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*Administrative law protection of biological diversity as an instrument
providing food security*

ABSTRACT

A doctoral dissertation prepared
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This doctoral dissertation, entitled *Administrative law protection of biological diversity as an instrument providing food security* explores the Polish administrative and environmental laws in terms of tools ensuring food security through protection of biological diversity. In so doing, the author considers legal forms of operation of the public administration, referred to as the means of implementation of protective tasks of the authorities. The main goal of the above was to answer the question whether the Polish legal order provides for a uniform model of administrative law protection of biological diversity serving the purpose of the individual and collective food security in the long term.

It is worthwhile pointing out that the protection of biological diversity has already been considered by representatives of various academic disciplines, nevertheless, their considerations were narrowed down mainly to biological sciences. The issues have been characteristic also of administrative law and environmental law publications in which, however, the reference was made primarily to an ideal nature conservation. Even when discussing the functional conservation of nature, understood as the protection of its natural resources for business and economic reasons, such researchers did not include any mention of the relation existing between the protection of biodiversity and food security, which is pivotal to the subject matter of this paper.

The analysis was based on the following assumptions of fundamental nature. Firstly, that the content of administrative and environmental regulations defines the purposes which – while aimed at securing values important for the environment itself – at the same time contribute to providing for the needs of the individual and the community. Secondly, that striving to guarantee food security in the long run basis on protection of biological diversity. Thirdly, that in order to ensure food security, the legislator provides, in the administrative and environmental laws, for certain tools the purpose of which is ensuring, through administrative law protection of biological diversity, food security for the existing and future generations. Fourthly, that those legal tools prevent authorized entities from using natural resources in a manner which, even though on a short-term basis leading to food security, at the same time contributes to a decrease in biological diversity. Fifthly, that the legal regulations aimed at biodiversity preservation, apart from imposing obligations on the norm addressees, provide for mechanisms fostering behaviours in compliance with the applicable law. Sixthly, that food security constitutes a social goal, and therefore securing it in the long run depends on the performance of protective tasks by the public administration authorities. Seventhly, that the law provides for specific forms of action which are the means by which the public

administration authorities may implement the protective tasks entrusted to them. Eighthly, that the legal regulations containing instruments serving to provide food security through protection of biological diversity reflect the assumptions of the international law and are compliant with the EU law.

The research methodology was mainly of legal-dogmatic nature: legal texts had to be analysed so that their actual content would be established. Another method used in this dissertation was the theoretic-legal method based on the subject-matter literature and the existing case law. In order to accomplish the assumptions of this work, the author had to avail herself also of the method of comparative law, however, to a smaller extent. Its use was justified since the EU Member States are under the obligation to put into effect the EU law provisions, implementing them into domestic legal systems. Another, auxiliary method used in preparing this thesis was the historical-legal one.

Due to the multitude and the elaborate nature of the legal acts requiring analysis, the hard core of the study was rooted in the Polish legal order. It should be treated as an example of a domestic legal system accomplishing the goals of the international law, account being taken of the EU law. The scope of research included also the case law and views of representatives of the doctrine. Having in mind that the key notions for the topic of this paper started developing back in the 70-ties of the 20th century, even though timewise the dissertation focuses on the contemporary legislation, the author decided to cover also earlier years in order to show the notional evolution.

The work consists of: the introduction, list of abbreviations, table of content, five chapters, conclusions and the references. The first chapter, entitled *Basic notions of biological diversity and food security*, is introductory in its nature, and the purpose behind it is to explain the key notions for further considerations. First, attention was turned to the notion of security, which was counted among values-goals of legal norms. Its etymology was clarified and an attempt made at defining it in the context of humanities, social and legal sciences. Then a reference was made to the concept of "environmental security" in legal acts, judicature and the doctrine. Earlier, however, the meaning of ecology in life sciences was defined. Not forgetting the importance of sustainable development for the present topic, the author continued presenting how that principle is defined in soft law documents, normative acts and the case law. Once the concepts of environmental security and sustainable development have been clarified, it was time to discuss the normative meaning of biological diversity's definition. The second part of chapter one concerned food security as a value-goal of the legal

norms. At this point, a reference was made to how the definition of food security evolved and the author – for the purposes of this paper – proposed her own definition of the notion, taking into account its quantitative aspect. It was, besides, emphasized that the subject-matter of the EU regulations and Polish legal acts also constituted food safety. Towards the end of the chapter, a classification of threats to food security was included, and an assumption made that food security is an element of public security and a public goal. Finally, a comparison was made between food security and the right to proper food. Chapter one ended with a résumé constituting, at the same time, an introduction to the following chapter.

The second chapter's title is *Food security, biodiversity, sustainable development and environmental security as goals of administrative and environmental laws*. The further discussion was opened with stressing that every state sets certain goals, including goals concerning the whole of the state's population. It was assumed that examples of such goals are: food security, biodiversity, sustainable development and environmental security, in the meaning as defined in chapter one. Firstly, a reference was made to food security as the key notion for the dissertation. Implementation of the goal both in normative acts and in soft law documents was researched. The observation was that in all those documents invariably a correlation was made between the security of the type and the status of biological diversity. Consequently, the author focused on the implementation of the goal in terms of protection of biological diversity in normative acts, soft law documents and in the case law. Owing to that, it was demonstrated that biodiversity is a value *per se* as well as a means of achieving another goal, apart from food security, namely sustainable development. Thus, further part of the chapter was devoted to implementation of the goal of sustainable development in normative acts, soft law documents and in case law. A natural consequence of the above was spending some time on researching how the goal of environmental security is implemented in normative acts and soft law documents. It was due to the observation that such an implementation ensures food security, which in turn constitutes an element of environmental security. And so defined values-goals were analysed in light of international, EU and Polish laws. The final part of the chapter contains a summary recapitulating the earlier analysis and introducing the topics to be discussed in the three following chapters. It was emphasized that food security in the long run requires that states take on environmental protection tasks. And implementation of such tasks is possible through public administration authorities using the forms of action provided for under the law.

The third chapter, entitled *Legal tools aimed at ensuring food security in fishery and fishing*, is oriented on researching Polish legislation in terms of legal tools for ensuring food security through protection of biological diversity of sea and inland water resources. Accordingly, the analysis conducted in the chapter concerned the Polish Act dated 19 December 2014 on Maritime Fishery and the Polish Act dated 18 April 1985 on Inland Water Fishing. At the same time, a classification was made of legal forms of action of the public administration provided for in that respect, which enabled the author to establish what protective tasks are implemented through their means. Chapter three ends with a summing-up.

The idea behind considerations made in the fourth chapter, entitled *Legal tools aimed at ensuring food security in agriculture*, and the fifth chapter, entitled *Legal tools aimed at ensuring food security in hunting and game management*, was reaching analogical goals, the only difference being that they concerned biodiversity in agricultural and game management. In chapter four, following some introductory issues, the author discusses various legal tools, the purpose of which is ensuring food security through protection of biological diversity, in the form of programs to develop rural areas, ecological farming, protected designation of origin, protected geographical indication and ban on the cultivation of transgenic plants. Next, in chapter five, an attempt at formulating a definition of hunting in the meaning of legal sciences was made, followed by a reference to the legal tool of hunting and game management. Each time corresponding legal forms of administrative action were considered. That led to establishing the tasks realized with that means.

The main part of this doctoral dissertation is summed up with the below conclusions. It was assessed that the analysis conducted in the work convinces of accuracy of the formulated topic of the paper, which classifies protection of biological diversity under administrative law as a tool of ensuring food security. A need was, however, underlined for further search for legal solutions which would make that instrument more effective. The accounts of the author led to a conclusion that the legal tools do not prevent, at least to a sufficient degree, the authorized entities from using the natural resources in a manner which temporarily ensures food security but in the long run adversely affects biological diversity. The cause of such a state of affairs is not, however, lack of a uniform model of administrative law protection of biological diversity. Rather, it is the author's belief that the underlying problem is the scarcity of legal tools encouraging use of the environmental resources with the future generations in mind. Account being taken that their application is not always possible, a suggestion is made that the legislator should pay more attention to legal forms of action

vested in the public administration authorities and constituting a means of performing their supervisory and auditing tasks.

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