Warsaw, 25 April 2019

SUMMARY

OF PROFESSIONAL ACCOMPLISHMENTS

I. First name and surname:

JACEK BŁAŻEJ JAWORSKI

II. Diplomas and academic degrees awarded

In terms of education, I have acquired the following qualifications:

- 2009 - **Doctor of Laws**
  Cardinal Stefan Wyszyński University in Warsaw
  Faculty of Law and Administration
  Thesis: *Reglamentacja Zawodów Rynku Nieruchomości*
  Supervisor: Professor Zygmunt Niewiadomski

- 2003 – **Master of Laws: LL.M. (European Integration)**
  Dresden University of Technology
  Faculty of Law, Department of European Integration and Harmonization of Community Law
  Thesis: *Öffentlich-rechtliche Beschränkungen des freien Kapital- und Personenverkehrs in der EU im Vorfeld des Beitritts der Republik Polen zur EU an den Beispielen des Immobilienerwerbs durch Deutsche in Polen und der Freizügigkeit der polnischen Arbeitnehmer in Deutschland.*

- 2003 – **Master of Arts in Law**
  Cardinal Stefan Wyszyński University in Warsaw
  Faculty of Law and Administration
  Thesis: *Pośrednik w obrocie nieruchomościami*
  Supervisor: Professor Zygmunt Niewiadomski

- 2002 - **Master of Arts in Canon Law**
  Cardinal Stefan Wyszyński University in Warsaw
  Faculty of Canon Law – majoring in civil law
  Thesis: *Charakterystyka postępowania administracyjnego w sprawach wywłaszczenia*
  Supervisor: Zbigniew Cieślak, PhD

I am also a legal adviser practicing in Warsaw.

III. Information on employment in academic institutions

Since 5 September 2008, I have been employed **by my home university, at the Department of Administrative Proceedings, Faculty of Law and Administration, Cardinal Stefan Wyszyński University in Warsaw**: first as an assistant lecturer, and since 2009 as an **assistant professor.** In the years 2006-2008, I taught classes at the Faculty of Law and Administration, Cardinal Stefan Wyszyński University in Warsaw, under a contract of mandate.

As part of my teaching activities at the Faculty of Law and Administration, Cardinal Stefan Wyszyński University in Warsaw, I delivered lectures, taught classes, seminars and monographs in the field of:
- administrative and administrative court proceedings,
- construction law, spatial development and property management.

These classes were attended by BA and MA law and administration students.

I was also a supervisor and reviewer of several dozen Master's and Bachelor's theses.

At the Department of Administrative Proceedings, Cardinal Stefan Wyszyński University in Warsaw, headed by **Ms Małgorzata Jaśkowska, PhD, University Professor,** I serve as secretary.

IV. Description of the academic achievement, referred to in Article 16(2) of the Act of 14 March 2003 on Academic Degrees, Academic Title and Degrees and Title in Arts

a) Academic achievement:

"Ochrona właściciela nieruchomości sąsiedniej w procesie planistycznym i budowlanym"

(Protection of the owner of the neighbouring property in the planning and construction process)
b) Information about the monograph:

Jacek Jaworski

"Ochrona właściciela nieruchomości sąsiedniej w procesie planistycznym i budowlanym"

C.H.Beck, Warsaw 2019

Editorial reviewer: Małgorzata Jaśkowska, PhD, University Professor

c) Review of the academic goal, results achieved and their exploitation.

The main aim of the paper was to investigate, define and assess the scope of protection of owners of neighbouring properties, which is provided during the construction and planning process. In particular, the aim was to determine whether such owners could participate in proceedings concerning investments on neighbouring plots and, if so, when and to what extent their legal interests were protected.

An answer to the questions posed for research purposes was provided through the analysis of partial issues forming the basic structure of the paper.

The introduction defines the basic concepts, including: neighbouring property, planning and construction process. The notion of a legal interest was at first defined as a certain assumption, and only in the further part of the paper it was discussed as an institution, assuming that it must be connected with the legal sphere of the entity and used as a research tool, necessary for the analysis of the applicable provisions of the planning and construction law.

At the beginning of the paper, in chapter two, concerning the axiological basis of the planning and construction process, two values were deliberately distinguished: ownership, which is usually related to an individual legal interest, as well as spatial order and sustainable development, as functionally related values, important with regard to public interest, but also as regards the owner of a neighbouring property.

An additional research objective was to decode the content of ownership as a normative model and determinant of spatial policy acts. In particular, my aim was to determine whether the right to develop a property was a basic "element" of ownership, at least in relation to urban properties, as this has a direct impact on neighbourly relations.

Speaking about the right to develop a property, two extreme approaches were distinguished: the first one is more liberal, combining in a natural way ownership with the right to develop a property and the second one is restrictive, where the development is not at all an obvious right of the owner. Theoretical assumptions made led to the conclusion that the right to develop a property constitutes the essence of ownership; however, the analysis of planning, construction and jurisdiction regulations has partly refuted this.

Nevertheless, chapter three argues that ownership is a good that is important from the point of view of both individual and public interest. Therefore, the regulation of relations between owners of neighbouring properties is one of the public tasks. This is because the area of clash between at least two individual interests is, with regard to the necessity of resolving conflicts of ownership, of great importance for the general public. Therefore, a separate part of the monograph is devoted to the optimisation of neighbourly relations.

At the same time, an assumption was made that the paper, focusing on administrative law, should not skip over the issues of mutual influence at the junction of administrative and civil law. Such a broad approach has the advantage that it specifies the scope of protection of the owner of a neighbouring property provided under private and public law, and thus it answers the question whether there are situations, where legal interests derived from the ownership right are not covered by administrative and legal protection. Unfortunately, the results of the paper partly led to the conclusion that this is the case. Therefore, the situation of the owner of a neighbouring property may boil down to the "inability" to provide administrative and legal protection.

There are also situations, where administrative courts, by refusing the right to bring proceedings (or by refusing to accept the appellant's merits-related argument), stipulate that the protection of their rights before a common court (in particular based on a restitution claim) cannot be precluded. In the case of immission, however, the effectiveness of the claim is highly limited if it turns out that the investment was carried out in accordance with the provisions of administrative law. Thus, a building permit issued on the basis of development conditions or a local spatial development plan proves the legality of the project. With the specific function of the building and its proper use as well as the specific designation of the land, e.g. for services, it cannot be considered that the immission is above the average.

The administrative, legal and procedural approach plays a central role in the paper. It is naturally connected with a legal interest that affects the right to bring proceedings. If the owner of a neighbouring property can participate in the process as a party, then in jurisdictional proceedings it receives the widest scope of protection, which is manifested in that it uses the whole range of legal protection measures.

Therefore, together with an attempt to define a legal interest, theoretical and legal concepts of the issue were developed. In order not to obscure them (with a relatively diverse body of literature), basic definition assumptions were discussed, when defining basic concepts (in chapter one). As a result, chapter four directly presents various theoretical and legal approaches to a legal interest. This has been done with regard to the right or obligation and the legal sphere, distinguishing the occurrence of a real state (risk) of infringement, resulting from the need to resolve an administrative matter in jurisdictional proceedings. It was also distinguished that a legal interest may have different meanings (material, procedural, formal, direct, indirect or accessory). An attempt to present a concept of a legal interest in this respect was made based on the assumptions of logic and the aim was to adapt this concept to the possibility of ensuring legal protection of the owner of a neighbouring property. In this chapter, the concept of perception of a legal interest, characteristic for the publication, was distinguished and referred to the general assumptions of the general administrative procedure and the provisions allowing appeals against acts and activities.

Therefore, **part four** of the paper elaborates on the concept of a legal interest, which offers the owner of a neighbouring property the right to participate in the administrative planning and construction processes. The aim was to provoke reflection on the direct nature of a legal interest, when a legal situation of the owner of a neighbouring property is somehow - at least in relation to the owner of an investment property - accessory and thus indirect in nature. This was also deliberate in view of the scope of the paper. This is a novel approach, since it aims at distinguishing between the structural elements of the interest. As a consequence of the considerations carried out, it was assumed that it comprised two elements.

The structure of a legal interest was therefore based on two elements: **infringement of the legal sphere and a specific provision**. The distinction of the so-called secondary parties (which are not directly entitled or obliged) was intended to show how their legal interest differs from the interest of the so-called direct parties (e.g. an investor for whom the authority determines building rights). The paper also used the concept of a reflexive party (which is a synonym of an accessory party) and an additional party, within which a formal party was distinguished, although this concept may be ambiguous and may refer to an entity that has been taken into account by law as a party, even though the decision cannot affect its legal sphere, or an entity that does not have a legal interest, but the authority mistakenly considered it (formally) as a party.

Favouring a given model of a legal interest was therefore a reason for analysing the extent to which the rules take account of the concept adopted. At the same time, the aim was to establish whether, within the aforementioned legal concept, there were any special, specific and characteristic features of an entity, being the owner of a neighbouring property, which speak in favour of a separate categorisation of its legal interest.

The legal interest protection was analysed in separate parts, as the planning process (chapter five) and the construction process (chapter six) were separated. This is a consequence of the fact that already in the title of the paper the research limits have been established. At the same time, a dogmatic method was applied, taking into account the analysis of jurisprudence in order to see to what extent the legislator's *ratio legis* was "preserved" when applying these provisions.

Since this paper covers not only construction proceedings, which in a way are naturally connected with the conduct of administrative general (jurisdictional) proceedings, but also addresses the planning process, so the participation of owners of neighbouring properties is also discussed in relation to the local law-making process. Of course, this was related to the legal nature of local plans that determine the purpose and introduce land development rules. The majority of planning proceedings, despite that it leads to the normative marking of development features in relation to specific properties, have - or at least this is what the judicature mostly assumes - a general and abstract character. However, it is difficult not to notice that the specificity of these acts affects specific properties and determines the actual scope of rights of one owner and the impact on the property of the other. We are talking about the law-making process, where the participation of entities (including owners) in the procedure of creating the act and appealing against it is separately regulated. Therefore, in a natural way, the discussion on the ownership protection had to touch upon the understanding of the notion of a legal interest, not only under Article 28 CAP, but also under Article 28(2) of the Construction Law, other grounds for issuing decisions, such as Article 52 of the Construction Law, or e.g. Article 59 of the Act on spatial planning and development. Finally, it was unavoidable to analyse Article 101 of the Act on municipal self-government, which regulates the issue of appeals differently than Article 50 of the Law on proceedings before administrative courts.

The analysis of the construction process revealed difficulties in judicature's understanding of the legal basis of interests, which is directly caused by the determination of the extent to which Article 28 CAP can be applied "complementarily" (e.g. in matters regulated in the construction law, special acts, etc.). It is obvious that the subject of research were the proceedings leading to the issuance of a decision, although the scope of protection of the legal sphere of the owner of a neighbouring property was also related to the cases of undertaking a construction initiative regarding the so-called notification (under the Construction Law) and other cases of carrying out investment projects.

The analysis of the regulations shows that the structural elements of a legal interest – **the infringement of the legal sphere and the special provision** - manifest themselves differently in relation to the primary and secondary parties.

For the primary party, the infringement of the legal sphere should be regulated by a specific provision, which is to be understood as a provision of substantive administrative law. It should be expected that, for each type of case, the legislator will identify at least generically future entitled or obliged persons. In the construction law, this is not entirely the case, which compels one to search for a party or to choose between alternative parties, that is the owner, perpetual usufructuary or administrator. Against all appearances, the very definition of an investor is not precise either.

As regards the primary party, the relationship between the two elements is close, and what is interesting, the latter element actually creates the first one. This is because the provision, which indicates to whom the right may be granted, determines whose legal sphere will be affected by this decision. This means that a legal interest created for the primary party must in fact derive from a specific provision of substantive and administrative law at the same time, since only such a provision can determine the future addressees of a rule of law specified by the authority.

The above-indicated two-element structure of a legal interest changes **with the secondary party**, which is a concept opposite to the primary party. Its status should result from an accessory link with the primary party, in such a way that the determination of the primary party's right or obligation will affect the secondary party's legal sphere. This is not always the case, especially when the legislator artificially, i.e. in isolation from the legal sphere, introduces a certain category of entities into the Act.

For the status of **an accessory party** to be recognised, the infringement of its legal sphere **does not need to be determined** in a specific provision of substantive administrative law. This is practically impossible, as it is impossible to determine **all those** who may be legally affected. The situation of these entities is a result of their rights and factual state. Therefore, in order to ensure proper protection of this category of persons, it is sufficient to invoke the institution of a legal interest, associated solely with the risk of violation of the legal sphere. The manner in which a legal interest is demonstrated in this case is different from that of the primary party.

In respect of the primary party, it follows from the provision on the *per se* right that there has been a breach of the legal sphere of the entity entitled to that right. As regards the secondary party, first it should be noted that the decision specifying the rights of another entity will affect the sphere of the third party, and then, by indicating its normative nature, it can be inferred that this is the legal sphere of that person.

Since the provisions of substantive administrative law are usually focused on who should be granted the rights, no provisions defining reflexive entities can be found in the classic approach. However, the fact that they are not defined does not mean that the legislator did not provide for them in the proceedings. It is precisely the legal interest that should enable these entities to participate in the process.

For the primary party, therefore, a legal interest **must** <u>derive directly from substantive administrative law</u>. For the secondary party, it **should** result from <u>all the provisions constituting a universally binding source of law</u>.

If this is not the case, that is if the legislator opts for a separate regulation of the secondary party, it may result in a lack of protection of the entity not mentioned in the specific regulation. For example, an artificial term in the Act clarifying which owner of a neighbouring property is a party may deprive another owner of protection, even though there is a real risk of infringement of his legal sphere.

This may be partly desirable by the legislator and, from the point of view of the purpose of the regulation, even legally acceptable when it comes to ensuring that legal protection does not "spread" too much over countless entities. However, determining who may be a secondary party is a very delicate procedure, acceptable as an exception, because the risk of harming the primary party when too many secondary parties are allowed is, due to the extent to which the authority is bound by law, much smaller than the risk of unjustified deprivation of legal protection of an entity whose legal sphere may be significantly affected by the decision.

From the point of view of axiological assumptions, ownership, as a subjective, absolute and effective *erga omnes* right, and at the same time not only anchored in the provisions of *ius* *cogens* substantive law, but having constitutional grounds, deserves protection, regardless of whether it concerns the owner of an investment property or the owner of a neighbouring property. Perhaps the protection of the one who is in the neighbourhood is exceptionally justified if we consider that the essence of conflicts of ownership boils down to a simple relationship that when one is allowed to do more, the other has to endure it.

At the same time, the mere relationship between the specification of the secondary party in the specific legislation and its non-determination is simple, as it is based on the principle of mutual exclusion. If the party is not specified (and this should be considered desirable), protection will be granted to all entities in respect of which there is a risk that their legal sphere will be infringed. If, on the other hand, the secondary party is specified, it excludes those entities which are not specified in the specific provision.

Where a provision of administrative law, based on the notion of a "legal interest" will apply, and it is usually Article 28 CAP, any provision of generally applicable law (including civil law) will constitute a special provision. Therefore, relying on a provision of the law for the owner of a neighbouring property will mean referring to Article 140 of the Civil Code in conjunction with Article 28 CAP. It is worth noting that, in practice there is no room for a provision of substantive administrative law in such a structure, or at least for such a provision, which in a generic definition of the secondary party is very precise.

However, where the legislator specifies secondary parties, a special provision will be this provision of substantive administrative law. It has already been mentioned that this is not a desirable situation, as it narrows the scope of protection.

Basing legal interest on the legal sphere by means of a comprehensive set of rules makes it difficult to identify all the persons whose legal sphere may be affected by the decision. However, it is difficult to expect that, whenever the legislator specifies generically an administrative matter, it will make subjective references to third parties in an attempt to determine which of them may be prejudiced in their legal sphere. Moreover, the example of Article 28(2) of the Construction Law clearly shows that such a legal specification does not have to solve practical problems in determining who is a party to the proceedings.

The notion of a legal interest, associated with the infringement of the legal sphere and derived from the ownership right, exempts from the obligation to make reservations as to the necessity to invoke a substantive provision of administrative law. For an accessory party having a legal interest will mean invoking ownership only in connection with a procedural rule which uses the notion of a "legal interest".

On the other hand, assuming that in each case there must be a provision of substantive administrative law, which specifies accessory entities, dependent on the main addressee of the decision, constitutes a separate legal basis for recognising the protection of their legal interest. This will mean that such entities, despite invoking ownership, will not be able to protect it unless they find the "link" which, under administrative law, indicates the ownership of such persons.

This link will no longer be Article 28 CAP alone or any other provision indicating a legal interest. This is all the more dangerous as it may lead to the exclusion of a legal interest from protection or a secondary (administrative) recognition that an interest derived from the ownership right is not legal at all, or at least does not have a "legal" attribute in the administrative sense of the word.

The cases in question therefore show a clash between the actual infringement of the legal sphere and the approach to the accessory entity as a party relying on the content of the special provision.

Finally, it should be remembered that the notion of a legal interest, which cannot be limited to a right (as then there would be no reason to introduce it) is so universal that it offers protection to all entities whose legal sphere may be violated as a result of a decision on the rights or obligations of others. If a *sine qua non* condition for having a legal interest is to be a separate provision of substantive administrative law, which should generically specify the group of secondary entities, then the notion of a legal interest does not make much sense. A party can then be defined as an entity "*whose rights are affected by the proceedings*" (direct party) and "*any other entity if a special provision so provides*" (additional party).

For an accessory entity this may mean that it will not be a party to the proceedings, because it is not a direct party (obviously), but at the same time it will not be considered as a secondary party, despite that its legal sphere may be affected by a provision of administrative law. The obligation to precisely derive a secondary party's legal interest from the provisions of substantive administrative law actually thwarts the essence of a legal interest. It is worth noting that, whenever the legislator refers to secondary entities, it indicates in the act that they are parties, but never states that they have a legal interest. This clearly shows the difference between these concepts.

Therefore, for the owner of a neighbouring property to have a legal interest is nothing more than to demonstrate the relationship (influence) between the future decision and its legal sphere (resulting from ownership). However, such a relationship does not always affect the right to participate in the proceedings concerning this decision, and this is what qualifies it as deprivation of the protection of a legal interest.

Relating the above considerations to statutory solutions, a few examples in this regard should be provided. One of the most important of them is Article 28(2) of the Construction Law. It is of a special nature in relation to Article 28 CAP.

Article 28(2) of the Construction Law concerns a building permit. It refers not only to the primary parties, but also to owners of neighbouring properties. In the case of a building permit, the legal sphere of e.g. a lessee from a neighbouring property is not protected. This provision refers to owners, perpetual usufructuaries and administrators of properties. At the same time, however, also the indicated owners enjoy a limited protection. This is due to the definition of the area of influence referred to in Article 3(20) of the Construction Law. This provision defines the area of influence up to the restrictions in development, including buildings, only if separate provisions stipulate so. A restriction in development is a narrower concept than the civil law approach to a restriction in use, and therefore there is a risk of depriving some of the owners of neighbouring properties of legal protection.

For example, Article 52 of the Construction Law (concerning legalisation and reorganisation proceedings) does not refer to secondary parties at all. Therefore, general provisions can be applied, although there may be opinions that this is not Article 28 CAP, but rather general provisions applicable to the construction law system, and therefore based on assumptions resulting from Article 28(2) of the Construction Law. Finally, it cannot be ruled out either that, since Article 52 does not mention secondary parties, they do not enjoy legal protection at all.

In the case mentioned above, the problem in fact boils down to the decision to allow supplementary application of Article 28(2) of the Construction Law, and this is by analogy rather than by way of proper application. Otherwise, it may lead to the situation that during the legalization proceedings, and consequently also in respect of the operating permit, the scope of the parties will be wider than in the case of the building permit itself (sic!). Difficulties in determining secondary parties also arise in extraordinary proceedings (resumption and invalidity proceedings), not to mention the so-called special acts.

Article 59 of the Act on spatial planning and development, concerning development conditions, does not shape secondary parties either (in this respect it is similar to Article 52 of the Construction Law). However, the necessity to apply the general rules resulting from Article 28 CAP is undisputed here. Some jurisprudence, when invoking legal grounds for the interest, points not only to Article 28 CAP in conjunction with Article 140 of the Civil Code, but also to the provisions of the Planning Act, which concern ownership and protection of legitimate interests of third parties, e.g. Article 6 of the same Act.

Finally, there are such legal norms that precisely and exclusively determine who can be a party. They concern construction law and spatial law at the same time. It is about in particular the transfer of a building permit or a permit to resume works pursuant to Article 40(3) of the Construction Law, as well as the transfer of a decision on development conditions pursuant to Article 63(5) of the Act on spatial planning and development. These are special cases, as the right itself has already been shaped by a separate decision, and therefore they are of little significance from the point of view of the owner of a neighbouring property.

As regards the additional parties, it should be noted that, in construction proceedings, they are of particular interest to the legislator, at least where a building permit is issued. However, in other proceedings, e.g. legalization or reorganisation proceedings, the legislator in no way qualifies their status. This is done similarly in the case of the special acts and when issuing the so-called decisions on land development conditions. In my opinion, the basis for demonstrating interest here will be the ownership title, i.e. directly the subjective right anchored in the provisions of civil law. Paradoxically and contrary to the intentions of the legislator (who, however, I suspect is willing to exclude owners of neighbouring properties), this situation is advantageous for them. However, it requires support of the jurisprudence, which plays a key role here, as it may do away with the flexibility of the application of a legal interest if, in the case of secondary parties, it reduces it to the role of a specific provision of substantive administrative law.

After analysing the provisions of law, it seems that in the construction law the legislator permanently ignores the demand for defining precisely the primary addressee of the decision, while at the same time striving to limit the role of secondary parties. Looking at the overall construction system, this ignorance does not seem **incidental**. Decisions on legalization, demolition, obligations to remove a particular state or to perform construction obligations do not have their main addressees explicitly defined in the regulations. Indication that they may be investors, owners or administrators does not specify generically who is to be a party, but indicates conditionally the possibility of being a party. As for its structure, it resembles Article 29 CAP, from which also little follows if it is considered that in certain cases generically defined, some of the entities listed therein cannot be a party at all. In addition, the mere **alternative** of selecting these entities, which exists without the conflict-of-law rules, makes it difficult to identify these entities.

If we consider that we are actually talking about administrative matters, where the range of entities that may be a party is narrowed by statutory regulations, then the problem of depriving the property owner of protection is part of a broader problem. However, discussions on whether the owner of a neighbouring property may be a party to the proceedings refer to the situation, where we assume that the legislator has provided for the termination of the proceedings by way of a decision without the application of special provisions.

In the case of tacit settlement of the matter, the protection of the entity compels us to recognize that such consent is a specific (conclusive) administrative act. If the assumption is different - that we are dealing with an effect caused *ex lege* by the lapse of a deadline and tacitness is at the most a material and technical activity, it makes it difficult to talk about proceedings and a party at all, so the rights accessorily related to the beneficiary in such circumstances are outside the scope of interest. Besides, the adoption of an implicit act does not make it any easier for such entities to have their rights protected if they know nothing about the notification procedure itself, let alone about the tacit consent. It is difficult to assume in such conditions their ability to participate actively or the right to challenge "tacit" decisions of the administrative authority, even if assuming that the principle of two-instance proceedings has not been excluded in the CAP provisions with respect to this institution.

In the case of the so-called special acts, the protection of the owners of neighbouring properties is even more difficult. The structure of special acts seems to aim at recognising as the primary addressee an investor who, at the time of filing an application, often does not even have a title to the property, because he will obtain it *post factum* (if assuming that the issuance of a decision concerning many cases results in the deprivation of the right *ex lege*). Unfortunately, the analysis shows that the owners of properties, on which investments are to be made, are treated as second-class entities (when looking at the limitation of their procedural rights, service issues, the possibility of full application of extraordinary procedures). This situation reduces them to the role of a secondary party, or - referring to the procedural regulations of the interwar period - to a legally interested entity. What is worse, the fact that the law is silent when it comes to the regulation of cases concerning the owners of neighbouring properties, seems to be a manifestation of deprivation of their legal protection. In such a situation, the concept of a legal interest based directly on ownership meets the needs of these entities. In practice, this would also require the support of administrative courts' judicature.

Finally, it should be clearly stated that the real difficulties in the implementation of owner protection are due to non-procedural reasons. They are inherent in material law, which allows too many exceptions, destroying the general principles of the building and spatial system in order to plan and build in an organized manner and based on mutual respect for property rights. It is not just a matter of the number of special acts in force (although this raises justified concerns), but of the fact that the legislator excludes any obligation to harmonise planning in the area of public purpose investment. This is not very comforting, but within the legal framework defined by the special acts, the participation of the owner of a neighbouring property in practice will not be of much use, since the investor himself decides about the location, without being obliged to select it in the least burdensome way, especially for those neighbours who live there.

There are many more legal and material reasons for reducing the level of protection of neighbouring property owners. In respect of the so-called development conditions, like in the case of special acts, their extent is dangerous. Therefore, this leads to pathological situations, where in areas inherently attractive for investments, municipalities consciously make planning omissions and do not commence works in order to avoid inconvenient public discussions and agreements concerning the ensuring of adequate means of transport, common green areas, not to mention maintaining proportions and ensuring development, which should be sustainable in essence. Apart from their basic disadvantage allowing a pro-investor analysis of good neighbourhood, the development conditions are a perfect example of gradual urban and spatial degradation. One decision on development conditions usually is not spatially perceptible, and does not give rise to a discussion on comprehensive solutions perceived in the context of space as a larger whole. The scale of the problem can be noticed only when several dozen buildings are constructed next to one another - but then it is too late to restore harmony and proportions between the neighbouring owners.

Against the background of building regulations and the indicated case of issuing development conditions, the protection of owners of neighbouring properties in the planning process is quite good. Where there are plans in place, the position of the neighbouring property owner is significantly stronger. Although it requires a proper understanding of the right to bring proceedings, based on the infringement of a legal interest, in practice it is possible to effectively challenge a local spatial development plan and, in certain cases, a valid study. Planning must also take into account the ownership right and legal interests of third parties, which, with a pro-citizenship and pro-ownership approach of the courts, may strengthen the protection of those entities that seek respect for property in neighbourly relations. Of course, a legal interest (and its infringement) in administrative court proceedings is not the same as in jurisdictional proceedings, but the fact that administrative courts can verify legality indicates a high level of the protection. The possibility of challenging a local law act, i.e. a local spatial development plan, compensates in a way for not distinguishing a legal interest at the stage of planning works aimed at adopting this act. The property owner has the same rights to submit an application or comments as everyone else - it can be said that it is incorporated into the so-called social factor, and its legal interest at this stage is not given any priority. However, in the case of an appeal against a local law act, which is not *actio popularis*, not everyone but the owner, has the opportunity to prove his or her right to lodge an appeal. Of course, this does not mean at the same time that the infringement of the interest was unlawful, since this issue depends on an objective assessment of the legality by administrative courts.

From this perspective, it is difficult to understand the often manifested arguments that, since the plan shapes ownership by way of a statutory consent, it takes into account the principle of respect for ownership. After all, not every ownership is shaped with respect. In order to assess it, it is necessary to establish a normative pattern of ownership, for example in the context of the aforementioned freedom of construction. Problems are also caused by the arguments found in the jurisprudence that the principle of sustainable development and spatial order cannot be effectively invoked without indicating the violation of specific provisions. The search for separate regulations is often fruitless, as the legislator does not specify the noble ideas and goals outlined. This means that a norm-principle is not taken into account, only because we cannot assign a norm-rule to it.

The above conclusions should be used in the judicature to better understand the scope of protection of neighbouring property owners. This protection is not complete, because not every legal interest is protected, and in particular not every restriction in use is worth protecting in the opinion of the legislator. The mere understanding of a legal interest in the context of two elements of its structure and, of course, the distinction between primary and secondary parties, seems indispensable to ensure proper procedural and jurisdictional standards. For this reason, the results of the paper can be widely used by the judicature. It should be remembered that almost every investment process, which is usually carried out in urban areas, creates a sense of a legally justified or subjectively perceptible threat in the owners of neighbouring properties. Neighbourly conflicts in planning and construction processes are so common that they constitute a serious factor burdening the administrative judiciary. Sometimes one can even get the impression that the entire administrative and judicial system concentrates its efforts not on the essence of the case, but on determining who had a legal interest in resolving it. Finally, there are also diagnosed sources of these conflicts, which led to additional *de lege ferenda* demands, such as unifying functions and designation, limiting external interference in residential areas, specifying general values more precisely in special regulations and finally imposing on those responsible for public investments an obligation to take into account all values, including the need to harmonize mutual relations between owners.

d) **Reasons for the choice of the subject**

The choice of the subject was dictated by the theme combining aspects of widely understood property issues, including spatial planning and construction law in the context of ownership relations. Also, the professional practice of the author, who first as the head of the legal office in the town hall was responsible for coordinating, managing and representing the authority and municipality in the proceedings (including also the administrative court proceedings), and later (to this day) provided legal assistance in this regard to external entities, was important. From the perspective of planning processes, the author considers the provision of legal assistance to the Polish Chamber of Urban Planners in Warsaw very fruitful.

The suggestion of Professor M. Jaśkowska, Head of the Department of Administrative Proceedings, where the author holds the position of an assistant professor, to delve into the issues of a legal interest, had a significant impact on the structure and character of the paper. Since E. Bernatzik's views were written down in the Austrian doctrine and later invoked by W. Klonowiecki, relatively few people have taken up this subject. Chapter IV should therefore be regarded as a new perspective and a more in-depth research on the institution of a legal interest, which is one of the greatest advantages of the paper. However, the aspect of the above-mentioned institution embedded in the context of the legal protection of the owner of a neighbouring property can be attributed to interests in spatial planning and construction law developed under the supervision of Professor Z. Niewiadomski.

It must be admitted that, as regards a legal interest, the reading of administrative and judicial statements of reasons left the author unsatisfied, so he, as a researcher and practicing lawyer, noted that practically every dispute in neighbourly relations is based on the examination of a legal interest understood and described in a slightly different way. Over the years, a suspicion whether the authorities (and sometimes even courts) correctly refer to the concept has strengthened the author's willingness to address the subject. At the same time, the problem seemed to be extremely practical and relating to a large number of cases, and at the same time offering a chance to show a new perspective on selected and basic institutions of administrative law.

It is to be hoped that the recourse to the canons (axioms) of law, in order to attempt to present them in a new context, referring to known assumptions, will be considered not only as a brave and worthwhile activity, but above all as an advisable one, also with regard to the need to update specific solutions in relation to the changing law and factual circumstances concerning investment processes. Each institution of law as a permanent assumption may at the same time be part of a very dynamic normative environment. The analysis of this phenomenon is useful from the point of view of *de lege lata* and *de lege ferenda* conclusions.

The paper is therefore a result of the need to outline the scope of subjective protection based on a legal interest, which, given the growing number of disputes, may help to model the basic patterns and assumptions of procedural systems, in particular those related to the planning and construction law.

V. <u>Presentation of other academic and research achievements</u>

My other academic and research achievements, following the PhD Degree, include academic publications, i.e. two monographs, part of the update from the commentary to the Real estate management act (co-author), Lexicon of construction law and spatial development (co-author), academic articles published in collective works and legal journals (23 articles, including 3 in English).

My academic achievements also include active participation in national and international academic conferences (23 papers, including 2 in English) and participation in a research project entitled *"Model regulacji jawności i jej ograniczeń w demokratycznym państwie prawnym"*.

Only a few selected academic achievements have been discussed below. With regard to my academic publications I would like to draw your attention to four articles.

The first article entitled "Zniesienie samorządu zawodowego urbanistów. Uwagi na tle wyroku TK z 24.03.2015 r.", published in Przegląd Prawa Publicznego, June 2016, No. 6, pp 75-90, was written by J. Jaworski and P. Sosnowski. I consider myself the chief architect of this article in terms of the structure of the text and the theses made. The text is the result of my professional experience. As a legal advisor to the Chamber of Urban Planners, which was abolished by the legislator, I expressed my objection to the recognition of the deregulatory provisions by the Constitutional Tribunal as being in compliance with the Constitution of the Republic of Poland. I have learnt from the press that the Constitutional Tribunal commissioned an external opinion on this matter. I have never become acquainted with it, but comparing it with this text would offer an interesting double perspective. The main objection was that the Constitutional Tribunal unnecessarily stated in its statement of reasons when the profession of public trust could be deregulated since it deemed that the profession of urban planner was not of such a nature. Of course, it is difficult to agree with this. The fact that the Constitutional Tribunal allowed the deregulation of the profession of public trust was a dangerous precedent, which could be a signal or a sign of pressure on other professional local governments.

The second article entitled "Zażalenie na odmowę dokonania czynności notarialnej" appeared in the academic monograph, with D. Gil as editor, entitled "Szczególne środki zaskarżenia w ujęciu komparatystycznym", Lublin 2013, which was the outcome of the conference under the same title. In my opinion, this article shows my interests in litigation from the borderline of administrative and procedural law. For this reason, I participated quite regularly in conferences organized by D. Gil, PhD, of the UMSC. The conferences were attended more often by penal and civil law rather than administrative law specialists, which made it possible to compare the use of similar constructions and institutions in different branches of law.

The third article entitled "Nabywanie uprawnień do wykonywania zawodu lekarza w Polsce przez obywateli Ukrainy", [in:] Internacjonalizacja administracji publicznej, Z. Czarnik, J. Posłuszny, L. Żukowski (Eds.), LEX, Warsaw 2015, pp 497-520, reflects the paper delivered at the SEAP conference. It refers to the rules of law (not to the institution itself), but owing to this I was able to become one of conference speakers and the paper itself met with great interest of the Ukrainian lawyers. Thanks to that I had a pleasure to deliver a paper in the Auditorium Maximum Hall of the former Jan Kazimierz University in L'viv. Considering the outstanding lawyers and doctors, who were associated with this university before the war, it was an extraordinary experience and distinction for me.

The fourth article entitled "Sytuacja Administracyjnoprawna – wybrane zagadnienia z perspektywy nauczania Jana Bocia" was published in the Opolskie Studia Administracyjno-Prawne (volume XVI/1(1), Opole 2018, pp 65-75.). It was a post-conference article, following the conference organized also by the SEAP. I am a member of this association and I do my best to participate in their annual conferences. I remember the late Professor Jan Boć joking that, with the current requirements of academic achievements, we are no longer able to read everything that is published on the academic market. Meanwhile, my task, when preparing the article, boiled down to reviewing Professor's post-doctoral thesis and his later achievements in the field of "Administrative and Legal Situation", which, according to the author, in some circumstances could replace the notion of the administrative and legal relationship. My speech at the conference was received very well. Several academics praised the article afterwards, that is why I decided to mention it here.

Apart from the conferences organized by the SEAP, including the above-mentioned conference in L'viv in 2013 or Paris in 2011, I also participated in other international conferences, delivering papers and publishing articles in English. This was the case, for example, at the international conference organized in Opole (among others, by the Opole University) under the name: "Judicial Protection of Individual Rights in Central European Countries - Current Experience and Trends" 2nd Central European Forum on Law and Administration (10-11 October 2017, Opole), where I delivered my paper entitled: "Three Principles of the Protection of Property - The Application of the European Convention on Human Rights in the Polish Law System".

The list of the conferences I participated in also includes the University of Gdańsk conference (and following publications) initiated (and edited) by Professor T. Bąkowski. I also regularly participate in the Łódź conferences organized by Professor M. Stahl, Professor B. Jaworska-Dębska and R. Budzisz, PhD. I have a particularly pleasant recollection of the conferences, projects and publications initiated by Professor J. Sługocki and P. Kledzik, PhD, of the University of Szczecin. The list of publications also shows my participation in the conferences, because I feel part of the academic community and I am strongly involved in this sphere of the academic life.

Although the lexicons and comments on the Real estate management act and the Act on spatial planning and development are not purely academic achievements, they show the spectrum of my publications. They have been recognised in the market for years and well received by publishers. They may complement a lawyer's academic work.

Moreover, I would like to add that in 2013 and 2014 I participated in an academic and research project entitled "Model regulacji jawności i jej ograniczeń w demokratycznym państwie prawnym" (DOBR/0075/R/ID2/2013/03, co-financed from the funds of the National Centre for Research and Development and headed by Professor Grażyna Szpor, PhD, Professor of the Cardinal Stefan Wyszyński University) as one of the persons responsible for Action 1.04. As a result of the analysis, I prepared, under the supervision of Professor M. Jaśkowska, a paper entitled "Szczególne postaci ochrony prawa do prywatności" (in:) M. Jaśkowska (Ed.) Vol. IV

Znaczenie orzecznictwa in: G. Szpor (Ed.), Jawność i jej ograniczenia, C.H.Beck, Warsaw 2014, pp 188-217.

VI. Summary

In conclusion, I would like to stress that my academic activity focuses on administrative law: procedural and substantive law. I am developing my interest in the proceedings with the support of Professor M. Jaśkowska, and as regards substantive law, I developed my interest in spatial development (when I was still a student) under the influence of Professor Z. Niewiadomski. It seems that in my papers I often refer to civil law solutions, looking at the situation of an individual rather than only at the administrative and legal situation. I think it is also important that I try to reach for the achievements of the doctrine and thus expand the developed institutions rather than search for novelties "at all costs". For me, the "novelty" are the new approaches to institutions presented with respect to what has already been said about them in science.

Jaworski