

CONSISTENCY OF COMPETENCE OF THE REGIONAL DIRECTOR FOR ENVIRONMENTAL PROTECTION

1. Introductory remarks

Environmental Protection Authority, which is the regional director of environmental protection, operates in the Polish legal system since 15 November 2008, under the Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments³⁴⁵.

The competence of the regional director of environmental protection may include the matters in the following areas: environmental impact assessments, forms, nature conservation, environmental damage, and cooperation with environmental organizations and waste management.

The activities of the Regional Director in the environment are considerable scope for co-operation with the authorities, departments and other organizations involved in environmental protection. These are, for example, local government authorities, managers or teams of outstanding natural beauty natural parks or environmental organizations.

In view of the very wide range of tasks of the regional director of environmental protection and cooperation with other entities may occur in practice to cross the competence or, worse, a negative conflict of competence.

After nearly four years of operation, the regional director of environmental protection in Poland, you can try to assess the changes in the environmental authorities introduced by the Law on Provision of Information. Particular attention should be to look at the scope of the powers of the regional director of environmental protection. The implementation of the tasks that existed before and the changes introduced must be considered, it actually require the establishment of new bodies, and by extension to the already numerous administrative apparatus.

2. The environmental authorities in Poland - general issues³⁴⁶

³⁴⁵ OJ No 199, item 1227 as amended;

³⁴⁶ See: M. Górski, *Komentarz do artykułów 376 – 385*, [in:] M. Górski, M. Pchałek, W. Radecki, J. Jerzmański, M. Bar, S. Urban, J. Jendroška, 2011, *Prawo ochrony środowiska. Komentarz*, s. 1246 – 1282; K. Gruszecki, 2011, *Prawo ochrony środowiska. Komentarz*, p 727 – 751; P. Otawski, *Organization of Environmental Protection Services in Poland*, [in:] M. Rudnicki, I. Weresniak – Masri, A. Kozłowska (ed), 2011, *European Environmental Law in the UE Member States. An Overview of Implementation Effectiveness*, s. 17 – 34. M. Rudnicki (ed), 2011, *Organizacja ochrony środowiska*; M. Walas, *Organy ochrony środowiska w Polsce*, „Przegląd Prawa Ochrony Środowiska” 2009, no 1, p 41 – 50.

In accordance with article 5 Polish Constitution of 2 April 1997, the environment is one of the fundamental duties of the state. Tasks in the field of environmental protection are carried out by the authorities, including in particular public authorities³⁴⁷. The legislature in the Act of 27 April 2001 Environmental Protection Law in the article 3 point 14 of the legislature is that these tasks can also be performed by "other actors"³⁴⁸, when they are established by law or by agreements to carry out public tasks relating to the environment and its protection."

In article 376 and 377 Environmental Protection Act the legislature has concluded directory environmental authorities, which is composed of the mayor, the governor, council county Marshal, Governor, Minister responsible for the environment, the General Director of Environmental Protection and Regional Director of Environmental Protection and the Environmental Protection Inspection. The doctrine is both supporters of the closed nature of this directory³⁴⁹, as well as opponents of such an approach³⁵⁰. It appears that the dispute is rather small practical importance. It is common ground that the authorities carrying out tasks in the field of environmental protection formed a coherent and efficient system of protection.

Authorities perform environmental tasks of various types and in various forms of lawful activities. The doctrine is distinguished by many classification tasks in the field of environmental protection, but most synthetic seems to be that created by M. Gorski, who shared the task of environmental protection, because of their content, the management of the environment (indirect protection) and executive tasks (direct protection)³⁵¹. In the first group distinguished by organizational tasks, tasks reglamenting - binding and tasks of control and supervisors. The second group of tasks is implementing tasks on behalf of the local community and the execution of a replacement. Author includes regional director of environmental protection to bodies performing the tasks reglamenting - binding³⁵².

The doctrine emphasizes that the process of shaping the institutional system of each area of law should be taking into account certain principles, among which the most important is the principle of subsidiary (subsidiary),

³⁴⁷ OJ 2008 No 25, item 150 as amended

³⁴⁸ than environmental protection agencies.

³⁴⁹ Z. Bukowski, [in:] J. Ciechanowicz – McLean, Z. Bukowski, B. Rakoczy, 2008, *Prawo ochrony środowiska. Komentarz*, p 596.

³⁵⁰ W. Radecki, 2002, *Organy administracji oraz instytucje ochrony środowiska*, p 8 – 9; K. Gruszecki, *Prawo...*, p 729; M. Górski, *Komentarz...*, p 1249 – 1253.

³⁵¹ M. Górski, 2008, *Zmiany w podziale kompetencji organów administracji publicznej w sprawach związanych z ochroną środowiska*, [in:] L. Zacharko, A. Mantan, G. Łaszczycza (ed), *Ewolucja prawnych form administracji publicznej...*, p 104.

³⁵² M. Górski, [in:] M. Górski (ed), 2009, *Prawo ochrony środowiska*, p 89; podobnie: A. Barczak, *Zadania organów administracji w zakresie ochrony środowiska*, [in:] PKorzeniowski (ed), 2010, *Prawa i obowiązki przedsiębiorców w ochronie środowiska*, p 71.

decentralization, rationalization of cost effectiveness³⁵³. At the same time the operation of such system should be evaluated, "if adopted in its development assumptions proved to be correct, and whether it executes the task under law³⁵⁴". The criteria for this assessment are: efficiency, effectiveness, economy and public administration positive outcome. What's more, the administration tasks of environmental protection should be carried out in a continuous and complex, and there should be links between individual activities³⁵⁵.

In light of these comments is to consider and to assess how prosper in the current system of environmental law authorities, the functioning of the regional director of environmental protection, especially that already appear in the Parliament question to the minister of the environment on the activities of the various regional environmental management³⁵⁶.

3. The political position of regional director of environmental protection

The creation of new bodies as the General Director of Environmental Protection and the regional directors of environmental protection is the next step in the process of deconcentration of tasks related to environmental protection, which lasts in Poland since 1999³⁵⁷. This change in the Polish environmental authorities was related to the acquisition by the appropriate authorities of tasks previously performed by the minister responsible for the environment and by the provincial governors. As it shows, the change is "to contribute to the improvement of the environmental management process in Poland and the efficient use of EU funds."³⁵⁸

In accordance with article 123 paragraph 1 of the Act on the provision of information, the regional director of environmental protection administration

³⁵³ G. Dobrowolski, *Propozycja reformy instytucjonalnej ochrony środowiska*, [in:] M. Górski, J. Bucińska, M. Niedziółka, R. Stec, D. Strus (ed), 2011, *Administracja publiczna – człowiek a ochrona środowiska. Zagadnienia społeczno – prawne*, p 95.

³⁵⁴ G. Dobrowolski, *Propozycja...*, p 95.

³⁵⁵ M. Górski, 1992, *Ochrona środowiska jako zadanie administracji publicznej*, p 179.

³⁵⁶ For example, a Parliamentary Question No. 5204 of 6 November 2009, the Minister for the Environment on the activities of regional environmental management in the province. Malopolska and Silesia, in particular niezłaatwienia ap lication gm. Lacko in the province. Malopolska in the manner provided by law Administrative Code; <http://orka2.sejm.gov.pl/IZ6.nsf/ZAPop/05204?OpenDocument> - 19 March 2012.

³⁵⁷ D. Strus, *Pozycja ustrojowa i wybrane kompetencje w zakresie ochrony przyrody Generalnego Dyrektora Ochrony Środowiska i regionalnych dyrektorów ochrony środowiska*, [in:] M. Górski, J. Bucińska, M. Niedziółka, R. Stec, D. Strus (ed), *Administracja...*, p 372; K. Sobieraj, *Ewolucja służb ochrony środowiska*, [in:] M. Rudnicki (ed), 2011, *Organizacja ochrony środowiska*, p 54; K. Sobieraj, 2011, *Organization of Environmental Services in Poland*, Polish Yearbook of Environmental Law, p 164.

³⁵⁸ D. Strus, *Pozycja...*, p 373.

body is detached³⁵⁹. In accordance with article 56 sec. 1 of the Act of 23 January 2009, the governor and government offices in the province "detached organs of government are local organs of state administration subordinate to the minister or the competent authority of the central government and state-owned corporate managers and managers of other state agencies performing the tasks of government in the region." In accordance with article 127 paragraph 3 of the Law on the Provision of Information on appeal body (a body of higher education), within the meaning of article 17 of the Code of Administrative Procedure, in relation to the regional director of environmental protection is the General Director of Environmental Protection. This subordination "covers all aspects of the regional director of environmental protection³⁶⁰." Regional Director of Environmental Protection as the body performs its task monocratically with the regional directorate of environment, which is a state budget unit.

Most of the employees of the regional environmental management work in the current environment and agriculture departments that existed (and still exists) in the regional offices. On 1 January 2009, they became, in accordance with article 164, paragraph 1 of the Act on the provision of information, employees of regional environmental management³⁶¹. These employees have been included by the legislature to the civil service, due to the interpretation of article 125 Act on Disclosure of information.

Advisory body - an advisory organ of director of the regional environmental in the field of nature conservation is a regional council environmental protection within its competence. Its tasks in accordance with article 97 of the Act on the Protection of Nature, in particular: assessment tasks for the protection of nature; opinions on draft laws in the field of nature conservation issued by the regional director of environmental protection; offer conclusions and opinions on issues of nature conservation; opinion on development plans and strategies of the provincial nature conservation. Reviews of this body will be the nature of the expert, based on the qualifications of the persons³⁶² comprising it, which is why they will have no binding regional director for environmental protection.

In accordance with article 133 Act on Disclosure of information in the field of environmental impact assessment advisory body - an advisory director of the regional environment is a regional committee for environmental impact assessments. A significant adjustment was included in the paragraph 4 of this article. According to it, the regional director of environmental protection may apply to the commission for regional environmental assessments for an opinion

³⁵⁹ JO No. 31, item 206, as amended

³⁶⁰ B. Rakoczy, 2010, *Ustawa o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko. Komentarz*, p 298.

³⁶¹ D. Strus, *Pozycja...*, p 375.

³⁶² K. Gruszecki, 2009, *Ustawa o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko. Komentarz*, p 355 – 356.

on a proposal from mayor on matters within its competence in the field of environmental impact assessment. Regional Director of Environmental Protection, however, is not related to the proposal to ask the mayor and is left to the committee's decision³⁶³. As mentioned in the doctrine³⁶⁴, however, should consider the possibility of introducing the bill to the possibilities for regional environmental director with the proposal for consultation committee also other bodies carrying out an environmental impact assessment. What's more, it would also clarify the order in which applications are being considered for such withdrawal to the committee.

At this point, should be evaluated. Article 124, paragraph 1 of the Act on the provision of information. It provides for cooperation regional director of environmental protection in relation to its task of landscape parks managers or teams of outstanding natural beauty. The legislature, however, did not specify the form here this cooperation and its scope.

At first glance, one might conclude that this cooperation covers all tasks performed by the Regional Director for the environment, because the *lege non distinguente nec nostrum est distinguere*. But you have to agree with the view that such a broad interpretation of this provision could result in the execution of certain tasks to unauthorized entities³⁶⁵. According to article 105 paragraph 4 and article 106 paragraph 2 of the Act of 16 April 2004 on the conservation of nature³⁶⁶ to the tasks of the director and the director of a landscaped park, landscape parks team include: protection of nature, landscape and historical and cultural values, organization of educational activities, tourism and recreation, cooperation in the field of nature conservation and organizational units legal and natural persons, as well as application to the local spatial development plans for land use areas included in the park.

Pending is also a form of cooperation, which may have a different character. How these regulations should be supplemented in the future, even if the financial issues that are very important in the performance of public duties³⁶⁷.

It is important to control the operation of the Regional Director for the environment in the national park. According to article 94, paragraph 1 of the Act of Nature Conservation "regional director duties in the field of environmental conservation in the national park of the park performs director does." The legislature expressly indicated tasks from the competence of the regional director of environmental protection. It is noted that inter alia in connection with the provision of article 91 revision occurred in Nature Conservation Act. According to the current shape of the Director of the National Park was included, according to the Act of 18 August 2011 amending the Act on the

³⁶³ B. Rakoczy, *Ustawa...*, p 319.

³⁶⁴ K. Gruszecki, *Ustawa o udostępnianiu...*, p 368 – 369.

³⁶⁵ K. Gruszecki, *Ustawa o udostępnianiu...*, p 341.

³⁶⁶ OJ 2009 r. No 151, item 1220.

³⁶⁷ K. Gruszecki, *Ustawa o udostępnianiu...*, p 342.

Protection of nature and other acts³⁶⁸, to the nature conservation authorities³⁶⁹. This change has long been postulated in the doctrine³⁷⁰, as director of the National Park is the head of state-owned organization, which is a national park. Under current law and the interpretation of article 94, paragraph 1 of the Act on the Protection of Nature can definitely be concluded that the director of the national park is separate from the regional director of the environment and act on its own behalf.

Another entity, which is related to the functioning of the regional director of environmental protection, is a regional wildlife conservator. In accordance with article 163 Paragraph 1 of the Act on the provision of information, by law it became a provincial nature conservator. At present, he is the first deputy of regional director of environmental protection. With his help, the body discussed carry out its activities in the field of nature conservation³⁷¹.

Through the reform regional (county) nature conservator received the administrative nature of the self. At the moment he always acts in the name and on behalf of the Regional Director for the environment³⁷².

In accordance with article 59 paragraph 1 of the governor and government in the province of detached bodies of government are acts of local law in force in the province or part thereof. In the case of the regional director of environmental protection, in accordance with article 123 paragraph 2 of the Act the provision of information, the order will be in force in the province. However, the basis for this type of local legislation must always follow the law.

The introduction of new arrangements for the organization of the environment in its assumptions were primarily shorten the proceedings, delegate

³⁶⁸ OJ No 224, item 1337.

³⁶⁹ W tym samym akcie prawny do organów ochrony przyrody zaliczony został także marszałek województwa.

³⁷⁰ W. Radecki, *Szczególne formy ochrony przyrody w nowym układzie kompetencji w państwie*, „Ekoprofit” 1999, No 2, p 14.

³⁷¹ A similar situation took place at the end of 2010, when the county for environmental inspector had no formal status Inspectorate for Environmental Protection Authority. The body was the governor, who worked with the provincial environmental protection inspector. Regional Inspector for Environmental Protection has acted for and on behalf of the governor. This situation has been amended by the Act of 25 November 2010 amending the Law on the Inspection of Environmental Protection and the Law on Government Administration (OJ No. 239, item 1592). From 1 January 2011, the Environmental Protection Inspectorate, and also environmental authorities for the purposes of the Environmental Protection Act is the Chief Inspector of Environmental Protection and Regional Environmental Inspector.

³⁷² A similar situation took place at the end of 2010, when the county for environmental inspector had no formal status Inspectorate for Environmental Protection Authority. The body was the governor, who worked with the provincial environmental protection inspector. Regional Inspector for Environmental Protection has acted for and on behalf of the governor. This situation has been amended by the Act of 25 November 2010 amending the Law on the Inspection of Environmental Protection and the Law on Government Administration (OJ No. 239, item 1592). From 1 January 2011, the Environmental Protection Inspectorate, and also environmental authorities for the purposes of the Environmental Protection Act is the Chief Inspector of Environmental Protection and Regional Environmental Inspector.

responsibility to one authority and to ensure high quality of bureaucracy. All adjustments were, generally speaking, to improve the management of the environment in Poland in order to raise funds from the European Union more effectively³⁷³.

One should, however, look at the tasks imposed on the Regional Director for the environment and to answer the question of whether his position in the environmental authorities and the tasks entrusted to him, they can ensure that the original assumptions adopted.

4. The competence of the regional director of environmental protection - general issues

The legislature in the article 131 of Act on Disclosure of information entered into a list of tasks, which are applied to the regional director of environmental protection. These are: participation in strategic environmental impact assessment; conduct impact assessments of projects on the environment, or participation in these assessments, creation and liquidation of the forms of nature on the basis of the Law on Environmental Protection, protection and management of Natura 2000 sites and other forms of protection, on the basis of and to the extent determined by the Act on the Protection of Nature, issuing decisions under EPL, conducting investigations and performing other tasks referred to in the Act of 13 April 2007 on prevention of environmental damage and its repair³⁷⁴, transmission of data to the database of assessments the environmental impact and strategic environmental impact assessment, cooperation with local government authorities in matters of environmental impact assessment and environmental protection, cooperation with environmental organizations, the execution of tasks, including issuing decisions and outsourcing expert in the field of waste management³⁷⁵. Last task was imposed on the regional director of the environmental law of 22 January 2010 amending the Waste Act and other laws³⁷⁶.

The legislature does not mention, however, provision forms in which those obligations are to be performed. It will, therefore, always be the result of provisions to the substantive basis for such actions³⁷⁷.

In connection with such a wide range of responsibilities of the regional director of environmental protection analysis will be based on the provisions

³⁷³ For more: Justification of the draft law on access to information on the environment and its protection, public participation in environmental protection and environmental impact assessments.

³⁷⁴ JO No. 75, item 493, as amended.

³⁷⁵ Originally, the provision that the regional director of environmental protection imposed the duty to perform the tasks associated with participation by organizations in a Community eco-management and audit scheme (EMAS). This provision was repealed by the Act of 15 July 2011 on the national eco-management and audit scheme (EMAS) (OJ No. 178, item 1060).

³⁷⁶ JO No. 28, item 145.

³⁷⁷ K. Gruszecki, *Ustawa o udostępnianiu...*, p 364.

that give just the framework for the regional director of environmental protection.

As stated in article 131 Act on Disclosure of information the basic tasks of the regional director for environmental protection relate primarily to the nature and conduct of, or participation in the procedures of environmental impact assessments. These tasks will therefore be discussed first.

5. The competence of the regional director of environmental protection in the environmental impact assessment

Environmental impact assessment is a procedure and therefore the regulations are often very detailed and complicated³⁷⁸. Perhaps for this reason, the legislature decided on the provision of information off the control of the Environmental Protection Act. This change raised concerns from the very beginning, because by doing so there have been even greater, "spreader" provisions for the protection of the environment, after many acts³⁷⁹.

The legislature in the article 75 paragraph 1 of the Law on the Provision of Information decided that the authorities have powers to issue a decision on the environmental conditions. Parent body, as a rule, is the mayor or president of the city. Actions of other bodies referred to in that provision is an exception to the presumption because the properties of the former.

Regional Director of Environmental Protection has been recognized as competent to issue a decision on the environmental conditions, for example: who are always projects significant environmental effects of roads, railway lines, overhead power lines, installation of transmission oil, petroleum products, chemicals or gas, artificial water tanks, nuclear facilities, radioactive waste, projects carried out in enclosed areas, projects implemented in marine areas, changes in the forest, which is not the property of the State Treasury, for the purposes of agriculture, projects involving the implementation of the investment in airports for public use within the meaning of the Act of 12 February 2009, with special rules for the preparation and implementation of investment in airports for public use³⁸⁰; investment in the terminal; investments in regional broadband networks, projects involving a change or extension of projects listed above, projects involving the implementation of the investment within the meaning of the Act of July 8 2010 on Specific Rules for the implementation of the investment in flood protection structures³⁸¹.

In terms of environmental impact assessment of the most important tasks of the regional director of environmental protection are³⁸² conducting

³⁷⁸ For this reason, in this paper, we discuss the most important issues concerning the regional director of environmental protection.

³⁷⁹ W. Radecki, *Ocena oddziaływania na środowisko*, [in:] W. Radecki (ed.), *Instytucje...*, p 301 – 302.

³⁸⁰ JO No 42, item 340.

³⁸¹ JO No 143, item 963.

³⁸² W. Radecki, *Ocena...*, p 287 – 288.

environmental procedures as re-evaluation of the proceedings for the decision, "construction" of article 72 paragraph 1 point 1, 10 and 14, conducting impact assessment procedure on the Natura 2000 as part of the proceedings leading to the decision realization of article 96, giving opinions on the statement or no proof required to assess the impact of the projects that have the potential to have significant effects on the environment, but if it is deemed necessary - opinion on the scope of the report, opinion on the scope of the projects which are likely significantly affect the environment, agreeing the conditions of the project, if prior to the decision on environmental conditions is carried out environmental impact assessment, agreeing terms of the project after a re-evaluation of environmental impact statement for the assessment of the impact on Natura 2000 sites: the obligation to assess or not to assess the need, in relation to the implementation of the project after an assessment of impacts on the Natura 2000 implementation of the agreed terms, the refusal to agree the conditions of implementation.

As for the legal forms of the bodies involved in the proceedings on environmental impact assessment, as a general rule, one should apply the provisions of the Act here Code of Administrative Procedure, unless the Act provides otherwise.

Regional Director of the Environmental Impact Assessment of the environmental issues administrative decisions, the provisions of reconciling, opinions and other provisions.

In conclusion, it should be noted that under the previous legislation the tasks performed by Regional Director Environmental performing governor after the Marshal.

6. The competence of the regional director of environmental conservation

In terms of tasks related to environmental protection one of the most important responsibilities of the regional director for environmental protection is the possibility of the establishment, abolition and change the legal limits some forms of nature resulting from EPL. In accordance with article 13 paragraph 3 of the act of creating a nature reserve in the form of an order issued by the Regional Director for the environment. Importantly, the creation of this form of nature protection is not required for interoperability regional director of environmental protection with other entities. However, in the case of an increase, reduce or eliminate the nature reserve is required to consult the regional councils of nature³⁸³.

Another issue is the obligation under article 13 paragraph 3a and 3b of EPL. The legislature imposes on developers administration: draft study of conditions and directions of spatial development of municipalities, local development plans provinces and marine spatial plans internal waters, territorial sea and exclusive

³⁸³ D. Strus, *Pozycja...*, p 378.

economic zone, in the part concerning the nature reserve and its buffer zone, the obligation to reconcile these acts of planning regional director of environmental protection, if the findings of these acts may have an adverse effect on the conservation objectives of a nature reserve. Similarly, the issue of agreeing on legislation regulates the planning under the Act of 28 September 1991 on forests³⁸⁴.

Another privilege regional director of environmental protection resulting from EPL is to introduce fees for access to the area of the nature reserve, guided by the need to protect nature. The authority does so in the form of an ordinance. These fees are earmarked for conservation. As it increases in doctrine, there is no adjustment in determining the form of the payment of such fees and how they are documenting. "Not precise in this regard may lead to technical difficulties."³⁸⁵

In article 15 of the Law on Nature Protection contains directory of prohibitions that limit or exclude the use of the land on which forms of legal force of nature. In paragraph 5 of this provision the legislature authorizes the Regional Director for the environment to allow for exceptions to these prohibitions in the nature reserve where it is "reasonable exercise of scientific research or educational purposes, cultural, tourist, recreational or sports or religious purposes and does not cause adverse effects for the purpose of nature conservation nature reserve." The legislature in the original version of this article, however, has not ruled on the form in which it is authorized to waive the prohibition should be issued. It seems, however, as also noted in the literature, due to the fact that such an authorization issued by the Regional Director in the practice environment is ruling on an individual basis, it should be in the form of an administrative decision³⁸⁶.

This was an oversight by the legislature removed the Act of 18 August 2011 amending the Act on the Protection of nature and other acts³⁸⁷. This To the Act paragraph 6 - 8 were added, which regulates issues related to the same decision, the request for authorization of a derogation from the prohibitions and terms of realization of this derogation³⁸⁸.

In accordance with article 19 paragraph 1 point 2 of the Law on Environmental Protection Regional Director shall prepare a draft environmental management plan for the nature reserve³⁸⁹. This project requires collaboration

³⁸⁴ JO of 2011, No. 12, item 59, as amended.

³⁸⁵ D. Strus, *Pozycja...*, p 378.

³⁸⁶ K. Gruszecki, 2010, *Ustawa o ochronie przyrody. Komentarz*, p 91.

³⁸⁷ JO No. 224, item 1337.

³⁸⁸ W tym miejscu należy także zauważyć niedbałość ustawodawcy przy wprowadzaniu zmian do obowiązujących aktów prawnych, ponieważ zarówno ta ustawa, jak i ustawa z dnia 18 sierpnia 2011 roku o bezpieczeństwie i ratownictwie w górach i na zorganizowanych terenach narciarskich (Dz. U. No 208, item 1241), wprowadza do artykułu 15 ustawy o ochronie przyrody ustęp 6. Świadczy to niezbyt dobrze o staranności polskiego ustawodawcy.

³⁸⁹ Lub po uzgodnieniu z nim zarządzający rezerwatem albo sprawujący nad nim nadzór.

with relevant local municipal councils, which should give an opinion in this regard. It should be assumed that the opinion, which is the weakest form of cooperation between the authorities will not be binding on the regional director of environmental protection. Unfortunately, the legislature has demonstrated a lack of precision, without specifying the period within which the municipal council should give its opinion. One might assume at first glance that the municipal council, therefore, will not be in this area in any way limited³⁹⁰. However, such an interpretation would mean certainly extended the procedure for drawing up the plan of protection.

Pursuant to § 7 of the Regulation of the Minister of Environment of 12 May 2005

on the drafting of a management plan for the national park, nature reserve and a landscaped park, to make changes in the plan and the protection of resources, objects and elements of nature³⁹¹ issuing the draft plan forward it to the competent authorities to make the review and the arrangements provided for in the Act on the Protection of Nature. So the council of the municipality and the draft plan must be submitted.

As laid down in article 19 paragraph 6 of the Act on the Protection of Nature, "the regional director of environmental protection shall present, in the way of a local ordinance in the form of a plan for the protection of the nature reserve within 6 months from the date of receipt of the draft plan." Therefore, it seems that this is the date by which the municipal council must express an opinion. In the absence of any position, it should be assumed that the council has no objections to the draft plan submitted by the regional director of environmental protection. The legislature did not indicate the consequences of exceeding this limit. It must be therefore considered that this is the time-limit³⁹².

Quite a significant change in the preparation of a management plan for the nature reserve located in more than one region is a common requirement of the establishment, by an act of local law in the form of orders, the regional directors of the environment in which the activities are part of the reserve. This change is based on the fact that under the previous legislation, while still governor drew up the plan, in the case of a nature reserve position in several provinces, the governor drew up a plan in which the surface of the greatest reserve³⁹³. The current procedure in which an agreement must be reached a number of entities, not really speed up the whole process.

Certain powers of the regional director of environmental protection received in connection with the preparation plan for the park. According to art 19 Paragraph 6b regional parliament makes a draft resolution establishing a management plan for the park landscape needs to be agreed with the relevant

³⁹⁰ K. Gruszecki, *Ustawa o ochronie...*, p 121.

³⁹¹ JO No. 94, item 794.

³⁹² K. Gruszecki, *Ustawa o ochronie...*, p 126.

³⁹³ D. Strus, *Pozycja...*, p 380.

regional director of environmental protection. It should be noted here on several issues. First, we are dealing with an already finished draft resolution. If, therefore, the regional director of environmental protection will not receive draft resolution, he has no obligation to take a stand³⁹⁴. Secondly, since the agreement is considered to be far-reaching form of cooperation between the authorities, the lack of agreement in this procedure prevents the introduction of conservation plans³⁹⁵. The last issue is a problem with a situation in which protection plan is to be prepared for a landscaped park located in several provinces. Clear from the results that the right to establish a conservation plan will be in this situation county parliament, in which the head office of the park. However, no adjustment is here about the possible arrangements of the plan with the regional director of environmental protection. It seems that also here will apply paragraph 6b article 19 of the Law on Environmental Protection, which imposes such an arrangement. And if so, is involved in this procedure will have to take all regional directors, which is the area of the park. And it certainly makes it much harder and extends the entire procedure.

In the case of the Natura 2000 plan is an instrument of protection new tasks. For its preparation shall be entitled, in accordance with article 28 paragraph 5 of the Act on the Protection of Nature, is the regional director of environmental protection, which is guided by "the need to maintain and restore to a favourable conservation status of habitats and species of plants and animals for which the protection of Natura 2000 designated area." This plan shall be established in the form of an ordinance. As in the case of a nature reserve, where the Natura 2000 site is located in more than one province, establish a plan of protection tasks together in the way of a local in the form of regulation, the regional directors of the environment in which the activities are part of the area. Management regional director of environmental protection tasks down plan expires for establishing a conservation plan.

In accordance with article 32 paragraph 3 of the Act on Nature Conservation regional director of environmental protection is the coordinator of the functioning of Natura 2000 sites. His tasks have here a socio - organizational and material - technical³⁹⁶. Inter alia for this purpose, in accordance with article 114 paragraph 1 of the Law on Nature Protection, Regional Director of Environmental Protection "gathers documentation resources, and wildlife components, particularly valuable for scientific creations of nature, the positions of protected species of plants, animals and fungi, as well as their habitats and natural habitats." These data are then used to efficiently coordinate all Natura 2000 sites. The legislature, however, did not specify what documents and in what form should be collected. This will therefore lead to different practices in each regional director of environmental protection.

³⁹⁴ K. Gruszecki, *Ustawa o ochronie...*, p 126.

³⁹⁵ Ibidem.

³⁹⁶ D. Strus, *Pozycja...*, p 383.

7. The competence of the regional director of environmental damage

Regional Director of the Environmental was granted permission to set forth in the prevention of environmental damage and its repair. It took over on these issues before the task performed by the governor. Regional Director of Environmental Protection of the environment is a body competent in matters of liability for environmental damage prevention and repair of damage to the environment. In the event of imminent harm to the environment or in an environment where the injury occurred in two or more provinces, it is appropriate regional director of environmental protection, who first learned about their occurrence.

However, the legislature did not exclude completely the participation of Governor of the tasks of environmental damage. According to article 7 paragraph 3 of the Act on prevention of environmental damage and its repair regional director of environmental protection, the competent in the event of imminent harm to the environment or in an environment where the injury occurred in two or more provinces, shall act in consultation with the governor, in whose area there was an immediate danger of damage to the environment or harm to the environment.

In article 7a law on the prevention of environmental damage and the repair of the legislature basically repeated in article 123 paragraph 1a Act on Disclosure of information. As already mentioned, the "subordination" of the regional director of environmental protection to the General Director of Environmental Protection, covers all the tasks carried out by the authority.

The legislature has also recognized the regional director of environmental protection, as before the governor, as appropriate in relation to the environmental damage caused to land before 30 April 2007.

These regulations range of tasks related to the detriment of the environment consisted of an almost complete transfer of competence from one authority - the governor - to another entity - the regional director of environmental protection.

8. Other regional powers of the director of environmental protection

The next task, which was applied to the regional director of environmental protection is cooperation with environmental organizations. It seems, however, that task belongs to everybody performing tasks related to environmental protection. Cooperation with such entities is certainly deepening environmental protection.

The final task of the regional director of environmental protection said article 31 paragraph 1 of the Act is the provision of information to carry out the waste³⁹⁷. These tasks are mainly issuing decisions and outsourcing expertise. Thus, the regional director of environmental protection, in accordance with article 19 paragraph 2 of the Act of 27 April 2001 on waste, approved by

³⁹⁷ JO of 2010, No. 185, item 1243, as amended.

decision of the hazardous waste management program for projects and events in enclosed areas within the meaning of the Act of 17 May 1989 Geodetic Law and maps³⁹⁸. Under paragraph 4 of this article must in this issue consult the mayor or president of the city with jurisdiction over the place of generation of hazardous waste. A copy of the decision, the regional director shall notify the competent environmental protection because of the location of hazardous waste county marshal, county environmental protection inspector and head of the commune, the mayor or the president of the city.

In accordance with article 21a of the Act on Waste Regional Director approves waste management decisions for projects and events in enclosed areas. A copy of this decision shall forward marshals provinces and provincial environmental inspectors having jurisdiction over the place of waste, not later than 30 days from the date on which this decision becomes final.

Regional director of environmental protection shall also give permission to conduct the recovery or disposal of waste; authorized waste collection and transportation of waste; permission to use the landfill. It is also required the consent of the landfill closure or its separate parts.

The Regional Director also performs environmental expertise in the cases provided for in article 54b of the Waste Act.

9. Concluding Remarks

The emergence of regional director of environmental protection in the Polish legal system was a significant change and met with different opinions. Even among some members in the first months of the new law, doubts arose about the effectiveness of the new structures³⁹⁹.

The doctrine positively assessed⁴⁰⁰, and falls to agree with this view, the intention of entrusting proceedings relating to the assessment of the environmental impact of one body. Adjustment Act on Disclosure of information relating to environmental impact assessment clearly sought to systematize the responsibility of the authorities in this regard. Another issue is the exclusion of the problems of the Environmental Protection Act, which is commonly penalized⁴⁰¹. It seems that so many of the tasks entrusted to the director of the regional environment will help to accelerate the number of investment projects, and thus indirectly to make better use of EU funds. Especially, it is a very complicated procedure and detailed. Negatively, however, evaluated the fact that due to the scope of the delegation of the environmental impact assessment of the other parties, blurred in a sense, the problem of responsibility for carrying out the tasks in this area.

³⁹⁸ JO of 2010, No. 240, item 2027, as amended.

³⁹⁹ These have a Parliamentary Question No. 5204 of 6 November 2009, the Minister for the Environment on the activities of regional environmental management in the province. Malopolska and Silesia.

⁴⁰⁰ D. Strus, *Pozycja...*, p 385.

⁴⁰¹ W. Radecki, *Ocena...*, p 301 – 302.

As for the other tasks entrusted to the regional director of environmental protection, there are already some doubt as to the effectiveness and consistency.

For jobs in the field of environmental protection, there are still many tasks is the responsibility of others because of the specific object of protection. It should perhaps reflect on granting the regional director of environmental protection in these matters, rather the "agreeing" on some important issues, such as the Natura 2000 sites. The fact that the regional director should not perform so many tasks in the field of nature conservation, it may be included in the adjustment of interim and final regulations. According to article 163 paragraph 2 of the Act the provision of information until such time as the Regional Director for the environment, this function was to act as (a maximum of 6 months) Provincial Nature Conservator. It seems that if they strengthen the position of the provincial nature conservation, it could successfully perform tasks in the field of environmental protection is currently assigned to the regional director of environmental protection.

In the case law on the prevention of environmental damage and the repair of the problem of selecting the proper authority (governor or marshal) in these cases appeared at the stage of preparation of this bill⁴⁰². Finally, at the time the governor was the competent authority⁴⁰³. As it suggests, it could be due to the fact that it is the Governor in the field of nature conservation authority, and it is the Nature Conservation law was of paramount importance to the provisions of the damage in the environment. As you can see the problem with delegation of damage to the environment from the very beginning is quite important. Is the current regulation will be effective will probably only practice.

Assessment of cooperation with environmental organizations to the list of tasks of the regional director of environmental protection seems unnecessary in this case. As one would expect for each body performing public functions, including the role of environmental protection, should in the exercise of its functions to work with the public, both with individual entities, as well as with organized forms. Certainly a broader dialogue with the public in proceedings only reinforces environmental tasks in this area.

As for the "youngest" tasks which are assigned to the regional director of environmental protection, concerning waste management, it appears that the legislature has assigned them to him due to the fact that, in accordance with article 378 paragraph 2 of the Law on Environmental Protection Regional Director of Environmental Protection is the competent authority in matters of actions and events in enclosed areas. It must therefore be regarded as a consequence of the legislature in this regard.

In less than three years of the Act on Disclosure of Information spool regional director of environmental protection as you can see has been altered by

⁴⁰² W. Radecki, 2007, *Ustawa o zapobieganiu szkodom w środowisku i ich naprawie. Komentarz*, p 73.

⁴⁰³ Ibidem.

the removal of the tasks associated with participation by organizations in a Community eco-management and audit. It seems that the legislature itself a little "test" of the new body can afford to practice it.

The current system of environmental authorities, particularly in relation to the advent of the new body, which is the regional director of environmental protection, in many places, raises doubts as to the competence, which does not give the public administration as a whole, the possibility of efficient and effective implementation of its tasks.

As it pointed out⁴⁰⁴ the system environmental authorities in Poland requires a thorough reform, which would provide greater financial and organizational effectiveness.

For this purpose, environmental management system should be implemented with the use of the existing human potential and technical support. The main task of the legislator should now change the nature of law designed to organize the institutional links between existing bodies competency performing tasks related to environmental protection.

⁴⁰⁴ M. Rudnicki, *Koncepcja reformy służb ochrony środowiska*, [in:] M. Rudnicki (ed), *Organizacja...*, p 135
i n.