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Cemeteries in Poland as Built Structures and Their Impact on Shaping the Social Environment³

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Abstract

The research objective of this article is to analyse the legal aspects concerning the placement of cemeteries in urban space. It will aim to reconstruct legal definitions of cemeteries and to provide an answer to the research question concerning the Polish legal regulations on the impact of cemeteries on the shaping of the social environment. Analysis will be made of the location of other buildings within their boundaries, the impact of cemeteries on the use of property rights and economic activity in their vicinity as well as cemeteries as places of historical memory. The findings conclude that the Law on Cemeteries and Burial of the Dead is an outdated act subject to increasing criticism. While in the case of a cemetery, understood as a construction object, we are able to use the provisions of the construction law, in the case of defining its social dimension, this is unfortunately impossible.

Keywords: cemetery, law, Polish legal system, construction law, social space.

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Cmentarze w Polsce jako obiekty budowlane i ich wpływ na kształtowanie środowiska społecznego⁴

Streszczenie

Celem badawczym artykułu jest analiza aspektów prawnych dotyczących umiejscowienia cmentarzy w przestrzeni urbanistycznej. Celem będzie rekonstrukcja definicji legalnych cmentarzy oraz odpowiedź na pytanie badawcze, jak kształtują się polskie uregulowania prawne dotyczące wpływu cmentarzy na kształtowanie się otoczenia społecznego. Analizie zostaną poddane kwestie umiejscowienia innych budynków w ich obrębie, wpływ cmentarzy na korzystanie z prawa własności i aktywność gospodarczą w ich sąsiedztwie oraz cmentarze jako miejsca pamięci historycznej. We wnioskach stwierdzono, że ustawa o cmentarzach i chowaniu zmarłych jest aktem przestarzałym i coraz częściej krytykowanym. O ile w przypadku cmentarza, rozumianego jako obiekt budowlany, jesteśmy w stanie posiłkować się przepisami z zakresu prawa budowlanego, to niestety w przypadku określenia jego społecznego wymiaru jest to niemożliwe.

Słowa kluczowe: cmentarz, prawo, polski system prawny, prawo budowlane, przestrzeń społeczna.

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Introduction

On account of their nature and purpose, cemeteries require an array of special legal regulations. The subject of the article will be an analysis of the legal aspects of the placement of cemeteries in urban space, as well as legal definitions of cemeteries appearing in legislation, jurisprudence, and doctrine. The focus will be on answering the research question of how cemeteries are being regulated in terms of their impact on the shaping of the social environment. The authors will analyse the location of other buildings within their boundaries, the impact of cemeteries on the use of property rights and economic activity in their immediate vicinity as well as cemeteries as places of historical memory. The academic literature lacks a study that analyses cemeteries as a built structure in this context.

Research Materials and Methods

The article covers the legal aspects of the functioning of cemeteries in Poland. In 2022, the academic literature saw the publication of Paweł Sularz's book, *Cmentarze w Polsce. Zagadnienia administracyjnoprawne* [Cemeteries in Poland: Administrative and Legal Issues].⁵ Note should also be taken of two commentaries by Drembkowski and Darmorost to the Act on Cemeteries and the Burial of the Dead.⁶ An important issue relates to spatial planning concerning the location of cemeteries, which is the subject of academic research in the fields of geography⁷ as well as law.⁸ These

⁵ P. Sularz, *Cmentarze w Polsce. Zagadnienia administracyjnoprawne*, Warszawa 2022.

⁶ See: P. Drembkowski, *Ustawa o cmentarzach i chowaniu zmarłych. Komentarz*, Warszawa 2017; E. Darmorost, *Ustawa o cmentarzach i chowaniu zmarłych. Komentarz*, Warszawa 2014.

⁷ G. Bennett, P.J. Davies, *Urban Cemetery Planning and the Conflicting Role of Local and Regional Interests*, "Land Use Policy" 2015, 42, pp. 450–459; A. Długozima, *Lokalizacja współczesnych cmentarzy komunalnych*, "Prace Geograficzne" 2020, 161, pp. 81–106; eadem, *How to Find a Suitable Location for a Cemetery? Application of Multi-criteria Evaluation for Identifying Potential Sites for Cemeteries in Białystok, Poland*, "Moravian Geographical Reports" 2022, 30(1), pp. 34–53.

⁸ T. Brzezicki, I. Fisz, *Lokalizacja cmentarza*, "Nieruchomości" 2014, 4, pp. 12–15; W. Hrynicky, *Zakładanie, rozszerzanie i utrzymywanie cmentarzy – przyczynek do dyskusji na temat prywatyzacji oraz obowiązku istnienia miejscowego planu zagospodarowania przestrzennego*, "Administracja: Teoria, Dydaktyka, Praktyka" 2013, 4(33), pp. 43–66; M. Rosegnal, *Planistyczne problemy lokalizacji cmentarza*, [in:] D. Karkut, J. Mazurkiewicz, J. Gołaczyński, J. Turłukowski (eds.), *Non omnis moriar: osobiste i majątkowe aspekty prawne śmierci człowieka: zagadnienia wybrane*, Wrocław 2015; A. Wieczorek, *Cmentarz w miejscowym planie zagospodarowania przestrzennego*, "Mazowsze. Studia Regionalne" 2019, 31, pp. 55–74.

publications do not exhaust all aspects of the functioning of cemeteries, particularly those which are the research subject of the present article.

The basic legal acts that relate to the operation of cemeteries in Poland are: the Act of 31 January 1959 on Cemeteries and Burial of the Dead⁹ and the Act of 28 March 1933 on War Graves and Cemeteries.¹⁰

The term *cemetery* appears in a number of legal acts, both of statutory and executive rank, yet no legal definition exists. The starting point for the reconstruction of such a definition will be the provisions of the Act of 7 July 1994 – Construction Law.¹¹ Article 3(1) of the Act refers to a built structure, being a building, a structure, or a small-scale piece of architecture. On the other hand, Article 3(3) lists a number of structures, which are buildings, in which a cemetery is also specified. It should be made clear that this article of the construction law also lacks a definition of a cemetery or the elements characteristic of a cemetery. The legislator has limited itself to listing a very comprehensive catalogue of objects that cannot be considered as a building and a small-scale piece of architecture.¹² Furthermore, the basic legal act relating to funerary issues, i.e. the Act on Cemeteries and Burial of the Dead, does not contain a definition of a cemetery. This act lists the primary purpose of a cemetery, which is the burial of the deceased (Article 8), the requirements to be met by cemeteries, along with a statutory delegation authorizing the Minister of Health to determine which areas are considered suitable from a sanitary point of view for cemeteries (Article 5). In this case, it is reasonable to draw on the body of court-administrative judgments. The Voivodeship Administrative Court (hereinafter referred to as the VAC) in Łódź, in its ruling of 1 August 2023, stated that a cemetery may be understood as a complex of built structures, if within its borders there are buildings or small-scale architectural objects, walkways and roadways, car parks, directly related to its purpose.¹³ In turn, the VAC in Cracow, in its judgment of 5 March 2019, held that a cemetery is an area intended for the burial of the corpses and remains located within the boundaries established by a fence.¹⁴ The Supreme Administrative Court, on the other hand, in its judgment of 10 November 2017, while developing the definition of a cemetery, used the regulation of a local act, such as a local spatial development plan, emphasizing the possibility of conducting

⁹ Ustawa z dnia 31 stycznia 1959 r. o cmentarzach i chowaniu zmarłych (Dz.U. z 2023 r., poz. 887 / Journal of Laws of 2023, item 887).

¹⁰ Ustawa z dnia 28 marca 1933 r. o grobach i cmentarzach wojennych (Dz.U. z 2018 r., poz. 2337 / Journal of Laws of 2018, item 2337).

¹¹ Ustawa z dnia 7 lipca 1994 r. Prawo budowlane (Dz.U. z 2023 r., poz. 682 / Journal of Laws of 2023, item 682).

¹² Art. 3 pkt 2 i 4 ustawy Prawo budowlane.

¹³ Judgment of the VAC in Łódź of 1 August 2023, III SA/Łd 371/23.

¹⁴ Judgment of the VAC in Cracow of 5 March 2019, II SA/Kr 1576/18.

service activities in the form of a funeral home.¹⁵ Also worth quoting is the definition included in the judgment of the VAC in Cracow of 9 July 2010, which, in the description of the facts, characterizes a cemetery on the basis of the rules of linguistic interpretation based on the findings in *Słownik języka polskiego* [The Dictionary of the Polish Language], stating that it is an enclosed area for sanitary reasons.¹⁶

The division of cemeteries proposed in the doctrine should also be pointed out. For instance, Aleksander Sobczak, drawing, *inter alia*, on the provisions of the Code of Canon Law, specified the following: parish and interparish cemeteries – intended for the burial of persons living in a given parish or parishes, monastic cemeteries – where members of a particular order are buried, special cemeteries – intended for a particular community of the faithful, and family cemeteries – belonging to a particular family.¹⁷

It should be added that attempts have been made to define cemeteries in the Polish legislative process, an example of which is the failed amendment to the Law on Cemeteries and Burial of the Dead drafted by the 7th Sejm. In this draft, cemeteries were defined as an area used for the burial of corpses, remains or ashes, in graves, catacombs, or columbaria.¹⁸

Research Results – The Cemetery as a Built Structure

The most important point in the analysis of cemeteries in the Polish legal system is their inclusion as an important object in urban space, as a built structure. The concept of urban space has no legal definition in the contemporary legal system. The reason for this is probably the fact that *urban space*, originally understood as ‘space within the boundaries of the walls and later within the administrative boundaries,’ has very often been subject to change.¹⁹ The current use of phrases that

¹⁵ Judgement of the Supreme Administrative Court of 9 February 2017, II OSK 1362/15.

¹⁶ Judgement of the VAC in Cracow of 9 July 2010, III SA/Kr 931/00.

¹⁷ A. Sobczak, *Poradnik cmentarny. Kościelne i cywilne normy prawne o cmentarzach i chowaniu zmarłych wraz z orzecznictwem*, Gniezno 2003, pp. 13–14. See also: E. Baniukiewicz, *Pojęcie cmentarza. Działania konserwatorskie*, [in:] A. Michałowski (ed.), *Ochrona cmentarzy zabytkowych: materiały szkoleniowe pracowników Państwowej Służby Ochrony Zabytków oraz materiały z konferencji Organizacja Lapidariów Cmentarnych, Żagań-Koźuchów, 20–23 czerwca 1993*, Warszawa 1994; B. Affek-Bujalska, *Podstawy prawne ochrony cmentarzy*, [in:] A. Michałowski (ed.), op. cit.

¹⁸ Poselski projekt ustawy o zmianie ustawy o cmentarzach i chowaniu zmarłych. Druk nr 2144. 2013. Available at: <https://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=2144> (access: 3.11.2023). It is worth noting the parliamentary debate that took place during the work on the bill in which alternative forms of burial were proposed. This was met with radical criticism, as a result of which this amendment in its entirety was rejected.

¹⁹ B. Rzczyńska, *Jakość przestrzeni urbanistycznej*, “Problemy Jakości” 2024, 10, pp. 37–40. It should be added that the concept of urban space is also increasingly relevant to the countryside, as spatial urbanization

characterize this space, such as spatial order, is defined as a spatial arrangement that creates a harmonious whole and accommodates, in an ordered relationship, all functional, socio-economic, environmental, cultural, compositional, and aesthetic conditions and requirements.²⁰

The functioning of cemeteries in the urban space as special built structures for specific tasks makes it possible to locate strictly defined built structures within them which, owing to their nature and purpose, cannot be located in other areas. In view of the regulation in Article 5(2) of the Law on Cemeteries and Burial of the Dead, it should be pointed out that each cemetery should have a pre-burial house or mortuary which is designed for: (1) deposition of the bodies of the deceased until they are buried; (2) performing inspection of human remains for forensic, sanitary, and police purposes; and (3) performing other activities related to the burial of the deceased.

In the situation of incorporation of a cemetery in an urban space, a key issue is its scope of impact on other facilities as well as on the area. In this case, a provision in the Construction Law Act containing a statutory definition of the scope of impact of a facility, namely Article 3(20), is particularly helpful. According to it, it should be understood as the area designated in the surroundings of a built structure on the basis of separate regulations, introducing restrictions on the development of this area linked to this structure. This definition is applicable to cemeteries because the specific provisions on the location of cemeteries imply that such scope of impact is very broad. According to Article 3 of Law 5 on Cemeteries and Burial of the Dead, cemeteries are to be established and developed in the areas specified in local development plans. However, this does not mean that cemeteries can be set up in any place chosen by the municipality. In this case, taking into account the extent of the impact of the planned cemetery, its location and functioning in the urban space are determined by the provisions of the Regulation of the Minister of Municipal Economy of 25 August 1959 on the determination of areas suitable for cemeteries from the sanitary point of view.²¹ The legislator dealt with the issue of the location of cemeteries in a very general manner, introducing the possibility of a broad interpretation of the potential impact of cemeteries within the urban space. Pursuant to § 1 of this legislation, land for a cemetery should be sited in a way that precludes the possibility of a detrimental impact on the surrounding area. Thus, the exact

processes are also taking place in rural areas. See: D. Szymańska, J. Biegańska, *Fenomen urbanizacji i procesy z nią związane*, "Studia Miejskie" 2011, 4, pp. 13–38.

²⁰ Art. 2 pkt 1, Ustawa z dnia 27 marca 2003 r. o planowaniu i zagospodarowaniu przestrzennym (Dz.U. z 2023 r. poz. 977 / Journal of Laws of 2023, item 977).

²¹ Rozporządzenia Ministra Gospodarki Komunalnej w sprawie określenia, jakie tereny pod względem sanitarnym są odpowiednie na cmentarze z dnia 25 sierpnia 1959 r. (Dz.U. z 1959 r., poz. 315 / Journal of Laws of 1959, item 315).

nature or manner of the possible impact of the cemetery is not specified, succinctly stating that a 'harmful impact' should be excluded. Admittedly, the provision contains guidelines as to the location, for instance, that cemeteries should be located at the borders of towns, settlements, or communities in isolation from the built-up area, on land designated for public greenery or suitable for its development, close to the local transport network. However, applying the principles of linguistic interpretation, one finds that this is not of an absolute nature, but merely informative.

Reference should also be made to the theses expressed in jurisprudence. The Voivodeship Administrative Court in Poznań, in its judgment of 12 September 2012, stated that 'the regulation of 25 August 1959 defining the areas suitable for cemeteries from the sanitary point of view refers to the conditions of location of a cemetery in relation to existing development (including, inter alia, residential development), and not to the conditions of location of other buildings in the vicinity of an existing cemetery.'²² Taking this judgment as an example, it becomes evident that the question of existing development, regardless of its nature, takes precedence over the planned location of a cemetery. The above thesis has also been confirmed in the judgments of other courts.²³ Meanwhile, in the judgment of the Supreme Administrative Court of 9 February 2017, we find information that the quoted § 1(1) of the Regulation should be read in conjunction with § 3(1) defining the appropriate distances of a cemetery from buildings²⁴ (which will be discussed later in the text).

An analysis of the location of cemeteries in urban space also requires reference to local spatial development plans. The regulation contained in the planning act, which unambiguously defines the location of the cemetery, but also indicates the areas that can be occupied by the cemetery (new location of burial places or expansion of the area of the existing cemetery), as referred to in Article 13c(2)(10) of the Act of 27 March 2003 on planning and spatial development, should be considered a model regulation (Dz.U. z 2023 r., poz. 977 / Journal of Laws of 2023, item 977). However, the omission of closed cemeteries and their inclusion as public green areas constitutes a problematic issue. The definition of a public green space is contained in Article 2(25) of the said Act, stating that it is an area of not less than 0.05 ha covered with vegetation, equipped with technical and recreational infrastructure, in particular a park, a green area, a children's playground, or a historic garden. We should bear in mind the policy pursued by local authorities in relation to former cemeteries (notably after 1945 in the so-called recovered territories),

²² Judgement of the VAC in Poznań of 12 September 2002, II SA/Po 565/12. Lex nr 122236.

²³ Judgement of the VAC in Warsaw of 5 January 2012, IV SA/Wa1501/11; Judgement of the VAC in Poznań of 12 September 2012, II SA/Po 565/12; Judgement of the VAC in Łódź of 7 December 2011, II SA/Łd 981/11; Judgement of the VAC in Cracow of 7 April 2008, II SA/Kr 386/06.

²⁴ Judgement of the Supreme Administrative Court of 9 February 2017, II OSK 1362/15.

when former (so-called post-German) cemeteries were liquidated and turned into parks or areas that meet the above definition of a public green area.²⁵ Given the afore-said regulation specifying the areas suitable for cemeteries from a sanitary point of view, in the case of locating new facilities, regulation regarding the protective zone around a cemetery is omitted. In this situation, carrying out land levelling works (without exhumation) and renaming the area concerned from a cemetery to a public green area is not a solution that should be approved by the local legislator. It is our contention that this is a case of deliberate disregard for a very important regulation, namely Article 3(7) of the Cemeteries and Burial of the Dead Act, stipulating that in the event of a change of use of a cemetery area, the remains of the deceased located therein should be transferred to another cemetery at the expense of the purchaser of the area or the new user. For instance, the Voivodeship Administrative Court in Warsaw, in its judgment of 19 December 2011, ref. No. IV SA/Wa, stated that the transfer of solely external attributes of cemeteries, such as tombstones, results in the previous cemetery becoming a cemetery area to which the provisions of Article 6(1), (2), and (3) of the Act on Cemeteries and Burial of the Dead continue to apply. Therefore, if in the past only gravestones have been transferred, without the transfer of human remains, the site cannot be claimed to have lost the character of a cemetery site.

Two issues should be considered while evaluating the functioning of cemeteries in urban space, namely the impact of cemeteries on the natural environment as well as on the space intended for permanent human residence. In the first case, the regulation stipulates that, in particular, the following should be investigated: (1) soils to the depth of the first groundwater level, but no shallower than 2.5 m from the ground surface, determining their type, structure, moisture content, calcium carbonate content, and degree of acidity; with the results of the tests reported in the technical description; (2) water relations including a discernment of: a) the directions of surface water runoff, b) the depth and variability of the groundwater levels and the direction of their slope; and (3) existing vegetation.

As for the aspects related to the permanent residence of people, the legislator, when introducing restrictions on distances, listed as examples such facilities as residential buildings, establishments producing foodstuffs, mass catering establishments, establishments storing foodstuffs, and wells, springs, and streams used to draw water for drinking and household needs. In this case, the proximity of the said cemeteries should be at least 150 m; this distance may be reduced to 50 m

²⁵ An example of this is Park Zachodni in Wrocław, where only few small architectural objects have been preserved, which are the remains of the cemetery that existed in this area or part of the City Park in Strzelin.

provided that the area within the 50 to 150 m distance from the cemetery has a water supply system with all buildings using water connected to this system.²⁶ It is important to add that the interpretation of the provisions set out does not give rise to doubt in the sense that the distances given apply, not only to the location of future cemeteries in relation to existing development, but also to future development in relation to an existing cemetery. This means that the legislator has introduced a 'protective zone' (referred to in judicial-administrative rulings as a sanitary zone), which must exist between both types of built structures (i.e. the cemetery and the buildings listed in the regulation). This is reflected both in the judgments of the Voivodeship Administrative Courts²⁷ and in the judgments of the Supreme Administrative Court.²⁸

Moreover, a number of factors have been identified that could impact on other sites or areas. The cemetery site should, where possible, be on an elevated site in an area that does not flood and should be landscaped to allow rainwater to run off easily. In addition, in a cemetery site, the groundwater table should be no more than 2.5 m below the ground surface, and should not slope towards buildings or towards reservoirs or other water intakes used as a source of water supply for drinking and domestic needs (water mains or wells). The ground of the cemetery should be as permeable and calcium carbonate free as possible and the location for the cemetery should, if possible, be chosen in such a way as to ensure that the most common winds in this location blow away from the residential areas towards the cemetery.²⁹

As regards the manner in which the cemetery will affect its surroundings, reference should be made to the provision of Article 234 of the Act of 20 July 2017 – Water Law³⁰ and relates to the prohibition of changing the direction and intensity of rainwater or snowmelt runoff as well as the discharge of water onto neighbouring land.³¹ As the cemetery site should be located on an elevation where possible,

²⁶ §2 i 3 Rozporządzenia Ministra Gospodarki Komunalnej w sprawie określenia, jakie tereny pod względem sanitarnym są odpowiednie na cmentarze z dnia 25 sierpnia 1959 r.

²⁷ Judgement of the VAC in Olsztyn of 1 June 2023, II SA/Ol 300/23; Judgement of the VAC in Gdańsk of 14 September 2022, II SA/Gd 151/22; Judgement of the VAC in Poznań of 31 January 2019, IV SA/Po 65/19; Judgement of the VAC in Cracow of 13 September 2017, II Sa/Kr 445/17.

²⁸ Judgement of the Supreme Administrative Court of 28 April 2020, II OSK 1827/19; Judgement of the Supreme Administrative Court of 15 November 2019, II OSK 3305/17.

²⁹ § 4–6 Rozporządzenia Ministra Gospodarki Komunalnej w sprawie określenia, jakie tereny pod względem sanitarnym są odpowiednie na cmentarze z dnia 25 sierpnia 1959 r.

³⁰ Art. 234 Ustawy z dnia 20 lipca 2017 r. Prawo wodne (Dz.U. z 2023 r., poz. 1478 / Journal of Laws of 2023, item 1478).

³¹ This issue until the introduction of the Water Law Act was only addressed in § 28 of the Regulation of the Minister of Infrastructure of 12 April 2002 on the technical conditions to be met by buildings and their location – Rozporządzenie Ministra infrastruktury z dnia 12 kwietnia 2002 r. w sprawie warunków

this may consequently mean discharging water onto other land. Under Article 77, section 1 point 3 letter b, locating cemeteries in areas of particular flood risk is prohibited. This type of work is punishable by a fine ranging from PLN 1,000 to PLN 7,500 (Article 478(6)(c) of the Water Law Act). An exception to this rule is provided for in Article 77 section 7 in connection with Article 166 section 5 of the Water Law Act allows for cemeteries' location after obtaining a decision from Polish Waters. Moreover, the location of cemeteries may be prohibited in intermediate protection areas and protected areas (see Article 130(1)(13) and Article 140(11) of the Water Law Act). Another prohibition on locating cemeteries applies to a distance of less than 50 m from the top of the flood barrier (Article 176(1)(6) of the Water Law Act).

In assessing the impact, a cemetery may have on neighbouring areas, reference may also be made to § 13 and 60 of the Regulation of the Minister of Infrastructure of 12 April 2002 on the technical conditions to be met by buildings and their location,³² relating to the provision of natural lighting and adequate sunlight hours. However, in the case of cemeteries, it is, in fact, difficult to imagine a situation in which other facilities are overshadowed and natural light is restricted in rooms intended for human habitation.

The social Dimension of the Location of Cemeteries

The issues related to the location of cemeteries cannot be limited to those associated with the investment process in the broad sense, taking into account mainly the provisions of the construction law. The social dimension of the location of cemeteries relates to the assessment of how cemeteries affect socio-economic activity.

An interesting example is the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism, which stipulates in Article 14(6) that in other unlisted places, facilities (i.e. those referred to in Article 14(1)–(5) of the Act), or in specific areas of the municipality, owing to their nature, the municipal council may introduce a temporary or permanent prohibition on selling, serving, consuming, and bringing in alcoholic beverages.³³ According to its judgment of 17 December 2001, ref. No. II Sa/Ka 680/2000, the Supreme Administrative Court – District Court in

technicznych, jakim powinny odpowiadać budynki i ich usytuowanie (Dz.U. z 2022 r., poz. 1225 / Journal of Laws of 2022, item 1225).

³² § 13 i 60 Rozporządzenia Ministra Infrastruktury z dnia 12 kwietnia 2002 r. w sprawie warunków technicznych, jakim powinny odpowiadać budynki i ich usytuowanie (Dz.U. z 2022 r., poz. 1225 / Journal of Laws of 2022, item 1225).

³³ Ustawa o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi z dnia 26 października 1982 r. (Dz.U. z 2023 r., poz. 2151 / Journal of Laws of 2023, item 2151).

Katowice considered a complaint against the decision of the Self-Government Appeal Board in Cz. dated 2 March 2000, ref. No. SKO 0812/7/2/2000, which upheld the decision of the R. Municipality Board of 20 January 2000 giving a negative opinion on the application of Jadwiga K. to issue a permit for the sale of alcoholic beverages containing up to 4.5 per mille of alcohol and beer. In the case under examination, the Municipal Council set a distance of 150 m from religious facilities within which the sale of alcoholic beverages may not take place. This resulted in a situation whereby a zone of influence of religious facilities (including cemeteries) was established, with the consequence that the location of any facilities for the sale of alcoholic beverages was significantly restricted.³⁴

With regard to the cited ruling, the adoption of distance provisions from cemeteries on legal grounds is of great relevance when it comes to restricting or excluding the use of property rights on neighbouring land. This is linked to the problem of potential compensation for the impact of cemeteries on neighbouring land. Hence the importance of the local zoning plans, which clearly indicate the surroundings of cemeteries subject to regulations limiting the full enjoyment of property rights. An example of this is the judgment of the Supreme Administrative Court of 27 October 2011, in which it was held that 'the lack of a regulation on the protective zone in the local plan renders it impossible for the owners of neighbouring areas to pursue possible claims for the restriction or complete prevention of the use of their property right. The area surrounding the cemetery is important for entities having a legal title to the grounds directly adjacent to the cemetery. The siting of the cemetery and the provisions of local plans prevent any development of the land, which constitutes an infringement of the right to property or may render the owner completely deprived of the exercise of his property right. A zoning plan must not unduly restrict the right to property. Any such restrictions should be the basis for provisions in the local plan guaranteeing compensation to owners in the event of an infringement of their property rights. The above results from Article 36 of the Act on spatial planning and development, pursuant to which if, in connection with the adoption of a local plan or its amendment, the use of the real property or its part has become impossible or significantly restricted as to its designation, the owner or the perpetual usufructuary of the real property may, subject to paragraph 2 of the same provision, demand from the municipality: compensation for the actual damage suffered or purchase of the real property or its part.'³⁵

Another matter related to the location of cemeteries, however, on social grounds, concerns the cultivation of the memory of the dead. The Polish legal order is

³⁴ A. Sobczak, *op. cit.*, pp. 182–185.

³⁵ Judgement of the Supreme Administrative Court of 27 October 2011, II OSK 1625/11.

governed by the Act of 28 March 1933 on Graves and War Cemeteries. Pursuant to Article 3 of said Act, war cemeteries are designated for the burial of the bodies of persons mentioned in section 1. Thus, the character of a war cemetery will be twofold. Firstly, its location (or the location of other built structures) will have to take into account the provisions of the aforementioned Act on Cemeteries and Burial of the Dead. The essential point characterizing war cemeteries (apart from the persons buried therein) is the supervision of the government administration over their maintenance (with the note that in Article 6(3), the legislator provided for the possibility, by means of an agreement, of entrusting a local self-government unit with the duty of maintaining a war cemetery).

In the case of war cemeteries, a further element should be noted, namely their special role in martyrology, which is particularly evident in the celebration of anniversaries or holidays associated with a particular cemetery (e.g. the anniversary of the outbreak of the Second World War or the anniversaries of particular national uprisings). The role of the cemetery in this case has a far broader character than in the case of a municipal or denominational cemetery intended only for the burial of human remains. Evocations of the suffering and death of concrete individuals (or a collective subject) are intended to glorify their death and sacrifice, as well as to shape patriotic attitudes, historical consciousness, or even a community of memory. An example justifying the above thesis is the manner of commemoration of particular anniversaries. While in the case of communal and religious cemeteries, only the 1st of November takes the form of a mass celebration of the memory of those buried, the remaining practice is individual and intimate. In the case of war cemeteries, on the other hand, this celebration of remembrance is of a collective or mass nature. To characterize the social dimension of war cemeteries, attention should be drawn to the form of the celebration of this memory, which takes the form of mass events.

Conclusions

In the article, we have presented the cemetery as a built structure that determines the possibility of future development and has an impact on the social environment. Our analysis shows that the siting of cemeteries should be related to the specific issues presented in the paper. Owing to the specific purpose of this built structure, the legislator has not foreseen other situations where the cemetery will determine any form of human activism, other than those referred to in this text. Furthermore, the examples provided support the conclusion that it is unacceptable to treat a cemetery as an inert built structure. Simultaneously, it should be emphasized that the

impact of cemeteries on their surroundings cannot be clearly defined in the contemporary legal order. This is owing to the fact that the main legal act, i.e. the Act on Cemeteries and Burial of the Dead, is obsolete and increasingly criticized by both the doctrine and the administrative court rulings. While in the case of a cemetery, understood as a built structure, we are in a position to rely on the provisions of the construction law, this is unfortunately not possible when it comes to defining its social dimension. This is principally due to the lack of legal regulations not only comprehensively regulating the issues of cemeteries, including cemeteries as places of remembrance. This means that it will only be possible to undertake a much broader and multi-faceted discourse on the impact of cemeteries when the legislator adopts comprehensive legal solutions related, not only to cemeteries as places for burying the dead, but also to memorials.

It should be added that, as the law currently stands, a cemetery is a site excluded from other development possibilities. As an example, a cemetery with a high share of greenery can also function as a park. Obviously, it will not be a park, but an additional element will be introduced in its functioning, oriented towards the use of greenery and a noise-reduced zone. This will require appropriate legislative action or, within the existing statutory provisions, the introduction of a statutory delegation authorizing the local authority's governing body to issue the relevant local law provision. In an analogous vein, cemeteries (especially those with a high proportion of historic buildings) can be an important element in historical didactics. In our opinion, cemeteries may be assigned these additional functions, naturally while preserving and respecting their primary function. Any legal changes that will result in the correlation of the cemetery with other forms of human activity will require appropriate research into the public's perception of the cemetery.

While the issue of amending the Act on Cemeteries and Burial of the Dead or adopting a new act may constitute a time-consuming legislative process, in our opinion, for the time being, it would be reasonable to amend the regulation on what areas are suitable from the sanitary point of view for cemeteries, which in § 3 defines the so-called protection zone. In this case, the legislator has clearly indicated that the relevant distance is measured from the boundaries of the cemetery. Mindful of the dynamic urbanization process and the occupation of new land for development, it would make sense to introduce solutions relating to closed cemeteries or parts of them that are no longer used for burying the dead. In connection with this *de lege ferenda* proposal, it is worth quoting the thesis contained in the judgement of the Voivodship Administrative Court in Poznań of 25 January 2018, ref. No. II SA/Po 1166/17 (unfortunately not accepted in the jurisprudence of administrative courts due to the literal application of § 3(1) of the cited regulation) according to which it is problematic to assess the scope of cemetery isolation strips when

we are dealing with a necropolis that has been non-functional for decades and the establishment of which is not documented. It is therefore reasonable to assume that, in assessing the extent of the cemetery isolation strip, consideration should be given first and foremost to the perimeter of where the dead were actually buried and where the graves are located. However, it would seem too far-reaching under such conditions to restrict the rights of neighbouring landowners to development. Such a restriction would, in fact, lose its relevance if a particular piece of land has not been used to bury the dead for decades, there are no graves, and furthermore contemporary conditions do not indicate any prospect of it being used as a burial ground.

Moreover, the distinction between cemeteries for the burial of the dead and cemeteries (or parts of cemeteries) excluded from burial should be reflected in the process of establishing local spatial development plans. At this point, it is necessary to refer to Article 15(2b) of the Act on Planning and Spatial Development (introduced pursuant to Article 1(15)(c) of the Act of 7 July 2023 amending the Act on Planning and Spatial Development and Certain Other Acts), according to which a local plan providing for the location of a new cemetery or expansion of an existing cemetery should be drawn up at least for the area comprising a protection zone, related to restrictions on development and use of land in the vicinity of the cemetery. In consequence, this means that the municipality, at the stage of drawing up the local spatial development plan, will be obliged to determine where this zone will be located (new cemetery or its extension) and where, in view of the circumstances referred to in the aforementioned judgment, its determination will no longer be required.

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