


# The Role of Values in Decision-Making for National Development Planning (a study in light of legal orders in Poland and Norway)

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**Abstract:** The issues discussed in this paper relate to the axiological justification of planning decisions as part of development policy pursued by public authority bodies, using the example of Polish and Norwegian planning systems. This study derived from the premise that the contemporary model of planning for socio-economic development is crucially significant in terms of organizing the activities of public administration that aim to meet socio-economic needs. In addition to values, the article also identifies legal institutions through which the values in question may be integrated in planning decisions for the development pursued with public participation.

## 1. Introduction

Values should underpin the objectives to be accomplished so as to further development, including prospective benefits the community may enjoy as a result. Hence, the question is whether and how values influence planning decisions for national development. On the one hand, the challenge is to take social values into account, while on the other one must factor

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in the economic objectives that the development policy aims to achieve<sup>1</sup>, financial realities, as well as seek to incorporate universal values into the legal mechanisms of that policy. Therefore, next to values, it is important to identify those legal institutions which enable their integration in the decision-making while planning for development.

For the purposes of research, it has been presumed in advance that the pursuit of development policy is a vital component in socio-economic development planning which, in conjunction with spatial planning and multi-annual financial planning, constitutes an instrument with which socio-economic processes can be sensibly structured.<sup>2</sup> Hence, in the findings on the axiological rationale of development planning decisions in Poland, the Act on the Principles of Development Policy (APDP) of 6 December 2006<sup>3</sup> plays a paramount role as, in conjunction with the systemic statutes, it establishes the competence mandate for the executive bodies to act in this sphere. At the same time, it should be emphasized that the Polish system of socio-economic development planning is strongly linked to the EU *acquis* with respect to cohesion policy (strategic programming).<sup>4</sup> In fact,

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<sup>1</sup> Policy of a public authority policy understood as “the determination of the most effective, legally permitted modes of action which administration may employ to accomplish public goals, modes which are admissible under existing legal circumstances”; thus e.g. Jan Jeżewski, “Polityka administracyjna. Zagadnienia podstawowe,” in: *Administracja publiczna*, ed. Jan Boć (Wrocław: Kolonia Limited, 2003), 309. Thus, the idea is to arrive at “an optimal formulation of the legal facet of state policy”; After: Michał Kulesza, “Z problematyki badań nad metodami działania administracji,” in: *Zbiór studiów z zakresu nauk administracyjnych*, ed. Zygmunt Rybicki, Maria Gromadzka-Grzegorzewska and Mirosław Wyrzykowski (Wrocław-Warszawa-Kraków-Gdańsk: Ossolineum, 1978), 337. In Poland, actions and activities geared towards development have been defined in pertinent legislation as “conduct of development policy”; its terminological EU equivalent is “cohesion policy”.

<sup>2</sup> Katarzyna Kokocińska, “Integrated programming in national development,” *Ruch Prawniczy Ekonomiczny i Socjologiczny*, vol. 4 (2019): 139–149; Katarzyna Kokocińska, “Legal instruments in the development of electromobility in the European Union, with particular focus on planning acts,” *Review of European and Comparative Law*, no. 44(1) (2020): 81–102.

<sup>3</sup> Act on the Principles of Development Policy of 6 September 2007, (consolidated text Journal of Laws of 2021, item 1057), hereinafter as APDP or Act of 2006.

<sup>4</sup> “Strategic programming” is distinguished here within the framework of socio-economic development planning (development planning), whereby it encompasses procedures

both are functionally coupled. Therefore, it is likely that the catalogue of EU objectives and values coincides with the legal mechanism behind domestic decision-making for development planning. For this reason, it would be advisable to examine the legal system of a non-EU member state to identify common values (and objectives) and ascertain how they are taken into account in the planning process. The planning system selected for this analysis (albeit not cited in extensive detail due to the scope of the study) originates from Norway, where the Planning and Building Act of 2008 is central to development planning.<sup>5</sup>

## 2. The Axiology of Decision-Making

According to Z. Ziemiński, “(...)the norms of a given legal system draw their axiological rationale (justification) in an appropriately ordered system of values that the implementation of legal norms is supposed to serve”<sup>6</sup>; in such instances, one may assert that the system is axiologically cohesive. The law is to further certain values, thus promoting the achievement of states of affairs that the community finds advantageous or desirable.

From the standpoint of jurisprudence, values constitute the substrate for the law in force and its applications alike. Legal norms are founded on values<sup>7</sup>, which means that when law is applied or planning decisions made, they must be taken into account by seeking axiological justification for such applications or decisions. In their analyses, legal researchers usually adopt a systemic perspective for the assessment of normative solutions.<sup>8</sup> Such an approach facilitates identification of the values which deter-

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for the preparation of programming acts based on the provisions of EU law concerning implementation of the cohesion funds.

<sup>5</sup> Act of 27 June 2008 no. 71 relating to Planning and the Processing of Building Applications (the Planning and Building Act).

<sup>6</sup> Zygmunt Ziemiński, *Wartości konstytucyjne. Zarys problematyki* (Warsaw: Wydawnictwo Sejmowe, 1993), 7; Maciej Zieliński, Zygmunt Ziemiński, *Uzasadnianie twierdzeń, ocen i norm w prawnoznawstwie* (Warsaw: Państwowe Wydawnictwo Naukowe, 1988), 305; Jan Zimmermann, ed., *Wartości w prawie administracyjnym* (Warsaw: Wolters Kluwer business, 2015), 465.

<sup>7</sup> Jan Zimmermann, *Aksjomaty prawa administracyjnego* (Warsaw: Wolters Kluwer business, 2013), 74.

<sup>8</sup> For a critique of the systemic approach see Marek Piechowiak, “W sprawie funkcjonalności i dysfunkcjonalności konstytucji. Zagadnienia filozoficzno-prawne,” *Ruch Prawniczy*

mine the identity of a given system of law and result in socially desirable outcomes. It is assumed that a system of values originates with the rational legislator and spans values that become binding under law (legal values) and values which the legislator invokes through general clauses or non-specific wording; public morality is another component, comprising all those values/moral norms that are shared by the majority.<sup>9</sup>

For the decision-maker (planning decision) it does not suffice that a system of values has been established, because the relationships between them are relevant as well. The pursuit of a certain value does not take place in an axiological vacuum, since it is contiguous to other values. Therefore, the planning decision-maker is left with no choice but to make a careful axiological diagnosis. Where a conflict of values occurs, the determining authority is under obligation to weigh them appropriately and make the decision drawing on the adopted hierarchy of values arising from the axiology of the sources of law and, in consequence, from their constitutionally defined order.<sup>10</sup>

Sources of law derive their axiological legitimacy from three groups of values within the system of law. According to M. Kordela, this includes values which are commonly recognized as binding, as well as legal values—constitutional ones in particular—encompassing the foremost principles of a political system, such as democracy which governs sovereign authority, the division of power as a value which informs the system of government, or the notions of social justice and social market economy as the mainstays of the social and economic system. Even superior to the latter, there are values such as sovereignty, dignity, solidarity, and subsidiarity. The second group is constituted by the normative competences of public authority: a defined and constitutionally guaranteed system of sources of law along with a hierarchy of resulting values. Custom and

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*Ekonomiczny i Socjologiczny*, vol. 3 (1995): 131.

<sup>9</sup> This category of values includes humanity's universal values such as goodness, beauty, truth, justice, which are often referred to in constitutional preambles. See Marzena Kordela, "Aksjologia źródeł prawa," *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, vol. 2 (2016), 15–26.

<sup>10</sup> Leszek Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, wyd. 15 (Warsaw: Wolters Kluwer, 2011), 52–57; Krzysztof Pleszka, *Hierarchia w systemie prawa* (Krakow: Wyd. UJ, 1988), 119–132.

precedent as well as the tenets of legal text exegesis makes up yet another group.<sup>11</sup> The hierarchy of sources of law and the values thence derived are intended to supply adequate axiological justification for a decision. This does not mean that axiological conflicts do not occur in the course of making a decision. As A. Węgrzecki argues, any situation in which a person participates may—from an axiological viewpoint—bring forth distinct values and lead to conflict<sup>12</sup> which most often manifests in the competitiveness of values. A genuine problem arises when competition ensues between values at the same level of hierarchy.

While being aware of a certain simplification for the purposes of further inquiry, it has been assumed in the light of the above that the system of values which informs the activities of executive authorities in undertakings geared towards development consists of universal values, constitutional values (including the values stated in the economic constitution of the EU<sup>13</sup>), as well as values/principles resulting from detailed legislation pertaining directly to development-oriented action.

### 3. Development Planning: Making Decisions about Future Decisions

The conduct of development policy and, consequently, socio-economic planning in Poland is comprehensively regulated in APDP, which specifies the entities involved and the modes of cooperation between them, as well as the principles of pursuing that policy<sup>14</sup> with respect to social and economic development in the spatial dimension. Essentially, the legal mechanism of implementing that policy is determined by the catalogue of entities (the Council of Ministers and local government bodies) and their relations based on interrelated activities. Pursuant to Article 2 APDP, the conduct of

<sup>11</sup> Kordela, “Aksjologia,” 20; Marzena Kordela, *Zasady prawa. Studium teoretycznoprawne* (Poznań: Wydawnictwo Naukowe UAM, 2012), 102.

<sup>12</sup> Adam Węgrzecki, “O konflikcie wartości,” *Zeszyty Naukowe Akademii Ekonomicznej w Krakowie*, vol. 22 (2006): 5–12.

<sup>13</sup> Kazimierz Strzyczkowski, “Uwagi o zadaniach nauki o prawnych formach działania administracji gospodarczej,” in *Instrumenty i formy prawne działania administracji gospodarczej*, ed. Bożena Popowska, Katarzyna Kokocińska (Poznań, Wydawnictwo Naukowe UAM, 2009), 53.

<sup>14</sup> More broadly in Katarzyna Kokocińska, *Prawny mechanizm prowadzenia polityki rozwoju w zdecentralizowanych strukturach władzy publicznej* (Poznań: Wydawnictwo Naukowe UAM, 2014), 309.

development policy includes delivering public tasks on a national scale and, simultaneously, in the regional and local dimensions, so as to pursue the objectives defined in relevant statutes.<sup>15</sup>

Socio-economic development planning is a key element of development policy.<sup>16</sup> The legislator, in addition to stating the goals (values – objectives for the conduct of development policy), defines the circumstances which justify the issue of planning acts, simultaneously indicating their substantive scope. The national socio-economic planning system comprises development strategies executed by means of programmes as well as public policies. Development strategies are declarative in nature and refer to trends, challenges, concepts and scenarios of socio-economic development in a specific perspective, indicating the objectives, directions and priorities of development in a particular sphere, whereby their territorial or substantive scope may differ. Development strategies are adopted by the Council of Ministers (national, sectoral, domain-specific) and by local government bodies (regional and local development strategies), but their essential feature is that they remain consistent within the adopted system of planning documents, also where the pursued socio-economic development goals are concerned. Programmes, on the other hand, qualify as executive instruments in relation to the development strategy and state

<sup>15</sup> Article 2 APDP.

<sup>16</sup> For the purposes of this analysis, planning is assumed to mean the activity of actors aimed at designing the future, by defining objectives and instruments (including legal measures) to achieve them. See: Janusz Łętowski, “Miejsce i funkcje planowania w działalności administracji,” *SP* 1983, vol. 1 (75): 3–34; Kazimierz Strzyczkowski, *Administracyjnoprawne instytucje planowania* (Warsaw: Wydawnictwo Uniwersytetu Warszawskiego, 1985), 164; Peter Badura, *Das Planungsermessen Und die rechtsstaatliche Funktion des Allgemeinen Verwaltungsrechts, in Festschrift zum 25 Jährigen Bestehen des Bayerisches Verfassungsgerichtshof*, ed. Hans Domcke (München: Booberg, 1972), 157–182; Eberhard Schmidt-Assmann, “Planung unter dem Grundgesetz,” *Die öffentliche Verwaltung*, no. 16 (1974): 541–547; Eberhard Wille, ed., *Konzeptionelle Probleme öffentlicher Planung, Allokation im marktwirtschaftlichen System*, no. 7 (Frankfurt nad Menem, Bern, New Yourk, Nancy: Peter Lang International Academic Publishers, Berlin, 1985), 278; Werner Hoppe, Hans Scharmann, Reimar Buchner, *Rechtsschutz bei der Planung von Straßen und anderen Verkehrsanlagen* (München: Beck, C. H. (Verlag), 2001), 373; Edwin Buitelaar, Maaike Galle, Niels Soler, “Plan-led planning systems in development-led practices: an empirical analysis into the (lack of) institutionalisation of planning law,” *Environment and Planning A) Economy and Space*, vol. 43( 2011), 928–941, <https://doi.org/10.1068/a43400>.

goal-oriented details. Importantly, there exists a functional link between planning decisions (which assume the form of planning acts) and legal acts, which for their part contain incentives for the accomplishment of objectives stipulated in such instruments. Thus, they perform a motivating function to make certain states of affairs a reality<sup>17</sup> (i.e. achieve the values-objectives specified therein).

The domestic structure of the socio-economic development planning system is profoundly influenced by EU solutions. The implementation of the EU cohesion policy<sup>18</sup> by the Member States follows the principle of programming involving planning documents: partnership agreements and programmes, whose preparation and implementation adhere to the EU principles and values relating to cohesion and development activities.<sup>19</sup> Also, a strong connection with the general objectives of the functioning of the EU is particularly conspicuous in this area of commitment of its institutions.<sup>20</sup>

The development planning system in the Kingdom of Norway has been structured differently. The legislation focuses primarily on spatial planning. Although a separate general law governing the activities of public authorities in the field of development has not been enacted, it does not mean that relevant references are lacking or that state activity in this respect remains thoroughly unregulated. The planning framework adopted in Norway is based on the integrated approach to development, which means that social and economic development are important elements of

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<sup>17</sup> Marek Szydło, "Planowanie indykatywne jako funkcja państwa wobec gospodarki," in *Funkcje współczesnej administracji gospodarczej. Księga dedykowana Profesor Teresie Rabskiej*, ed. Bożena Popowska (Poznań: Wydawnictwo Poznańskie, 2006), 143–162.

<sup>18</sup> Article 174 TFEU.

<sup>19</sup> Title II, Strategic Approach, Chapter I, Partnership Agreement, Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, Official Journal of the European Union L 231/159 of 30.06.2021, hereinafter as Regulation 2021/1060.

<sup>20</sup> Articles 3 and 4 TEU.

spatial planning<sup>21</sup>, although the latter is often subject to detailed provisions in sectoral legislation.

According to the Planning and Building Act, planning in the Kingdom of Norway takes place at three levels: central, regional and local. Such a paradigm of planning results in different scopes of planning acts adopted at each level of governance and their reciprocal effects. Regional and local planning is part of the national policy and one approaches it as an instrument of coordination between different tiers of administration, as well as a tool for coordinating sectoral policies. At the central level (within the Ministry of Local Government and Regional Development), a document is drafted which sets out the governmental guidelines on regional and urban planning, on whose grounds local governance bodies work out regional and municipal planning strategies. The central planning guidelines define the objectives and values that should be taken into account in the planning process, which includes responding to distinct interests. Regional planning takes advantage of corresponding strategies (drawing on the national development goals and the UN Sustainable Development Goals<sup>22</sup>) and plans as its key instruments, while planning processes at this level rely on cooperation in terms of inter-municipal planning and as part of the regional planning forum. Here, areas of interest include transport infrastructure, housing and commercial development, social and cultural development, education, public health as well as the protection of soil, forests, coastal zones, etc. In addition, local authorities may request municipalities to engage in collaborative inter-municipal planning if they consider it necessary in order to address current challenges. An inter-municipal plan is an element of the planning effort next to plans for land use or spatial development in a particular municipality.

It follows from this brief overview of planning systems for development (also in spatial terms) that state development policies are devised at

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<sup>21</sup> The Polish system of socio-economic development planning is not extensively aligned with spatial planning, which is governed by the Planning and Spatial Development Act of 27 March 2003, even though attempts have been made to integrate the socio-economic and the spatial dimension in development planning documents elaborated at national, regional and local levels.

<sup>22</sup> *The Sustainable Development Goals* were adopted by UN member states by a General Assembly Resolution on 25 September 2015 in New York.



multiple levels in which public bodies exercise their authority. It may be noted that domestic circumstances are not the only important point of reference for planning decisions, as those arising from EU policies and global challenges need to be taken into consideration as well.

#### 4. Socio-Economic Development Planning in the Light of Values

Universal values, including constitutional values, are particularly significant for the efforts undertaken with a view to pursuing development. Moreover, public law rests on established axiological premises which inform its standard<sup>23</sup>, supplemented by the values introduced into the system by specific statutes (values relevant to its individual areas).<sup>24</sup> Bearing in mind the difficulty of arguing their hierarchy, a reconstruction of a catalogue of values in the planning activities of the state may be attempted.

The concept of “policy”, understood as the delineation of directions of state activities in various fields in order to achieve a specific goal, as well as the notion of “development”, approached as a process of change, are characterized by value-dependent relativity.<sup>25</sup> For this reason, the pursuit of development policy and the consequent planning must be situated in the current socio-economic context. The latter is determined by the purposes of the social and economic dimension of the EU common market, which prioritizes sustainable growth, highly competitive social market economy geared towards full employment and social progress, as well as conservation and improvement of the quality of the natural environment.<sup>26</sup> In Poland,

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<sup>23</sup> Andrzej Powałowski, ed., *Aksjologia Publicznego Prawa Gospodarczego* (Warsaw: C.H. Beck, 2022), 255.

<sup>24</sup> Katarzyna Kokocińska, ed., “Publicznoprawne aspekty udziału sektora MŚP w procesie realizacji strategicznych celów polityki rozwoju (“Aspectos de derecho público de la participación del sector de PYMES en el proceso de implementación de los objetivos estratégicos de la política de desarrollo”),” (Poznań, Wydawnictwo Naukowe UAM:2021), 19–43.

<sup>25</sup> J. Hausner argues that invoking specific values, legal and extra-legal norms, or rules of conduct is indispensable, because “(...) failure to comply with political rights and democratic rules hinders development in the long run--also because it means depriving individuals and groups of the necessary autonomy and civil society of its subjectivity.” Jerzy Hausner, *Zarządzanie publiczne* (Warsaw: Wydawnictwo Naukowe Scholar, 2008), 370.

<sup>26</sup> Article 3(3) of the Treaty on the European Union, consolidated version, Official Journal of the European Union of 26.20.2012, C 326/13, hereinafter as Treaty on the European Union or TEU.

that context derives from the constitutional principles of social market economy, inclusive of economic freedom and private property, solidarity, dialogue and cooperation of social partners. Consequently, the substance of a “development policy” will not be constant and tend to have various meanings assigned, but they will not transcend the boundaries delimited by the values – objectives that this obligation of the executive bodies should serve to achieve.

In Poland, “development policy” became a normative concept by virtue of APDP, having been defined through reference to specific values – objectives which are subject to normativization, understood as “the state of subsuming values within the normative scope of substantive law”.<sup>27</sup> The normative scaffolding for the definition of “development policy” relies on two value-oriented elements. On the one hand, it is to be pursued by way of “a complex of interrelated actions”, which should be approached as a value inherent in the paradigm of public management informed by decentralization of public authority and partnership. The other component of the definition lies in the espoused values – objectives that these activities are intended to serve: continual and sustainable development<sup>28</sup> of the country, socio-economic, regional and spatial cohesion, greater competitiveness of the economy and creation of new jobs, all of which have been assigned a specific legal meaning by both normative and policy acts.

It should therefore be assumed that, each time a planning decision is taken, the bodies designated to pursue development policy will be obliged to weigh the values, including those which reflect social needs in line with EU policies. In fact, when implementing measures for cohesion and development that receive co-financing from the EU budget, the Member States

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<sup>27</sup> Jan Boć, Piotr Lisowski, “Normatywizacja wartości w prawie administracyjnym,” in *Wartości w prawie administracyjnym*, ed. Jan Zimmermann (Warsaw: Wolters Kluwer business, 2015), 24.

<sup>28</sup> Anchoring in law also applies to “development” construed as an objective (value) towards which actions normatively defined as the conduct of a policy are geared. Z. Cieślak distinguishes a group of values pertaining to “the development of the state understood as a community of communities, including creation of spatial conditions for development, protection and use of environmental resources, creation of social conditions for development, creation of economic conditions for development and creation of scientific and cultural conditions for development.” Zbigniew Cieślak, “Istota i zakres prawa administracyjnego,” in *Prawo administracyjne*, ed. Zygmunt Niewiadomski (Warsaw: LexisNexis, 2011), 53–55.

are under obligation to align their strategic programming with the specific objectives and values towards which that support is allocated. At present, in addition to the objectives of a more competitive, smarter, greener Europe whose enhanced social dimension makes it closer to citizens by promoting sustainable and integrated development, one highlights the significance of climate objectives and the mechanisms of adaptation to climate change.<sup>29</sup>

One cannot fail to mention the contribution of EU institutions to the implementation of public governance standards, which have a substantial impact on planning-related decision-making. The much underscored need to prepare and implement programmes at the appropriate territorial level<sup>30</sup>, the obligation to establish partnerships in accordance with the principle of multi-level governance and the local approach involving regional and local authorities, economic and social partners, or actors who represent civil society, inform the essence of development-oriented efforts. Moreover, with regard to the implementation of funds, the 2021–2027 perspective attaches particular importance to horizontal principles, such as respect for fundamental rights and adherence to the EU Charter of Fundamental Rights. The objectives of the EU Funds are to be pursued with the objective of promoting sustainable development in mind – as set out in Article 11 TFEU – as well as in conjunction with the UN Sustainable Development Goals, the Paris Agreement and the principle of “do no significant harm”, while thoroughly respecting the environmental acquis of the Union.<sup>31</sup>

The principles/values applicable to public governance are vital in the development planning process. Therefore, the analyses of the Polish legal order must not disregard the systemic context of APDP, which to a substantial extent draws on the structure of the executive<sup>32</sup> and the relations between its bodies which presuppose decentralization of public power. This constitutional principle, interpreted in tandem with other constitutional principles, notably the tenet of subsidiarity, gives rise to the obligation to establish specific frameworks of tasks and competences, as well as delegate

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<sup>29</sup> Article 6, Regulation 2021/1060.

<sup>30</sup> Article 7, Regulation 2021/1060.

<sup>31</sup> Article 9, Regulation 2021/1060.

<sup>32</sup> Article 14, Constitution of the Republic of Poland, Journal of Laws of 1997, No 78, item 483; 2001, no. 28, item 319; 2006, no. 200, item 1471; 2009, no. 114, item 946.

their execution to lower tiers. This principle stresses the organizational arrangement involved in development policy (and its planning) and, as a result, the requirement to respect territorial self-governance communities, directly invoking the key values that attest to democratization of social life. This is augmented by the values to which the EU institutions and bodies give precedence: multi-level governance and partnership. Essentially, they seek to be closer to the citizen, who has an influence either indirectly (through representative entities) or directly on the directions of policies and planning decisions.

Given the above, when one examines the values espoused in the Norwegian system for development and planning, constitutional solutions prove to be the key elements, just as in the Polish system.<sup>33</sup> That approach stems primarily from Article 112 of the Constitution of the Kingdom of Norway, which asserts everyone's right to an environment conducive to health and to a natural environment in which productivity and diversity are preserved. According to the Norwegian Constitution, natural resources should be managed comprehensively and in the long term, so as to ensure that future generations will have the benefit of that right. The principle of sustainable development, reinforced by the principle/value of intergenerational justice<sup>34</sup> are further complemented by a standard of action undertaken by public authorities. Namely, in order to safeguard those rights, citizens are entitled to information on the state of the environment and on the effects of planned or ongoing intervention into natural habitats.

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<sup>33</sup> The Constitution of the Kingdom of Norway The Constitution, as laid down on 17 May 1814 by the Constituent Assembly at Eidsvoll, subsequently amended, most recently by Resolutions of 14 May 2020, <https://lovdata.no/dokument/NLE/lov/1814-05-17>

<sup>34</sup> Andrzej Klimczuk, "Intergenerationality, Intergenerational Justice, Intergenerational Policies," in *The Encyclopedia of Diversity and Social Justice*, ed. Thmopson Sherwood (Rowman & Littlefield, Lanham, MD 2015), 419–423; Janna Thompson, *Intergenerational justice: Rights and Responsibilities in an intergenerational Polity*. (MIASTO New York: Routledge, 2013), 198; Nina Tissera, "Intergenerational Justice," in *Encyclopedia of Corporate Social Responsibility*, ed. Samuel O. Idowu, Nicholas Capaldi, Matthias S. Fifka, Liangrong Zu, René Schmidpeter. (Berlin: Springer Heidelberg), 500, <https://doi.org/10.1007/978-3-642-28036-8>; Wilfred Beckerman, "The impossibility of a theory of intergenerational justice," in *Handbook of intergenerational justice*, ed. Joerg Chet Tremmel (Cheltenham: Edward Elgar Publishing, 2006), 53–71; Dale Jamieson, "Ethics, public policy, and global warming," *Science, Technology, & Human Values*, vol. 17(2), (1992), 139–153.

State bodies take action to implement these principles relying, among other things, on the provisions of the Planning and Building Act, a law whose premises draw on the UN principles of sustainable development. The Planning and Building Act promotes sustainable development in the interest of individuals, society and future generations<sup>35</sup>, while planning carried out under the provisions of this Act is intended to facilitate the coordination of governmental, regional and municipal functions, supplying grounds for administrative decisions on resource use and conservation. The adopted plans, which integrate development activities with spatial development, define the objectives of spatial, environmental, economic, social and cultural development of municipalities and regions, identify social needs and functions and determine how these functions can be discharged. The catalogue of core values includes protection of land resources, scenic qualities and the preservation of valuable landscapes and cultural environments; industrial and commercial development are stated as valuable goals as well, alongside promoting public health and addressing social inequalities in health. The Norwegian planning process is based on the standards of a state with highly advanced democracy. It is emphasized that planning and decision-making procedures, including administrative decisions, should ensure transparency, predictability, participation of all authorities and the public, as well as compliance with international obligations. The principle of universal accessibility in planning is intended to guarantee cohesion of actions undertaken by local authorities, whether self-governmental, regional and central, which translates into realization of the previously adopted values, at each level of public governance.<sup>36</sup>

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<sup>35</sup> LANDTIME – The Planning and Building Act between market demand, land policy, sustainability, temporality, and intergenerational justice, project manager: Associate Professor Knut Boge, Department of Property and Law, Norwegian University of Life Sciences, Funding: The Research Council of Norway,

<sup>36</sup> Mønnesland Jan, Naustdalslid Jon, “Planning and Regional Development in Norway,” *Built Environment (1978-)* 26, no. 1 (2000): 61–71, <http://www.jstor.org/stable/23288975>; Thor Falkanger, “Planning law in Norway,” in *Planning Law In Western Europe*, ed. John Francis, Garner, Nigel P. Gravells (Amsterdam: Elsevier Science Publishers B.V. North-Holland, 1986): 245–268.

## 5. Legal Institutions of Public Participation in Planning Decision-Making

When adopting a certain system of values (and their hierarchy) which are relevant to development, the legal institutions that guarantee their inclusion in planning decision-making are crucial if the process is to be successful. The above analysis of EU regulations and domestic legislation (Polish and Norwegian), shows that the legal institutions which emphasize partnership in the planning process have a considerable impact. Openness, participation, accountability, efficacy and cohesion of actions within the framework of multi-level governance not only constitute the essential values, but also describe which directions to follow to structure the modes of managing development. This approach affords the actors participating in the development planning process a broader scope of authority, while their actions are mutually complementary, which enables one to surmise that policies will be devised and applied at the most appropriate level of government, where the actions in question will prove the most effective.

Another greatly significant element is the idea of territorial self-government, which is referred to both in APDP and the Planning and Building Act, demonstrating that the legislator respects the value of democratization of public life. The place and role of territorial arrangements in the conduct of development policy endorsed in Polish and Norwegian legislation should be associated with consolidating actual participation of the civil society in the exercise of power. This amounts to an obligation of close cooperation between public authorities and partners, with a view to achieving harmonious development of the country while taking a specific system of values into consideration. Thus, a fundamental issue from the standpoint of this inquiry is the extent of normative assurance for public participation in the exercise of public authority and instruments of putting that standard into practice.

Unquestionably, the statutory guarantee of regional and local contribution to development policy is crucial; as has been demonstrated, this has been provided for by the legislator in either legal order. Pertinent legislation lists local and regional structures among the actors involved in development policy, equipping them with the legal means to carry out their tasks, including active participation in the development planning process. Another strongly emphasized means of collaboration is ensuring immediate

participation of social and economic partners and enabling citizens (outside formal structures) to partake in formulating a development policy. Here, consultations and receiving opinions on planning acts constitute some of the key solutions in both Polish and Norwegian statutes. In Polish law, Article 6 APDP expressly states the obligation to consult as an integral part of the planning process. Consultation is mandatory with a specific category of planning acts<sup>37</sup>, whereby this right may be exercised by a statutorily defined category of entities, which includes local government bodies and their associations, social and economic partners as well as the Joint Commission of the Government and Local Government. In the Norwegian system, next to systemic and competence statutes, public participation in planning is guaranteed primarily by the provisions of the Planning and Building Act. Under the latter<sup>38</sup>, anyone who puts forward a planning proposal is obliged to facilitate public participation in the planning process. The implementation of this requirement rests primarily with municipalities, also in the planning processes carried out by other public bodies or private entities. Where the Act stipulates that a proposal for a planning act is to be submitted for opinion, the draft should be sent to all central administrative bodies, regional and municipal authorities as well as other public bodies, organizations and private institutions that the proposal concerns. In addition, one underscores special responsibility of the municipalities to ensure active participation of vulnerable groups, including children and young people, which not only shows how important this principle is but also promotes the idea of social participation (also referred to in the Norwegian law as the social element). This, in turn, translates into increased likelihood that needs (and the values represented by specific social groups) are genuinely heeded. In both legal orders examined here, the procedural provisions of mandatory consultation are formulated in very general terms. The legislator establishes a catalogue of requirements that an entity which holds consultations is obliged to meet, including the obligation to

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<sup>37</sup> Currently, this obligation applies to three types of planning acts: draft concepts for national development, development strategies and public policy drafts. Under Article 6 APDP, consultations are to take place with respect to operational and implementative documents. This category includes programmes which serve to deliver a partnership agreement as well as programmes which require to be drafted in accordance with the provisions of EU law.

<sup>38</sup> Chapter 5, Public participation in planning, Planning and Building Act.

send the draft to relevant actors, post an announcement that consultations will be taking place on their website, and state the deadline and manner of submitting comments on the draft, as well as the date and venue of consultation meetings.

This analysis confirms that the Polish and Norwegian legislators provide for legal institutions which allow the public have their say in the decisions made by public authorities with respect to planning acts for development. The key difference consists of the appointment of subsidiary bodies, which act as expert collaboration forums. The Norwegian system posits the requirement for consultative and advisory structures, which subsequently contribute considerably to the decision-making process. County authorities establish regional planning forums whose task is to aid coordination and cooperation in the municipal and regional planning processes. Serving to exchange views and represent various interests, they foster the principle of collaboration, offering a space for the exchange of experiences and thus constitute a legal, structured form of cooperation. This particular cooperative formula was abandoned by the Polish legislator in 2019.<sup>39</sup>

The provisions in question also make it requisite to ensure the participation of the representatives of diverse interest groups when planning documents are drafted, approaching it an indispensable element in the mechanism of development policy. The significance of the adopted solutions should be underlined in view of the legal distinction between the domestic development policy pursued by the government and the development policy implemented at the regional and local levels, as well as given the necessity to harmonize development-oriented activities. Moreover, the Polish and Norwegian legislators recognize the need for the regional and local communities which are directly concerned by planning decisions to be involved in their making.<sup>40</sup>

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<sup>39</sup> Previously (until 2019), it was the National Territorial Forum which served as a subsidiary body. In addition to representatives of the central authorities, the forum comprised representation of self-government at voivodeship level, associations of territorial governance units and socio-economic partners.

<sup>40</sup> E. Buitelaar, M. Galle, N. Sorel, *Plan-Led Planning Systems in Development-Led Practices: An Empirical Analysis into the (Lack of) Institutionalisation of Planning Law*, in



## 6. Conclusions

This study relied on two main assumptions: the contemporary model of planning for socio-economic development is crucial considering the organization of the activities of public administration as well as other participants in socio-economic life; consequently, since it serves to meet socio-economic needs (by accomplishing normatively defined objectives), it should be informed by a specific system of values (axiological justification for planning decisions made by public authorities in the conduct of development policy).

An inquiry thus oriented demonstrates that next to universal values—including constitutional ones—which guide public administration as it plans for development, crucial importance should be attributed to values that influence both the decision-making process and the achievement of statutory objectives. Values have an impact on development policy decisions in that they shape the standards and principles to which public administration adheres (governance values or good governance values). Decentralization, subsidiarity and public participation—the values embraced to foster transparent, effective, accountable policy decision-making—do not serve to achieve development goals directly, but they do ensure that the public partakes in planning decision-making to see the essential values – objectives taken into account in the process. Thus, they have a decisive influence on the extent to which the statutorily defined development goals will be accomplished (values – objectives). It should be stressed that the public authorities involved in pursuing development policy—from the initial concept to the adoption of a planning decision implemented by means of legal acts—lend legitimacy to certain values being guided by the public interest. Therefore, one cannot underestimate the contribution of stakeholder groups and partners who represent various social expectations since they influence the ultimate planning decisions. Hence, the study highlights the legal institutions which guarantee public participation in development planning decisions.

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