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Ecological and Non-ecological Advertising (Modern and Historical Legal Aspects)

Introduction. Environmental Protection Measures in General

Environmental protection is one of the main declared aims of the European Union. The Preamble of the Treaty of European Union openly states that the representatives of the Member States are 'DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and **environmental protection**, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields'². In addition, Article 3 Paragraph 3 Sentence 2 of the TEU provided that the European Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a **high level of protection and improvement of the quality of the environment**. Article 191 of the Treaty on the Functioning of the European Union³ was dedicated to the EU environmental policy. It states that the EU environmental policy contributes to the pursuit of the following objectives: preserving, protecting and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resources, promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change. The EU environmental policy aims at a high level of protection taking into account the diversity of situations in the various regions of the Union. It is based on the precautionary principle and on the principles

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² OJEU – C 326/15 of 26.10.2012.

³ OJEU – C 326/47 of 26.10.2012.

that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

Environmental protection should be understood as undertaking or refraining from undertaking actions in order to contribute to the preservation and restoration of biological balance; this protection involves especially rational building of environment and management of natural resources according to the principle of sustainable development, pollution prevention and restoration of natural elements⁴.

Environmental protection is without doubt a special responsibility of contemporary man towards posterity. It is exercised with the use of a number of instruments, hence the legal responsibility in the domain of environmental protection may be an administrative responsibility, civil and penal liability⁵. From the perspective of public interest, it is essential that those who pollute the environment are held liable however – obviously – it would be much better if the damage to the environment was not incurred. Environmental protection cannot be carried out only through global, European or state legislation. In fact, the individual and the local community are responsible for the protection of the environment. Appropriate conditions for actual, everyday environmental activities are the easiest to create on the basis of the local community. In this context environmental education is of particular importance, it shapes personality traits, attitudes, habits and opinions: conscious attitude towards the environment (a sense of moral responsibility for the quality of the social and natural environment), respect for various forms of life (fondness of nature, respect for the laws of nature), appropriate attitudes towards the environment and its protection (willingness to undertake actions to protect the environment). Awareness that a man has a significant impact on the changes in the environment and that natural resources are finite should lead to their rational use. Consequently, environmental education aims to raise public awareness of environmental protection to implement sustainable development. Mass media with an impact superior to any other transfer of information are of key importance in environmental education. No wonder that the Polish legislator, taking into consideration the impact of mass media, imposed on it an obligation to

⁴ Article 3 Point 3 of the Act of 27 April 2001 – Environmental Protection Law, consolidated text: „Journal of Laws” of 2013, item 1232 as amended.

⁵ For more information regarding civil liability see, e.g. P. Mazur, *Formy zbiorowe ochrony prawa osobistego do środowiska* [Eng: *Collective forms of protection of personal rights to environment*], „Państwo i Prawo” 2006, No. 5, pp. 102–115.

create a positive attitude of society to environmental protection and popularise the environmental protection principles in publications and broadcasts⁶.

Legal Regulation Governing Non-ecological Advertising

The above considerations prove that it is specifically noteworthy to refer to the issue of advertising, the impact of which is extremely considerable. It is interesting that notwithstanding the fact that advertising has been accompanying social life for so many years, the issue of its „ecological correctness”, that is assessed from the legal point of view, is a relatively new phenomenon. As far as the Polish law and related regulations are concerned, the regulations that ban „advertising or another kind of promoting goods or services” that are in contravention with ecology were actually enforced as late as on 19th of May 2000⁷ when the Act of 29 December 1992 on radio broadcast and television incorporated the ban on advertising (currently commercial content), programme and other content encouraging health, safety or environmental hazards (Article 16b Point 5, Article 18 Clause 3), which was followed by the amendment to the Act of 27 April 2001 – Environmental Protection Law enforced on 1st of October 2001 to put the wording of that ban into a greater detail and explicitness.

The ban on the advertising that encourages environmental protection hazards⁸ was incorporated into the Polish law and related regulations in conjunction with Article 12 letter d and e of the Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities⁹. In compliance with that Directive, tele-

⁶ Article 78 of the Environmental Protection Law.

⁷ The date of entry into force of Act of 31 March 2000 amending the Broadcasting Act and Act on Polish language, „Journal of Laws”, No. 29, item 358.

⁸ For more information see: D. Chojnacki, D. Dziedzic-Chojnacka, *Zakaz reklamy nieekologicznej w polskim prawie ochrony środowiska* [Eng: *Ban on non-ecological advertising in Polish Environmental Protection Law*], „Radca Prawny” 2007, No. 4, pp. 52–63; D. Dziedzic-Chojnacka, *Zakaz reklamy sprzyjającej zachowaniom zagrażającym ochronie środowiska w ustawie o radiofonii i telewizji* [Eng: *Ban on advertising encouraging behaviours threatening environmental protection in the Broadcasting Act*], [in:] *Odpowiedzialność za szkodę w środowisku* [Eng: *Environmental liability*], ed. B. Rakoczy, Toruń 2010, pp. 215–230; E. Dolegowska, *A few thoughts on (non-)ecological advertising*, „Polish Yearbook of Environmental Law” 2011, pp. 175–187.

⁹ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain pro-

vision advertising cannot encourage health or safety hazards (letter d) or environmental protection hazards (letter e). After 19th of December 2007 that issue was governed by Article 3e Clause 1 Point c (iv) of the amended Directive 89/552/EEC, in conformity of which Member States assured compliance of commercial audiovisual content broadcast by mass media service providers falling within the jurisdiction of the Member States with a specific set of commercial requirements, inter alia, the requirement that audiovisual content cannot encourage considerable environmental protection hazards.

The currently binding Directive 2010/13/EU¹⁰ of the European Parliament and Council also explicitly refers to qualitative standards of commercial audiovisual content, stating that the same cannot encourage considerable environmental protection hazards (Article 9 Clause 1 letter c subsection iv of this Directive). The new wording „considerable environmental protection hazards” means a narrower definition of the advertising ban that had been in force under the Directive 89/552/EEC, however the notion „advertisement” was replaced with a broader notion „commercial audiovisual content”. In conformity with Article 1 Clause 1 letter h of the Directive 2010/13/EU, that includes „image accompanied or not by sound, that serves the purpose of promoting directly or indirectly goods, services or image of natural or legal person running business operations. Such images accompany a broadcast programme or are incorporated into it in return for fee or remuneration or for autopromotion purposes”. That is the case with television advertising, sponsoring, teleselling or product locating.

Non-ecological Advertising

On the grounds of the Polish law and related regulations governing the subject matter under consideration, the Act of 27 April 2001 – Environmental Pro-

visions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, OJ – L298/23 of 17/10/1989. However the Directive has been amended on 19 December 2007 by the Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities Text with EEA relevance, OJEU – L 332/27 of 18.12.2007.

¹⁰ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJEU – L 95/1 of 15/4/2010.

tection Law is of utmost importance as it comes forward with the explicit and straightforward ban on the so called non-ecological advertising. In accord with Article 80 *advertising or another kind of promoting goods or services should not contain the content encouraging consumption model that is in contravention with the environmental protection policy and sustainable development policy, including but not limited to the image of wilderness used for promoting products and services that have adverse impact upon natural environment.*

The analysis of that regulation results in the conclusion that it contains two independent norms but the latter one refers to the eligible form of that ban:

- 1) advertising or another kind of promoting goods or services should not contain the content encouraging consumption model that is in contravention with the environmental protection policy and sustainable development policy and
- 2) advertising or another kind of promoting goods or services should not particularly use the image of wilderness for promoting products and services that have adverse impact upon natural environment)¹¹.

The formulation of that stipulation indicates that its first part focuses on the advertising substance in the context of the consumption model and its second part – focuses on its form¹².

That is the ban on advertising¹³ and any other kind of promoting goods and services. The Polish legislator regards advertising as one of the kinds of promotion that represents a broader notion and includes all and any activities aiming at increasing popularity of some good or undertaking. The essential thing is that non-ecological advertising and promoting is banned regardless of the fact whether it refers to goods and services directly related or not to natural envi-

¹¹ J. Pakuła, *Glosa do wyroku Sądu Apelacyjnego w Warszawie z dnia 12 stycznia 2010 r.* [Eng: *Gloss of the judgement of the Court of Appeal in Warsaw of 12 January 2010*], VI ACa 666/09 (*unpublished*), „Przegląd Prawa Ochrony Środowiska” 2011, No. 2, p. 124.

¹² D. Chojnacki, D. Dziejic-Chojnacka, *op.cit.*, p. 61; J. Pakuła, *op.cit.*, pp. 124–125.

¹³ In accordance with the Broadcasting Act of 29 December 1992 (consolidated text: „Journal of Laws” of 2015, item 1531 as amended) commercial communication is all communication, including images with or without sound or only sounds, which directly or indirectly aims to publicise goods, services or goodwill attached to an entity carrying out economic or professional activities in a broadcast or included in it for a fee or other remuneration or for self-promotional purposes, especially advertisement, sponsorship, teleshopping and product placement (Article 4 Point 16), while an advertisement is commercial communication from public or private body connected with its economic or professional activities aiming to promote sells or paid use of goods or services; self-promotion is also an advertisement (Article 4 Point 17).

ronment and its protection¹⁴. It seems that in practice it may refer exclusively to business-related advertising, namely advertising of goods and services and not for instance advertising of behaviour, self-conduct, etc.

Advertising or another kind of promoting will violate Article 80 of the Environmental Protection Law when it publicises the consumption model that is contravention with the environmental protection policy and the sustainable development policy. Unfortunately the Polish legislator has not clarified how the notion the consumption model that is contravention with the environmental protection policy and the sustainable development policy” should be understood. It seems that in respect of the environmental protection policy, the rule of universal use of natural environment¹⁵, the rule of comprehensive environmental protection¹⁶, the rule of prevention and caution¹⁷, the rule „the polluter pays”¹⁸ should be particularly observed as the rules of reference for the purpose of assessing ecological correctness of advertising. Whereas the sustainable development policy as referred to in Article 80 of the Environmental Protection Law takes its origin from the European Union and Polish Constitutional Law and related regulations. In conformity with Article 5 of the Constitution of the Republic of Poland, the Republic of Poland guards independence and integrity of its territory, assures freedom and human and civil rights and security of its citizens, guards national heritage and assures environmental protection, addressing the sustainable development policy. As far as the sustainable development is concerned, this should mean such economic and social development that integrates political, economic and social activities that observe and protect environmental balance and sustainability of fundamental environmental processes in order to guarantee the opportunity to satisfy basic needs of respective communities and citizens of both the contemporary generation and future generations (Article 3 Point 50 of the Environmental Protection Law)¹⁹.

¹⁴ B. Rakoczy, [in:] Z. Bukowski, E.K. Czech, K. Karpus, B. Rakoczy, *Prawo ochrony środowiska. Komentarz* [Eng: *Environmental Protection Law. Commentary*], Warszawa 2013, p. 112.

¹⁵ Article 4 of the Environmental Protection Law.

¹⁶ Article 5 of the Environmental Protection Law.

¹⁷ Article 6 of the Environmental Protection Law, Article 192 TFEU.

¹⁸ Article 7 of the Environmental Protection Law, Article 191 TFEU.

¹⁹ For more information regarding sustainable development see: M. Kenig-Witkowska, *Koncepcja „sustainable development” w prawie międzynarodowym* [Eng: *The concept of sustainable development in international law*], „Państwo i Prawo” 1988, No. 8, pp. 45–58; Z. Bukowski, *Zrównoważony rozwój w systemie prawa* [Eng: *Sustainable development in the legal system*], Toruń 2009; R. Atkinson (ed.), T. Georgios (ed.), K. Zimmermann (ed.),

Generally speaking it is banned to publicise the content related to the use of natural environment and its components in contravention with the environmental protection policy and sustainable development policy²⁰. Furthermore, according to the legislator advertising and promoting goods and services that have adverse impact upon the natural environment by means of the image of wilderness is extremely detrimental. The notion of wilderness here includes both animate nature (e.g. plants and animals) and inanimate nature (e.g. rocks, boulders, boulder fields etc.). It is the case with animate nature and inanimate nature found in the natural environment, namely the wilderness. Interestingly enough it is exclusively banned to use the image of wilderness whereas it is permissible to use the sound of wilderness (e.g. rush of the mountain streamlet, bellow of a bison etc.)²¹.

Judicial Decisions

Judicial decisions of the Polish courts do not often take into consideration ecological correctness of advertising, thus it is plausible to mention two court procedures pending before the Court of Appeal in Warszawa.

Accordingly in 2008 the petition to ban the use of the image of a bison by one of the largest-sized banking institutions in Poland was filed with the Circuit Court in Warszawa, meaning the discontinuation of advertising goods and services by means of the image of the wilderness, which violates the law and related regulations.

The Circuit Court rejected the petition and the Court of Appeal rejected the appeal, notwithstanding the fact that it was indeed admitted that Article 80 of the Environmental Protection Law did apply to the instances of the use of the image for advertising or promoting purposes, that was commonly deemed to represent the component of the wilderness even though it was used by means of presenting a pictogram²². Accordingly it did not matter that the im-

Sustainability in European Environmental Policy: Challenges of Governance and Knowledge (Routledge Advances in European Politics), London 2010; J. Kielin-Maziarz, *Koncepcja zrównoważonego rozwoju w prawie Unii Europejskiej* [Eng: *The concept of sustainable development in EU law*], Lublin 2013.

²⁰ B. Rakoczy, [in:] Z. Bukowski, E.K. Czech, K. Karpus, B. Rakoczy, op.cit., p. 113.

²¹ Ibidem, p. 114.

²² It should be noted that during the evaluation regarding the violation of the ban on the non-ecological advertising, it is not taken into consideration whether the image of wilderness used inappropriately in the advertisement is real or digital.

age did not directly refer to a specific (real) image of the wilderness. It was also underlined that the legislator allowed for the claim to discontinue advertising and promoting a product only under the circumstances when an economic operator, that used the image of the wilderness for advertising purposes, publicised, supported, disseminated the consumption model that was obviously in contravention with the environmental protection policy and sustainable development policy. Proving that advertising aims at publicising the consumption model that only has adverse impact the natural environment but also damages, degrades it and throws the natural environment off balance is the precondition for a successful claim governed by Article 80 of the Environmental Protection Law. It is not sufficient to prove that advertising or another kind of promoting is conducted by means of the image of the wilderness²³.

Still another lawsuit instituted before economic court considered whether the use of the image of the wilderness for beer advertising and promoting purposes had averse impact upon the natural environment, namely whether the television advertising of beer by means of the image of a group of youngsters drinking beer and watching the investigation into the shape of the bottle of beer stamped on the cereal field encouraged to damage cereal crops, litter the natural environment with empty bottles or degrade the natural environment by other means. In this case the petition and subsequent appeal were also rejected by the court. The Court of Appeal in Warszawa resolved that it was not banned to use the image of the wilderness for the purpose of advertising grocery products (beer). The ban on the use of the image of the wilderness for the purpose of promoting goods and services that had adverse impact upon the natural environment exclusively referred to the instance of advertising the consumption model that apart from the adverse impact upon the natural environment such a consumption model damaged, degraded it, threw the natural environment off balance. We needed to bear in mind that there were actually no products or services that would not have brought about any adverse impact upon the natural environment. Should have been the case that the legislator intended to discontinue the image of the wilderness for business-related advertising purposes, it would have meant violation of the principle of proportionality of measures suitable to achieve the expected aims of the legal regulations²⁴.

²³ The judgement of the Court of Appeal in Warsaw of 12 January 2010, VI ACa 666/09, LEX No. 1112665.

²⁴ The judgement of the Court of Appeal in Warsaw of 8 December 2009, VI ACa 621/09, LEX No. 677994.

Thus it seems that Article 80 of the Environmental Protection Law allows to draw the conclusion that it is the ban on the promotion (advertisement) that publicises „non-ecological” consumption model or informs on such a model. It is plausible to suspect that such advertising contributes or may contribute to the increase in the popularity of improper behaviour. Advertising an off-road vehicle that is driven breathtakingly in the territory of the national park, damaging plants and frightening animals away²⁵, advertising soft drink, the empty package of which litters the lawn as well as advertising useless and needless production of solid waste, not using the image of the wilderness may serve as the examples of non-ecological advertising.

Petition to Discontinue Non-ecological Advertising

Non-ecological advertising is undesirable phenomenon that may induce adverse reaction of a consumer to the natural environment and related protection. Encouraging adverse reaction by means of advertising may reach extremely large target groups, and as such it may be the source of hazards. It is indeed obvious that the ban on the non-ecological advertising is not sufficient to assure its full and effective compliance. It is necessary to undertake measures to assess whether specific advertising is indeed in contravention with the law and related regulations and if that is the case – it is necessary to apply a legal measure that will prevent this kind of illegitimate activities.

Within the framework of the Polish law and related regulations, a petition filed with a civil court of law is the measure to execute that ban in practice. This means that such cases fall under the civil law within the meaning of Article 1 of the Civil Procedure Code²⁶, although environmental protection authorities may also levy administrative sanctions. The Polish Environmental Protection Law includes the innovative stipulation governing the civil legal procedure of combating non-ecological advertising²⁷, that addresses to this end the key role of environmental protection non-governmental organisations²⁸.

²⁵ J. Pakuła, op.cit., p. 127.

²⁶ Act of 17 November 1964 – Code of Civil Procedure, unified text: Dz.U. [Journal of Laws] of 2014, item. 101 with subsequent amendments; hereinafter CPC.

²⁷ B. Rakoczy, *Pojęcie sprawy gospodarczej z zakresu ochrony środowiska* [Eng: *Economic issue in the field of environmental protection*], „Przegląd Sądowy” 2003, No. 4, p. 87.

²⁸ Taking into consideration the need to guarantee non-governmental organisations an opportunity to achieve statutory aims, the Polish Legislator allowed them to participate in civil proceedings (Article 8 and Articles 61–63 CPC). According to Article 8 CPC

In conformity with Article 328 of the Act – Environmental Protection Law, the petition to discontinue non-ecological advertising or another kind of promoting goods or services may be lodged by a non-governmental organisation. Article 3 Point 16 of this Act provides for the definition of an ecological organisation as a social organisation, the statutory objective of which is to protect natural environment. Given the norms governed by the Civil Procedure Code (that does not refer to the notion of a social organisation any longer but a non-governmental organisation), it is plausible to admit that non-governmental organisations that are bound by their statutes to the extent of the environmental protection-related affairs may enjoy the profile of an ecological organisation.

Article 328 of the Environmental Protection Law indicates that legitimate activities may undoubtedly be assigned to ecological organisations. According to some of the authors, it is the exclusive competence to lodge such a kind of petition²⁹, according to others – that norm broadens the group of operators entitled to lodge that kind of petition³⁰. Supporting the latter point of view would mean admittance that in the case of the petition to discontinue non-ecological advertising, the Polish law and related regulations provide for *actio popularis*³¹,

non-governmental organisations whose statutory activities does not involve economic activities, may initiate a proceeding and participate in a pending proceeding in order to protect rights of citizens. Initiation of proceedings involves bringing legal action lodging an appeal against a decision of the relevant authority or filing a petition to the court on behalf and with consent of the party concerned. Those entities may also join a natural person through the participation in the pending proceeding. Moreover the legislator enabled non-governmental organisations which do not participate in the case according to the mentioned principles to present an opinion relevant to the case in the form of a resolution or declaration of their duly empowered authorities (Article 63 CPC).

²⁹ P. Mazur, op.cit., p. 104 footnote 9; A. Oryl, *Prawo ochrony środowiska jako źródło obowiązków w zakresie reklamy i promocji produktów lub usług* [Eng: *Environmental Protection Law as a source of obligations in relation to advertising and promotion of products and services*], "Jurysta" 2009, No. 3–4, p. 47; K. Gruszecki, *Prawo ochrony środowiska. Komentarz* [Eng: *Environmental Protection Law. Commentary*], ed. 4, Warsaw 2016, pp. 974–975; J. Mucha, *Legitymacja procesowa w sprawach o zaprzestanie tzw. nieekologicznej reklamy w świetle przepisów ustawy – Prawo ochrony środowiska* [Eng: *Bringing proceedings in cases of stopping the so-called non-ecological advertising as provided by law – Environmental Protection Law*], „Przegląd Prawa Ochrony Środowiska” 2013, No. 2, pp. 29–32.

³⁰ B. Rakoczy, *Pojęcie...*, p. 89; K. Padrak, *Odpowiedzialność cywilna w Prawie ochrony środowiska* [Eng: *Civil liability in Environmental Protection Law*], „Zamówienia Publiczne. Doradca” 2006, No. 2, p. 57.

³¹ For more information regarding the historical origin of *actiopopularis* see, especially, B. Sitek, *Actiones populares w prawie rzymskim na przełomie republiki i pryncypatu*

so the legal measure that is available for all and any operators capable of participating in court procedures due to significant public interests, notwithstanding the fact that the petition does not directly concern such an operator. Although the essence of the norm governed by Article 80 of the Environmental Protection Law may be taken advantage of to the extent of preventing social awareness of the permission for such a style of living that may have adverse impact upon the natural environment, it prevents undesirable effect of adverse reaction of a consumer to the natural environment and related protection, which represents the point of view worth supporting. Literal and systemic interpretation of the provisions of Article 328 of the Environmental Protection Law allow to draw the conclusion that they do not stipulate universal legitimisation of such kinds of petition that could follow the classical instance of the Roman *actio popularis* but protecting the natural environment as common good (universal good and not individual good) it makes an ecological organisation an ombudsman of public interests to this end³². It needs to be underlined that it also seems that a public prosecutor legitimises that kind of petition as by the virtue of Article 7 of the Civil Procedure Code a public prosecutor may claim for the proceeding to be instituted in respect of any matter or case as well as may take part in any proceedings if a public prosecutor is required to do so in order to effectively protect law and order, citizens' rights or public interests, according to a public prosecutor's discretionary powers³³.

It is an outstanding issue whether the petition to discontinue broadcasting an advertisement should be lodged against an economic operator, for which the advertisement has been created (a producer or manufacturer, the goods or services distributor), an economic operator that produces advertisements (the advertisement producer) or an economic operator that is broadcasting the advertisement. According to B. Rakoczy the petition should be lodged against an entrepreneur broadcasting an advertisement or conducting promotional campaign³⁴ whereas for K. Gruszecki it is acceptable to lodge a petition against both a manufacturer or producer of goods or provider of services, the goods or services being the subject matter of advertising, and a publicity op-

[Eng: *Actiones populares in Roman Law at the end of the republic and at the begining of the principate*], Szczecin 1999.

³² E. Wójcicka, *Actio popularis w prawie polskim* [Eng: *Actiopopularis in Polish law*], „Państwo i Prawo” 2015, No. 11, p. 78.

³³ J. Mucha, op.cit., p. 33.

³⁴ B. Rakoczy, *Pojęcie...*, p. 89; K. Padrak, op.cit., p. 57; B. Rakoczy, [in:] Z. Bukowski, E.K. Czech, K. Karpus, B. Rakoczy, op.cit., p. 603.

erator³⁵. It seems that the petition to discontinue advertising may be effective in respect of both an advertisement broadcasting contractor and an advertisement broadcasting contracting authority³⁶. Since an advertisement broadcasting contractor does not broadcast it upon its own initiative but upon the request of a third party – a manufacturer or a producer of goods or a provider of services, the goods or services being the subject matter of advertising, and that consequently counts on increasing the earnings in result of the broadcast advertisement. That is the reason why the ban on non-ecological advertising may be effective only when it must be executed under a judicial decision issued in respect of a manufacturer or a producer of goods or a provider of services.

Summary

The conceptual framework of the sustainable development, that is incorporated into the acts of international law, including the European Union law and the Polish law and related regulations, manifests itself as a compromise between environmental protection and public space development, including social and civilisational development. It addresses the role and legal capacity of man as well as man's needs and requirements and existence that are protected within the framework of environmental protection. It is contemporarily unacceptable to neither allow for absolute use of the natural environment by man nor to admit man's servitude to the natural environment, that would deprive man of all that may have adverse impact upon the natural environment.

The analyses, that have been conducted, indicate that the Polish legislator – apart from typical legal measures that provide for execution of civil, penal, and administrative accountability – appreciated the importance of pro-ecological promotion as well as the hazards brought about by the non-ecological advertising of goods and services, driven by environmental protection orders and injunctions that are extremely significant in terms of the European law and related regulations and addressing the necessity to assure sustainable development. It was understood that the promotion that is in contravention with the environmental protection policy and sustainable development policy may bring about the effect of adverse reaction of a consumer towards the natural environment and related protection measures, thus being indeed hazardous for the natural environment.

³⁵ K. Gruszecki, *op.cit.*, p. 975.

³⁶ J. Mucha, *op.cit.*, p. 38.

The principle of proportionality, however, causes to admit that the Polish law and related regulations do not generally ban the use of the image of the wilderness for advertising purposes. The very fact of merely using the image of the wilderness (original or adjusted one) but the nature of goods or services, that manifests itself as the adverse impact upon the natural environment, accounts for the non-compliance of advertising with the law and related regulations. It is no doubt that the duty of creating the conditions to prevent the adverse impact upon the natural environment is vested in the legislator and public authorities, so compliance with production or manufacture standards and discharge permits issued for specific production and manufacture purposes proves that a specific product has been manufactured or produced in the manner that does not have any adverse impact upon the natural environment and in conformity with permissible limits or thresholds. Thus it is banned to promote such a consumption model that, apart from adverse impact upon the natural environment, damages the natural environment, degrades it, throws the natural environment off balance.

The aim of Article 328 of the Environmental Protection Law is to create the opportunity to combat advertising that is in collision with the environmental protection requirements. A social organisation may in its own name and on its own behalf claim to have non-ecological promotion discontinued, regardless of the fact whether its private interests have been affected or not in result of that promotion. Since it is operating for the benefit of public interest that is environmental protection. It is by the way significant that an ecological organisation may exclusively claim discontinuation of broadcasting an advertisement but not any damages whatsoever. It is due to the fact that such a claim serves the purpose of protecting public interest instead of private interest (as it is the case with claiming damages).

The Polish legislator has thus noticed that prevention measures that are intended to prevent degradation of the natural environment and to promote pro-ecological behaviour are extremely significant in terms of actions aiming at assurance of environmental protection standards. They particularly include actions related to advertising and promoting positive tasks and objectives, that is the ones bringing about beneficial or advantageous deliverables. However, all and any activities diminishing the promotion of legal and actual standards that could contribute to rational shaping of the natural environment and economising the use of natural resources among individuals, cannot be underestimated.

Summary

The European Union law and related regulations implement the conceptual framework of the sustainable development, that manifests itself as a compromise between the environmental protection and public space development, addressing the social and civilisational development. Amongst the regulations governing that issue, the ban on the advertising that encourages to act in the manner causing environmental protection hazards, is particularly interesting. The Polish law and related regulations ban to promote goods or services including the content that publicises the consumption model that is in contravention with the environmental protection policy and sustainable development policy, including but not limited to the advertising with the use of the wilderness for the purpose of promoting goods and service that have adverse impact upon the natural environment. Ecological organisations are entitled to lodge the petition to ban that kind of promotion within the framework of the civil law court procedure.

Keywords: environmental protection, non-ecological advertising, sustainable development, broadcast ban (advert ban), wilderness, consumption model

Słowa kluczowe: ochrona środowiska, reklama nieekologiczna, zrównoważony rozwój, zakaz emisji (reklamy), dzika przyroda, model konsumpcji