

Stanisław WRZOSEK • Magdalena KISAŁA

INTERDISCIPLINARY APPROACH IN RESEARCH ON THE ROLE OF LOCAL GOVERNMENT UNITS IN ENVIRONMENTAL PROTECTION

Stanisław **Wrzosek**, Prof. (ORCID: 0000-0001-5557-5758) – *The John Paul Second Catholic University of Lublin, Faculty of Law, Canon Law and Administration*

Magdalena **Kisala**, PhD (ORCID: 0000-0003-4593-0394) – *The John Paul Second Catholic University of Lublin, Faculty of Law, Canon Law and Administration*

Correspondence address:

Spokojna Street 1, 20-074, Lublin, Poland

e-mail: kisala@kul.lublin.pl

ABSTRACT: Environmental protection was placed by the legislator as one of the public tasks performed by local government. Due to the fact that the local government performs decentralized tasks, which are mainly intended to meet the needs of local communities in a given territory, tasks related to the field of environmental protection also serve the needs of residents of communes, poviats and voivodships in terms of the use of the environment. Therefore, the type and nature of these tasks will be adapted to the role and specialization of individual local government units. Local government units perform tasks stipulated in the existing legislation. They are also obliged to use instruments related to planning and strategic documents that take account of statutory environmental protection assumptions. In order to achieve higher effectiveness in the scope of environmental protection, local government units may take actions that facilitate the use of techniques and methods for environmental management and use quality management tools.

KEY WORDS: local government, environmental protection, public tasks, administrative policy, management sciences

Introduction

Environmental protection covers issues of an interdisciplinary character, therefore, the considerations in this article may be subject to assessment from the point of view of various research disciplines. The aim of the article is to identify legal, strategic and quality instruments which local governments (or its bodies) use to undertake activities related to environmental protection and assessment of their role in this area. Such an approach to the subject allows to study the functioning of local government units in environmental protection from the point of view of administrative law, administrative science, administrative policy and management sciences. Each of them characterizes the subject matter in a different way and emphasizes distinctive features of applied research and scientific methods (Dobosz, 2001, p. 29). At the same time, however, they complement each other giving a wider scope of assessment of the problem under investigation. In connection with the above, the study begins with the analysis of the legal position of local government units from the point of view of the administrative law, based on the applicable legal provisions regarding separation from the structure and tasks of the state with regard to environmental protection. Using the assumptions of the administrative science, however, issues related to the structure of local government bodies dealing with environmental protection and issues related to the indication and assessment of competences situating these bodies in the indicated structures were presented. Next, the issues were analysed from the point of view of the administrative policy, which complements administrative science, as it includes postulates and guidelines for improving the functioning of local government administration. The discussion ends with the analysis of the applicability of management sciences in the field of environmental protection activities undertaken in local governments in order to find opportunities to increase the effectiveness of local government bodies.

Research methods

Theoretical and empirical considerations are based on normative acts and specialist literature. First of all, local government units operate on the basis of national law. Therefore, to investigate the subject matter, the legal basis of environmental protection and local government had to be analyzed. Secondly, the content of the article is also a subject to the regulation of community law. For this reason, community law documents regarding environmental management have been analyzed. The conducted thesis have been supplemented by the specialist literature.

Results of the research

Law as the foundation of organisation and the functioning of local government

According to the Constitution of the Republic of Poland, local government in Poland participates in exercising public authority by performing an important part of public tasks not reserved by the Constitution of the Republic of Poland or acts for other bodies. Additionally, public authorities, and hence also local government authorities, are obliged to protect the environment and conduct a policy ensuring ecological security for contemporary and future generations. Clarification of constitutional regulation in the scope of further repartition of reserved tasks for self-government units, including the area of environmental protection, is made in the public administration system laws and specific laws. Tasks are transferred using the principle of decentralization and the principle of subsidiarity.

The principle of decentralization is expressed in art. 15 para. 1 of the Constitution of the Republic of Poland of 1997. According to its content, the territorial system of the Republic of Poland ensures decentralization of public authority which consists in a permanent, legally protected transfer of important tasks, competences and resources of bodies operating at the national level of cooperative entities operating at various levels of the territorial division of the country (Judgment of the Constitutional Tribunal of July 18, 2006, ref. no U5/04, OTK-A 2006, item 80). The legal definition of decentralization emphasizes three aspects: 1) transfer of public tasks to be implemented at the local level, 2) use of property and rights by local authorities, ensuring their independence and the ability to decide on public matters, 3) adequate financial resources to implement their own policies (Gajl, 1993, p. 12).

The principle of subsidiarity is expressed in the preamble of the Constitution of the Republic of Poland of 1997 as the one that is to strengthen the rights of citizens and their communities. The principle of subsidiarity is related to the principle of decentralization and it is complementary thereof. On this basis, the legislator makes a decision regarding the level at which the task should be carried out and communicates the competences related to its implementation. Master decisions regarding citizens should be made at the lowest possible level and the closest to the citizen, and the decision-making criterion at the higher levels is efficiency (Milczarek, 1998, p. 319). The assignment of tasks and competences to a specific unit, and consequently to its bodies, will therefore also have an organizational character (Matczak, 2004, p. 27), which streamlines and improves the functioning of public

administration bodies. In accordance with the principle of subsidiarity, the higher level unit should not be entrusted with tasks that can be performed at lower level unit with the same efficiency. Higher units should operate in those areas whose scope gives them the possibility to undertake more effective actions than lower units (Saint – Ouen, 1991, p. 4). The division of power, according to the principle of subsidiarity, should be rational and based on the criterion of effectiveness (Dolnicki, 2012, p. 30). The division of tasks based on the principle of decentralization and the principle of subsidiarity was reflected in the statutory provisions of the administrative law and in specific laws.

Local government units perform their own tasks and commissioned tasks. The municipality's own tasks include, in particular, matters related to environmental protection and nature protection (Article 7 (1) (1) of the Act of 8 March 1990 on municipal self-government, i.e. Journal of Laws of 2019, item 506). The poviats exercise certain public tasks of a supra-municipal nature with respect to environmental protection and nature (Article 4 paragraph 1 item 13 of the Act of June 5, 1998 on poviats self-government, Journal of Laws of 2019, item 511). The voivodship self-government performs voivodship tasks defined by acts in the field of environmental protection (Article 14 paragraph 1 item 8 of the Act of 5 June 1998 on the voivodship self-government (VSG), i.e. Journal of Laws of 2019, item 512). Additionally, the voivodship self-government defines the goal related to the preservation of the value of the natural environment in the voivodship development strategy, taking into account the needs of future generations (Article 11 paragraph 1 point 4 of the VSG). The voivodship self-government also implements the voivodship's development policy, which consists of the rational use of natural resources and shaping the natural environment, in accordance with the principle of sustainable development (Article 11 paragraph 2 point 5 of the VSG). Tasks assigned to self-government units can be divided into four categories: 1) organizing tasks, 2) direct-executive tasks, 3) obligatory and regulatory tasks, 4) supervisory and control tasks (Górski, 1992, p. 105). Thus, tasks related to environmental protection are located at every level of local government. Organizational tasks are performed by municipalities, poviats and voivodships. The main contractor for direct-executive tasks is the commune, although, of course, the poviats and the voivodships undertake activities in this area. However, the commune and poviats are the units obliged to undertake tasks important from the point of view of local communities. On the other hand, the objective of the voivodship self-government is primarily the civilization development of the region (Barczak, 2015, p. 222-230).

Research on the role of local government in environmental protection from the perspective of administrative sciences

The subject of interest of the administrative sciences is the examination of the administration in a given system, i.e. the problems of the influence of the state system on the shape of administration, the matters of administration structures and the interconnectedness of the administrative institutions (Leoński, 2010, p. 20 and n.). In connection with the above, the next step in the analysis is the identification of self-government bodies that have been granted competences related to environmental protection. According to art. 3 point 15 of the Act of 27 April 2001 – Environmental Protection Law (Journal of Laws of 2018, item 799, with later amendments (E.P. Law), the environmental protection authorities are administrative bodies appointed to perform public tasks in the field of environmental protection. The legislator enumerates environmental protection authorities: 1) commune head, mayor or city president, 2) starosta, 3) voivodship assembly, 4) voivodship marshal, 5) voivode, 6) minister competent for the environment, 7) general director of environmental protection, 8) the regional director for environmental protection. If the Act so provides, the bodies of the Inspection for Environmental Protection operating under the provisions of the Act on the Inspection for Environmental Protection perform tasks in the field of environmental protection (Articles 376, 377 E.P. Law). Some inconsistency of the legislator regarding the recognition of the voivodeship marshal and starosta as the environmental protection body, alongside the mayor or president of the city and the regional government raise doubts in the literature on the subject. It should be agreed with the view of the doctrine that the doubts arising in this context do not pose practical problems, because the tasks and competences of individual bodies have been specified in specific regulations (Kościńska, 2011, p. 97). On the other hand, uncertainty may arise from the recognition of the self-government bodies as the environmental protection body only of the voivodship parliament and omission of the commune council and powiat council, which also have competences in the field of environmental protection, not smaller than the voivodeship regional council (Barczak, p. 221). The competences of the authorities refer to the above-mentioned categories of tasks in the field of environmental protection: organizing tasks, direct-executive tasks, mandatory and regulatory tasks as well as control and supervisory tasks. As part of the organizing tasks, the legislator granted legal instruments to each unit for the adoption of communal, district and provincial environmental protection programs. The competences granted primarily to the commune authorities serve the performance of direct-executive tasks. The content, dates and order of performing these tasks are shaped by supervisory and control bodies, and are implemented by enforcement bodies (Górski,

2002, p. 242). These tasks are implemented primarily in the form of a resolution that most often takes the form of a local law act, as well as in the form of an administrative decision (Barczak, p. 226). The implementation of the obligation and rationing tasks consists in shaping the legal situation of other entities affecting the environment or using it (Górski, 1998, p. 15 and n.). Competences for the implementation of these tasks have been assigned primarily to environmental protection authorities, with particular emphasis on the legal position of the marshal of the voivodship and a reduction in the role of the starosta in this area. Such an assignment of competencies related to the obligation and rationing tasks is justified by reasons of accuracy and efficiency, because it is the voivodeship that gives the greatest guarantee of achieving results related to them (Barczak, p. 226-227). The last group of tasks and related competences concerns the control and supervisory sphere. According to art. 379 E.P. Law, control competences of compliance with and application of environmental protection regulations within the scope of their competence are vested in the voivodship marshal, starosta and mayor of the city. The control measures and the manner of conducting the controls have also been indicated. These authorities or persons authorized by them are entitled to act as public prosecutor in cases concerning offenses against environmental protection regulations.

Administrative policy in the field of environmental protection

The obligation to determine the activities for the implementation of tasks in the field of environmental protection in strategic and planning documents was imposed on the local government. These are activities within the framework of administrative policy, one of which is environmental policy. According to art. 13 E.P. Law, environmental policy is a set of activities aimed at creating the conditions necessary to implement environmental protection, in accordance with the principle of sustainable development. Environmental policy is conducted on the basis of the development strategy, programs and programming documents referred to in the Act of 6 December 2006 on the principles of development policy (Journal of Laws of 2017, item 1376, as amended) and by means of voivodship, powiat and commune environmental protection programs (Article 14 E.P. Law). The primary goal of environmental protection programs is to coordinate the activities and launch appropriate instruments by the competent body, adequate to the needs in the field (Czuryk, 2009, p. 57). The programs make inventories of protective problems, and thus they determine the real scheme of action, which in consequence may lead to the organization of the local government activities in the area (Barczak, 2006, p. 66).

The obligation to implement environmental policy was imposed on local government units at all levels. In documents defining the policy of environmental protection, local government bodies are obliged to undertake specific actions considering their statutory duties as well as conditions and needs of the local government unit. In relation to the obligations imposed on self-government units, the following are created: local government environmental protection programs, repair programs, voivodship waste management plans, resolutions on the implementation of the voivodship waste management plan, local spatial development plans, voivodship spatial development plans, long-term development plans and modernization of water supply equipment and sewage systems and management plans for land located in limited use areas around industrial plants. In reference to the above examples, the characteristic feature is that local environmental protection authorities do not always act as the main planning organ. Their role may be reduced to the function of a co-acting, commissioning or information body (Barczak, 2015, p. 224).

The issues of environmental protection are also regulated by the development strategy of the voivodship, which takes into account the preservation of the value of the cultural and natural environment, considering the needs of future generations (Article 11 paragraph 1 point 4 of the E.P. Law). The voivodship development strategy should take into account the objectives of the medium-term national development strategy, the national regional development strategy, appropriate supra-regional strategies, as well as the goals and directions of the spatial development concept of the country.

Summing up, environmental policy is concerned with taking actions aimed at maintaining or restoring natural balance, rational shaping of the environment and management of its resources in accordance with the principle of sustainable development and aimed at preventing pollution and restoring natural elements to the proper state.

Possibilities of applying management sciences in environmental protection in local government

In order to achieve higher efficiency in the field of environmental protection, local self-government bodies may take actions that facilitate the use of techniques and methods for environmental management. The activities falling within the concept of environmental management include: rational management of natural resources, human resources management in terms of increasing the level of ecological awareness, management of production cycle facilities towards closing these circuits and reduction of waste generation at their source, management of ecological manufacturing, recycling, financial

management – linking environmental and production effects and creating development opportunities for businesses, information management – anticipating internal and external conditions, skilful use of information in decision-making processes and environmental protection (Gajdzik, Wyciślik, 2010). The choice of activities and their formalization depends on the adopted concept of environmental protection in a specific local government unit, which formulates its intentions and intentions regarding environmental protection in strategic documents. The consequence of the acceptance of specific obligations is the selection of means for their implementation. Environmental protection management is primarily associated with the possibility of developing and implementing an environmental management system, whose assumptions are stipulated in the ISO 14001 standard. The basic task of ISO 14001 is to support environmental protection and prevent pollution in accordance with the principle of sustainable development. The objective of implementing the environmental management system specified in the ISO 14001 standard is to improve the environmental performance. The standard is based on periodic reviews and assessments of the environmental management system in order to continuously improve the activity. In turn, the implementation of the ISO standard is a prerequisite for the implementation of the Eco-management and EMAS Audit System. EMAS is an EU environmental certification system that operates on the basis of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation of organizations in the Community eco-management and audit scheme. Both the implementation of the environmental management system based on the ISO standard and the EMAS system are voluntary. The self-government unit makes its own decision, however, it must be made in connection with the undertaken public tasks. The goal of the activities related to the operation of systems is even more effective protection. The local government unit can also apply quality management methods and tools in addition, regardless of the activities related to the implementation of the system. These include benchmarking, outsourcing, just in time, Ishikawa's cause and effect diagram. They can be used incidentally, jointly or separately, and therefore have a flexible character and are used depending on the needs of the local government unit.

Conclusions

A number of statutory obligations in the field of environmental protection have been imposed on local government units. They are implemented by means of various legal instruments. The complexity of the tools gives a

greater guarantee of protection and counteracting negative effects on the environment. The actions of the bodies are determined by the applicable legal norms. The delegation of tasks to self-government units on the principle of decentralization and subsidiarity is to influence their harmonization and take into account the criterion of rationalization of activities. Assignment of tasks to a specific level of the local government structure also takes into account the division of tasks due to the identification of residents' needs and their gradation in terms of their basic character and higher-order needs, and therefore, the need to satisfy them in a given scope and according to their availability.

Obligations related to the implementation of protective tasks were imposed on the authorities of each local government unit, despite the fact that the legislator did not recognize all bodies of self-government units as environmental protection authorities. By equipping the starosta and voivodship marshal with specific competences, the legislator gave them the status of an organ in functional terms. The extension of competences also to these entities indicates that the legislator gives priority to environmental protection and uses the structure of bodies operating in communes, poviats and voivodships in the widest possible way, creating a network of connections for even more effective action.

The legislator gives a significant role to documents formulated as part of the implementation of environmental policy. This role, analysed in this article, is seen in the imposition of the obligation of statutory creation of the indicated documents and their subsequent implementation. Such a broad scope is also worth emphasizing. They are a manifestation of the growing ecological awareness of authorities and residents of local communities, which is reflected in the creation of pro-environmental activities that take into account specific resources and needs. These instruments can be supplemented by instruments of management sciences: systems, methods and tools of a pro-quality nature, implemented on a voluntary basis, using the potential of local government units and creating innovative pro-ecological attitudes. The effectiveness of the undertaken activities is very much dependent on the inclusion of interdisciplinary research, including research including the areas of knowledge indicated in this study.

The contribution of the authors

Stanisław Wrzosek – 50%

Magdalena Kisała – 50%

Literature

- Barczak A. (2015), *Rola samorządowych organów ochrony środowiska w systemie prawa ochrony środowiska*, in: P. Korzeniowski (ed.), *Zagadnienia systemowe prawa ochrony środowiska*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź, p. 221-230
- Barczak A. (2006), *Zadania samorządu terytorialnego w zakresie ochrony środowiska*, Wolters Kluwer Polska, Warszawa, p. 66
- Czuryk M. (2009), *Zadania organów administracji publicznej w zakresie ochrony środowiska*, "Rocznik Naukowy Wydziału Zarządzania w Ciechanowie" No. 3-4(III), p. 57
- Dobosz P. (2001), *Problemy metodologii współczesnej nauki prawa administracyjnego na tle metody historyczno-prawnej*, "Kwartalnik Prawa Publicznego" No. 1, p. 29
- Dolnicki B. (2012), *Samorząd terytorialny*, Wolters Kluwer Polska Sp. z o.o., Warszawa, p. 30
- Gajdzik B., Wyciślik A. (2010), *Wybrane aspekty ochrony środowiska i zarządzania środowiskowego*, Wydawnictwo Politechniki Śląskiej, Gliwice
- Gajl N. (1993), *Finanse i gospodarka lokalna na świecie*, Państwowe Wydawnictwo Ekonomiczne, Warszawa, p. 12
- Górski M. (1992), *Ochrona środowiska jako zadanie administracji publicznej*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź, p. 105
- Górski M. (2002), *Prawo ochrony środowiska*, in: M. Stahl (ed.), *Materialne prawo administracyjne. Pojęcia, instytucje, zasady*, C.H. Beck, Warszawa, p. 242
- Górski M. (1998), *Zadania samorządu terytorialnego w dziedzinie ochrony środowiska a nowy podział kompetencji terenowych organów administracji publicznej*, "Ochrona Środowiska. Prawo i Polityka" No. 4, p. 15-16
- Kozińska A. (2011), *Administracja samorządowa*, in: M. Rudnicki (ed.), *Organizacja ochrony środowiska*, Wydawnictwo KUL, Lublin, p. 97
- Leoński Z. (2010), *Nauka administracji*, C.H. Beck, Warszawa, p. 20-21
- Matczak M. (2004), *Kompetencja organu administracji publicznej*, Kantor Wydawniczy Zakamycze Grupa Wolters Kluwer, Kraków, p. 27
- Milczarek D. (1998), *Subsydiarność – próba bilansu*, in: D. Milczarek (ed.), *Subsydiarność*, Centrum Europejskie Uniwersytetu Warszawskiego, Warszawa, p. 319
- Prawo ochrony środowiska (2001), Dz.U. z 2018 r. poz. 799 ze zm.
- Rozporządzenie Parlamentu Europejskiego i Rady (WE) (2009), nr 1221 w sprawie dobrowolnego udziału organizacji w systemie ekozarządzania i audytu we Wspólnocie (EMAS)
- Saint – Ouen F. (1991), *Podział władzy w demokracji europejskiej*, "Samorząd Terytorialny" No. 6, p. 4
- Ustawa o samorządzie gminnym (1990), Dz.U. z 2019 r. poz. 506
- Ustawa o samorządzie powiatowym (1998), Dz.U. z 2019 r. poz. 511
- Ustawa o samorządzie województwa (1998), Dz.U. z 2019 r. poz. 512
- Wyrok TK z dnia 18 lipca 2006 r., sygn. akt U5/04, OTK-A 2006, poz. 80