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PUBLIC TRANSPORT SUSTAINABLE DEVELOPMENT PLAN AS A SPECIAL LEGAL ACT

SIGNIFICANT STATUTORY DEFINITIONS

Pursuant to *ustawa z dnia 16 grudnia 2010 r. o publicznym transporcie zbiorowym*¹ [the Public Transport Act of December 16, 2010] (hereinafter referred to as the u.p.t.z.), the duties of the public administration with regard to transport involve planning its development as well as organizing and managing it. There is also no doubt that the transport needs of citizens are met using different means of transport, many entities and different types of activities conducted by the administration. With regard to planning the development of transport, the legislator attaches particular significance to public transport sustainable development plans (transport plans), developed both by territorial self-government units and the government administration. Before analysing such plans in detail, it is necessary to define some statutory terms and determine the related difficulties of interpretation.

Public transport, as defined in Art. 4(1)(14) of the u.p.t.z., is the publicly available regular transport of persons provided at particular intervals on a particular route, routes or a transport network. The definitions of a route and a transport network are also provided in the Act. It should be indicated that the Public Transport Act has a wide application: it is applicable on the territory of the Republic of Poland and in the cross-border area; it applies to road and railway transport, other rail, cable and funicular transport as well as maritime transport and inland navigation (Art. 1(1) of the u.p.t.z.). The construction of these provisions makes it possible to assume that the notion of public transport *de lege lata* covers all the above-mentioned types of transport.

Although the Act does not provide a definition of a transport plan itself, it includes a definition of the sustainable development of public transport (Art. 4(1)(28) of the u.p.t.z.). It is a certain process that takes into account social expectations regarding the general availability of public transport services and that is

¹ Dz.U. [Journal of Laws] 2011 No. 5, item 13 as amended.

aimed at using different means of transport and promoting those which are environmentally friendly and equipped with state-of-the-art technical solutions. The definition, though very general, seems to be more accurate than the original suggestion that sustainable development should be ensured only by means of the promotion of a system of integrated hubs. Sławomir Fundowicz rightly believed that this definition is superfluous and may cause difficulties of interpretation, as it was not possible to define so broad a notion in the statute².

In order to develop and implement a transport plan, it is also necessary to define a “public transport organizer”. Pursuant to Art. 4(1)(9) of the u.p.t.z., it is a competent territorial self-government unit or the minister responsible for issues relating to transport, ensuring the provision of public transport services in a given area. A public transport organizer is the “competent authority” referred to in the provisions of the Regulation (EC) no. 1370/2007³. It is extremely significant that territorial self-government units also include an association of communes or an association of districts (Art. 4(2)(1) of the u.p.t.z.). Therefore, within the meaning of the Act, not only communes and districts but also their associations enjoy the status of a public transport organizer that is responsible for planning, organizing and managing such transport.

It should be stressed that on a local level, the burden of ensuring public transport services in practice falls on communes. The role of districts in organizing inter-municipal transport is usually small (especially in the case of rural districts), and their activities in this regard focus on organization, including the coordination of timetables for transport services provided by private carriers. It also stems from the limited resources of districts in this regard⁴. To effectively provide public transport services, it may be necessary for several communes (note by K.W.: and less frequently — districts) to cooperate and, consequently, create an association of communes acting as an organizer of public transport⁵. On a regional level, citizens’ public transport needs are met by provincial self-governments, and on a national level — by the minister responsible for transport.

One may have certain reservations about the construction of Art. 7(4) of the u.p.t.z., which states that the duties of a public transport organizer specified in the Act are performed not only by commune heads, mayors and town mayors, boards

² S. Fundowicz, “Opinia z 16 marca 2009 r. o projekcie ustawy o publicznym transporcie zbiorowym oraz przepisy wprowadzające ustawę o publicznym transporcie zbiorowym (RL-0303-5.6/09)”, *Przegląd Legislacyjny*, 3–4 (2009), p. 193.

³ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road, and repealing Council Regulations (EEC) No 1191/69 and (EEC) No 1107/70 (OJ L 315 of 3.12.2007, p. 1).

⁴ J. Ostalowski, “Organizacja i finansowanie transportu zbiorowego w Polsce a wspólnotowe zasady udzielania pomocy publicznej”, *Samorząd Terytorialny*, 1–2 (2009), p. 109.

⁵ T. Turek, “Związek międzygminny jako organizator usług publicznego transportu zbiorowego — uwagi ogólne na tle ustawy o publicznym transporcie zbiorowym”, *Finanse Komunalne*, 4 (2012), p. 44.

of commune associations, mayors of towns with district rights and boards of district associations, but also by district governors and province marshals. First of all, towns with district rights, in the case of which the duties of a public transport organizer are to be performed by their mayors, are not independent organizers of public transport, as defined in Art. 7(1) of the u.p.t.z. The list of “organizers” provided in the Act is complete and includes only communes, associations of communes, districts, associations of districts, provinces and the minister responsible for transport. This solution corresponds to the three-tier character of a territorial self-government, with a commune, district and self-governing province being its units. In turn, towns with district rights are a constitutional construct that corresponds to a commune, but that has the right to carry out the tasks of a district. Second of all, pursuant to acts on self-governments, district governors and province marshals independently are not the bodies of, respectively, a district and a provincial self-government. *De lege ferenda*, the duties of a transport organizer should be entrusted to, respectively, a district board or a province board. The role of these authorities should be emphasized in a similar way in provisions on the preparation of a transport plan⁶.

SPECIFIC LEGAL NATURE OF A TRANSPORT PLAN

Entities that, pursuant to the law, enjoy the status of a public transport organizer, are responsible for planning the sustainable development of such transport. The obligation to create transport plans for communes, associations of communes, districts as well as associations of districts depends on the number of people living in a given area, and such plans are sometimes adopted obligatorily (Art. 9(1)(1–4) of the u.p.t.z.), and sometimes optionally (Art. 9(2) of the u.p.t.z.). In turn, provincial plans and a ministerial plan are always adopted obligatorily. Communes, districts and provincial self-governments also adopt transport plans when they are entrusted with the task of organizing public transport under an agreement concluded between, respectively, communes, districts and provinces.

A public transport sustainable development plan belongs to a group of legal instruments referred to as planning acts. Most often, though not always, such plans cover only internal norms, providing for the directions and courses of action of entities and units in the organizational structure of an authority adopting a transport plan and are not aimed directly at entities outside the structure. *In genere* the essence of such plans is the determination of a local, regional or national policy that the administration intends to enforce in the short or long term in a given area of its operation. Only a few of planning acts are defined in the statute as the enactments of universally binding law. In some cases, such a character of a given

⁶ S. Fundowicz, op. cit., p. 193.

act has to be determined by way of interpretation. Provisions on transport plans do not raise serious doubts as to the character of such plans, as they classify them as the sources of law referred to in Art. 87 of the Constitution of the Republic of Poland⁷. With regard to plans adopted by the competent authorities of territorial self-government units, including the bodies of commune and district associations, pursuant to Art. 9(3) of the u.p.t.z., such plans are *explicite* the enactments of local law. In turn, plans adopted by the minister responsible for transport are universally binding, as suggested by the form of the executive order to the Act.

Transport plans also have other features that are characteristic of the enactments of universally binding law. The Act provides for the particular authorization to issue such plans as well as for the right manner of their publication. The Act also imposes the obligation to make a transport plan public by announcing it in a “relevant official journal of the organizer”. *De lege lata*, plans prepared by territorial self-government authorities should be announced in a given provincial official journal, and a plan prepared by the minister of transport should be announced in the official journal of the minister. A public transport organizer that is an association of communes or districts is also obliged to publish a transport plan in a manner that is usual for the communes or districts that belong to such associations. However, this manner of publication does not release from the obligation to announce a given plan in the official journal of the province on whose territory a given association of communes or districts operates (Art. 13(5) *in fine* of the u.p.t.z.).

The universally binding character of transport plans is also indicated in the provisions of *ustawa z dnia 28 marca 2003 r. o transporcie kolejowym*⁸ [the Rail Transport Act of March 28, 2003], which states, among others, that transport plans are plans of the sustainable development of public transport developed by an organizer of public transport and announced in accordance with the Public Transport Act (art. 4a). The organizers of public railway transport conclude agreements for the provision of public services only on the basis of binding transport plans and within the scope specified in such plans (Art. 28p). Therefore, there is no doubt that such plans affect the terms of agreements concluded between a public transport organizer (territorial self-government unit or the minister of transport) and its operator (self-government budgetary entity or an entrepreneur) and, in consequence, affect the legal situation of parties to such agreements, referring to their rights and obligations. As a result, a transport plan is binding *erga omnes*⁹. Moreover, transport plans are implemented both by an organizer and an operator of public transport.

⁷ The Constitution of the Republic of Poland of 2 April 1997 (Dz.U. [Journal of Laws] 1997 No. 78, item 483 as amended).

⁸ Consolidated text Dz.U. [Journal of Laws] 2013, item 1594 as amended.

⁹ K. Włażlak, “Komentarz do art. 4a”, [in:] *Ustawa o transporcie kolejowym. Komentarz LEX*, ed. M. Wierzbowski, P. Wajda, Warszawa 2014, p. 44.

Transport plans also have another specific feature, which in this case is characteristic of most planning acts. There are various specific, both lateral and horizontal, relations between particular transport plans. Such relations result from the fact that the implementation of some provisions of a transport plan is conditional on the implementation of other provisions, and the implementation of one type of plans is conditional on the implementation of another type of plans¹⁰. Province marshals are obliged to ensure that a draft provincial plan takes into consideration the provisions of the plan prepared by the minister responsible for transport. District governors and the boards of district associations prepare their draft plans taking into account the provisions of provincial plans, and commune heads (mayors, town mayors) and the board of an association of communes, in principle, prepare their draft plans taking into account the provisions of a relevant district plan (and if there is no such plan — provisions of a relevant provincial plan). Provisions that should be taken into account include provisions on routes on which public benefit transport services are to be provided. Moreover, only plans that were announced in official journals, i.e. plans that are universally binding, are to be taken into account. Therefore, there is a certain hierarchy of transport plans, the aim of which is to ensure their coordination¹¹.

One other special manifestation of the hierarchy is the obligation provided for in the Railway Transport Act to seek an opinion of the President of the Office of Rail Transport on draft transport plans with respect to rail passenger transport (Art. 13(1)(6a)). Although such opinions are not binding, they are the *sine qua non* of the enforceability of an adopted plan and may (but do not have to) affect its provisions. Moreover, there is an obligation for a self-government transport plan to take into account the provisions of planning acts referred to in *ustawa z dnia 27 marca 2003 r. o planowaniu i zagospodarowaniu przestrzennym*¹² [the Act on spatial planning and land development of March 27, 2003], i.e. the national spatial development concept, provincial spatial development plan, study of conditions and directions of spatial development of a commune and a local spatial development plan that is the enactment of local law. As a result, there are specific relations not only between particular transport plans, but also between transport plans and other types of plans.

SPECIFIC PLANNING PROCEDURE

A self-government transport plan is developed by way of a resolution of the council/assembly or meeting of an association, and a governmental plan — by way of a resolution of the competent minister. There is a special procedure for adopting such plans, which is different from the procedure for adopting most planning acts. With

¹⁰ E. Knosala, *Zarys teorii decyzji w nauce administracji*, Warszawa 2011, p. 132.

¹¹ R. Stasikowski, *Transport kolejowy. Analiza administracyjnoprawna*, Warszawa 2013, p. 261.

¹² Consolidated text Dz.U. [Journal of Laws] 2012, item 647 as amended.

regard to plans that are the enactments of internally binding law, there is no statutory obligation to announce information on a developed draft plan in the press, Public Information Bulletin (Pol. *Biuletyn Informacji Publicznej*) or in a usual manner. One other obligation, which is less frequently imposed, is the obligation to ask entities outside the organizational structure of the entity adopting the plan for their opinion on a plan or to consult such entities about the plan. Even if it is envisaged that an opinion will be issued when developing a draft plan, it is at most one opinion (e.g. in the case of a self-government programme of cooperation with non-governmental organizations, programme for stray animal care and prevention of the problem of stray animals). Transport plans, however, are characterized by a different procedure of their adoption, which applies not only to the original version of a given plan but also to its possible future updated versions. The procedure is somewhat reminiscent of a procedure for adopting a local spatial development plan. The aim of the two procedures, too, is similar, namely the protection of the rights of individuals¹³.

Information on a draft transport plan is made public by announcing it in the local press, Public Information Bulletin and in a usual manner (art. 10(1) of the u.p.t.z.). *Ratio legis* for this solution is to enable citizens and non-governmental organizations as well as other entities stipulated in Art. 3(3) of *ustawa z dnia 24 kwietnia 2003 r. o działalności pożytku publicznego i o wolontariacie*¹⁴ [the Act on public benefit and voluntary work of April 24, 2003] to submit opinions on a draft plan. Thus, public consultations in this case are obligatory, but they are not binding. The place of displaying a draft plan as well as the form, place and date of giving opinions on the plan are specified in a relevant announcement. Pursuant to Art. 10(1) *in fine* of the u.p.t.z., the time limit for giving opinions shall not be shorter than 21 days from the date of announcement. The relevance of conclusions presented in such opinions is assessed by a public transport organizer. *De lege lata*, even though opinions on a plan are not binding, they may be considered relevant and, in consequence, affect the final version of the plan. It should be reminded that transport may be organized by, respectively: a commune, association of communes, district, association of districts, provincial self-government and the minister responsible for transport. The Act does not specify which authorities are responsible for examining opinions and making possible amendments to a given draft plan. It seems that in this case it is the authorities that are responsible for preparing a given draft plan that have such competences. However, the above-mentioned doubts may be raised by the fact that the competence to prepare a draft transport plan is granted to, respectively, district governors and province marshals. Draft resolutions should be prepared by boards, i.e. executive bodies of districts/provincial self-governments, and not by their chairmen.

¹³ See for example Z. Leoński, *Samorząd terytorialny w RP*, Warszawa 2006, p. 52; idem, "Ustrój i zadania samorządu terytorialnego", [in:] *Samorząd w Polsce. Istota, formy, zadania*, ed. S. Wykrętowicz, Poznań 2008, p. 151.

¹⁴ Consolidated text Dz.U. [Journal of Laws] 2010 No. 234, item 1536 as amended.

The specific planning procedure is also manifested in the obligation to hold consultations on transport plans with respect to routes running on areas within the jurisdiction of other authorities. The obligation to hold such consultations is imposed on the authorities preparing draft plans. A draft provincial transport plan requires consultations with the marshals of neighbouring provinces, a draft district plan — consultations with the governor of a neighbouring district or the board of the neighbouring association of districts (if applicable), while a draft commune plan requires consultations with the heads (mayors, town mayors) of neighbouring communes or the board of a neighbouring association of communes (if applicable). The obligation to hold consultations results in a situation in which a given authority issues a decision based on its own opinion as well as the opinion of another authority. In consequence, the decision in a way result from the opinion of two authorities, even though its final wording is prepared by the authority that conducts given proceedings¹⁵. Moreover, the board of a neighbouring association of districts should give an opinion on a draft provincial plan, and the board of a neighbouring association of communes (if applicable) should give its opinion on a draft district plan. District and provincial transport plans may also be affected when a commune with a population of less than 50 thousand declares transport needs with respect to routes running on a territory that is outside its jurisdiction.

SPECIFIC PROVISIONS OF TRANSPORT PLANS

The subject of a transport plan relates to a planned organization of transport for public benefit. Transport plans specify, among others, a transport network on which transport services are to be provided, provide assessments and forecasts of transport needs and the predicted financing of services. However, the list of the elements of a transport plan provided for in Art. 12(2)(1–7) of the u.p.t.z. is not exhaustive. It means that the Act provides for the possibility of extending the scope of a plan to include additional elements, other than those specified by the legislator, which take into account social expectations regarding access to transport services. When preparing a plan, it is also necessary to take into account conditions and needs included in various acts, documents and data (including, among others, the state of spatial development, social and economic situation, influence of transport on the environment), and, in the case of rail transport, information that is available to the manager of railway infrastructure. The legal character and subject of transport plans suggests that their role in creating a modern public transport system is significant. As it is necessary for the system to be uniform, a detailed scope of a transport plan is determined by the minister responsible for transport

¹⁵ J. Zimmermann, *Motywy decyzji administracyjnej i jej uzasadnienie*, Warszawa 1981, p. 77.

by way of a resolution¹⁶. Both the governmental plan¹⁷ and self-government plans have a textual and a graphic part.

A specific feature of a transport plan, distinguishing it from most planning acts, is the lack of a statutory time frame for its applicability. The legislator provides only for the possibility of updating a plan depending on reasonable needs. In principle, planning acts become outdated as they are executed. In this regard, one exception has so far been allowed, namely spatial development plans¹⁸. Should a public transport sustainable development plan also be considered such an exception? It is not the case that the fact that the Act does not provide for a time frame makes it impossible for the authority preparing a given plan to choose a period of its validity. As it is stressed in the doctrine, plans cease to have a practical sense when they are prepared for a reality that changes too fast¹⁹. Undoubtedly, when determining a period of the validity of a plan, an important role should be played by the planned financial perspective relating to the provision of transport services and infrastructure investment. In practice, there are tendencies to adjust a time frame of a plan to the duration of a budget, the term of an agreement for the provision of public transport services or periods of projects financed from EU funds. As a result, particular self-government transport plans cover a period of one year, several years or even a dozen or so years, while in the case of others, no time frame is specified. This also applies to a government plan, which is updated at least every five years. The first verification is scheduled for 2016, which will make it possible to take into account the results of the settled projects included in, among others, *Wieloletni Program Inwestycji Kolejowych do roku 2013 z perspektywą do roku 2015* [the Multiannual Rail Investment Programme until 2013 with the run-up to 2015].

FINAL CONCLUSIONS

The first self-government transport plans were to be adopted within three years after the entry into force of the Public Transport Act at the latest, i.e. by Ja-

¹⁶ See *rozporządzenie Ministra Infrastruktury z dnia 25 maja 2011 r. w sprawie szczegółowego zakresu planu zrównoważonego rozwoju publicznego transportu zbiorowego* [Regulation of the Minister of Infrastructure on the detailed scope of sustainable development plan of public transport] (Dz.U. [Journal of Laws] 2011 No. 117, item 684).

¹⁷ See *rozporządzenie Ministra Transportu, Budownictwa i Gospodarki Morskiej z dnia 9 października 2012 roku w sprawie planu zrównoważonego rozwoju publicznego transportu zbiorowego w zakresie sieci komunikacyjnej w międzywojewódzkich i międzynarodowych przewozach pasażerskich w transporcie kolejowym* [Regulation of the Minister of Transport, Construction and Maritime Economy of 9 October 2012 on a plan for sustainable development of public transport in the field of communication network in interprovincial and international passenger transport by rail] (Dz.U. [Journal of Laws] 2012, item 1151).

¹⁸ Z. Leoński, *Samorząd terytorialny...*, p. 52; idem, *Ustrój i zadania...*, p. 151.

¹⁹ D. Mantey, "W labiryncie planowania", *Samorząd Terytorialny*, 3 (2012), p. 24.

bruary 1, 2014. Due to the short period covered by the plans, no practical problems have yet occurred with respect to the implementation of the plans, including in the decisions of administrative courts. However, without a doubt, the construction of provisions on transport plans itself indicates their specificity. It can be assumed that the specific features of transport plans will help accelerate the sustainable development of transport that also takes into account social expectations.

Most planning acts do not include norms aimed at entities outside the administrative apparatus, unlike transport plans. Moreover, such specific legal features are characteristic of both a ministerial plan and plans prepared by territorial self-government units as well as plans prepared by the associations of communes and associations of districts. When creating transport plans, there is a certain coordination mechanism between the government administration and the self-government administration as well as between particular units of a territorial self-government. It is also characteristic that in the case of district and provincial plans, draft resolutions are prepared by district governors and province marshals and not by executive bodies. The planning procedure, under which there is an obligation to make a draft plan available to the public for the purpose of public consultations as well as an obligation to consult various entities and ask them for their opinion on the plan, is complicated. The *ex lege* large scope of transport plans may cause difficulties in determining some of its elements, including the determination of the period of their validity. *Prima facie*, a longer period may seem optimal. However, a long duration of a plan entails a greater probability of it not matching the changing social and economic conditions and the need to amend it in a complicated and costly planning procedure.

PLAN ZRÓWNOWAŻONEGO ROZWOJU PUBLICZNEGO TRANSPORTU ZBIOROWEGO JAKO SPECYFICZNY AKT PRAWNY

Streszczenie

Przedmiotem opracowania jest plan zrównoważonego rozwoju publicznego transportu zbiorowego (plan transportowy) jako specyficzny akt prawny. Cel badawczy sprowadza się do wskazania wpływu planu i jego szczególnych cech na zrównoważony rozwój transportu. Autorka zwraca uwagę na wybrane definicje ustawowe i rysujące się na ich tle wątpliwości interpretacyjne, szczególnie charakter planu, swoistą procedurę planistyczną oraz charakterystyczne elementy planu. Prawna natura zarówno rządowego, jak i samorządowych planów transportowych nie jest dyskusyjna, plany te są bowiem ustawowo nazwane aktami powszechnie obowiązującego prawa. Taki charakter planów, specyficzna procedura planistyczna mająca na celu ochronę praw jednostki, a także treść tych aktów, w założeniu uwzględniająca oczekiwania społeczne dotyczące zapewnienia dostępu do usług transportowych, świadczą o ogromnej roli planów transportowych we współczesnym systemie organizowania przewozów o charakterze użyteczności publicznej.

Krótki okres obowiązywania pierwszych samorządowych planów transportowych nie przyniósł jeszcze poważniejszych problemów związanych z tymi aktami w praktyce działania

jednostek samorządu terytorialnego i ich związków. Analiza rozwiązań ustawowych nasuwa już jednak w tym zakresie co najmniej kilka kontrowersji czy wątpliwości interpretacyjnych. Na przykład przygotowanie powiatowego i wojewódzkiego planu transportowego prawodawca powierza — zamiast zarządowi — staroście i marszałkowi województwa. Można rozważyć potrzebę wprowadzenia w ustawie choćby ramowego horyzontu czasowego, w jakim będą obowiązywać plany samorządowe. Inne pytania mogą powstać na tle skomplikowanej procedury planistycznej oraz pojemnej zawartości planów.

PUBLIC TRANSPORT SUSTAINABLE DEVELOPMENT PLAN AS A SPECIAL LEGAL ACT

Summary

The subject of the paper is a public transport sustainable development plan (transport plan) as a special legal act. The research objective of the paper is to indicate the influence of transport plans and their particular features on the sustainable development of transport. The author points to selected statutory definitions and the uncertainties of interpretation they give rise to, as well as to the special character of such plans, specific planning procedure and characteristic elements of transport plans. The legal nature of both government and self-government plans is not disputable, as the statute defines them as enactments of universally binding law. Such character of transport plans, the specific planning procedure aimed at protecting the rights of individuals as well as the provisions of such plans, which are intended to take into account social expectations relating to access to transport services, testify to the great importance of transport plans in the current system of the organization of public transport.

Short periods covered by the first self-government transport plans have not yet resulted in more serious problems related to such plans in the practice of territorial self-government units and their associations. An analysis of statutory solutions suggests at least a couple of controversies or uncertainties of interpretation in this respect. For instance, the legislator entrusts the task of preparing a district and provincial transport plan to a district governor and province marshal and not to the board of a district or a province. It may be considered necessary to at least specify in the statute a time frame for the applicability of self-government plans. Other questions may arise with regard to the complicated planning procedure and the wide scope of transport plans.