

THE CONSTRUCTION OF A COAL MINE IN THE VICINITY OF A NATIONAL PARK. SELECTED ENVIRONMENT PROTECTION ASPECTS

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Summary. The environment protection legislation form a broadly coherent system of national park protection. An important problem is the need to protect the special natural values of the Polesie National Park in connection with the planned business activities involving the hard coal mining outside the protected area. The most crucial element designed to protect the national park is the need to carry out an environmental impact assessment of the planned project as provided for in the Act on providing information about the environment and its protection, public participation in environmental protection and environmental impact assessments.

The analysis of the procedure for issuing decisions on the environmental conditions of the planned project leads to the conclusion that the possibility of obtaining a real effect on its content and the right to appeal against it to the administrative court is conditional on obtaining the right of a party to this proceeding. The National Park Director will be capable to be a party to the proceedings if he demonstrates that the area of the park is within the range of significant impact of the project, which may impose restrictions in the development of the real estate in accordance with its current intended purpose. These conditions are difficult to fulfil under the currently applicable legislation.

Two solutions may be proposed for the law as it should stand. First one is granting the director of the national park the right to consult on environmental conditions in the event of possible negative impacts of the planned project on the nature of the national park. The second solution involves the widening of the catalogue of participants to the proceedings on the issuance of a decision on the environmental conditions by adding the director of the national park in case of possible adverse impacts of the planned project on the park's natural assets.

Key words: environmental protection, national park, geological and mining law, environmental impact assessment, party to administrative proceedings

This study has been inspired by the information about the plans for a new hard coal mine project in the Lublin region. The investor has obtained a license for exploration of the deposit, and is currently seeking to obtain a mining licence. The issue has a particular gravity, as it is the first attempt in many years to build a new hard coal mine, and that the mine is to be built in the vicinity of the Poleski National Park. In view of the above, the issue of proper implementation of the public interest arises with regard to the hypothetical conflict between economic development as an intrinsic feature of civilisational development, and environmental protection that is fundamental to human life. This problem concerns Polish legislation, but also legal regulations in other countries, taking different forms depending on, among other things, the restrictiveness of legal provisions regarding protected areas and the degree of economic development of the country and the impact of the mining sector on this degree.¹ This conflict may be resolved by balancing the protection of these values for the sake of the public interest by introducing appropriate legal constructs in national legislations.

The Poleski National Park is located within the area of the Łęczna-Włodawa Lake District, which is the southern part of Polesie Lubelskie. It was established in 1990 on the basis of the following peat bog nature reserves: Durne Bagno, Jezioro Moszne, Jezioro Długie, Torfowisko Orłowskie. Bagno Bubnów was incorporated into the Poleski National Park in 1994. The park has unique natural values with a high degree of naturalness and unique ecological systems (there are genetically and morphologically diverse swamps and peat bogs, small lakes and rivers). As already noted in the literature, the development of the mining industry in the nearby Lublin Coal Basin, situated 1.5 km away from the park protection zone, developing tourism and meadow and peat bog burning are a particularly serious threat to the ecosystems concerned [Kozieł and Kozieł 2005, 55].

1. INDUSTRIAL DEVELOPMENT AND ENVIRONMENTAL PROTECTION

On the one hand, industrial development serves society, but on the other it causes losses through environmental degradation, which is increasingly visible in the long run [Górski 2018, 34]. Intensive business activity is inseparably connected with threats to the natural environment and to human health and life. The effects of degradation of nature can be both direct: a decrease in the quality of individual components of the environment, and indirect: associated with the deterioration of health conditions of the population or a decrease in the value of fixed assets. One can also talk about external threats, but also

¹ For a broader view see: Wawryk 2014, 291–317; Otto, Naito, and Pring 1999, 323–34.

internal threats, the sources of which are located in the park [Dąbmska 1985, 18; Kapuściński 1985, 105]. Ecological values play a significant role in the relationship between the man and the environment. According to studies carried out, most of the population of Poland notice the fact of lowering the quality of the environment and express a positive attitude to nature [Kozieł and Kozieł 2005, 54]. Scholars argue that social conflicts in protected areas, in particular in national parks, are rooted in spatial conflicts and contradictions, and primarily the conflict between the functions of space and the natural environment, and a contradiction consisting in the overlapping of park and municipal areas, giving rise to a structural conflict of power and competence conflicts. Social conflicts can often turn into spatial conflicts. This is related to the ongoing debate about the concept of nature as a public good [Królikowska 2007, 221, 224].

Environmental hazards are generally well identified in terms of their immediate impact. However, long-term effects remain particularly dangerous, with fatal and irreversible consequences which are difficult to predict at the start of running certain economic activities, e.g. mining of minerals.

Conservation of natural resources is a necessity, especially against the uncontrolled effects of industrial development. The literature on the subject notes that the extraction of minerals is an undertaking that has a significant impact on the environment, and practically it is always a negative impact. This implies the need to create a precisely defined framework for outlining boundaries of the permitted use of mineral resources, taking into account the environmental protection conditions. The very fact of the existence of a prospected deposit is not a circumstance justifying a business activity involving its extraction, irrespective of those needs [Mikosz 2008, 9].

Nature protection, within the meaning of the Act of 16 April 2004 on nature conservation,² consists in preserving, sustainable use and renewal of natural resources, creations and components. The objectives of nature protection are pursued by, among other things, establishing legal forms of nature protection. In the case of area forms, this involves the identification of fragments of space that are valuable due to the existing plant and animal species and their biocenotic systems and landscape assets, as covered by additional legal requirements, most often in the form of specific prohibitions to secure the survival of such objects of protection [Otawski 2007, 130].

National parks are the oldest and highest form of nature protection. It covers a protected area distinguished by its specific natural, scientific, cultural and educational values, where the entirety of natural and landscape qualities is subject to protection (Art. 8, para. 1 ANC). The legislator in Art. 15 ANC sets out specific restrictions applicable in national parks. From the point of view

² Journal of Laws of 2018, item 1614 as amended [henceforth cited as: ANC].

of threats associated with the hard coal mine construction project, the most essential aspects is the prohibition on exploration of rocks and minerals and the prohibition on modification of hydrographic conditions if these changes are not intended to protect nature (para. 7–8).

In the areas bordering the national park, a buffer zone must be obligatorily delineated. It is a protection zone determined individually for the national park in order to protect it against external threats arising from human activities (Art. 11, para. 1 and Art. 5, para. 14 ANC). The prohibitions provided for national parks do not apply in this area, but the buffer zone constitutes a restriction on property ownership, since only those construction projects can be located on the territory of the national park, which do not pose a threat resulting from human activities.³ It is worth noting that the area of national parks in many cases overlaps with Natura 2000 areas. This is also true for the Polesie National Park. Natura 2000 is a system adopted by the European Union for the protection of selected elements of nature, most important from the point of view of the whole continent [Wójcik 2001, 7]. The legal basis for the Natura 2000 network is Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (now replaced by Directive 2009/147/2009) and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. The Republic of Poland has implemented these Directives. Under the provisions of the Act on nature conservation, the Natura 2000 network includes special protection areas for birds, special areas of conservation and sites of Community importance. On the Natura 2000 areas, it is forbidden (with certain exceptions) to undertake activities that may, separately or in combination with other activities, significantly adversely affect the objectives of conservation of the area, including in particular: 1) deteriorate the condition of natural habitats or habitats of plant and animal species for the protection of which a Natura 2000 site has been established, 2) affect negatively the species for the protection of which a Natura 2000 site has been established, and 3) deteriorate the integrity of a Natura 2000 site or its connections with other sites (Art. 33 ANC). Thus, specific activities were prohibited not only directly within the Natura 2000 area (as in the case of national parks), but also those which, when undertaken outside these areas, may adversely affect the objectives of protection of this area.

In general, it should be stated that the applicable regulations make up a coherent system of protection of the national park area. The analysed area of the Polesie National Park is also listed in the UNESCO biosphere reserve world list as the Transboundary Biosphere Reserve of West Polesie. The peat bogs

³ See the judgement of the Regional Administrative Court in Warsaw of 15 November 2006, IV SA/Wa 1449/06, Lex no. 308135 and the judgement of the Supreme Administrative Court of 8 April 2009, II OSK 590/08, Lex no. 562867.

located in its area were also included in the list of the *Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat*.⁴

2. NATIONAL PARK PROTECTION AND MINING ACTIVITY

An important problem is the need to protect the special natural values of the Polesie National Park in connection with the planned business activities involving the extraction of minerals (hard coal) outside the protected area. The analysed issues concern a specific conflict of interest between, on the one hand, an undertaking applying for a licence for extraction of minerals and, on the other hand, a national park as a specialised entity, whose aim in this case is to prevent possible (but real) negative consequences of the planned economic activity in the area of the national park. The experience gained so far in the implementation of industrial projects shows that public administration bodies (central government and local government) clearly favour the implementation of such projects, failing to notice or ignoring any significant threats. Therefore, it is important to ensure that the authorities of the National Park have a real influence on the decisions of public administration issued during the construction process.

The Act of 9 June 2011, the Geological and Mining Law⁵ provides for a rather complex procedure for obtaining a licence, which is determined in conjunction with the regulations set out in the Act of 27 March 2003 on spatial planning and development⁶ and in the Act of 3 October 2008 on providing information about the environment and its protection, public participation in environmental protection and environmental impact assessments.⁷ Pursuant to the requirements of the Geological and Mining Law, licences are granted by the minister competent for the environment, having consulted the commune head (mayor, city president) competent for the site where the intended activity is to be pursued (Art. 22, para. 1 and Art. 23, para. 2a GML). The licence may be refused on the grounds that there is a contradiction between the intended activity and the public interest, in particular related to environmental protection (Art. 29, para. 1 GML). Undertaking and performing activities specified in the Geological and Mining Law is allowed only if this does not violate the purpose of the property as specified in the local spatial development plan, and where there is no such spatial development plan issued, if this does not violate

⁴ Convention signed on 2 February 1971 in Ramsar, ratified by Poland on 6 January 1977, *Journal of Laws of 1978*, No. 7, item 24.

⁵ *Journal of Laws of 2019*, item 868 as amended [henceforth cited as: GML].

⁶ *Journal of Laws of 2018*, item 1945 as amended [henceforth cited as: ASPD].

⁷ *Journal of Laws of 2018*, item 2081 as amended [henceforth cited as: APIE].

the use of the property defined in the spatial development conditions and directions study for the commune concerned.

The regulations provided for in the Geological and Mining Law do not prevent the implementation of a project that is harmful to the nature of the national park. The national park will not be a party to the licence award proceedings. The procedure of consultation with the commune head (mayor or city president) when granting the licence seems to be insufficient, as local government administration generally favours the implementation of projects of this type, in view of the expected development of infrastructure and growth of employment rates in a given region. Moreover, the criterion for the consultation to be valid is the condition for the intended activity not to infringe the intended use or method of using the property, as specified in the local spatial development plan or the commune's study on spatial development conditions and directions. The legislature has linked the obligation to protect the environment as the basis for refusing to grant a licence primarily with the question of rational management of mineral deposits [Klimek 2015, 177; Schwarz 2012, 215; Mikosz 2008, 15], and these matters are regulated in Section VII of the Act of 27 April 2001, the Environmental Protection Law.⁸

The implementation of a mining project requires a change of land use in the local spatial development plan or in the spatial planning conditions and directions study for the commune. The procedure for drafting a local spatial development plan (or study) is a sequence of activities undertaken during the planning procedure. To be launched, the procedure requires the relevant notices to be made and the participation of the public in these works (including by means of electronic communication) and the organisation of public discussion (as part of the local spatial plan drafting procedure). Anyone who challenges the provisions of the draft plan (study) can submit comments, and the commune council, when adopting a plan or study, is obliged to decide on the manner of considering the comments on the draft (Art. 9–12 and 14–20 ASPD). The director of the National Park is therefore entitled to take steps in the planning procedure and, in the case where a resolution adversely affecting the protection of the park is adopted, he should bring an action before the administrative court. The effectiveness of this measure should be considered questionable. The difficulty will consist in the need to demonstrate the negative impact of the plan or study on the environment, irrespective of the actual undertaking of the mineral extraction activity on the site concerned.

The most important element designed to protect the national park is the requirement of carrying out an environmental impact assessment of the planned project provided for in APIE. A decision on environmental conditions is required for the planned: 1) projects that may always have a significant

⁸ Journal of Laws of 2019, item 1396 as amended [henceforth cited as: EPL].

impact on the environment; 2) projects that may possibly have a significant impact on the environment. The environmental impact assessment of the project contains determination, analysis and assessment of the direct and indirect impact of the project concerned on: 1) the environment and the population, including human health and living conditions, tangible goods, heritage monuments, landscape, including cultural landscape, the interaction between these elements, the availability of mineral deposits; 2) the risk of occurrence of major accidents and natural and construction disasters; 3) possibilities and manners of prevention and reduction of the negative impact of the project on the environment and 4) the required scope of monitoring (Art. 62, para. 1 APIE). Obtaining a licence for the extraction of minerals requires a prior decision on environmental conditions (Art. 72, para. 1, point 4 APIE). The definition of project (Art. 3, para. 1, point 13 APIE) refers its scope directly to the extraction of minerals, while the Ordinance of the Council of Ministers of 10 September 2019 on projects which may have a significant impact on the environment⁹ defines to what extent a project involving extraction of minerals will be a type of project which may have a significant impact on the environment and to what extent it will be the type of project which may possibly have a significant impact on the environment. The decision on environmental conditions is of a “preliminary ruling” nature in relation to a future authorisation for a specific project,¹⁰ indicating the shape of the project in terms of environmental protection requirements by allowing it to be implemented in the variant that will be most favourable to the environment. The essence of the procedure for a decision on environmental conditions should be to recognise all the risks and nuisances of the intended project *vis-a-vis* the environment. Only on this basis will the impact of the planned project on the environment be determined, followed by the conditions for remedying or minimising the identified risks [Klimek 2016, 84].

Before issuing a decision, the competent authority is required to make public the information on undertaking to perform an environmental impact assessment, the subject of the decision to be issued for the case, and on the possibility of submitting comments and motions.

The basic document in the environmental impact assessment procedure is the report on the environmental impact of the project. It is collection of information prepared in a formalised manner, specifying all aspects related to the environmental effects of the project [Dobrowolski 2011, 185]. The content of the report is broad and, as a rule, is defined in Art. 66, para. 1 APIE. The scope of the report identifies the body conducting the proceedings, takes into

⁹ Journal of Laws, item 1839.

¹⁰ Judgement of the Supreme Administrative Court of 16 September 2008, II OSK 821/08, ONSA 2009/6/116 and judgement of the Regional Administrative Court of 18 December 2012, VIII SA/Wa 591/12, Lex no. 1332222.

account the state of the art and research methods as well as existing technical possibilities and data availability. The report should be comprehensive and cover all possible risks related to the implementation of the project and indicate which environmental protection standards apply in this respect and whether the planned project meets them.¹¹ The established scholarly opinion indicates that the report should take the form of a scientific study [Śliwa 2015, 23–41].

The decision on environmental conditions regarding mineral extraction is issued by the Regional Director for Environmental Protection (Art. 75, para. 1, point 1, item 1 APIE), taking into account: the results of consultations and opinions, findings contained in the report on the environmental impact of the project, results of proceedings with public participation, results of proceedings on cross-border environmental impact, if carried out.

A party to the proceedings for issuing a decision on environmental conditions is the applicant and the entity which has the right in rem to the property located in the area affected by the project as proposed by the applicant, subject to Art. 81, para. 1 APIE.¹² This area means: 1) the planned area on which the project will be constructed and the area located 100 m from the borders of this area, 2) plots of land where environmental quality standards would be exceeded as a result of implementation, operation or use of the project, or 3) plots of land within the range of significant impact of the project, which may impose restrictions on the development of real estate, in accordance with its current purpose (Art. 74, para. 3a APIE).

3. DISADVANTAGE AND BENEFITS OF APPLICABLE LEGAL SOLUTIONS

The analysis of the discussed procedure leads to the conclusion that the possibility of obtaining a real influence on the issuance of the decision on the refusal to agree on environmental conditions and on the right to lodge a complaint with the administrative court determines the obtaining of the right of a party in the proceedings. The National Park Director will be capable to be

¹¹ Judgement of the Regional Administrative Court in Krakow of 26 September 2017, II SA/Kr 420/17, Lex no. 2388577 and the judgement of the Regional Administrative Court in Poznań of 14 September 2017, II SA/Po 501/17, Lex no. 2384218.

¹² The legislator in Art. 81, para. 1 APIE stipulates that if in the light of the assessment of environmental impact of the project it is impossible to execute the project in the variant proposed by the applicant, the body competent to issue the decision on environmental conditions, with the consent of the applicant, shall indicate in the decision the variant accepted for implementation from among the variants referred to in Art. 66, para. 1, point 5 APIE. If it is not possible to implement the project in the variants referred to in Art. 66, para. 1, point 5 APIE and if the applicant does not consent to indicating in the decision on environmental conditions the variant allowed for implementation, the body shall refuse to consent to the implementation of the project.

a party to the proceedings if he demonstrates that the area of the park is within the range of significant impact of the project, which may impose restrictions in the development of the real estate in accordance with its current intended purpose. It may prove difficult to meet these conditions, especially where a specific area of the park is already developed in accordance with its intended use.

The regulations in question contain vague concepts that allow for a significant degree of discretion (“significant impact”, “may impose”). Moreover, it should be borne in mind that the key evidence in matters concerning the determination of environmental conditions for a given project is the report on environmental impact. It constitutes the basic document on which the authority bases its decision on the substance of the case. Unfortunately, the report is a private document, prepared on behalf of the entity interested in the implementation of a specific investment.¹³ The report is evidence in an administrative case, and other entities participating in the administrative proceedings as a party or with the rights of a party have the possibility to submit requests aimed at undermining the validity of this evidence.¹⁴ The undermining of the content of the report cannot be based on the assumptions of the applicant – not based on relevant specialist assessments (studies) – or hypothetical occurrence of possible future threats (nuisances) to the environment [Wilk–Ilewicz 2015, 52–80]. The case law indicates that the conclusions of a report drawn up by persons having appropriate knowledge cannot be countered only by means of negation not supported by any specific arguments, as such argumentation deprives the dispute of its juridical character.¹⁵ As a rule, the findings of the report may be challenged only by presenting an equally complete analysis of natural conditions (the so-called counter-report), prepared by specialists of the same level of expertise as the authors of the report, whose conclusions would be in gross contradiction to those contained in the report submitted by the investor.¹⁶ The objective of the body issuing the decision on environmental conditions is to seek to establish objective truth, collect and thoroughly consider all the evidence, which occurs by verifying the data contained in the report [Kosieradzka–Federczyk 2012, 46–49]. The current legal solutions have a significant drawback consisting in that the administrative bodies are obliged

¹³ Judgement of the Supreme Administrative Court of 21 March 2017, II OSK 2316/15, Lex no. 2288614.

¹⁴ Judgement of the Supreme Administrative Court of 23 February 2007, II OSK 363/06, “Nieruchomości” 2007, no. 7, p. 15.

¹⁵ Judgement of the Supreme Administrative Court of 28 July 2016, II OSK 1076/15, Lex no. 2118230.

¹⁶ Judgement of the Regional Administrative Court in Olsztyn of 7 November 2017, II SA/OI 732/17, Lex no. 2407737; judgement of the Regional Administrative Court in Poznań of 31 May 2017, II SA/Po 199/17, Lex no. 2330125; judgement of the Supreme Administrative Court of 28 October 2016, II OSK 844/16, Lex no. 2169204 and judgement of the Regional Administrative Court in Poznań of 18 April 2018, IV SA/Po 199/18, Lex no. 2482273.

to carry out an independent environmental impact assessment and at the same time do not always have enough expertise [Klimek 2017, 80]. This issue is particularly important in the case of such complex project as the construction of a hard coal mine. The assessment of the report will require in this case the use of knowledge of many specialists in particular fields of environmental protection and related sectors.

Moreover, as it is emphasised in the established scholarly opinion, the current Act on nature conservation defines the buffer zone in a very laconic way, as “a protective zone bordering a particular form of nature conservation.” This was regulated differently in the previously applicable Act of 1991, where the buffer zone had a planning sense because it required the consultation on local development plans with the director of the national park (without specifying that this only concerned arrangements that could have negatively affected the natural assets in the park).¹⁷ Therefore, the provisions of the previous Act made it possible to formulate recommendations that could strengthen the role of the buffer zone in nature conservation, especially from the point of view of its role as an ecological corridor, which is currently not possible. The wording of Art. 53 of the Act on spatial planning and development is being pointed to, which states that it is required to consult the project with the national park director, but only in terms of the determination of the location of the so-called public purpose project. The Environmental Protection Law contains provisions on the necessity to include in the local spatial development plan restrictions resulting from the establishment of the buffer zone (Art. 16, para. 7 ANC). However, since the Act on nature conservation does not formulate any criteria, conditions or restrictions concerning the buffer zone, then there is nothing that can be included in the local spatial development plan. Thus, the buffer zone of a national park has become a fictitious creation, with practically no protective and planning significance [Solon 2005, 12].

CONCLUSIONS

To conclude, it should be stated that under the current legislation, the authorities of a National Park have limited possibilities of effective use of legal means enabling the suspension of a project of construction of a hard coal mine in the vicinity of the National Park. The park director is entitled to submit comments and requests in accordance with the procedure provided for in Chapter 2 APIE on public participation in the decision-making process. Two solutions may be proposed for the law as it should stand.

For the first one, it should be pointed out that in accordance with Art. 77, para. 1 APIE, before issuing the decision on environmental conditions,

¹⁷ Art. 14, para. 9 of the Act of 16 October 1991 on nature conservation, Journal of Laws of 2001, No. 99, item 1079 as amended.

the body competent to issue the decision shall consult the conditions for the implementation of the project with specific entities. In some cases, the consultation is narrowed down to the existence of alternative solutions for the implementation of the project and the planned actions to compensate for the negative effects on the natural environment. The consultation is a form of a conclusive nature as it binds the administrative body deciding in the main proceedings. The consultation procedure is an accessory procedure and forms a part of broadly understood proceedings in the main case. At the same time, the binding character of the position taken by the consulted authority is expressed in the inability to issue a positive decision in case of a negative position of the consulted authority, as well as in the inadmissibility to define in the decision the positive conditions for the implementation of the project in a different manner than that done by the consulted authority.¹⁸

It is therefore advisable to grant the director of the national park the right to consult on environmental conditions in the event of possible negative impacts of the planned project on the nature of the national park. The decision would then be issued after the consultation, i.e. reaching a consensus with the director of the national park. The national park authority would be able to refer to the documentation collected during the procedure, in particular the report on the environmental impact of the project developed by the investor (Art. 77 APIE).

The second solution involves the widening of the catalogue of participants to the proceedings on the issuance of a decision on the environmental conditions indicated in Art. 74, para. 3a APIE, by adding the director of the national park in case of possible adverse impacts of the planned project on the park's natural assets. As a party to the administrative procedure, the director of the national park would be authorised to take all legal measures available to demonstrate the harmfulness of the planned project to the natural assets of the national park. The most important right is the possibility of challenging the findings of the environmental impact report. In particular, the director will be able to instruct specialists who have expertise to develop a counter-report. This document will be assessed by the decision issuing authority based on the same grounds as the investor's report on the environmental impact of the project. The cost of developing this document remains a separate issue. As stated above, in the case of such projects as a hard coal mine, the report (and thus a counter-report) would be a very comprehensive and complex document requiring the participation of specialists in many fields. It will therefore be necessary to provide the national park with appropriate funding for developing counter-reports.

¹⁸ The judgment of the Regional Administrative Court in Warsaw of 31 January 2018, VIII SA/Wa 627/17, Lex no. 2451143.

It seems that scholars in the field suggested the need for the searching of appropriate organisational and legal forms, calling on the legislature to create such conditions of “coexistence” of different values in order to ensure the effectiveness of nature protection of national parks [Luczyńska–Bruzda 1985, 79–84]. So far, however, these postulates have not been fully embodied in the applicable legal regulations.

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BUDOWA KOPALNI WĘGLA KAMIENNEGO W SĄSIEDZTWIE PARKU NARODOWEGO. WYBRANE ASPEKTY Z ZAKRESU OCHRONY ŚRODOWISKA

Streszczenie. Przepisy dotyczące ochrony środowiska tworzą zasadniczo spójny system ochrony parku narodowego. Istotny problem to konieczność ochrony szczególnych walorów przyrodniczych Poleskiego Parku Narodowego w związku z zamiarem podjęcia działalności gospodarczej polegającej na wydobywaniu węgla kamiennego poza obszarem chronionym. Najistotniejszym elementem mającym służyć ochronie parku narodowego jest konieczność przeprowadzenia oceny oddziaływania na środowisko planowanego przedsięwzięcia przewidzianej w ustawie o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko.

Analiza procedury wydawania decyzji o środowiskowych uwarunkowaniach planowanego przedsięwzięcia prowadzi do wniosku, że możliwość uzyskania realnego wpływu na jej treść oraz na prawo wniesienia skargi do sądu administracyjnego warunkuje uzyskanie prawa strony w tym postępowaniu. Dyrektor parku narodowego będzie mógł być stroną postępowania, jeżeli wykaże, że obszar parku znajduje się w zasięgu znaczącego oddziaływania przedsięwzięcia, które może wprowadzić ograniczenia w zagospodarowaniu nieruchomości, zgodnie z jej aktualnym przeznaczeniem. Spełnienie tych warunków w obecnym stanie prawnym jest trudne do zrealizowania.

De lege ferenda możliwe są dwa rozwiązania. Pierwsze, to przyznanie dyrektorowi parku narodowego prawa do uzgodnienia decyzji o środowiskowych uwarunkowaniach w przypadku możliwych negatywnych oddziaływań planowanego przedsięwzięcia na przyrodę parku narodowego. Drugie zaś, to poszerzenie katalogu uczestników postępowania o wydanie decyzji o środowiskowych uwarunkowaniach o dyrektora parku narodowego, w przypadku możliwych negatywnych oddziaływań planowanego przedsięwzięcia na przyrodę parku.

Słowa kluczowe: ochrona środowiska, park narodowy, prawo geologiczne i górnictwo, ocena oddziaływania na środowisko, strona postępowania administracyjnego

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