

Karolina Karpus*

**Legal protection of landscape in Poland
in the light of the Act of 24 April 2015
amending certain acts in relation
to strengthening landscape
protection instruments**

**Prawna ochrona krajobrazu w Polsce
w świetle ustawy z dnia 24 kwietnia 2015 r.
o zmianie niektórych ustaw w związku ze
wzmocnieniem narzędzi ochrony krajobrazu**

<http://dx.doi.org/10.12775/PYEL.2016.004>

Abstract

Landscape as an element of the environment is the subject of legal protection. However, the Polish legislator had a number of problems defining the notion

* Doctor of Laws, Assistant in the Environmental Law Department, Faculty of Law and Administration, Nicolaus Copernicus University in Toruń.

of 'landscape'. As a result, landscape was subject to dispersed, inconsistent and uncoordinated protection. The new Act of 24 April 2015 aimed to help the Polish legislator to provide more effective protection of that natural element, i.e. landscape. The aim of this work is to present the new legal situation. However, because of the enormous scope of new regulations, the analysis shows above all the changes introduced by the Act of 2004 on Nature Conservation, the Act of 2003 on Spatial Planning and Management, and the Act of 2003 on Monuments Protection and Maintenance. The analysis is preceded by a brief description of landscape protection in Poland in the period before the new legal regulations came into force.

Keywords:

Environmental law; landscape protection; legal instruments of landscape protection.

Streszczenie

Krajobraz jako element środowiska stanowi przedmiot ochrony prawnej. Jednakże zdefiniowanie pojęcia „krajobrazu” sprawiało polskiemu ustawodawcy szereg trudności. Skutkowało to objęciem krajobrazu ochroną rozproszoną, niejednorodną, nieskoordynowaną we właściwym stopniu. Nowa ustawa z 24 kwietnia 2015 r. miała pomóc ustawodawcy polskiemu w zapewnieniu skuteczniejszej ochrony tego elementu przyrodniczego, jakim jest krajobraz. Celem opracowania jest omówienie nowego stanu prawnego, przy czym z uwagi na niezwykle szeroki zakres nowych przepisów, szczegółowej analizie poddane zostały przede wszystkim zmiany w wprowadzone w: ustawie z 2004 r. o ochronie przyrody, ustawie z 2003 r. o planowaniu i zagospodarowaniu przestrzennym oraz ustawie z 2003 r. o ochronie zabytków i opiece nad zabytkami. Omówienie to poprzedzone zostało krótką charakterystyką ochrony krajobrazu w Polsce w okresie przed wejściem w życie nowych rozwiązań prawnych.

Słowa kluczowe:

Prawo ochrony środowiska; ochrona krajobrazu; prawne narzędzia ochrony krajobrazu.

1. Legal protection of landscape before 11 September 2015

1.1. Introductory remarks

According to the definition of ‘environment’ mentioned in article 3 point 39 of the Act of 27 April 2001 on Environmental Law¹, landscape is one of the natural elements present in human environment. The Polish legislator combines the notion of landscape protection with nature conservation, hence, the regulations in that scope were earlier presented in the Act of 16 April 2004 on Nature Conservation² (further referred to as the NCA). Article 2 item 1 point 7 of the NCA defines nature conservation as maintenance, sustainable use, as well as restoration of resources, features and elements of nature, including landscape. Until September 2015 there was no explicit definition of ‘landscape’ in the NCA. In article 5 of the NCA, the Polish legislator referred only to the following notions: 1) ‘landscape protection’ meaning ‘the conservation of the characteristic features of a given landscape’ (article 5 point 8), 2) ‘landscape values’ meaning ‘ecological, aesthetic and cultural values of an area and connected with it the lie of the land, features and elements of nature created as a result of natural forces or human activities’ (article 5 point 23). The approach of the Polish legislator combining landscape with nature resulted in including an area with such understood landscape values into the so-called territorial forms of nature conservation (national park, nature reserve, protected landscape area) or into some object-oriented forms of nature conservation (natural monument, nature-landscape complex).

Taking into consideration the concepts behind landscape and their classification in the theory of environmental law, there is a discussion on the relationships between environmental law and monuments protection law. The perception of a landscape as one of the natural elements of the environment from the angle of the mixed concept of landscape³ (combined

¹ Journal of Laws of 2016 item 672, with further amendments.

² Journal of Laws of 2015 item 1651, with further amendments, further referred to as the NCA.

³ W. Radecki indicates three concepts of landscape: biological (physical, ecological), physiognomic (architectural) and mixed (combining those two) – see W. Radecki, *Ustawa o ochronie przyrody. Komentarz*, Warszawa 2008, p. 46-47.

natural and cultural components) makes landscape subject to both environmental protection law and monuments protection law. Thus, there is a demand for the establishment and realization of the integrated system of environmental and monuments protection⁴. According to article 3 point 14 of the Act of 23 July 2003 on Monuments Protection and Maintenance⁵ (further referred to as the MPMA), ‘cultural landscape’ means ‘space historically formed as a result of human activities, containing products of civilization and natural elements’. In the light of this act, cultural landscape is subject to the so-called territorial forms of monuments protection, which include: historical monument (article 15 of the MPMA) and culture park (article 16 of the MPMA).

An important issue of landscape protection is the issue of legal regulations enabling such protection beyond special areas, which are the above-mentioned nature conservation forms or territorial forms of monuments protection⁶. Space (surrounding), in which landscape exists is also subject to the regulations of the Act of 27 March 2003 on Spatial Planning and Management⁷ (further referred to as the SPMA). As an example, among the previous solutions concerning landscape, the following acts serving spatial planning and management may be indicated: local spatial management plan (gmina (commune) self-government), voivodship spatial management plan (voivodship self-government), national spatial management concept⁸ (the

⁴ K. Stanik-Filipowska, *Ochrona zabytków nieruchomości a ochrona środowiska*, in: *Prawo ochrony środowiska*, ed. J. Stelmasiak, Warszawa 2009, p. 386-387.

⁵ Journal of Laws of 2014 item 1446, with further amendments, further referred to as the MPMA.

⁶ K. Bartniak, *Prawna ochrona krajobrazu*, in: *Prawo ochrony środowiska*, ed. M. Górski, Warszawa 2014, p. 584-586.

⁷ Journal of Laws of 2016 item 778, with further amendments, further referred to as the SPMA.

⁸ See the resolution No 239 of the Council of Ministers of 13 December 2011 on the National Spatial Management Concept 2030, Official Journal of the Republic of Poland of 2012 item 252, p. 118, 123 – ‘Creation of spatial structures supporting the achievement and maintenance of the high quality of natural environment and landscape values of Poland’ as the aim 4 – which involves activities in the following areas: 4.1. Integration of activities in the scope of the functioning of a consistent national ecological network as a basis of the protection of the most valuable natural and landscape resources; 4.2. – Prevention of natural space fragmentation; 4.3. Introduction of landscape management in accordance with the European Landscape Convention; 4.4. Rational management of limited national surface and undergrounds waters, including the prevention of water deficit for people and economic development; 4.5. Achievement and maintenance of good water condition and potential,

Council of Ministers and the Minister of Regional Development). In all three acts, the rules applying to landscape protection as well as territorial forms protecting this element were defined mandatorily. However, it should be pointed that in the period before 2015 there was no close correlation between this act and landscape defined as a mixed concept. In the above-mentioned acts the Polish legislator referred, of course, to environmental protection and nature conservation (whose element is landscape), as well as to monuments protection, but only cultural landscape was directly distinguished. Another example of including landscape as the subject of protection beyond special areas may be environmental impact assessment regulated by the Act of 3 October 2008 on Access to Information on Environment and its Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment⁹. However, similarly as in the earlier case in the period before 2015, landscape was present within this procedure as one of environmental elements and not as a special protection subject. According to article 62 item 1 point 1 of this act, within the environmental impact assessment of an undertaking the followings aspects of a given undertaking were defined, analysed and assessed directly and indirectly: a) environment, as well as human health and living conditions, b) material goods, c) monuments, d) mutual influence of elements mentioned in letters a-c, e) access do fossil deposits.

Summing up, it may be indicated that in the period before 2015, landscape understood as combined natural and cultural elements was subject to two kinds of legal protection: 1) as one the elements present in an area qualified as a special area and therefore under special legal regime, 2) as an element of surrounding (environment) present beyond such special areas. According to the Polish legislator, the protection of landscape was highly unsatisfactory, especially, in the second case. The following circumstances were indicated as the main threat to the quality of landscape: '1) a very low protection level of areas in local spatial development plans, 2) as a consequence – the dispersion of buildings and the freedom of actions based on a decision on spatial development, 3) the intensive building-up of panoramic outskirts and silhouettes of towns while there is no effective legal possibility to protect

as well as ecosystems connected with them; 4.6. Reduction of environmental overload caused by pollutant emissions into water, air and soil; 4.7. Protection of economically valuable fossil deposits and increase of recycled materials use.

⁹ Journal of Laws of 2016 item 353, with further amendments.

them beyond the arrangements defined in local spatial management plans, whose number is definitely too low¹⁰.

1.2. Implementation of the new 'landscape' act

On account of criticised deficiencies of previous legal regulations applying to landscape protection and the international obligations of Poland, actions were taken to improve this unsatisfactory state of affairs. The Act of 24 April 2015 on Amending Certain Acts in Relation to Strengthening Landscape Protection Instruments¹¹ (further referred to as the LPA), which came into force on 11 September 2015, should improve the situation. The act is the legislative initiative of the President of the Republic of Poland, who presented it to the Sejm in June 2013¹². In the justification of the bill it was indicated that in the first place there would be four basic solution groups supporting landscape protection. These are: 1) urban landscape protection rules; 2) restrictions on the procedure of building landscape dominants; 3) broadening the scope of environmental impact assessments; 4) new regulations concerning advertisement location¹³.

In the justification of the bill, the initiator also indicated that the new solutions should serve implementing by Poland the rulings of the European Landscape Convention¹⁴, adopted by the Council of Europe¹⁵. The act offers

¹⁰ See: The justification of the bill on amending some acts due to the strengthening of landscape protection tools: the Sejm of the Republic of Poland of the VII term, parliamentary document No. 1525, www.sejm.gov.pl [access: 10.09.2015]; A. Fogel, *Uwarunkowania prawnoustrojowe ochrony i kształtowania krajobrazu*, „Samorząd Terytorialny” 2014, No. 12, s. 44-54.

¹¹ Journal of Laws of 2015 item 774, further referred to as the LPA.

¹² <http://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=1525>

¹³ See: The Justification of the bill...

¹⁴ Opened for signature in Florence on 20 October 2000, Journal of Laws of 2006 item 98; the Convention came into life on 1 March 2004; see: K. Barniak *Prawna ochrona krajobrazu*, in: *Prawo ochrony środowiska*, edited by M. Górski, Warszawa 2014, p. 576-577.

¹⁵ See for further reading: A. Staniewska, *Potrzeba ochrony, zarządzania krajobrazem i racjonalnego kształtowania krajobrazu w odniesieniu do Europejskiej Konwencji Krajobrazowej i prezydenckiego projektu tzw. ustawy krajobrazowej*, „Samorząd Terytorialny” 2014, No. 12, s. 32-43; U. Myga-Piątek, *Ocena wartości i zagrożeń krajobrazów kulturowych Polski. Perspektywa Europejskiej Konwencji Krajobrazowej*, „Samorząd Terytorialny” 2014, No. 12, s. 7-19.

the definition of 'landscape' (article 1 letter a of the European Landscape Convention), according to which, it is 'an area, as perceived by people, whose character is the action and interaction of natural and/or human actions'. Whereas, according to article 1 letter d of the Convention, 'landscape protection' means 'actions to conserve and maintain the significant or characteristic features of a landscape, justified by its heritage value derived from its natural configuration and/or from human activity'.

Article 3 of the Convention defines basic aims, i.e. to promote landscape protection, management and planning, and to organise European co-operation on landscape issues. The general measures defined in article 5 are to serve their fulfilling, i.e.: 1) to recognise landscapes in law as an essential component of people's surroundings, an expression of the diversity of their shared cultural and natural heritage, and a foundation of their identity; 2) to establish and implement landscape policies aimed at landscape protection, management and planning through the adoption of the specific measures set out in article 6; 3) to establish procedures for the participation of the general public, local and regional authorities, and other parties with an interest in the definition and implementation of the landscape policies mentioned in paragraph b above; 4) to integrate landscape into its regional and town planning policies and in its cultural, environmental, agricultural, social and economic policies, as well as in any other policies with possible direct or indirect impact on landscape. Whereas article 6 indicates specific measures (awareness raising, training and education, identification and assessment, landscape quality objectives, implementation).

Among other international agreements, which may be significant to the discussed issue, the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage should be indicated¹⁶ (further referred to as the UNESCO Convention). Although there is no direct reference to landscape and its protection in this act, 'cultural heritage' defined in article 1 indicates in the category of 'sites' – 'works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view'. The use of the term 'combined works of nature and man' harmonizes with the much later adopted definition of 'landscape' in the European Convention, because both of them refer to

¹⁶ Adopted in Paris on 16 November 1972, Journal of Laws of 1976 item 190, further referred to as the UNESCO Convention.

the so-called mixed concept of landscape ('the whole nature with human elements')¹⁷. Currently, Poland has 13 inscriptions on the UNESCO World Heritage List in the category 'cultural heritage' and one inscription in the category 'natural heritage' (Białowieża Forest). Also, the attention should be paid to the co-operation under the aegis of the UNESCO embracing the International Programme 'Man and Biosphere' (MaB) initiated in 1971, resulting in the formation of the Biosphere Reserve Network. Currently, Poland has 10 reserves on the UNESCO World Biosphere Reserve List coordinated by the International Coordinating Council MAB¹⁸. In the legal situation before 11 September 2015, the Polish legislator did not refer strictly to the direct coordination of the protection of these objects in a landscape concept. As one can think, it resulted mainly from the fact of including those areas into national territorial forms of nature protection, without distinguishing the aspect of international obligations. However, in the new 'landscape' Act of 2015, the Polish legislator decided, for the first time, to introduce those issues directly into the Polish law.

Landscape protection is without doubt a complex, as well as, interdisciplinary concept. In the legal aspect, the new solutions concerning landscape protection demanded several changes in the following areas: nature conservation; monuments protection; spatial planning and management and building law; public roads; as well as other issues (penal policy, administrative execution, local taxes and fees). The Polish legislator had in this case a possibility of applying two models of legal regulations: the adoption of a new independent act, directly embracing all the most important legal solutions ('the act on landscape protection') or the adoption of a law solely amending other acts in law. The latter option was chosen eventually. Because of this, it should be indicated that the new Act of 2015, from the point of view of legislative technique, is solely so called 'act amending other acts', which means that it only amends already binding acts (there are ten such acts altogether), as well as temporary and adjusting regulations, necessary because of the amendments.

¹⁷ W. Radecki, *Prawna ochrona przyrody w Polsce, Czechach i na Słowacji. Studium prawnoporównawcze*, Warszawa 2010, p. 150-151.

¹⁸ <http://www.unesco.pl/nauka/czlowiek-i-biosfera-mab/> [access: 10.09.2015]

2. Landscape protection instruments in the new Act of 2015

2.1. Introductory remarks

In the Act of 2015, the Polish legislator refers to a new term ‘landscape protection instruments’. It should be accepted that it refers to those structures of the Polish legal system which so far have been called an ‘instrument’ of a given branch of law (e.g. ‘environmental protection law instruments’¹⁹) rather than a ‘legal institution’²⁰.

In the light of the solutions of the Act of 2015²¹, the legal catalogue of ‘landscape protection instruments’ is as follows:

- 1) prescriptive–authoritative instruments²²:
 - a) orders and prohibitions imposed by the act;
 - b) orders and bans imposed by a local act on the basis of statutory authorization:
 - i) general;
 - ii) within the forms of nature conservation;
- 2) landscape audit;

¹⁹ A. Erechemla, *Rola wybranych instrumentów prawa ochrony środowiska w zapewnieniu bezpieczeństwa walorów przyrodniczych i turystycznych obszarów przyrodniczo cennych*, in: *Bezpieczeństwo walorów przyrodniczych i turystycznych doliny Sanu, Nozdrzec 2007*, p. 172: ‘a legal instrument may be defined as a legal norm or a group of legal norms, which have objective or teleological character, thus they serve achieving a specific objective. There is no standardized structure of a legal instrument. The term »legal instrument« is often used in the doctrine of environmental protection law. It often has a similar meaning to »legal institution«, but »legal institutions« are understood very widely, they include not only those strictly specified by the legal theory doctrine but also legal measures and even legal forms of administrative activities’.

²⁰ A. Habuda, *Pojęcie instytucji w prawie ochrony środowiska*, in: *Instytucje prawa ochrony środowiska. Geneza, rozwój, perspektywy*, edited by W. Radeckiego, Warszawa 2010, p. 28: – ‘the institution of environmental protection law is a group of legal norms which are functionally and content related and this relations finds approval in the tradition of legal regulation of human conduct / behaviour towards the environment, as well as in the current form of this regulation’.

²¹ See for further reading: *Ustawa krajobrazowa: komentarz do przepisów wprowadzonych w związku ze wzmocnieniem narzędzi ochrony krajobrazu*, ed. A. Fogel, Warszawa 2016;

²² In the Author’s assessment, the starting point to discuss ‘landscape protection tools’ in this work should be the classification of ‘legal instruments of environmental protection’ suggested by J. Jendrońska and M. Bar – see: *Prawo ochrony środowiska. Podręcznik*, Wrocław 2005, p. 75-100.

- 3) planning acts;
- 4) financial-legal measures:
 - a) advertisement fee;
 - b) fine;
- 5) legal liability.

At the same time, the Polish legislator regulates in the Act landscape protection in two directions. The effort in this scope is first concentrated on legal solutions of general character (general outline), which include landscape protection instruments introduced above all in: the Act on Nature Protection, the Act on Monuments Protection and Maintenance, and the Act on Spatial Planning and Management. They serve to establish fundamental spatial order concerning landscape (including the identification and the inventory of valuable areas and the risk assessment of anthropogenic pressure, and then protection objectives), as well as the legal order, enabling extensive and effective protection of those areas. Simultaneously, the Polish legislator distinguishes specific issue, which is aesthetic order, above all the so-called outdoor advertisement (placed in the visual field of road users; displayed on advertising boards and other advertising equipment) as an element which may negatively affect the landscape under protection.

Bearing the above-mentioned solution in mind, it may seem that the description of new solutions of the Act of 2015 should be done in the first place by dividing problems into general landscape protection and outdoor advertisement. Then, within each of those issues, landscape protection instruments introduced by the Polish legislator should be discussed.

2.2. Legal basis of general landscape protection

2.2.1. Amendments to the Act of 2003 on Spatial Planning and Management

The presentation of landscape protection instruments forming the group of legal regulations of general character (general outline) should begin from the amendments introduced by the new Act to the Act of 2003 on Spatial Planning and Management²³. In this Act, the Polish legislator

²³ See for further reading: M. Nowak, Z. Tokarzewska-Żarna, *Ustawa krajobrazowa, rewitalizacyjna i metropolitalna: komentarz do przepisów o planowaniu i zagospodarowaniu przestrzennym*, Warszawa 2016.

defined the following terms: 1) 'landscape', which currently means 'an area, as perceived by people, including natural and human activity elements, formed as a result of natural factors or of human activity' (article 2 point 16e of the SPMA); and 2) 'priority landscape', which is a landscape 'especially valuable for the community because of its natural, cultural, historical, architectural, urban, rural or aesthetic-view values and thus demanding the maintenance or defining the rules and conditions of its formation' (article 2 point 16f of the SPMA). As it was indicated before, in the previous legal situation, the Act lacked the direct reference to landscape in the current mixed meaning. Simultaneously, while introducing those new definitions, the Polish legislator amended the content of those provisions of the Act which included elements taken into consideration in the process of spatial planning and management. Thus, currently, landscape (which includes combined natural and cultural components) is explicitly and directly indicated as a separate protection objective, mentioned independently next to environmental protection and nature conservation. The example may be article 15 section 2 point 3 of the SPMA in its new definition, according to which a local spatial management plan must define the 'protection rules of environment, nature and landscape' (previously: 'protection rules of environment, nature and cultural landscape'). Additionally, article 15 section 2 of the SPMA gained a new point 3a, which says that a plan must also consider 'the rules of landscape formation'.

In this Act new landscape protection instruments have been enacted, i.e. landscape audit (new articles 38a-38b of the SPMA). The Polish legislator did not explicitly define the legal character of this new instrument. According to article 38b section 4 of the SPMA the landscape audit is enacted by the voivodship sejmik, thus it has a legal form of resolution of a constitutional body of a local self-government, which is voivodship self-government. The Polish legislator decided to give a voivodship self-government the competence within this scope. Because of this, the voivodship management has the obligation to draft a bill, which is a landscape audit (article 38b of the SPMA). The management is also responsible for consulting several other bodies listed in article 38b item 2 of the SPMA (e.g. a regional director of environmental protection) and for collecting remarks concerning the project from interested community members, whereas the sejmik bears the obligation to enact it. According to article 38a item 1 of the SPMA, a landscape audit for the area of a voivodship should be in principle made at least every 20 years. Voivodship sejmiks were

obliged on the strength of article 13 section 1 of the Act of 24 April 2015 on Amending Certain Acts in relation to Strengthening Landscape Protection Instruments to enact the first landscape audits in the period of three years from the implementation of this act, i.e. by 11 September 2018. In the case of not fulfilling this obligation by a given voivodship sejmik in a defined period, the landscape audit would be drawn up and accepted for an area of a voivodship by the appropriate voivode on the way of the so-called substitute order at the expense of a voivodship sejmik.

According to article 38a item 2 of the SPMA, the act, which is a landscape audit should include in its content the following mandatory elements: the identification of landscapes present in the entire area of a voivodship, the determination of their characteristic features and the assessment of their value. Whereas, according to section 3 of this article the audit should particularly:

- define: a) landscapes present in the area of a given voivodship, b) the location of priority landscapes;
- indicate the location and boundaries of: a) cultural parks, b) national parks, nature reserves, landscape parks, protected landscape areas, c) the objects on the UNESCO world heritage lists, the areas of the UNESCO Biosphere Reserve Network (MaB) or areas and objects suggested to be put on those lists.

Next, after the classification of landscapes of a voivodship, including priority landscapes with taking into account the mentioned parks, areas and objects, the Polish legislator demands explicitly to indicate in a landscape audit (article 381 item 3 point 3 of SPMA):

- the threats for the possibility of maintaining priority landscapes values and landscape values within those parks, areas and objects;
- recommendations and conclusions concerning the formation and protection of priority landscapes, as well as landscapes in the areas of mentioned parks, areas or objects, especially through indicating the areas, which should be included in the following nature conservation forms: landscape park, protected landscape area or nature-landscape complex;
- local architectural building-up forms in the area of priority landscapes.

The detailed solutions concerning the classification of landscapes, the mode of assessing the identified landscapes and the indication of priority landscapes, as well as the mode of taking into account the mentioned parks,

areas and objects in the landscape audit, and the scope and methodology of the audit should be defined by the Council of Ministers on the way of resolution. However, such resolutions have not been issued yet.

Introducing the new instrument of landscape protection, i.e. landscape audit, the Polish legislator anticipated the regulation indicating, on the one hand, the mode of forming the audit content in the light of the Act on Nature Conservation and the Act on Monuments Protection and Maintenance. According to article 38a item 4 of the SPMA the recommendations and conclusions included in the audit cannot be contrary to the objectives and modes of protection of parks, areas and objects, which as forms of nature conservation and monuments protection are formed on the grounds of the provisions of those two acts. On the other hand, the legislator defined the rules of the influence of recommendations and conclusions included in the landscape audit content on the spatial planning and management acts. These recommendations and conclusions are therefore mandatorily included in the acts implemented by gmina (commune) self-government (the study on the conditions and directions of gmina (commune) spatial management plan and local spatial management plan) and by voivodship self-government (voivodship spatial management plan).

2.2.2. The amendments to the Act of 2004 on Nature Conservation and to the Act of 2003 on Monuments Protection and Maintenance

On the account of including the definition of 'landscape' and 'priority landscape' in the SPMA, the Polish legislator applied, in the NCA, the so-called reference to those definitions (article 5 point 2e and point 23a of the NCA). A similar reference takes place in article 5 point 2f of the NCA to the definition of 'cultural landscape', included in the MPMA. However, in the NCA, new terms concerning landscape have appeared: 1) 'visual axis' (according to article 5 point 13a of the NCA means 'imaginable straight line directing the sight to characteristic elements of an area or areas development'); 2) 'exposition outskirts' (according to article 5 point 15b of the NCA means 'extensive horizontal plains, especially water reservoirs, hillsides or flat valley bottoms enabling the exposition of panoramas'); 'view point' (according to article 5 point 15c of the NCA means 'the place or point topographically risen in the area, from which the view of the area for the viewer is wide and far').

Those three new terms have a special meaning because of the implementation of a new landscape protection instrument, which is the order to define 'landscape protection area' for priority landscapes identified within the frames of landscape audit mentioned in article 38a of the SPMA. The landscape protection areas may be especially 'exposition outskirts, visual axes, viewpoints and build-up areas special for their local architectural form, important to maintain landscape values' of a given area (according to article 20 item 4 point 7 of the NCA and article 23a item 1 point 1 of the NCA).

Among the discussed in the first part of the work the forms of nature conservation enacted on the basis of the NCA, the amendments concerning landscape and its protection were, above all, introduced in the case of a landscape park and landscape protected area, and to a lower extent, in the case of nature-landscape complex.

A landscape park and a protected landscape area are territorial forms of nature conservation established in Poland on the way of the resolution of a voivodship sejmik, i.e. at the level of voivodship self-government. According to article 16 item 1 of the NCA, a landscape park covers the area protected because of its natural, historical and cultural values, as well as its landscape values in order to maintain and popularize those values in the conditions of sustainable development. Whereas, according to article 23 item 1 of the NCA, a protected landscape area covers the area protected because of its distinctive landscape of varied ecosystems, which are valuable because they fulfil needs connected with tourism or they function as ecological corridors. In the resolution creating a landscape park or a protected landscape area, the voivodship sejmik defines the following main elements: 1) name; 2) area (location, boundaries); 3) protection objectives along with prohibitions. The catalogue of prohibitions binding in those special areas was determined directly in the act – in the period before September 2015, those were article 17 item 1 of the NCA for a landscape park, and article 24 item 1 of the NCA for a protected landscape area. The voivodship sejmik in the resolution creating a specific landscape park or a specific protected landscape area was obliged to choose independently one or more prohibitions from the right catalogue, taking into account real protection needs of a given area. Such interpretation of both mentioned regulations was confirmed in the rulings of the Polish administrative courts. As an example, the stand of the Voivodship Administrative Court in Poznan may be quoted, according to which: 'the choice of determined prohibitions must be adapted to the specificity of an area, which is to be protected. Thus, one

cannot also exclude in advance such a case, when maximum protection through enacting all the measures defined in article 24 item 1 of the NCA may be justified. Still, the introduction of each prohibition does not take place at public administrative bodies own discretion, but it should be based on the need of nature conservation in a given area²⁴.

Currently, i.e. in the period after September 2015, the existing model of imposing prohibitions in a landscape park or in a protected landscape area has changed. In both cases, the Polish legislator added new landscape protection instruments next to the old ones. Firstly, these are new prohibitions binding by virtue of law. That is, according to article 17 item 1b of the NCA, in a landscape park there is a prohibition on destruction and damage of the objects of historical and cultural significance indicated in the protection plan for a landscape park, and according to article 24 item 1b of the NCA in a protected landscape area there is a prohibition on destruction and damage of the objects of historical and cultural significance indicated in the resolution of a voivodship sejmik, which outlines within the boundaries of priority landscapes the so-called landscape protection areas and defines the list of objects of historical and cultural significance.

Secondly, the Polish legislator anticipated, in both cases, additional catalogues of prohibitions, which apply to the above-mentioned 'landscape protection area'. This new instrument of landscape protection is supposed to serve landscape parks and landscape protection areas. The voivodship sejmik is currently obliged to outline a 'landscape protection area' for a priority landscape in the following way:

- in the case of a landscape park – on the basis of article 20 item 4 point 7 of the NCA in the planning act, which is the so-called landscape park protection plan;
- in the case of a landscape protection area – on the basis of article 23a item 1 of the NCA – in the resolution 'outlining landscape protection areas and defining the list of objects of historical and cultural significance' (the resolution is a new legal solution).

Along with the outlining, on the basis of these acts, boundaries of individual 'landscape protection areas' the voivodship sejmik is obliged to choose from the additional catalogue of 'territorial' prohibitions those which will be binding in the area of a defined zone. The catalogues of 'territorial'

²⁴ The judgement of the Voivodship Administrative Court in Poznań of 6 September 2013, II SA/Po 405/13.

prohibitions are included respectively in article 17 item 1a of the NCA for areas on the territory of a landscape park and in article 24 item 1a of the NCA for those in the boundaries of a landscape protection area. For the areas on the territories and included in a local spatial management plan the prohibitions are as follows: the prohibition on locating new buildings, and the prohibition on afforesting. Whereas, for the areas on the territories without a local spatial management plan the prohibitions are as follows: the prohibition on locating new buildings, the prohibition on locating new buildings different from the local architecture, the prohibition on locating new buildings higher than two storeys or seven metres and the prohibition on afforestation.

The above presented landscape protection instruments. i.e. 'landscape protection area' and new prohibitions applying to a landscape park and to a landscape protection area are the most important changes concerning landscape and its protection introduced into the NCA. The Polish legislator introduced additionally several changes organizing the relationships between a voivodship self-government and a gmina (commune) self-government, as well as the changes defining the legal effects of new solutions for private persons. The example of the first changes may be article 16 item 4b of the NCA, according to which a gmina (commune) council may currently object to agreeing on a resolution bill of the creation of a landscape park or to enlarging its area solely in the case, when the adoption of the resolution leads to the limitation of development opportunities of a gmina (commune) resulting from the study of the conditions and directions of the spatial management or from the local spatial management plan to a degree out of proportion to the values a landscape park is supposed to protect. While, according to new article 16 item 4c of the NCA, a gmina (commune) council cannot object to agreeing on such a resolution bill in the case, when the adoption of this resolution is the result of the recommendations concerning the creation or enlargement of a landscape park included in the landscape audit, defined in article 38a of the SPMA. Article 23 item 3b and 3c of the NCA anticipates a similar solution.

The example of the changes of the second kind is article 24a of the NCA. According to section 1 of this article, the owners of buildings, erected before the acts came into force, in which a voivodship sejmik defined 'landscape protection areas' along with binding 'territorial' prohibitions, in the case when the buildings violate the provisions of the acts, are not obliged to adapt them. The Polish legislator anticipated so legal protection for private

entities, who realized the investments before the new act came into force. At the same time, for the owners of such buildings, a financial incentive was created, which is supposed to help find compromise between acquired rights and landscape protection. In special cases, on the grounds of article 24a item 2 of the NCA, the owners of such buildings may request financial help from a voivodship self-government to cover the costs of voluntary adaptation of a building to new requirements within landscape protection.

The new solutions introduced by the MPMA concern two fundamental issues. Firstly, the definition of ‘cultural landscape’ was slightly modified and currently according to article 3 point 14 of the MPMA means ‘space, including natural elements and human creations, historically created as a result of natural factors and human activity’. Also, the provisions concerning territorial forms of monuments protection, which is a cultural park, were organized. It refers also to the relations between a cultural park and a nature-landscape complex. Secondly, the Polish legislator introduced an order to take into account recommendations and conclusions of landscape audit while defining monuments protection on account of advertisement.

2.3. Outdoor advertisement and landscape protection – legal aspect

2.3.1. Amendments to the Act of 2003 on Spatial Planning and Management

Among the new landscape protection instruments, in the group of prescriptive-authoritative instruments, the solutions concerning landscape protection under human pressure, which is the so-called outdoor advertisement²⁵, should be included. Moreover, apart from outdoor advertisement, other objects, which do not directly serve to promote specific content, such as small architecture objects or fences, have an impact on the aesthetics of surroundings. Therefore, the Polish legislator, in the Act of 24 April 2015 on amending certain acts in relation to strengthening landscape protection instruments, paid a lot of attention to those issues. The main motive for this was giving gmina (commune) self-governments new instruments, which allowed to control, more effectively than before,

²⁵ M. Kropiewnicka, M. Czech, D. Ostrowiecki, *Reklama części krajobrazu – nowe regulacje prawne dotyczące reklamy zewnętrznej w świetle prezydenckiego projektu ustawy o zmianie niektórych ustaw w związku ze wzmocnieniem narzędzi ochrony krajobrazu*, Przegląd Prawa Ochrony Środowiska 2014, No. 2, p. 103-104.

the location of advertising carriers and other chosen objects in public space. Because of this, the Act of 2003 on Spatial Planning and Management introduces the following solutions:

- the possibility to determine, by the gmina (commune) council on the grounds of article 37a item 1-2 of the act, by a resolution being a local act ‘rules and conditions of locating small architecture objects, advertising boards and advertising equipment, as well as fences, their dimensions, quality standards and kinds of building materials, from which they can be made’, and in the case of signboards – to determine ‘rules and conditions of their location, dimensions and the number of signboards which can be placed on a given real estate by the entity conducting business activities there’;
- the authority to impose, through an administrative decision of a wojt (a head of gmina (commune)), town mayor or city mayor, a fine on the entity which placed an advertising board or advertising equipment at variance with the provisions of such a resolution (article 37d item 1 of the SPMA) or when it is impossible to determine the entity – to impose a fine on the owner, perpetual lessee or owner-like possessor of the estate or building object, on which an advertising board or equipment was placed (article 37d item 2 of the SPMA).

The implementation of the mentioned new competences of gmina (commune) self-government bodies require specifying the definition of advertisement and its carriers. Therefore, the Polish legislator introduced in article 2 of the SPMA the necessary definitions. Currently, ‘advertisement’ means ‘promoting in any visual form information on persons, companies, goods, services, undertakings or social movements’ (article 2 point 16a of the SPMA). Three kinds of outdoor advertising carriers were distinguished: 1) ‘advertising board’, being ‘physical object intended for or serving the display of advertisement along with its construction elements and fittings, with a flat surface serving the display of advertisement, especially a billboard, advertisement put on building windows and advertisement placed on scaffoldings, fences or on building sites equipment, excluding small objects of everyday use, used in accordance with their purpose’ (article 2 point 16b of the SPMA); 2) ‘advertising equipment’ being ‘physical object intended for or serving the display of advertisement along with its construction elements and fittings, other than an advertising board, excluding small objects of everyday use, used in accordance with their purpose’ (article 2 point 16c of the SPMA); 3) ‘signboard’ being ‘advertising board or

advertising equipment informing on business activities conducted in an estate, on which this advertising board or equipment are placed; (article 2 point 16d of the SPMA). The term 'small architecture object' had already been defined in the Polish law, as a definition included in article 3 point 4 of the Act of 7 July 1994 on Building Law²⁶. 'Small architecture objects' are 'small objects, especially: a) of religious cult, such as: shrines, roadside crosses, figures; b) statues, fountains and other garden architecture object; c) functional objects serving everyday recreation and maintaining tidiness, such as: sandpits, swings, climbing frames, bins'.

The system of orders and prohibitions (including exceptions from the prohibitions) concerning the location and appearance of small architecture objects, advertising boards and advertising equipment, signboards and fences, which may be established in accordance with the new provisions by a resolution of gmina (commune) council, intends to fulfil to the same degree two objectives at the same time. Firstly, the system defines the requirements concerning new objects of that kind, located in the public space in the period after September 2015 on the area of a gmina (commune), which has adopted such a resolution.

Secondly, the system of orders and prohibitions also refers to small architecture objects, outdoor advertisement equipment and fences in existence before the new law came into force. Because of this, it is indicated in article 37a item 9 of the SPMA that gmina (commune) council by a resolution adopting such a system of orders and bans defines at the same time conditions and deadline of adopting existing on the day of its coming into force small architecture objects, fences and advertising boards and advertising equipment to the prohibitions, rules and conditions defined in the resolution. The period of the adaptation cannot be shorter than 12 months from the day the resolution comes into force. The mode of adopting a resolution was defined in article 37b of the SPMA. According to it, the executive body of a gmina (commune) is obliged to submit a resolution draft to specific bodies (e.g. voivodship monuments conservator) to give opinion or agree on it, as well as, to make a draft available to the public so that they can submit their remarks.

On the other hand, a fine mentioned before intends to prevent from the violation of orders and prohibitions system in the scope referring only

²⁶ Journal of Laws of 2016 item 290, with further amendments.

to the location of an advertising board or advertising equipment. According to article 37d item 4 of the SPMA, a fine is imposed from the day, on which a gmina (commune) executive body initiates proceedings until the day the advertising board or equipment are adapted to the provisions of the gmina (commune) council resolution, or until the advertising board or equipment is removed. According to article 37d item 8 of the SPMA, the amount of a fine is calculated as a product of the surface area of an advertising board or advertising equipment serving the display of advertisement, expressed in square metres and of, enacted by gmina (commune) council, fortyfold rate of the variable part of advertising fee, defined in article 17a of the Act of 12 January 1991 on Local Taxes and Fees, increased by, enacted by gmina (commune) council, fortyfold rate of a fixed part of this fee, for each day when the advertising board or equipment is at variance with the provisions, mentioned in the gmina (commune) council resolution, put forward on the grounds of article 37a section 1-2 of the SPMA.

Apart from the described administrative financial sanction (and at the same time a financial-legal measure), which is a fine, according to article 37d of the SPMA, the Polish legislator also anticipated criminal sanctions (for an act constituting an offence). The aim of these sanctions, however, is mainly the protection of monuments, since they were anticipated in article 118 section 1 of the MPMA, according to which, everyone, who, without permission, puts a technical device, advertising board, advertising equipment or an inscription on a monument entered into the register, would bear criminal responsibility (penalty of limitation of liberty or fine).

2.3.2. Amendments to the Act of 1991 on Local Taxes and Fees

The system of orders and prohibitions concerning the location and appearance of small architecture objects, advertising boards and advertising equipment, signboards and fences, enacted in the new legal situation by a resolution of gmina (commune) council, apart from administrative and criminal sanctions is accompanied by a new public levy. It is 'advertising fee' defined in articles 17a-17b of the Act of 12 January 1991 on Local Taxes and Fees²⁷. According to article 17a item 1-2 of the LTFA, gmina (commune) council may impose

²⁷ Journal of Laws of 2016 item 716, with further amendments, further referred to as the LTFA.

advertisement fee on advertising boards or advertising equipment, however, this fee may be collected only in those areas of gmina (commune), which are subject to the rules and conditions of locating small architectures objects, advertising boards or advertising equipment and fences. According to article 17a item 3 of the LTFA, advertising fee is collected if advertising boards or advertising equipment is located on an estate or a building, regardless of whether a board or equipment display advertisement. The fee is imposed, as a rule, on entity, who is the owner, perpetual lessee or owner-like possessor of such an estate or building. Taking into consideration the fact that estates and buildings in Poland are subject to, under the same act, local gmina (commune) taxes, i.e. estate taxes, the Polish legislator indicated in article 17a item 6 of the LTFA, that the amount of paid tax on estate, advertising board or advertising equipment was included in advance into due advertising fee from this advertising board or advertising equipment. Whereas, it was indicated in article 17a section 5 of the LTFA that advertising fee was not collected if advertising boards or advertising equipment : 1) are not visible from public spaces; 2) are a signboard if they are in accordance with the rules and conditions of locating small architecture objects, advertising boards, advertising equipment and fences; 3) are the fulfilment of the obligation imposed by legal provisions; 4) serve exclusively to popularise information: a) permanently commemorating persons, institutions or events; b) of religious character, connected to the activities of churches or other religious congregations if an advertising board or equipment is located in the boundaries of utility areas of worship places, religious activity and cemeteries.

The new advertising fee consists of two parts: fixed and variable. According to article 17b item 2 of the LTFA, the fixed part is a flat rate regardless of the surface area of an advertising board or equipment serving to display advertisement, whereas the variable part depends on the surface area of an advertising board or equipment serving to display advertisement (article 17b item 3 of the LTFA). The rates of both parts of the fee are defined by gmina (commune) council by a resolution (as well as the rules of establishing and collection and payment deadlines of this levy). However, the rates of advertising fees cannot exceed maximum rates indicated in article 19 point 1 letter g and h of the LTFA, i.e. in the case of the fixed rate – PLN 2.47 a day, and in the case of the variable part – PLN 0.20 a day for 1m² of the surface area of an advertising board or equipment serving to display advertisement.

3. Summary

In the light of the Act of 24 April 2015 Amending Certain Acts in relation to Strengthening Landscape Protection Instruments, the solutions concerning landscape protection in Poland were designed in two fundamental areas.

Firstly, landscape as an element of the environment subject to protection, so far, had not been emphasized in the Polish law so directly as it has currently taken place. The new law should enable to conduct, for the first time, the complex process of the identification of voivodships areas paying attention to their landscape values, especially taking into account the so-called priority landscapes. This process will be conducted by means of a new tool, i.e. landscape audit. At the same time, the new law regulates, organizes and coordinates the issues concerning landscape as a subject of regulation of nature conservation law with the issues of its protection in the light of monuments law. Parallel to it, the coordination of those issues takes place on the grounds of spatial planning and management. In this scope, the biggest tasks were assigned to voivodship self-government and, as a rule, they are of mandatory character.

Secondly, the Polish legislator undertook long expected intervention concerning the aesthetic order of human surroundings. To that effect, the new law on the system of orders and prohibitions concerning the location and appearance of small architecture objects, advertising boards and equipment, signboards and fences is the answer to the problem, which was the lack of coherent solutions in the Polish law enabling effective landscape protection beyond special areas (nature conservation forms, area monuments protection forms). In this scope, the biggest tasks were assigned to gmina (commune) self-government. However, it should be pointed out that by implementing the new law, the Polish legislator gave gmina (commune), differently as it has taken place towards voivodship self-government), the freedom to decide on the need to establish aesthetic order in the defined scope. Thus, it is hard to predict how many gminas (communes) in Poland will eventually benefit from the possibilities in this scope.

Bibliography

- Bartniak K., *Prawna ochrona krajobrazu*, in: *Prawo ochrony środowiska*, ed. M. Górski, Warszawa 2014.
- Erechemla A., *Rola wybranych instrumentów prawa ochrony środowiska w zapewnieniu bezpieczeństwa walorów przyrodniczych i turystycznych obszarów przyrodniczo cennych*, in: *Bezpieczeństwo walorów przyrodniczych i turystycznych doliny Sanu*, Nozdrzec 2007.
- Fogel A., *Uwarunkowania prawnoustrojowe ochrony i kształtowania krajobrazu*, „Samorząd Terytorialny” 2014, No. 12.
- Habuda A., *Pojęcie instytucji w prawie ochrony środowiska*, in: *Instytucje prawa ochrony środowiska. Geneza, rozwój, perspektywy*, edited by W. Radeckiego, Warszawa 2010.
- Jendrośka J., Bar M., *Prawo ochrony środowiska. Podręcznik*, Wrocław 2005.
- Kropiewnicka M., Czech M., Ostrowiecki D., *Reklama części krajobrazu – nowe regulacje prawne dotyczące reklamy zewnętrznej w świetle prezydenckiego projektu ustawy o zmianie niektórych ustaw w związku ze wzmocnieniem narzędzi ochrony krajobrazu*, „Przegląd Prawa Ochrony Środowiska” 2014, No. 2.
- Myga-Piątek U., *Ocena wartości i zagrożeń krajobrazów kulturowych Polski. Perspektywa Europejskiej Konwencji Krajobrazowej*, „Samorząd Terytorialny” 2014, No. 12.
- Nowak M., Tokarzewska-Żarna Z., *Ustawa krajobrazowa, rewitalizacyjna i metropolitalna: komentarz do przepisów o planowaniu i zagospodarowaniu przestrzennym*, Warszawa 2016.
- Radecki W., *Prawna ochrona przyrody w Polsce, Czechach i na Słowacji. Studium prawnoporównawcze*, Warszawa 2010.
- Radecki W., *Ustawa o ochronie przyrody. Komentarz*, Warszawa 2008.
- Staniewska A., *Potrzeba ochrony, zarządzania krajobrazem i racjonalnego kształtowania krajobrazu w odniesieniu do Europejskiej Konwencji Krajobrazowej i prezydenckiego projektu tzw. ustawy krajobrazowej*, „Samorząd Terytorialny” 2014, No. 12.
- Stanik-Filipowska K., *Ochrona zabytków nieruchomych a ochrona środowiska*, in: *Prawo ochrony środowiska*, ed. J. Stelmasiak, Warszawa 2009.
- Ustawa krajobrazowa: komentarz do przepisów wprowadzonych w związku ze wzmocnieniem narzędzi ochrony krajobrazu*, ed. A. Fogel, Warszawa 2016.

Email:

kkarpus@law.umk.pl