

European Ecological Network Natura 2000 – Opportunities and Threats

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Abstract—The research objective of the project and article “European Ecological Network Natura 2000 – opportunities and threats” Natura 2000 sites constitute a form of environmental protection, several legal problems are likely to result. Most controversially, certain sites will be subject to two regimes of protection: as national parks and as Natura 2000 sites. This dualism of the legal regulation makes it difficult to perform certain legal obligations related to the regimes envisaged under each form of environmental protection. Which regime and which obligations resulting from the particular form of environmental protection have priority and should prevail? What should be done if these obligations are contradictory? Furthermore, an institutional problem consists in that no public administration authority has the power to resolve legal conflicts concerning the application of a particular regime on a given site. There are also no criteria to decide priority and superiority of one form of environmental protection over the other. Which regulations are more important, those that pertain to national parks or to Natura 2000 sites? In the light of the current regulations, it is impossible to give a decisive answer to these questions. The internal hierarchy of forms of environmental protection has not been determined, and all such forms should be treated equally.

Keywords—Natura 2000, European Ecological Network.

I. INTRODUCTION

IN the Polish law, the issues related to Natura 2000 Ecological network are governed by the Environmental Protection Act of 16 April 2004 [1]. This Act outlines the purposes, principles and forms of protection of animate and inanimate nature and landscape. Natura 2000 is considered one of the ten forms of environmental protection [2], equal in significance to the remaining nine forms, although each one of them is subject to a different legal regime developed on the basis of the Environmental Protection Act. Such a solution is rare in the legal systems of other European countries and it is not required by the EU directives concerning Natura 2000 ecological network.

Other member states, such as the Czech Republic, Germany and to some extent Slovakia adopted much less restrictive legal regimes for creating the uniform European ecological network. In Czech law, the term "Sites of Community Importance" is used. In Germany, environmental protection is based on the already existing forms of protection. An intermediate solution was adopted in Slovakia: Natura 2000 sites will become a separate form of environmental protection if they are considered protected sites on the basis of the domestic regulations in effect. Unlike in Poland, no special

form of environmental protection has been created there. The solution adopted in Poland is an extension of EU regulations and goes beyond the framework outlined in the EU directives for ensuring the protection of Sites of Community Importance. It should be also noted that in Poland a given site can be protected by two systems of protection at the same time, e.g. the regime of national parks and Natura 2000 network. This legal solution may result in uncertainty as to how the given form of environmental protection should be practically applied in the specific circumstances.

If Natura 2000 sites constitute a form of environmental protection, several legal problems are likely to result. Most controversially, certain sites will be subject to two regimes of protection: as national parks and as Natura 2000 sites. This dualism of the legal regulation makes it difficult to perform certain legal obligations related to the regimes envisaged under each form of environmental protection. Which regime and which obligations resulting from the particular form of environmental protection have priority and should prevail? What should be done if these obligations are contradictory? Furthermore, an institutional problem consists in that no public administration authority has the power to resolve legal conflicts concerning the application of a particular regime on a given site. There are also no criteria to decide priority and superiority of one form of environmental protection over the other. Which regulations are more important, those that pertain to national parks or to Natura 2000 sites? In the light of the current regulations, it is impossible to give a decisive answer to these questions. The internal hierarchy of forms of environmental protection has not been determined, and all such forms should be treated equally.

Another problem is the legal status of national parks and the sites covered by them, and the legal status of Natura 2000 sites. There are a lot of problems with obligations which should be fulfilled on the sites covered by both forms of environmental protection. As far as Natura 2000 sites are concerned, a particularly interesting case is the relationship between protection action plans and local zoning plans. There are also ambiguities with regard to certain issues related to coordinating the impact of protection plans for the national parks and protection action plans for Natura 2000 sites. At present, there is no rational coordination between the local zoning plans and the protection action plans.

Another problematic issue is the conflict between the legal status of areas surrounding the national parks, the Natura 2000 sites, and environmental management schemes. The fact that three different regulation schemes apply to the same site is the source of multiple legal conflicts. Besides substantive conflict

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between the particular provisions, there is also the conflict between administrative and legal regulations of the Environmental Protection Act and the civil law regulations containing the obligations under environmental management schemes.

Another important legal issue which emerges when the land is designated as a site which will be covered by one or both forms of environmental protection involves compensations and claims related to limitations in its usage by owners because of environmental protection. Entities which conduct agricultural activity on the sites covered by one of the foregoing forms of environmental protection may be in different legal circumstances. Farmers whose land is in the area surrounding the national park where there is limited agricultural activity are "statically entangled". On the other hand, the farmers "dynamically entangled" in the network of Natura 2000 sites may become the beneficiaries of environmental schemes; therefore their agricultural operations are controlled by the "environmental sector". Finally, the farmers whose land is being "included" in the area surrounding the national park may at the same time be subject to dynamic control of environmental schemes under Natura 2000. The above-described legal issues are discussed in detail in this study.

II. LEGAL REGULATIONS APPLYING TO THE NETWORK OF NATURA 2000 SITES

The establishment of the network of Natura 2000 sites is regulated not only by the Polish Environmental Protection Act but – most of all – the EU regulations which outline the framework of individual activities. One site, or a part thereof, may be covered by both forms of environmental protection. In such a case, there emerges the procedural problem as to which of the procedures has priority and was implemented earlier. It is also necessary to consider the decision-making powers of the authorities with respect to the site which is subject to two legal regimes.

The regulatory framework of Natura 2000 sites [3] is designed to be twofold. Under the European law this issue is regulated by the following two directives: Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds [4] and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [5]. In Poland, Natura 2000 network is governed by the Environmental Protection Act of 16 April 2004, along with several executive regulations to the Act.

In the European Community Law, the issues related to Natura 2000 network are regulated through directives, i.e. legislative acts which do not apply directly and do not create direct rights and obligations for the citizens. Directives, as acts of secondary law, constitute guidelines for member states on how to formulate the main assumptions of their domestic law. In this respect, the birds directive and the habitats directive are only recommendations for the member states which outline the general tenets for creation of domestic regulations. Both directives leave member states with a large amount of leeway as to the selection of the method of introducing the particular

forms of protection of Natura 2000 sites. According to the judgment of the Court of Justice in *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, the directive should establish a general legal framework, on the condition that the member state will actually ensure the full application of the directive in a clear and precise manner [6]. The choice of the method is left to the decision of the member state. In Poland, the legal regime concerning Natura 2000 network is more rigorous than contemplated in the directives referred to above. The Court of Justice states that as far as the habitats directive is concerned, the member states are particularly obligated to ensure that their legal regulations transposing that directive are clear and precise. The Polish Environmental Protection Act goes even further than the aforementioned directives in that it makes Natura 2000 sites one of the forms of environmental protection.

The European Community directive requires that any indispensable measures be applied to ensure protection or restoration of sufficient diversity and habitats. Such measures include: establishment of protected sites; preservation of habitats and conducting operations within the protected sites and beyond those sites, according to environmental needs; restoration of biotopes and creation of new ones. Under the Polish Environmental Protection Act, Natura 2000 is considered one of the forms of environmental protection, on par with national parks, nature reserves, landscape parks, landscape protection sites, protected nature sites, data collection sites, sites used for ecological purposes, nature and landscape complexes, and protection sites of plant, animal and fungal species. This regulation goes beyond the Community standards set forth in the directives because none of the two directives requires a member state to establish a new form of environmental protection. The directives only emphasize the necessity to create the uniform European ecological network. However, they do not contain any recommendations for legal regimes under which such a network is to be created. Comparative legal analysis shows that other member states, such as the Czech Republic, Germany, and to some extent Slovakia adopted much less restrictive legal regimes for creating the uniform European ecological network. In Czech law, the term "Sites of Community Importance" is used. In Germany, Natura 2000 sites are covered by protection on the basis of already existing forms of environmental protection. An intermediate solution was adopted in Slovakia: the Natura 2000 sites will become a separate form of environmental protection if they are considered protected sites on the basis of the domestic regulations in effect. Unlike in Poland, no special form of environmental protection has been created there. The solution adopted in Poland is an extension of EU regulations and goes beyond the framework outlined in the EU directives for ensuring the protection of Sites of Community Importance. Moreover, in Poland a given site can be protected by more than one system of protection at the same time, e.g. that of a national park and that of Natura 2000 network. This legal solution may result in uncertainty as to how the given form of environmental protection should be practically applied in the

specific circumstances.

The issue which should be clearly determined is that of relationships between Community and Polish regulations concerning Natura 2000 network and the support schemes, in particular environmental management schemes. The Regulation of the Minister of Agriculture and Rural Development of 26 February 2009 regarding detailed conditions and method of granting financial support under the measure "Environmental Management Scheme" covered by the Rural Development Programme (PROW) for 2007-2013 [7] contains the procedure for applying for support under that measure and states that obligations under environmental management schemes will be met under Package 5 Protection of bird species and habitats in Natura 2000 sites. There is a degree of overlap between the requirements contemplated in the Regulation and the protection action plans. The contents of action plans prepared by the potential beneficiaries of environmental management schemes, in particular with respect to descriptions of habitats or nesting areas and grazing plans with regard to land that will be used for grazing only or for grazing and mowing (appendix no. 1 part II item 4 of the aforementioned Regulation), may turn out to be the same as the description of protected sites and their condition, threats, requirements and options for protection of environment, as well as the description of geographical and environmental conditions stipulated in the protection action plans [8]. Due to the fact that individual analyses of such requirements are very costly to the potential beneficiary, applications for support may be limited in numbers.

III. SPECIAL LEGAL STATUS OF PROTECTION ACTION PLANS (PZO)

The protection action plan (in Polish, "plan zadań ochronnych" – PZO), which is an act of local law mentioned in Article 87 sec. 2 of the Constitution of the Republic of Poland, is subject to the regime of Article 94 of the Constitution of the Republic of Poland. This means that a local government administration authority such as the regional environmental protection director may issue PZO only on the basis and within the boundaries of its powers contemplated in the act. Any provisions of PZO exceeding that delegation will be null and void.

The network of Natura 2000 sites is based on protection action plans, which involve determination of the protected site, protected objects, the purposes of protection actions and the actions taken in the process of realization of those purposes. Pursuant to the Environmental Protection Act, the procedure for establishment of the protection action plan is complex and involves various entities. This procedure includes the following main stages:

1. regional environmental protection director prepares the 10-year protection action plan for Natura 2000 site (the first draft is prepared within 6 years of the European Commission's approval of the site);
2. PZO should be drafted with participation of local community, interested parties and the entities conducting activity near the habitats and sites of occurrence of the

species to be protected within the Natura 2000 site designated. Such a solution ensures that the decisions take into consideration the postulates of all the interested parties insofar as possible. It is still an open issue as to what extent the opinions of individual entities should be taken into account by the regional environmental protection director when drafting PZO;

3. the most important stage is the enactment of PZO by the regional environmental protection director in the form of local regulation. As an act of local law, it is published in the official journal of the relevant województwo (Polish province).

PZO loses its effective power when the Natura 2000 protection plan is established. PZO is mandatory; the requirement of its enactment may not be waived.

PZO's main feature is its legal nature: under the Constitution of the Republic of Poland, it is a source of universally binding law. Pursuant to the Environmental Protection Act, the plans indicate, *inter alia*, amendments to the existing studies of gmina's (Polish municipality's) land development conditions and directions as well as local zoning plans concerning elimination or mitigation of external or internal threats, if necessary in order to maintain or restore the proper condition of habitats and sites of occurrence of the plant and animal species to be protected within the designated Natura 2000 site. This means that PZO, as an act of local law issued by the regional environmental protection director, may form grounds for amendment to or become an element of new legal acts adopted by gmina's council in the form of the local zoning plan. Pursuant to the Environmental Protection Act, PZO should contain only recommendations for amendment to or adoption of new studies of conditions and local zoning plans. There are questions as to the binding power of such recommendation. Pursuant to Article 17 item 6 a, fourth sub-item, of the Local Planning and Zoning Act of 27 March 2003 [9], when executing the procedure of adopting the local zoning plan, the municipality/town/city mayor is only obligated to ask for an opinion of the regional environmental protection director. The adopted system does not allow for an evaluation of the extent to which the protection action plans force amendments to the local zoning plan. The situation is clear when PZO already exists but the local zoning plan is yet to be adopted: PZO, as an act of local law, has a binding power for the authority adopting the local zoning plan and it should be taken into account because, by principle, the local zoning plan should not be in contravention with the law already in force. Problems may emerge when PZO is being issued and the local zoning plan already exists. What is the premise for amendment to the local zoning plan and is it binding for the authority which adopted the local zoning plan? Taking into account the hierarchy of sources of law, the local zoning plan and PZO are the legal acts of equal power. Furthermore, they should take into consideration each other's provisions based of chronology, which means that if there already is a local zoning plan and PZO is yet to be adopted, it should as much as possible take into consideration the provisions of the local zoning plan. Such an interpretation may seem to be in

contravention with Article 28 sec. 10 item 5 of the Environmental Protection Act, where amendments to the existing local zoning plans are contemplated. However, the Act does not stipulate any sanctions for not amending the local zoning plan and not taking into account the provisions of PZO. There is no legal tool to force a gmina's council to amend the local zoning plan so as to take into account the provisions of PZO issued after the adoption of the local zoning plan. Consequently, in a given area two contradictory acts of local law may be in effect, with different designations for the same plots of land.

If the local zoning plan is adopted on the basis of PZO, the entities operating on the area covered by PZO may invoke not only the local regulation itself but also the local zoning plan and, consequently, the real property protection scheme applicable in case of a change to the real property's designation. This scheme makes it possible for the owner or perpetual usufructuary of the real property to demand indemnification for damages actually incurred on account of not being able to use the real property or such use being significantly limited, as a result of adoption of the local zoning plan or amendment thereof, or demand that the real property or part thereof be purchased by gmina. If the owner or perpetual usufruct user sells the real property and does not exercise the foregoing rights, they may demand indemnification from gmina equal to reduction in the real property's value. The opposite situation is also possible, i.e. the value of the sold real property with respect to which the local zoning plan has been amended may increase. In such a case, the owner or perpetual usufructuary may be charged with a one-off fee not higher than 30% of the value of the real property (Article 36 of the Local Planning and Zoning Act of 27 March 2003 [10]). These claims may be made within 5 years from the effective date of the local zoning plan.

A different relationship exists between PZO and the study of conditions which is not an act of local law, despite the fact that it was adopted by resolution of gmina's council. Like the local zoning plan, PZO may cover only part of the given gmina or województwo. In such a situation it seems that PZO, as an act of local law, has priority if the new study is adopted or the existing study is amended.

PZO has the power of universally binding law on the given territory, and other legal acts which are being drafted, in particular new local zoning plans, must take into account the legal solutions adopted by PZO. As an act of local law, PZO also applies to citizens. The provisions of PZO should be taken into consideration when applying for support from EU or national funds. Yet the following questions arise: may PZO be subject to cross-compliance requirements [11]? What is PZO's relationship to those requirements? Pursuant to Article 7 sec.1 items 2 and 2a of the Act of 26 January 2007 on Payments under Direct Support Schemes [12], the farmer is eligible for a single area payment if the entire agricultural land is maintained according to the prescribed standards for the entire calendar year and the farmer complies with the requirements for the entire calendar year. This means that the farmer must comply with requirements set forth in Article 2

item 35 of Commission Regulation No. 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation No. 73/2009 as regards cross-compliance, modulation and integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation No. 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector [13]. These requirements refer to Annex II to Council Regulation No. 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 [14]. According to item A5 of Annex II to that Regulation, cross-compliance requirements include the obligations set forth in the habitats directive (Article 6 and Article 13 sec. 1 a of the habitats directive). This means that the farmer is obligated to comply with the requirements set forth in PZO or the protection plans for Natura 2000 sites in the scope concerning types of habitats, plant species, and animal species. It is forbidden to take actions which may, separately or in combination with other actions, have a significant negative impact on the purposes of protection of Natura 2000 sites, and the ban on deliberate picking, destroying, damaging and collecting of protected plants should be enforced (similar solutions have already been adopted in connection with the birds directive). Taking into consideration the foregoing scope of basic requirements, where one of the main requirements concerning the environment is compliance with PZO, the question arises as to the relationship between direct payments and payments under environmental management schemes. What is the difference between the requirements for e.g. mowing the grass set forth in PZO and the requirements under environmental management schemes concerning e.g. mowing the grass? It is very difficult to answer this question in the light of the prevailing regulations, and only teleological interpretation may be helpful in finding the answer. According to linguistic interpretation, a farmer cannot undertake an obligation under environmental management scheme if they are bound by this obligation under cross-compliance requirements. This may be described as follows: one meadow may be mowed on the basis of only one legal obligation; the obligation results from the fact that a single area payment is collected, and this precludes the possibility of applying for a payment under environmental management scheme on the same factual basis. When applying the teleological interpretation of law (which, however, tends to be unreliable) and examining the purpose of the adopted regulations, it is necessary to find a distinction between the cross-compliance requirements set forth in PZO and the obligations under environmental management schemes, i.e. obligations of specific type. If we follow this interpretation, we have to assume that the farmer should undertake – in addition to meeting the cross-compliance requirements – further obligations exceeding the requirements set forth in PZO. In such a case, all the obligations exceeding

PZO could be subject to payments under environmental management schemes. However, in practice it is impossible to distinguish which obligation results from PZO and which obligation results from environmental management schemes. This situation requires making an amendment to the law to ensure that the obligations under environmental management schemes and the prerequisites for applying for support under environmental management schemes are precisely defined.

The existence of PZO depends on the protection plans which exist on the given site. Pursuant to Article 28 sec. 11 items 2 and 3, PZO is not prepared for the sites which entirely or partly overlap a national park, nature reserve or landscape park for which the protection plan has been established in the scope described in sec. 10, and which entirely or partly overlap a national park or nature reserve for which the protection action plan has been established in the scope described in sec. 10. The draft protection plan for the landscape park is prepared by the park director, and the minister of environment establishes, by way of regulation, the protection plan for the national park within 6 months from the date of receiving the draft plan, or refuses to establish it if the draft plan is inconsistent with purposes of environmental protection, adjusting the protection actions to the purposes of environmental protection of the national park. The protection plan may be changed to reflect the environmental protection needs. In this respect, PZO and the protection plan are the acts of universally binding law, but they have different ranks. PZO and the protection plan are established by two different authorities. The responsibility for checking how much PZO overlaps with the protection plan lies with the regional environmental protection director. It is true that Article 20 sec. 5 of the Environmental Protection Act says that the protection plans for the national park in the part in which it overlaps with the Natura 2000 site should take into consideration the scope of the protection action plan for the Natura 2000 site referred to in Article 28 or the scope of the protection plan for the Natura 2000 site referred to in Article 29, but it does not contain any further provisions on PZO or the scope of its application on the overlapping areas.

IV. COMPENSATIONS FOR ESTABLISHING NATURA 2000 SITE ON A GIVEN AREA

As a result of establishment of Natura 2000 site on a given area, the manner of usage of this area changes. By principle, if Natura 2000 site is established, this does not result in restrictions on business activity, forestry activities, hunting or fishing, provided that such an activity does not have a significant negative impact on the purposes of protection of Natura 2000 site. In justified cases, the activity significantly negatively impacting the protection purposes of Natura 2000 site may be permitted, if a proper system of compensating the environment is ensured.

The establishment of Natura 2000 site may also involve reduction in value of real properties located on the site or reduction of profitability of the activity conducted on that site. In this respect, the Polish law provides for two possibilities.

The first one of them is the possibility of demanding that

the gmina purchase the real property or a part thereof, contemplated in Article 129 sec. 1 of the Act entitled Environmental Protection Law of 27 April 2001 [15] if – as a result of restrictions – it is no longer possible to use the real property or a part thereof in the manner in which it was used before or according to its previous designation. The right to make such a claim may be exercised by the owner of the real property or the perpetual usufructuary. In addition, these entities as well as the persons holding material right to the real property (according to the legal theory, this group also includes the users of the real property and the persons who have life interest in the real property – Article 91 of the Civil Code) may demand indemnification for damages, including reduction of real property's value. The value of this indemnification is determined by starosta (territory administrator) by way of a decision. This right emerges as a result of any infringement in the manner of using the real property in relation to environmental protection. The scope of this regulation includes claims that arose as a result of establishment of Natura 2000 sites as well as national parks. In this respect, the method of pursuing the claim is the same in both cases.

As it may be inferred from court rulings, the indemnification is not limited to actual loss, because of the rule of full liability for restrictions imposed on usage of real property, which is also based on the rules of civil law contemplated in Article 361 § 2 of the Civil Code [16]. In both cases the claims may be made within 2 years of the effective date of the regulation or act of local law which has caused a restriction on usage of the real property. However, the loss should be appraised at the moment of publication of the act or shortly after it has gone into effect [17].

The second possibility of compensation involves the contractual procedure defined in Article 36 sec. 3 of Environmental Protection Act. This procedure applies only to Natura 2000 sites. The rights specified in that article may not be exercised by the persons who have made claims resulting from establishment of a national park. It is a disputed issue whether or not it will be possible to exercise this right and to what extent if the given area is the Natura 2000 site as well as the national park. The competing claims and the scope of their existence will have to be in each individual case settled by the court in accordance with the Code of Civil Procedure.

If as a result of establishment of the Natura 2000 site on the given area the business, farming, forestry, hunting or fishing activity must be adjusted to the requirements of the Natura 2000 site and no support schemes which compensate for reduction in profitability are in effect in that area, the regional environmental protection director may conclude an agreement with the owner or possessor of that area. Such agreement cannot be concluded with the administrator of real properties belonging to the State Treasury. The agreement defines the following:

1. List of necessary actions, methods and deadlines for their performance, and terms and conditions of settlement of receivables for the performed actions, and

2. Value of compensation for income lost as a result of imposed restrictions.

The foregoing regulation requires that no support schemes which compensate for reduction in profitability are in effect in the given area. In Poland, such schemes may include the planned payments for Natura 2000 sites or the funds from the European Social Fund, European Regional Development Fund, Cohesion Fund, European Agricultural Fund for Rural Development, European Fisheries Fund, LIFE+ financial instrument supporting environmental and nature conservation projects, and Seventh Framework Programme.

If none of the aforementioned support schemes applies, the regional environmental protection director may (although there is a dispute in the legal theory whether it is an obligation) conclude the agreement referred to above. The agreement may be concluded, with one exception, with the owner or the possessor of the real property. The agreement defines the value of compensation for income lost as a result of imposed restrictions.

The current regulation does not contemplate compensations for the persons who intend to conduct the above-described activity on Natura 2000 site (e.g. who have real properties in the direct vicinity of Natura 2000 site). Such a solution could be implemented if the entity proves beyond any doubt that it will incur a loss as a result of imposed restrictions. In addition, there are no regulations on the basis of which the owners of real properties directly adjacent to Natura 2000 site could apply for indemnification on account of possible reduction of value of their real properties. The issue of compensations for gminas in which Natura 2000 sites are established also remains open. If the aforementioned regulations are to be amended, it is advisable to consider the introduction of such compensations therein.

V. CONCLUSION

Although the Environmental Protection Act is an attempt to find a compromise between all the possible forms of environmental protection, in many cases it seems to be in contravention of the prevailing laws concerning the Natura 2000 ecological network. The above-described problems related to the legal status of that form of environmental protection, the relationships between the protection action plan and the protection plan, or the issues of claims resulting from restrictions in usage of the real property are only a few selected examples of legal concerns.

As a general recommendation, it is necessary to reexamine the consequences – from the standpoint of potential beneficiaries of agricultural support schemes – of making Natura 2000 sites one of the forms of environmental protection. It seems unjustified to subject Natura 2000 sites to the same regime of protection as national parks. Moreover, allowing the possibility of the same area being covered by two forms of environmental protection not only results in legal chaos but it also makes it practically impossible to perform certain regulations.

Another problematic matter is the issue of regulating the relationships between PZO and the protection plans and their

significance to the procedures for adoption of local zoning plans. Currently there is no clear coordination in that regard, which is attributable not only to the fact that the procedure for adoption of the local zoning plan is lengthy but also to the fact that there are contradictions between the protection action plans and the local zoning plans.

It is necessary to resolve the issue of priority of application of PZO and the protection plans and their hierarchy with respect to each other. It is believed that priority should be given to the protection plans of national parks, because the procedure for drafting such plans is very complex. This solution is dictated by general rules of environmental protection rather than substantive provisions of the Environmental Protection Act. At the present time, there are no clear legal criteria to unequivocally resolve the issue of priority between the legal regime concerning the national parks and the one concerning the Natura 2000 sites.

Taking into account the conflict between the protection action plans and the action plans resulting from environmental management schemes, in order to simplify the procedure and ensure more effective utilization of the protection action plan (an act of local law) efforts should be made to ensure complementarity between main elements of the action plans resulting from environmental management schemes and the protection action plans. An option should be provided of using the elements of protection action plans directly and invoking them when drafting the action plans resulting from environmental management schemes. The descriptions of protected sites, such as habitats, which are included in protection action plans, should become a part of environmental management schemes. The beneficiary should be able to use them as an act of local law which was drafted by the professionals after carrying out a complex procedure. Complementarity between protection action plans and the action plans resulting from environmental management schemes will facilitate the process of absorption of the support funds. The activities defined in the protection action plan, such as scope of works to be performed, deadline and frequency of performance, technical conditions of performance (§ 3 item 6 a-h of the Regulation of the Minister of Environmental Protection of 17 February 2010 in the matter of preparing the draft protection action plan for Natura 2000 site) may be identical with the requirements for package 5 defined in appendix 3 part IV of the Regulation of the Minister of Agriculture and Rural Development of 26 February 2009 in the matter of detailed conditions and method of granting financial support under the measure "Environmental Management Scheme" covered by the PROW for 2007-2013. For example, the requirements stipulated in the action plans resulting from environmental management schemes, such as ban on deep tillage, ban on usage of sewage and sewage sedimentation, ban on fertilizing, obligation to mow on the prescribed dates and on the prescribed height, etc., are sometimes elements of protection action plans; in other words, similar obligations may be already set forth in the protection action plans. The regulations concerning the same factual state of affairs should be complementary with respect to each other.

They should not preclude or duplicate each other, because it will result in a situation in which the same obligations will be imposed on the citizens twice, only under different legal grounds.

Finally, it is necessary to discuss the issue of claims made by persons who lost their real properties as a result of introduction of one of the forms of environmental protection, or usage of those real properties became impeded or impossible. The legislator should urgently put in place provisions concerning unification of claims due in relation to Natura 2000 sites and national parks. We also support expanding the options for protection of real property ownership rights in the case of establishment of national parks.

The legal problems outlined above represent only a selection of issues. One may also point out the conflict between the regulations pertaining to areas surrounding the national park and the environmental management schemes. Extensive regulatory work is necessary to address the complex problems related to Natura 2000 sites (which form a relatively new legal institution) and the new regulations concerning national parks. At present, these problems may be viewed only through the prism of the Environmental Protection Act. It should be remembered that the changes which are being introduced will have influence on the Environmental Protection Law, local zoning, regulations governing the receipt of support, in particular under environmental management schemes, as well as the civil procedure with regard to claims. All these issues have to be resolved, not only in order to effectively protect the environment, which should be the primary objective, but also to make it easier for the farmers and other entities to rationally use those areas for purposes of agricultural operations and business activity whilst taking care of the environment. These are the changes that should be made.

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REFERENCES

- [1] Consolidated version in Journal of Laws of 2009, No. 151, item 1220, as amended.
- [2] Pursuant to Article 6 sec. 1 of the Environmental Protection Act, "Forms of environmental protection include the following:
 - 1) national parks;
 - 2) nature reserves;
 - 3) landscape parks;
 - 4) landscape protection sites;
 - 5) Natura 2000 sites;
 - 6) protected nature sites;
 - 7) data collection sites;
 - 8) sites used for ecological purposes;
 - 9) nature and landscape complexes;
 - 10) protection sites of plant, animal and fungal species."
- [3] The following literature related to Natura 2000 sites has been used in this publication: A. Bołtromiuk (editor), *Europejska Sieć Ekologiczna Natura 2000 jako nowy element otoczenia polskiej wsi i rolnictwa* (Natura 2000 European Ecological Network as a New Element of Surroundings in Polish Rural Areas and Agriculture), Warsaw 2010; A. Bołtromiuk, M. Kłodziński (editor), *Natura 2000 jako czynnik zrównoważonego rozwoju obszarów wiejskich regionu Zielonych Płuc Polski* (Natura 2000 as Sustainable Development Factor of Rural Areas in the Green Lungs of Poland region), Warsaw 2011; J. Ciechanowicz-McLean, *Międzynarodowe prawo ochrony środowiska* (International Environmental Protection Law), Warsaw 2001; J. Ciechanowicz-McLean, *Ochrona środowiska w działalności gospodarczej* (Environmental Protection in Business Activity), Warsaw 2003; J. Ciechanowicz-McLean, Z. Bukowski, B. Rakoczy, *Prawo ochrony środowiska: komentarz* (Environmental Protection Law: Commentary), Warsaw 2008; EC COM 431 final: Communication from the Commission to the Council and the European Parliament: Financing Natura 2000, 2004; J. Engel, *Natura 2000 w ocenach oddziaływania przedsięwzięć na środowisko* (Natura 2000 in Environmental Impact Assessments), Warsaw 2010; S. Gantioler, P. Brink, S. Bassi, M. Kettunen, A. McConville, M. Rayment, *Financing Natura 2000 – Financing needs and socio-economic benefits resulting from investment in the network, 2010; Natura 2000: szanse i zagrożenia* (Natura 2000: Chances and Threats), Instytut Problemów Współczesnej Cywilizacji im. Marka Dietricha (Marek Dietrich Contemporary Civilization Problems Institute), Warsaw 2010; K. Sundseth, P. Creed, *Natura 2000: ochrona różnorodności biologicznej Europy* (Natura 2000: Protecting Europe's Biodiversity), Luxembourg 2009; S.C.F. de Piérola, *Natura 2000 i społeczeństwo: instrumenty komunikacji społecznej w zarządzaniu Siecią Natura 2000* (Natura 2000 and the Society: Instruments of Social Communication in Management of Natura 2000 Network), Warsaw 2009; P. Rutkowski, *Natura 2000 w leśnictwie* (Natura 2000 in Forestry), Warsaw 2009; B. Rakoczy, *Ograniczenie praw i wolności jednostki ze względu na ochronę środowiska w Konstytucji Rzeczypospolitej Polskiej* (Limitation of the Individual Rights and Freedoms due to Environmental Protection in the Polish Constitution), Toruń 2009; B. Rakoczy, *Komentarz do ustawy o zapobieganiu szkodom w środowisku i ich naprawie* (Commentary to the Act on Preventing Damages to the Natural Environment and Redressing Them), Warsaw 2008; B. Wierzbowski, B. Rakoczy, *Podstawy prawa ochrony środowiska* (Basis of the Environmental Protection Law), Warsaw 2007.
- [4] OJ L 103, 1979, p. 1, as amended, referred to as "birds directive".
- [5] OJ L 206, 1992, p. 7, as amended, referred to as "habitats directive".
- [6] C-6/04 European Communities v United Kingdom of Great Britain and Northern Ireland.
- [7] Journal of Laws of 2009 No. 33, item 262, as amended.
- [8] § 3 item 2 b-c of the Regulation of the Minister of Environmental Protection of 17 February 2010 in the matter of preparing the draft protection action plan for Natura 2000 sites – Journal of Laws of 2010 No. 34, item 186.
- [9] Journal of Laws of 2003 No. 80, item 717, as amended.
- [10] Journal of Laws of 2003 No. 80, item 717, as amended.
- [11] See Annex II to Council Regulation (EC) No. 73/2009; Regulation of the Minister of Agriculture and Rural Development of 11 March 2010 in the matter of minimum standards (Journal of Laws No. 39, item 211); announcement of the Minister of Agriculture and Rural Development of 19 March 2009 in the matter of the list of requirements set forth in the EU regulations, taking into account the national provisions implementing those regulations (M.P. of 2009 No. 17, item 224); announcement of the Minister of Agriculture and Rural Development of 17 March 2010 on the change of the list of requirements set forth in the EU regulations, taking into account the national provisions implementing those regulations (M.P. of 2010 No. 16, item 169); announcement of the Minister of Agriculture and Rural Development of 28 December 2010 on the change of the list of requirements set forth in the EU regulations, taking into account the national provisions implementing those regulations (M.P. of 2011 No. 2, item 20); announcement of the Minister of Agriculture and Rural Development of 16 March 2011 on the change of the list of requirements set forth in the EU regulations, taking into account the national provisions implementing those regulations (M.P. of 2011 No. 27, item 299). At present, this situation is unclear and at least two different legal interpretations are permitted.

- [12] Consolidated version in Journal of Laws of 2008, No. 170, item 1051, as amended.
- [13] OJ L 316, 2009, p. 65, as amended.
- [14] OJ L 30, 2009, p. 16, as amended.
- [15] Consolidated version in Journal of Laws of 2008, No. 25, item 129, as amended.
- [16] Polish Supreme Court Ruling of 25 February 2009, III CSK 546/08.
- [17] Polish Supreme Court Ruling of 25 February 2009, III CSK 565/08.

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