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REGIONALISATION OF TASKS RELATED TO ENVIRONMENTAL PROTECTION

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Abstract:
This paper aims to analyse the criteria regarding the distribution of tasks related to environmental protection oriented at regionalisation of such tasks. Further, it provides an assessment of regionalisation along with the postulates *de lege ferenda* (i.e. the law as it should stand).

Regionalisation of tasks related to environmental protection is very significant from the point of view of performance of tasks related to environmental protection. Regionalisation of such tasks should take into account the following aspects – area of impact and area of protection, cost of protection manifested in ensuring funds to finance such protection, the requirement of specialist knowledge and, finally, familiarity with local conditions. As a matter of fact, regionalisation of such tasks

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should be a compilation of all those criteria in total. It is not easy to establish the applicability of such criteria and weigh the significance of each of them in a specific situation. It is difficult to expect such an effect from the lawmaker. However, it does not mean that it should not make conscious reference to such criteria and apply them to the optimum extent possible.

Key words:
environmental protection, decentralisation, regionalisation of tasks;

The distribution of tasks related to environmental protection is one of the major issues in environmental protection law. It is not only a matter of distribution of competences but also a matter of organisation of environmental protection and political issues. Without any doubt, two basic statements must be made. The first one is the inevitability of the distribution of tasks related to environmental protection. The other refers to the intentionality of such a distribution and its underlying well-designed criteria.

This paper aims to analyse the criteria regarding the distribution of tasks related to environmental protection oriented at regionalisation of such tasks. Further, an assessment of regionalisation will be formulated along with the postulates *de lege ferenda* (i.e. the law as it should stand).

The problem of regionalisation of tasks related to environmental protection derives from another one, that is, the distribution of tasks between respective public authorities. This distribution has different variants depending on the model of organisation of public authority in the specific country and on the political system in which they operate. They will be different in a federal state and in a unitary state. They will be determined by the existence and structure of local government.

Regionalisation of tasks related to environmental protection is not defined in normative terms. It can have various interpretations depending on the political system model.

In Poland, regionalisation of tasks related to environmental protection is limited to determining which tasks are performed by the state administration bodies and which by the local government units[1]. This determinant

[1] B. Rakoczy, Prywatyzacja zadań z zakresu gospodarki komunalnej. Stan *de lege lata* i *de lege ferenda* (Privatisation of tasks related to municipal management. De lege lata and

overlaps with another problem that is often neglected in the discussion concerning the organisation of environmental protection, namely which tasks are performed by the central administration authorities and which by the local administration authorities. Finally, it must be considered that regionalisation is mostly connected with a voivodeship (region) as a unit of local government.

From a theoretical point of view, regionalisation of tasks related to environmental protection is associated with decentralisation and deconcentration.

Not aspiring to explore these terms in detail, which as a matter of fact would go beyond the scope of this paper, I would like to refer to the definition of decentralisation proposed by J. Boć. According to that Author, decentralisation is connected with determining the legal status of local government and its units. He claims that decentralisation is an organisational system in administration granting clearly defined competences to respective administrative entities which are determined or assigned by other (superior) bodies statutorily, are performed autonomously and to this extent are subject only to verification surveillance by competent authorities[2].

In turn, in another handbook, P. Przybysz recounts that decentralisation is a way of organisation of the administrative apparatus where lower level bodies do not report to bodies at a higher level of hierarchy[3].

On the other hand, P. Przybysz sees deconcentration as competences being dispersed among a few bodies[4].

He also points out that deconcentration occurs when competences are dispersed among a number of entities within the overall structure of public administration or its part[5].

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de lege ferenda) [In:] A. Błaś (ed.), J. Boć (ed.), Stan i kierunki rozwoju nauk administracyjnych (Status and directions of development of administrative studies), Wrocław 2014, pp. 279-305.

[2] J. Boć, [in:] J. Boć, Prawo administracyjne (Administrative law), ed. 13, Kolonia Limited 2010

[3] P. Przybysz, [in:] M. Wierzbowski (ed.), Prawo administracyjne (Administrative law), ed. 10, Warszawa 2011, p. 103

[4] Op. cit., p. 105

[5] R. Giętkowski, K. Łokucijewski, [in:] E. Bojanowski (ed.), K. Żukowski (ed.), Leksykon prawa administracyjnego. 100 podstawowych pojęć (The lexicon of administrative law. 100 fundamental terms), Warsaw 2009, p. 52

The distribution of tasks related to environmental protection plays a very important role in many legal systems. It is significant enough to have been given a constitutional status. This can be illustrated by Art. 117 of the Constitution of the Italian Republic. The provision identifies issues that can be regulated by statute laws of the regions unless such laws are contrary to state laws, national interest and the interests of other regions. The competences related to environmental protection, ecosystems and cultural heritage remain solely at the level of the state[6].

Another example is Art. 7 par. 4 of the Act on the Form of the Government which is a constitutional act. This provision stipulates that except as set forth in the law, by the operation of the act the government can regulate matters other than taxes if such matters refer to, among other things, hunting, fishing, protection of animals or protection of nature and the natural environment[7].

The above-given examples lead to the conclusion that legislators give an exceptionally serious treatment to tasks related to environmental protection if they give them a constitutional status. Incorporating such a distribution of tasks in a constitutional framework will certainly guarantee its stability which is highly significant for environmental protection because processes occurring in the environment are long-term processes.

It was also noticed that the distribution of such tasks was necessary[8]. But for decentralisation and deconcentration of tasks it is impossible to ensure the correct level of environmental protection.

The system of Polish law lacks a constitutional norm that would regulate the distribution of tasks related to environmental protection between state and local government administration. On the other hand, general rules concerning the distribution of public tasks between state and local government administration do exist in the constitution. However, what is significant and interesting, these are not the norms that strictly regulate the distribution of public tasks but they formulate presumptions. The first of these presumptions is expressed in art. 163 of the Constitution of the Republic of Poland of 2 April 1997 stipulating that "Local government

[6] Cf. e.g.

[7] Vide i.a. H. Strömberg, B. Lundell, Sveriges författning, Lund 2004, p. 115 et seq.; E. Hlomberg, N. Stjernquist, Var Författning, ed. 13, Stockholm 2003, pp. 151-152.

[8] M. Rudnicki (ed.), Organizacja ochrony środowiska (Organisation of environmental protection), Lublin 2011

shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities."[9].

A principle operating in the system of Polish law is the presumption of the competence of local government. Thus, a task related to environmental protection is performed by other public authorities (at the level of state administration) only when the act clearly assigns such competence to such authorities.

However, local government in Poland consists of three units – a voivodeship (region), a poviat (district) and a gmina (municipality/ commune). Hence, it was necessary to formulate another presumption concerning competences expressed in normative terms in Art. 164 of the Constitution of the Republic of Poland reading"

1. The commune (gmina) shall be the basic unit of local government.
2. Other units of regional and/or local government shall be specified by statute.
3. The commune shall perform all tasks of local government not reserved to other units of local government".

This provision clearly indicates that it is the gmina that performs all the tasks that have not been clearly reserved to other units of local government.

Thus, first we deal with a norm presuming the competence of local government and then the competence of the gmina within the structure of the local government.

Further, reference should be made to Art. 18. par. 1 of the Act on Commune Self-Government of 8 March 1990[10], stipulating that "The competence of the commune's council includes all matters within the scope of the commune's activities unless otherwise stipulated by the statutes.".

In turn, this provision implies that the executive body of the gmina, that is, the administrator, the mayor, the president of the city, performs tasks reserved to the gmina if this is stipulated in the act. In all other cases the competent authority is the municipal council (i.e. the council of the gmina). Thus, it may be presumed that ultimately the public tasks, including those related to environmental protection, will be performed by the municipal council.

Thus, it is clear that the constitutional and ordinary lawmakers in Poland assign public tasks to local governments, although recent changes in the

[9] Cf. i.a. B. Dolnicki, Samorząd Terytorialny, ed. 5, Warsaw 2012

[10] Dz. U. (JL)

environmental protection law seem to oppose this fact[11]. However, it does not mean that local government is completely excluded from the execution of public authority and performance of public tasks, including tasks related to environmental protection.

Despite ongoing changes, issues concerning the regionalisation of tasks related to environmental protection should be further analyzed with a particular focus on criteria according to which these tasks are distributed among state administration and local administration bodies. It should be also emphasized that regionalisation of such tasks occurs inside the state administration as well.

The basic criterion according to which tasks should be distributed under their regionalisation is the criterion of the area of their impact and protection. The analysis of this criterion must commence with the statement that the environment as a whole and its natural elements are not subject to any territorial divisions whatsoever. It is not only a matter of internal divisions but also of international divisions. Thus, environmental protection must take these circumstances into account. On the other hand, the problem cannot be completely separated from the territorial division of the state, at least taking into account the local competence of public administration bodies.

The problem of impact and protection underlying the analyzed criterion is not identical with reference to all natural elements[12]. It is differentiated depending on the specific natural element. As a rule, the more general and the wider the range of impact and protection, the protection of the specific natural element should be a task of state administration authorities. Air can be an excellent example here. With regard to its qualities, air protection cannot be limited to the territory of the gmina only. It follows at least from its large fluctuations at a specific height. Therefore, restricting environmental protection tasks only to the gmina would be pointless. Air quality standards applicable in one gmina could differ from those established for the neighbouring gmina.

However, it does not mean that the territorial level of the gmina cannot be used in some way. This level can play an important role in case of air impact. The gmina can successfully eliminate the sources of low emissions,

[11] It refers to the construction of water authorities following from the Water Law of 20 July 2017.

[12] Cf i.a. B. Rakoczy, Prawo ochrony przyrody (Environmental Protection Law), Warsaw 2009.

for instance, by subsidizing their replacement with more environment-friendly ones.

With regard to the same circumstances, the territorial level of the poviat does not seem satisfactory either. Thus, we are left with the most general territorial division of the state – the division into voivodeships.

However, a significant problem occurs here, namely should the tasks related to air protection be performed by state administration at the voivodeship level or by the voivodeship as a unit of local government. As regards monitoring tasks, these are mostly carried out by the consolidated voivodeship and state administration. On the other hand, as regards local law, the adopted solution is that the regional council adopts relevant resolutions, including platform resolutions.

Another example when this criterion is used can be the protection of and the impact on waters. Here, regionalisation is manifested in aligning the organisation of public administration with the structure of waters in Poland. Without any doubt, the level of the gmina is highly unsatisfactory, for instance, with regard to the fact that the network of rivers in Poland flows through a number of gminas, which could cause excessive distribution of competences in relation to the same river.

The level of the poviat is also inappropriate for similar reasons. The level of the voivodeship is inadequate as well. Insofar as it could be adequate to ensure effective protection of air, with water it would be impossible. Waters are not subject to the division into voivodeships[13]. Thus, the division of public administration authorities performing tasks related to the protection of waters and preventing impact on waters, and more generally speaking – the management of waters, is strictly determined by hydrological conditions.

In this case, regionalisation must comply with hydrological requirements. However, the central level is not adequate here.

A question emerges if the tasks related to water management should be performed by the state or local administration. In case of waters, centralization is significant with regard to the routing of flowing surface waters and underground waters. They flow through territories subject to a number of local government units, which does not foster maintaining uniform directions in the management of waters. Hence, concentration is necessary and it is possible in the realm of state administration.

[13] Air is not subject to the division either; however, it is possible to control its movement between voivodeships. Even if another division is adopted, it would not change anything.

However, water management concentration does not oppose the necessity for regionalisation that in this case becomes decentralisation. It is only necessary to maintain uniform directions of activity but not necessarily the uniformity of the activity alone. Thus, decentralisation is justified. This, in turn, when the uniformity of directions is maintained, ensures flexibility in taking local conditions into account as necessary to ensure effective activity.

Another example of regionalisation with reference to this criterion is management and disposal of waste[14]. Two types of elements can be seen in this aspect. The basic activities related to waste disposal and management are performed by the gmina. The gmina is responsible for collecting the waste. Next, waste is delivered to regional or interregional municipal waste processing plants. Thus, an intermediate and combined solution is applied here. It makes use of a small area of impact of municipal waste with a range limited to the gmina. At the same time, regionalisation is required with reference to tasks going beyond the organisational and financial capacity of a single gmina.

An example of using the impact area and the protection area as criteria is the protection of natural environment. In the system of Polish law a very deep division of competences between respective bodies responsible for respective forms of environmental protection can be observed.

National parks are set up by the Council of Ministers and nature reserves by the regional director for environmental protection. Landscape parks and protected landscape areas are set up/ acknowledged by the regional council. Nature 2000 area is a form of natural environment protection in which the competences of a few different bodies are intertwined[15].

The protection of species is a task of the minister in charge of environment.

On the other hand, individualised forms of natural environment protection are introduced by the authorities of the gmina.

The consequence of such fragmentation of competences in creating, abolishing and acknowledging the forms of natural environment protection

[14] These issues are discussed in more detail, for instance, in the exquisite study by P. Korzeniowski, Model prawny systemu gospodarki odpadami. Studium administracyjno-prawne (The Legal model of a waste management system. An administrative and legal study), Łódź 2014; Z. Bukowski, Prawo gospodarki odpadami (Waste Management Law), Poznań 2014

[15] Cf. i.a. A. Habuda, Obszary Natura 2000 w prawie polskim (Natura 2000 areas in Polish legislation), Warsaw 2013.

is the problem of validating relations between respective acts of local law. It is particularly visible in local spatial development plans and acts acknowledging the establishment of landscape parks or protected landscape areas[16].

As regards environmental protection, using the example of environmental protection law, it is clearly visible that regionalisation of tasks is not only limited to the distribution of tasks between state administration and local government administration. Regionalisation is also visible within the structures of the state administration itself since the regional director for environmental protection is a body of non-combined state administration. What is interesting, the regional director for environmental protection is the only body in charge of environmental protection in the Polish legal system in the narrow sense with a name making reference to regionalisation[17].

Another criterion to be taken into account in distributing the tasks between the state government and local government administration is the financial criterion. It is incontestable that effective environmental protection requires exceptionally high financial expenditure both with regard to preventive and possible corrective measures. Thus, the financing of respective tasks is determined by the distribution of tasks and, as a consequence, it affects the regionalisation of tasks.

A rule can be formulated that the higher the cost of performing or undertaking tasks related to environmental protection, the more the task should be concentrated, and even centralised. It is a result of the fact that money is accumulated at the centralised or concentrated level. As a consequence, the financial resources are considerable.

This is particularly visible in the system of organisation of funds for environmental protection and water management. The funds for environmental protection and water management are not environmental protection bodies but they are environmental protection institutions deprived of executive authority.

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[16] Cf. i.a. B. Rakoczy, Stanowienie aktów prawa miejscowego w zakresie form ochrony przyrody. Ocena de lege lata i postulaty de lege ferenda (Making of the local law regarding forms of environmental protection. Assessment de lege lata and postulates de lege ferenda), [in:] M. Stahl (ed.), P. Korzeniowski (ed.), A. Kaźmierczak – Patrzyczna (ed.), Problemy pogranicza prawa administracyjnego i prawa ochrony środowiska (Issues on the borderline of administrative law and environmental protection law), Warsaw 2017, pp. 433-446.

[17] Likewise, the director of the regional water management authority, but it is an environmental protection body in the broad sense

M. Górski notes that this term seems to be a common term for units of organisation that are not environmental protection bodies but that operate within the structures of a widely interpreted public administration apparatus and perform tasks significant for the accomplishment of environmental protection goals[18].

The organisation of the funds for environmental protection and water management has a two-tier structure comprising the National Fund for Environmental Protection and Water Management and regional funds for environmental protection and water management. The National Fund for Environmental Protection and Water Management is a state body corporate and regional funds for environmental protection and water management are self-governed bodies corporate. There are no hierarchical relations between them.

The organisational structure of funds shows elements of regionalisation. Although respective funds do not form a hierarchical structure, they are not completely independent. The legislator was not satisfied with creating a single centralised fund for environmental protection and water management. It also set up respective regional (voivodeship) funds as they could better recognize and respond to regional needs.

The National Fund for Environmental Protection and Water Management finances tasks related to environmental protection if they go beyond regional capabilities. These issues must be also taken into consideration in the evaluation of the criteria underlying the distribution of tasks between state administration and local government administration.

Another criterion is specialisation. The performance of tasks related to environmental protection as a rule requires specialist knowledge and skills. This element determines the legislator's attempts at organizing specialised administration for environmental protection. However, not all tasks related to environmental protection require specialist knowledge. Sometimes general skills and basic knowledge are sufficient. The lawmaker should identify the areas of environmental protection which require specialist knowledge and skills and the areas in which such knowledge and skills are not required.

[18] M. Górski, [in:] M. Górski, M. Pchałek, W. Radecki, J. Jerzmański, M. Bar, S. Urban, J. Jendrośka, Prawo ochrony środowiska. Komentarz (Environmental Protection Law. A Commentary), ed. 2, Warsaw 2014, p. 987.

Thus, it is possible to formulate a rule according to which when tasks related to environmental protection require more specialist knowledge and skills, the specific task should be performed by state administration. Such an assumption results from the fact that such administration has specific financial resources which allow the financing of specialised administration. The money can be also used for financing different types of measuring instruments and equipment. In addition, it has considerably larger organisational options.

In the system of Polish law specialised environmental protection bodies in the narrow sense are the voivode acting through the regional (voivodeship) inspector for environmental protection, the regional director for environmental protection and the general director for environmental protection. Other bodies can be regarded as non-specialised.

However, a question arises whether the distribution of tasks among specialised and non-specialised bodies is adequate. Practice shows it is not and this mainly refers to decisions on environmental conditions or issues covered by the regime of the Water Law. A closer analysis of this issue would go beyond the scope of this study, but it is necessary.

Finally, another criterion to be taken into account when talking about regionalisation of tasks related to environmental protection is familiarity with local conditions. It is often neglected in the context of regionalisation of tasks related to environmental protection. It is a result of giving priority to other conditions, mostly political ones. However, it should be regarded more significant.

The point is how important it is for effective environmental protection to know the local conditions, and further on what regional scale.

The rule is that the more necessary it is for effective environmental protection to know the local conditions, the more such a task should be considered in the context of regionalisation. The smaller the requirement to be familiar with such conditions, such a task can be performed by state administration.

The problem of familiarity with local conditions is in the first place visible in environmental protection. As indicated above, the competences of environmental protection bodies in applying the forms of environmental protection have become widely scattered. Nevertheless, it can be observed that the lawmaker left individual forms of environmental protection to the gmina as the unit of local government being most familiar with the needs for using such forms of environmental protection.

This issue is also present in the context of waste management and waste disposal. The gmina is a local government unit that knows the local conditions best, considering that such conditions play a key role in waste handling processes.

To sum up, regionalisation of tasks related to environmental protection is very significant from the point of view of performance of tasks related to environmental protection. Unfortunately, it is not adequately perceived and understood. Regionalisation of such tasks should take into account the above-mentioned four criteria – area of impact and area of protection, cost of protection manifested in ensuring funds to finance such protection, requirement of specialist knowledge and, finally, familiarity with local conditions. As a matter of fact, regionalisation of such tasks should be a compilation of all those criteria in total. It is not easy to establish the applicability of such criteria and weigh the significance of each of them in a specific situation. It is difficult to expect such an effect from the lawmaker. However, it does not mean that it should not make conscious reference to such criteria and apply them to the optimum extent possible.