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THE CONCEPT AND LEGAL FRAMEWORK  
OF NATIONAL PARKS: A COMPARATIVE LEGAL  
STUDY FOCUSING ON THE UNITED STATES  
OF AMERICA, THE REPUBLIC OF POLAND  
AND THE FEDERAL REPUBLIC OF GERMANY

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ABSTRACT

The article analyses the concept and legal framework of national parks in three different countries. First, it deals with national parks in the USA, which is the pioneer of the concept of a national park. Then,

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it moves to Europe, precisely to Poland and Germany. The aim is to show the differences between national parks in all those countries and their objectives. But the most important question to answer is? What are national parks for?

### **Keywords**

National park; legal framework of a national park; administration of natural parks; the International Union for Conservation of Nature.

## **STRESZCZENIE**

W artykule analizie poddano instytucję parków narodowych i podstawy ich działania w trzech państwach. W pierwszej kolejności zajęto się rozwiązaniami przyjętymi w Stanach Zjednoczonych Ameryki, które miały charakter pionierski. Następnie omówiono rozwiązania europejskie – polskie i niemieckie. Celem opracowania jest pokazanie różnic między parkami w tych trzech państwach i ich przyczyn. W szczególności skoncentrowano się na poszukiwaniu uzasadnienia dla istnienia tej formy ochrony przyrody.

### **Słowa kluczowe**

Park narodowy; prawne podstawy działania parku narodowego; zarządzanie parkami narodowymi; Międzynarodowa Unia Ochrony Przyrody.

## **1. INTRODUCTION – ABOUT THIS ESSAY**

When we think of national parks, we think of unspoiled nature, infinite widths and probably about the United States of America. About the United States of America? Yes, of course! Already in 1934, President Franklin D. Roosevelt recognised properly that “there is nothing so American as our national parks”<sup>1</sup>.

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<sup>1</sup> F. D. Roosevelt, *Radio Address from Two Medicion Chalet, Glacier National Park, August 5, 1934*, <http://www.presidency.ucsb.edu/ws/?pid=14733> [20.03.2016].



Seen from a distance, the concept of a national park has been one of the greatest export hits from Northern America. There can be found dozens of national parks in a wide variety of countries all around the world. An American way of experiencing nature goes global. Europe is no exception. Today, on the old continent alone, there can be found approximately 90 million hectare of protected area, which corresponds to 18% of the total amount of land, spread on more than 40 countries<sup>2</sup>. But this success story can't hide the uncertainties that are caused by the use of the term of a "national park". The definitions of this idea vary from time to time, even so the legal framework is different from country to country. Also the assigned objectives are by no means uniform. Therefore it's about time to bring light into this jungle of legal inconsistencies and confusions to strengthen the nucleus of this unique idea of nature protection. In consideration of the thesis that the concept of a national park was formed in the U.S., this essay focuses first on the country just been named. Later, the focus shifts on Poland and exceedingly on Germany, analysing the European idea, obligations and especially framework of a national park. During this process, the following question permanently appears and asks for an answer: What are national parks for?

## 2. "THE BEST IDEA WE EVER HAD" – U.S. NATIONAL PARKS

It can be claimed that the United States of America are the motherland of the idea of a national park. Influenced by

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<sup>2</sup> C. Ritchie, *Entwicklung der Nationalparks in Europa*, in: *100 Jahre Nationalparks in Europa – wo stehen wir in Europa?*, ed. EUROPARC Deutschland e.V., Berlin 2011, p. 8; keep in mind that his extraordinary number refers to the protected areas in general and not to the amount of land covered by national parks specifically.



the trends of the ending Romanticism era<sup>3</sup>, swapping over from Europe, the first National Park was founded 1872 in the State of Wyoming<sup>4</sup>. The motives were manifold: In example, concerning the Yellowstone National Park, the establishment of this park was strongly supported by the means to protect this peace of nature from human destruction, especially caused by tourists, brought there by the Northern Pacific Railroad<sup>5</sup>. However, back then and even nowadays the Yellowstone National Park is an important tourism attraction. Just to give you an idea, Yellowstone hosts close to 4 million visits each year!<sup>6</sup> Hence, this impressive number can't hide the development whereas the number of visitors in all the national parks throughout the U.S. is decreasing from year to year. In the 1950s or 60s, going to a national park was the "American vacation"<sup>7</sup>. The parks opened their doors for visitors, seeking an increasingly commercialized park experience<sup>8</sup>. But those times are over. On the one hand side this trend causes problems. In example the question arises whether the citizens are still willing to pay for an institution

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<sup>3</sup> S. E. Demars, *Romanticism and American National Parks*, "Journal of Cultural Geography", Vol. 11, Issue 1, p. 17.

<sup>4</sup> National Park Service, U.S. Department of the Interior, *Birth of a National Park*, <http://www.nps.gov/yell/learn/historyculture/yellowstoneestablishment.htm> [20.03.2016].

<sup>5</sup> D. Wakelee, *National Park Service*, Encyclopedia of the U.S. Government and the environment – history, policy and politics (Vol. 1), eds. M. Lindstrom, Santa Barbara 2011, p. 542; about the motives for establishing national parks in general: J. Schelhas, *The U.S. National Parks In International Perspective, The Yellowstone Model Or Conservation Syncretism*, National Parks: Vegetation, Wildlife and Threats (Wildlife Protection, Destruction and Extinction), eds. G. Polisciano, O. Farina, New York 2010, p. 83.

<sup>6</sup> See the *Official visitation statistics* (1979 – 2014) of the National Park Service, U.S. Department of the Interior, <http://www.nps.gov/yell/planyourvisit/visitationstats.htm> [20.03.2016].

<sup>7</sup> B. Yablonski, *The National Parks – America's Best Idea*, PERC REPORTS, Vol. 27, Issue 3 (2009), p. 20.

<sup>8</sup> D. E. Anatoli, *National Park Law in the U.S.: Conservation, Conflict, and Centennial Values*, "William & Mary Environmental Law and Policy Review", Vol. 33, Issue 3 (2009), p. 855.



they don't use anymore?<sup>9</sup>. But this trend sets up chances on the other hand side as well, because obviously less people mean fewer disturbances for the nature<sup>10</sup>.

## 2.1. A BRIEF OVERVIEW

On a geographical map, showing the United States of America, you will find 59 national parks, spread all over the country in 22 states. The largest one is Wrangell-St. Elias in Alaska (32,000 km<sup>2</sup>), whereas the smallest one is Hot Springs in Arkansas, covering only 24 km<sup>2</sup> of land. All together they are called the "crown jewels" of the National Park System<sup>11</sup>. The National Park System itself has more than 20 different designations like "national monument" or "national recreation area" etc.

## 2.2. THE DEFINITION OF THE CONCEPT OF A NATIONAL PARK

Looking for a legal definition on the concept of a national park, you won't find any satisfying definition in the American acts and laws. But that's no reason to worry. Alternatively, the "Act to establish a national park from 1916" offers kind of a legal definition by defining the area of responsibility for the National Park Service. There it says that the National Park Service is supposed to take care of the national parks and national monuments, "which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such

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<sup>9</sup> B. Yablonski, *The National Parks – America's Best Idea*, PERC REPORTS, Vol. 27, Issue 3 (2009), p. 20.

<sup>10</sup> See in example for the topic of noise pollution: N. P. Miller, *US National Parks and management of park soundscapes: A review*, "Applied Acoustics" 69 (2008), pp. 77-91.

<sup>11</sup> C. H. Vincent, *National Park System: Establishing new units*, CRS Report for Congress, Congressional Research Service, 25.<sup>th</sup> of April 2013, p. 1.



means as will leave them unimpaired for the enjoyment of future generations<sup>12</sup>.

### 2.3. LEGAL FRAMEWORK

As already seen, the idea of a national park traces its roots in America in the late 1800s, closely connected to the permanent stream of settlers going west. Yellowstone wasn't the only national park founded around the transition from the 19<sup>th</sup> to the 20<sup>th</sup> century in Northern America: up to 1916, thirteen more national parks were established in the United States of America. However, the year 1916 – therefore a hundred years ago – represents a turning point in the history of the national park movement. Driven by the surging popularity of the parks, President Woodrow Wilson and the U.S. congress enacted the “Act to establish a National Park Service”, launching the National Park Service to promote and protect the parks at the same time<sup>13</sup>. Quite noteworthy is the fact that the name of this act is not used uniformly: actually in the same treaty the different nomenclature of “National Park Act” and “National Park System Act” appears<sup>14</sup>. Care should be taken about this seeming to be irrelevant detail: the term “organic act” is generally used as a collective name for any act, that in stating a territory or agency in the U.S. Be that as it may, this formal curiosity does not affect the material content of the act, whereby the act is creating and delegating authority to a new agency (the National Park Service)<sup>15</sup>. Remarkably in addition is the insight that the named act established the National Park Service is not the most extraordinary innovation. Moreover, the innovation to set up an

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<sup>12</sup> See the *Act to establish a national park (1916)*, section 1.

<sup>13</sup> D. E. Anatoli, *National Park Law in the U.S.: Conservation, Conflict, and Centennial Values*, “William & Mary Environmental Law and Policy Review”, Vol. 33, Issue 3 (2009), pp. 860-861.

<sup>14</sup> R. L. Fischman, *The National Wildlife Refuge System and the Hallmarks of Modern Organic Legislation*, “Ecology Law Quarterly”, Vol. 29, Issue 3 (2002), p. 504.

<sup>15</sup> *Ibidem*, p. 504.



*organized park system*<sup>16</sup> was magnificent for those times and exists till today. However, the act has undergone several direct and indirect amendments in the last hundred years. The first ones were caused by the scant attention to the key language, defining the goals and purposes of a national park, paid by congress while debating about the act in the drafting<sup>17</sup>. Therefore the act received further explication for the first time in the form of the seminal 1918 Lane Letter<sup>18</sup>. Further amendments followed, especially in the 1970s. Likewise in those times falls the excessive expansion of national park acreage. Thanks to the “National Parks and Recreation Act of 1978” (ironically called “park barrel”), \$1.8 billion have been available for the national parks and park-related projects<sup>19</sup>. In this context it shall not be failed to mention the controversial Alaska National Interest Conservation Lands Act (ANICLA)<sup>20</sup>, which lead to a massive increase of protected lands in Alaska, but also marks a climax of the creation of protected lands, that has never been attained again. Especially from a European position it is interesting to see that the National Park Service interprets the “Act to establish a national park” through it’s own national guidance document, called the “NPS Management Policy” (short: “MP”)<sup>21</sup>. Hereby it’s important to know that the favoured priorities of this document change from time to time. The two poles on this topic are preservation on the one hand side and on the opposite site there is the aim to use

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<sup>16</sup> *Ibidem*, p. 504.

<sup>17</sup> R. B. Keiter, *Revisiting the Organic Act: Can it meet the next century’s conservation challenges?*, “The George Wright Forum”, Vol. 28, No. 3 (2008), p. 241.

<sup>18</sup> *Ibidem*, p. 241.

<sup>19</sup> D. Wakelee, *National Park Service*, Encyclopedia of the U.S. Government and the environment – history, policy and politics (Vol. 1), eds. M. Lindstrom, Santa Barbara 2011, p. 545.

<sup>20</sup> T. C. Allan, *Locked up! A history of resistance to the creation of national parks in Alaska*, Washington State University, dissertation 2010, pp. 169–198. M. Nie, *Governing The Tongass: National Forest Conflict And Political Decision Making*, “Environmental Law Review”, Vol. 36, Issue 2 (2006), p. 400–403.

<sup>21</sup> D. E. Anatoli, *op.cit.*, p. 865.



the parks also for enjoyment<sup>22</sup>. In the last decade the update on the MP's by the Bush administration in the middle of the 2000s caused a great sensation in the American society. Critics say that this very liberal and user-friendly change harms the nature badly<sup>23</sup>. In any case, last but not least the "Act to establish a national park" has been subject of multiple disputes in several courtrooms in the U.S.<sup>24</sup>, which shows that this act from the beginning of the 20<sup>th</sup> century is still an important tool to protect the environment from anthropogenic destructions.

Despite all the welcoming results, achieved by the "Act to establish a national park", keep in mind that this law just puts up the legal framework for the national parks<sup>25</sup>. First of all, every national park has it's own specific set of rules<sup>26</sup> and is getting supervised by a director, whereby this director still stands under supervision of the Secretary of the Interior<sup>27</sup>. Creating a national park however is a long lasting procedure<sup>28</sup>. To make a long story short: first of all Congress enacts a law requiring the National Park Service to give specific information about a certain piece of land. In the end, the act passed by Congress or the President creating the national park is based on that information and con-

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<sup>22</sup> H. A. Mappes, *National Parks: For Use and "Enjoyment" or for "Preservation"?* and the role of the National Park Service Management Policies in that determination, "Iowa Law Review", Vol. 92, Issue 2 (2007), p. 601 ff.

<sup>23</sup> J. Cart, *Bush legacy leaves uphill climb for U.S. parks, critics say*, Los Angeles Times, 25.<sup>th</sup> of January 2009, <http://articles.latimes.com/2009/jan/25/nation/na-parks25> [20.03.2016].

<sup>24</sup> R. B. Keiter, *National park protection: Putting the Organic Act to work*, Our Common Lands – Defending the National Parks, ed. D. J. Simon, Washington, D.C. 1988, p. 75.

<sup>25</sup> M. L. Miller, *There ought to be a law! The peculiar of broad federal harmful nonindigenous species legislation*, Invasive species on a globalized world – ecological, social and legal perspectives on policy, eds. R. B. Keller, M. W. Cadotte, G. Sandiford, Chicago/London 2015, p. 328.

<sup>26</sup> See in example for the Yosemite National Park the "Superintendent's Compendium", <http://www.nps.gov/yose/learn/management/upload/compendium.pdf> [20.03.2016].

<sup>27</sup> See the *Act to establish a national park (1916)*, section 3.

<sup>28</sup> See for the process of the procedure: C. H. Vincent, *National Park System: Establishing new units*, CRS Report for Congress, Congressional Research Service, 25.<sup>th</sup> of April 2013, Summary.



tains certain regulations on the aim of this national park as well. The approach that a federal organ is creating national parks is accompanied by further rather strong federal laws, allowing the federal agencies (National Park Service) to enforce them in an effective way<sup>29</sup>. State or local governments can only claim little interference; therefore this park system is based on a strong national sovereign<sup>30</sup>, what is quite noteworthy in a severely federalist organised country like the U.S. Nonetheless federal laws go along with state laws. Together they form a barely penetrable jungle of regulations. For instance, besides the “Act to establish a national park” from 1916, there are six more federal laws to protect national parks against adjacent land use practice: the “National Environmental Policy Act”, the “Wilderness Act”, the “Wild and Scenic Rivers Act”, the “Endangered Species Act”, the “National Forest Management Act” and the “Boundary Waters treatment from 1909”<sup>31</sup>. In addition there are specific state laws, different from state to state. Beyond these, there are even more federal and state laws concerning topics like air pollution, the use of water etc. But do all those laws provide a comprehensive protection against destructive human influences? To be cautious about this, the idea that all the laws mainly protect the nature is at most a wishful thinking. Taking a closer look to the court cases of the past few years, concerning the federal “Act to establish a national park”<sup>32</sup>, most times the question arose, whether the protection of the nature or the use through the people should be given preference. Therefore Denise E. Anatoli summarizes those trials correctly by concluding that the National Park Service is often “the Monkey in the Middle”, trying to satisfy both sides<sup>33</sup>. The criticism recited by Professor Robert L. Fischman (Indiana University Bloomington) goes in the same direction. He says: the “organic act” “serves as guidance for permissible park uses

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<sup>29</sup> D. E. Anatoli, *op. cit.*, p. 885.

<sup>30</sup> *Ibidem*, p. 885 f.

<sup>31</sup> R. B. Keiter, *Legal Considerations In Challenging External Threats To Glacier National Park, Montana, USA*, “Environmental Magazine”, Vol. 11, No. 1 (1987), p. 121.

<sup>32</sup> An analysis offers: D. E. Anatoli, *op. cit.*, p. 889.

<sup>33</sup> *Ibidem*, p. 889.



but fails to articulate an answer to the systemic question: What are parks for?”<sup>34</sup>

So, all in all, national parks in the United States of America are secured by a great net of legal acts and laws. However, the purpose of those legal instruments is not clearly defined. This on-going tightrope act harms in case of doubt the environment. Finally, not to be forgotten is that the national parks are suffering under a chronicle underfunding. In example in 2015, the National Park Service announced that the costs of deferred maintenance reached \$11.5 Billion<sup>35</sup>. In the long run this development could lead to less National Park Service staff and therefore even the most severe laws could not get enforced properly anymore.

For the sake of completeness, it should be added that there are not that many international laws, applying to national parks in the United States of America. In example, the U.S. only sign, but did not ratify the Convention on Biological Diversity<sup>36</sup>. Therefore they are allowed to negotiate, but don't need to implement the named convention. The situation appears different when it comes to the World-Heritage-Convention. Several national parks in America fulfil the required criteria. Probably the most famous example is the Grand Canyon National Park in the State of Arizona<sup>37</sup>.

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<sup>34</sup> R. L. Fischman, *The Problem of Statutory Detail in National Park Establishment Legislation and its Relationship to Pollution Control Law*, “Denver University Law Review”, Vol. 74, Issue 3 (1997), p. 810.

<sup>35</sup> R. Watson, S. Wilson, *Let's Fix Our National Parks, Not Add More*, The New York Times, 30<sup>th</sup> of June 2015, <http://www.nytimes.com/2015/06/30/opinion/lets-fix-our-national-parks-not-add-more.html?ref=opinion> [20.03.2016].

<sup>36</sup> See therefore in example: K. Raustiala, *Domestic Institutions and International Regulatory Cooperation: Comparative Responses to the Convention on Biological Diversity*, “World Politics”, Vol. 49, Issue 4 (1997), pp. 482-509.

<sup>37</sup> World Heritage Convention, *Grand Canyon National Park*; <http://whc.unesco.org/en/list/75> [20.03.2016]; see for further information on the World-Heritage-Convention the section on legal framework in Poland and Germany later in this paper.



### 3. TWENTY THREE DIAMONDS – NATIONAL PARKS IN POLAND

Nature conservation has quite a long history in Poland. The roots of the concept of nature conservation date back to the 19<sup>th</sup> century<sup>38</sup>. A true gem in this context is the Białowieża National Park (Białowieża National Park): The beginnings of this national park reach back to the early 1920s and as early as in 1932, the “reserve” was transformed into the “National Park in Białowieża” and got reopened by the Republic of Poland in 1947<sup>39</sup>. But that’s not all: already in 1979, the UNESCO put the Białowieża National Park on its World Heritage List<sup>40</sup>. According to this tradition, in the whole system of environmental laws, nature protection is a topic with one of the longest legislative histories in Poland<sup>41</sup>. Most significant in this regard are the Nature Protection Act from 1934 and the new Civil Code, introduced in 1964<sup>42</sup>. Anyhow, already in the 1970s, Poland had a national network of protected areas and therefore in this case Poland has been far ahead, in example of the European Community (now the European Union), establishing such a complex system of protected areas somewhat later<sup>43</sup>.

<sup>38</sup> S. Garsztecki, *Natur und Umwelt*, Deutsche und Polen: Geschichte, Kultur, Politik, eds. A. Lawaty, H. Orłowski, Munich 2003, p. 521.

<sup>39</sup> Białowieża National Park, *Białowieża National Park: About us*, [http://bpn.com.pl/index.php?Itemid=178&id=104&option=com\\_content&task=view&lang=en](http://bpn.com.pl/index.php?Itemid=178&id=104&option=com_content&task=view&lang=en) [20.03.2016].

<sup>40</sup> Ministry of foreign affairs (Poland), *Białowieża National Park*, [20.03.2016].

<sup>41</sup> P. Otawski, *Environmental Law*, Handbook Of Polish Law, eds. W. Dajczak, A. J. Szwarz, P. Wilinski, Warszawa 2011, p. 376.

<sup>42</sup> D. L. Cole, *An Outline History of Environmental Law and Administration in Poland*, Articles by Maurer Faculty, No. 691 (1995), pp. 302, 317.

<sup>43</sup> P. Otawski, *Environmental Law*, Handbook Of Polish Law, eds. W. Dajczak, A. J. Szwarz, P. Wilinski, Warszawa 2011, p. 376.



### 3.1. A BRIEF OVERVIEW

Currently there are 23 national parks on the Polish map. Some of them are really small, like the Ojcowski National Park, and some of them are rather big, like the Biebrzanski National Park. All in all they cover a wide range of habitats and host a broad spectrum of plants and animals. But with regard to the total amount of land, covered by the Republic of Poland, the areas protected by a national park are quite little with only 1%<sup>44</sup>.

### 3.2. THE DEFINITION OF THE CONCEPT OF A NATIONAL PARK

In Poland, the category “national park” is one out of several forms of territorial protection. The other forms are: the nature reserves, the landscape parks and protected landscape areas. In addition there are individual forms of nature protection, in example trees or waterfalls etc., and species protection<sup>45</sup>.

The criteria for the national parks in Poland are laid down in the Nature Protection Act from the 16<sup>th</sup> of April 2004. The relevant section is the article eight. There it says that national parks cover the area of particular environmental, scientific, social, cultural and educational values with total surface area no less than 1000 hectare where all environmental elements and landscape values are under protection. National parks are established in order to preserve biodiversity, resources, objects, elements of inanimate nature and landscape values as well as to restore resources and environmental elements to their proper state. Moreover, they serve to reconstruct distorted natural habitats, plants, animals and fungi habitats<sup>46</sup>. In addition article

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<sup>44</sup> Polish National Tourist Office, *National Parks*, <http://www.poland.travel/en/national-parks/> [20.03.2016].

<sup>45</sup> For legal definitions and further information see: P. Otawski, *Environmental Law*, Handbook Of Polish Law, eds. W. Dajczak, A. J. Szwarc, P. Wilinski, Warszawa 2011, pp. 376-377.

<sup>46</sup> In the absence of an official translation of the whole *Nature Protection Act from the 16<sup>th</sup> of April 2004* on the official government webpages, this translation is taken from: General Directorate for Environmental Protection,



12 (1) of the quoted act becomes important: it says, that the national parks are accessible for tourists in as much as it does not influence the nature negatively. Hereby another aim of the national park is named: tourism, therefore the economic aspect of the parks. Other functions, national parks in Poland have to satisfy besides the protective and economic (tourism) aspects are an educational, scientific, cultural and historical function<sup>47</sup>.

### 3.3. LEGAL FRAMEWORK

The named Nature Protection Act from the 16<sup>th</sup> of April 2004 is the most important legal source for national parks in Poland. In example, it provides the process of establishing a national plan: therefore the council of ministers has to follow the request, articulated by the minister for environmental affairs. Then the name, boundaries, area and the protection zone is getting defined. The amount of private land varies from national park to national park, but can amount up to 50% or even more. Those areas are under “landscape protection”<sup>48</sup>. Remarkably, and maybe caused by this mixed landowner situation, is the issue, whereas in average only 21% of the national park area is under strict protection and therefore free from any kind of human intervention<sup>49</sup>. Anyhow, the moment, the new national park is established, all the properties of the treasuries within the defined borders are from now on under the charge of the national park, following the orders of the Act of 1997 on Real Property Man-

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*Characteristics of forms of nature protection in Poland – National Parks*, <http://www.gdos.gov.pl/forms-of-nature-protection> [20.03.2016].

<sup>47</sup> B. Pater, *National Parks – Their operations and financing*, Business and non-profit organizations facing increased competition and growing customers’ demands, eds. A. Nalepka, A. Ujwary-Gil, Nowy Sącz 2011, p. 432.

<sup>48</sup> J. Olko, M. Hedrzak, J. Cent, A. Subel, *Cooperation in Polish national parks and their neighborhood in a view of different stakeholders – a long way ahead?*, “Innovation – The European Journal of Social Science Research”, Vol. 24, No. 4 (2011), p. 298.

<sup>49</sup> *Ibidem*, p. 299.



agement<sup>50</sup>. From now on, the area receives the highest form of protection known under the Polish environmental legislation<sup>51</sup>. When the national park got established, it has its own administration, consisting of a director for the national park (appointed by the minister for environmental affairs) and a national park service, including a national park guard. The director of the national park has the status of a “nature conservatory body” (see article 91 (2) of the Nature Protection Act from the 16<sup>th</sup> of April 2004). Therefore the director is the one, who is responsible for managing the park and presenting it to the outside<sup>52</sup>.

When you look above the laws referring to the national Parks in Poland, especially the changes in the last few years caught the author’s attention. Those changes were caused by the adaption of the Public Finance Act on the 27<sup>th</sup> of August 2009, whereby the so-called “auxiliary holdings” got excluded<sup>53</sup>. Before this change took place, the state budget financed the national parks by 10-12% of their needed money. The still missing money was earned by the sale of tickets etc. In judicial terms: They have been a “state budget unit”. But when the new law got into force, the auxiliary enterprises run by the national parks got shut down. An important source of income broke off. As a consequence, the budgets of the parks where decreasing below the minimum. But a new judicial trick should remedy this situation: the national parks became judicial persons, so that they could retain their revenues like it was possible before the reform. In addition, the parks receive money from the voivodship funds for environmental protection and water management and from

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<sup>50</sup> Ł. Matoga, E. Stach, *The change of the financial and organisational model of functioning of national parks in Poland*, Journal of Economy, Business and Financing, – Electronic Interdisciplinary Conference (2015), p. 55.

<sup>51</sup> P. Otawski, *Environmental Law*, Handbook Of Polish Law, eds. W. Dajczak, A. J. Szwarc, P. Wilinski, Warszawa 2011, p. 377.

<sup>52</sup> K. Karpus, *The notion of “Nature conservation body“ in Polish Nature conservation law, it’s types and competences*, “Polish Yearbook of Environmental Law” 2014, p. 86.

<sup>53</sup> B. Pater, *National Parks – Their operations and financing*, Business and non-profit organizations facing increased competition and growing customers’ demands, eds. A. Nalepka, A. Ujwary-Gil, Nowy Sącz 2011, pp. 430–438.



European funds as well<sup>54</sup>. Anyhow, this almost dramatic scenery brought up the question: What are national parks for? But moreover it also raises the question, what a national park can afford. Because when the state doesn't support its own institutions with money, it can't provide the delegated tasks – despite any judicial auxiliary construction.

#### 4. “LET NATURE BE NATURAL” – NATIONAL PARKS IN GERMANY

“Let nature be natural”. This quote taken from Hans Bibelriether<sup>55</sup> became the slogan for all the national parks in Germany. However, the idea of a national park right in the centre of Europa has been a late bloomer. We have already seen that the first national parks in the U.S. have been founded in the 19<sup>th</sup> century and national parks were mushrooming in the beginning of the 20<sup>th</sup> century in Europe – most of them were privately owned – as well<sup>56</sup>. Nonetheless it took quite a long time, up to the 7<sup>th</sup> of October 1970, till the Nationalpark Bayerischer Wald<sup>57</sup> in the Land of Bavaria was founded and therefore Germany got his first national park. Surely the question is legitimate, whether the idea of a national park in Germany is really new or not? In example, as early as in 1897, there has already been the vision to transform the Grunewald in Berlin into a “Staatspark”, a primeval forest, inspired by the American national park mod-

<sup>54</sup> EUROSAT, *National parks – a cooperative audit (joint report)*, p. 54, <http://www.eurosaiwgea.org/audits/Documents/NATIONAL%20PARKS%20COOPERATIVE%20AUDIT%20JOINT%20REPORT.pdf> [20.03.2016].

<sup>55</sup> Bayerische Akademie für Naturschutz und Landespflege, *Hans Bibelriether*, *NaturschutzGeschichte(n) – Band I*, Laufen 2010, p. 27.

<sup>56</sup> H. D. Knapp, L. Jeschke, *Nationalparke*, *Naturschutz in Deutschland*, eds. M. Succow, L. Jeschke, H. D. Knapp, Berlin 2012, p. 205; European Environment Agency, *Protected Areas in Europe*, Copenhagen 2012, p. 11.

<sup>57</sup> H. Pöhl, *Der halbwilde Wald Wald – Nationalpark Bayerischer Wald, Geschichte und Geschichten*, Munich 2012.



el<sup>58</sup>. In the end, this claim was rejected. Anyhow, the National-park Bayerischer Wald has been a role model for many more national parks in West Germany in the 1970s and 1980s<sup>59</sup>. The national park movement experienced in the meantime a real boom, right after the German Reunion (in 1990) and the establishment of national parks in the Land of Mecklenburg-Western Pomerania, Saxony-Anhalt and Saxony<sup>60</sup>. Since then, more and more national parks appeared on the German map. Just in 2015, the latest national park, the Nationalpark Hunsrück-Hochwald, right on the border of the states of Rhineland-Palatinate and the Saarland, has joined this ensemble<sup>61</sup>.

#### 4.1. A BRIEF OVERVIEW

Currently you will find 16 national parks in Germany. They are spread throughout the country and protect a wide range of habitats, like the Wadden Sea in the north and the mountains in the south. All the national parks together cover an area of 1.047.859 hectare (the terrestrial amount is only 214.588 hectare). That is corresponding to a stake of 0,6 % of the Federal territory<sup>62</sup>.

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<sup>58</sup> R. Auster, *Schutz den Wäldern und Seen! Die Anfänge des sozialpolitischen Naturschutzes in Berlin und Brandenburg*, Naturschutz und Demokratie!, eds. G. Gröning, J. Wolschke-Bulmahn, Munich 2006, p. 157.

<sup>59</sup> H. D. Knapp, L. Jeschke, *Nationalparke*, Naturschutz in Deutschland, eds. M. Succow, L. Jeschke, H. D. Knapp, Berlin 2012, p. 206.

<sup>60</sup> E. Gassner, *Das Recht der Landschaft, Gesamtdarstellung für Bund und Länder*, Radebeul 1995, p. 213.

<sup>61</sup> Nationalparkamt Hunsrück-Hochwald: *Der kurze Weg zum Nationalpark*, <http://www.nationalpark-hunsrueck-hochwald.de/nationalpark-hunsrueck-hochwald/der-kurze-weg-zum-nationalpark.html> [20.03.2016].

<sup>62</sup> Bundesamt für Naturschutz, *Nationalparke*, [http://www.bfn.de/0308\\_nlp.html](http://www.bfn.de/0308_nlp.html) [20.03.2016].



#### 4.2. THE DEFINITION OF THE CONCEPT OF A NATIONAL PARK

The Federal Nature Conservation Act (*Bundesnaturschutzgesetz [BNatSchG]*) offers a legal definition for the term “national park”. Article 24 states:

“National parks are areas that have been designated in a legally binding manner, that are to be protected in a consistent way and that

1. Are large, largely unfragmented and have special characteristics,
2. Fulfil the requirements for a nature conservation area in the greater part of their territory, and
3. In the greater part of their territory, have not been affected by human intervention at all, or to a limited extent only, or are suitable for developing, or being developed, into a state which ensures the undisturbed progression, as far as possible, of natural processes in their natural dynamics.

(2) The purpose of national parks is to serve as areas, in the greater part of their territory, in which it is assured that natural processes, in their natural dynamics, can take place in the most undisturbed manner possible. Provided this is compatible with the purpose of protection, national parks may also serve the purposes of scientific environmental monitoring, nature education, and enabling the general public to experience nature.

(3) National parks are to be protected in the same manner as nature conservation areas, taking account of their special protection purpose and the exceptions necessary in light of their large size and use for settlement.”

Therefore it’s quite noteworthy that the national parks are not the only protection category known by the Federal Nature Conservation Act. The articles 24 (4) up to article 32 define the terms of national nature monuments, biosphere reserves, landscape protection areas, nature parks, natural monuments, protected landscape monuments, legally protected biotopes, the “Natura 2000” network and protected areas, pursuant to Article 4 (1) of Directive 92/43/EEC and Article 4 (1) and (2) of Direc-



tive 79/409/EEC. Hence, the national park is only one out of several protection categories.

National parks mainly serve to protect natural landscapes, in which nature is left to itself, so that a reserve for wild plants and animals can exist. On the contrary, biosphere reserves are focusing on cultural landscapes and in the nature parks the anthropogenic influences are much higher, because in those institutions, sustainable tourism becomes active support<sup>63</sup>. This short introduction shows that every protection category has its own aims and scope, whereas the national park sets up the most severe regulations.

### 4.3. LEGAL FRAMEWORK

The management of national parks in Germany is affected by a number of international laws and accessorially by directives of the European Union as well. First to be named is here the Convention on Biological Diversity, which was opened for signature at the Earth Summit in Rio de Janeiro on the 5<sup>th</sup> of June 1992 and entered into force on the 29<sup>th</sup> of December 1993<sup>64</sup>. Germany signed this convention like 167 other countries and the European Union. Most important in this context is article 8, where among other things the countries are supposed to establish protected areas<sup>65</sup>. Another important paper, especially in the last few years, is the “Convention Concerning the Protection of the World Cultural and Natural Heritage” by the UNESCO: In 2011, the World Heritage Committee decided to register the Nationalpark Hamburgisches Wattenmeer to the list of the Natural Heritage Sites<sup>66</sup>. Since then the whole German Wadden Sea

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<sup>63</sup> EUROPARC Germany e.V., *Quality criteria and standards for German national parks*, Berlin 2009, p. 3.

<sup>64</sup> A. Cropper, *Convention on Biological Diversity*, “Environmental Conservation”, Vol. 20, Issue 4, p. 364.

<sup>65</sup> The convention is available under: <https://www.cbd.int/convention/articles/default.shtml?a=cbd-08> [20.03.2016].

<sup>66</sup> K. Janke, *Das Weltnaturerbe Wattenmeer in Deutschland ist komplett*, “Biologie in unserer Zeit” Vol. 41, Issue 4 (2011), p. 226.



holds this label. In my opinion the term “label” should be used, because the legal protection status is not raised through this designation. However, this label is great for the tourism industry on the one hand side<sup>67</sup>, but on the other hand side it might raise the people’s attention to the beauties of nature as well and reinforce their will to protect those areas.

Moreover there are two directives from the European Union which deserve considerable attention: the EU Birds Directive from 1979 (79/409/EWG) and the Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (FFH-Directive). This directive intends to establish new protected areas through the member states in accordance with the European Union. Also the member states need to report in the conservation status of habitats and species<sup>68</sup>. The mentioned directive has a direct influence on the German national parks, because when a new protected area gets established, the protection category must be chosen in accordance with the special conservation objectives<sup>69</sup>. And one out of the several protection categories in Germany (see above) is the “national park”. And in this way, the wheel turns full circle.

You have already seen the relevant provisions of the Federal Nature Conservation Act, defining the criteria for a national park. Hence, the jurisdiction over environmental law in the Federal Republic of Germany is split up between the Federation (*Bund*) and the sixteen states (*Länder*). In principle it applies that “the Länder shall have the right to legislate insofar as this Basic Law does not confer legislative power on the Federation”

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<sup>67</sup> For the close bond between national parks in the tourism industry see in example: M. Mayer, *Can nature-based tourism benefits compensate for the costs of national parks? A study of the Bavarian Forest National Park, Germany*, “Journal of Sustainable Tourism”, Vol. 22, Issue 4 (2014), pp. 561-583.

<sup>68</sup> The text of the directive (in English) is available under: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN> [20.03.2016].

<sup>69</sup> N. Koch, *Die FFH-Richtlinie im Spannungsfeld ökologischer- und nicht ökologischer Belange – Schutzregime und Vorhabenzulassung – Unter Besonderer Berücksichtigung der DA-Erweiterung in Hamburg-Finkenwerder*, Münster 2005, p. 48.



(Article 70 (1) GG)<sup>70</sup>. But environmental law is a topic of the concurrent legislation<sup>71</sup>. Therefore all the sixteen states passed their own State Nature Conservation Acts. In conclusion, the Federal and the State Nature Conservation Act of the respective state are the legal basis for the national parks in Germany.

All the State Nature Conservation Acts are quite similar to the Federal Nature Conservation Act. A detailed investigation on the differences is therefore not necessary. In fact, the material content of those acts is of greater importance. Information on this topic shall be provided by presenting the case of the Elbtalaue National Park. The Elbtalaue National Park was established in 1998 but already got resolved in 1999. How did that happen? From the beginning on, the project stood under no good star. Even before the national park was set up, the federal ministry for environmental affairs claimed that the pointed out area does not fulfil the requirements laid down in the Federal Nature Conservation Act<sup>72</sup>. The Land of Lower-Saxony wasn't stopped by that: It established the national park soon afterwards. Little later a married couple of agricultures filed a lawsuit against the national park regulation. They said that their economic existence is seriously getting harmed by the usage restrictions caused by the national park regulation. Hereinafter, both the *Niedersächsische Obergerverwaltungsgericht Lüneburg*<sup>73</sup> and a federal court, the sixth senate of the *Bundesverwaltungsgericht*<sup>74</sup>, agreed on the argumentation quite similar presented by the

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<sup>70</sup> See for an appropriate English translation of the Grundgesetz: [http://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html#p0315](http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0315) [20.03.2016].

<sup>71</sup> About the concurrent legislation: R. Stettner, *Artikel 72 GG*, Grundgesetz Kommentar, ed. H. Dreier, 2. Ed., Vol. II, Tübingen 2006, recital 1 following. *Wo verlegt und wann?*

<sup>72</sup> Bundesministerium für Umwelt, Naturschutz, Bau und Reaktorsicherheit, *Geplanter Nationalpark Elbtalaue erfüllt Naturschutzanforderungen nicht*, press release (15<sup>th</sup> of January 1998), <http://www.bmub.bund.de/presse/pressemittelungen/pm/artikel/geplanter-nationalpark-elbtalaue-erfuellt-naturschutzanforderungen-nicht/> [20.03.2016].

<sup>73</sup> OVG Lüneburg, 22.02.1999 – 3 K 2630/98.

<sup>74</sup> BVerwG, 10.09.1999 – 6 Bn 1.99 = Neue Zeitschrift für Verwaltungsrecht 2000, p. 198.



federal ministry for environmental affairs in 1998, whereas the area was a cultivated landscape and did not meet the requirements. In conclusion the park has been declared null and void<sup>75</sup>.

What does the case show to the judicial interested reader? In general terms, the provided case raises not less than the systematic question: What are national parks in Germany for? The applicable law from the 1990s is totally different from the valid law of our days. The back in those times valid and applied Article 25 (1) of the Lower-Saxony Nature Conservation Act sets up a set of rather strict criteria for the establishment of a national park. A certain amount of land has to be (almost) free of human influences. Also the federal ministry for environmental affairs was asking for more than 50% of space that wasn't used in any way by humans<sup>76</sup>. But since then, a revolution in the way of thinking about the national parks in Germany took place. This revolution also found its expression in the change of the Federal Nature Conservation Act in 2002 (and later in 2009 as well). Suddenly the imperative precondition of an area characterized by no or only little human impact was getting replaced by the main aim of protection<sup>77</sup>. In easy terms: the areas for a national park just need to be "suitable" for becoming free of human impact<sup>78</sup>. The term "development national park" (*Entwicklungsnationalpark*)<sup>79</sup> can be seen as the keyword for this process. The consequences are visible nowadays: more

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<sup>75</sup> T. Hellenbroich, *The Designation of National Parks in German Nature Conservation Law*, Valuation and Conservation of Biodiversity, eds. M. Markussen, R. Buse, H. Garrelts, M. M. Costa, S. Menzel, R. Marggraf, Berlin 2005, p. 141.

<sup>76</sup> H. Job, *Welche Nationalparke braucht Deutschland?*, "Raumforschung und Raumplanung", Vol. 68 (2010), p. 78.

<sup>77</sup> T. Hellenbroich, *The Designation of National Parks in German Nature Conservation Law*, Valuation and Conservation of Biodiversity, eds. M. Markussen, R. Buse, H. Garrelts, M. M. Costa, S. Menzel, R. Marggraf, Berlin 2005, p. 141.

<sup>78</sup> H. Job, *Welche Nationalparke braucht Deutschland?*, "Raumforschung und Raumplanung", Vol. 68 (2010), p. 78.

<sup>79</sup> M. Stock, *Nationalparke in Deutschland: Den Entwicklungsgedanken gesetzlich absichern und konkretisieren!*, "Zeitschrift für Umweltrecht" (2000), p. 200.



and more national parks got established in the new century, but several national parks in Germany do not meet the formerly required more than 50% of land free from human influences<sup>80</sup>. And there is no end in sight: In example, coherent forests or former military training areas<sup>81</sup> are potential candidates to become national parks in the next few years as well.

Closely connected to this development is the question how protected areas are getting established. In general, this procedure can be divided into two categories. For example, the biotopes named in Article 30 of the Federal Nature Conservation Act, are legally protected *ex lege*<sup>82</sup>. Quite different is the situation according to the national parks: the declaration is a constitutive act, valid only to this individual case<sup>83</sup>. In this specific declaration the protected object, the protection aim, the rules for this area (instructions and prohibitions) and the measures of reinstatement, maintenance and development have to be laid down<sup>84</sup>. Also the fact that Germany is a federal republic becomes quite obvious in the establishment of a national park again. According to Article 22 (5) of the just mentioned act, the installation of a national park has to be in consultation with the federal ministry for environmental affairs. In the end, every national park has therefore its own regulation within the scope, given by Federal Nature Conservation Act<sup>85</sup>. In addition, every national park has its own national park plan (*Nationalparkplan*). In more

<sup>80</sup> *Ibidem*, p. 78.

<sup>81</sup> V. Arnold, *Vom Schießplatz zum Nationalpark*, Süddeutsche Zeitung, 30<sup>th</sup> of August 2015, <http://www.sueddeutsche.de/wissen/naturschutz-vom-schiessplatz-zum-nationalpark-1.2625135> [20.03.2016].

<sup>82</sup> O. Hendrichke, § 22 *BNatSchG*, *Gemeinschaftskommentar zum Bundesnaturschutzgesetz*, ed. S. Schlacke, Cologne 2012, recital 7.

<sup>83</sup> The formal requirements are therefore the same, as known from the German administrative law in general. Those formal requirements are according to the state law (*Landesrecht*). Therefore you can say: the formal requirements are given by the states, the material content is provided by the federal law.

<sup>84</sup> O. Hendrichke, § 22 *BNatSchG*, *Gemeinschaftskommentar zum Bundesnaturschutzgesetz*, ed. S. Schlacke, Cologne 2012, recital 7.

<sup>85</sup> Further detail on specific limitations offers: T. Hellenbroich, *The Designation of National Parks in German Nature Conservation Law*, Valuation



popular terms, this document can be seen as a manual for the park. This plan codifies in example a mission statement and concepts on topics like education, traffic and trails, the treatment of wild animals etc<sup>86</sup>.

## 5. NATIONAL PARKS IN THE USA, POLAND AND GERMANY – A BUNCH OF DIFFERENCES

The presented analysis has shown that there are several differences, already found regarding the definition of a national park. In the U.S., a national park has its obscene in preserving the nature. Even in most cases, the protected parcel of land has not undergone any anthropogenic influences. The status quo is meant to be preserved! However, the situation on the other side of the Atlantic is completely different: Europe is a rather small continent, divided into many little countries and inhabited by a vast amount of people – especially central Europe. This geographical initial situation is also reflected by the legal definition of national parks: the Polish concept of a national park as well as the German concept of it provide the option to develop those areas, protected by the land protection category of a “national park”. Therefore even areas that have already undergone harsh human influences can become protected by national parks, as long as the influences are getting lowered over the time. In my eyes, that’s a massive difference, making it necessary to differentiate national park “U.S. – type” from national parks “European-type”.

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and Conservation of Biodiversity, eds. M. Markussen, R. Buse, H. Garrelts, M. M. Costa, S. Menzel, R. Marggraf, Berlin 2005, p. 145 following.

<sup>86</sup> See instead of many the “*developing plan*“ of the Nationalpark Schwarzwald, <http://www.schwarzwald-nationalpark.de/nationalpark/aufgaben-und-ziele/nationalparkplan/> [20.03.2016].



### 5.1. EXCURSUS: THE IUCN

We have already seen some differences in the concepts of a national park. But however big those differences might be, they all have in common that the national parks are a means of land protection. To compare those actions, the International Union for Conservation of Nature (IUCN) offers a definition as well as a system of protection area categories since 1994<sup>87</sup>. Category II deals with the national parks: here it says that national parks are “large natural or near natural areas set aside to protect large-scale ecological processes, along with the complement of species and ecosystems characteristic of the area, which also provide a foundation for environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor opportunities”<sup>88</sup>. In the context of this essay, this definition is quite important, because by involving the term of “near natural areas”, the IUCN is pursuing also the concept of a “developing national park”, what is corresponding to the reality of national parks in Poland and Germany.

### 5.2. LEGAL SIMILARITIES AND CONTRASTS

Kind of surprising to me is the fact that the legal procedure of establishing a national park is quite similar in all of the three considered countries. The term “national” plays a constantly important role: to this regard the federal level (in example the federal minister for environmental affairs in Poland and Germany or even the President in the U.S.) has a lot of power. Moreover, I have to agree on Piotr Otawski<sup>89</sup>, when he says that

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<sup>87</sup> S. Chape, J. Harrison, M. Spalding, I. Lysenko, *Measuring the extent and effectiveness of protected areas as an indicator for meeting global biodiversity targets*, “Philosophical Transactions of the Royal Society” (2005), p. 443–455.

<sup>88</sup> International Union for Conservation of Nature, *Protected Areas Category II*, [http://www.iucn.org/about/work/programmes/gpap\\_home/gpap\\_quality/gpap\\_pacategories/gpap\\_pacategory2/](http://www.iucn.org/about/work/programmes/gpap_home/gpap_quality/gpap_pacategories/gpap_pacategory2/) [20.03.2016].

<sup>89</sup> P. Otawski, *Environmental Law*, Handbook Of Polish Law, eds. W. Dajczak, A. J. Szwarc, P. Wilinski, Warszawa 2011, p. 378.



the Polish and American concepts of a wilderness area are quite close: the national park administration in both countries is almost identical. Almost identical is moreover the legal basis for national parks in Poland and Germany: in both member states of the EU, a code from the early 2000s is the basic legal framework for national parks. However, gratifying in this connection is the more precise formulation of the Polish act; in example it names a clearly required amount of land, necessary to set up a national park. A final remark: in all of the three countries, the aim of a national park is inconsistently defined to a greater or lesser extent. In my opinion, national parks are a means of land protection. Therefore the only aim can be the protection of the nature. All the other functions are totally subordinate to the protection of nature. The situation becomes more difficult when areas of a national park are in private ownership. Clashes with the use of the land are quasi inevitable. In addition, in my eyes, there is a heavy battle between the protection of nature and the use through the citizens in the U.S., caused by the weak wording of the act. Last but not least, not failed to be mentioned should be the aspect of financing. National parks are run by the public and cost a lot of money. But you should keep in mind that they actually satisfy – besides the nature conservation aspect – many other functions: Think about the education or the national parks as a seed bank of many plants and animals! However, it will be interesting to observe, how the changes in the Polish legislature, conducting this aspect, will work out.

## 6. CONCLUSION

The preceding considerations lead to the following three theses.

The term “national park” is an American invention from the 19<sup>th</sup> century, corresponding to the nature conditions, without any anthropogenic influences, presented in Northern America in those times. However, Europe experienced a nature conservation movement in the 19<sup>th</sup> century as well. Several European

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countries established nature protection areas in the beginning of the 20<sup>th</sup> century and kind of copied the American term.

Nowadays the concept of a national park in the U.S. is completely different to the concept of this term in central Europe. Poland as well as Germany evolved a concept based on the conversion of cultivated areas into natural areas, to deal with the small areas of land, free of human influences, available in central Europe. This concept, known by the IUCN as well, is also reflected in the laws, which apply on the national parks. Therefore we have to distinguish between the national park “U.S. – type” and the national park “European – type”.

Despite their diversity, the legal framework and especially the administration of national parks is fairly similar in the studied countries. In every examined system, “national park” is the highest category of land protection. Worthy of note are the Polish and German environmental legislation, providing a comprehensive section on the affairs of national parks. In addition, also the disputes on the functions and financing of national parks are equal in the considered nations.

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