

THE LEGAL INSTRUMENTS OF PROTECTION OF THE ENVIRONMENT IN A SPA COMMUNE IN POLAND

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ABSTRACT

The author has undertaken to classify the legal instruments of environmental protection of a health resort municipality (a spa commune) in Poland, regarding the aspect of their impacting the state of protection of the natural environment. A spa commune has at its disposal a catalogue of its own tasks, which is complemented by those connected with maintaining medicinal functions of the spa and with meeting the requirements of the environment. The analysis of the content of regulations of law on environmental protection allows the conclusion that in relation to spas there are no – in principle – separate legal norms which regulate questions connected with the protection of the environment. While identifying the legal instruments of environmental protection, it was necessary to take into account a few normative areas, on the basis of which the following groups of instruments were distinguished: regulatory and “police” type, planning, and control and financial. In the study, some selected legal and comparative aspects were also taken into consideration.

Key words: spa commune, health resort, environmental protection

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INTRODUCTION

One of the essential roles which a spa commune is to perform is provision of spa related health care. In order to make it possible, the spa commune should not only possess natural medicinal resources and adequate infrastructure, but also is expected to meet the relevant requirements in connection with the environment. This supports the thesis that granting a municipality the status of a spa commune depends on the state of environmental protection in this commune. In order to obtain the status of a spa it is obligatory that natural medicinal resources as well as spa treatment centers are available in the given area. They should be accompanied by such environmental assets as the climate of curative values and fulfilling requirements with reference to the natural environment, like the quality of water, purity of the air and soil, sewage system management and waste management. A spa commune has at its disposal – apart from carrying out standard own tasks – an “additional packet” of own tasks connected with maintaining curative functions and this set of own tasks is closely connected with satisfying requirements related to the environment. Unfortunately, the applicable legal regulations, both the ones dedicated to spas and those pertaining to the field of environmental protection laws, do not refer in detail to this issue, leaving an area for neglect, which results in substandard protection requirements in spas. This article undertakes to classify and generally characterize the legal instruments of environmental protection in a spa commune in Poland. Also, selected aspects of environmental protection in spas in Austria, Germany, the Czech Republic and Slovakia will be mentioned.

THE CONCEPT OF A SPA COMMUNE

On the map of Poland’s administrative division of the country, spa communes occupy a special status. From the perspective of the legal organization and the foundations of functioning of these municipalities, they are subjected to the general political regime defined in the Act on commune self-government,¹ yet their status is determined by an indi-

¹ Act of 8.03.1990 on commune self-government, *Journal of Laws* 2019, item 506 as amended.

vidual act, as well.² As far as the very notion of a spa commune itself is concerned, the first time it was used was under the “spa act”, still spas as such have their beginnings in Polish lands much earlier.³ The notion of “a spa commune” recognizes it as a municipality whose area, or its part, has been granted the status of a spa under the procedure defined in the Act (Art. 2, point 2 of the “spa act”); in turn, a spa is an area in which spa-based therapeutics is run, isolated with the aim of making use of and protecting natural curative resources found there and satisfying conditions, upon the fulfilment of which the place can be granted the status of a spa (Art. 2, item 3 in connection with Art. 34, item 1 of the “spa act”). If, in the area of the given commune, there are no spa treatment plants or there are no installations to run the relevant activity, the legislator grants the possibility of obtaining the status of the area of spa protection to the given place⁴ that is not exempt from holding appropriate environmental and medicinal assets.

It should be noted that the criterion of isolating a spa commune and a spa is not only a determined territory, but – primarily – is related to the existence of resources of medicinal and curative values in the area. Both legal categories: a spa commune and a spa have thus a common denominator in the form of a very good – from the point of view of improvement of human health – sanitary, environmental and therapeutic state of the place. This state is marked out by the conditions defined in Art. 34 of the “spa act”. The separation of the notions of a spa commune and a spa can be found also in other legal systems, for example, in the Austrian, German,

² Act of 28.07.2005 on spa therapeutics, spas and areas of spa protection and spa communes, *Journal of Laws* 2017. 1056 as amended, (henceforth: “spa act”).

³ The first mentions of spas in Poland date back to the 12th and the 13th centuries, when such spas as: Cieplice, Łądek Zdrój and Szczawnio were established. The Act of 23.03.1922 on spas, *Journal of Laws* 1922. No. 31, item 254, was of the breakthrough character regarding the status of Polish spas. It is considered to be the first mature regulation in this field (cf. Kamil Sikora, “Szczególny status gmin uzdrowiskowych w Polsce”. *Studia Iuridica Lublinensia* 23(2014): 107-124).

⁴ The very differentiation between the area of a spa and one of spa protection is, on the ground of the “spa act” a peculiar novelty, Jerzy Korczak, “Gmina uzdrowiskowa w prawodawstwie polskim”, *Opolskie Studia Administracyjno-Prawne* XVI 1(1) (2018): 112.

Czech and Slovakian ones, in which the expression “a spa commune” is far more often replaced by that of a “health resort”.⁵

CLASSIFICATION OF THE LEGAL INSTRUMENTS OF ENVIRONMENTAL PROTECTION IN POLISH SPAS

The problem area of environmental protection in a spa commune exceeds considerably the “spa act” and requires making reference to the law of environmental protection and the law of planning and spatial development. The normative complex which is primarily composed of the Act on Law of Environmental Protection,⁶ the Act on Conservation of Nature⁷ and the Act on Planning and Spatial Development,⁸ headed by the “Spa Act”, allows distinguishing the following instruments of environmental protection:

- 1) Regulatory instruments and instruments of the “police” type,
- 2) Planning instruments,
- 3) Instruments of control,
- 4) Financial instruments.

The analysis of the content of the law on environmental protection leads to the conclusion that in relation to spas at the moment there are no separate legal norms that regulate the questions connected with protection of the environment. They are subject to the same legal regime as the grounds that are not covered by legal protection. The exception here are norms dealing with noise in a spa zone “A”, as well as questions connected with localization of base stations of movable telecommunications, radio

⁵ Artur Nowak-Far, “Miejscowości uzdrowiskowe w Austrii, Czechach, Niemczech i na Słowacji: status prawny i regulacyjne determinanty funkcjonowania”, *Studia z Polityki Publicznej* 2/18 (2018): 39.

⁶ Act of 27.04.2001 on Law of Environmental Protection, *Journal of Laws* 2018, item 799, as amended; hereafter: LEP.

⁷ Act of 16.04.2004 on protection of nature, *Journal of Laws* 2018, item 1614, as amended; hereafter: APN.

⁸ Act of 27.03.2003 on planning and spatial development, *Journal of Laws* 2018, item 1945, as amended; hereafter: APSD.

and television broadcasting stations.⁹ Certain individual regulations dealing with these specific areas can be introduced by acts of local law in Polish conditions, e.g. “anti-smog acts” for spas. The municipality of Wrocław offers a model example in this respect, as they accepted a separate “anti-smog act”¹⁰ dedicated to spas in their region.

The elementary regulatory means that determine the specific legal regime of spa communes is through establishment of three zones of spa protection (marked with the letters “A”, “B” and “C”) as parts of the spa area. The criterion of division into the zones is the conservation of the spa and environmental assets index and the percentage share of green areas in the individual zones.

Prohibitions, which must be acknowledged to be the basic means of “police” type, remain in a close relationship with the division into the zones. They are, at the same time, traditional means of environmental protection. Some of them are of an unconditional character and cannot be revoked with any legal action by an organ of public administration; others allow exceptions. The system of prohibitions as means of protection of spa assets appeared for the first time on the ground of the Act of 23 March 1922. The system of bans in force is characterized by decreasing severity – from the furthest-fetched obligations in zone “A” to the least severe in zone “C”.¹¹ Additional prohibitions and restrictions which are binding in spa areas can be introduced by acts of local law, e.g. in the scope of exploiting installations in which fuels are burnt.

The remaining regulatory instruments should be looked for outside the “spa act” in the sphere of broadly-understood “environmental law”. Apart from local law, regulatory means of environmental protection in a commune are administrative decisions as classical manifestations of public administration activity.

⁹ Jan Golba, “Uzyskanie i utrata statusu uzdrowiska w Polsce”, access 27.03.2019. <https://sip.lex.pl/#/analysis/738413749/uzyskanie-i-utrata-statusu-uzdrowiska?cm=URELATIONS>.

¹⁰ Resolution XLI/1406/17 of the Parliament of Lower-Silesian Province of 30 November 2017, concerning introduction of limitations and prohibitions in the areas of spas in the Province of Lower Silesia, relating to exploitation of installations where combustion of fuels is conducted. Official Journal of the Province of Lower Silesia of 8 December 2017, item 5154.

¹¹ Wojciech Radecki, “Ochrona prawna walorów turystycznych. Cz. VII. Walory turystyczne uzdrowisk”, *Problemy ekologii* 6(2008):283-285.

In connection with a series of limitations regarding investments in the area of spa communes, a special role must be ascribed to administrative decisions issued in the situation of the lack of a local spatial development plan. These decisions shape the planning situation within the area covered by zones “B” and “C”; in turn, in zone “A” these decisions are not issued at all, since possessing a local spatial development plan is obligatory for this zone. Decisions concerning the conditions of development and management of the area determine the compliance of the intended investment with the state spatial order in the area in which there is no spatial development plan in force and while assessing the compliance, one needs to take into account the requirements of environmental protection.

The group of regulatory means of this type should also include decisions belonging to the group of means of legal responsibility, which are mentioned in Art. 362-368 of the Law of Environmental Protection (LEP), two of which are dedicated to the village head (the mayor, the president of the city), that is the decision obliging a physical person to execute activities with the aim to limit negative impacts on the environment and remove a threat to the environment, or restore the environment to the appropriate state (Art. 263 of LEP) and the decision of the village head (the mayor, the president of the city) to suspend usage of installation, the emission from which does not require a permit or usage of an appliance by a physical person as far as the so-called common use of the environment is concerned (Art. 368 of LEP). The narrow range, both subjective and objective, of these decisions does not exclude the possibility of their application in the area of a spa commune. Limitation of the negative impact on the environment or suspension of usage of installation exploited without the necessity of obtaining a permit can make a significant matter of environmental protection in a spa.

The second group of legal instruments of environmental protection in a spa commune consists of planning instruments. In this place, it needs reminding that one of the firmer means of environmental protection in a commune is the local spatial development plan.¹² The governing princi-

¹² Jerzy Stelmasiak, „Miejscowy plan zagospodarowania przestrzennego jako prawny środek ochrony środowiska”, Lublin, Wydaw. UMCS, 1994.

ple of the Polish spatial planning system is that of optionality of the plan; nevertheless, this principle admits exceptions. One of them is obligatory drawing up of the local plan in zone “A” of a spa during two years beginning with the date of obtaining the relevant decision of the minister responsible for matters of health, who confirms in this way the possibility of running spa treatment. The obligation of passing the local plan is tied to the necessity of conservation of environmental assets for the area of strict spa protection. This means, too, that the prohibitions passed in a statutory way for this zone must be included in the plan, along with all the consequences thereof, in the sphere of the location of objects. As it follows from the Report of the Supreme Chamber of Control of 29 December 2016, spas have not often take advantage of this instrument, which caused many large-retail establishments, car parks, detached houses or objects of tourist infrastructure to be set up even against the binding prohibitions.¹³ In the case of zones “B” and “C”, a local plan can be passed, since in these areas there is still the principle of optionality in force. If, however, the commune does not take advantage of the planning governance, which it is entitled to, in this area the requirements of environmental protection are defined by specific acts. In this place, however, one needs to share the view expressed by D. Trzcińska, who argued that linking realization of environmental goals with instruments of spatial planning is deciding about the effectiveness of carrying out the protective function with reference to spa communes.¹⁴ This function is fulfilled by the local spatial development plan.

Regarding the group of planning instruments, there are also ones here that are accepted in each commune, independent of whether it holds a special status of a spa or not. We can count into them programs of environmental protection in a spa commune on the basis of Art. 17, par. 1 of the LEP. Programs of environmental protection in a spa commune are documents that shape the local environmental policy, taking account of specific conditions resulting from the spa status. Programs of environmental protection do not have the normative character as they are in force exclusively “inside” the administration. As a result they should not have di-

¹³ Access 27.03.2019, <https://www.nik.gov.pl/aktualnosci/nik-o-statusie-uzdrowisk.html>.

¹⁴ Diana Trzcińska, “Ochrona środowiska a status uzdrowiska w świetle prawa planowania przestrzennego”, *Opolskie Studia Administracyjno-Prawne* XVI 1(1) (2018): 157.

rect legal effects in the sphere of rights and obligations of external subjects with reference to administration, yet – through constant making reference to documents of the national, province and county levels – they are supposed to achieve cohesion and uniform ecological goals.

Another group of legal instruments of environmental protection in a spa commune are control instruments. It is worth underlining here that organs of a spa commune do exercise control of abiding by and applying regulations dealing with environmental protection, but do not have powers of a governance character. The general competence norm to carry out inspection, that is Art. 379 of the LEP, confers powers to the village head, the mayor or the president of the city to exercise control and apply regulations of environmental protection in the scope covered by the appropriateness of these organs. The relevant organ stating – in the consequence of control – that the regulations of environmental protection have been violated, does not undertake to act on its own, but applies to the Provincial Inspector in charge of Environmental Protection to take relevant steps which remain the competence of the latter. The above-mentioned control instrument serves as the basic tool of environmental protection in a spa commune.

As far as carrying out the control function in a spa is concerned, monitoring of the environment is of elementary importance. Monitoring is, in accordance with Art. 25, par. 1 of the LEP, the basic source of information on the environment and, simultaneously, a spa commune's own activity. A commune that boasts of this specific status should satisfy the relevant requirements defined for spa communes as regards environmental protection, in particular, regarding the aspects of protection of air and prevention of noise. Specifically, again making reference to the records of Art. 34, par. 2 of the “spa act”, the control should cover the extent of satisfying the requirements relating to the environment, which are determined in the regulations of environmental protection, primarily in the spheres of protection of air, prevention of noise, as well as management of green areas, water resources, energy and waste. Attention should be paid to the fact that the regulations of LEP regarding the extent to which monitoring of the state of the environment should be executed do not introduce the duty of conducting separate research of the quality of the environment within spa protection zones. Therefore, spas can avail

themselves solely of the instruments that have been introduced into the legal order of each commune.

The controlling instruments are of particular significance to the maintenance of the proper quality of the air and the acoustic standards of the environment, which – in a spa – are supposed to create suitable conditions for spa treatment. Consequently, spa communes are obligated to periodically prove that they fulfil the statutory requirements defined for spas. In order to accomplish this, a spa commune prepares and submits to the Minister of health the so-called spa report, in which all the information concerning the environment is included, among others, relating to the quality of the air, noise, and waste. Specific requirements concerning the environment in a spa, however, have been defined exclusively with reference to the aspect of prevention of noise.¹⁵ Accordingly, in the case of spas, as far as zone “A” is concerned, the acceptable levels of noise (between 40 and 50 dB) have been defined and acknowledged to be rigoristic.¹⁶ Maintaining such a noise level within the whole zone “A”, where there operate establishments which are not facilities providing spa treatment, such as guesthouses, restaurants, cafes or other centers offering services, and which generate noise, and in the direct vicinity of which there are traffic routes, including public roads, is virtually impossible. Not undermining the very relevance itself of introducing restrictions in spas, and even approving of the necessity of existence of such rigors with reference to the environment in them, there arises the question of adequacy of certain implementation standards in view of the conditions encountered in the given area.

The negative image of Polish spas, seen from the perspective of executing controlling competences was revealed by the Report of the Supreme Chamber of Control of 29 December 2016, which covered 11 spa communes out of 45 existing ones. As it follows from the report, none of the inspected communes satisfied the requirements set for spas. It was found, among others, that the communes (apart from two of the

¹⁵ Regulation of 14.06.2007 of the Minister of the Environment on permissible sound levels in the environment, *Journal of Laws* 2014, item 112.

¹⁶ Magdalena Kuchcik, Jarosław Baranowski, “Zagrożenie balasem wybranych uzdrowisk Polski”, *Acta Balneologica* 1 (131) (2013): 55.

inspected ones), despite the obligation resulting from the act, did not monitor the state of the environment. The admissible levels of noise were exceeded in the examined spas. Similarly, the assessments of the admissible air quality were found to have been violated and did not reflect the true levels of pollution, with the norms of concentration of suspended particulates PM10 being considerably exceeded in half of the inspected spas.

The last group consists of financial instruments. On the ground of the Polish law, the financial and legal instruments of environmental protection are, in particular, the following: 1) fee for using the environment; 2) administrative financial penalty; 3) differentiated tax rates and other public tributes serving the purpose of environmental protection (Art. 272 of LEP). This is an open catalog of means, which can be complemented with other financial and legal means defined in separate regulations.¹⁷ In this place, abstracting from the doubts existing in the legal science with reference to the qualification of administrative financial penalties (and increased fees) into the category of financial-legal means,¹⁸ all of them can be applied in spa communes. Nevertheless, in view of the specifics of spa communes and numerous restrictions in the sphere of economic use of the environment, the range of applied fees charged for emission of gases and particulates into the air and for storage of waste, as well as financial penalties for exceeding the terms of relevant decisions issued in this respect, will not be as extensive as in communes which do not possess assets typical of spas. A significant role in the sphere of environmental protection (and precisely speaking – protection of nature) will be played by fees for using the environment and the administrative financial penalties defined in the Act on Protection of Nature (APN). The duty imposed on the commune council, as constituted in Art. 78 of the APN, concerning setting up green and wooded areas and maintaining them in a proper state should be executed in a detailed way in spa communes, with all the consequences thereof in the sphere of charging the fees for removal of trees and bushes on the basis of a permit, as well as penalties for removing trees or bushes without

¹⁷ *Prawo ochrony środowiska*, Comment on – line (E. Katarzyna – Czech), access 2.04. 2019.

¹⁸ Wojciech Radecki, [w:] M. Górski, M. Pchalek, W. Radecki, J. Jerzmański. M. Bar, S. Urban, J. Jendrośka, *Prawo ochrony środowiska, Komentarz*, CH Beck, Warszawa 2011: 985.

a necessary permit; also, which is of particular significance in spa communes, the penalties for destroying a tree or a bush or damaging trees in consequence of building works carried out within the tree canopy (Art. 88, par. 1, items 1,3,4 of APN).

The financial-legal instrument directly dedicated to spa communes is the spa fee. In light of Art. 48 of the “spa act”, a health resort has the right, as part of the realization of its own tasks connected with preservation of medicinal functions of a spa, to charge the spa fee on the ground of separate regulations.¹⁹ The fee is collected from physical persons staying for over one day for the purposes of curation, tourism, leisure or taking part in trainings in resorts lying within the area that has been granted the status of a spa. The funds which come from collecting fees should be allocated to monitoring the environment and raising the quality of the environment in spa communes. Naturally, taking into consideration the condition of the environment in spa communes, there arises the question of justifiability of paying the spa fee (a visitor’s tax). This question has acquired a new meaning in view of the doubtful standard of environmental protection within the area of certain spas and needs paying more attention to, since this instrument (charging the fee) is commonly made use of throughout Europe. However, it is not the intention of the author to advocate abolishing the obligation to pay such a fee.

SELECTED ASPECTS OF ENVIRONMENTAL PROTECTION IN SPAS IN OTHER COUNTRIES

The legal tradition of the functioning of health resorts has developed in many European countries; however, an analysis of the legal instruments of environmental protection in individual legal systems, in the framework in which it was presented concerning the Polish law, would need carrying out extensive studies. The literature devotes far more space to aspects relating to spa and wellness tourism²⁰ than protection of the environment.

¹⁹ Act of 12.01.1991 on local taxes and fees, *Journal of Laws* 2018, item 1445, as amended.

²⁰ For example, Anton Kasagrandá, Daniel Gurnak, “Spa and Wellness Tourism in Slovakia (the Geographical Analysis)”, *Czech Journal of Tourism* 6(1) (2017): 27-53.

The present study is limited to a few reflections of a general character. In Austria, legal regulation concerning spas is dispersed on the federal level and the legal systems of individual lands (countries).²¹ One of the key aspects of a spa in that country are climatic factors and conditions relating to low levels of noise specified more precisely on the level of lands. Similarly, in Germany, the question of the granting of the status of a spa or a health resort, as well as detailed principles of their functioning is the matter reserved to the lands' competence; they also include regulations of environmental protection and climatic conditions of given resorts, e.g., in North Rhine-Westphalia granting the status of a health resort is decided, among others, by requirements of spatial planning and protection of the natural environment, including appropriate air quality and prevention of noise²². In turn, in the Czech Republic and Slovakia, functions – similarly as in Poland – separate regulations dedicated to spas. However, the questions of environmental protection are treated in an overall fashion there. For instance, the Slovakian Act of 27 October 2005 on natural medicinal waters, natural thermal waters, spas and natural mineral waters, as well as on amending and complementing certain acts, concerns, among others, protection of environment acknowledged to have the spa character. The Czech regulation concentrates on expanding green areas of varied plant species and the problem of elimination of sources of noise and air pollution, which could negatively impact the spa²³. In these systems, spa-related regulations established on the central level are uniform for the whole country and the legal instruments of environmental protection remain – as a rule – outside the spa-related legislation. As A. Nowak-Far reports, a particular protective regime of Slovakian spas overlaps the general system of protection of the environment resulting from the Act of 25 June 2002 on protection of nature and landscape, which is the effect of the fact that a considerable number of spas and health resorts are located both within the areas or very close to those classified as specially protected.²⁴ The legal systems in question recognize also the institution of the spa fee as a specific

²¹ Artur Nowak – Far: 41.

²² Artur Nowak – Far: 48.

²³ Artur Nowak – Far: 46-47.

²⁴ Artur Nowak – Far: 51-52.

financial instrument. In the Czech Republic and Slovakia,²⁵ like in Poland, it has the character of a local charge. In each of the legal systems the possibility of recognizing a resort as a spa depends – apart from the presence of resources – primarily on fulfilling determined environmental conditions, particularly those in the sphere of protection of the air and securing good acoustic conditions in the place.

CONCLUSION

Care of the state of environment is a duty of each commune, but in spa communes, taking care of ecological assets should be the priority. Spa treatment which is the fundamental attribute and – at the same time – distinguishes the communes holding the special status of spas, can be effectively realized not only when a spa commune preserves its environmental values, but also successively raises their quality. Creating a favorable environmental situation for the development of spa treatment is vital and valuable from the point of view of both people's needs, including the right of leisure, and stabilizing the nearly one-century-long tradition of Polish spas (accepting the year 1922 as the beginning of the “spa law” in Poland).

The review of the legal instruments of environmental protection in a spa commune makes it possible to formulate a few conclusions that paint a rather pessimistic picture of the function of the law in this domain. Firstly, the regulations of the law of environmental protection do not perceive the environmental distinctness of spa communes. On the contrary, they treat them like any other commune in the country. This deficit cannot be eliminated by the “spa act” which does indicate fulfilment of the requirements of environmental protection as an indispensable condition, but there are no specific regulations in force which should result from this. Spas do not have at their disposal instruments of environmental protection, which would be dedicated to them exclusively, with the exception of the legal rigors in force in zone “A”, that is the obligation to possess a local plan of spatial development, as well as com-

²⁵ See more, Derco Jan, Pavlisinova Dominika, “Financial position of medical spas 0 the case of Slovakia”, *Tourism economics*, 23 (4) (2016):867-873.

pliance with the norms related to acoustic standards. Organs of the spa commune are responsible for maintaining such a state that satisfies the postulate of protection of environment in their area. Secondly, the instruments of environmental protection in spa communes are secondary in relation to the primary tool that is delineation of spa protection zones. This is the basic criterion of introducing further regulations, like acts of local law containing defined means of the “police” type binding in individual zones. Thirdly, since the specificity of spa communes generates a higher level of environmental protection on their territory, the level ought to be subjected to a stricter regime of controlling the state of the environment. In particular, controlling the air quality and the noise levels should be run on a regular basis and each departure from the norm should be detected and eliminated. Thus, it needs postulating that the means of control should be strengthened and regular monitoring of the environment should be conducted. Lastly, it would be advisable to consider changing the system of financing tasks connected with realization of spa functions and strengthening the system of controlling the implementation of spa fees collected by the communes. The analysis of the legal systems relating to spas situated in Austria, Germany, the Czech Republic and Slovakia leads to the conclusion that environmental protection, including climatic conditions, is an important criterion for a resort to be acknowledged as a spa, yet the legal instruments of environmental protection in these states must be looked for also outside spa-related regulations.

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