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Protection of the Biosphere in Natura 2000 Sites

Ochrona biosfery na obszarach Natura 2000

SUMMARY

The article presents the main assumptions concerning the functioning of Natura 2000 sites in Europe, with particular emphasis on Polish regulations. These areas of high natural value directly influence the shape of nature conservation and the state of the climate. In this latter context, legal norms and legislators face the challenge of finding such a legal framework to prevent the progressive degradation of the climate. The functioning Natura 2000 sites in Poland as one of the forms of nature protection may be helpful in this respect, provided that the plans of protection tasks are adapted to the changing environmental conditions.

Keywords: Natura 2000 sites; biosphere; nature protection; conservation plan; Birds Directive; Habitats Directive

The progressive globalization and industrialization of economic life have a direct impact on the shape and degradation of the climate. International organizations, including the UN, and the largest countries in the world are taking various measures to prevent the negative effects of environmental pollution. One of the permanent legal mechanisms functioning in the European Union for many years is the Natura 2000 sites, which define areas of natural value. Measures are taken within them not only to preserve the natural durability of individual elements of the biosphere but, above all, to prevent the advancement of the climate crisis. Environmental protection is not just a constitutional obligation of the state[1] but it should be the duty of every citizen thinking about the future.

[1] Z. Bukowski, *Konstytucyjne podstawy obowiązków państwa w zakresie ochrony środowiska*, „Prawo i Środowisko" 2002, nr 4.

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The right to a clean environment and climate is also a human right[2]. This is accompanied by a fairly important requirement to preserve this environment for future generations. The current debate on climate change and ongoing protests, especially among young people, seem to be increasingly emphasizing the right of people to live in an environment free from excessive pollution. However, this approach must take into account the principle of sustainable development[3], which should also respect economic development. Reconciling technological progress and growing consumption with nature conservation principles is currently one of the most important challenges on a global scale.

These challenges particularly concern areas which are of natural value not only due to climate protection but primarily to ensuring the survival of wild animals or valuable natural species. To this end, the world is looking for legal mechanisms to safeguard and ensure the survival of the most valuable species. At the same time, these mechanisms must not interfere too much with the acquired or subjective rights of property owners, who are subject to an appropriate protection regime.

The aim of the article is to present the basic legal mechanisms occurring in Natura 2000 sites, which can be used to protect the biosphere. On the example of Poland, certain collision and conflict situations have also been identified[4] which are present in the individual regulations. These phenomena are not conducive to the full protection of the biosphere and the formation of its basic functions. Currently, Natura 2000 sites regulated at the European level by two directives – the so-called Birds Directive[5] and Habitats Directive[6] – are one of the basic legal instruments that can have a global impact on the environment and improve its condition. They are a universal mechanism which, although they indeed differ from one country to another, from a pan-European perspective, is becoming one of the basic legal mechanisms having a real impact on nature conservation.

The choice of the applicable legal instruments affecting the biosphere in Natura 2000 sites is left to the Member States. It is the national regulations that determine the legal measures to be taken to achieve the intended protection objectives. The most important of these include the protection of wild birds and habitats of natural

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[2] J. Jendrośka, *Prawa człowieka w ochronie środowiska w prawie polskim*, „Prawo i Środowisko" 2002, nr 1.

[3] B. Jeżyńska, *Proekologiczne instrumenty wsparcia zrównoważonego rozwoju obszarów wiejskich*, „Studia Iuridica Agraria" 2012, t. 10.

[4] H. Groszyk, A. Korybski, *Konflikt interesów i prawo*, Warszawa 1990.

[5] Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ EU L 103/1 as amended, 25.04.1979) which was replaced by the new Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ EU L 20/7 as amended, 26.01.2010).

[6] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ EU L 206/7 as amended, 22.07.1992).

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value. In accordance with recital 7 of the Directive 2009/147/EC "The conservation aims at the long-term management and conservation of natural resources as an integral part of the European nations' heritage. This makes it possible to control natural resources and regulates their use on the basis of measures necessary to preserve and adjust the natural balance between species as far as reasonably practicable". As indicated in Article 2 of that Directive "Member States shall take the requisite measures to maintain the population of the species […] at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level".

The EU Member States are taking different measures in this regard. In most cases, the Natura 2000 network constitutes one of the forms of nature protection and it is already a permanent element of this branch of law. There are countries which, like Germany[7], the Czech Republic[8] or Slovakia[9], have adopted more liberal solutions. Despite this, they have succeeded in achieving the objectives set out in the directives.

The issue of the functioning of Natura 2000 sites and the achievement of the objectives set out in both Directives has been the subject of repeated interest in case-law of the Court of Justice. For example, we can only indicate the judgements of the Court of 9 December 2004 (C-79/03)[10] and of 9 June 2005 (C-135/04).

The Habitats Directive specifies which sites are to be protected. This is very important from the point of view of extending possible biosphere areas that may be covered by this form of nature protection. According to the Habitats Directive, when introducing a special protection regime, the following must be taken into account: the degree of representativeness of the habitat type on the site; the site area encompassing the habitat type in relation to the total area encompassing the habitat type within the national territory; the level of protection of the structure and functions of the given habitat type and the possibilities for restoration; the global assessment of the value of the site for the conservation of the given habitat type. In

[7] A. Schmidt, Ch. Schrader, M. Zschiesche, *Die Verbandsklage im Umwelt- und Naturschutzrecht*, Berlin 2014; A. Heym, *Öffentlichkeitsbeteiligung im Naturschutzrecht*, Kolonia 2014.

[8] W. Radecki, *Prawna ochrona przyrody w Polsce, Czechach i Słowacji. Studium prawnoporównawcze*, Warszawa 2010, p. 245.

[9] Idem, *Ochrona środowiska w polskim, czeskim i słowackim prawie karnym*, Warszawa 2013; A. Habuda, *Organy ochrony przyrody a obszary Natura 2000*, [in:] *Ocena modelu prawnego organizacji ochrony środowiska w Polsce i na Słowacji*, red. E. Ura, J. Stelmasiak, S. Pieprzny, Rzeszów 2012, p. 489 ff.

[10] The judgement states that: "A derogation under Article 8 of Directive 79/409 on the conservation of wild birds, which prohibits the use of all means, arrangements or methods used for large-scale or non-selective capture or hunting, may, according to Article 9 (1) of the directive, be made only where there is no other satisfactory solution and for reasons exhaustively listed in Article 9 (1) (a) and (c), including serious damage to crops".

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the next step of designating a habitat, the following should be taken into account: the size and density of the population of the species living on the site relative to the populations living within the national territory; the level of protection of the features of the habitat that are important for the species and the possibilities for restoration; the degree of isolation of the population living on the site from the natural range of the species; the global assessment of the value of the site for the conservation of the given species.

However, the establishment of Natura 2000 sites does not end the process of biosphere protection. It is continuous and requires the involvement of many control and supervising entities that will oversee the execution of the provisions of the plans of protection tasks in Natura 2000 sites. In the judgement in the case of the *European Commission v. French Republic*, the Court of Justice pointed out that:

> […] the transposition of that provision requires the Member States not only to adopt a comprehensive legislative framework but also to implement concrete and specific protection measures. Similarly, the system of strict protection presupposes the adoption of coherent and coordinated measures of a preventive nature. Such a system of strict protection must, therefore, enable the effective avoidance of deterioration or destruction of breeding sites or resting places of the animal species […], therefore, by failing to establish a program of measures to ensure strict protection of the European hamster (*Cricetus cricetus*), enabling the effective avoidance of deterioration or destruction of breeding sites or resting places of the animal species, the Member State has failed to fulfill its obligations under Directive 92/43[11].

This means not only the need to create an appropriate legal framework for the functioning of Natura 2000 sites but also the need for continuous monitoring of the implemented regulations. Only such a holistic approach should provide the full protection of the biosphere.

In Poland, pursuant to the Act of 16 April 2004 on Nature Protection[12] Natura 2000 sites have become one of the forms of nature conservation[13]. Individual sites are established through an appropriate procedure, which usually culminates in the issuance of an ordinance on plans for protection tasks by the regional director for environmental protection[14]. They regulate, among others, the obligations and rights

[11] Judgement of the Court of Justice of 9 June 2011, C-383/09.

[12] Act of 16 April 2004 on Nature Protection (Journal of Laws 2015, item 1651 as amended), hereinafter: ANP.

[13] D. Strus, *Funkcjonowanie obszarów Natura 2000 na podstawie przepisów prawa polskiego i prawa Unii Europejskiej*, [in:] *Europeizacja prawa ochrony środowiska*, red. M. Rudnicki, A. Haładyj, K. Sobieraj, Lublin 2011, p. 314 ff.

[14] M. Walas, *Nadzór regionalnego dyrektora ochrony środowiska nad obszarami Natura 2000*, [in:] *Problemy wdrażania systemu Natura 2000 w Polsce*, red. A. Kaźmierska-Patrzyczna, M.A. Król, Szczecin–Łódź–Poznań 2013, pp. 209–219; D. Strus, *Pozycja ustrojowa i wybrane kompetencje w zakresie ochrony przyrody Generalnego Dyrektora Ochrony Środowiska i regionalnych dyrektorów*

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of the owners of properties located in Natura 2000 sites, as well as the possible scope of conducting business activity[15]. Thus, apart from local spatial development plans, they become one of the acts of local law influencing the development of property ownership rights. This raises some doubts of a constitutional nature, but the appropriate empowerment of the regional director for environmental protection in the ANP seems to have been quite effective so far[16].

Apart from the plans of protection tasks, the Polish law provides for the assessment of the impact of plans on the environment. This is indirectly indicated by Article 33 (1) ANP, in which it is forbidden, as a rule, to undertake activities which, separately or in combination with other activities, may have a significant negative impact on the objectives of protection of the Natura 2000 site, including in particular: deteriorating the condition of natural habitats or habitats of plant and animal species for the protection of which the Natura 2000 site was designated, or affect negatively the species for the protection of which the Natura 2000 site was designated, or deteriorating the integrity of the Natura 2000 site or its links with other sites. The assessment of the significant negative impact on the objectives of nature protection has a very rich case-law[17]. It points to giving priority to the objectives of protection of Natura 2000 sites with simultaneous consideration of the rights of property owners in the given areas.

Plans of protection tasks are becoming the basic instrument for the protection of the biosphere in over 20% of the Polish territory. By defining the tasks of property owners, they significantly influence the improvement of management conditions in Natura 2000 sites. The plan of protection tasks includes, among others, specification of protection actions with an indication of entities responsible for their execution and areas of their implementation, including in particular actions concerning: the active protection of natural habitats, plant and animal species and their habitats; monitoring the condition of objects of protection and monitoring the implementation of objective; supplementing the knowledge about objects of protection and conditions of their protection. Protection tasks are becoming the key to the protection of the biosphere in Natura 2000 sites. Their precise specification not only allows

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ochrony środowiska, [in:] *Administracja publiczna – człowiek a ochrona środowiska. Zagadnienia społeczno-prawne*, red. M. Górski, J. Bucińska, M. Niedziółka, R. Stec, D. Strus, Warszawa 2011.

[15] E.K. Czech, M. Marcinkiewicz, *Ograniczenie wolności działalności gospodarczej na obszarach Natura 2000*, [w:] *Problemy wdrażania systemu Natura 2000*...

[16] A. Lipiński, *Utworzenie obszaru Natura 2000 jako problem konstytucyjny*, [w:] *Prawo i polityka w ochronie środowiska*, red. H. Lisicak, Wrocław 2006, pp. 89–96.

[17] Cf., for example, judgement of the Supreme Administrative Court of 23 February 2007, II OSK 363/06; judgement of the Voivodeship Administrative Court in Gdańsk of 30 June 2011, II SA/Gd/312/11; judgement of the Court of Justice of 14 September 2006, C-244/05; judgement of the Court of Justice of 20 September 2007, C-304/05; judgement of the Court of Justice of 13 December 2007, C-418/04; judgement of the Court of Justice of 26 October 2006, C-239/04.

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us to maintain the highest standard of legislation but above all enables the proper performance and control of obligations of the owner in areas of high natural value.

De lege ferenda, however, it would be necessary to consider fine-tuning the catalog of sanctions for breaching the rules of protection task plans. At present, some people running businesses in these areas add potential fines as costs of environmentally harmful activities. Undoubtedly, the assessment of the effectiveness of the level of sanctions for breaching the plans of protection tasks is a challenge facing the regional director of environmental protection[18]. Protection of the biosphere in Natura 2000 sites should begin with the verification of existing plans of protection tasks and their effectiveness. The several dozen or so years of their functioning in Natura 2000 sites certainly requires amendments related to new climatic and environmental challenges.

Undoubtedly, the biosphere protection in Natura 2000 sites is also influenced by other forms of nature protection overlapping with these areas. The greatest territorial example of this collision of regulations is the regulation of national parks. In Poland, all national parks are simultaneously Natura 2000 sites. This means that they are subject to a double legal regime related to the protection of national natural heritage and European regulations. Where a national park exists, no plans of protection tasks are issued, provided that the plan of protection of the national park meets the requirements of the plan of protection tasks (Article 28 (11) (2) and (3) ANP). It may arise that the two documents[19] will exist in parallel. In such a case, indicating the hierarchy of sources of law, priority should be given to the provisions of the national park protection plan as established by the regulation of the competent minister for the environment, and only in the alternative should the plan of protection tasks be applied as an act of local law[20].

This simple solution is not always possible, especially in the buffer zone of a national park. In these places, it is no longer clear which regulations have priority. When we add to this the norms resulting from spatial planning[21], there is a problem with defining the scope of biosphere protection and norms concerning the obliga-

[18] M. Wiencenciak, *Sankcje w prawie administracyjnym i procedura ich wymierzania*, Warszawa 2008.

[19] P. Czechowski, A. Niewiadomski, *National parks and Natura 2000 areas – evaluation of the legal status of regulations in rural areas*, [in:] *Chosen Problems of Nature Conservation in Polish and International Law*, eds. P. Litwiniuk, A. Niewiadomski, R. Stec, Ł. Ciołek, Warszawa 2015, pp. 23–32.

[20] A. Niewiadomski, *Rodzinne gospodarstwo rolne wobec ochrony środowiska w prawie polskim i europejskim*, [in:] *Prawne mechanizmy wspierania i ochrony rolnictwa rodzinnego w Polsce i innych państwach Unii Europejskiej*, red. P. Liwtiniuk, Warszawa 2015, pp. 141–151.

[21] Z. Czarnik, *Miejscowy plan zagospodarowania przestrzennego jako podstawa wykonywania własności nieruchomości*, „Zeszyty Naukowe Sądownictwa Administracyjnego" 2006, nr 2.

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tions of the property owner in Natura 2000 sites[22]. This accumulation of legal acts in these areas is, on the one hand, conducive to the intensification of protection, resulting in the creation of a nature protection complex in many aspects. On the other hand, it leads to conflict situations, when the above-mentioned legal acts regulate agricultural or economic activity in Natura 2000 sites in a different way[23].

Apart from typical public law regulations resulting from the ANP or spatial planning, the protection of the biosphere in Natura 2000 sites is subject to the norms of the Common Agricultural Policy relating to the possibility of obtaining aid funds by farmers conducting their activities in Natura 2000 sites. In the years 2014–2020[24], pursuant to the Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005[25], special measures are offered in this respect under the so-called agri-environmental-climate payments. They are commitments that the farmer makes voluntarily in return for the financial resources he receives. They may function in conjunction with the said acts of public law. The current regulations aim to ensure that the undertaken agri-environmental-climate commitments not only have a positive impact on farmers' incomes[26] but also significantly improve the quality of the climate.

The problem is if the commitments undertaken are incompatible with the binding legal acts being universally binding norms resulting from the aforementioned plans. The conflict that arises must be resolved in favor of public law because of its "universality". It should also be noted that the functioning of the Rural Development Programme of environmental advisors in the current period should, as far as possible, exclude collisions and conflicts.

The problem of the functioning of Natura 2000 sites as an element of biosphere protection is even more complicated if we consider a number of other legal documents that may regulate the functioning of agricultural property owners in these sites. These areas are covered by the cross-compliance rules[27] or the so-called

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[22] H. Izdebski, *Prawo własności w planowaniu zagospodarowania przestrzeni*, [in:] *Kierunki reformy planowania i zagospodarowania przestrzennego*, red. I. Zachariasz, Warszawa 2012.

[23] J. Ciechanowicz-McLean, *Ochrona środowiska w działalności gospodarczej*, Warszawa 2003.

[24] B. Jeżyńska, R. Pastuszko, *Pakiet legislacyjny WPR 2014–2020 w świetle podstaw prawa UE i prawa międzynarodowego. Kompleksowa analiza prawna*, Biuro Analiz i Dokumentów, OE-186, marzec 2012.

[25] OJ EU L 347/487 as amended, 20.12.2013.

[26] M.A. Król, *Sytuacja prawna prowadzącego działalność rolniczą na obszarach Natura 2000*, [w:] *Problemy wdrażania systemu Natura 2000…*

[27] A. Hawrylewicz-Łuka, *Spełnianie wymogów wzajemnej zgodności (cross-compliance) przy ubieganiu się przez rolników o płatności bezpośrednie jako poszanowanie środowiska naturalnego*, [in:] *Administracja publiczna…*, pp. 130–155; B. Jeżyńska, *Znaczenie i funkcje zasady cross-compliance w systemie rolniczych dopłat bezpośrednich*, „Studia Iuridica Lubliniensia" 2010, t. 13.

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greening policy[28]. They impose obligations on farmers wishing to collect direct payments that are environmentally sound and require them to comply with the relevant rules relating to the functioning of the farm. These regulations are another example of public and legal regulations that a farmer may undertake voluntarily in exchange for financial aid.

The article presented the main legal problems resulting from the functioning of Natura 2000 sites in the Polish law system. Several types of legal acts have been indicated, whose scope of regulation includes the functioning of property owners and persons conducting agricultural activity in these areas. One of the main conclusions is the emerging conflict not only between the economic interests of farmers and the interests of the state but above all the conflict between individual legal acts regulating the legal situation in Natura 2000 sites.

De lege ferenda, it is necessary to postulate the development of a comprehensive regulation covering all acts relating to Natura 2000 sites. For example, just the harmonization of plans for protection tasks, plans for national parks, the system of direct payments or agri-environmental-climate measures should not only bring about a better legal effect but, above all, it should lead to an increase in the level of protection for areas of natural value. Taking these legislative measures will be beneficial for farmers and it will also improve global effects on the level of climate pollution.

At the same time, it should be noted that the legislative measures taken must go hand in hand with an increase in the financial resources allocated to support property owners – primarily farmers operating in Natura 2000 sites. Without a proper financial incentive, the proposed legal solutions may turn out to be so unfavorable for them that in economic terms they would be better off to pollute the environment and pay fines than to take care of its condition. Climate protection now appears to be a phenomenon that has no price. However, measures that may improve the state of the environment seem very realistic in terms of the financial implications to be assessed.

The protection of the biosphere in Natura 2000 sites should be an example for other areas of natural value. At present, we can observe a state of some legal chaos, which through the diversity of regulations leads to a lack of effects on the achievement of nature conservation objectives. A change in this state of affairs should contribute to improving not only legislation in these areas but above all to ensuring that it is fully applied by those to whom it is addressed. The European Ecological Network Natura 2000 is a fairly young formation, constantly being developed. The completion of the implementation of the Habitats Directive, scheduled for 2000 (hence the name Natura 2000), was extended by 11 years. We can say that a complete system of protection has been in place for just over 8 years. This time

[28] A. Niewiadomski, *Ausgewählte rechtliche Probleme in der Funktionsweise des Europäischen Ökologischen Netzes Natura 2000*, „Studia Iuridica" 2014, t. 59, pp. 231–246.

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shows that many things need to be improved and some things need to be looked at more closely. The adoption of the new legal framework must also take into account the climate phenomena which are beginning to gain in importance from the point of view of environmental pollution. The new regulations relating to Natura 2000 sites should be a response to the current problems related to the achievement of protection objectives throughout Europe.

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STRESZCZENIE

W artykule przedstawiono główne założenia dotyczące funkcjonowania obszarów Natura 2000 w Europie, ze szczególnym uwzględnieniem regulacji polskich. Tereny te, cenne przyrodniczo, bezpośrednio wpływają na kształt ochrony przyrody oraz stan klimatu. W tym ostatnim kontekście przed normami prawnymi i legislatorami stają wyzwania znalezienia takich ram prawnych, aby zapobiec postępującemu degradowaniu klimatu. Funkcjonujące obszary Natura 2000 w Polsce jako jedna z form ochrony przyrody mogą w tym zakresie okazać się pomocne, o ile plany zadań ochronnych zostaną dostosowane do zmieniających się uwarunkowań środowiskowych.

Słowa kluczowe: obszary Natura 2000; biosfera; ochrona przyrody; plan zadań ochronnych; dyrektywa ptasia; dyrektywa siedliskowa

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