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PUBLIC NEEDS AS CONDITION FOR LIMITATING PRIVATE PROPERTY RIGHT TO LAND

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ABSTRACT

The article is devoted to the analysis of foreign legislation regulating the conditions for seizure of land plots to meet public needs. The evolution of approaches to understanding the private property right from Antiquity to Modern age as long as the specific character of property right to land including possibilities of its legal limitation for meeting socially prominent aims are explored. Special attention is paid to the Eastern European countries' legislation as their statutory regulation of private property out of the command economy is relatively young. Having analyzed the constitutions, land legislation and law enforcement practice of several foreign states a conclusion is made about a similar legal structure of land withdrawal where expropriation is allowed in favor of both public and private subjects if their activity meets socially significant needs of a wide range of people and achieving this goal by any other way is impossible. The American practice of "economic analysis of law" allowing to appreciate the public benefit by the economic tools is positively assessed. It is also stated that it is impossible to envisage a list of specific situations that fall under the concept "public needs" and it is necessary to assess the correlation of public and private interests in each specific case. At the same time, in order to protect the rights of owners such an assessment should be carried out before the seizure including by public hearings.

Key words: private property, public needs, expropriation, withdrawal, just compensation

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THE PRIVATE PROPERTY RIGHT AS A FUNDAMENTAL CONSTITUTIONAL HUMAN RIGHT: CONCEPT, MEANING, HISTORY OF REGULATION

The private property right is the basis of the modern economy. Thank to the effective tools of property rights protection, commodity-money relations develop, the state's social policy is formed and the citizens' welfare in general is provided. In the modern world the right to private property is considered as an inalienable and natural human right, it is enshrined in the constitutions of all developed countries and the state is responsible for its implementation by the citizens and protection.

Despite the fact that the idea of private property was formed at the dawn of mankind, the formation of the state and law left a significant imprint on its understanding. In ancient Rome there already was a system of allocating land plots from communal lands into private property to Roman citizens and this kind of property runs like a red thread throughout the Roman history. Under feudalism property relations were viewed in the context of numerous restrictions connected with relations of personal domination both within the class of feudal lords and in relations between the latter and peasants (Pisemsky 2016, p. 151–152). The absolutization of private property right in Europe happened at the end of XVIII century that is directly related to the bourgeois revolutions. In 1789 France adopted the Declaration of the Rights of Man and the Citizen which declared property to be an "inviolable and sacred right" and a little later, in 1791, this right was confirmed on the American continent – in the US Bill of Rights enshrining a number of personal, economic and political rights. Property is recognized as sacred, and at the same time, the idea of the right of private property as a natural, inalienable human right is strengthened (Andreeva 2008, p. 125). It is possible to say that property right is a part of the modern Western civilization's genetic code (Weber 1990).

Gradually, in the foreign countries legislation there appears an idea about a non-absolute nature of the property right and a necessity to create such a mechanism that could make a citizen's property serve the common good in special cases. Thus, the Fifth Amendment to the US Constitution directly provides for the possibility of alienating private property in favor of the state. "No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation".

Already in XIX century a persistent tendency of "socialization" of private property is developing which was expressed in the provisions about its service to public interests consolidated in legal acts. At the beginning of XX century this trend is found everywhere and is reflected in constitutional acts. For example, the German Constitution of 1919 (Weimar Constitution) contains an indication about the limitation of the content and size of private property by law as well as the possibility of its alienation for "the common good and on a legal basis".

It should be noted that not all of the first constitutions enshrined guarantees for the protection of the rights of the owner. G.N. Andreeva notes that the system of guarantees was often curtailed, for example, the Statute of the Italian Kingdom of 1848 does not provide for a preliminary nature of compensation, but is a prerequisite (Andreeva 2009, p.163).

The formation of the socialist system in Eastern Europe could not but affect the regulation of property relations. Initially from 1917 in the socialist regime countries private property was completely prohibited, it was condemned and considered a bourgeois relic. According to the apt expression of G. Chukayeva in 1917 in the history of mankind there began the first experiment to "uproot" private property which captured not only the means of production but also things belonging to individuals by their nature: works of creative labor, food products, etc. (Chukaeva 2006). Gradually it became obvious even to the socialism builders that such an approach was destructive for the economic system as a whole. The derogation was expressed in the emergence of a regime of the so-called "personal property" to household articles and later private property in its traditional understanding was

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allowed in a number of countries (of course its role was declared secondary in relation to the state one).

The collapse of the USSR marked the end of the socialism era for the Eastern European states. They returned to the capitalist path of development of social relations; consequently it became necessary to restore the institution of private property. The right to private property was consolidated in the newly adopted constitutions and acts of national legislation. In addition to the legislative consolidation of private property guarantees, it was necessary to transfer state property to private hands for the development of commodity-money relations. To solve this problem, the states used two methods: restitution (return of the nationalized property to its previous owners) and privatization (transfer of state property to private hands). Countries often chose both ways. Thus in the last 20–30 years in Eastern Europe countries there was a massive transformation of state property into private one. The relatively short history of capitalist relations in most Eastern European countries in comparison with Western Europe and America determines the particular interest of the questions connected with the correlation of public and private interests in property.

FEATURES OF PRIVATE PROPERTY RIGHT TO LAND REGULATION

The obvious at all times value of land as a special object of human relations could not but be reflected in legal acts regulating property relations. For example, in the days of Antiquity the right to own land was granted only to the city citizens; under feudalism the private property right to land was largely conditional but even this conditional right could belong exclusively to the nobles. As for Modern age it is characterized by the development of land law, detailed regulation of the sale and purchase relations, lease, exchange of land, the allocation of land plots to private hands, etc.

The heyday of legal regulation of land property relations fell on XIX century in the USA. The widespread seizure of land by colonists under the conditions of an undeveloped legal system led to a large-scale crisis in the country for whose solving the government needed to create a special mechanism for transferring land to private ownership. A kind of revolution in American land law was the Homestead Act of Congress 1862 allowing the US citizens to acquire large tracts of land for a symbolic payment. This law ceased to work only in the second half of XX century (Kuropyatnik 2005, p.155).

In the Spanish Constitution of 1978 the special status of land as an object of ownership is linked to the provision of citizens' right to decent housing. To implement this right Article 47 of the Constitution directly claims that the state regulates the use of land in the general interest and also takes all necessary measures to prevent possible speculation with land. For the countries of Eastern and Central Europe, where agricultural production is widely developed, the issue of land turnover is of a particular importance. So, the Constitution of Ukraine in Article 14 stipulates that land is the main national wealth of the country and the acquisition and implementation of land property right should be carried out in accordance with the law. The Constitution of the Republic of Belarus declares agricultural land to be the property of the state, only other categories of land can be privately owned.

POSSIBILITY OF LIMITING PROPERTY RIGHTS BY MEANS OF WITHDRAWAL FOR PUBLIC NEEDS IN FOREIGN LEGISLATION

While studying the institution of private land property, a special interest is given to the question of possibility of limiting the right of a person to the belonging to him land plot including the means of seizure for public needs. This problem is relevant everywhere but it acquires a particular importance for Eastern European countries. Legal consciousness influences the legal regulation of private property relations in post-socialist countries, since within one generation there was a rethinking of the role of this institution: from socialist ideas related to the socialization of property to understanding the protection

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of private property rights as a necessary condition for the development of society.

In most post-socialist countries the question about the seizure of private property for public needs is enshrined on the constitutional level and regulated by unified norms. No one can be deprived of property, except for socially useful purposes established by law upon just compensation (part 3 of article 41 of the Constitution of Romania; paragraph 2 of article 21 of the Constitution of Poland; article 58 of the Constitution of Serbia; paragraph 4 article 20 of the Constitution of Slovakia, etc.). Article 44 of the Constitution of the Republic of Belarus as a condition of alienation also enshrines the adoption of a corresponding resolution in court. At the same time in federal states (for example, the Russian Federation) the law on the basis of which the seizure of property can be carried out, i.e. restriction of the right, must be only federal.

This issue is similarly settled in the Basic laws of Western European states. According to the Italian Constitution the seizure of property, including land, is permissible only for purposes provided by law and having a public interest with the obligatory payment of a proportionate compensation. In Austria, in addition to the Federal Constitutional Law of 1920 which is considered the Austrian constitution, the Basic State Law of December 21, 1867 on the general rights of citizens of the kingdoms and lands represented in the Imperial Council remains in force. In its article 5 the inviolability of property is enshrined, however, it is noted that the alienation of property against the will of the owner is permissible only in cases established by law. It is noteworthy that, in contrast to Russia, in practice it is admissible to establish such cases not only in federal legislation but also in a legal act of any other entity of the federation.

The uniformity of constitutional consolidation of the seizure of land is largely determined by the well-established traditions of the constitutional and legal doctrine which had been formed over several centuries as mentioned above. Constitutional provisions are developed in the norms of national legislation and its application. Here, however, there is no uniformity, since the content of national legislation is determined by the historical development of each individual state, as well as its socio-economic and political development today.

In particular, in Hungary, the permissible purposes of property seizure, its procedure and features of compensation payments are regulated by a special legal act – Law CXXIII 2007 (Law on expropriation). This legislative act lists in detail the permissible cases in which the seizure is justified by public interest and, in addition, the conditions are indicated in the absence of which the seizure is impossible even if there is a socially significant goal (Andorko 2015, p. 56). In particular, the seizure initiator must prove that the achievement of the goal is impossible by simple limiting the owner's rights in relation to the property without alienation; there is no opportunity to purchase this plot by an ordinary civil law transaction; the benefits that the withdrawal will bring to society significantly exceed the harm caused to an individual; it is impossible to achieve this socially significant goal without the use of specific real estate. In order to assess the effect of the planned publicly significant projects accurately and relate it to the scale of harmful consequences for a particular private person, the law imposes on the public authorities of Hungary the obligation to take into account such factors as the number of persons who will be able to use this object or service, development prospects of this territory as well as the way the planned project will affect the employment of the population in this area (Andorko 2015, p. 57).

The issues of land plots seizure for public needs are regulated in sufficient detail in the legislation of the Scandinavian countries, which is explained by the social nature of the economy of these states, a broad focus on the development of social systems: education, culture, healthcare, environmental protection. Thus, nature protection zones are created on state-owned lands which are widespread in Northern Europe (Averina 2014, p. 72). Regarding legislative regulation in the Scandinavian countries several acts of legislation are in force as a rule. For example, in Norway, in addition to the special law on expropriation of private property – the Law on Expropriation

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of 1959, relations connected with the seizure of land plots for public needs are regulated in a number of other legislative acts. These include the Public Roads Act of 1963, the Planning and Building Act of 2008. It is noteworthy that the problem of the balance of private and public interests in the process of seizure of property in Norway practically does not arise; litigation related to challenging decisions of public authorities is also extremely rare (Steinsholt 2010). This is due to the fact that the court almost always takes the side of public law and satisfies the complaints of individuals only in the event of a large number of procedural violations committed during the procedure.

GENERAL CHARACTERISTICS OF SEIZURE CONDITIONS: PUBLIC NEEDS AND JUST COMPENSATION

The main problems that states face when confiscating property for public needs are, firstly, the definition of the concept "public needs" and the boundaries of its content and, secondly, the problem of determining the amount of just compensation.

As for the concept "public needs", first of all, it is worth noting the absence of a single definition in the legislation of different states. Despite the external similarity the terms used by foreign legislators differ. For example, the Constitutions of Italy of 1947, Liechtenstein of 1921 operate with the concept "in the common interests"; The Basic Law of the Federal Republic of Germany uses the wording "for the common good", the Danish Constitution of 1953 calls such goals "social necessity", the Polish Constitution of 1929 and the Basic Law of Hungary speak of "public goals", etc. We believe that the term "public" in this case should be understood as a social but not a state-significant goal – this is confirmed by the provisions of the legislation and law enforcement practice of the respective states.

Some researchers note the lack of a clear definition of "public needs", as well as a list of such needs as a gap in legal regulation leading to infringement of the rights of individuals and speculation of public interests (Afanasyeva 2010, p. 124). Some American legal scholars specializing in land relations suggest solving this problem by developing a unified legal act containing a lengthy definition of public needs including a list of all permissible cases that allow the seizure of private property. It seems that creation of such a normative act is out of question, since it is impossible to predict all possible examples of social needs. At the same time in our opinion the protection of private individuals' interests should be carried out not in the course of court proceedings but in advance before the decision on alienation is made. Mandatory public hearings could be a solution to the problem.

Another important condition without which the seizure of property from an owner is unacceptable is just compensation. An indication of the need to pay "just compensation", "just redemption" or "just market value" is contained both in the Constitutions and in the legislation of foreign countries which specifies the procedure for determining the amount of damage as well as specific losses to be compensated. Most countries have developed methods for calculating just compensation based on the market value (it is believed that the market is the most objective measure for determining the real value of the seized property (Edemsky 2009, p. 88).

THE PRACTICE OF DEFINING THE CONCEPT "PUBLIC NEEDS" IN FOREIGN LEGISLATION

In the United States after the victory of the revolution the concept "public needs" was perceived in a narrow sense. This provision was regarded as limiting the state on the seizure of private property making it possible only for the purpose of using by all members of society (for example, building roads). With the development of commodity-money relations situations began to arise when the use of land by one private subject brought more benefits to society than its use by another subject of private law. As a result there was a transformation of approaches to the concept "public use". Already in XIX century the doctrine of "public benefit" was formed according

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to which private individuals had the right to satisfy requests for the seizure of land plots from others. Later this practice was developed. It is not necessary that the whole society or even a large part of it directly benefit from the improvement to present public use. The US Supreme Court took the position that the seizure can be carried out even if public use is made in the future (Rindge Co. v. Los Angeles, 262).

Changes in the role of the state in economic activity associated with the policy of Roosevelt's "new course" led to another change in the approaches in judicial practice to the question of the private property seizure. New views led to the rejection of the principle of state "non-interference" in market relations and, as a result, a revision of approaches to the nature of private property. In XX century the United States adopted an approach according to which the public benefit is determined by public authorities. The latter began to carry out seizures of private property for the purpose of economic development of the territories. The economic analysis of law is becoming more widespread in the legal theory of the United States. The essence of this direction lies in the analysis of economic consequences when making legal decisions. Thus, the use of economic analysis of law makes it possible to assess the social benefits by economic tools (Posner 2003). And this leads to a revision of judicial practice on the seizure of private property. Now it is not enough to refer to the decision of the public authority justifying each specific case of the seizure of property for public benefit. For this, it is necessary to make an economic calculation.

If the courts of the Anglo-Saxon system of law can apply economic analysis of law to resolve specific cases then in the continental system of law the courts depend more on the existing regulatory legal acts. And the question of the court decision's fairness will be determined not by economic benefits for society but by the legal tradition enshrined (or not enshrined) in legal acts.

Being a country that has relatively recently left the socialist camp, Poland has a rather short history of formation the practice of expropriation of land plots in connection with public needs. At present the reasons for the compulsory seizure of property, as noted above, are enshrined on the constitutional level and the specification of these norms in relation to private ownership of land occurs in legislation: firstly, in the Civil Code and secondly, in a special Law on Real Estate Management of 1997. At the same time neither one nor the second legislative act contains a legal definition of the concept "public needs", although it is central to this procedure. In the Polish legal doctrine there is a point of view stating that it is not only impossible but also unnecessary to give a single definition for the concept "public needs" (Walacik and Źróbek 2010). It is explained by the fact that in each specific case it is necessary to evaluate the object being based on a combination of factors and such a generalization can lead to a violation of the private property subjects' rights.

At the same time the Law of 1997 establishes an indicative list of purposes that may serve as a sufficient basis for expropriation. In particular, these include the construction of highways, airports and other transport infrastructure facilities, maintaining their proper condition; construction and maintenance of the proper condition of structures for the transportation of gas, oil, electricity, etc.; construction and repair of water supply systems; construction and renovation of cultural heritage sites. In addition, the Polish law recognizes publicly significant goals related to the protection of monuments and cemeteries as well as objects intended for environmental protection.

Other laws may stipulate other public purposes that are temporary in nature, for example, the construction of sports facilities for the 2012 UEFA international sporting event was fixed as the purpose of land withdrawal by a special law on preparation for the UEFA final.

The existing law enforcement practice in Poland related to the expropriation of land for public needs shows that for the goal to be recognized as "public" it is not at all necessary to be funded by public entities. Of key importance is the nature of object's further use which should be available to meet social needs. For example, a private hospital, private school or kindergarten may be recognized as a public interest

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but a private airport used for personal purposes has no value to society (Źróbek 2010).

In Austria there is also a rather flexible understanding of the public interest as the basis for the seizure of land. Austrian legislation does not contain a single definition or a closed list of public needs forcing to assess each case being based on the degree of public utility of the planned activity and the degree of infringement of the rights of the land plot's owner. If the achievement of a socially significant goal is available in other ways than the expropriation of the owner's property, the seizure is considered unacceptable (Handbuch der Grundrechte 2014, p. 645).

As in Poland, according to Austrian legislation land plots can be alienated not only in favor of public entities (state authorities, municipalities) but also in favor of individuals and legal entities, if their activities are of a socially useful nature.

In Norway, as noted above, there is a special normative act – the Law on Expropriation of 1959 containing an indicative list of public purposes that allow expropriation of land from the owner. These goals can be conditionally divided into two groups: specific (construction of hospitals, highways) and undefined allowing discretion (for example, the implementation of state or municipal projects (Dyrkolboth 2015, p. 118).

As for the subjects in favor of which the Norwegian legislator allowed the possibility of property seizure, it is permitted to transfer to private persons; moreover, in most cases it is private companies that receive seized plots of land for use and the state acts as the acquirer only formally. Of course, in this case individuals need to justify the benefit for the state and it may be indirect (for example, the company receives direct income from the construction of apartment buildings and the state implements social functions and provides the population with jobs or housing, etc.).

In Spain the legal definition of "public needs" is not enshrined in law either. Moreover, the autonomous regions, which have the right to regulate relations in the sphere of urban planning, can determine the goals sufficient for the implementation of the withdrawal of private land from the owners. In practice this often leads to abuse by local authorities. Valencia's law on compulsory land withdrawal establishes the right of the developer to propose a land management scheme at his own discretion that can cover both publicly owned land and land that does not belong to the municipality or the state. Ultimately, the scheme must be approved by the central state bodies, but the fulfillment of this condition does not always guarantee the protection of citizens' rights due to the corruption component. Local town-planning laws have already caused criticism from the European Parliament recommended the Spanish authorities to suspend the consideration of town-planning schemes and provide decent compensation to those who have already suffered from the actions of local laws.

In addition to legislation an important role in defining the concept "public needs" is played by law enforcement practice, especially the practice of interstate bodies for the protection of human rights. For European countries such a body is the European Court of Human Rights.

In analyzing the issue of "public needs" the position of the ECHR fundamentally differs from the American model of economic analysis of law. According to the court the interpretation of the category "public needs" is the prerogative of the national authorities. The decision to enact property alienation laws is always based on political, economic and social issues which may differ in a democratic society (Khludneva 2013, p. 45). In most cases the court rejects the applicants' opinion that there is no public purpose for the seizure of property. Thus, this category is given a broad interpretation. Moreover, the Guide on Article 1 of Protocol 1 provides a list of situations in which the ECHR has already recognized the legality of withdrawal for public needs. For example, the Court classifies as such situations: the elimination of social injustice in the housing sector (James and Others v. The United Kingdom, §45); the nationalization of certain industries (Lithgow and Others v. The United Kingdom, §§9 and 109); adoption of land and city development plans (Sporrong and Lönnroth

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v. Sweden, §69; Cooperativa La Laurentina v. Italy, §94); seizure of land in connection with the implementation of local town plans (Skibińscy v. Poland, §86); prevention of tax evasion (Hentrich v. France, §39); measures to combat drug trafficking and smuggling (Butler v. The UK (December.); protection of the interests of victims of crime (Sheiko v. Lithuania, §31); measures to restrict alcohol consumption (Tre Traktörer AB v. Sweden, §62); protection of morality (Handyside v. The United Kingdom, §62); and even the transition from a socialist economy to a free market economy (Lekic v. Slovenia [GC], §§103 and 105). This is not a complete list of situations that have taken place in practice of the ECHR which recognized the existence of a public interest (need).

Thus, the European Court treats the decisions of the national authorities with great reverence and therefore there are practically no examples of satisfying the interests of the applicant and recognizing the absence of public needs in the implementation of the procedure for seizing a land plot in the practice of the ECHR.

CONCLUSION

Summing up it should be noted that approaches to the definition of the concept "private property", its content, legal regulation and characteristics of implementation have been changing throughout the history of human development. From a complete denial of private property, society moved to its absolutization and, finally, to understanding its social function, its subordinate nature in relation to public interests. Of particular importance here is the private property right to land as the main and most valuable resource. The legislation of all developed countries has enshrined certain mechanisms for the seizure of land plots from private owners in the event of public needs; however, legal scholars have not yet succeeded in putting an end to the dispute about the correlation of public and private interests. The main questions of this work are the following: what the "public needs" are, whether withdrawal should be made in favor of public entities and if it is possible to provide a specific list of situations falling under the concept "socially significant" goals.

An analysis of the legislation and practice of foreign countries has clearly shown that the adoption of a unified normative act that enshrines the legal concept "public needs" and a closed list of such needs is impractical and impossible. The law can only outline the legal framework of this mechanism, provide for the necessary conditions for withdrawal which serve as guarantees of the owners' rights. The establishment of the exact list is also impossible for the reason that in a number of countries (for example, in Norway) public needs are recognized as the indirect goals the public benefit of which is secondary and not obvious at first glance. The question about possibility of expropriation in favor of private entities should also be answered in the affirmative, since the main importance here is not the formal entity receiving the land plot but the real benefit for society as a result of the implementation of a particular object. It seems that borrowing the American system of "economic analysis of law", which makes it possible to assess the social benefits by economic instruments, can play a positive role here. Not to damage the rights of individuals, it is necessary to carry out an assessment in advance without waiting for an illegal and unfair decision. In addition, public hearings are an effective tool for preventive control.

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THE STANDARD OF LIVING AND ITS SPATIAL DIFFERENTIATION AMONG RURAL MUNICIPALITIES IN WARMIA-MASURIA PROVINCE

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ABSTRACT

This manuscript presents the results of the research on the spatial differentiation of the level of living among the rural municipalities of the Warmia-Masuria Province in the years 2005 and 2018. The rural areas are currently undergoing many changes, including sub-urbanisation processes and a departure from their monofunctional perception. The multi-dimensional analysis (Hellwig's development pattern method) was used to measure the level of living in selected rural municipalities. Then, the Ward's method was employed to identify the similarities in the level of living in these territorial units. The results indicate a significantly higher level of living established based on the synthetic measure value in the municipalities adjacent to the leading urban centres of the region, i.e., Stawiguda or Dywity. In turn, the relatively lowest living standards were demonstrated in the municipalities bordering the Russian Federation. Strong spatial dispersion of this phenomenon, combined with the petrification of the positions at the top and at the bottom of the ranking, indicates the need to implement a different development strategy for these specific units. The implementation of the Smart Village concept, facilitating the sustainable development of rural areas, as well as extensive cooperation of local government leaders with experts and scientists may offer practical solutions in this regard.

Key words: level of living, regional diversification, rural areas, multidmensional analysis

INTRODUCTION

Economic development is a consequence of many processes and phenomena of diverse origins. Therefore, its measurement poses multiple difficulties. Nevertheless, from the perspective of societies, the economic development should increase prosperity and living standards. Among many concepts of prosperity measurement, synthetic measures combining material and non-material elements have been the most popular in recent years (Reinsdorf 2020, pp. 9–10, Kasprzyk 2015, pp. 287–291, Drabsch 2012, pp. 9–16, Biernacki 2006, pp. 115–124). This is mainly due to the indicated flaws of the gross domestic product (GDP) as a complete measure of development (Stiglitz et al. 2009, pp. 21–41, Aitken 2019, pp. 1–12). The reservations related to operationalisation also concern living standards (Kalinowski 2015, pp. 13–25, Berbeka 2006).

At the same time, economic development contributes to radical changes in regions and populations living therein. This refers to the rural areas as well, which are currently undergoing numerous

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transformations also as a result of cohesion processes. Changes in demographic structures, delay or suspension of decisions on procreation or marriage, migrations, and diverging from the traditional monofunctional perception of the rural areas are just a few reasons that make the concept of rural areas' multifunctionality increasingly important (Jezierska-Thole 2013, pp. 25–27, Kłodziński 2008, pp. 40–56, Czarnecki 2011, pp. 88–97, Wilkin 2011, pp. 117–139, MROW 2014, pp. 37). The high spatial dispersion of the social and economic development of rural areas, depending both on location (Wiggins and Proctor 2001, pp. 432–435) and economy (Terluin 2003, pp. 331–337), may thus be emphasised (Stanny 2012, pp. 18–20).

Given Poland's membership in the European Union for over fifteen years, it seems advisable to assess changes in the level of living of inhabitants of the rural areas, particularly those at the lowest level of administrative division (NUTS 5). Over that period, the rural areas of eastern Poland (located in Lublin Province, Podkarpackie Province, Podlasie Province, Świętokrzyskie Province, and Warmia-Masuria Province), included in the catalogue of the European regions with the lowest living standards, have become the beneficiaries of numerous programmes financed from EU funds, the primary goal of which was to improve the living conditions of the population (Dudek and Wrzochalska 2017, pp. 194–197). The importance of these areas from the perspective of the European structures is undisputed, mainly due to their peripherality and neighbourhood of countries that are not EU member states. Meanwhile, these areas still suffer from the scarcity of growth factors and remain regions with a relatively low level of living according to EU classifications. Among the eastern regions of Poland, the Warmia-Masuria Province is characterised by low population density, severe depopulation of the rural areas, a considerable percentage of social welfare assistance recipients, insufficient social and economic infrastructure. Another characteristic feature of the Province is the relatively small and overcrowded flats (Kozera and Stanisławska 2019, pp. 236–241). In extreme cases, due to unfavourable socio-economic conditions, the rural areas of this region have become enclaves isolated from the integrated social spaces and settlement infrastructure. Furthermore, founding the activity on strongly dispersed farms and mono-functionality of the areas have inscribed this part of the state into the concept of remote rural areas developed by the OECD at the end of the 20th century (What future for our countryside 1993). Apart from the undeniable values of the natural environment, the living conditions of inhabitant left much to be desired (Źróbek-Różańska 2020, pp. 1–15).

When analysing rural areas, increasing consideration is given to the concept of Smart Village. Being derived from the concept of Smart Cities, it proposes solutions to the problematic issues of depopulation, maladjustment of settlement infrastructure (including health issues), and social competences, thereby having a real impact on life quality of residents (Garau and Pavan 2018, pp. 1–18, Haarstad 2017, Bibri and Krogstie 2017, Nam and Pardo 2011, Farelnik and Stanowicka 2016, pp. 359–370). While much attention is paid to the issues of management, public transport, care for the environment, and finally IT technologies in the analysis of urban areas, "shortening the distance" to cities (including in the access to services, e.g. medical care) and increasing the social competences of the population seem to be of key importance in the case of rural environments. Effective implementation of the Smart Village concept becomes an important determinant of the functioning of public administration institutions at every level (Naldi et al. 2015, pp. 90–101, Isserman et al. 2009, pp. 300–342, Orchel-Szeląg 2019, pp. 6–9, Adamowicz and Zwolińska-Ligaj 2020, Komorowski and Stanny 2020).

Considering the above, this study aimed to analyse changes in the level of living in 67 rural municipalities of the Warmia-Masuria Province over the years 2005–2018. The base year was the first full year of Poland's membership in the EU, while the last year of analysis was the most recent year the data were available for. The multidimensional analysis was employed to determine the synthetic measure of the level of living. Then, rural municipalities

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of the Province were grouped according to its value. Moreover, the municipalities with the most similar level of living have been identified with the use of hierarchical methods.

MATERIALS AND METHODS

The level of living was assessed with the so-called synthetic measure of development, which allows presenting a situation of regional differentiation in the level of living, considering numerous socio-economic categories, in an easily accessible manner (i.e., through just one numerical value). This is achieved via the transformation of a multi-dimensional set of data to a single numerical value, typically from a predefined range of values. Thus, the analysed phenomenon can be described with the utmost clarity. Next, the rearrangement of these numerical values enables scrutinising the situation in particular areas and detect mutual relationships. However, the procedure is rather complex as it comprises several steps, which will be described in greater detail underneath.

What is fundamental for the reliability of the achieved results is selecting diagnostic variables (partial factors). They must fulfill the formal and statistical requirements, but above all, they must pertain to the subject of an analysis. Variables submitted to the final analysis were distinguished by: general approval, measurability, accessibility of numerical data, relatively high quality, and very strong connection to the subject matter (Zeliaś et al. 2000, pp. 36–37). One of the attributes of the variables proposed in this study was their realness, which in turn arose from the data being made relative to the population size and from the inclusion of their importance expressed as a percent contribution of each phenomenon. This approach enabled excluding the impact of the size of a rural municipality (measured by the size of its population or in other absolute numbers) on generated values of the diagnostic variables (and consequently, on the subsequent classification of municipalities). Given the above, the empirical research included only these variables which met the requirements established in connection with the formal and statistical criteria. The following were treated as necessary conditions (Malina 2004, p. 95):

a) completeness of data in the entire analysed time series;
b) sufficient spatial variability, measured with the variability coefficient ($v_j > 10$ per cent)[1];
c) absence of excessive mutual correlation of variables[2].

Once the diagnostic properties had been chosen, the subsequent stage of the study was undertaken, which consisted of unitarisation[3]. This stage enabled transforming variables (often expressed in different units) to a state of comparability (in our case, to express them in a range from 0 to 1), using the following formula:

$$z_{ij} = \frac{x_{ij} - \min\limits_{i} \{x_{ij}\}}{\max\limits_{i} \{x_{ij}\} - \min\limits_{i} \{x_{ij}\}}$$

[1] Variables characterised by a lower variability coefficient than indicated are regarded in the literature as relatively stable and not contributing significant information about the analysed phenomenon, or not possessing discriminating abilities. Cf. Zeliaś et al. (2000), p. 127.

[2] The occurrence of strongly correlated characteristics in the set of diagnostic variables means that these characteristics assign greater importance to the data, which are replicated in the performed analysis (similar data are entered into the analysis via correlated variables). This may lead to a situation where the taxonomic analysis would yield an unreliable description of the analysed reality due to excessive weight of excessively correlated variables.

[3] Unitarisation (next to standarisation and normalisation) is one of the normalising formulas which bring variables to a certain range (to a state of comparability) while removing units of measure. This procedure helps avoiding situations in which variables with high absolute values (by an order of magnitude compared to other variables) would have a decisive contribution to the construction of the synthetic indicator of the level of living. This would mean, in other words, that the results of classification might be distorted by these variables, by accentuating their impact relative to the other ones. Compared to standarisation, unitarisation allows avoiding a situation where extreme values of certain variables would bias the final results of the synthetic indicator calculations. Unlike standarisation, unitarisation enables eliminating such situations, as it brings all data down to an interval from 0 to 1, both left- and right-bounded. Cf. M., Nardo, M., Saisana, A., Saltelli, S., Tarantola, A., Hoffman, E., Giovannini. (2005). Handbook on constructing composite indicators. Methodology and user guide, OECD, STD/DOC, no 3, Paris 2005, p. 18.

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where:

z_{ij} – unitarised value of the j^{th} variable for the i^{th} object,

x_{ij} – value of the j^{th} variable for the i^{th} object.

Once the character of each of the variables included in the research had been evaluated (which meant that they were identified as stimulants[4] or destimulants[5]), the destimulants had to be submitted to the process of stimulation, i.e., to the process of a destimulant transformation into a stimulant, to ensure that the direction of impact for all the variables was the same and that higher values of the synthetic measure represented a higher level of living. The following stimulation formula was employed to this end (Walesiak 2006, p. 18):

$$x_{ij} = \mathrm{a} - \mathrm{b}x_{ij}^{D}$$

where:

j – a variable,

i – the research object (a rural municipality),

a, b – arbitrary constants: b = 1, $\mathrm{a} = \max_i \{x_{ij}^{D}\}$,

x_{ij}^{D} – value of the j^{th} destimulant in the i^{th} object.

The consecutive step in our analysis involved the derivation of coordinates of the template composed of the most advantageous values scored by the individual variables in the rural municipalities analysed:

$$z_{0j} = \begin{cases} \max_i \{z_{ij}\}\ dla\ z_j^S \\ \min_i \{zij\}\ dla\ z_j^D \end{cases}$$

Afterwards, distances were calculated between individual rural municipalities and the template, using the Euclidean metric in the following form (Panek 2009, p. 69):

$$d_{i0} = \sqrt{\sum_{j=1}^{m} (z_{ij} - z_{0j})^2}$$

where:

d_{i0} – distance of the object to the template

z_{ij} – value of normalised variable j for the i^{th} of this object

z_{0j} – coordinates of the template object for the j^{th} variable.

The penultimate step in the research was to determine the value of the synthetic indicator, which served to arrange the rural municipalities with respect to their inhabitants' level of living. The calculations were based on the following formulas (Panek 2009, p. 69):

$$s_i = 1 - \frac{d_{i0}}{d_0}, \quad d_0 = \overline{d}_0 + 2S(d_0),$$

$$\overline{d}_0 = \frac{1}{n}\sum_{i=1}^{n} d_{i0}, \quad S(d_0) = \sqrt{\frac{1}{n}\sum_{i=1}^{n} (d_{i0} - \overline{d}_0)^2}$$

where:

S_i – synthetic measure of development,

d_{i0} – distance of the object from the template,

$\overline{d}$ – arithmetic mean $\mathrm{d}_{0,}$

$S(d_0)$ – standard deviation $\mathrm{d}_{0.}$

Once the rural municipalities had been arranged in terms of the value of the living standard measure, the final stage of analysis was to classify individual territorial units into four clusters, depending on the synthetic indicator value. The classification was made in the following intervals:

Cluster 1: $w_i \in [\overline{w} + s_w, 1]$,

Cluster 2: $w_i \in [\overline{w}, \overline{w} + s_w)$,

Cluster 3: $w_i \in [\overline{w} - s_w, \overline{w})$,

Cluster 4: $w_i \in [0, \overline{w} - s_w)$.

where:

w_i – synthetic indicator,

$\bar{w}$ – mean value of the synthetic indicator,

S_w – standard deviation of the synthetic indicator.

[4] Diagnostic variables whose increase in the analysed time period informs about the positive influence on the described phenomenon. In this case, variables counted as stimulants informed about some improvement in the standard of living of the municipality residents.

[5] Diagnostic variables whose increase informs about an adverse effect on the analysed phenomenon. In this case, an increase in the value of any of the variables counted as destimulants proved that the level of living decreased.

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Based on the selected variables, differences in the level of living were analysed using the Hellwig's method (Hellwig 1968, pp. 304–320, Bielak and Kowerski 2018, pp. 153–158). The synthetic values of development measure achieved allowed for the linear arrangement of rural municipalities in terms of the intensity of the scrutinised phenomenon.

The above analysis was completed with the determination of similarities in the level of living of inhabitants of the discussed territorial units. The rural municipalities were grouped using the classification methods aimed at distinguishing possibly the most homogenous clusters of objects considering the similarity in terms of the structure of individual observations. In this study, these were the synthetic measures of the level of living. The distinguished groups of objects should be strongly differentiated between groups but homogenous within them as much as possible (Młodak 2006, p. 66). In brief, this method aims to minimise the sum of squares of standard deviations of two clusters, that can be formed at each stage, and employs the analysis of variance approach to estimate distances between the clusters.

Ultimately, the Ward's method was chosen to achieve a hierarchy of agglomerations, in which the starting point is the number of clusters equal to the number of objects of a study. The criterion applied to group the units into higher-order clusters (groups) was the minimum differentiation in the values of the traits (Stanisz 2007, p. 122) that served as the criteria for the segmentation regarding the values of the clusters created at the consecutive steps (Rószkiewicz 2010, p. 6). As a result, objects included into particular groups were characterised by the highest possible similarity of the analysed traits. In turn, the subsequent iterations are defined by the distance (d_{ip}) between a newly created cluster and the remaining ones, derived from the following formula (Balicki 2009, p. 278):

$$d_{ip} = \frac{n_i + n_k}{n_i + n_j + n_k} d_{ik} + \frac{n_j + n_k}{n_i + n_j + n_k} d_{jk} - \frac{n_k}{n_i + n_j + n_k} d_{ij}$$

where:

n_i – number of items in cluster i,
n_j – number of items in cluster j,
n_k – number of items in cluster k,
d_{ik} – distance from the original cluster i to cluster k,
d_{jk} – distance from the original cluster j to cluster k,
d_{ij} – distance between the original clusters i and j.

The Ward's method is widely accepted owing to its theoretical properties and satisfying results of simulation studies[6]. Its application allows achieving excellent results of clustering, where clusters are very homogeneous. Its other advantage is the clarity of presentation via dendrograms[7].

In an attempt to create a synthetic measure of development that would describe the spatial differentiation in the level of living, the first step of the taxonomic stage of the research was to select diagnostic traits. Worthy of emphasising is the highest subjectivity of this step of the research. A scientist needs to design such a range of characteristics that would best represent the analysed phenomenon. Our choice of diagnostic variables to calculate the synthetic measure of development was based on criteria connected with the subject matter and the formal and statistic aspects. The selected variables were characterised by the following properties (Zeliaś et al. 2000, pp. 37–38): they were commonly approved, highly relevant for the subject matter, measurable,

[6] By completing a series of simulations, Grabiński and Sokołowski (1980) proved that the effectiveness of finding the true structure of data with this method is by around 40% higher than obtained with the second most common method, one of the farthest neighbour clustering. Cf. T., Grabiński, A., Sokołowski. (1980). The effectivness of some identification procedures, signal processing. Theories and applications, in: M., Kunt, F., De Coulon, North-Holland Publishing Company, UERASIP, Amsterdam, after: J. Berbeka. (2006). Poziom życia ludności a wzrost gospodarczy w krajach Unii Europejskiej, Wydawnictwo Akademii Ekonomicznej w Krakowie, Kraków.

[7] A dendrogram is a tree-shaped diagram showing connections between analysed objects based on the adopted criteria. In the Ward's method, a dendrogram shows subsequent steps (iterations) in the clustering process – from leaves (single rural municipalities) to the root (one cluster).

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supported by available numerical data, relatively high in quality, and were derived from a thorough review of the literature. The variables were transformed relative to the populations of rural municipalities to minimize the influence of the size of a given municipality on the achieved values of the variables.

The research sample consisted of statistical data connected with the level of living in 67 rural municipalities (Fig. 2) in the Warmia-Masuria Province (Fig. 1). The parameters chosen for the study are measurable and reliable because they were derived from the official publications issued by the Polish Statistical Office (Bank of Local Data). A comparative analysis was made for the years 2005 and 2018 to verify a hypothesis that the level of living in rural areas increased after Poland accessed the European Union.

The variables included in our research pertain to many fields of life, e.g., demography, housing, labour market, social and cultural infrastructure, environmental protection, and financial indicators of the territorial units. Some of the potential variables were eliminated at the early selection stage, mostly because of the incompleteness of data and, less often, because the aggregation of data at this level of the administrative division was impossible due to some organisational and formal obstacles. Even at this level, spatial dispersion could be observed in some of the diagnostic variables. Economic, demographic, and educational aspects of the analysis were the strongest polarizing factors of the described population. Inter-

Fig. 1. Warmia-Masuria province and its location
Source: own study

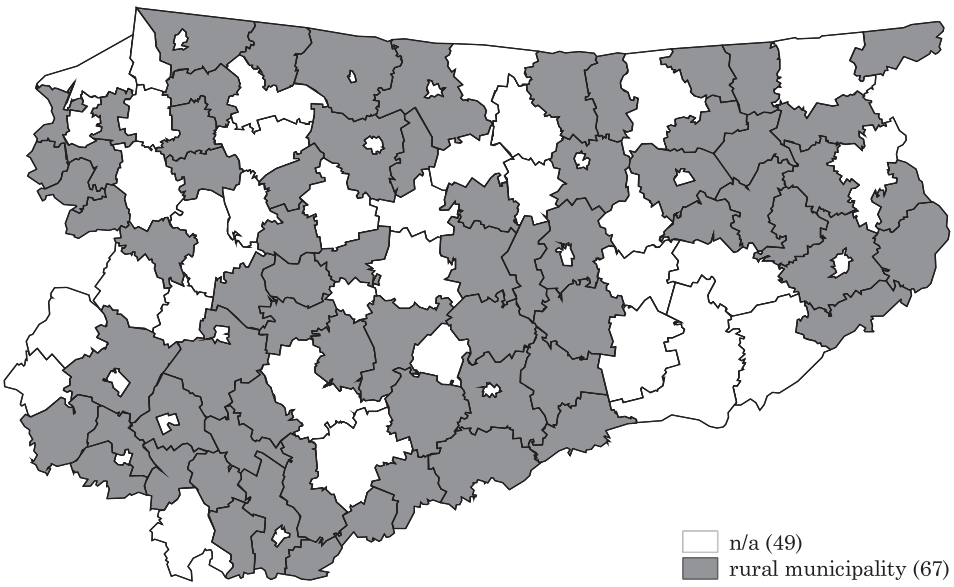

Fig. 2. Rural municipalities in Warmia-Masuria Province
Source: own study

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estingly, in many cases, the partial indicators achieved higher values in 2018 compared to the base year (2005), which was usually indicative of the improved living standards of inhabitants of the rural municipalities analysed over this period.

The formal and statistical tests allowed collating the final set of variables describing differences in the level of living in rural municipalities of the Warmia--Masuria Province (Table 1).

Table 1. Diagnostic variables considered in the synthetic indicator of the level of living

No.	Variable name	Variable character
1	population density	stimulant
2	rural municipality own incomes per capita	stimulant
3	rural municipality total expenditures per capita	stimulant
4	rural municipality expenditures on municipal economy and environment protection per capita	stimulant
5	entities entered in the REGON register per 10,000 inhabitants	stimulant
6	entities per 1000 inhabitants of working age	stimulant
7	foundations, associations, and social organizations per 1,000 inhabitants	stimulant
8	post-working age population per 100 inhabitants of working age	destimulant
9	children in pre-school education institutions per 1,000 children aged 3–5 years	stimulant
10	share of registered unemployed persons in the working age population [%]	destimulant
11	number of flats per 1,000 inhabitants	stimulant
12	average floor area of the flat per capita [m^2]	stimulant
13	inhabitants using sewage treatment plants [%]	stimulant
14	book collection of libraries per 1,000 inhabitants	stimulant

Source: own study

RESULTS AND DISCUSSION

Based on research conducted, it should first be stated that the level of living, established based on the synthetic measure value, increased in most rural municipalities surveyed. That meant the improvement in conditions for enterprises operating therein and the development of the social and economic infrastructure. The situation was, to a substantial degree, caused by the improvement in municipal infrastructure, development of education, and environmental aspects. All these elements contributed to the improvement in the living conditions of the local populations. In addition, this situation inscribes into the discussions related to the essential determinants of the intelligent development, the key ones of which include activities connected with infrastructure, mobility, and effective public management (Guedes et al. 2018, p. 10)

At the same time, results of the study confirmed the thesis on the regional polarisation of the level of living. In both the first and the last year of analysis, the same territorial units were leaders, including mainly rural municipalities adjacent to large urban centres (Table 2). A meaningful role can be attributed in this process to the growing revenues to budgets of municipalities and skillful use of European funds, including those dedicated to these areas increasing (see: OP Development of Eastern Poland, Sadowski et al. 2021) For this reason, the highest level of living, assessed based on the synthetic measure value in 2018, was recorded for Stawiguda, Dywity, Gietrzwałd, and Jonkowo municipalities, which are the backbone of the capital of the region and Province – Olsztyn. Next in the list were the units in an analogous situation (rural municipalities: Giżycko, Ełk, Purda, Jedwabno), i.e., located in the immediate vicinity of large population centres. All units listed above were included in the first group, distinguished by the highest level of living among the rural municipalities of the Province. Simultaneously, the value of the synthetic measure for Stawiguda in 2018 (0.7248) was many times higher than the respective values for the municipalities at the bottom of the list. The lowest value of the measure was recorded for Budry municipality in Węgorzewo

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Table 2. Ranking of municipalities based on the synthetic measure of the standard of living in 2005 and 2018

Municipality	Province	Ranking 2018	Ranking 2005	Value of the indicator 2018	Value of the indicator 2005
Stawiguda	olsztyński	1	1	0.7248	0.6593
Dywity	olsztyński	2	2	0.5546	0.5485
Gietrzwałd	olsztyński	3	3	0.5407	0.5263
Jonkowo	olsztyński	4	4	0.4387	0.4638
Giżycko	giżycki	5	5	0.4101	0.4045
Ełk	ełcki	6	45	0.3957	0.1596
Jedwabno	szczycieński	7	6	0.3621	0.3663
Purda	olsztyński	8	8	0.3598	0.3388
Ostróda	ostródzki	9	14	0.3446	0.2999
Kruklanki	giżycki	10	21	0.3411	0.2607
Elbląg	elbląski	11	7	0.3324	0.3553
Łukta	ostródzki	12	9	0.3289	0.3217
Piecki	mrągowski	13	12	0.3221	0.3017
Świętajno	szczycieński	14	17	0.3008	0.2855
Iława	iławski	15	36	0.2960	0.1963
Miłki	giżycki	16	23	0.2948	0.2509
Biskupiec	nowomiejski	17	15	0.2930	0.2978
Wydminy	giżycki	18	26	0.2860	0.2398
Nowe Miasto Lubawskie	nowomiejski	19	40	0.2780	0.1864
Mrągowo	mrągowski	20	39	0.2698	0.1896
Kurzętnik	nowomiejski	21	38	0.2628	0.1898
Milejewo	elbląski	22	20	0.2586	0.2624
Rybno	działdowski	23	22	0.2566	0.2553
Lubomino	lidzbarski	24	25	0.2488	0.2423
Płoskinia	braniewski	25	29	0.2425	0.2160
Sorkwity	mrągowski	26	10	0.2347	0.3140
Świątki	olsztyński	27	27	0.2346	0.2287
Płośnica	działdowski	28	30	0.2284	0.2122
Pozezdrze	węgorzewski	29	31	0.2268	0.2115
Gronowo Elbląskie	elbląski	30	18	0.2239	0.2813
Janowo	nidzicki	31	53	0.2208	0.1400
Szczytno	szczycieński	32	35	0.2111	0.2037
Kętrzyn	kętrzyński	33	55	0.2106	0.1374
Iłowo-Osada	działdowski	34	24	0.2086	0.2498
Grodziczno	nowomiejski	35	52	0.2079	0.1432
Grunwald	ostródzki	36	61	0.2044	0.1060
Dąbrówno	ostródzki	37	16	0.2038	0.2901
Kowale Oleckie	olecki	38	19	0.2037	0.2676
Małdyty	ostródzki	39	13	0.1948	0.3012

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Dźwierzuty	szczycieński	40	48	0.1940	0.1511
Świętajno	olecki	41	11	0.1886	0.3058
Prostki	ełcki	42	43	0.1882	0.1711
Stare Juchy	ełcki	43	32	0.1880	0.2111
Srokowo	kętrzyński	44	47	0.1759	0.1539
Lidzbark Warmiński	lidzbarski	45	57	0.1736	0.1200
Wieliczki	olecki	46	34	0.1724	0.2096
Dubeninki	gołdapski	47	41	0.1679	0.1740
Kiwity	lidzbarski	48	59	0.1640	0.1158
Bartoszyce	bartoszycki	49	58	0.1638	0.1181
Rychliki	elbląski	50	63	0.1537	0.1015
Kozłowo	nidzicki	51	50	0.1495	0.1455
Janowiec Kościelny	nidzicki	52	64	0.1482	0.0958
Wilczęta	braniewski	53	56	0.1464	0.1271
Lubawa	iławski	54	60	0.1456	0.1118
Banie Mazurskie	gołdapski	55	28	0.1444	0.2227
Barciany	kętrzyński	56	37	0.1438	0.1944
Rozogi	szczycieński	57	46	0.1418	0.1594
Markusy	elbląski	58	49	0.1374	0.1505
Wielbark	szczycieński	59	51	0.1365	0.1453
Działdowo	działdowski	60	44	0.1299	0.1643
Godkowo	elbląski	61	54	0.1289	0.1389
Kolno	olsztyński	62	33	0.1158	0.2098
Kalinowo	ełcki	63	62	0.1063	0.1040
Braniewo	braniewski	64	65	0.0860	0.0950
Lelkowo	braniewski	65	42	0.0796	0.1721
Górowo Iławeckie	bartoszycki	66	66	0.0663	0.0823
Budry	węgorzewski	67	67	0.0452	0.0666

Source: own study

District (0.0452). For this reason, together with five other units (Lelkowo, Braniewo, Górowo Iławeckie, Kolno, Kalinowo), it was included in the last group of municipalities with the lowest level of living.

Finally. the best group of the rural municipalities of the Province in 2018 included eight units. while the second-best group consisted of seventeen units (Fig. 4). Thirty-six municipalities were included in the largest, third group, while only six to the last, fourth group. Significant differences were noted within the extreme groups. Compared to 2005, i.e., the first year of the analysis, only small changes occurred within the clusters, which, retrospectively, reflected the improvement in living conditions (Fig. 3). Back then, the best group included seven units, the second group twenty, and the third group – thirty-two territorial units. The worst living conditions, established based on the synthetic measure value, were recorded in eight municipalities, the last of which were the same units as in 2018. Even greater stability was noted in the rural municipalities listed as those with the highest level of living because the first five of them retained the same places on the list 13 years later.

Despite the relatively well-established positions on the list, a few distinct changes were noticeable regarding positions of particular

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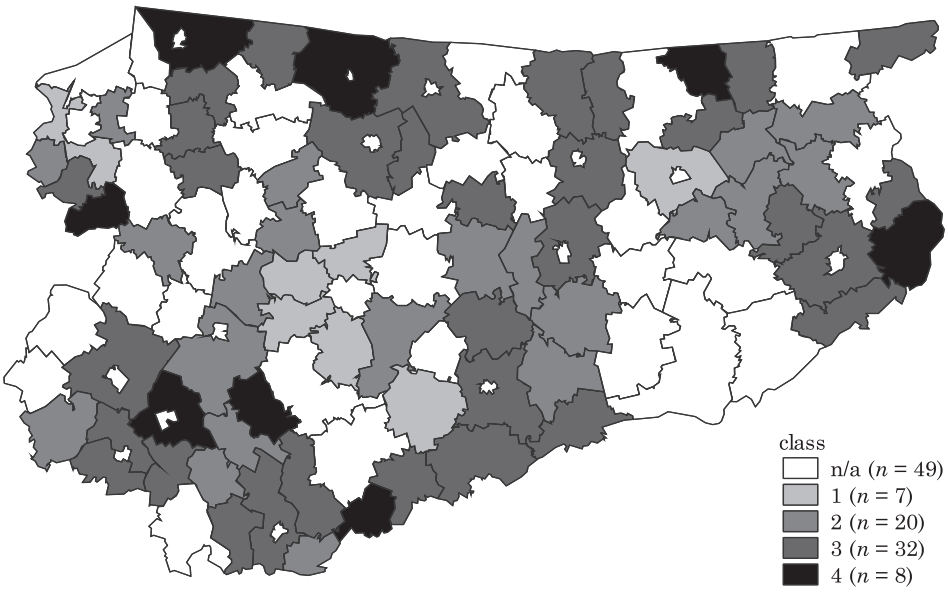

Fig. 3. Standard of living in rural municipalities of Warmia-Masuria Province in 2005
Source: own study

municipalities in the ranking. Compared to the year 2005, the greatest improvement in living conditions was recorded in the Ełk municipality (Tab. 2). This was mainly influenced by the improvement in the financial conditions of the municipality, which translated into both the higher income of the municipality per capita but also to increased expenditures on the municipal infrastructure, mainly those related to rational waste management and care for the natural environment.

More than twofold increase in the value of the synthetic indicator resulted in a significant improve-

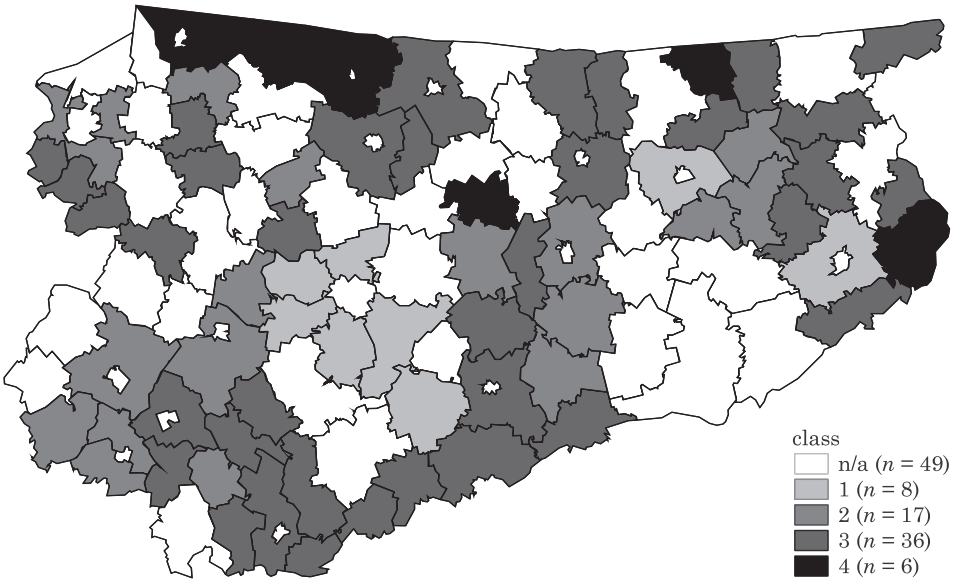

Fig. 4. Standard of living in rural municipalities of Warmia-Masuria Province in 2018
Source: own study

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ment in 2018 (in total, by as many as 39 positions up). A similar situation was observed in the following municipalities: Kętrzyn, Janowo, Grunwald, Iława, and Nowe Miasto Lubawskie (all of them moved more than twenty positions up on the list). However, during the research period, there were also opposite cases when significant decreases were noted in unit's position on the list. This was most frequently due to a slowdown in the increase in living standards measured with the synthetic indicator value or a less considerable increase compared to the other units. The municipalities that moved down the most over that period included Świętajno, Kolno, Małdyty, Banie Mazurskie (in each case, moving more than twenty positions down on the list). In addition to the above-mentioned spectacular changes in the positions of specific units, the homogeneity of individual groups and consolidation of their composition and number were observed in most cases. This seems to confirm the thesis on the leading role of endogenous potential in stimulating the economic growth and improving living conditions (Nazarczuk 2013, pp. 25–30).

This homogeneity was confirmed by the size of the clusters including the municipalities with the most similar level of living. In 2005, five initial clusters were recorded, the smallest of which were those where the level of living measured with the synthetic indicator value was the lowest (Fig. 5). The Stawiguda, Dywity, Gietrzwałd, and Jankowo municipalities were included in a separate cluster because their indicator's value was significantly higher compared to the other municipalities. The second group, including the Giżycko, Jedwabno, and Elbląg municipalities, also stood out due to the high value of the synthetic measure. However, their level of living was rather closer to the third cluster that included nineteen units. The synthetic measure value of the Wydminy municipality (0.2398) represented a peculiar dividing line, as it divided the entire catalogue of the rural municipalities of the Warmia-Masuria Province into two main clusters. Below that value, the remaining group of municipalities could be divided into another two clusters. The subsequent, fourth cluster included fourteen and the last one, the fifth, as many as twenty-seven municipalities.

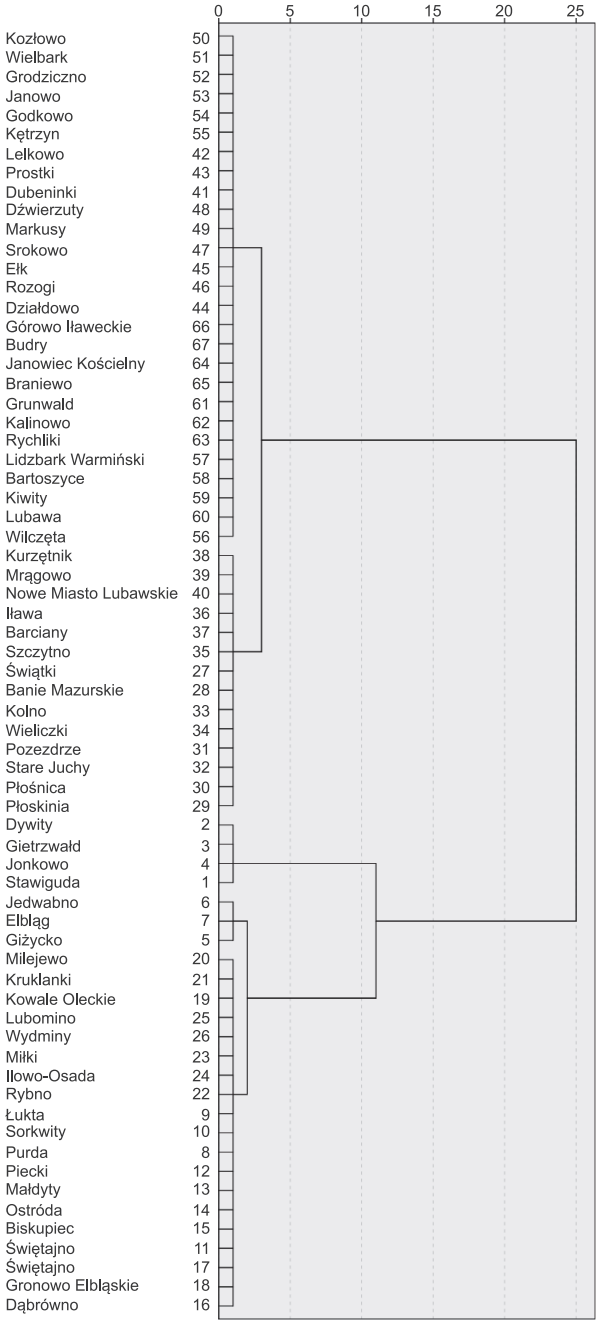

Fig. 5. Dendrogram of similarity of the standard of living (dendrogram based on Ward's connections: scaled distances; ranking in 2005) among rural municipalities of Warmia-Masuria Province in 2005

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The similarities in the level of living in 2018 allowed separating six initial clusters with diverse profiles (Fig. 6). Firstly, the level of living in the Stawiguda municipality was high enough to include it to a separate, one-element, cluster. The next two municipalities with the greatest similarity in the level of living were Dywity and Gietrzwałd municipalities, making it possible to classify them to the second created cluster. In those units, the level of living was similar, as evidenced by the link at the second level of clustering. The further similarities made it possible to create the third cluster comprising ten elements. At the fourth level of clustering, this has led to the separation of the fourth cluster comprising eighteen municipalities. This time, the synthetic measure value for the Janowo municipality (0.2208) was the cut-off point for the two remaining clusters with the level of living distinctively lower than in the other units. The fifth and the sixth clusters again included eighteen municipalities each. Compared to 2005, the level of living in these units became more similar, as evidenced, among others, by the smaller number of municipalities in the last cluster.

The results of the conducted research are in line with the common view on the leading role of the urban centres in shaping the level of living of populations. A significant improvement in the living conditions of the inhabitants of neighbouring municipalities has been empirically verified many times (cf. Głaz and Biczkowski 2012, pp. 86, Smutek 2017, pp. 141–143, Zbierska et al. 2014, pp. 309–312, Dumitrache et al. 2016, pp. 50–53, Nuissl and Rink 2005, pp. 130–133). Due to increased immigration and favourable conditions for the entrepreneurship development, such municipalities were frequently able to gather and then distribute the financial resources within their administrative boundaries (Malinowski and Smoluk-Sikorska 2020, pp. 16–22). Consequently, they have become peculiar hybrids, being a transitional form in the common city-village perception (Bański 2012, p. 11, Camarero and Oliva 2016, p. 97–98). Of all rural municipalities included in the research, these traits could be ascribed to several of the municipalities occupying the highest positions on the list.

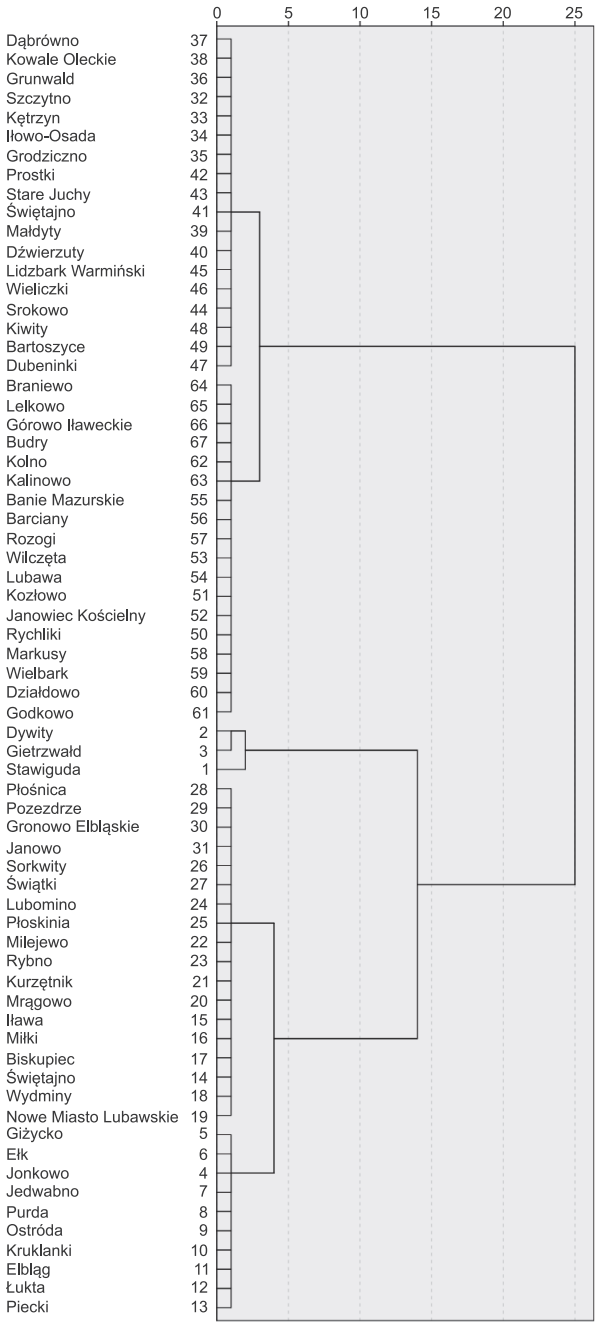

Fig. 6. Dendrogram of similarity of the standard of living (dendrogram based on Ward's connections: scaled distances; ranking in 2018) among rural municipalities of Warmia-Masuria Province in 2018

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The leaders of the ranking established based on the synthetic measure value (Stawiguda, Dywity, Gietrzwałd and Jonkowo), were included as administrative units in the concept of Olsztyn agglomeration developed by M. Bogdański in 2014 (pp. 69–70). At the same time, it seems that in its current form, a growing percentage of the immigrants has not only not changed the demographic structure (Źróbek-Rożańska and Zysk 2015, pp. 127–132, Biegańska 2013, pp. 9), but also influenced many other aspects of life, including i.a. changes related to mobility and organised transport, care for the natural environment, development of renewable energy sources, and also increased social competences of the entire communities including changes in life attitudes (Źróbek-Rożańska and Zadworny 2016, pp. 62–64).

On the other hand, relatively least favourable living conditions were in the Braniewo and Bartoszyce Districts, adjacent to the Russian Federation's border. The municipalities of that part of the Province (e.g., Górowo Iławeckie, Lelkowo, Braniewo, Wilczęta) occupied the last positions on the list. It seems that this part of the region was still struggling with the problems of social and economic nature, caused, to some extent, by the centrally planned agricultural activity (State Agricultural Farms – SAF) implemented in the communist era (Feltynowski et al. 2015, pp. 237, Biegańska et al. 2019, pp. 87). Depopulation and the extremely unfavourable demographic structure of those units combined with the shortage of the transport, educational, and municipal infrastructure, and the quality of the human resources have constituted a significant obstacle to the sustainable development. These barriers were also mentioned by the inhabitants of these areas (Uwarunkowania rozwoju… 2018, pp. 55, Sytuacja ekonomiczno-społeczna… 2019, pp. 55). The identification of the mentioned barriers to the sustainable development of the border areas in the Warmia-Masuria Province was consistent with the concept of the remote rural areas (RRA) (Dijkstra and Poelman 2008, pp. 1–2), which are problematic also to other countries of Europe (Copus and Crabtree 1996, pp. 43, Commins 2004, pp. 70–72).

The results obtained seem to be consistent with the findings of other authors discussing these issues both at the regional (Janusz 2014, pp. 178–180, Janusz 2015, pp. 294–297, Kopacz-Wyrwał 2016, pp. 93–103) and the whole-country level (MROW 2017, pp. 34, Kalinowski, 2015, pp. 194–202). The level of living, established based on the synthetic measure value, and the positions on the lists are similar in those studies, especially regarding the municipalities assigned the highest and the lowest values. The differences between these units allow expecting permanent divergence within the rural municipalities of Warmia-Masuria Province (Spellerberg et al. 2007, pp. 297–304). The high level of living in the suburban areas determined the constant influx of working-age population and contributed to both objective and subjective well-being of the citizens (Gilbert et al. 2016, pp. 38–43, Requena 2015, pp. 701–706, Shucksmith 2009, pp. 1278–1285, Sørensen 2014, pp. 1459–1462).

CONCLUSIONS

It should be underlined that the level of living is not a homogeneous category. Its diversity is largely due to the specificity of the region, its structure and, above all, its socio-economic situation. For this reason, the purpose of the analysis was to demonstrate the spatial diversity in living standards in the rural municipalities of the Warmia-Masuria Province and its changes since Poland's accession to the European Union. Hence, the years 2005 and 2018 were covered by the research. The level of living in the surveyed area was evaluated from the perspective of both demographic, social, economic, and environmental factors, employing the taxonomic method. Afterwards, the rural municipalities were classified into clusters, considering the synthetic value of the calculated measure of the level of living and mutual similarity, resulting from collating the same features in different combinations.

Therefore, the multidimensional approach allowed for the systematization of the municipalities' positions from the most to the least developed. This, in turn, showed the extent of differences in the level of living

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between Stawiguda, Dywity, Gietrzwałd, Jonkowo, and other municipalities. Thus, the relationship resulting from the location was confirmed, thanks to which the proximity of large urban centres has a positive impact on the level of living in neighbouring municipalities (Sobotka 2014, pp. 41, Gałka and Warych-Juras 2011, p. 151, Kulczyk-Dynowska 2012, p. 71–75, Mrozik 2013, pp. 94–99). On the other hand, remote rural areas were characterised by a relatively low level of living and many barriers limiting their development. Except for the municipalities listed above, the rotation was observed within the considered sample. A similar level of living was noticeable among the municipalities with relatively average synthetic measure values. The authorities of the municipalities with relatively the highest living standards may focus on continuous economic development, taking into consideration qualitative aspects. It will be possible due to the high level of satisfying needs of quantitative nature. The extensive cooperation between the local government and the world of science and business, and representatives of grassroots creative circles may prove helpful in this respect. Anyway, this cooperation is part of the Voivodeship's strategy (Strategia rozwoju… 2013). In the municipalities, where the level of living is one of the lowest in the Province, the authorities should first care for the infrastructural and technical facilities, and the quality of human resources.

However, we should remember that the created clusters can by disputable and should be treated this way. This is primarily due to the issue of the choice of indicators adequate for the analysis. In the case of taxonomic methods, their selection will always be influenced by the author's subjective evaluation. The literature of the subject emphasizes that the study of the same phenomenon conducted with another set of diagnostic features could bring different results.

Nevertheless, diagnosing the diversity of the level of living in a regional perspective and indicating its main features and determinants is extremely important from the viewpoint of the implemented economic or social policy as well as regional policy (cohesion policy) aimed at minimising differences and effective development of municipalities, districts, provinces, and the country. In view of the extensive discussion on the future of rural areas, it seems that particularly large emphasis should be put on the implementation of the concepts of smart cities and smart villages. The reliable identification of barriers, based on experiences of other countries and regions, may become an impetus for changes and, ultimately, significantly improve the living conditions of residents in many aspects. Above all, much attention should be paid to the areas struggling with the most difficult situation, measured by the value of the synthetic indicator. Both, local authorities and representatives of local initiatives play a meaningful role in this case because this concept requires a holistic approach. In addition, the use of dedicated European funds can only positively affect the living conditions of the population.

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COURT PROCEEDINGS IN CASES REGARDING ASCERTAINING ACQUISITIVE PRESCRIPTION OF REAL ESTATE

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ABSTRACT

In the article, the author presents the characteristics of the proceedings for ascertaining acquisitive prescription of real estate. Acquisitive prescription is a way to gain property rights. The legislator established non-litigious proceedings in this respect, and at the same time regulated its differences only to a very narrow extent. In this study, the author attempts to comprehensively characterize the proceedings by interpreting legal provisions, discussing views of doctrine and jurisprudence and their critical analysis. The study discusses both the issues of subjects of proceedings as well as the dynamics of proceedings and the characteristics of judgments issued in them. Of particular importance are issues that give rise to doubts, such as the circle of subjects interested in the case, references to the provisions regarding the confirmation of the acquisition of an inheritance and the problem of not binding the court with an application request.

Key words: civil proceedings, property law, non-litigious proceedings, acquisition of property.

INTRODUCTION

The subject of the analysis in this study will be court proceedings for ascertaining acquisitive prescription of real estate, regulated in Polish civil procedural law. Acquisitive prescription is a way to gain property rights. The legislator established non-litigious proceedings in this respect, and at the same time made a regulation which is not too detailed. In this case, the construction of the referral played a special role, because in the scope not regulated by these provisions, the legislator referred to the proper application of the provisions regarding the confirmation of the acquisition of an inheritance and specific bequest, which in practice caused many interpretation doubts regarding the scope of this referral. These issues are significant because ascertaining the acquisition of property rights is of key importance for the security of legal transactions. It should be noted that the discussed proceeding regarding ascertaining acquisitive prescription, regulated in Art. 609–610 (The Code of Civil Procedure 1964), has a wider range of application than just real estate, however this study has been limited to the procedural aspects of ascertaining acquisitive prescription of real estate. At the beginning it should be clarified that the object of acquisitive prescription can be any real estate, in particular land property (Rudnicki 1994, p. 27), a dwelling constituting a separate real estate, as well as premises for a different purpose, building real

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estate, shares in the joint ownership of the property as well as a physically separated part of the real estate (Pietrzykowski and Pietrzykowski 2020a). This statement defines the subject-matter framework of the discussed proceedings, however, the subject of the analysis will be their equally important subjective aspects, dynamics of proceedings, taking into account the specifics of the evidentiary proceedings, as well as judicial decisions and their contestability.

The main purpose of the study is to indicate the specific features of non-litigious proceedings in cases regarding ascertaining acquisitive prescription, distinguishing them from other proceedings conducted in this mode, with an indication of the purposefulness and functions assigned to individual constructions, used by the legislator in order to develop an effective process mechanism, removing the undesirable element of uncertainty as to property rights, harmful to the security of legal transactions.

SUBJECTS OF PROCEEDINGS

According to the regulation of Art. 609 § 1 (The Code of Civil Procedure 1964) anyone concerned in the case is entitled to submit an application for prescription. In this provision, the legislator did not provide a definition of the concept of the person concerned. Reference should be made here to the general provisions governing non-litigious proceedings. As follows from the provisions of Art. 510 § 1 (The Code of Civil Procedure 1964), anyone whose rights are affected by the outcome of the proceedings is a person concerned. It is appropriate to accept a broad understanding of the term of the person concerned, since there are no restrictions or interpretative guidelines in this provision. Not only the subject that is directly interested in a specific settlement of the case, but also any subjects that will be affected indirectly will be concerned (Rejdak 2020).

In the case of an application for ascertaining acquisitive prescription, the person entitled to submit an application will be any person who has a legal interest in ascertaining acquisitive prescription. This may concern the legal interest in ascertaining prescription for their own benefit, but also ascertaining that prescription for the benefit of another person (Olczak-Dąbrowska 2019). An autonomous possessor will be indisputably entitled in this respect, as well as their legal successors under the universal title and under the singular title (Flaga-Gieruszyńska 2019a). Noteworthy is the fact that in this matter the transition of autonomous possession to another person will not matter. The premise of possession is only relevant until the time of prescription, while subsequent possession regarding the acquisition of property by prescription is indifferent (decision of the Supreme Court of 3 April 2003, V CK 60/03, Legalis 59202). Not only the subject that believes that they has acquired property by prescription will be entitled, but also the one who will claim that by means of prescription the property has been acquired by another person for whom he or she is the creditor (Siedlecki 1988, p. 173). A person who has lost property by prescription may also have a legal interest in a claim to ascertain acquisitive prescription (Pietrzykowski and Pietrzykowski 2020a). A person who has lost ownership may thus seek to demonstrate their current property status, free themselves of the burdens that are associated with ownership, and their creditors may need the confirmation of the prescription, for example, for proving the insolvency of the debtor in connection with the pursuit of Pauline claims (Olczak-Dąbrowska 2019). On the other hand, the current owner of the property will not be able to apply for ascertaining acquisitive prescription, because the purpose of these proceedings is not to confirm ownership of the property (Studzińska 2017). Given the non-litigious nature of the proceedings for ascertaining acquisitive prescription of real estate and the fact that their purpose is to determine the ownership relationship of a special good such as real estate, one should agree with the position that a wide range of parties concerned should be allowed to participate in the case, which is to guarantee the legal protection of all persons interested in the outcome of the proceedings. The fact that the legislator provided for the possibility of revoking a final decision that would violate the rights of the person concerned

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who did not participate in the proceedings, supports the admission of a wide range of subjects to the proceedings.

A person concerned in the case within the meaning of Art. 510 § 1 (The Code of Civil Procedure 1964) will also be a dependent possessor of the real estate to which the application for ascertaining acquisitive prescription relates (Flaga-Gieruszyńska 2019a). This view is also confirmed by the case law of the Supreme Court (resolution of the Supreme Court of 18 December 1974 III CZP 88/74, Legalis 18462 and decision of the Supreme Court of 30 January 2000, I CKN 1359/00, Legalis 277317). The status of the person concerned may be given, as a dependent possessor, to a tenant of the building, which is located on the real estate which is the subject of the proceedings for ascertaining acquisitive prescription. As pointed out by the Supreme Court, although there is no connection between the result of the proceedings for ascertaining the prescription and the existence of the lease agreement, there may be such a connection between the result of the proceedings and the content of the agreement. As indicated, the applicant, who asks for ascertaining the acquisition of ownership of this property for their own benefit, will be able to change the terms of the agreement, in particular to increase the rent due (decision of the Supreme Court of 30 January 2001, I CKN 1359/00, Legalis 277317). In the doctrine a critical stance on this view is also present, because Olczak-Dąbrowska (2019) indicates that from the point of view of the effects of the acquisition of ownership by prescription for the continued existence of rights in rem or obligation binding the right, it is not justified to distinguish two categories of legal interest within the meaning of the indicated provision – direct, applicable to the owner against whom prescription runs, and indirect, which belongs to dependent possessors. This author indicates that the dependent possessor will have a legal interest within the meaning of Art. 510 § 1 (The Code of Civil Procedure 1964), only in a situation, when they claim that the character of the possession of the thing has changed, thus becoming an autonomous possession. It seems, however, that one should agree with the view which allows the dependent possessor to be identified as concerned in the case.

The issue of proper identification of the catalogue of persons concerned in accordance with Art. 510 § 1 (The Code of Civil Procedure 1964) is significant not only from the point of view of determining the persons entitled to submit an application, but also the circle of other participants to the proceedings. According to Art. 510 § 1 (The Code of Civil Procedure 1964) a person concerned, that is, anyone whose rights are affected by the outcome of the proceedings, has the right to participate in the case in any state until the end of the proceedings in the second instance. In this aspect, it is worth adding that the participants to the proceedings may also be owners of neighbouring land, if the settlement of the case concerns rights they claim to this property or to border strips of the land. Otherwise, their participation in the case will be superfluous (decision of the Supreme Court of 5 October 1971, III CRN 271/71, Legalis 15719).

The applicant in the application for ascertaining acquisitive prescription should list persons concerned in the case, which is regulated by Art. 511 § 1 (The Code of Civil Procedure 1964). However, it will be for the court to examine whether all the persons concerned in the case, as well as other persons, are or should be participants to the proceedings. In order to determine the circle of persons concerned in a given case, the court will be able to request, both from the applicant and other participants to the proceedings, information that will enable these findings to be made. If the court determines the persons concerned who are not involved in the case, it will summon them to participate. The court, when determining *ex officio* the circle of persons concerned, may also use the collections of documents, records and land and mortgage registers available to it, which in practice facilitates access to IT systems containing these information resources.

Particular significance of determining the persons concerned in the case for ascertaining acquisitive prescription by the court occurs when the applicant has not indicated as concerned the owner or co-owners of the property which is the subject of the proceedings.

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The owner's participation in the proceedings is necessary, so if the applicant fails to indicate them, the court should *ex officio* take action to determine them. If the determination is not possible on the basis of land and mortgage registers and other evidence, then they should be called upon to participate in the case by means of an announcement provided for in Art. 609 § 2 and 3 (The Code of Civil Procedure 1964) (decision of the Supreme Court of 05 March 1996, II CRN 211/95, Legalis 386463 and decision of the Supreme Court of 18 February 2015, I CSK 82/14, Legalis 1242081).

If the applicant has not indicated other persons concerned and at the same time the court has not been able to determine them, then the decision in the case will be made only after summoning other persons concerned under the procedure notifying the creditors of share capital reduction. The court may summon other persons concerned in the case also in other situations if it deems it advisable. An optional summoning may take place, for example, when the persons concerned have been identified, but there are reasonable doubts as to whether there are other persons concerned besides those persons. In particular, whether the ownership of the property was transferred to another person before the end of the prescription period (Art. 609 Marciniak). However, this only applies to situations when the applicant does not identify the persons concerned because they are not known to the applicant and will not relate to situations where only their whereabouts are not known. In this case, according to general principles, appointment of a guardian ad litem should be considered (decision of the Supreme Court of 19 February 1966, II CZ 50/66, Legalis 12583).

When referring to the above mentioned procedure, it should be noted that in terms of content of the announcement, in addition to the provisions of Art. 609 and 610 (The Code of Civil Procedure 1964), the provisions regarding the confirmation of the acquisition of an inheritance and the subject of the specific bequest, to which the legislator refers in Art. 610 § 1 (The Code of Civil Procedure 1964) will apply accordingly. For matters not regulated in chapter 2. Ascertaining acquisitive prescription reference should be made to the provisions of Art. 673–675 (The Code of Civil Procedure 1964). The announcement should specify the thing to be prescribed in such a way as to allow its identification and indicate the name of the possessor of the thing and its last owner. Another necessary element of the announcement is a call for persons concerned to declare and prove their rights to the thing (in this case real estate) within three months from the date indicated in the announcement, otherwise the court will announce acquisitive prescription if it finds grounds for issuing such a decision (Flaga-Gieruszyńska, 2019b). According to Art. 674 in conjunction with Art. 610 §1 (The Code of Civil Procedure 1964) the announcement should be placed in a magazine popular throughout the entire territory of the country, and also made public in the place where the thing is located, in the manner adopted at that place. The legislator also provided for the possibility of withdrawing from publication of the announcement, however, this is only possible if the value of the thing is insignificant, which will not be the case with real estate.

As a consequence, not only the importance of the initiative of the applicant and other participants to the proceedings should be noted, but also the *ex officio* activity of the court, the purpose of which is to correctly determine the subjects of the proceedings, ensuring legal protection to all those directly or indirectly concerned in settling the matter regarding ascertaining acquisitive prescription of real estate.

APPLICATION TO COMMENCE PROCEEDINGS AS A PROCEDURAL WRIT

Proceedings for ascertaining acquisitive prescription of real estate are non-litigious proceedings initiated only by an application that any person concerned may submit. The application for ascertaining acquisitive prescription of real estate should satisfy the general requirements of the application to commence non-litigious proceedings referred to in Art. 511 (The Code of Civil Procedure 1964). Pursuant to this provision, the application must comply with

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the provisions regarding the lawsuit, with the exception that instead of the defendant, persons concerned should be indicated. The application should include indication of the property to which the proceedings relate, in such a way that it can be identified. The court with jurisdiction to hear the case will be the district court of the location of the real estate in question (Art. 507 in conjunction with Art. 606, The Code of Civil Procedure 1964).

The application for the prescription of real estate should include the request, and thus specify the real estate for which the prescription is being requested and the date on which the ownership of that real estate was acquired by prescription. A case regarding the prescription is a property case, therefore the application for ascertaining acquisitive prescription of real estate should include the determination of the value of the subject of the dispute, which will usually be the value of the right which is the subject of the prescription (Wagemann 2011).

The application for ascertaining acquisitive prescription of real estate should include documents referred to in Art. 609 (The Code of Civil Procedure 1964). If the application concerns real estate which is disclosed in the land and mortgage register or for which a set of documents is kept, then a copy of the land and mortgage register or certificate of legal status resulting from this set of documents should be attached.

The application for ascertaining acquisitive prescription of real estate is subject to a fixed court fee, which is defined in Art. 40 (Law on Court Costs in Civil Cases 2015) and it amounts to PLN 2,000.

It is possible that more than one application for ascertaining acquisitive prescription will be submitted by different persons for the same real estate based on different factual grounds. Then, as indicated by the Supreme Court in the resolution of 12 June 1986, it is advisable to combine these cases pursuant to Art. 219 in conjunction with Art. 13 § 2 (The Code of Civil Procedure 1964) for joint examination in the manner referred to in Art. 609–610 (The Code of Civil Procedure 1964) (resolution of the Supreme Court of 12 June 1986, III CZP 28/86, Legalis 25360).

In the event that the application contains formal defects or is not duly paid, the provisions of Art. 130–130^2 in conjunction with Art. 13 §2 (The Code of Civil Procedure 1964) will apply. If a party has submitted to the court an application for ascertaining acquisitive prescription of real estate that has formal defects that prevent it from taking further course or the court fee has not been paid in the correct amount, then the chairperson summons the party by order, to correct or supplement it or to pay for it, under the pain of returning the application within one week of delivery of the order. If the party supplements the indicated defects within this period, then the application has legal effects from the date of its initial submission to the court. However, after the ineffective expiry of the time limit, when the applicant does not remove the formal defects, the chairperson returns the application which has no legal effects. In the event of submitting an application with formal defects or without paying the court fee in the correct amount, when the application is submitted by a professional representative, then such an application, by way of an order, is returned without a request to correct formal defects. If the representative within a week from the date of delivery of the order returning the application corrects the formal defects indicated in it, then the document will take effect from the date of the original submission.

Despite the fact that the legislator did not specify separate requirements for the application for ascertaining acquisitive prescription of real estate, but merely referred to the general provisions regarding the application initiating non-litigious proceedings, it should be noted that the specificity of these proceedings forces the emphasis on a precise determination of the claim. Especially if the real estate is not disclosed in the land and mortgage register or for which no set of documents is kept, it is particularly important to accurately identify the real estate, as well as identify the person who acquires the property and indicate the date on which the prescription happened. It should be remembered that the subject of the proceedings here is real estate, i.e. an object whose possibility of reliable, individual identification and indication of its owner is particularly important for the security of legal transactions.

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PROCEEDINGS FOR ASCERTAINING ACQUISITIVE PRESCRIPTION OF REAL ESTATE

Non-litigious proceedings in cases considering property law require a hearing. A case regarding ascertaining acquisitive prescription of real estate is, in accordance with Art. 608 (The Code of Civil Procedure 1964), examined at a hearing. In the event of summoning persons concerned through an announcement in accordance with Art. 675 (The Code of Civil Procedure 1964), in order to examine the claims, the court will set a hearing after three months from the date of the announcement, for which it will also summon persons who have submitted claims and provided their place of residence.

Due to the fact that the legislator has specified a special non-litigious procedure, it will not be possible to ascertain the presumption in the trial for establishing the right or removing inconsistencies between the state disclosed in the land and mortgage register and the actual legal status. In turn, it is possible that the acquisition of property by prescription may be proved as a premise for another resolution without the need for prior determination of this fact in accordance with the procedure provided for in Art. 609 and 610 (The Code of Civil Procedure 1964). However, this is permissible only if establishing this fact does not belong to the resolution in a given case, but only constitutes its premise. Such a situation may occur, for example, in a process in which the plaintiff pursues a vindicative claim, and in a demarcation case. On the other hand, it is unacceptable to replace proceedings for the acquisition of real estate by prescription with proceedings in which the resolution is essentially limited to ascertaining the prescription itself. Therefore, it will not be possible to ascertain the prescription in the process for establishing the right or removing inconsistencies between the state disclosed in the land and mortgage register and the actual legal status (resolution of the Supreme Court of 20 March 1969, III CZP 11/69, Legalis 13899).

The court during the proceedings examines the substantive and legal premises of prescription, which are set out in the provisions of Art. 172–176 of the Act of 23 April 1964 – the Civil Code. Firstly, uninterrupted possession of the property by an autonomous possessor for 20 years if the possession was obtained in good faith, and in a case of possession obtained in bad faith – for a period of 30 years. Secondly, the court should examine whether the person against whom the prescription period is running is not a minor or the period of 3 years since this person reached the age of majority has not elapsed, which excludes the possibility of ascertaining the prescription. Only the possessor who does not own the real estate acquire it by prescription (judgment of the Court of Appeal in Warsaw of 10 June 2015, VI ACa 37/15, Legalis 1337295).

An issue that raises significant doubts and divergences in both doctrine and jurisprudence is the issue of the extent to which the adjudicating court is not bound by the claims of the participants. Two opposite views emerged as to whether the court can ascertain acquisitive prescription of real estate in favour of the person who did not apply for it. The discrepancies result from a different understanding of the referral from Art. 610 §1 (The Code of Civil Procedure 1964). According to the first view, the proper application of the provisions on the acquisition of an inheritance consists in the application of Art. 677 § 1 (The Code of Civil Procedure 1964) without any modification. According to this view, the court should ascertain acquisitive prescription of real estate, in accordance with the results of evidentiary proceedings, in favour of a person who has acquired the property right in this way, even if it was a different person than then one indicated by the participants to the proceedings. On the basis of this position, Krej (2020) indicates that the referral in question refers to Art. 677 (The Code of Civil Procedure 1964) in the scope of not binding the court with a claim referring to the determination of another purchaser, another date of purchase, or other subject-limited scope of purchase of property. However, the court cannot rule on another matter or right that was not the subject of the claim. A similar view has K. Flaga-Gieruszyńska (2019b), who indicated that ascertaining acquisitive prescription

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takes place in favour of the person concerned even this person is not the applicant, the court also determines the date on which the real estate was acquired, regardless of the date indicated in the application. In addition, the specific nature of the proceedings for ascertaining acquisitive prescription is emphasized because their purpose is to determine the ownership relations of the real estate. As she claims, this is the reason why the proceedings are conducted in a non-litigious way, and the court is not bound by the claim contained in the application and has the obligation to issue a judgment that will correspond to the legal status resulting from the findings made in the course of the proceedings. This view is also reflected in the case law of the Supreme Court (decision of the Supreme Court of 27 March 2013, V CSK 202/12, Legalis 736743, decision of the Supreme Court of 12 September 2014, I CSk 626/13, Legalis 1092028, decision of the Supreme Court of 26 February 2014, I CSK 243/13 Legalis 1160414).

According to the second view, which appears as to whether the court is bound by the application, the proper application of the provisions regarding the acquisition of an inheritance must take into account the different specifics of these proceedings. Therefore, in the light of this position, it is not possible to apply Art. 677 §1 (The Code of Civil Procedure 1964) directly, which means that the court will be bound by the indication made by the participants to the proceedings of the person in favour of whom the acquisitive prescription is to be ascertained.

In turn, Pietrzykowski and Pietrzykowski (2020b) believe that Art. 610 § 1 (The Code of Civil Procedure 1964) contains only a partial referral to the provisions regarding the confirmation of the acquisition of an inheritance, because it is only about 'announcement' and 'judgment', but the principle of court's *ex officio* action to determine authorized persons cannot be adopted except for the announcement provided for in Art. 609 § 2 (The Code of Civil Procedure 1964). From this referral, it cannot be inferred that the court will ascertain the acquisition of real estate *ex officio* without an application of an authorized person in a substantive and legal sense. According to these authors, the referral does not include the obligation provided for in Art. 670 (The Code of Civil Procedure 1964) to determine *ex officio* the circle of authorized persons. This view is also reflected in the case law of the Supreme Court (resolution of the Supreme Court of 12 June 1986, III CZP 28/86, Legalis 25360, decision of the Supreme Court of 15 September 2011, II CSK 657/10, Legalis 459005, decision of the Supreme Court of 20 March 2014, II CSK 279/13 Legalis 994512). In the light of the resolution adopted in a composition of seven judges of the Supreme Court on 11 June 2015, the second view should be considered correct. The Supreme Court held that ascertainment of acquisitive prescription of real estate is possible only in favour of the person indicated by the applicant or another participant to the proceedings. In addition, it was pointed out that if it is clear from the evidence that ownership of the property was acquired by means of prescribed by a person other than that resulting from the application, the court should allow the claim to be modified, and if that person does not participate in the case, summon them to participate (resolution of the Supreme Court of 11 June 2015 CZP 112/14, Legalis 1249407). In a case regarding a confirmation of the acquisition of an inheritance, the court *ex officio* watches over the correctness of the issued decision, in turn in a case regarding ascertaining acquisitive prescription, the adjudicating court only needs to determine who acquired the property by means of prescription. Inheritance is subject to constitutional protection; hence the court must regulate the legal situation of the testator. On the other hand, in the matter of ascertaining the prescription of real estate, there are no grounds for public interest and legal order protection to require an *ex officio* decision on the acquisition of property by prescription, even if there is no application from the person concerned (Garlińska 2017, pp. 9–10).

The court adjudicating in the proceedings for ascertaining acquisitive prescription of real estate may take all evidence that will be necessary to demonstrate that the premises for the prescription are met, both requested by the applicant and other persons concerned, but it may also take evidence which was not

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requested by any of the indicated subjects (Krej 2020). In this respect, it will be of fundamental importance to outline the framework of evidentiary proceedings, including means of evidence as to the facts relevant to the resolution of the case. In this category of cases, a problem, which appears most frequently is the problem of using the most cost-intensive and time-consuming means of evidence, which is the opinion of an expert, which the court is required to use if it finds that special knowledge is necessary to resolve the case correctly. This particularly applies to the participation of an expert surveyor. It is argued in the doctrine that not every case regarding ascertaining the prescription of real estate requires taking evidence from an option of an expert surveyor. If the object of the proceedings is real estate which is a plot of land with fixed boundaries disclosed on the main map, then there is no need to take such evidence. However, if as a result of acquisitive prescription only ownership of a part of the plot of land is to be acquired, then in order to reveal the boundaries of the plot on the map and in the field, evidence from the opinion of an expert surveyor will be necessary (Olczak-Dąbrowska 2019).

Attention should also be paid to legal presumptions relevant to establish the factual and legal status relevant to ascertaining or refusal of ascertaining, in connection with which in these circumstances there will be no need to take evidence. In such a situation, the burden of proof will rest only with those subjects that want to refute the facts covered by the presumption. The above-mentioned presumptions are indicated in the Civil Code norms and these are: the presumption of the autonomous possession (Art. 339, Civil Code 1964), the presumption of the continuity of possession (Art. 340, Civil Code 1964), the fiction of the continuity of possession, which has been reinstated (Art. 345, Civil Code 1964), the presumption of good faith (Art. 7 in conjunction with Art. 172 § 1 (Civil Code 1964). The above-mentioned presumptions relate to the premises of prescription of real estate; therefore, they will have a significant impact on the scope of the evidentiary proceedings in a case regarding acquisitive prescription.

In proceedings for ascertaining acquisitive prescription of real estate, it is permissible to refute the presumption that results from the entry of the current owner in the land and mortgage register. An entry in the land and mortgage register as the owner, of a person who in fact is not the owner, does not constitute a negative premise for prescription. A decision ascertaining the acquisition of property by means of prescription will refute this presumption. This ruling is the basis for removing inconsistencies between the current entry and the actual legal status (Strzelczyk 2019).

DECISION OF THE COURT REGARDING ASCERTAINMENT OF PRESCRIPTION

In cases regarding ascertaining acquisitive prescription of real estate, the court issues a decision in which it states that a given person has acquired property by prescription of the identified property or dismisses the application. The decision stating the acquisition of property by prescription is declarative and it is effective *erga omnes*, and the acquisition of property is of primary nature (Malczyk 2020). The decision of the court will therefore only confirm the legal effect that arose by virtue of law itself. Challenging such a decision and dismissing the application for prescription means that the subject seeking ownership by means of prescription has never acquired that ownership because it did not meet the statutory requirements (judgment of the Supreme Administrative Court of 25 March 1999, I SA 1306/98, unpublished). Thus, the acquisition of ownership of real estate by prescription is not dependent on the court proceedings initiated before the court, nor on its ascertainment in the decision. Acquisition of ownership by means of prescription will occur as soon as the statutory premises for prescription are met, so the decision does not create a new legal status, but merely confirms the existing legal status.

Due to the specificity of the proceedings in question, it is necessary to indicate the necessary elements of the content of the decision issued by the court in these cases. The decision ascertaining acquisitive

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prescription specifies the date on which the real estate was acquired, specifies the new legal status of the real estate from the indicated date, regardless of the effects of subsequent events that could shape this status differently. Moreover, the subsequent sale of the real estate by its original owners is not an obstacle for ascertaining acquisitive prescription (decision of the Supreme Court of 3 April 2003, V CKN 60/03, Legalis 69807).

The decision should accurately identify the real estate, which is acquired by means of acquisitive prescription according to the rules provided for in the provisions on keeping land and mortgage registers, which will allow to reflect the content of the decision in the land and mortgage register. If the object of the acquisition is the entire real estate that has a land and mortgage register or set of documents, it will be sufficient to identify it by referring to the designation of that register or set of documents.

In the decision, the court must also indicate the subject that will acquire ownership of the real estate by prescription. A legally binding decision stating the acquisition of ownership by prescription is the basis for entry in the land and mortgage register of a person acquiring the ownership of real estate by prescription as the owner. A legally valid copy of the decision is sent by the court to the competent authority, which keeps the land register and notifies the appropriate land and mortgage register department.

In practice of applying the law, unusual cases of the subjective party to the decision were also resolved. If there is a situation that the purchaser of the real estate by means of prescription will be several co-owners, then the decision also indicates the amount of their shares. It is presumed that, unless the circumstances of the case indicate otherwise, the amount of these shares is equal. If ownership by means of acquisitive prescription will be acquired by spouses who are subject to a system of joint ownership, then both of them will be indicated as purchasers, with the indication that the acquisition will be on a joint basis. On the other hand, if only one of the spouses fulfils the features of autonomous possession of property, then only this spouse will be mentioned in the conclusion of the decision, even if the acquired property, in the light of Art. 31 §2 (The Family and Guardianship Code 1964), became an element of joint assets (resolution of the Supreme Court of 28 February 1978, III CZP 7/78, Legalis 20714).

Cases regarding ascertaining acquisitive prescription of real estate may also end with a decision rejecting the application. However, a legally binding decision refusing to ascertain the prescription of real estate will not prevent, in the event of a change in circumstances, re-submission of the application in this regard. The court in the re-opened case will not be bound by the findings that result from the justification of the decision dismissing the application to the extent to which they are not relevant for the decision (resolution of the Supreme Court of 12 March 2003, III CZP 97/02, Legalis 56169).

The determination by the court in a decision that a given person has acquired a specific real estate by means of prescription does not prejudge this person's current title to the real estate, if after the date of acquisition of the real estate specified in the decision events resulting in a change of title occurred (Dziczek 2011).

Consequently, it is irrelevant for the issuance of this decision whether the person from whom the ownership was acquired continues to own the real estate at the time of the decision, and whether the purchaser is still an autonomous possessor. The decision merely specifies that at a given time a specific person has met the premises of prescription and has acquired ownership of specific real estate. Despite the declarative nature of this decision, it is of significant importance in legal transactions, since only this decision can constitute the basis for entering a new owner in the land and mortgage register.

CHALLENGING A DECISION ASCERTAINMENT ACQUISITIVE PRESCRIPTION

In proceedings for ascertaining acquisitive prescription of real estate against a decision of the court of first instance resolving the matter as to its substance, an appeal may be lodged. For appeals

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in non-litigious proceedings, the provisions of Art. 367–391 (The Code of Civil Procedure 1964) will apply accordingly. An appeal may be lodged by any participant to the proceedings. The decision may be also appealed against by a person concerned who has not yet been a participant to the proceedings. It will become a participant when an appeal is lodged, which will be treated as an application to participate in the case. The person concerned, who has not been a participant to the proceedings so far, may lodge an appeal until the expiry of the time limit for filing it set for all current participants to the proceedings. However, the appeal will not be admissible against a part of the decision that does not include a resolution on a part of the real estate covered by the applicant's claim (resolution of the Supreme Court of 11 December 2014, III CZP 94/14, Legalis 1180280).

In turn, against a decision of the second instance regarding the merits of the case and against a decision of the second instance on the rejection of the application and discontinuance of proceedings, if they end the proceedings in the case, pursuant to Art. 519^1 §1 (The Code of Civil Procedure 1964), as cases of property law, a cassation appeal to the Supreme Court may be lodged.

Revocation of a final judgment regarding ascertaining the ownership of real estate by prescription, will also be possible if this decision violates the rights of the person concerned who was not a participant to this proceeding. This person may then pursue their rights only by resuming proceedings in this case, as stated in Art. 524 § 2 (The Code of Civil Procedure 1964) (resolution of the Supreme Court of 13 September 1967, III CZP 60/67, Legalis 13200). It should be emphasized that it is not sufficient that the person concerned did not participate in the proceedings, and each time it should also be examined whether this resulted in a real violation of that person's rights as a part of the terminated proceedings (Akińcza 2006). Failure to summon to participate in the case regarding ascertaining the acquisition of ownership of real estate by prescription does not invalidate the proceedings (order of the Supreme Court of 18 November 2003, II CK 233/02, Legalis 222833).

CONCLUSIONS

Proceedings for ascertaining acquisitive prescription are a separate type of non-litigious proceedings, however, despite distinguishing a particular type of proceedings, as a result of scarce regulations, in many cases a reference should be made to general provisions regarding non-litigious proceedings and properly applied provisions regarding proceedings for the acquisition of an inheritance and specific bequest. However, even when referring to the general provisions of non-litigious proceedings, due to the special nature of these proceedings, certain features characterizing these proceedings can be distinguished.

A person concerned in a case regarding ascertaining acquisitive prescription of real estate is anyone whose rights are affected by the outcome of the proceedings. Such a person will undoubtedly be the autonomous possessor of real estate, a person who has lost ownership by means of acquisitive prescription, but also other subjects, such as creditors of the previously indicated subjects. Although this issue raises doubts in legal doctrine, it should be assumed that dependent possessors are also persons concerned in the case. The adoption of a broad understanding of the notion of the person concerned in the proceedings for ascertaining acquisitive prescription of real estate is also supported by the fact that determining the owner of the real estate is of particular importance for the certainty of legal transactions. Participation in the case of all persons concerned with the resolution of the case guarantees them the opportunity to defend their rights.

The purpose of the proceedings for ascertaining acquisitive prescription is to obtain a court decision that confirms that the person named therein acquired ownership of the identified real estate on a given date. Acquisition of ownership of real estate by prescription is by virtue of law, and the decision is only declaratory, but it is important because only this decision can constitute the basis for the disclosure of the new owner in the land and mortgage register. Proceedings in this regard are pending only on an application which must meet the general requirements of the

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application in non-litigious proceedings. The court on its own initiative will not be able to go beyond the claim of participants to the proceedings and determine the acquisition of property in favour of another person. However, it should allow modification of the claim during the proceedings, and if the evidence indicates that the person who is not involved in the case has acquired ownership, the court should summon this person to participate in the case. The legislator has provided for a separate non-litigious procedure for ascertaining the prescription, therefore it will not be possible for the court to decide on this matter in other proceedings. However, it is permissible for the court to examine the fact of acquisitive prescription in other proceedings if this fact is one of the premises for the resolution. In this case the court in the conclusion of the decision will not indicate that a given person has acquired ownership of the property but will merely cite this fact in the justification as a premise for a specific resolution of another case.

The decision ascertaining the prescription can be challenged. Against the decision resolving the case as to the substance, on general principles for non-litigious proceedings, in the first instance an appeal can be lodged, and in the second instance a cassation appeal can be lodged. An additional possibility to revoke a final decision is resumption of proceedings when the decision violates the rights of the person concerned, who was not a participant to the proceedings.

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URBANIZATION EFFECTS ON LAND USE CHANGES WITHIN CHIȘINĂU URBAN AGGLOMERATION. CASE STUDY – STĂUCENI COMMUNE

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ABSTRACT

This article evaluates the effects of urbanization on the land use within Chişinău agglomeration. The research carried out regarding situation in Stăuceni commune confirms that the peri-urban area undergoes a period of significant spatial and functional transformation influenced by the demographic pressure, poorly controlled urban development and intensification of land relations. By implementing the project "Chişinău Arena" on the territory of Stăuceni commune, the plan for territorial expansion of Chişinău city (in peri-urban areas located on m Chişinău ajor transport axes) is reconfirmed. At the same time, the demographic forecast presented in scenario III, according to UN for Population, shows that the Chişinău's population will decrease towards 2035, therefore it is necessary that the spatial planning to be adapted quickly to the pace of demographic changes for not compromising the infrastructure projects and land squandering in the suburban areas.

Key words: Stăuceni commune, land management plan, land fund, land balance, housing fund, demographic forecast

INTRODUCTION

The special importance of Chişinău municipality is determined by its political, social, economic and administrative functions which are extended throughout the territory of the country. During the last several decades in the process of municipality development is an increasing tendency of its integration with the suburban areas, in this way consequently, activating the agglomeration formation process.

However, the legislation of the Republic of Moldova does not refer to the term of "urban agglomeration". In the Concept of Sustainable Development of the Localities of the Republic of Moldova from 2001 and abolished in 2012 the terms that render an area of influence and a metropolitan area were presented in an ambiguous form – the model after which Chişinău agglomeration works. The term has become common only in the general plans of development and systematization of the network of localities, but which have not been implemented so far. According to the United Nations for Population, the agglomeration has first and foremost a demographic dimension, which was constituted by the concentration of the

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population in a large city and the suburban areas that are adjacent to the city limits. Also, we can mention that the issue is complicated by the fact that, although "suburb" or equivalent terms are used in different parts of the world, its connotations vary (Harris 2013). At the beginning of the twentieth century, many researchers focused on studying the lifestyle of the suburbs and explaining the terms of suburban residents and transit travelers, aspects that are actual and at the contemporary stage (Pisman 2011).

We consider, that Chișinău agglomeration obtained its official status along with the adoption of Law No. 431 of 19.04.1995 on the status of Chișinău municipality and Law No. 835 of 17.05.1996 on the principles of urbanism and spatial planning of the Republic of Moldova. Of course, Chișinău municipality was established as a territorial and regional system that undergoes a period of significant spatial and functional transformation influenced by demographic changes, poorly controlled urban development and intensification of land relations.

In this context, administrative boundaries within agglomerations have been removed from physical, social and environmental realities may result a diffuse urbanization (Feltynovsky 2015, Moreno--Monroy 2020). All these processes were specific to post-socialist cities at the stage of democratization of society (Ilchenco 2018). In general, the problems of urban agglomerations in post-socialist states have become the subject of research since the 90s of the last century, being actual for the beginning of the XXI century (Gornostayeva 1991, Kubeš 2013). Thus, according to the general principles of formation of the exposed suburbanization process (Hesse and Siedentop 2018), the Republic of Moldova follows the Eastern continental European model. In the same vein the effects of urbanization can vary greatly due to the diversity of economic, industrial, land and expansionist policies (Phelps 2017). It should be mentioned that urbanization processes need to be analysed in correlation with the distribution of different types of land use (Szarek-Iwaniuk 2020). However, urban sprawl and suburbanisation are often seen as global phenomena, expressing a universal model of land use change in market economy conditions (Taubenböck et al. 2019). Therefore, more than that, the processes associated with intensive development entail changes in the landscape and spatial layout of villages (Tataruch et al. 2019).

A deeper understanding of the relationships between trends that lead to urban sprawl based on certain national, regional and local considerations of urban development is essential to remedy the adverse effects of this phenomenon (EEA 2006), as the urban sprawl can be effectively reduced only by understanding the forces that influence it (Phelps 2017).

To capture the effects of the above-mentioned phenomena, an integrative approach was developed at the level of Stăuceni commune within Chișinău municipality.

MATERIALS AND METHODS OF RESEARCH

Studying the normative and legislative framework for territorial planning and development of Chișinău municipality, the reference documents with an impact on the land management in Stăuceni commune were identified as follows:

- Land Code of the Republic of Moldova (1991) – the only legislative document that which contrary to the rules of legal stability, has undergone numerous changes, especially in the field of land allocation and destination;
- Territory Plan of Chișinău municipality, approved up to 2025 (2007) has a guiding aspect in the correlation of programmes in all administrative-territorial units of Chișinău municipality;
- General Urban Plan of Stăuceni commune (2012) – it is developed for the whole territory of the locality, including all the territories necessary for its operation and development;
- Zonal Urbanistic Plan of the lands in the outside the built-up areas of Stăuceni commune (2019) – it includes a guiding component (the development directions for certain sectors with a special value in the locality territory) and a regulatory component

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with the following provisions: delimiting the functional area, establishing the construction regime with: alignments, height regime, control indices, occupancy rate of the territory and the land use coefficient.

In the elaboration of this study the following scientific research methods were applied. The analytical method was used for the working hypothesis formulation and for critical approach of the problems reported in the transformation of Stăuceni commune. The direct observation method was applied to collect confirmatory information regarding the situation in Stăuceni commune and correlating with public statistical data. The statistical--mathematical method was widely used in the process of collecting, processing and analysing a significant volume of statistical data regarding the structure of the land fund of Stăuceni commune for the years 1995 and 2015; dynamics of population at censuses 1989, 2004 and 2014; dynamics of housing stock (individual houses and apartments) for the period 1945–2014; and also the projected evolution of the Chișinău population towards 2035. The cartographic modelling applied through the Geographic Information Systems allowed the representation of changes in the land balance between 1982 and 2013 for the main categories of land (under constructions, arable land, orchards and vineyards).

RESULTS AND DISCUSSIONS

Stăuceni commune is an autonomous administrative-territorial unit within Chișinău municipality that is made up of two localities: Stăuceni (commune administrative residence) and Goianul Nou (a village). Stăuceni commune is neighboring in the North with Cricova town and Ciorescu commune, to the West with Grătiești commune and to the South--West with Tohatin commune. The geographical location of Stăuceni commune at a distance of 6 km in the North of the Chișinău, its direct access to the M2 (Chișinău – Orhei – Bălți – Cernăuți) and to M14 (Criva – Chișinău – Odessa), and also the national corridor Giurgiulesti – Cernăuți represent the main factors that have stimulated the increase of interest for this locality.

In order to understand the context in which Stăuceni commune has evolved within the influence area of Chișinău city and the mechanisms that must be activated to find optimal development solutions will be elucidated.

Demographic pressure: In the last decades Stăuceni commune has registered an upward demographic trend confirmed by the latest censuses of the population of the Republic of Moldova. According to the Census of Population and Housing from 2014 the population of the commune constituted 8694 inhabitants, being with 37.6% higher than in 1989, and with 27.2% compared to 2004 (Tab. 1). The same demographic growth is noted in Chișinău municipality. Thus, between 2004 and 2014 the population growth rate in Stăuceni commune was higher than in most of the suburbs of the capital, while some have recorded even a negative demographic balance (Fig. 1*a*). The reasons for which Stăuceni commune was prone to this demographic evolution are the advantages offered by proximity to the capital: intensification of the pendulum migration of the labour force, the extension of the housing stock and the numerical growth of the young population.

Table 1. The dynamics of the population number of Stăuceni commune at Census of the population of the Republic of Moldova, inhabitants

Locality	1989	2004	2014	2014/1989 [%]	2014/2004 [%]
Stăuceni Commune	6318	6833	8694	37.6	27.6
Stăuceni village	5742	6204	8000	39.3	28.9
Goianul Nou village	576	629	694	20.5	10.3

Source: National Bureau of Statistics of the Republic of Moldova

The positive dynamics of the population number, related to the small area of the city, had as a consequence for Stăuceni commune, namely the population density increase. In this context it is worth to be mentioned that only in the period 2004–2014, from the total of 18 suburbs of the municipality, Stăuceni commune registered, within the built-up area, the highest value of the population growth rate,

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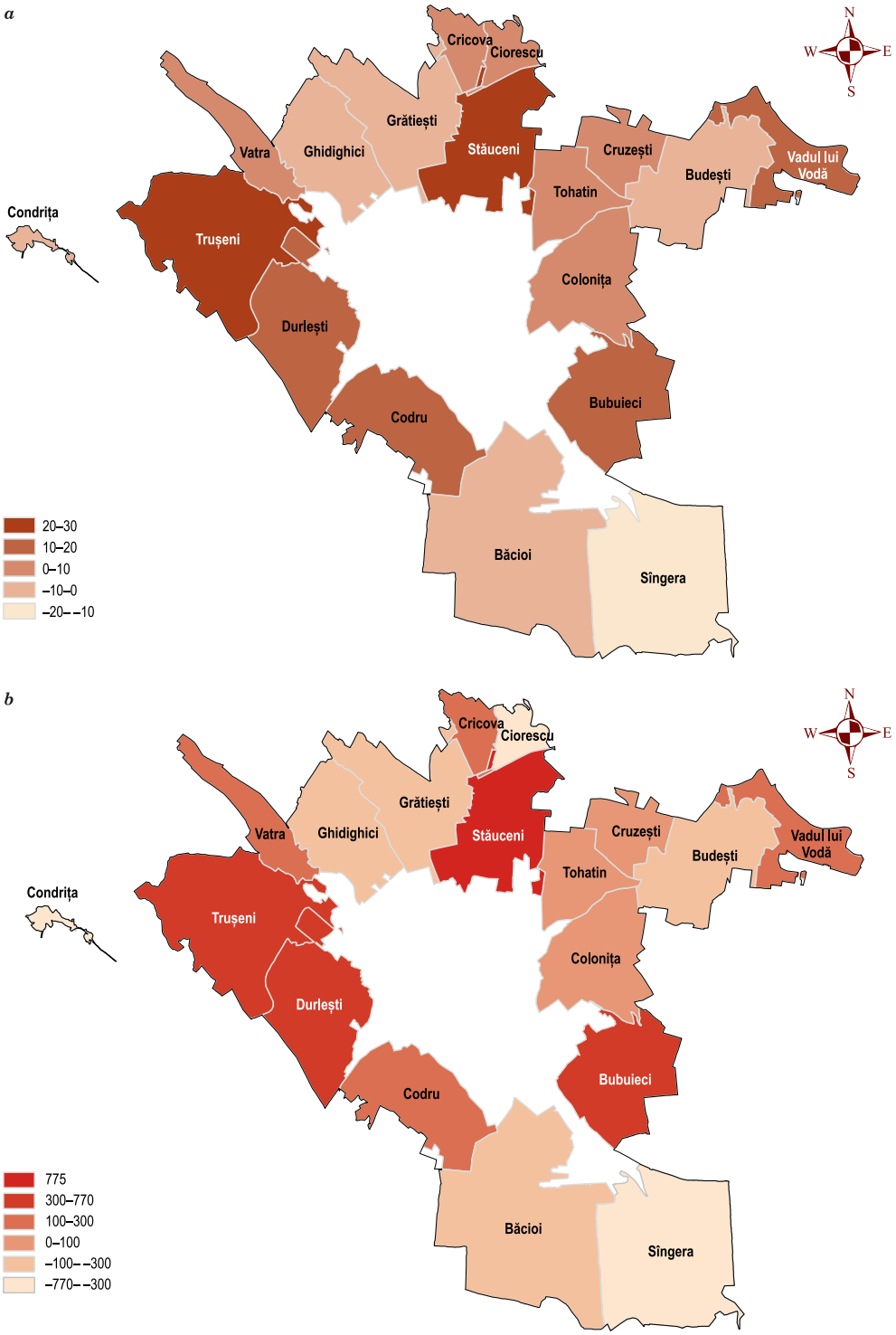

Fig. 1. Variation in time of the population in Stăuceni commune and the suburbs of Chișinău municipality between 2004 and 2014: *a* – population number [%]; *b* – population density [inhabitants per square km]

Source: own elaboration according to National Bureau of Statistics of the Republic of Moldova

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which constituted 775 inhabitants/km^2, compared to Trușeni commune (385 inhabitants/km^2), Durlești city (342 inhabitants/km^2), Cricova city (272 inhabitants/km^2), or Codru city (272 inhabitants/km^2) – Figure 1(*b*). Under these conditions, Stăuceni commune is emerging within the municipality of Chișinău as an area with a demographic dynamism at the expense of some suburbs that have registered a modest growth or are even affected by depopulation.

Structural modification of the land fund in Stăuceni commune occurred as a result of the economic, social and political transition of the Republic of Moldova, from the 90s of the 20th century, which was manifested at the beginning by the abolition of state property, the privatization of immovable property, the abuses by the decision-makers, later this process continued with the increase of the urban pressure, the lack of urban planning and the instability of the land legislation.

Thus, on January 1, 2015 the surface of the land fund of Stăuceni commune constituted 2745.5 ha, which distributed according to the mode of use shows as follows: agricultural land – 76.0%, forest plantations – 8.0%, constructions 3.0%, roads 8.8%, streets 2.0% etc. Compared with the year 1995, in the structure of the land fund were highlighted important changes both in quantity and quality. Firstly, the surface of the land fund was reduced from: 3110 ha in 1995 at 2745.5 ha at present, or by 11.7%. During this period, the area of multi-annual plantations was reduced essentially from 33% to 25%, and the share of arable land increased from 36% to 46% (Fig. 2*a*, *b*).

To emphasize systemic changes from the land fund, the balance of land exits and entrances was analyzed for the main categories of use between 1982 and 2013 (Fig. 3). During this period, the surface of the build-up area increased by 160 ha, especially from the account of arable land in a proportion of 76% and orchards of 11.2%. The surface of the arable land has increased the total area by over 20 ha, in particular, on account of the areas occupied with multi-annual crops (orchards and vineyards) ≈ 90%. The lands occupied by the vineyards had the most to suffer as a result of changing the way they were used, the area of which was reduced by 240 ha. Over 80% of the area of the vineyards has been converted to arable land (Fig. 3).

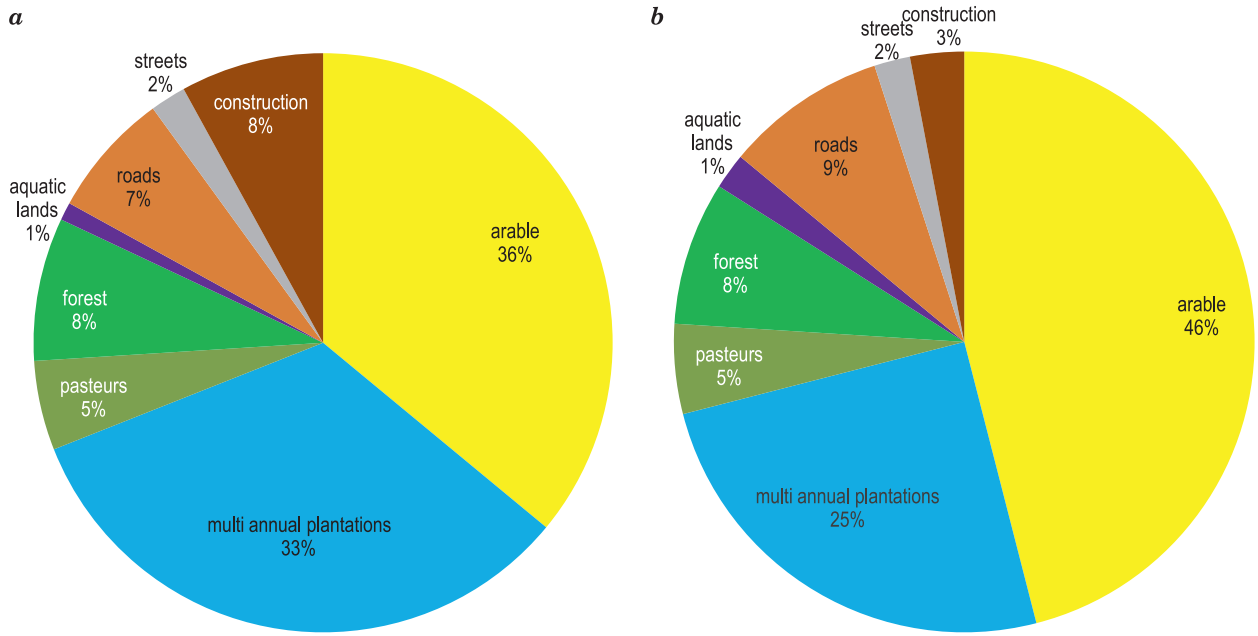

Fig. 2. The structure of the land fund of Stăuceni commune in: *a* – 1995; *b* – 2015
Source: own elaboration according to National Land Cadastre

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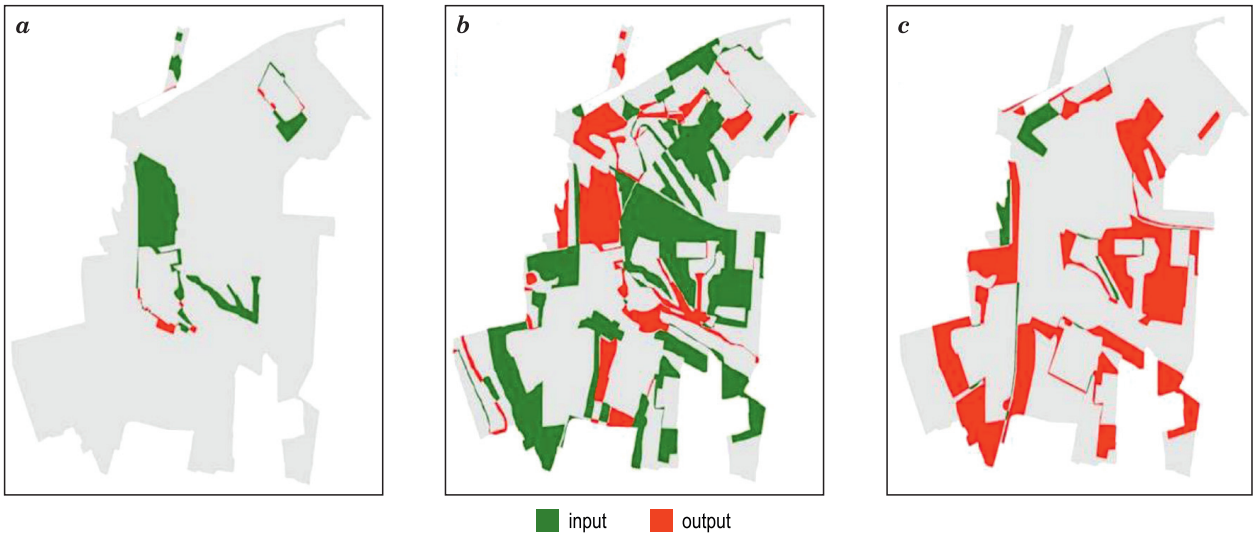

Fig. 3. The spatial dynamics of the main land categories of Stăuceni commune for the years 1982 and 2013: *a* – built-up area; *b* – arable land; *c* – vine plantation
Source: own elaboration according to National Geospatial Data Fund

On January 1, 2015 from the surface of the land fund of Stăuceni commune (2745.5 ha), in state property were 65%, private property 24.5% and ownership of territorial-administrative unit 10.5%. Comparing the data recorded by the mayoralty of Stăuceni and those of the Registry of Real Estate (RBI) regarding the land area by the form of ownership, significant deviations of the cadastral data are revealed. According to the evaluations carried out, it was found that the land area after all forms of ownership is smaller than the one indicated by the town hall. At the same time, the total area of Stăuceni commune is smaller than the final data shows (Tab. 2). This situation indicates that, the mayoralty of Stăuceni commune is devoid of information related to the land cadastre.

Table 2. Forms of land ownership

Forms of land ownership	Land balance [thousand ha]	Real estate registry [thousand ha]	Deviations [thousand ha]
State public property	1,75	1,55	-0,20
Public property	0,25	0,07	-0,18
Private property	0,71	0,66	-0,05
The total area of the commune	2,75	2,28	-0,47

Source: own elaboration according to Audit Report of the financial statements of Stăuceni commune, December 31, 2017, p. 10

Another observed problem is the fragmentation of land and real estate assets of state enterprises. In this context, the State Enterprise "National College of Viticulture and Winemaking" and "Stăuceni Wine Factory" represented the essential factor in the development of the locality. For several decades, the company was the main owner of the lands in Stăuceni commune. In the mid-1990s, 1750 ha of land or 56% of the total area of the commune were managed by the state-owned enterprise, including 72.5% of the agricultural area and only 7.8% of the built-up area. In the internal structure of the enterprise, the largest areas were occupied by vineyards and orchards ≈50% from total, which provided with raw material the factory for processing agricultural production in the locality. By 2015, the company was dispossessed of 300 ha or 20% of the total area, later used for construction. As a result of the optimization of the processing capacity of the wine factory, the areas of vineyards and orchards were reduced, by over 70%, but their share in the structure of the internal land fund has remained.

In recent years, the lands in the administration of the company have become the subject of land

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disputes, especially on bad mismanagement, and subsequently became the object of expropriation for the needs of the state. According to the Government Decision No. 781 of 22.06.2016 The State Enterprise "The National College of Viticulture and Winemaking from Chișinău" was reorganized into 2 separate entities – the Public Institution "Center of Excellence in Viticulture and Winemaking" and the State Enterprise "Stăuceni Wine Factory". In the administration of the Center of Excellence in Viticulture and Winemaking, remained agricultural lands with an area of 1431.5 ha, all related to the delivery of educational services.

The reorganization and delimitation of the patrimony of the State Enterprise, represents a successive stage of the plan regarding the identification and organization of the land (69.23 ha) necessary for the construction of the multipurpose arena, according to LG Nr. 52 of 23.03.2018.

Speculative character over the lands of Stăuceni commune was influenced by the evolution of the real estate market in Chișinău, where the high prices and the reduced supply caused the buyers to orient themselves towards the suburbs. The market value of the land depends on a number of factors:

a) location;
b) the degree of endowment with urban infrastructure;
c) the presence of transport and communication routes;
d) the ecological state of the area and the presence of the green spaces;
e) the urban perspective of the area, etc.

As a result of examining over 40 advertisements, the price offer for the land for construction and also for agricultural ones from the village of Stăuceni was established. The most expensive land for construction (10,000 €/ar) are located out of the build-up area of Stăuceni commune, near the Râșcani sector of Chișinău city. The lowest prices (1500–4000 €/ar) are required for land located outside the city with limited access to the main road routes. The high price for agricultural land (> 50,000 €/ha) is determined, in particular by the presence of the facilities offered for the development of agricultural infrastructure (shopping centres, warehouses, platforms for agricultural equipment, etc.).

Stăuceni commune, along with other suburbs of the capital, faces the unresolved issue regarding the confused status and the lack of a clear perspective of development of the fruit-growing associations, with functions of village settlements, inherited from the Soviet period. On the territory of the commune there are the fruit-growing associations "Buruiana", which covers an area of 9 ha, and was distributed, according to the norm by 6 are, to 150 owners (Fig. 4).

Previously distributed free of charge to the inhabitants of Stăuceni commune, these lands have

Fig. 4. Fruit-growing association „Buruiana"
Source: photo by authors

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become the object of transactions on the land market, under the influence of high demand and exaggerated prices on land for construction in the capital.

The problem returned to the agenda of the central authorities, stemming from the situation created around these organizational-legal forms, considered outdated for the following reasons (self-government regime, locations without addresses and residence visa, etc.). So it was approved the completion of the Land Code, with art. 40 which provides for the possibility of including the lands from the fruit-growing association within the locality, but with respect of the urbanism norms and the specific requirements. Also the lands within the fruit-growing associations will be excluded from the agricultural circuit and will be considered as land intended for construction.

But this supplementation of the Land Code cannot be considered effective, firstly, because it is not mandatory, secondly, the procedure for inclusion within the locality is difficult (change of the GUP of the locality) and investments will be required for the infrastructure rehabilitation of.

Under the pressure of the demographic factor, Stăuceni commune became one of the most dynamic suburbs of the capital in terms of housing development, which had an impressive evolution both in the construction of individual houses and in a period of real estate effervescence of the multi-storey housing fund.

The increase in the number of individual houses has evolved significantly, starting with the 80s of the 20th century, supported by a coherent policy of extending the city, based of the multi-annual plantations clearing from the northern area of the commune (Fig. 5*a*).

The dynamics of housing block constructions has evolved significantly since 2005, when it is recorded a breakthrough of real estate in the municipality of Chișinău, due to the high demand for living space. Only between 2006 and 2014, in the village of Stăuceni, were there a greater number of apartments than before 1990 (Fig. 5*b*).

The tendency of expansion of low density constructions has led to the depletion of the land fund for the development of the locality. Later, due to the lack of land for residential blocks, the destination of the green spaces in the central area of the locality with complicated geotechnical conditions was used. That has led the increase of the build-up area on a limited territory, having a negative impact on the coherence, quality, degree of endowment and support with social infrastructure (Fig. 6).

At the same time, out of the more than 1800 apartments built in the suburbs of Chișinău, ≈ 35% belong to the village of Stăuceni, more than in the other 8 suburbs taken together (Fig. 7). As a result of the increase in the number of apartments placed in service, the share of apartments of this type in the structure of the residential fund of Stăuceni commune constituted (44.5%), higher values were registered by only 2 suburbs of the capital: the cities Vatra (45.2%) and Cricova (47.2%) – Figure 8.

The planning policy and planning of the territory of Stăuceni commune initially provided for the elaboration of the Concept "Zonal urbanistic plan for the development of the territory of Chișinău – Stăuceni" as a component part of the Planning Plan of the territory of Chișinău municipality in 2007, with the purpose of creating a space with a unique urban architecture between Râșcani sector and Stăuceni commune. It was also intended to perform the following tasks: determining the use of land; the modernization and development of the transport infrastructure; planning of new urban elements (commercial areas, agreement and sports areas, business areas, etc.). The proposed land for carrying out these projects, had the planned area of 540 ha – state property. The suspension of the Chișinău Municipality Territory Plan for an indefinite period, did not allow the realization of the respective projects, according to the initial program.

Subsequently the lands outside of built-up area of Stăuceni commune, located directly at the border with the Râșcani sector and the urban interest thoroughfare – Bucovina Street, they were used for the construction of individual houses, which in time formed a residential complex. Interest for land in out of the build-up area of Stăuceni, it reappeared

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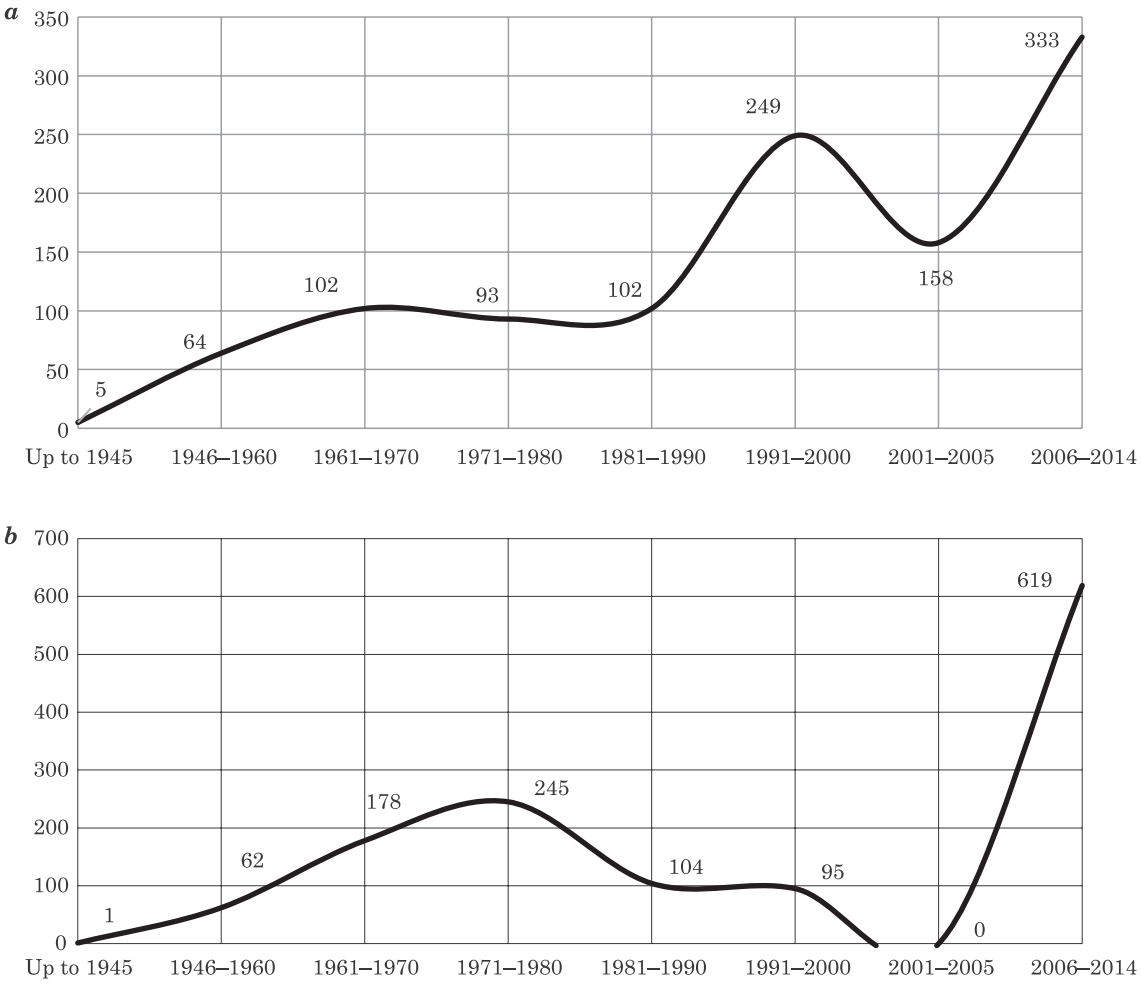

Fig. 5. Dynamics of the number of individual houses *a*) and apartments *b*) built in Stăuceni commune from 1945 to 2014
Source: own elaboration, according to National Bureau of Statistics of the Republic of Moldova

Fig. 6. Multi-storey residential complex, Stăuceni commune
Source: photo by authors

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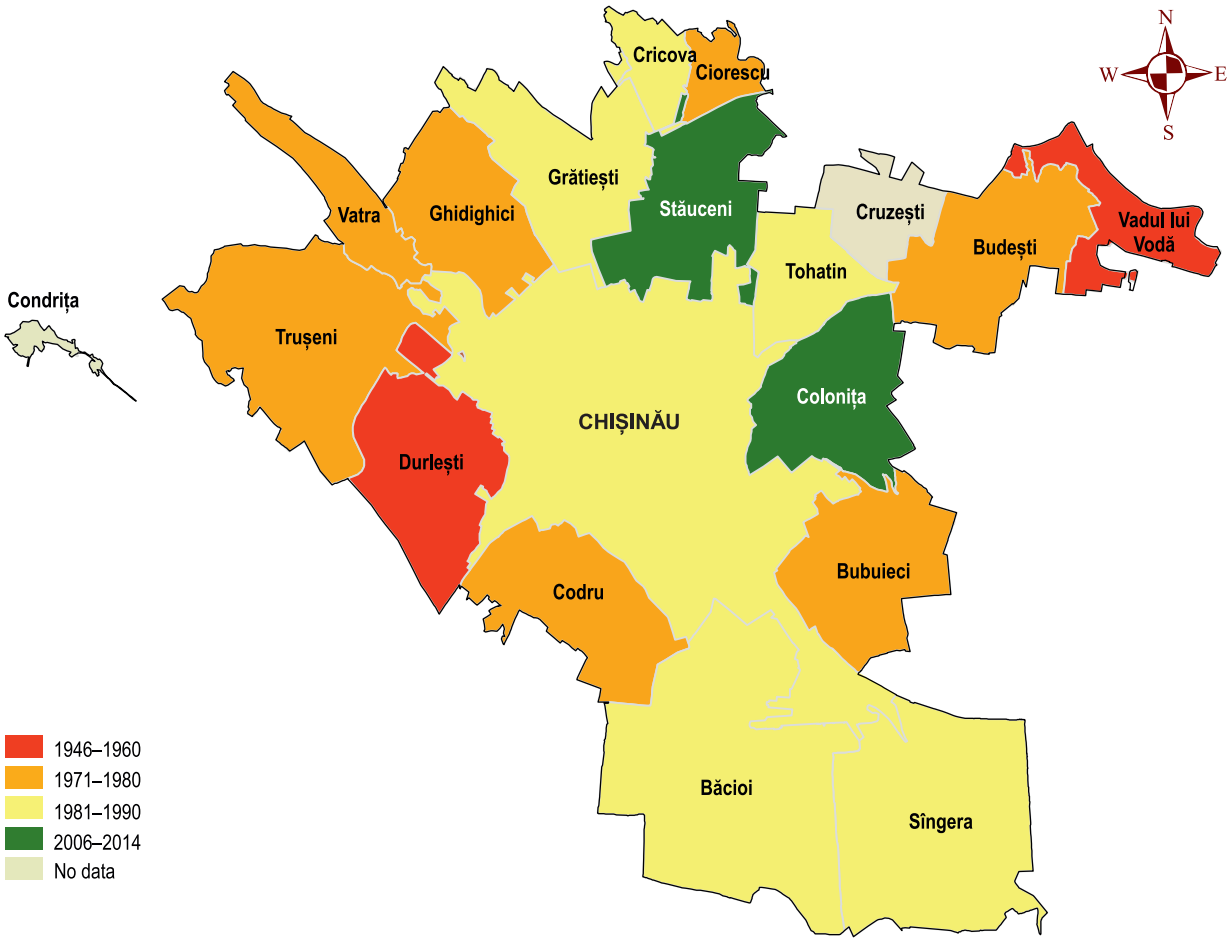

Fig. 7. The reference periods in the construction of the apartments in Stăuceni commune
Source: own elaboration according to National Bureau of Statistics of the Republic of Moldova

with the launch of the national construction project of the Multipurpose "Chișinău Arena". The land for the construction of the sports edifice, with an area of 69.2 ha, was withdrawn from the agricultural circuit under the management of the "Center of Excellence in Viticulture and Winemaking" based in Stăuceni (2018). The respective project represents a stage of the expansion process and integration of Stăuceni commune within the city of Chișinău.

The development perspective of Chișinău agglomeration will depend on the demographic evolution of the city and the polarization capacity of the peri-urban area. According to the estimates made by the United Nations for Population, in the evolution of the Chișinău agglomeration, there were 3 possible scenarios, but with an orientation towards the pessimistic one. For a clearer argumentation of the perspectives of development of this territorial system, all the three Evolutionary Scenarios will be presented (Fig. 9).

Scenario I – optimistic, assumes that the population of Chișinău by 2025, will reach 768 thousand inhabitants, and starting with 2010, in the capital, more than 40% of the urban population of the Republic of Moldova was to be concentrated. The projection was based on the estimations of the annual rate of population growth. According to the positive trends predicted in the demographic growth, the Chișinău city meets the conditions to be placed in the category of urban agglomeration.

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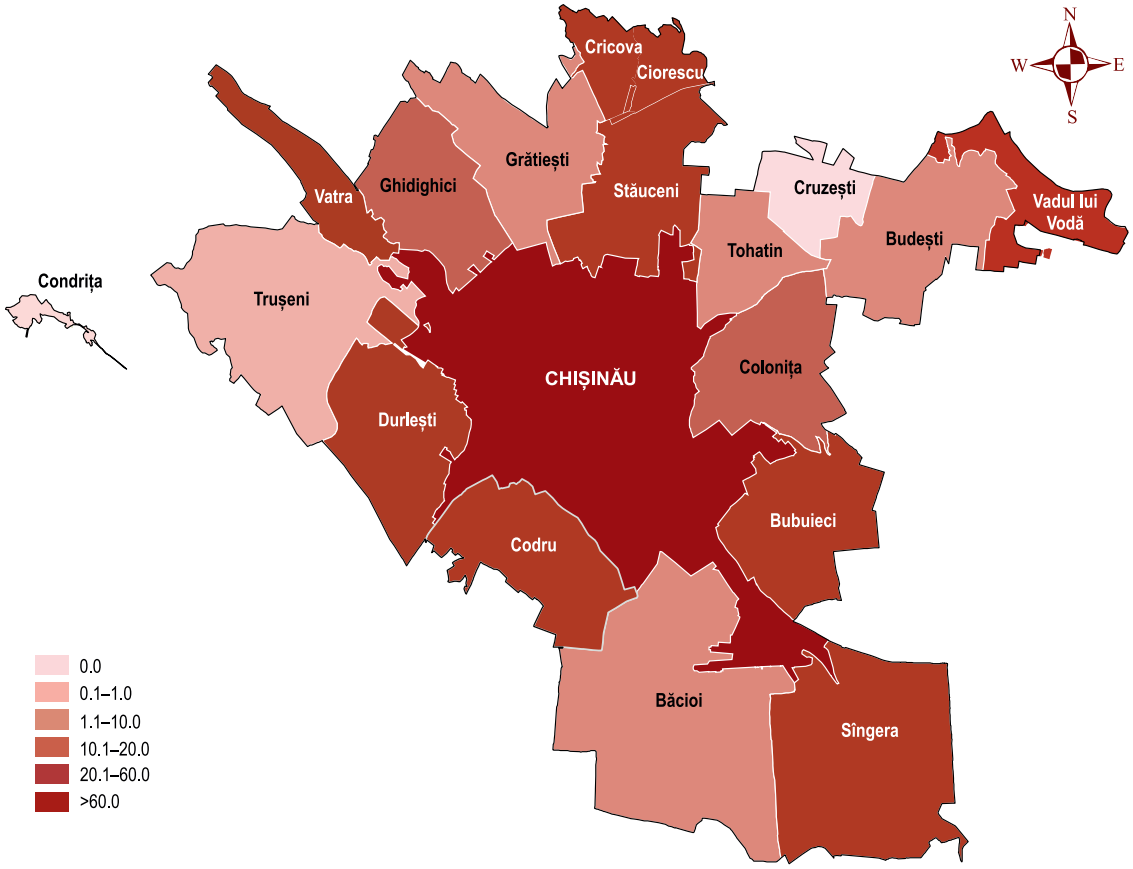

Fig. 8. Share of apartments in the structure of the housing fund in Stăuceni commune, compared to all suburbs of Chișinău municipality
Source: own elaboration according to National Bureau of Statistics of the Republic of Moldova

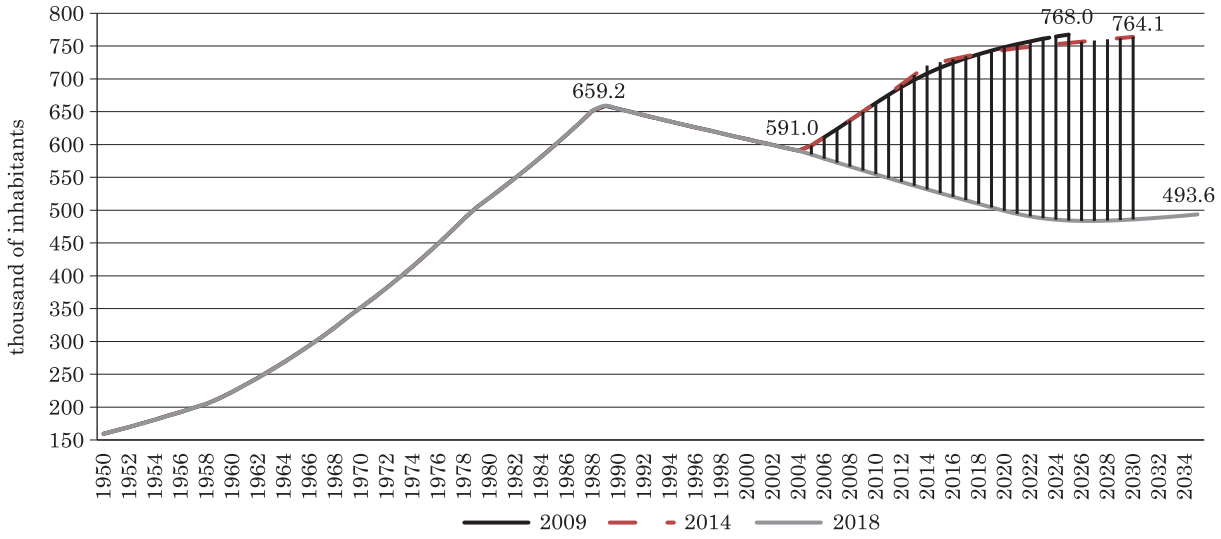

Fig. 9. The projected evolution of the population of Chișinău city, until 2035
Source: own elaboration according to United Nations… (2020)

Scenario II – moderate-optimistic, based on the tendency in decrease of average annual rhyme of the general demographic balance. If for the period 2015–2020 the average annual rate was set at 0.5%, then for the subsequent periods (2020–2025) and (2025–2030) values between 0.2–0.3% were forecasted. According to this scenario, the number of Chișinău population, by 2030, would reach the threshold of 764 thousand inhabitants.

Therefore, the IIIrd Scenario – pessimistic, that is closer to reality, based on both the population and housing census data for 2014, as well as the estimates of the average annual rate of the demographic balance within the limits of values (-0.6%) for the period 2020–2025 and (+ 0.3%) for 2030–2035. The oscillatory variation of the general demographic indicators will determine in the future a dramatic reduction Chișinău population, with a tendency to stabilize by 2035 to 493.6 thousand inhabitants.

CONCLUSIONS

The research conducted on the evolution of Stăuceni commune, Republic of Moldova, highlights the fact that the proximity and influence of Chișinău city are decisive for the whole peri-urban area, but it is more intense in the localities along the international road axes and with urban development prospects.

The territorial transformation of Stăuceni commune was marked by the change of the lands use, conversion of the vineyards into arable land and constructions. The mentioned situation is due to the optimization of the processing capacity at the local wine factory and the gradual loss of economic specialization.

Extension of the build-up area, as one of the main directions for the development of Stăuceni locality, it was realized in the absence of the updated General Urban Plan, and the development of the new multi-storey residential complexes took place without a Detailed Urban Plan. The evolution of the real estate market in the Chișinău city had for Stăuceni commune the following consequences: manifestation of the speculative character in land transactions, defective management of the land fund by the local public administration and violation of the law regarding the destination change of the lands.

The demographic forecast presented in scenario III shows that the population of Chișinău will decrease towards 2035, therefore it is necessary that spatial planning to be adapted depending to the pace of demographic changes to not compromise the infrastructure projects and squandering of new lands in the peri-urban area.

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LIABILITY FOR FAILURE TO LEAVE SOMEONE ELSE'S LAND PROPERTY

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ABSTRACT

The article presents responsibility for the offense of not leaving the land property despite the request of an authorized person. The purpose of this article is to draw attention to cases where it is legally permissible to enter someone else's land property despite such demand. The article discusses in particular the situation of entities performing geodetic or cartographic works and the scope of their rights to enter the land property and buildings. In addition, the obligations of the owner or the holder of the property on which this type of work is to be carried out and the consequences of obstructing or preventing their performance have been also specified.

Key words: petty offense law, petty offense, geodetic works, request of an authorized person, owner

INTRODUCTION

Nowadays, in the countries of Central and Eastern Europe, including Poland, there is a strong manifestation of a sense of ownership. People's attachment to property has been seen both positively and negatively in human history. On the one hand, it has been pointed out that the desire to accumulate property fosters both the development of human personality and the production of more and more goods and services. On the other hand, property-related conflicts have been noticed, and efforts have been taken to eliminate them (Pipes 2012).

During the socialist period, the citizens of the Eastern Bloc countries did not attach so much importance to property. Private owners or land owners did not ostentatiously demonstrate their rights. The political transformation taking place after 1989 led to the formation of a new ownership order. It is true that in Poland formal and legal regulation of property rights turned out to be very difficult. During World War II, expropriations were carried out by both German and Soviet occupation authorities. The expropriations were also continued after World War II. After the war, legal regulation of these lands in land and mortgage registers was not ensured, because in the socialist realities only real power mattered. As a result, buildings and housing estates were built in areas without regulated property rights (Schulz 2013).

In Article 20 of the Constitution of the Republic of Poland of 1997 (Journal of Laws of the Republic of Poland, no. 78, item 483), the social market economy based on the freedom of economic activity, private property as well as solidarity, dialogue and cooperation of social partners was adopted as the basis for Poland's economic system.

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After the political transformation and ownership transformations, it was clearly visible that property rights were demonstrated, in particular by marking their properties with signs with the inscriptions: "Private property", "Private property. Trespassing of unauthorized persons forbidden".

The right to property and the right to exclusive and free use of places such as: forest, field, garden, pasture, meadow or dike in Poland is protected not only under civil law but also by the Code of Petty Offenses (Zbrojewska 2013). The author of the article draws attention to the protection of the right to use the real estate guaranteed in the Code of Petty Offenses (1971) (abbreviated: CPO) (consolidated text published in Journal of Laws of the Republic of Poland of 2019, item 821). The object of the study is the scope of protection and analysis of cases where the violation of the right to use the property of the owner or the holder by not leaving the property despite the request of the right holder is legally permissible, and the behavior of those who make the violation does not constitute an offense.

MATERIALS AND METHODS

The dogmatic and legal method is used in the work. An analysis of legal acts related to the protection of property rights, responsibility for not leaving someone else's property and entities authorized to perform geodetic and cartographic works, the scope of their rights to enter the property was made. The literature review was used in the analysis of individual regulations.

PETTY OFFENSE – NOT LEAVING SOMEONE ELSE'S LAND PROPERTY

In Article 157 § 1 of CPO (1971), the legislator has been honoring the petty offense of not leaving someone else's land property despite an authorized person's demand to do so. This provision states that anyone who, contrary to the request of an authorized person, does not leave the forest, field, garden, pasture, meadow or dike, shall be subject to a fine of up to 500 PLN or a reprimand. Prosecution takes place at the request of the victim.

Behavior of the perpetrator of a petty offense covered by Article 157 § 1 of CPO (1971) consists in not leaving the places listed in this provision at the request of an authorized person. It does not matter whether the perpetrator was in the given place with the consent or against the will of the authorized person. The fact that the unauthorized party does not leave the place despite the expressed request of the authorized person is important for the liability of the trespasser. The request to leave the place has to be unambiguous and come from the authorized person. Therefore, it refers to the owner, co-owner or bodies authorized to administer the place (e.g. tenant, administrator, dependent or independent owner) and persons authorized to represent their interests (e.g. attorney, employee) (Zbrojewska 2013).

The form of the request does not matter as long as it clearly expresses the will of the entitled person – it can therefore be a request expressed orally, in writing or by means of a gesture. The authorized person may always demand that the perpetrator leave the given land, without having to have any special, justified reasons for formulating such a request (Michalska-Warias 2019).

The provision requires the perpetrator's stay in one of the places listed in Article 157 § 1 of CPO (1971). The first of these sites is forest. The legal definition of the forest given in Article 3 of the Forests Act (1991) (abbreviated: FA) (consolidated text published in the the Journal of Laws of the Republic of Poland of 2020, item 6), differs from the one adopted in biological sciences.

According to Article 3 of FA (1991), forest is the ground:

1. With a compact area of at least 0.1 ha, covered with forest vegetation (forest crops) – trees and shrubs and undergrowth – or temporarily deprived of it:
a) intended for forest production or
b) constituting a nature reserve or forming part of a national park, or
c) entered in the register of monuments.

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2. Connected with forest management, occupied for and used according to the needs of forest management: buildings and structures, water drainage facilities, forest spatial division lines, forest roads, areas under power lines, forest nurseries, wood storage facilities, as well as used for forest car parking lots and tourist devices.

The rules of entering the forest owned by the State Treasury are set out in Chapter 5 of FA. The rule is that forests owned by the State Treasury are made available to the public, however, pursuant to Article 26 Section 2 of FA (1991) permanent access is not granted to forests constituting:

a) forest crops up to 4 m high,
b) experimental plots and seed trees stands,
c) animal habitats,
d) sources of rivers and streams,
e) areas at risk of erosion.

The forest inspector introduces a temporary ban on access to the forest owned by the State Treasury, if:

a) destruction or significant damage to tree stands or degradation of the undergrowth occurred;
b) there is a high fire risk;
economic operations are carried out related to farming, forest protection or logging.

The next places indicated in Article 157 § 1 of CPO (1971) are:

a) field, by which the area of land intended for cultivation is meant,
b) garden understood as a place intended for growing plants; the term also covers orchards and plantations,
c) pasture – it is a land covered mainly with perennial grasses and intended for grazing livestock,
d) meadow – it is arable land on which dense herbaceous vegetation grows with dominance or a significant proportion of grasses,
e) dyke – it is an embankment, most often earth, built to accumulate water to maintain water level in ponds or protect against flooding (Zbrojewska 2013).

The subject of the petty offense may be any person capable of bearing responsibility for the offenses, except for the person authorized to be on a given land (Radecki 2013). This entitlement may result from the ownership right or from a limited right in rem to the land. It may also result from possession or from the right to enter a given land provided for by special provisions. Whoever found themselves in the places indicated in Article 157 § 1 of CPO (1971), e.g. a policeman, fireman, doctor, surveyor in situations where he is authorized by law, does not commit an offense.

Persons carrying out geodetic and cartographic works are statutorily authorized to enter the land and building facilities and to carry out the necessary activities related to the work performed. Pursuant to Article 13 of the Act on Geodetic and Cartographic Law (1989) (abbreviated AGCL) (consolidated text published in the Journal of Laws of the Republic of Poland of 2020, item 276) persons carrying out geodetic and cartographic works have the right to: access to the ground and building and perform necessary activities related to the work performed; coppicing trees and shrubs necessary for geodetic works; placing geodetic, gravimetric and magnetic marks as well as devices protecting these marks on land and buildings free of charge; placing triangulation structures on land and buildings.

This authorization is not arbitrary, but applies only to activities carried out as part of geodetic and cartographic works carried out in accordance with the provisions of the Act, by an authorized entity. Contractors of geodetic and cartographic works may be: entrepreneurs, organizational units and persons with professional qualifications in the field of geodesy and cartography when they perform the functions of a court expert, mining surveyor or mining surveyor's assistant.

According to Article 4 Clause 1 of the Act on Entrepreneurs Law (2018) (abbreviated: AEL) (consolidated text published in the Journal of Laws of the Republic of Poland of 2019, item 1292) an entrepreneur is a natural person, a legal person or an organizational unit which is not a legal person, that is granted legal capacity by a separate act, that performs business activity.

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Partners of a civil law partnership in the scope of their business activity are also considered entrepreneurs – Article 4 Clause 2 of AEL (2018). In the case of performing geodetic and cartographic services in the form of a civil law partnership, the contractors of geodetic and cartographic works are therefore the partners understood as entrepreneurs.

In a situation where the entrepreneur is a natural person, the right to enter the land and building facilities and to perform necessary activities related to the performed geodetic and cartographic works, guaranteed in Article 13 of the Act on Geodetic and Cartographic Law (1989), applies only to them. This means that in relation to persons who assist an entrepreneur who is a natural person, the owner of a land or building structure or other authorized person may always demand that the person accompanying the entrepreneur must leave the given land property. The same situation applies to partners of a civil law partnership, only they are statutorily authorized to enter the land and building facilities, and to carry out the necessary activities related to the work performed. The above results directly from Articles 14 and 13 of AGCL (1989). Only entities indicated in Article 11 of AGCL (1989), the owner or another person possessing the real estate are obliged to enable to carry out geodetic and cartographic works. The above rights constitute intervening in the right to property protected in accordance with Article 21 of the Polish Constitution (1997). It is therefore not permissible to use a broad interpretation.

An entrepreneur may also be a legal person. The legal definition of a legal person is contained in Article 33 of the Polish Civil Code (1964) (abbreviated: CC) (consolidated text published in the Journal of Laws of the Republic of Poland of 2019, item 1145). According to this definition, legal entities are the State Treasury and organizational units to which special provisions grant legal personality. The essence of a legal person is that it is an organizational unit which, pursuant to the provision of the Act, has been equipped with legal capacity. Therefore, any legal person may be subject to civil law relations. The concept of "legal person" is narrower than the concept of "organizational unit", because not all organizational units have special legal personality. Organizational units that are not legal persons, to whom a separate law confers legal capacity may also be entrepreneurs within the meaning of Article 4 of AEL (2018). Organizational units that are not legal persons but have legal capacity are primarily commercial partnerships listed in Article 4 of the Commercial Companies Code (2000) (abbreviated: CCC) (consolidated text published in the Journal of Laws of the Republic of Poland of 2019, item 505), i.e. general partnerships, limited partnerships and limited joint-stock partnerships.

Entrepreneurs may be foreign persons. In accordance with Article 4 Clause 3 of AEL (2018) the rules for undertaking, conducting and terminating economic activity by foreign persons are defined in separate provisions. These provisions are contained in particular in the Act on the Rules for the Participation of Foreign Entrepreneurs and other Foreign Persons in Business Transactions on the Territory of the Republic of Poland (2018) (abbreviated: ARPFE) (consolidated text published in the Journal of Laws of the Republic of Poland of 2019, item 1079). In accordance with Article 3 Item 5 of ARPFE (2018), a foreign person is: a natural person without Polish citizenship, a legal person with headquarters abroad, as well as an organizational unit that is not a legal person with legal capacity, with headquarters abroad.

In the case of geodetic and cartographic works carried out by a legal person or an organizational unit which is not a legal person, the right to access to land and building objects in order to perform the necessary activities related to the performed geodetic and cartographic works applies to employees of these entities or persons with whom the commission contract or the contract of specific work was concluded.

Another entity entitled to enter the real estate property in order to carry out geodetic and cartographic works is a person acting as an expert witness. Not only an expert entered in the list of court experts by the president of the regional court is obliged to perform the function of an expert, but any person

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who the court has appointed to issue an opinion – Article 195 of the Code of Criminal Procedure (1997) (consolidated text published in the Journal of Laws of the Republic of Poland of 2020, item 30) and Article 278 of the Code of Civil Procedure (1964) (consolidated text published in the Journal of Laws of the Republic of Poland of 2019, item 1460). The person indicated in the court's decision to appoint an expert is obliged to prepare an opinion in accordance with the scope and subject matter as outlined by the procedural body. In the case of performing the duties of an expert witness, they have the right to enter the land property and building facilities in order to perform activities to the extent necessary to issue an opinion.

Access to someone else's land property and building by entities indicated in Article 11 Clause 1 of AGCL (1989) is authorized only for the purpose of performing geodetic or cartographic works. In accordance with Article 2 of AGCL (1989) by geodetic works we understand designing and carrying out geodetic measurements, taking aerial photographs, making calculations, preparing and processing geodetic documentation, as well as establishing and updating databases, measurements and photogrammetric, gravimetric, magnetic and astronomical studies related to implementation tasks in the field of geodesy and cartography and the national land information system, while cartographic work is the development, substantive and technical editing of maps and derivative studies and their reproduction.

It is indicated that access to someone else's land property and building is authorized only after reporting the geodetic works to the competent authority. Since the applicable provisions no longer provide for separate confirmation of the submission of works by the authority, the contractor should obtain a confirmation of acceptance of the application in the usual manner (e.g. by obtaining the so-called acceptance stamp on a copy of the application) or obtain a printout of the declaration of submission of the application in electronic form (Lang 2018) .

However, it should be remembered that in accordance with Article 13 Section 3 of AGCL (1989) in closed areas, geodetic works may be carried out only by contractors acting on behalf of the authorities that issued the decision to close the area, or with their consent. The defense and security of the state require special regulations, hence a special procedure is provided for to isolate such areas. Closed areas are determined by competent ministers and heads of central offices by means of a decision. This decision also defines the boundaries of the closed area. Geodetic documentation defining the course of borders and the area of the closed area is forwarded by the authorities issuing decisions to close the area to territorially competent county authorities – Article 4 Clause 2a of AGCL (1989). Separation of closed areas determines the purpose for which they are to serve, and this is the defense and security of the state, other purpose of the area does not allow giving the area the status of a closed area (Karpiuk 2016).

The owner or other person possessing the rights to the property in accordance with Article 14 of AGCL (1989) is obliged not only to tolerate the activities of persons performing geodetic and cartographic works, but also to enable the performance of these works. The Act does not provide for any obligation to assist in carrying out works. Therefore, one should opt for a narrow scope of obligations of the owner or another person holding the property. Undoubtedly, the obligation to allow for the performance of geodetic and cartographic works consists in providing access to real estate and not disturbing the works, as well as moving objects interfering with the performance of measurements, e.g. moving vehicles. The obligation to permit work does not include removing permanent obstacles, such as fences or gazebos, regardless of whether they were built in accordance with applicable regulations. The obligation to allow for geodetic and cartographic works is therefore purely actual, one can say – organizational and ad hoc (Lang 2018).

If the owner of the property hinders or prevents a person performing geodetic and cartographic works from entering a land or building and making

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the necessary work-related activities, their act or failure to act is unlawful and constitutes a petty offense (Kotowski and Kurzępa 2008). Obstructions mean any behavior that causes difficulties, obstacles in geodetic or cartographic work. On the other hand, hindering means disabling entry into the land or a building and inability to undertake and carry out these works at all. This offense is penalized in Article 48 Clause 1 Item 2 of AGCL (1989) and is punishable by a fine. In accordance with Article 24 § 1 of CC (1971), the fine amounts between 20 PLN and 5,000 PLN, unless the law provides otherwise. In this case, AGCL (1989) does not contain different regulations as to the amount of the fine. In a situation where the owner or other person holding the property undertakes this type of behavior, the entity authorized to perform geodetic or cartographic works should use the help of the Police. At the same time, it is the body authorized to conduct proceedings in the case of a petty offense under Article 48 Clause 1 Item 2 of AGCL (1989) and to issue a request for punishment to the court.

Regulation of Article 48 Clause 1 Item 2 of AGCL (1989) to provide protection to entities performing geodetic or cartographic works corresponds with, among others, provisions providing for liability for hindering or preventing the performance of official duties by Police or Border Guard officers regulated in Article 65a of the Code of Petty Offences (1971), or firefighters in Article 82a of the Code of Petty Offences (1971).

CONCLUSIONS

The property right is subject to protection. Violation of the right to use the property of the owner or holder by not leaving the property despite their request is an offense and is punishable by a fine. However, the legislator provides for situations in which the owner or other authorized person can neither effectively demand one to leave the property nor to impede activities performed by authorized entities. It is legally permissible, which is beyond doubt and is widely known, for police officers or Border Guards to enter the property in connection with and during the performance of their duties. Such rights also apply to entities listed in Article 11 Clause 1 of AGCL (1989) but only for the purpose of performing geodetic or cartographic works, which are defined in Article 2 of AGCL (1989). Other entities or those mentioned in Article 11 Clause 1 of AGCL (1989) but not performing geodetic or cartographic work are required to leave the property at the request of the owner or other authorized person. Failure to comply with this request exposes them to liability for a petty offense under Article 157 § 1 of CPO (1971).

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