

Analysis of simplified mode of property acquisition for the purpose of road construction in Poland*

Anita KWARTNIK-PRUC and Anna TREMBECKA, Poland

Key words: public roads, road construction, acquiring the grounds

SUMMARY

In Poland, creating a network of modern roads has become one of the fundamental needs. In April 2003, in response to such a demand, the Act on special rules for preparation and realization of investment in the scope of national roads was passed. The purpose of this Act was to create a legal tool that would simplify the process of road construction. A three-stage mode of investment preparation introduced by the Act, which included: a decision on determining the road location, a decision on property expropriation and a construction permit, in practice has proved to be too time-consuming and in many cases made it impossible to achieve the assumed purpose of the Act. Therefore it was decided to reach for more radical measures in order to accelerate the construction of public roads, consequently simplifying the procedure as well as the method of acquiring land for roads in the subsequent amendments to that Act. Under the current provisions of law, in relation to the roads, a new type of a decision is applied - the permit decision on the implementation of the road investment. This decision is a kind of consolidated administrative decree, which results in a number of consequences, primarily:

- it determines the location of the road investment,
- it approves the property division,
- it expropriates property rights within the investment boundaries,
- it approves the construction permit design and grants the construction permit,
- it limits the use of adjacent properties in order to carry out reconstruction of technical infrastructure and of other category roads.

These regulations enabled to replace the existing five separate administrative procedures with a procedure which is completed with a single administrative decision.

The paper includes a thorough analysis of land acquisition procedure for road construction in view of the existing legislation. The competence of particular public administration authorities in this process was pointed out. The legal consequences of a decision on the implementation of the road investment with respect to all property rights and obligations relating to properties located within the planned roadway were determined. Attention was also drawn to the specific manner of making divisions of these properties, as well as to the problem of the implementation of road investment in the areas covered by flowing waters or areas with railway lines.

* Scientific work financed from the budget for science in the years 2010-2013 as a research project NN524 465 839

Analysis of simplified mode of property acquisition for the purpose of road construction in Poland

Anita KWARTNIK-PRUC and Anna TREMBECKA, Poland

1. INTRODUCTION

Expansion of the public road network is an essential element in the development of our country. Therefore, a number of specific regulations regarding investment in the planning and construction of roads was introduced in Poland. At the beginning there was the act on toll motorways, which entered into force on 2nd January 1995. However, after several years of its term, it turned out that there is a need for more radical legislative solutions in order to execute the investment plans. Accordingly, on 10th April 2003, the Act was adopted on special rules for preparation and implementation of investment in national roads [Ustawa 2003] which, in order to intensify the construction of public roads in Poland, has already been amended several times.

A particularly important amendment was adopted on 18th October 2006. Its task was to introduce essential changes in the preparation and implementation of road investments, including the mode of property acquisition for construction of public roads and its expansion on all public roads. It provided a two-stage process of preparing an investment. The first stage ended with a decision on establishing the location of the road, which replaced the traditional acts occurring in the traditional investment process, in the scope of the planning and zoning (for example: zoning decisions, decisions on location of a public investment), while in the second stage a decision authorizing the construction of the road was obtained.

Another amendment to the Act on special rules for preparation and implementation of investment in public roads, adopted on 25th July 2008, led to a further simplification of the above procedure by introducing one-stage proceedings providing for all the terms and conditions of road investment in a single administrative decision.

As a result of these changes, which came into force on 10th September 2008, a new type of a decision was introduced - the decision authorizing the implementation of road investment [Trembecka 2011]. This decision constitutes a kind of an administrative decision, which has several effects, i.e. primarily:

- determines the location of a road investment
- approves the real estate division
- expropriates rights to properties located within the area of the investment
- approves the building project and grants construction permit
- limits the use of adjacent properties for the purpose of the reconstruction of technical infrastructure and other category roads.

These regulations have allowed for the replacement of the existing five separate administrative procedures with a procedure leading to a single administrative decision.

The purpose of these legislative solutions is to simplify and speed up works associated with the implementation of road investments.

2. THE STRUCTURE OF THE ROAD NETWORK IN POLAND

The level of the development of transport infrastructure constitutes one of the criteria for assessing the socio-economic development of the country. Transport infrastructure in Poland is not satisfactory and requires undertaking actions to improve the situation, as malfunctioning infrastructure slows the economic growth and reduces the competitiveness of the economy. The current structure of the road network in Poland is dominated by local roads - municipal and county roads (Fig. 1), which are not adapted to the continuously increasing volume of traffic. Freeways and highways are executed at just over 1,500 km and account for barely 0.4% of all roads in Poland.

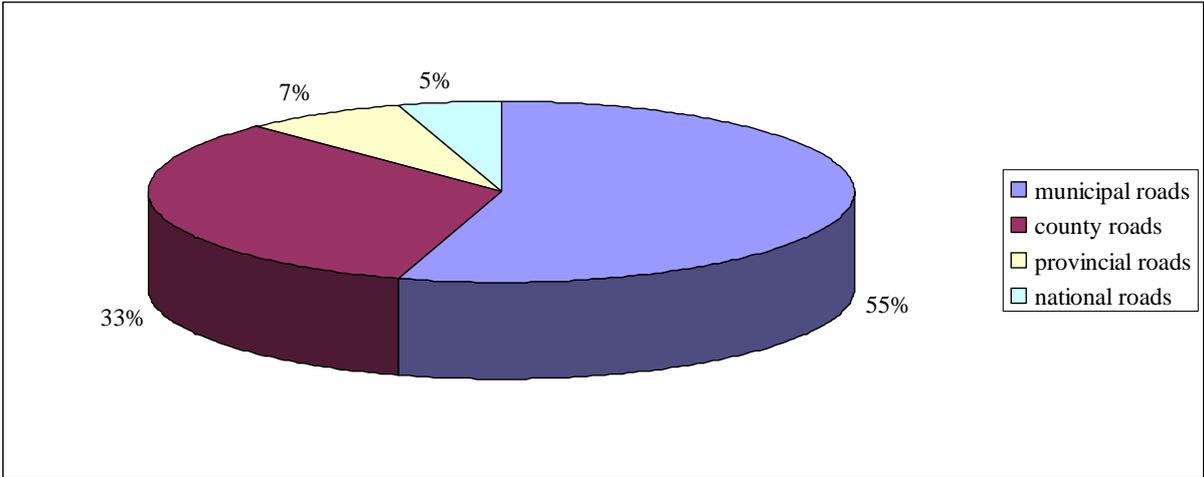


Figure 1. The structure of public roads in Poland
 Source: Own work based on CSO data

The entry into force in 2006 of the provisions of the amended Act on special rules for preparation and implementation of investment in public roads, which greatly simplified the mode of acquisition of properties for roads, resulted in a steady increase in the length of public roads in Poland. However, only the simplification of the whole procedure of road construction in 2008 resulted in a significant increase in road investment in 2010 (Fig. 2).

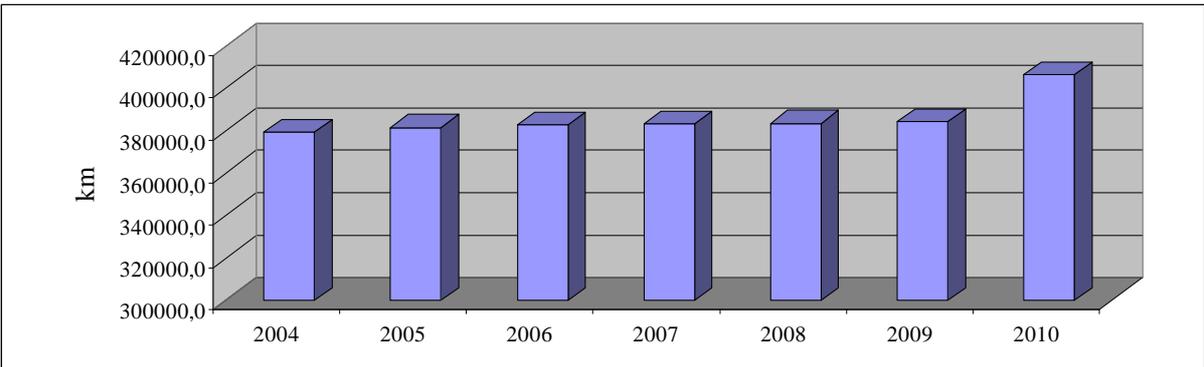


Figure 2. The length of public roads in Poland in the years 2004-2010
 Source: Own work based on CSO data

The existing sections of motorways and expressways in Poland currently do not represent a coherent network linking major cities and industrial areas of the country (Fig. 3). Lack of a comprehensive system of motorways and expressways limits the possibilities of the inflow of foreign investments and does not encourage the development of industry and services. It is also a significant obstacle to labor mobility and reducing unemployment rate.



Figure 3. Polish motorways and expressways

Source: Own work based on data of the General Directorate for National Roads and Motorways

3. LEGAL EFFECTS OF THE DECISION AUTHORIZING THE IMPLEMENTATION OF ROAD INVESTMENT

The Act on special rules for the preparation and implementation of investment in public roads includes radical, as for the Polish standards, solutions for the transfer of ownership rights to the land under the proposed road lane to a public law entity, based on the decision authorizing the implementation of road investment.

The decision authorizing the implementation of road investment includes in particular [Ustawa 2003]:

- 1) requirements for the road to be linked with other public roads, including their category;
- 2) determining area demarcation lines;

- 3) conditions resulting from the need for environmental protection, protection of historical monuments and contemporary cultural heritage, as well as defense needs of the state;
- 4) requirements for the protection of legitimate interests of third parties;
- 5) approval of the division of property;
- 6) designation of the property or part thereof, according to real estate cadastre, which will become the property of the State Treasury or appropriate local authorities;
- 7) approval of the construction project;

If necessary, the decision may contain other terms such as:

- a) obligation to rebuild the existing utilities,
- b) obligation to rebuild roads of other categories,
- c) determining the restrictions on the property use for the execution of the above obligations.

Legal consequences of the decision authorizing the implementation of road investment in relation to property rights, bonds and permanent management have been presented in Table 1 below. The decision authorizing the implementation of road investment is issued by the governor with regard to national and provincial roads, or the staroste for the county and municipal roads, respectively.

Table 1. The legal effects of the decision authorizing the implementation of road investment

Rights to the property covered by demarcating lines of road investment	Legal effects of the decision authorizing the implementation of road investment
Property	Acquisition by virtue of law by the State Treasury or a local government on the day of the decision becoming final
Perpetual usufruct	Expiration on the day of the decision becoming final
Limited rights in rem in immovable property of the State Treasury and local government	Expiration on the day of the decision becoming final
Permanent administration (does not apply to the road manager)	Final decision is the basis for the issue of the decision on termination
Rental agreement, leasing, lending aggravating the real estate of the State Treasury and local governments	Final decision is the basis for termination of contracts by the road manager with an immediate effect
Rental agreement, leasing, lending aggravating the property acquired by virtue of law	Expire after 3 months of the decision becoming final

Source: Own work

3.1 Restrictions on the use of the property for the purpose of reconstruction of technical infrastructure

In many cases, road construction also requires the reconstruction of the existing public utilities. According to the Act on special rules for the preparation and implementation of investment in public roads - the decision authorizing the implementation of road investment includes, if necessary, arrangements regarding the obligation to rebuild 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 area designated for the construction of the road by demarcating lines. Location of technical infrastructure on private property does not require prior negotiation with the owner or perpetual usufructuary of the property.

The decision authorizing the implementation of road investment, which also includes authorization for the location of a given infrastructure on the property, results in a limitation on the use of the property by the owner or perpetual usufructuary of the property. The decision should indicate the area of a property occupied for infrastructure, and also define the obligation of the owner or perpetual usufructuary to make the property accessible in order to carry out activities related to maintenance and emergency repairs of public utilities.

The responsibility of a public road investor executing reconstruction of public utilities is to restore the property to its original state. If the restoration of the property to its original state is impossible, or causes undue hardship or expenses, the party has a claim for compensation for damage caused by the reconstruction. The reconstruction of technical utilities may also result in a decrease in property value and, in consequence, generate additional compensation claims.

3.2 Passage of road investment through areas of flowing water or areas of railway lines

In cases where the public road investment requires passage through areas of flowing water or areas of railway lines there is no legal consequence of the property transition to the relevant public law entity. Then the relevant road manager is entitled to a free of charge occupation of the area for the duration of the investment.

The principles of the free occupation (scope, conditions, term) are defined by a written agreement between the road manager and the rail infrastructure manager or the appropriate authority exercising ownership rights to flowing water, such as the Province Marshal. The agreement should be concluded not later than 30 days prior to the planned occupation of the property, or without due delay if the decision authorizing the implementation of road investment is immediately enforceable.

For damages caused by the occupation of the property there is entitlement to compensation determined under the principles of the Civil Code, therefore, in the absence of an agreement, it may be brought before a civil court. The obligation to pay compensation lies with the relevant manager of the road.

3.3 Conveyance of the property covered by the decision authorizing the implementation of road investment

The decision authorizing the implementation of road investment shall state the date of the conveyance of the property, or the conveyance of the property and empty premises and other spaces. This term shall not be shorter than 120 days from the date on which the decision authorizing the implementation of road investment has become final.

The owner or perpetual usufructuary has the right to free utilization of the property by the conveyance deadline. It is not necessary to conclude an agreement on this with the road manager, as this power is clear from the Act.

Obligations arising from the decision authorizing the implementation of road investment are

subject to administrative enforcement. Therefore, it also applies to the conveyance of the property ownership by the owners or perpetual usufructuaries, as well as persons who are entitled to limited rights in rem.

Enforcement authorities include:

- The Governor - in relation to the decision authorizing the implementation of road investment for national and provincial roads,
- The staroste - in relation to the decision authorizing the implementation of road investment for the county and municipal roads.

The enforcement of the obligation under the decision authorizing the implementation of road investment should be carried out within 30 days of the receipt of the request of the competent road manager.

The question of the property conveyance when the decision authorizing the implementation of road investment was made immediately enforceable was settled in a different way. The effect of such a decision is an immediate conveyance of the property, emptying the premises and other spaces. This obligation applies to the owner, perpetual usufructuary, as well as any other holder of the property, premises or other spaces. The immediate implementation of the decision results in the obligation of the conveyance of the property ownership, although the rights to the property have not been unvested yet (decision is not yet final). In such cases, the manager of the future public road is entitled to an immediate actual possession of it.

If the decision authorizing the implementation of road investment, which was immediately enforceable, concerns a property developed with a residential building, or a building with an allocated dwelling, the relevant road manager is obliged, within the actual taking possession of the property, to indicate the replacement property. If the actual taking possession of the property takes place after the lapse of 120 days from the date on which the decision authorizing the implementation of road investment has become final, the relevant road manager is not obliged to indicate the replacement property.

Replacement property is a property that is in the same locality where the existing property is located, equipped with at least such technical devices, as the premises previously used, with an area of rooms as in the premises previously used; this condition is deemed fulfilled if the household member has 10 m² of the total area of the rooms, and in case of a single-person household - 20 m² of the area.

The obligation to provide replacement premises rests with the future manager of a public road. Persons indicated with replacement premises are obliged to leave them at the lapse of 120 days from the date on which the decision authorizing implementation of road investment has become final. The obligation to leave the premises within a period specified by law is subject to the administrative enforcement.

4. THE SCOPE OF SURVEYING AND LEGAL DOCUMENTATION PREPARED FOR THE PURPOSE OF ISSUING A DECISION AUTHORIZING THE IMPLEMENTATION OF ROAD INVESTMENT

The Act on special rules for the preparation and implementation of investment in public roads includes regulations regarding the surveying documentation needed to be developed in connection with the decision authorizing the implementation of road investment.

The practical implementation of this Act, however, revealed that during the preparation of

documentation for road investments, other surveying and legal documents are also necessary. This necessity is a consequence of unregulated legal status of the properties. Surveying and legal documentation prepared incorrectly may result in refusal of entry of the ownership rights in the land and mortgage register, which was acquired by virtue of law, by the State Treasury or local governments. It should be noted here that the Act [Ustawa 2003] requires the competent authority within one month to determine a compensation for the loss of ownership rights, perpetual usufruct or limited rights in rem.

Although the legislature does not make determining a compensation conditional on making entries in the land and mortgage register, but the authorities competent for determining the compensation must be extremely cautious in the disposition of public funds.

Therefore, the role of surveyors in the preparation of documentation for the purpose of obtaining by the investor a decision authorizing the implementation of road investment is very important, as their tasks in this process include a number of issues. It should be emphasized that the proper preparation of the surveying and legal documentation affects both the accuracy of determining the scope of the decision authorizing implementation of road investment, as well as compensation proceedings.

4.1 Documentation regarding changes in land and building register

In areas covered by former land and mortgage registers, established before 1945, often preparation of documents of property division requires a prior separation of the property disclosed in separate land and mortgage registers, which currently constitute a single record parcel. The reason for such conditions is the mode of establishing land registers in Poland in the 60s and 70s of the twentieth century, which consisted of determining the boundaries of parcels according to beneficial ownership. Because the beneficial ownership differed from ownership, record parcels comprising properties which were owned by different entities (as disclosed in separate land and mortgage registers) were often created.

According to the regulation of the Council of Ministers of 7th December 2004 on the manner and mode of conducting property division [Rozporządzenie 2004], a map with the division project includes, among others, information about the boundaries of the property being divided. Lack of indicating the above boundaries will disqualify the surveying documentation causing that it cannot qualify as a study on the division of property. Consequently, any property through which the division line of the site boundaries passes, should have boundaries indicated on the map with the draft division, submitted to an application for authorizing the implementation of road investment. In a situation where the cadastral parcel "connects" several properties, the first step is to prepare the documentation, which is the basis for disclosure in the study of land registers of separate properties, which will then be subject to division under the Act on special rules for the preparation and implementation of investment in public roads (Fig. 4).

This stage ends with the issuance of an administrative decision, stating the amendments in land and buildings register under the provisions of the Act of 17th May 1989 Geodetic and Cartographic Law [Ustawa 1989] and the regulation of the Minister of Regional Development and Construction of 29th March 2001 on the land and building register [Rozporządzenie 2001]. An appeal against these decisions is subject to the Regional Superintendent of Surveying and Mapping.



Figure 4. Condition disclosed in the land register and a map presenting the division of the properties connected in a record parcel.

Source: Own work based on materials obtained from the City of Krakow

These activities result in the consistency of data in land registers and land and mortgage registers and allow division of a property in the further stage.

4.2 Draft property divisions

The decision authorizing the implementation of road investment includes, among others, decisions regarding the approval of the design of the property division. The division is carried out according to the line demarcating the area of the designed public road. Exceptionally, the local development plan does not have any significance here, although in Poland the conformity of the proposed division of a property with the local plan is a prerequisite for the admissibility of the division.

Projects of property division do not require an opinion on their compliance with the findings of the local plan, but they must be drawn up in accordance with separate regulations (Fig. 5), namely the Real Estate Management Act [Ustawa 1997] and the regulation of the Council of Ministers on the manner and mode of conducting property division [Rozporządzenie 2004].

MAPA Z PROJEKTEM PODZIAŁU NIERUCHOMOŚCI

OPRACOWANYM NA PODSTAWIE ART. 12 USTAWY O SZCZEGÓLNYCH ZASADACH
PRZYGOTOWANIA I REALIZACJI INWESTYCJI W ZAKRESIE DRÓG PUBLICZNYCH

Działka 374 objęta KR1P/00014647/3

Województwo: Małopolskie
Powiat: M. Kraków
Gmina: M. Kraków
Jednostka ewidencyjna: Krowodrza
Obręb: 29
Ks. zleceń nr: 1172/08
Arkusz mapy: 823D
Skala 1:1000

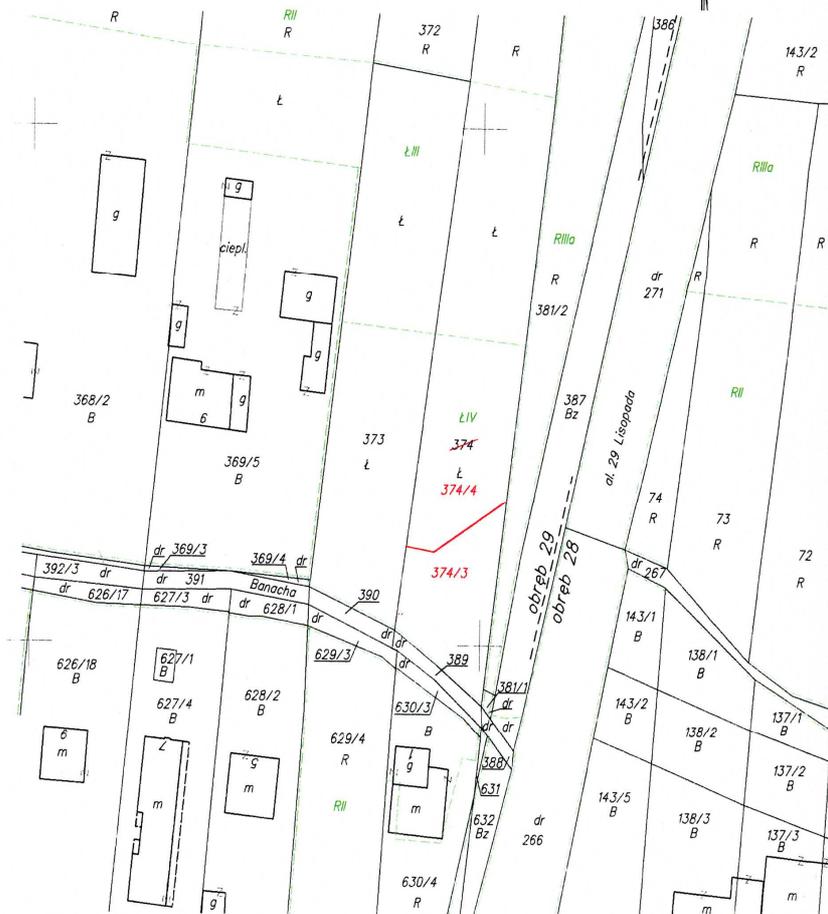
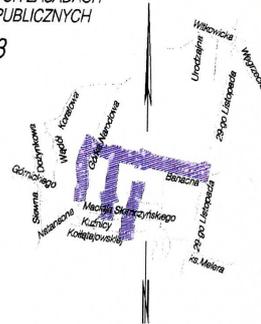


Figure 5. Sample map with the draft division constituting enclosure to the decision authorizing the implementation of road investment

Source: Own work based on materials obtained from the City of Krakow

The study of documentation being developed for the purpose of road investments has revealed that the execution of the property division projects must often be preceded by a regulation of their legal status. Moreover, the above analysis showed no interaction – already at the stage of

design documentation – of the persons drawing up the project of demarcation lines of the road investment with the surveyors, in order to reflect the current development state on the parcel. Determination of demarcation lines is not only a graphical representation of investor's intentions, but it also results in a change of land ownership within the limits of the line, and in consequence, affects the costs of the investment. In this way it would be possible to avoid e.g. determining lines demarcating a road investment, intersecting a building, or leaving out of the scope of investment parcelled out plots of insignificant area, such as 1 m².

4.3 Documentation regarding the disclosure of current designations of properties acquired under a decision authorizing the implementation of road investment

According to the Act on special rules for the preparation and implementation of investment in public roads [Ustawa 2003], the decision authorizing the implementation of road investment includes, among others, designation of a properties or parts thereof, which become by the virtue of law the property of the State Treasury or a relevant local authority. At this point a problem should be noted regarding incompatibility of the property designation which occurs between the Section I of the land and mortgage register and the land and property register, and records of land and buildings. Such a situation is a consequence of changes in land registration systems.

In the case of properties subject to the partial acquisition, under the decision authorizing the implementation of road investment, division statements include necessary lists of land changes, and the accuracy of the documentation is verified by its admission to the geodetic and cartographic resource.

The situation is different with respect to properties subject to acquisition as a whole, in relation to which the Act on special rules for preparation and implementation of investment in public roads, does not require additional surveying documentation. However, since decisions authorizing the implementation of road investment constitute the basis of the rights acquired by the public entities to properties located within the lines demarcating the investment being entered in the land and mortgage register, the application to the land and mortgage court must be accompanied by legal and surveying documentation (inventories of land changes, synchronization lists, etc.), which enable to make the desired entry also for the property subject to the acquisition in its entirety.

5. SUMMARY

One of the major effects of the implementation of the Act on special rules for preparation and implementation of investment in public roads is the acquisition of property rights for the purpose of public road construction, by the virtue of law, by the State Treasury or local government units on the date when the decision authorizing the implementation of road investment becomes final. The issue of the conveyance of the property subject to the decision authorizing the implementation of road investment was also covered by detailed regulations, clearly stating the rights and obligations of each party to the proceedings which, from the point of view of the people losing their right to the property, is of utmost importance.

These regulations should be assessed as highly desirable in the context of the existing problems associated with the acquisition of land for investment. At the same time, simplifying

the procedure for the preparation of road investments has led to a significant increase in public roads in Poland, although it should be noted that this increase primarily concerns local roads.

It is also worth mentioning that the Act on special rules for the preparation and implementation of investment in public roads regulates the use of flowing waters areas and areas of railway lines in a situation where the road investment passes through these areas. The course of action and the responsible administration organs were clearly identified.

All the conditions of the road investment becoming a single administrative decision resulted in the surveying documentation being extremely important in its proper preparation, as it accompanies the application for issuance of a decision authorizing the implementation of road investment. It should be borne in mind that this decision approves both the location of a road and also surveying divisions according to the line demarcating the investment, as well as it indicates the properties or parts thereof, which become owned by public entities. It is also the basis for introducing changes to the land register of and in land and mortgage registers.

Scientific work financed from the budget for science in the years 2010-2013 as a research project NN524 465 839

REFERENCES

Gdesz M., Trembecka A., 2011, Regulowanie stanu prawnego nieruchomości pod drogi - Regulating legal status of real estate properties intended for public roads, Katowice, Wydawnictwo Gall, Language: Polish

Kolińska M., Kwartnik-Pruc A., Trembecka A., 2010, W pasie drogi: dokumentacja geodezyjno-prawna do wniosku o wydanie decyzji o zezwoleniu na realizację inwestycji drogowej - In the lane road: geodetic and legal documentation to the application for decision on the permission for the implementation of road investment, Geodeta: magazyn geoinformacyjny, vol. 2, pages 56-58, Language: Polish

Rozporządzenie Ministra Rozwoju Regionalnego i Budownictwa z dnia 29 marca 2001 r. w sprawie ewidencji gruntów i budynków (Dz.U. Nr 38, poz. 454 z późn. zm.) - Regulation of the Minister of Regional Development and Construction of 29th March 2001 on the land and property register (Official Journal No.38, item 454, as amended), Language: Polish

Rozporządzenie Rady Ministrów z dnia 7 grudnia 2004 r. w sprawie sposobu i trybu dokonywania podziałów nieruchomości (Dz. U. Nr 268, poz. 2663) - Regulation of the Council of Ministers of 7th December 2004 on the manner and mode of conducting property division (Official Journal No. 268, item 2663),) Language: Polish

Trembecka A., 2011, Nabywanie nieruchomości pod drogi przez podmioty publicznoprawne w trybie specustawy drogowej. Jedna decyzja zamiast pięciu - One decision instead of five: acquisition of real property for roads, Geodeta: magazyn geoinformacyjny, vol 11, pages 39-42, Language: Polish

Ustawa z dnia 17 maja 1989 r. Prawo geodezyjne i kartograficzne (Dz.U. z 2005 r. Nr 240, poz. 2027 z późn. zm.) - The Act of 17th May 1989, Geodetic and Cartographic Law (Official Journal of 2010 No.193, item 1287 as amended) Language: Polish

Ustawa z 21 sierpnia 1997 r. o gospodarce nieruchomościami (tekst jedn. Dz. U. z 2004 r. Nr 261, poz. 2603 z późn. zm.) - The Act of 21st August 1997 on Real Estate Management (consolidated text of Official Journal of 2004, No.261, item 2603 as amended) Language: Polish

Ustawa z dnia 10 kwietnia 2003 r. o szczególnych zasadach przygotowywania i realizacji inwestycji w zakresie dróg publicznych (tekst jedn. Dz. U. z 2008 r. Nr 193, poz. 1194 ze zm.) - The Act of 10th April 2003 on special rules for the preparation and implementation of investment in public roads (consolidated text of Official Journal of 2008, No.193, item 1194, as amended.), Language: Polish

Wolanin M., 2009, Komentarz do ustawy o szczególnych zasadach przygotowywania i realizacji inwestycji w zakresie dróg publicznych - Commentary on the Act on special rules for preparation and implementation of investment in public roads, Warszawa, C.H. Beck, Language: Polish

CONTACTS

Anita Kwartnik-Pruc, PhD (eng)
AGH University of Science and Technology
Department of Engineering Surveying and Civil Engineering
Faculty of Mining Surveying and Environmental Engineering
Av. A. Mickiewicza 30,
30-059 Krakow
POLAND
Tel. +48126173326
Fax + 48126172299
Email: anita.kwartnik@agh.edu.pl

Anna Trembecka, PhD (eng)
AGH University of Science and Technology
Department of Engineering Surveying and Civil Engineering
Faculty of Mining Surveying and Environmental Engineering
Av. A. Mickiewicza 30,
30-059 Krakow
POLAND
Tel. +48126174486
Fax + 48126172299
Email: anna.trembecka@agh.edu.pl