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# Administrative-legal status of a bathing water site under the Water Law

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## 1. Initial remarks

Water resources represent an important component of the environment. They play an important role in social and economic life. The prime purpose of their use is, naturally, human consumption. It is only secondarily that water resources can be used for other purposes, including sports and recreation<sup>1</sup>. Owing to the fact that the management of water resources requires sophisticated legal solutions, the legislator has created positive law norms serving to conduct proper water management.

The Water Law<sup>2</sup> is the basic act in the Polish legal system for water management. Its scope of regulation, according to its subject matter, covers the issues of water resources formation and protection, water use, and water resources management<sup>3</sup>. The Water Law

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<sup>1</sup> A. Żurawik, *Gospodarka wodami*, in: *Publiczne prawo gospodarcze*, Vol. 8B, J. Grabowski, L. Kieres, A. Walaszek-Pyziół (eds.), Warszawa 2018, p. 466.

<sup>2</sup> Act of 20 July 2017 (consolidated text: Journal of Laws 2024, item 1087 as amended), hereinafter referred to as the Water Law.

<sup>3</sup> Article 1 of the Water Law.

regulation is therefore the leading law in the field of water management, including the one that is the subject of this article<sup>4</sup>.

The Water Law regulation contains the basic set of norms shaping the administrative-legal status of a bathing site in Polish law<sup>5</sup>. As far as the status of a bathing site is concerned, the Act contains regulations concerning the powers and duties of the public administration bodies and the bathing site organizers, as well as regulations relating to the organization of the bathing site<sup>6</sup>. Problems of the bathing site fall within the area of issues related to the management of water resources. In fact, under the Water Law, water management also includes issues of satisfying the purposes of sport and recreation<sup>7</sup>.

According to the statutory definition, a bathing site is understood as a separate, designated and marked body of surface water<sup>8</sup>, designated by the municipal council and used by a large number of bathers, provided that a permanent bathing prohibition has not been issued against it (positive premise). Excluded from this definition are: swimming pools, swimming or spa pools, enclosed bodies of water subject to treatment or use for therapeutic purposes, artificial enclosed bodies of water separated from surface water, and groundwater (negative premise). The cumulative fulfilment of

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<sup>4</sup> Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water sites quality repealing Directive 76/160/EEC (Official Journal of the EU L No 64, p. 37 as amended). For more on the significance of this regulation, see: E. Kaznowska, M. Wasilewicz, *Bathing water sites in Poland – issues of the organization and supervision as a consequence of the Water Law Act amendment*, "Acta Scientiarum Polonorum, Formatio Circumiectus series – Environmental Processes" 2019, No. 4, pp. 187–205.

<sup>5</sup> These include: Article 16(22), (23), (32), (37), (44), (76); Article 37; Article 38; Article 41; Article 44; Article 45; Article 46; Article 47; Article 48; Article 49; Article 51(2), (3), (4); Article 75(2), (3); Article 76; Article 130; Article 140; Article 159(3); Article 170(2); Article 317(4); Article 329(2); Article 331(1), (6); Article 334; Article 344; Article 345; Article 346; Article 347; Article 349(1); Article 477.

<sup>6</sup> P. Szuwalski, *Komentarz do Artykułu 37*, in: *Prawo wodne. Komentarz do wybranych przepisów*, 2019, Lex.

<sup>7</sup> Article 10(7) of the Water Law.

<sup>8</sup> According to Article 20 of the Water Law, surface waters are waters of the territorial sea, internal marine waters, and inland surface waters.

the positive and negative conditions, in the light of the statutory definition, is therefore a prerequisite for a body of surface water to become a bathing water site. Since bathing water comprises a body of surface water, it may therefore be designated as such on inland marine or inland surface waters<sup>9</sup>. A distinction should be made between occasional bathing sites and bathing areas. Under the Water Law, these are designated and marked sections of surface water used for bathing that are not bathing sites<sup>10</sup>. Such places will not be covered by the scope of the analysis in this article.

The specific administrative-legal regulation of the status of a bathing site is related to the aim of protecting the public interest<sup>11</sup>. In fact, the legal regime defined by the Water Law in relation to the bathing site is intended to ensure the protection of the environment in terms of water resources. It also seeks to ensure the protection of the life and health of bathers. The protection of the public interest is also related to the establishment of legal guarantees to meet the needs of the population in the area of sport and recreation, which are associated with the use of the bathing area. Moreover, the public interest is reflected in the need to ensure public order and the safety of bathing water users<sup>12</sup>. The protection of the above-mentioned types of public interest leads to the identification of the primary objective of adopting administrative-legal status for bathing waters, for administrative law standards are the most effective way of safeguarding the public interest in the area of surface water management.

In the context of the administrative-legal regulation of the Water Law with respect to the bathing water sites and the fundamental purpose of adopting this regulation, i.e., to protect the public

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<sup>9</sup> Under Article 21 of the Water Law, inland surface waters are divided into flowing and standing inland waters.

<sup>10</sup> Article 16(28) of the Water Law.

<sup>11</sup> The specific administrative-legal regime for the protection of waters was already known under Roman law, cf. R. Kamińska, *Ochrona dróg i rzek publicznych w prawie rzymskim w okresie republiki i pryncypatu*, Warszawa 2010, pp. 107–144.

<sup>12</sup> In this area of safety, of fundamental importance is the Act of 18 August 2011 on the safety of persons in water areas (consolidated text: Journal of Laws of 2023, item 714, as amended) and the implementing acts issued on its basis.

interest, the question of the legal nature of the area within the bathing site boundaries should be raised. The theory of administrative law is familiar with the construction of so-called special areas. The main characteristic of such areas is that a particular legal regime is established, either replacing the general legal order with a different one or extending it with additional regulations<sup>13</sup>. The analysis of the administrative-legal status of bathing waters undertaken in this article will seek to establish the legal nature of the area covered by the bathing water site limits.

## 2. Procedure for the establishment of a bathing water site

The Water Law provides for a set of procedural steps for the establishment of a bathing site<sup>14</sup>. The procedure in question is comprehensively regulated in the main Act. It constitutes a *quasi-legislative* procedure. It is not an administrative procedure<sup>15</sup>, as its object is not to deal with an individual administrative matter<sup>16</sup>. Consequently, it is not governed by the rules of general jurisdictional proceedings.

Adherence to the procedure for the establishment of a bathing water site has a bearing on the legality of its establishment. The assessment of the correctness of the steps undertaken is made in the first instance by the provincial governor as part of legal supervision, in the event of legal remedies being used by the bathing

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<sup>13</sup> A. Wasilewski, *Obszar górniczy. Zagadnienia prawne*, Warszawa 1969, pp. 96–97.

<sup>14</sup> P. Szuwalski, *Komentarz do Artykułu 37*, in: *Prawo wodne. Komentarz do wybranych przepisów*, 2019, Lex.

<sup>15</sup> P. Michalski, M. Soberski, *Komentarz do Artykułu 37*, in: *Prawo wodne. Komentarz dla jednostek samorządowych*, P. Michalski, M. Soberski (eds.), 2024, Legalis.

<sup>16</sup> Cf. Article 1 of the Code of Administrative Procedure (consolidated text: Journal of Laws of 2024, item 572), hereinafter referred to as the CAP.

water site organizer<sup>17</sup> or another entity<sup>18</sup>, or it may also be the administrative court.

The procedure for establishing a bathing water site is initiated by a request from the bathing water site organizer. By 31 December of the year preceding the bathing season in which the bathing water site is to be opened, the organizer is under an obligation to submit a request for its inclusion in the list<sup>19</sup>. The application is addressed to the executive body of the municipality (mayor, town mayor). The Water Law sets out detailed requirements for this request<sup>20</sup>. In the event that the application does not meet the statutory requirements, the executive body of the municipality is obliged to invite the bathing water site organizer to supplement it within seven days<sup>21</sup>. Where the application is not completed within the specified deadline, the mayor of the municipality leaves the application unprocessed<sup>22</sup>. Therefore, only a complete application may be the basis for a bathing water site organizer's successful application for entry in the applicable list<sup>23</sup>.

On the basis of the requests for inclusion in the list submitted to the executive body, the head of commune, mayor, or town mayor proceeds to draft a resolution<sup>24</sup> defining a list of bathing sites within the commune or within the Polish maritime areas

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<sup>17</sup> The term organizer is understood by the Water Law to mean an individual, a legal person or an organizational unit without legal personality that manages a bathing site or a place occasionally used for bathing or has undertaken to organize a bathing site or a place occasionally used for bathing (Article 16(37)).

<sup>18</sup> Cf. decisions of the Supreme Administrative Court of 29 May 2020, II OSK 549/20, Lex no. 3052188.

<sup>19</sup> Article 37(3) of the Water Law.

<sup>20</sup> Article 37(2, 3) of the Water Law. From the point of view of the subject of the article, an essential part of the proposal is the determination of the boundaries of the bathing water site (Article 37(4)(2)).

<sup>21</sup> Article 37 (6) of the Water Law.

<sup>22</sup> Article 37 (7) of the Water Law.

<sup>23</sup> Cf. judgment of the Provincial Administrative Court in Poznań of 23 February 2023, III SA/Po 1231/22, Lex no. 3504871.

<sup>24</sup> The draft resolution should also take into account the requirements of Article 37(13) of the Water Law. In the light of this regulation, in the area of the national park a bathing site may be established if it is not precluded by the provisions of the national park protection plan or the plan of protective tasks and the principles of making the national park accessible.

adjacent to the commune<sup>25</sup>. The resolution comprises also a list of designated fragments of surface waters where the executive body of the municipality plans to establish bathing water sites for which it will be the organizer. In the light of the Water Law, the head of the commune, mayor, or town mayor may also submit a motion to include the bathing site on the list<sup>26</sup>.

After a draft resolution has been drawn up, the head of the commune, mayor, or town mayor is under the obligation to make the draft public in the manner customary in the commune<sup>27</sup>. In the system of statute law, custom does not serve as a law-making fact, except when a statutory norm refers to its application. This is precisely the situation we are dealing with in the procedure for the designation of a bathing site. The Water Law does not explicitly regulate the method of public disclosure. The decisive role in this respect will be played by whatever is the traditionally shaped practice of local (municipal) importance. Therefore, it may take place by publishing the draft resolution on the website of the Public Information Bulletin, the board of the office, and/or by posting it in the municipality. A literal interpretation requires that a draft resolution *in extenso*, and not only information about a draft resolution, be made available to the public. In addition to a draft resolution being made available to the public, the form, place, and deadline for submitting comments and proposals for amendments to that draft resolution must also be provided. The ability to submit comments and proposals for amendments is an element of public participation in the preparation of the draft resolution. The municipal executive body is free to determine the form of submitting comments and proposals. It may allow written form, oral form for the minutes, electronic form, or prescribe only one of them. The time limit for submitting comments and proposals may not be shorter than 21 days from the date of public disclosure. The time limit in question is a minimum term, and the executive body of the municipality may set a longer period. However, it is inadmissible

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<sup>25</sup> Article 37(8) in conjunction with Article 37(2) of the Water Law.

<sup>26</sup> Article 37(9) in conjunction with Article 37(5) of the Water Law.

<sup>27</sup> Article 37(10) of the Water Law.

to shorten the statutory deadline. In such an event, the procedure for drafting the draft resolution would be breached, which would result in the resolution being deemed invalid in its entirety by the provincial governor (as part of legal supervision over the resolution-making activity of a local government unit) or an administrative court (on the basis of a complaint filed).

Given the fact that the legislator has not defined the catalogue of entities that may submit comments and proposals for amendments to the draft resolution, it should be assumed that it is open in nature<sup>28</sup>. They may be submitted by natural persons, legal persons, as well as legal entities, including public administration bodies and their organizational units. Also immaterial is the question of residence or having a seat on the territory of the municipality by the entity that submits comments or proposals. The legislator also leaves open the subject-matter scope of comments or proposals for amendments. It may relate to questions of legal or factual interest, or concern matters of public interest. A comment should be regarded as a means of expressing a critical position on the solutions adopted. A proposal, on the other hand, should be regarded as an opportunity to express constructive suggestions to the draft resolution.

The head of the commune, or the governor, or the mayor of the city is required to consider the comments and proposals for amendments within a period of no more than 14 days from the expiry of the deadline for their submission<sup>29</sup>. The body considers the comments and proposals received within the submission deadline. However, there is no obligation to consider those received after the deadline. On the other hand, an entity which has submitted a remark or a proposal after the deadline is not entitled to apply for an extension<sup>30</sup>. This stems from the fact that in procedural matters related to public participation on a draft resolution, apart from the manner of calculating the deadlines, the regulations of the CAP do not apply<sup>31</sup>.

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<sup>28</sup> B. Rakoczy (ed.), *Prawo wodne. Komentarz*, Warszawa 2013, p. 190.

<sup>29</sup> Article 37 (10) of the Water Law.

<sup>30</sup> Article 58 of the CAP.

<sup>31</sup> P. Michalski, *Kąpieliska i miejsca okazjonalnego wykorzystywania do kąpieli*, in: *Nowe prawo wodne najważniejsze zmiany dla gmin i przedsię-*

The legislator does not regulate the form in which the consideration of comments and proposals should take place. Taking into account the fact that the proceedings in question are not conducted in an individual administrative case, and also taking into account the system-wide regulations of the Act on Municipal Self-Government<sup>32</sup>, it seems that the decision should be made by way of an ordinance. The municipal executive body is not obliged to serve the order in question on the applicant, nor is any legal remedy available against the ordinance in question. Possible protection can be sought by the applicant by lodging a complaint with the administrative court against the resolution on the list of bathing water sites under Article 101 of the Act on Municipal Self-Government, in which he will also be able to raise the issue of the legality of the order issued.

The procedure for preparing a draft resolution on the list of bathing water sites also envisages an opinion on the draft by specialized bodies. The draft resolution together with the bathing water organizers' proposals is submitted by the head of the commune, governor, or city mayor to the Polish Water Authority, the owner of the waters, and the competent body of the Environmental Protection Inspectorate and the national poviat or border sanitary inspector for an opinion, and in the case of a bathing water situated in the area of a national park – also to the director of the national park. In Polish maritime areas, the draft resolution is submitted as well to the competent director of the marine office, and in the case of an inland waterway, to the competent director of the inland waterway shipping office. In the absence of an opinion within 14 days of the date of delivery of a draft resolution with the relevant applications, the legislator presumes a positive opinion. By adopting the so-called contract of fiction, the legislator wishes to avoid a situation in which the inactivity of one of the bodies would impede the execution of the procedure.

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*biorstw wodociągowo-kanalizacyjnych*, K. Filipek, M. Kucharski, P. Michalski (eds.), Warszawa 2018, p. 16.

<sup>32</sup> Act of 8 March 1990 (consolidated text: Journal of Laws of 2024, item 609 as amended).

The opinions in question issued by competent public administration bodies, owing to the fact that the legislator has not assigned a different character to them, have a non-binding force. Accordingly, even if a negative opinion is expressed by an authorized entity, the subject draft resolution may be referred by the municipal executive body to the municipal council for adoption. Conversely, a breach of the provisions of the Water Law would be a situation in which the mayor of a municipality failed to request the opinions in question. Such a situation would constitute a breach of the procedure for drawing up a draft resolution to the extent that the adopted resolution would be deemed invalid in its entirety<sup>33</sup>. The omission of one of the bodies indicated is therefore sufficient to constitute a material breach of procedure.

Upon completion of the consultation process, the draft resolution is submitted to the municipal council. It is the municipal council alone that has the competence to determine the list of bathing sites. This implies that the head of the municipality, governor, or town mayor performs only an auxiliary function in the procedure. It is the municipal council that, by an act of local law<sup>34</sup>, is competent to determine a list of bathing waters within the municipality or within the Polish maritime areas adjacent to the municipality<sup>35</sup>. Such resolutions are adopted at the request of the organizers annually by 20 May<sup>36</sup>. It is therefore not permissible, under the Water Law, to adopt a list of bathing sites for a period longer than one bathing season<sup>37</sup>, irrespective of whether bathing is organized at the same site each year<sup>38</sup>.

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<sup>33</sup> Judgment of the Provincial Administrative Court in Gorzów Wielkopolski of 13 October 2021, II SA/Go 663/21, Lex no. 3248257.

<sup>34</sup> With all its legal implications, cf. judgment of the Provincial Administrative Court in Gdańsk of 20 January 2022, III Sa/Gd 633/21, Lex no. 3302955.

<sup>35</sup> Article 37 (2) of the Water Law.

<sup>36</sup> Article 37 (2) of the Water Law.

<sup>37</sup> In the light of Article 37(1), the bathing season comprises the period between 1 June and 30 September. The detailed period of the bathing season shall be determined by the municipal council by way of a resolution.

<sup>38</sup> P. Michalski, M. Soberski, *Komentarz do Artykułu 37*, in: *Prawo wodne. Komentarz dla jednostek samorządowych*, P. Michalski, M. Soberski (eds.), 2024, Legalis.

Once a relevant resolution has been adopted, the executive body is obliged to forward it to the head of the municipality<sup>39</sup>. The submission of the adopted resolution to the supervisory body concludes the procedure for drafting and adopting a resolution.

### 3. Organization and maintenance of the bathing site

Within the Water Law, the legislator sets out a number of obligations for the bathing site organizer of a material legal nature. The obligations in question are related to the issues of organizing and maintaining the proper functioning of the bathing area. Moreover, the legislator provides for liability for offences in the event of failure to comply with specific obligations<sup>40</sup>.

The organizer's primary obligation is to ensure proper identification of the bathing area<sup>41</sup>. Detailed requirements in this respect are contained in the Regulation of the Minister of Health of 21 December 2018 on the registration and marking of bathing sites and places occasionally used for bathing<sup>42</sup>. Under this regulation, a bathing water site is to be designated using an information board or a device allowing the information to be seen. The information medium is to be located in an easily accessible and visible place, in close proximity to the bathing site<sup>43</sup>. The implementing act also regulates in detail the information to be displayed on the information medium<sup>44</sup>.

The legislator also places obligations on the organizer in the event of the discontinuation of the running of the bathing site<sup>45</sup>.

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<sup>39</sup> Article 90 of the Local Government Act.

<sup>40</sup> Article 477 (3, 13) of the Water Law.

<sup>41</sup> Article 45 (1) of the Water Law.

<sup>42</sup> Journal of Laws of 2018, item 2476.

<sup>43</sup> § 3 of the Regulation on the records and method of marking of bathing sites and sites used occasionally for bathing.

<sup>44</sup> § 3 (1–12) of the Regulation on the records and method of marking of bathing sites and sites used occasionally for bathing.

<sup>45</sup> Article 45 (3) of the Water Law.

Discontinuation of the operation of a bathing site means both the resignation by the organizer from the continued operation of the bathing site during the bathing season<sup>46</sup>, and the fact that the time for which that season has been established by the municipality has expired. In such a situation, bathing sites lose their administrative and legal status by law. The organizer is therefore required to mark the area with a clear notice that the bathing site has ceased to operate. Additionally, the organizer is to remove the bathing area marking immediately, but no later than three days after its closure. This solution serves to safeguard the public interest in terms of the safety of bathing water users. In such circumstances, the organizer assumes no responsibility for the safety of the users of the site.

Another important obligation on the part of the bathing site organizer is to ensure the appropriate standard of water quality required in bathing waters<sup>47</sup>. The reason is that a bathing water may operate if its water quality is classified as at least satisfactory<sup>48</sup>. There is an exception to this rule. Where the bathing water quality has been classified as poor, the bathing water may operate under the statutorily defined conditions. Firstly, measures are to be taken by the organizer to protect human health and improve water quality, including a bathing prohibition during the bathing season or a temporary bathing prohibition. It is also necessary to establish the reasons for the failure to achieve a sufficient bathing water quality classification. Furthermore, action by the organizer to prevent, reduce, or eliminate the diagnosed causes of water pol-

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<sup>46</sup> P. Michalski, M. Soberski, *Komentarz do Artykułu 37*, in: *Prawo wodne. Komentarz dla jednostek samorządowych*, P. Michalski, M. Soberski (eds.), 2024, Legalis.

<sup>47</sup> On the quality of bathing water in Poland and other EU countries, see: European Environment Agency, *European bathing water quality in 2023*, <https://www.eea.europa.eu/publications/european-bathing-water-quality-in-2023/> (access: 17.03.2025).

<sup>48</sup> Article 47 (1) of the Water Law. Detailed rules for the classification of bathing water quality assessment are set out in Annex No. 3 to the Regulation of the Minister of Health of 17 January 2019 on the monitoring of bathing water quality and the place of occasional use for bathing (Journal of Laws of 2019, item 255).

lution is required. Information on bathing water quality must also be made available to the public in a clear and understandable way as to the hazards identified.

In order to discharge this obligation to ensure bathing water quality, the Water Law requires the organizer to carry out so-called internal monitoring<sup>49</sup>. The legislator lays down in detail the activities to be undertaken as part of the monitoring<sup>50</sup>. As part of its internal monitoring, the bathing water organizer establishes, in consultation with the competent sanitary inspection authority, a schedule of water sampling and bathing water samplings during the bathing season. The legislator requires the organizer to report any suspension of the sampling schedule as part of internal monitoring, and the grounds for it. The organizer is also required to conduct regular visual monitoring of the bathing water and bathing water supply waters for possible contaminants adversely affecting their quality and posing a risk to bathers' health. The organizer is further under an obligation to carry out water quality tests. In the cases specified in the Act, it is also obliged to communicate the results of these tests to the competent sanitary inspection authority. It is also to inform the relevant sanitary inspection authority of the occurrence of changes that may affect the deterioration of bathing water quality. The organizer is also obliged to inform bathers about the bathing water quality and the recommendations of the State Sanitary Inspection authorities in this respect.

If, as a result of an internal or official inspection<sup>51</sup> by the competent health authority, bathing water does not meet the specified quality requirements, the bathing water organizer is required, by way of an administrative decision, to determine the cause of the contamination and to take the necessary measures to protect human health and improve water quality<sup>52</sup>. Such a decision may, if necessary, also impose a bathing prohibition during the bathing season or a temporary bathing prohibition<sup>53</sup>. In such a situation,

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<sup>49</sup> Article 344 (4) of the Water Law.

<sup>50</sup> Article 344 (5) (1–8) of the Water Law.

<sup>51</sup> Article 344 (1–3) of the Water Law.

<sup>52</sup> Article 346 (1) of the Water Law.

<sup>53</sup> Article 346 (2) (1) of the Water Law.

the organizer is required to disseminate the prohibition by means of the mass media<sup>54</sup> and to display a notice to that effect at the bathing site's signposts<sup>55</sup>.

#### 4. Final remarks

The analysis shows that the legal status of the bathing site is characterized by extensive administrative and legal regulations. The legal regime of a bathing water site covers both the procedure for its establishment and the bathing water organizer's responsibilities. In this context, it is necessary to consider whether the bathing area belongs to the category of so-called special areas, as mentioned at the beginning of the article.

In administrative law theory, special areas include zones related to, e.g., the protection of state borders, economic zones, special zones for the protection of the environment (e.g., national park, landscape park, Natura 2000 area), zones related to the protection of former Nazi extermination camps, special revitalization zones, and road lanes of public roads. Theories characterizing special areas indicate that these areas constitute the space within the boundaries of which the objectives and tasks of public administration are realized<sup>56</sup>. Bathing sites undoubtedly fall within this characteristic of special areas in the sense that they are one of the tools of surface water management.

A characteristic feature of special areas is that they are established to protect the public interest<sup>57</sup>. In the case of bathing waters, the feature in question is also present. They are created, as mentioned at the beginning of the articles, in order to protect such forms of public interest as the protection of the environment, the protection of the life and health of bathers, the satisfaction of

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<sup>54</sup> Article 346 (3) of the Water Law.

<sup>55</sup> Article 346 (4) of the Water Law.

<sup>56</sup> W. Dawidowicz, *Polskie prawo administracyjne*, Warszawa 1978, p. 193.

<sup>57</sup> M. Kulesza, Z. Rudnicki, *Administracyjnoprawne gwarancje realizacji planu przestrzennego kraju*, "Państwo i Prawo" 1976, No. 5, p. 76.

the needs of the population in the area of sport and recreation, as well as to ensure public order and the safety of bathers. Special areas are established, modified<sup>58</sup>, decommissioned on the basis of laws and other acts issued on the basis of laws. Derivative acts issued on the basis of the Act establishing special areas include regulations, resolutions of local authorities, or administrative decisions<sup>59</sup>. In the case of bathing sites, the specific basis for their establishment is a resolution of the municipal council.

The specific legal regime of the special area is also characterized by interference with subjective rights<sup>60</sup>. Subjective interference may concern rights *in rem* (including property rights) and involves its cancellation (expropriation), or restriction of the right to a property. It may also involve the imposition of public burdens, as well as the introduction of police-type provisions (injunctions, prohibitions of certain behavior). In exceptional cases, the establishment of certain types of areas (e.g., special economic zones), involves the introduction of a system of preferences and privileges<sup>61</sup>. In the case of bathing waters, these features do not occur with the intensity that is characteristic of typical special areas. In fact, the establishment of a bathing site does not involve any interference with property rights. Nor is there any significant interference with the rights and freedoms of bathing water users. Bathing may be prohibited during the bathing season or temporarily banned under certain statutory circumstances<sup>62</sup>, which

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<sup>58</sup> In the case of bathing sites, division and combination is possible (Article 46 of the Water Law).

<sup>59</sup> P. Otawski, *O koncepcji obszaru specjalnego*, in: *Prawo i administracja. Tom II*, R. Budzinowski (ed.), Piła 2003, pp. 277–278.

<sup>60</sup> Cf. H. Izdebski, *Ideologia i zagospodarowanie przestrzeni. Doktrynalne prawno-polityczne uwarunkowania urbanistyki i architektury*, Warszawa 2013, p. 130.

<sup>61</sup> M.A. Waligórski, *Spółka prawa handlowego jako podmiot administrujący strefę specjalną*, in: *Administracja publiczna u progu XXI wieku. Prace dedykowane Prof. zw. dr hab. Janowi Szreniawskiemu z okazji jubileuszu 45-lecia pracy naukowej*, Z. Niewiadomski, J. Buczkowski, J. Łukasiewicz, J. Poślusznny, J. Stelmasiak (eds.), Przemyśl 2000, p. 673.

<sup>62</sup> Article 346 of the Water Law. Other restrictions may also be imposed pursuant to Article 5(1) of the Act on the Safety of Persons Staying in Water Areas.

however does not mean that other recreational and sporting functions available at the bathing site are prohibited.

In conclusion, it should be argued that the regulation of the status of bathing sites in the Water Law is marked by a considerable level of complexity. The positive law norms shaping the legal regime of the bathing site define its status in a way similar to the areas which in the theory of administrative law are classified as so-called special areas. However, not all the characteristics of such areas are present in the case of a bathing site. It must therefore be concluded that the bathing site cannot be classified within the conceptual category of special areas.

## **SUMMARY**

### **Administrative-legal status of a bathing water site under the Water Law**

Water resources represent an important component of the environment. They play an important role in social and economic life. The prime purpose of their use is, naturally, human consumption. It is only secondarily that water resources can be used for other purposes, including sports and recreation. It is for these purposes that bathing sites are created. The Water Law contains the core set of norms shaping the administrative-legal status of a bathing site in Polish law. The special regulation of the bathing site status is related to the need to protect the public interest. The analysis of the legal regime for the establishment and organization of a bathing site leads to the conclusion that, despite the extensive set of legal norms shaping its status, the bathing site does not fall within the category of so-called special areas.

**Keywords:** water law; water resources management; bathing site; special areas

## STRESZCZENIE

### Administracyjnoprawny status kąpieliska w świetle Prawa wodnego

Zasoby wodne stanowią ważny komponent środowiskowy. Pełnią istotną funkcję w życiu społecznym i gospodarczym. Pierwszorzędnym celem ich wykorzystania jest przeznaczenie do spożycia na potrzeby ludzi. Dopiero w dalszej kolejności mogą być wykorzystywane w innych celach, w tym dla uprawiania sportu oraz rekreacji. Właśnie w tych celach tworzone są kąpieliska. Ustawa Prawo wodne zawiera podstawowy zespół norm kształtujących administracyjnoprawny status kąpieliska w prawie polskim. Szczególna regulacja statusu kąpieliska związana jest z potrzebą ochrony interesu publicznego. Analiza reżimu prawnego utworzenia i organizacji kąpieliska prowadzi do wniosku, że pomimo rozbudowanego zespołu norm prawnych kształtujących jego status kąpielisko nie należy do tzw. obszarów specjalnych.

**Słowa kluczowe:** Prawo wodne; zarządzanie zasobami wodnymi; kąpielisko; obszary specjalne

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