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BUSINESS ACTIVITY OF THE NATIONAL PARKS IN POLAND

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DZIAŁALNOŚĆ GOSPODARCZA PARKÓW NARODOWYCH W POLSCE

STRESZCZENIE: Podstawowym źródłem finansowania parków narodowych w Polsce, podobnie jak na świecie są środki publiczne, w szczególności dotacje. W związku ograniczeniami środków publicznych szansą na wzrost poziomu finansowania parków narodowych można upatrywać w źródłach rynkowych, w tym w dochodach z działalności gospodarczej. Zapis o możliwości prowadzenia działalności gospodarczej przez parki narodowe znalazł się w znowelizowanej ustawie o ochronie przyrody. Celem artykułu jest analiza obecnego stanu w zakresie możliwości prowadzenia działalności gospodarczej przez polskie parki narodowe. W artykule wskazano na okoliczności uniemożliwiające bezpośrednie prowadzenie działalności gospodarczej przez polskie parki narodowe.

SŁOWA KLUCZOWE: parki narodowe, finansowanie, działalność gospodarcza, ustawa o ochronie przyrody

Introduction

As indicated in the Constitution of the Republic of Poland, the state is obliged to preserve natural resources that are national heritage and ensure ecological security for present and future generations¹. A national park is one of the forms of conservation of natural heritage. The national park is considered a public good because, for example, the use of it by one individual does not reduce availability to others². National parks being a public good are funded from the public budget. For consumers this means that public goods are available free of charge, or fees are charged only for some services. Therefore, one of the fundamental problems of national parks is their inability of self-financing. Subsidies are the most commonly used sources of funding for national parks, but they are often insufficient to cover all the necessary expenses. Therefore, the need to diversify sources of funding for national parks is gaining in importance. Additional sources of funding could be found, for example, in revenues from the business activity run by national parks.

This article is aimed at analysing the opportunities of Polish national parks to run business as a source of revenue. This issue is relatively rarely addressed in the Polish literature³. The article indicates circumstances that prevent the generation of direct revenues from business by national parks, thus proving the illusory nature of provisions regarding this subject in the revised version of the nature conservation act.

This study relies on source materials such as reports from the Central Statistical Office (GUS), and data from the Ministry of Environment and the Supreme Chamber of Control (NIK). In order to provide a comprehensive and objective presentation of this multidimensional problem references to relevant literature and legal acts are also made.

National parks in the system of protected areas

National parks are considered the highest form of nature conservation at the national level. The first national park (Yellowstone) was established in the United States in 1872. Soon after, in 1879, Australia's Royal National Park

¹ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. 1997 nr 78, poz. 483), art. 74/ The Constitution of the Republic of Poland of 2 April 1997 (Dz.U. of 1997 r. No. 78, item 483), Article 74.

² S. Owsiak, *Finanse publiczne*, Warszawa 2008, p. 28.

³ Problems related to legal aspects of national parks operation were discussed by: W. Radecki and D. Sześciło, but they did not address financing sources.

was established. It is assumed that in Europe, the first national parks for the protection of nature were created in Sweden in 1909 (Abisko and Sarek national parks), and in 1910 in Russia⁴.

In Poland, the idea of a national park was put into practice much later, in 1932. At that time *Leśnictwo Park Narodowy w Białowieży* (Forestry District National Park in Białowieża) and a unit of State Forests *Park Narodowy w Pieninach* (National Park in Pieniny) were established. The first act regulating the issue of national parks was adopted in 1934⁵, but only one national park, Białowieża National Park, was created based on its provisions after the end of the Second World War.

As defined in the Polish Nature Conservation Act, a national park “covers an area of outstanding environmental, scientific, social, cultural and educational value, with an area of not less than 1000 ha, which protects the whole of the nature and qualities of the landscape”⁶. In Poland, protected areas cover more than 10.1 million ha, which accounts for 32.5% of the country. In 2013 the total area of all the 23 national parks was 314,600 ha, i.e. 1% of the area of Poland. Other forms of nature conservation in Poland include: nature reserves (166,000 ha), landscape parks (2,531,000 ha), protected landscape areas (7,006,000 ha), ecological areas, documentation sites, and landscape and nature complexes (147,000 ha), as well as over 36,000 monuments of nature. In Poland, a large part of the protected areas, including all the national parks and some landscape parks, are included in the Natura 2000 network. Within this network 845 special areas of conservation (SACs) and 145 special protection areas (SPAs) have been established, and they cover almost 20% of the Polish land, which slightly more than the European average⁷.

As specified in the Nature Conservation Act, a national park is created to preserve biodiversity, resources, objects and elements of inanimate nature and landscape values, to restore the proper state of natural resources and components and to reconstruct distorted nature habitats, plants, habitats of animals and habitats of fungi. A national park is a public organisation with a legal personality. National parks are established in particular:

- to carry out conservation activities in the park’s ecosystems;
- to make the park area available to the public in line with conservation plans, conservation measures and decisions made by their director;
- to carry out activities for environmental education.

⁴ E. Simonides, *Ochrona przyrody*, Warszawa 2008, p. 401.

⁵ Ustawa z dnia 10 marca 1934 r. o ochronie przyrody/ Act of 10 March 1934 on nature conservation (Dz.U. 1934 No. 31 item 274).

⁶ Ustawa z dnia 16 kwietnia 2004 r. o ochronie przyrody/ Act of 16 April 2004 on nature conservation (Dz.U. 2004 No. 92 item 880), Article 8 clause 1.

⁷ *Ochrona środowiska*, GUS, Warszawa 2014, p. 40.

The director of a national park is selected in a competitive procedure and appointed by the minister competent for environmental affairs. A director of a national park has the status of a nature conservation body. An advisory body for the conservation of nature is a scientific council of the national park. According to the Nature Conservation Act of 2004, tasks related to the protection of property and the fight against crime and offences to nature conservation in the national parks are executed by conservation officers who are employed in the unit of the National Park Service.

The area of a national park is accessible to the public inasmuch as it has no adverse affect on the wildlife in the national park. The conservation plan (or a list of conservation measures) specifies sites that are accessible to the public and the maximum number of visitors who can stay at one site at the same time. Financing is the key problem in the implementation of objectives for which a national park has been established.

Financing of the operation of national parks before 2012

The debate on the need to reform the operation of national parks, including their financing model, has been ongoing in Poland for many years. Before 2010, national parks functioned as state budget units⁸. Because the funds from the state budget were insufficient to cover the expenses, parks had to seek other sources of financing for their operation. Due to the fact that the national parks did not have a legal personality they could not run business. This situation was the reason for which each park established an auxiliary enterprise. An auxiliary enterprise was a separated part of the budget unit in organizational and financial terms. Auxiliary enterprises were established by national parks to execute nature conservation tasks using income generated by them from:

- the sale of wood and non-wood products;
- fees for entrance to the park or its parts;
- fees for making the national park or its part available;
- fees for entrance to some facilities in the national park;
- sales of services, for example transportation, repair, construction.

The auxiliary enterprises covered the costs of their operation from self-generated income, which did not include income from rental and lease and other agreements of similar types concluded in relation to the assets of

⁸ Ustawa z dnia 27 sierpnia 2009 r. o finansach publicznych/ Act of 27 August 2009 on public finance (Dz.U. 2009 No. 157 item 1240).

the State Treasury or local administration units, respectively⁹. Although auxiliary enterprises were allowed to run a business, they could not be treated as companies in the legal sense. This resulted from the fact that they were established under a budget law, and not under the business law¹⁰.

The insufficiency of annual subsidies granted from the state budget to national parks was particularly clear in 2001–2005. According to the financial plans, subsidies in that period dropped from 59.9 million PLN in 2001 to 52.8 million PLN in 2005¹¹. Therefore, the burden of financing the national parks under the law at that time was shifted to auxiliary enterprises established by national parks.

This shift in the financial burden was reflected in the revenues of auxiliary enterprises. In 2000–2004 there was a gradual increase in the share of these funds in the total revenue of auxiliary enterprises and budget units. Revenues from the sale of products and services increased in contrast to the decreasing budget subsidies, and reached, for example, 62.3 million PLN in 2004, which accounted for 45% of total revenues generated by national parks and their auxiliary enterprises.¹²

This process has aroused well-deserved criticism. A recognized Polish authority, the State Council for Nature Conservation, in its report prepared in 2007 entitled “The position on the crisis of nature conservation in Poland” indicated, for example, that national parks, „spend almost all of their budget on the very low pay of employees and on maintaining the extensive infrastructure of the management of parks”, and „are also lacking funds for necessary conservation and educational measures, as well as environmental monitoring”. The report also emphasized that because of the activities associated with the acquisition of timber for sale wood stands in the national parks are starting to resemble production forests¹³.

Also, the Supreme Chamber of Control indicated that the national parks, in order to cope with the tasks imposed by the Minister of Environment, face at the same time restrictions arising from the lack of sufficient revenues and inability to adjust the planned revenues to expenditure, and undertake,

⁹ Ustawa z dnia 30 czerwca 2005 r. o finansach publicznych/ Act of 30 June 2005 on public finance (Dz.U. 2005 No. 249 item 2104), Article 26.

¹⁰ Decision of the Provincial Administrative Court in Warsaw of 6 July 2005, VI SA/Wa 2083/04, in: J. Lipski, M. Nowotnik, A. Szafranski, *Ustawa o swobodzie działalności gospodarczej. Wybór i opracowanie*, Warszawa 2009, p. 21.

¹¹ Budget laws for years 2001–2005.

¹² Report of the Supreme Chamber of Control from June 2006, Report from the inspection on the operation of national parks focused on the conservation of nature, sustainable use and renewal of resources, p. 26.

¹³ State Council for Nature Conservation, *Najważniejsze problemy ochrony przyrody w Polsce*, Warszawa 2007.

through their auxiliary enterprises, activities characteristic for business operators focused on maximizing income. One example of this was the acquisition of timber from national parks in the same manner as it is done from production forests.¹⁴

Following the provisions of the Public Finance Act of 2005, actions were taken then to consolidate the public finance system and to achieve greater transparency in the spending of budget funds. The first step towards this was the amendment of the Public Finance Act of 2005. As a result, regulations implementing the Public Finance Act were adopted¹⁵ and auxiliary enterprises operating in national parks were liquidated, starting from the end of 2010. Furthermore, the Nature Conservation Act, amended on August 18, 2011, transformed national parks from a state budget unit into a public organisation with a legal personality in line with the definition used in the Public Finance Act of 2005, Article 9, clause 14.

Financing of the operation of national parks after 2012

The reform of the legal form in 2012 based on which national parks operate has not caused any significant transformations in the tasks assigned to parks. However, it introduced a number of changes, for example financial management, preparation of plans and financial reports. Under the current legislation, national parks as public organisations with a legal character can use multiple diverse sources for the financing of their operation. According to the Nature Conservation Act of 2004 (Article 8h, clause 1), the list of revenue sources for national parks is wide, and includes:

- subsidies from the public budget;
- subsidies and loans from The National Fund for Environmental Protection and Water Management (NFOŚiGW) and its provincial funds;
- fees charged for entrance to the national park or its parts, as well as fees for making the national park or its part available;
- fees charged in relation to educational activities of the national park and entry to facilities related to such activities;
- income generated by the rental, lease, or use of premises;
- income from the sales of products gained in relation to the execution of tasks specified in a conservation plan or conservation tasks;

¹⁴ Report of the Supreme Chamber of Control of June 2006, p. 26.

¹⁵ Ustawa z dnia 27 sierpnia 2009 r. – Przepisy wprowadzające ustawę o finansach publicznych/ Act of 27 August 2009, Regulations implementing the act on public finances (Dz.U. 2009 No. 157 item 1241).

- income from the sales of educational, informational and scientific publications;
- income from the sales of movable assets;
- income from agricultural activity;
- income related to the provision of information on the environment and its protection;
- fees for access to information on natural, cultural and cartographic resources;
- income from punitive damage paid by perpetrators of offences against the environment;
- other revenues not listed above but resulting from the operation of the national park.

In addition, national parks can raise revenues from voluntary contributions in cash, inheritance, bequests and donations in cash or in kind, income from events organized for the benefit of nature conservation, funds from the European Union budget, funds from foreign non-returnable sources other than funds from the budget of the European Union, as well as subsidies from the budgets of local administration units for the implementation of tasks related to the protection of regional natural and cultural assets.

Another major change in the functioning of the national parks is that they can draw credit and loans¹⁶ in the amount of 60% of revenue specified in the financial plan, or 60% of costs for the implementation of tasks of the national park (Nature Conservation Act of 2004, Article 8h, clause 3). But the fundamental change from the point of view of the problem analysed in this paper is that national parks have been allowed to conduct business under the Business Freedom Act of 2 July 2004¹⁷, with some limitations specified in the Nature Conservation Act of 2004 (Article 8b, clause 2).

The scope of business allowed by the Nature Conservation Act is very wide, since “business includes any commercial activity in production, construction, trade, services, prospecting, exploration and exploitation of minerals from deposits, as well as professional activity carried out in an organized and continuous manner”¹⁸. Limitations on business activity run by national park are specified in the Nature Conservation Act of 2004 (Article 8, clause 2) and relate primarily to types of business inconsistent with the basic objectives for which national parks are established, such as the preservation of the biodiversity, resources, objects and elements of nature. In addition, it is

¹⁶ With the permission of the minister relevant for environmental affairs issued after agreement with the minister relevant for public finances in the form of an administrative decision.

¹⁷ (Dz. U. of 2010 No. 220, item 1447, as amended).

¹⁸ Ustawa z dnia 2 lipca 2004 r. o swobodzie działalności gospodarczej/ Act of 2 July 2004 on business freedom (Dz.U. 2010 No. 220 item 1447), Article 2.

worth noting that business activity should be additional, and not the fundamental activity of national parks, since it was not the reason for which they were created.

According to the Business Freedom Act (Article 14, clause 1), entrepreneurs being individuals may undertake business activities after they have been registered in the Central Register of Entrepreneurs (CEIDG). Other enterprises (including national parks) have to be registered in the National Court Register (KRS). However, the list of enterprises specified in the Act on the National Court Register is closed and does not include national parks¹⁹. Therefore, national parks cannot be registered in the National Court records, and thus cannot conduct business.

It seems that in the current situation, the only solution for national parks is to establish entities which could be entered into CEIDG (individuals) or KRS (other entities), and thus, to conduct business on behalf of the park. Considering this, it seems reasonable to open further options for financing the operation of national parks through their subsidiaries:

- partnerships under commercial law (for example limited liability company, joint-stock company);
- enterprises running business in the form of public-private partnerships;
- non-governmental organisations operating under the act on public benefit institutions (registered NGOs, foundations).

Conclusions

The analysis provided the following conclusions:

- 1) Tasks of national parks can be financed from various sources, including revenues from businesses run by them.
- 2) Revenues from businesses run by national parks cannot be gained in a manner inconsistent with the purpose for which national parks were established.
- 3) Because of the existing regulations specified in the Business Freedom Act and Act on the National Court Register (KRS), national parks cannot directly exercise the provisions of the Nature Conservation Act allowing them to run businesses.
- 4) A potential solution for national parks can be seen in running businesses by establishing, for example, partnerships under commercial law, public-private partnership or non-governmental organisations.

¹⁹ Ustawa z dnia 20 sierpnia 1997 r. o Krajowym Rejestrze Sądowym/ Act of 20 August 1997 on the National Court Register (KRS) (Dz.U. 1997 No. 121 item 769), Article 36.

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