes final

In numerous cases, road development also requires the reconstruction of the existing public utilities. The decision to authorize the execution of road investments includes, if necessary, settlements regarding an obligation to make the reconstruction of the existing public utilities and sets limitations on the use of the property for the purpose of the implementation of this obligation. These restrictions apply to properties located outside the lines demarcating an area intended for the development of the road. Location of technical infrastructure on private property does not require prior negotiation with the owners or perpetual users of the property.

Due to the deprivation of rights in rem to immovable property, compensation for the benefit of the owners, perpetual users and persons who were entitled to limited rights in rem is determined. Compensation is determined by separate administrative proceedings by the authority which issued the decision to authorize the execution of road investments. In the process of determining compensation, the provisions

contained in the Act of 21 August 1997 on real estate management subject to the provisions under Article 18 of the Special Road Act, as well as the provisions of the Council of Ministers of 21 September 2004 on the valuation of property and preparing the appraisal study.

The amount of compensation shall correspond to the value of the deprived rights in rem. The basis for determining the amount of compensation is generally the market value of the property specified in the opinion of the real estate appraiser.

Compensation is increased by:

- 5% if the owner or perpetual user will convey the property within 30 days from the date the decision to authorize the execution of road investments becomes final,
- ten thousand PLN if expropriation relates to a property built up with a residential building.

A conducted comparative analysis of acquisition processes to achieve public purposes, including the construction of roads in some European countries (France, Germany, United Kingdom) leads to a conclusion that these countries do not apply the simplified procedure for expropriation, as it is contained in the regulations of the Special Road Act.

For example, in Germany (Voss, 2010) land acquisition process includes:

1. preliminary negotiations regarding a voluntary sale,
2. application for expropriation,
3. formal expropriation procedure, in which the property intended for public purpose and fulfillment of other expropriation conditions are estimated, as well as the compensation is determined.

If the implementation of the public purpose requires an immediate acquisition of the property by the State, the authority initially grants the ownership rights to the property. In this respect it is similar to giving the decision to authorize the execution of road investments immediate enforceability, which allows for the immediate commencement of works on the right-of-way.

In France the process of expropriation for public investment consists of two stages:

Stage I – administrative – in which two documents are issued:

- a public-interest statement,
- an order of transferability of the property to an entity governed by public law

Stage II – judicial – in which the expropriations judge:

- rules on expropriation,
- determines the amount of compensation.

As far as compensation is concerned, comparing to the regulations in our country, significant differences occur in the UK (Fisher, 2010). Compensation for expropriated property covers both the fair market value of the property in addition to compensation for intangible losses, such as the upset, discomfort and inconvenience associated with compulsory purchase, as well as removal costs, costs of acquiring and adapting replacement premises, costs of mortgage transfer, and in the case of businesses,

temporary and permanent loss of profits Furthermore, determining the compensation occurs simultaneously with deprivation of the rights to the property.

In some countries, such as Canada, the United Kingdom, the value of the property for the compensation purposes are determined for the optimum utilization (Żróbek and Walacik, 2008).

### **3. The land expropriated by the decision to authorize the execution of road investment in the city of Krakow and the status of implementation of compensation claims.**

The analysis included the decisions to authorize the execution of road investments in the scope that resulted in the acquisition of property for the tasks related to road development. Investment tasks (including the construction of roads) in the budget of the City of Krakow have been divided into:

- strategic investments – the implementation of which, due to their range, is important for the entire city and their result will be not only a better life quality of its inhabitants but also the development and growing importance of Krakow in the region and even in the country,
- program investments – of a smaller financial size, but directly affecting the increasing standard of living of local communities.

The purpose of the distribution of the tasks was to ensure adequate stimulation of Krakow development and to control the effects in the scope of the investment expenditure plan.

The scope of the research included:

- 10 strategic investments (including the construction of the Ofiar Katynia Junction Kuklinskiego St, Lema St, Grota Roweckiego St, Trasa Łagiewnicka, JP Center service, Christo-Botewa St).
- 38 program investments (including, but not limited to the construction of Zakarczynie street, Siostry Faustyny St, Narciarska St, Makowskiego St, Conrada – Sosnowiecka junction, Koszykarska St, Smolenskiego St).

The study shows (Table 2) that on the grounds of the decision to authorize the execution of road investments issued during the years 2008 to 2011, the properties with a total area of 31.4357 hectares were conveyed by virtue of law for the benefit of the City of Krakow and the State Treasury. The acquired properties are located in different cadastral units of Krakow, depending on the location of the investment. Strategic investments are located in the Podgórze cadastral unit, with the exception of Ofiar Katynia Roundabout located in the Krowodrza cadastral unit. However, the planned program investments regarding public roads are located as follows:

- 19 investment in the Podgórze cadastral unit
- 14 investment in the Krowodrza cadastral unit
- 3 investments in Srodmiescie cadastral unit
- 2 investments in Nowa Huta cadastral unit

Table 2. Land acquired by virtue of law by the Municipality of Krakow and the State Treasury based on the decision to authorize the execution of road investments issued during the years 2008-2011 in Krakow

Road investment	Number of records covered by the analysis – the number of the decisions to authorize the execution of road investments	Land acquired by the Municipality of Krakow and the State Treasury pursuant to the decision to authorize the execution of road investments		Number of applications for disclosure of the effects of the decision to authorize the execution of road investments in the land and mortgage register
		Number of plots	Area of land [Ha]	
Strategic investments	10	402	16.0985	101
Program investments	38	373	15.3372	

In order to reveal the effects of the decision aeri, 101 applications were submitted to the land and mortgage court.

An analysis was conducted as well of the implementation of compensation claims (Table 3 and 4) for the acquisition of property rights by the Municipality of Krakow and the State Treasury on the grounds of the decision to authorize the execution of road investments in the period from 1 January 2011 until 30 June 2012. The compensation shall be determined after the decision aeri becomes final.

Table 3. Progress in the implementation of compensation claims for the acquisition of property rights by the Municipality of Krakow and the State Treasury on the grounds of the decision to authorize the execution of road investments in 2011 (based on data from the budget of the City of Krakow)

Road investments	The amount planned in the city budget for the implementation of compensation claims [mln PLN]	Number of issued compensation decisions	The amount of compensation paid [mln PLN]
Strategic investments	20.320 000	56	9.045 040
Program investments	5.600 000	23	4.058 584

Table 4. Progress in the implementation of compensation claims for the acquisition of property rights by the Municipality of Krakow and the State Treasury on the grounds of the decision to authorize the execution of road investments in the period from 1 January 2012 to 30 June 2012 (based on data from) the budget of the City of Krakow

Road investments	The amount planned in the city budget for the implementation of compensation claims for the year 2012 [mln PLN]	Number of issued compensation decisions in the first half of 2012	The amount of compensation paid in the first half of 2012. [mln PLN]
Strategic investments	15.200 000	20	3.324 953
Program investments	3.900 000	12	0.705932

During the study period, 111 decisions were issued (79 decisions in 2011, and 32 decisions in the first half of 2012) determining the compensation, based on which the compensation in a total amount of 17.134 509 million PLN was paid, of which 12.369 993 million PLN for the land acquired for strategic investments and 4.764 516 PLN for the land acquired for program investments.

An analysis was conducted as well of the circumstances causing the failure to determine and pay compensation for any property taken over by the Municipality of Krakow and the State Treasury for the road development. On these grounds it could be concluded that failure to carry out the full range of compensation claims is caused by:

- questioning by the owners or perpetual users of the proposed amount of compensation determined on the basis of appraisal studies, what makes it necessary to re-examine these studies by real estate appraisers taking into account raised objections (this problem refers to the majority of investments),
- appeal against the issued decisions on compensation to the authority of the second instance (the problem applies to most of the investments),
- request for a replacement property as a compensation (refers to Christo-Botewa investment)
- the lack of an exhaustive list of owners' heirs to the property acquired by the Municipality of Krakow or the State Treasury (e.g. Lema St),
- suspension of compensation proceedings until the legal status of the properties taken over for the existing public roads becomes clear (refers to Lema and Zakarczynie streets),
- pending court proceedings to establish property rights (e.g. on acquisitive prescription – applies to individual cases).

According to Walacik and Żróbek (2010a), the regulations of the Polish law do not take into account the principle of “just compensation” for the expropriated land and require urgent changes in this respect in order to eliminate the conflict between property owners and public authorities planning an investment. The authors Walacik, and Żróbek (2010a, 2011) refer to FAO's five principles regarding compensation, namely: equivalence, balance of interests, flexibility, equal application to de facto and de jure interests, as well as fairness and transparency. The authors conclude that the Polish system does not apply these principles, which, however, is not an exception. A comparative analysis of 12 different countries of Europe, Asia and also Australia revealed examples of infringement of these principles with respect to compensation, and as few as two European countries conformed.

The problem of just compensation has also arisen in the scientific monograph “Some aspects of compulsory purchase of land for public purposes” issued by Polish Real Estate Scientific Society. Walacik and Żróbek (2010b) analyze the conditions for expropriation for public purposes, explain the notion a public purpose, tackle the problem of regulating legal status of properties, and finally discuss the methods of determining just compensation, supporting it with a case study which proves that the market value of a property does not always correspond to the actual losses incurred by the owner.



#### **4. Analysis of geodetic and legal documentation developed for the purpose of authorization for the execution of road investments in the city of Krakow**

The analysis included geodetic and legal documentation developed by surveying companies on behalf of the manager of public roads in Krakow, i.e. the Board of Municipal Infrastructure and Transport, in order to obtain authorization for the implementation of road investments.

##### ***4.1. Types of geodetic and legal documentation for authorization for the execution of road investments***

The wording of the Act of 10 April 2003 on special rules for the preparation and implementation of investment in public roads indicates that the application for the decision to authorize the execution of road investments includes, among others:

- 1) a map at the scale of at least 1: 5 000 showing the proposed course of the road, indicating the land necessary for the buildings, as well as the existing utilities;
- 2) maps containing property division projects, prepared in accordance with separate regulations.

However, in the course of preparing the documentation for road investments in Krakow, it turned out that other geodetic and legal studies were also required, which included the following documentation regarding:

- the issue of decisions adjudicating changes in land and buildings register (before the division of a property)
- correcting in the land and mortgage register designation of the property acquired on the grounds of the decision to authorize the execution of road investments,
- demonstrating the state of occupancy of land under the existing on 1 January 1999 public road (to determine the conditions for the acquisition of the property pursuant to Article 73 of the Act Regulations implementing the Acts reforming public administration),
- study of the legal status of the property intended for road investments.

This is a consequence of, among others, unclear legal status of properties covered by investment demarcation lines and numerous discrepancies between the entries in the land and mortgage register and the cadastre, both in terms of designating a property and disclosed rights in rem.

The basis of the disclosure in the land and mortgage register and the cadastre of the acquired rights by public law entities is the decision to authorize the execution of road investments with geodetic and legal documentation. Incorrect geodetic and legal documentation may result in denial of entry in the land and mortgage register of the rights acquired by virtue of law, by the State Treasury or local government units. Proper preparation of legal and geodetic documentation also has an effect on the course of actions for compensation and the date of their termination. It should be noted that there is an obligation in the content of Article 12 section 4b of the Special

Road Act, which refers to determining a compensation for the loss of the property right, perpetual usufruct or limited rights in rem within 1 month by a competent authority.

Although the legislature does not make the possibility to determine the compensation dependent upon the entries in the land and mortgage register, but the administrative authorities competent for determining compensation should be extremely cautious in the disposition of public funds. Therefore, it would be reasonable to determine compensation only after disclosing the legal consequences of the decision with regard to the loss of rights by the previous owner and at the same time their acquisition by the public law entity.

#### ***4.2. Problems regarding property division***

For all the analyzed investments, submitting an application for the issuance of the decision to authorize the execution of road investments required the preparation of surveys of property division. In this case there is no separate decision approving the division of property issued because the decision to authorize the execution of road investments contains settlements regarding the approval of the land division project.

The division is carried out according to the line demarcating the area of the designed public road. The settlements of the local plan are not important in this case. Land division projects therefore do not require an opinion on their compliance with the settlements of the local plan. Pursuant to Article 95 clause 6 of the Property Management Act, real property division to separate a part thereof covered by the decision of determining the location of a public road may be independent of the settlements of the local plan, and in the absence of the plan, independent of the planning permission.

However, it must be conducted in accordance with the separate provisions, i.e. the Act of 21 August 1997 on Property Management and the regulation of the Council of Ministers of 7 December 2004 on the procedures for making property division.

A map of the land division project, in addition to the elements specified in § 9 section of the above mentioned Act, should also contain other elements essential for the proper presentation of the existing factual circumstances which affect the land division project. These maps after the decision aeri constitute a document required to make changes to the register of land and buildings as well as land and mortgage registers.

One of the problems occurring in practice in the course of the development of land division projects is the question of the demarcation lines of road investments running through buildings. Such a situation occurred in the investment Trasa Łagiewnicka, Lema St, JP Center service, Ofiar Katynia Junction.

Pursuant to Article 93 section 3b of the Property Management Act, *if the built-up property is subject to division, and the proposed division results in the division of building as well, boundaries of plots designed to be parcelled out should run along vertical planes that are formed by fire separation walls located along the entire height*

*of the building from the foundation to the roof covering. In buildings where there are no fire separation walls, boundaries of plots designed to be parcelled out should run along vertical planes that are formed by walls located along the entire height of the building from the foundation to the roof covering, clearly dividing the building into two separately used parts.*

In practice, the question arose whether this standard applies in the situation of the division for the aeri purposes because there are no clear resolutions in the existing legal regulations.

The resolution of the Supreme Administrative Court of 4 March 2002 file No. OPK 25/01 indirectly indicated that the division of real property as a result of setting out the road location line, the division of a building without taking into account vertical walls is acceptable. This view raises serious concerns, though.

In the case of Trasa Łągiewnicka, due to the course of the demarcation line running through the buildings, it was necessary to correct property division surveys, subject to the recommendations of the authority of the second instance, the Governor of Malopolska. The position of the authority of the second instance, according to which the demarcation lines for the purpose of obtaining authorization to execute road investments should not run through buildings resulted from the fact that the decisions aeri have property and legal effects in the form of property rights being transferred for the benefit of public entities and they are associated with the need to convey the real property. If the owners refuse to voluntarily convey the property, the enforcement in relation to the part of the building would be ineffective which, in consequence, would result in unenforceability of the decision to authorize the execution of road investments.

Another problem is the real property division for the authorization to execute road investment as a result of which plots of a small area such as 5 m<sup>2</sup> or 63 m<sup>2</sup> are parcelled out, which remain beyond the scope of the investment. Such situations result in claims of the owners and perpetual users to purchase those parts of the plots, which not suitable for the hitherto use. If public law entities refuse to purchase them (e.g. due to lack of funds in the city budgets) their owners are entitled only to court proceedings. This situation occurred, among others, in the case of parcelling out land for investments regarding the streets: Christo-Botewa, Grota Roweckiego, Zakarcznie.

In view of the presented issues, it seems to be important that – already at the stage of preparation of documentation – design firms and surveyors work closely to take account of the current state of the land development. Drawing a demarcation line is not just a graphical representation of the investor's intentions, but it has an effect in changing ownership rights to the land within the limits of the line and, consequently, affects the costs of the investment. In this way it would be possible e.g. to avoid demarcation lines intersecting a building and leaving outside the scope of the investment these parts of properties which, due to spatial parameters, are not suitable for use.

### ***4.3. Documentation on changes in the register of land and buildings***

Examination of the documentation developed for the purpose of road construction in Krakow revealed that the execution of the land division projects often must be preceded by the regulation of their legal status, in particular, the proceedings related to the so-called separation of distinct real properties combined into one record parcel.

The reason for such factual circumstances is the mode of setting up land records in the 60's and 70's in Krakow, which was based on determining the boundaries of the record parcels according to the state of possession. Since the possession differed from the ownership, record plots were often created containing the so-called combined "mortgage bodies" i.e. including cadastral parcels of the former Austrian cadastre, which were the subject of ownership rights of various entities (disclosed in separate registers). This problem has affected the investments in the streets: Kuklinskiego, Grota Roweckiego, Christo-Botewa, Szklarska, Smolenskiego.

In a situation where the cadastral parcel contains several "connected" real properties, the first step is the preparation of documentation, which is the basis for the disclosure of separate real properties in the appraisal of land and buildings, which will then be subject to division under the "Special Road Act".

This procedure ends up with the issuance of an administrative decision ordering the introduction of changes in the appraisal of land and buildings under the provisions of the Act of 17 May 1989 on Geodetic and Cartographic Law and the Regulation of the Minister of Regional Development and Construction of 29 March 2001 on the register of land and buildings<sup>3</sup>. An appeal against the above mentioned decisions is submitted to the Governor acting with the help of the provincial surveying and mapping inspector.

These activities result in achieving consistency of the data between records of land and buildings as well as land and mortgage registers, and allow the further step to divide the real property.

Figure 1 shows the status disclosed in the register of land and buildings after the change involving the division of separate properties merged into a plot No. 251 – Smoleńskiego St. The necessity for regulation resulted from a faulty merging of cadastral parcels which constitute separate properties, into one record parcel when setting up a register of land.

### ***4.4. Selected issues determining the legal status of real properties intended for the designed roads***

The documents developed by the surveyors in the process of determining the legal status of the property intended for the designed roads is used for:

- drawing up land division projects according to the demarcation lines of the investment, attached to the application for a decision authorizing the execution of road investments,

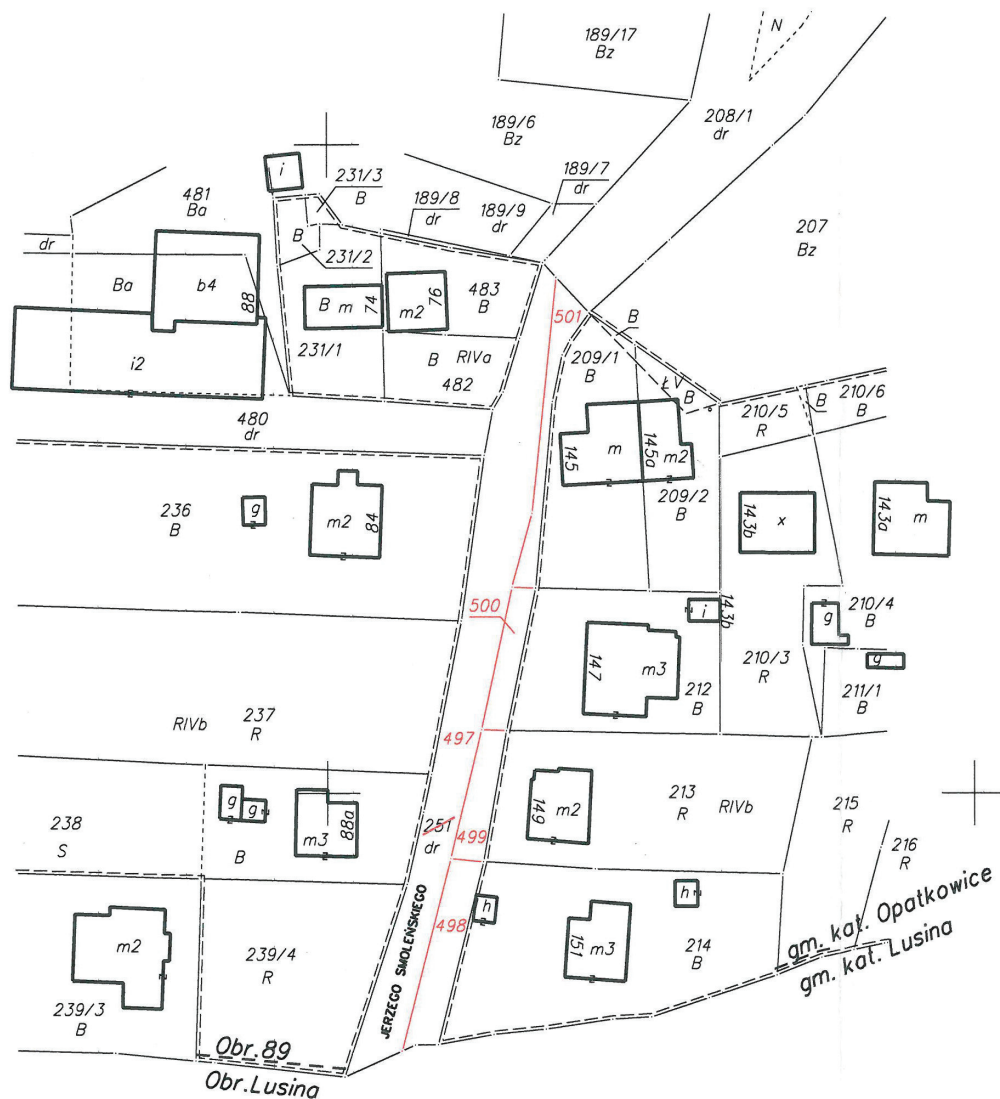


Figure 1. The status disclosed in the register of lands and buildings after the change involving the parcelling out of separate properties: Nos. 497, 498, 499, 500, 501, of the plot No. 251 (Smoleńskiego St).

- land and mortgage register proceedings aimed at disclosure of the effects of legal and property decisions to authorize the execution of road investments
- in proceedings for damages.

It also allows to assess – for the budget planning by the State Treasury and local government units – the scope of compensation claims in respect of the acquired rights to the property.

Under the Special Road Act public law entities obtain ownership rights to the real property or part thereof also in relation to the property with unclear legal status, i.e. when it is not known who is being deprived of the right. An example could be the situation when a lawsuit is pending on acquisitive prescription with regard to the real property located within the designed right-of-way.

Difficulties in determining the legal status of the real property may also result in a situation that a public entity is already entitled to real estate ownership, but it is not possible to document this fact. (Wolanin, 2009).

One of the major problems in this respect is to determine whether the property covered by demarcation lines resulting from the decision to authorize the execution of road investments is subject to Article 73 of the Act of 13 October 1998 Regulations introducing the Acts reforming public administration. According to the wording of this provision, the real property remaining on 31 December 1998 in the hands of the State Treasury or local government units, which is not their ownership but it is occupied for public roads, with effect from 1 January 1999 they are under the law, owned by the State or appropriate local government units, entitling to compensation.

Such a problem has arose while preparing documentation for the reconstruction of the streets, namely widening the right-of-way of the public roads existing as of 1 January 1999, i.e.: Christo-Botewa, Kuklinskiego, Lema, Zakarczynie, Ofiar Katynia Junction.

Under Article 73 (Polish Parliament, 1998) the decisions stating the acquisition of ownership rights by public law entities are issued by the governor. Although they are of a declaratory nature, but they specify the subject of the acquisition by indicating the property designation as well as they allow to prove the ownership rights to the property which public law entities are entitled to, and at the same time the loss of property rights by the previous owner with effect as of 1 January 1999.

If there is a presumption that the property is subject to Article 73 (Polish Parliament, 1998) and at the same time there is no governor's decision on this issue, there is a problem with the correct determination of its legal status (Trembecka et al., 2009). It has great significance for the compensation proceedings conducted in connection with the decision to authorize the execution of road investments. However, currently there are no precise legal regulations that define the way of dealing with such situations.

In the case of investments in Krakow, in such situations the road manager commissioned to draw up legal and surveying documents defining the boundaries of right-of-way of the existing public road as of 1 January 1999. Proceedings for damages based on the Special Road Act were suspended, pending the decision on the

acquisition of land intended for a public road pursuant to Article 73 of the Act (e.g. with compensation proceedings at Lema and Zakarczmie streets).

This procedure is consistent with the judgment of the Provincial Administrative Court in Warsaw of 15 September, 2010 ref. No. I SA / Wa 1305/10 which states: “If between the proceedings conducted under Article 73 of the Act of 1998 Regulations implementing the Acts reforming public administration, and the compensation proceedings there is a direct causal relationship, the body conducting the compensation proceedings in this case is obliged to stay compensation proceedings under the Act of 2003 on special rules for the preparation and implementation of investment in public roads”.

## **5. Conclusions**

One of the most important effects of the changes introduced to the Act of 10 April 2003 on special rules for the preparation and implementation of investment in public roads is expropriation of real properties for the construction of public roads by virtue of law. These regulations have contributed to accelerating the process of acquisition of properties by the State Treasury or local authorities, which should be considered as highly desirable in the context of the previously existing problems with the acquisition of land for these purposes.

The decision to authorize the execution of road investment, in addition to the expropriation of the property, determines the location of a road, approves surveying divisions according to the investment demarcation lines, as well as approves the construction design. It also constitutes the basis for the introduction of changes to the register of land and buildings as well as in land and mortgage registers.

The issues concerning the acquisition of real property under the Special Road Act are currently significant, which is confirmed by the range of the properties expropriated under the law – in Krakow it is about 32 hectares (775 parcels.). In the period 2008-2011, 48 aeri decisions were issued, which became a basis for the submission of 101 applications to the land and mortgage court to change the property owner”

However, the procedure for determining compensation for the acquired property to the owners and the people who enjoy other rights in rem, should be assessed negatively. The execution of compensation claims is in fact carried out in separate administrative proceedings, in a distant future from the date of loss of rights, often at a time when the property is already occupied for investment. In the period from 1 January 2011 to 30 June 2012, 111 decisions were issued determining compensation for the land acquired by the State Treasury and the Municipality of Krakow for a total amount of approximately 18 million PLN. This was a partial implementation of the compensation claims

In practice, in the course of compensation proceedings, problems occur that result from vague provisions and unregulated legal status of the property. (e.g., failure to define the procedures to determine the compensation for the property covered by the

decision to authorize the execution of road investment by the legislature, when at the same time they are subject to Art. 73 (Polish Parliament, 1998) as occupied for a public road, as of 1 January 1999).

The process of the implementation of compensation claims is also prolonged by questioning by the former owners and perpetual users of the proposed amount of compensation as well as raising objections to the appraisal studies regarding the estimated value of the land and their components.

The conducted analysis leads to the conclusion that regulation changes regarding compensation and eliminating imprecise provisions hindering compensation processes, as well as regulation of the legal status of a property before the commencement of the investment preparation procedures would be justified.

In particular, it would be desirable to introduce regulations to facilitate, and consequently to speed up, the proceedings to confirm the acquisition of the land acquired for roads by virtue of law by the State Treasury and local government units as of 1 January 1999, and at the same time to confirm the loss of this land by the previous owners. This would allow for the continuation of compensation procedures for the land covered by the aeri decision without a need for their suspension.

An alternative, further reaching solution, could be the norms explicitly allowing for determining compensation for properties for which, as of the date of the aeri decision, there was no governor's decision to acquire ownership rights by public law entities, despite fulfilling the stipulations of article 73 (Polish Parliament, 1998).

It seems reasonable to introduce regulations to determine compensation for properties covered by the aeri decision in the first stage, under civil law, i.e. by negotiation, and only in the case of a negative outcome of negotiations – in the administrative mode".

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## **Analiza dokumentacji geodezyjnej i prawnej w procesie wywłaszczenia pod drogi. Przypadek Krakowa**

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### **Streszczenie**

Zmiana ustawy o szczególnych zasadach przygotowywania i realizacji inwestycji w zakresie dróg publicznych spowodowała przyspieszony tryb pozyskiwania gruntów przeznaczonych pod budowę dróg. Wydawana na jej podstawie decyzja o zezwoleniu na realizację inwestycji drogowej wywołuje szereg skutków, tj. m.in. ustala lokalizację drogi, zatwierdza podziały geodezyjne, zatwierdza projekt budowlany a także powoduje nabycie nieruchomości z mocy prawa, przez Skarb Państwa lub jednostki samorządu terytorialnego.

Przeprowadzone badania wykazały iż w powyższym trybie miasto Kraków nabyło w okresie 3 lat ponad 31 ha gruntów przeznaczonych na realizację inwestycji drogowych. Oszkodowanie ustalane jest w drodze odrębnego postępowania w oparciu o operat szacunkowy określający wartość nieruchomości, niejednokrotnie w odległym terminie od chwili utraty gruntów przez właściciela. Jedną z przyczyn przedłużających się postępowań odszkodowawczych jest kwestionowanie proponowanej kwoty odszkodowań, nieregulowane stany prawne nieruchomości a także nieprecyzyjne przepisy prawne. Istotne znaczenie ma prawidłowe opracowywanie dokumentacji geodezyjno-prawnej dołączanej do wniosku o wydanie decyzji a także wykorzystywanej w postępowaniach odszkodowawczych.

Praca została zrealizowana w ramach badań statutowych Katedry GłiB nr 11.11.150.00