

## INSPECTION OF OBSERVANCE OF ENVIRONMENTAL PROTECTION REGULATIONS PERFORMED BY A COMMUNE HEAD (MAYOR, PRESIDENT OF THE CITY)

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**Summary.** The subject-matter of the study is to analyse inspection performed by a commune head (mayor, president of the city) in terms of observance of environmental regulations by specific entities. The choice of the subject-matter was substantiated by the fact that the scholarship of environmental protection law lacks current detailed analysis on environmental inspection and the role of the commune's executive authority in the investigated area. The aim of the paper is to obtain answers to two questions where the first one is of a general, whereas the second of a detailed nature. These are the following research problems: 1) is the commune head (mayor, president of the city) only an environmental inspection authority or perhaps is its scope of competences broader, thus giving him the role of a supervisory authority?; 2) what legal effects result from the fact that a commune head (mayor, president of the city) acts in a dual role in the issue in question? The method of interpretation of applicable laws was adopted as the research methodology. The reflections below show that the commune head (mayor, president of the city) is not only an authority of inspection for observance of environmental protection laws, but it also appears as a supervisory authority in certain areas of environmental protection law, which implies that the legal position of a commune head (mayor, president of the city) in terms of environmental inspection is a target (existing) model. This means that the inspection-supervisory powers conferred upon this authority are in fact sufficient.

**Key words:** environmental protection, inspection, supervision, commune head (mayor, president of the city)

### INTRODUCTION

The measure involving inspection of observance of environmental protection regulations (the so-called environmental inspection) is extremely important in a democratic rule of law. Lack of such an inspection implicates a deteriorated state of the environment and inability to maintain it in intended rigours, which consequently leads to the deterioration of human health and to a threat to life [Rakoczy 2012, 60], by which Art. 38 of the Constitution of the Republic of Poland,<sup>1</sup> which introduces the right to life, is violated. Pursuant to judgement of the Constitutional Tribunal, human life is a value of the highest rank in our civilization and legal culture.<sup>2</sup>

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<sup>1</sup> Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 2009, No. 114, item 946 [henceforth cited as: Constitution].

<sup>2</sup> Judgement of the Constitutional Tribunal of 30 September 2009, K 44/07, OTK-A 2008, No. 7, item 126.

Environmental inspection is relatively new as compared to other inspections due to the fact that environmental protection law is one of the youngest directions of legal regulations. The dynamics of development of this study only began towards the end of the 1960s and at the beginning of the 1970s [Ciechanowicz–McLean 2009, 21].

Environmental inspection should be primarily comprehensive, but not only that. A unitary inspection is also important, especially preliminary inspection and factual inspection [Jagielski 2018, 73–78]. In the first case the main role is played by the bodies of the Inspectorate of Environmental Protection, whereas in the second case by i.a. local government environmental protection authorities, where the commune head (mayor, president of the city) is one of them.

The authority in question, in the course of an inspection procedure, undertakes general activities concerning the environment and its protection, the aim of which is to establish the facts in terms of observance of environmental regulations, combined with a comparison of the existing state of the environment with the intended state, resulting from specified protection-related legal planning instruments. Juxtaposition of the established factual state with the intended model should produce conclusions which may be a basis for the possible application of relevant supervisory measures [Barczak and Kowalewska 2015, 174].

The subject-matter of these reflections will involve the analysis of the state of the art of environmental protection law research in the framework of a specialised research area, i.e. environmental inspection carried out by a commune head (mayor, president of the city). The environmental inspection instruments granted to this authority will be looked at, which will then give a basis for applying environmental supervision instruments. The choice of the subject is substantiated by the fact that no comprehensive analysis has been carried out on environmental inspection and the role of authorities that perform it. Admittedly, the literature features studies that address inspection-supervision tasks of a commune head (mayor, president of the city), but there is no up-to-date research in this field. Given the above, the paper's character mainly involves systematisation of the discussed scholarly matter, being a certain legal insufficiency. However, one needs to bear in mind that the development of scholarship is only possible where not only summaries are drawn up from time to time [Rakoczy 2016, 119], but also systematizing studies which aim to encourage environmentalists to an in-depth analysis of certain issues and to inspire polemics.

At the closing of these reflections, the significance of the discussed question must be clearly emphasized, which may be treated as a truism. There is no doubt that it is such a significant issue that absence of such a measure or its incorrect implementation results in a deteriorated state of the environment and inability to preserve it in the intended rigours, which in consequence leads to deterioration of human health and to threat to life and also to detrimental changes in nature.

## 1. ENVIRONMENTAL INSPECTION AND THE ROLE OF A COMMUNE HEAD (MAYOR, PRESIDENT OF THE CITY)

Pursuant to Art. 379, sect. 1 of the Environmental Protection Law<sup>3</sup> a commune head (mayor, president of the city) is one of the inspection authorities. He carries out inspection of compliance with and application of environmental protection regulations to the extent covered by his competences. The inspection covers environmental regulations that fall under the competence of the said authority. Making a reference to competence means that material, territorial and functional competence must be taken into consideration and that such competence must be determined on the basis of a specific provision obliging to the performance of a relevant task. The said entity, guarding compliance with environmental regulations, is competent in terms of regular use of the environment by natural persons who are not business operators (Art. 378, sect. 3 EPL). Sectoral environmental statutes go further making it an authority that inspects the activity of municipal companies.

The above shows that he examines the state of the environment and the observance of protection-related obligations imposed on the said stakeholders. This means that a commune head's (mayor's, president of the city's) competences do not concern only natural persons, since in some cases they also inspect municipal companies. It needs to be emphasized that pursuant to EPL, he cannot inspect a business operator. There are no normative grounds for him to undertake specific acts in law.<sup>4</sup>

The scope, competence and manner of a commune head's (mayor's, president of the city's) performance of environmental inspection results from Art. 379 and 380 EPL, chapter 4c of the Clean Commune Act<sup>5</sup> and Art. 18e of the Collective Water Supply Act.<sup>6</sup> It makes one ponder whether chapter 5 of the Entrepreneurs Act<sup>7</sup> entitled "Limitations of inspection of economic activity" also applies to the inspection in question.

When it comes to EPL, the Entrepreneurs Act does not apply since the commune head (mayor, president of the city) inspects only natural persons in terms of regular use of the environment.

A question arises about the fact whether the Entrepreneurs Act applies to environmental inspection carried out by a commune head (mayor, president of the city). The answer is ambiguous. Provisions of the Entrepreneurs Act certainly apply

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<sup>3</sup> Act of 27 April 2001, the Environmental Protection Law, Journal of Laws of 2020, item 1219 as amended [henceforth cited as: EPL].

<sup>4</sup> Judgement of the Voivodship Administrative Court in Szczecin of 9 November 2010, II SA/Kr 631/10, LEX no. 754867.

<sup>5</sup> Act of 13 September 1996 on maintaining communes clean and in order, Journal of Laws of 2020, item 1439 as amended [henceforth cited as: Clean Commune Act].

<sup>6</sup> Act of 7 June 2001 on collective water supply and collective waste water disposal, Journal of Laws of 2020, item 2028 as amended [henceforth cited as: Collective Water Supply Act].

<sup>7</sup> Act of 6 March 2018, the Entrepreneurs Act, Journal of Laws of 2019, item 1292 as amended [henceforth cited as: Entrepreneurs Act].

to inspection of economic activity of a water supply and waste water disposal company, which expressly results from Art. 18e, sect. 6 of the Collective Water Supply Act, where the legislator lays down so *expressis verbis* [Ubysz and Brynczak 2015; Bojarski, Radecki, and Rotko 2011].

Whereas in the case of inspection of observance and application of the provisions of the Clean Commune Act, application of chapter 5 of the Entrepreneurs Act is not clear, since the Clean Commune Act does not feature such a regulation. Thus, this can be interpreted in two ways. Firstly, chapter 5 of the Entrepreneurs Act does not apply to inspection of economic activity of an operator in the scope of provisions of the Clean Commune Act. Secondly, although the Clean Commune Act does not make a reference to chapter 5 of the Entrepreneurs Act, this chapter does apply to the said inspection. Legal scholars and commentators present a view that supports the second variant [Radecki 2016, 376; Bar, Górski, Jendrońska, et al. 2011, 1273; Jerzmański 2011, 92]. It seems that this view should be shared. This is supported by the fact that activity in terms of collecting waste from property owners is an activity regulated under the Entrepreneurs Act. Pursuant to Art. 43, sect. 1 of the Entrepreneurs Act, if separate regulations provide that a given type of activity is a regulated activity, the entrepreneur may carry out this activity if he meets requirements specified by these regulations upon being entered in the relevant register of business activity. One of such requirements are regulations resulting from chapter 5 of the Entrepreneurs Law.

In view of the above, the Entrepreneurs Act applies to environmental inspection carried out by a commune head (mayor, president of a city) on the basis of the Collective Water Supply Act and the Clean Commune Act. However, it does not apply to inspection carried out under ELP.

The following regulations on inspecting municipal companies will apply under the Entrepreneurs Act: notification of intention to start an inspection (Art. 48); authorisation to carry out inspection (Art. 49); entrepreneur's or his representative's presence during inspection activities (Art. 50); remote inspection (Art. 51); carrying out more than one inspection (Art. 54); duration of inspection (Art. 55); exclusion of possibility of re-inspection by the same authority (Art. 58); entrepreneur's objection; complaint about protracted performance of inspection (Art. 59); order to cease operation of the business (Art. 60).

Authorized persons may carry out inspection activities on behalf of a commune head (mayor, president of the city). They must have a specific authorisation to act on behalf of the authority for these activities to be valid. The legislator does not specify the nature of such authorisation in EPL, the Clean Commune Act or the Collective Water Supply Act. It does not lay down either what such authorisation should contain. There is no doubt that such authorisation should be personal and may be addressed only to a subordinate. It may be a one-off or permanent document. It is essential for it to specify the activities that the authorised person is supposed to perform. It needs to be noted that a change of persons authorised to conduct an inspection requires each time for a separate authorisation to be

issued. Pursuant to Art. 379, sect. 2 EPL, a commune head (mayor, president of the city) may authorise the staff of the commune (municipal) office or commune guards.

The inspection powers of a commune head (mayor, president of the city) have been laid down by the legislator. They result from Art. 379, sect. 3 EPL. They are enumerated as *numerus clausus*. This means that this enumeration is closed, allowing only for strictly defined activities specified in this provision to be carried out.

In carrying out inspection-related activities, a commune head (mayor, president of the city) has the right to enter, together with assessors and necessary equipment, the premises, a facility or their part, where the economic activity is conducted. With regard to remaining areas, such inspection may only be performed in the conventional daytime (between 6 a.m. and 10 p.m.). During the inspection, the inspection authority only undertakes activities that are necessary to establish the facts. It has the right to call and interview persons who have information related to the subject of the inspection. The choice of the form of submitting information rests with the person carrying out the inspection. He has the right to request written or oral information. In the latter, provisions of the Code of Administrative Procedure<sup>8</sup> related to documenting this kind of evidence apply, because such information will usually serve as evidence in the case. In order to determine the actual state of affairs, a commune head (mayor, president of the city), when performing the inspection, has the right to request that various types of documents be presented and all data (e.g. regarding emissions) be made available. It should be emphasised that this only concerns material related to the subject-matter of the inspection.

The above shows, that Art. 379, sect. 3 EPL outlines a classic model of inspection composed of 4 rudimentary elements: 1) entry to the inspected facilities; 2) investigation and other activities; 3) requesting information and interviews; 4) requesting documents and other data [Radecki 2016].

When it comes to the above inspection model, it applies to inspecting regulations of the Clean Commune Act (where Art. 9u, sect. 2 of the Clean Commune Act makes a reference to the content of the provision of Art. 379 EPL). Whereas the provision of Art. 18e of the Collective Water Supply Act established a three-element model of inspection of economic activity of a water supply and waste water collection company: 1) entry to the inspected facilities; 2) requesting information and interviews; 3) requesting documents and other data.

The inspection authority records inspection findings in the inspection protocol which presents its course and outcomes. This document should be made in writing where one copy is handed to the manager of the inspected entity (inspected natural person). The protocol does not need to be made within the time the authorisation stays valid. It may be made at a later date since it is not an inspection activity but only a record of the course of the inspection.<sup>9</sup> The reliability of the

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<sup>8</sup> Act of 14 June 1960, the Code of Administrative Procedure, Journal of Laws of 2020, item 256.

<sup>9</sup> Judgement of the Supreme Administrative Court of 4 June 2019, II OSK 1865/17, LEX no. 2691866.

protocol depends to a certain extent on it being signed by the inspection authority and the inspected entity. Pursuant to Art. 380, sect. 3 EPL, where the manager of the inspected entity or the inspected natural person refuse to sign the protocol, the inspector notes this in the protocol and the party refusing to sign the protocol may, within 7 days, present its position in writing to the commune head (mayor, president of the city). It needs to be emphasized that refusal to sign the protocol does not entail any legal consequences. It is because the protocol has been made and signed by the inspector and the absence of the signature of the inspected entity does not deprive the protocol of its reliability, but rather demonstrates a conflict between the inspected entity and the inspector.

The commune head (mayor, president of a city) or entities authorised by them also have the right to act as public prosecutors in proceedings in cases for environmental misdemeanours. General issues concerning the public prosecutor result from chapter 3 division III of the Misdemeanours Procedure Code;<sup>10</sup> entitled “Public prosecutor.” Pursuant to Art. 17, para. 1 MPC, as a rule the Police are the public prosecutor in all misdemeanour cases. The MPC introduces exceptions to this rule, quite important from the point of view of environmental protection. Para. 3 MPC is significant for reflections carried out here. It assumes that public prosecutors other than the Police may be admissible only when three prerequisites are met jointly. Firstly, it should be an entity expressly named in this provision. Such entities include a commune head (mayor, president of the city) and commune (municipal) guard.<sup>11</sup> Secondly, these authorities revealed the misdemeanours as part of their operation, also in the course of investigation. Thirdly, after revealing the misdemeanour, they requested that a penalty be imposed [Radecki 2002a, 225]. Upon meeting the above-described conditions, the competent authority gains, under Art. 17, para. 3 MPC, the power of a public prosecutor in cases of misdemeanour. As aptly noted by legal scholars and commentators, the power of a public prosecutor is a supervisory measure in nature and should be treated as an obligation to request that the offender be punished, if results of the inspection indicate that a misdemeanour related to environmental protection has been committed [Górski 2001b, 898–99; Radecki 2002b, 27].

Should as a result of the inspection the authority in question find violation by the inspected individual of environmental protection regulations and should a reasonable suspicion occur that such a violation might have taken place, the said authority is obliged to request at the voivodship inspector of environmental protection that appropriate measures falling under his competence be taken. The obligation to transfer the documentation of the case rests with the commune head (mayor, president of the city). In such an event, the case is taken over by the voivodship inspector of environmental protection and is further carried out by him. If

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<sup>10</sup> Act of 24 August 2001, the Misdemeanours Procedure Code, Journal of Laws of 2020, item 729 as amended [henceforth cited as: MPC].

<sup>11</sup> Judgement of the Supreme Administrative Court of 29 April 2014, III KK 452/13, LEX no. 1460728.

a commune head (mayor, president of the city) is materially competent in the case, only this authority is competent to make such a request after the premises enumerated in this provision have been met.

## 2. LEGAL MEASURES APPLIED BY A COMMUNE HEAD (MAYOR, PRESIDENT OF THE CITY) ON THE BASIS OF FINDINGS OF THE ENVIRONMENTAL INSPECTION

A commune head's (mayor's, president of the city's) appropriate performance of his duties related to environmental inspection requires that he employ adequate verification instruments. Inspection (supervisory) rights afforded to the said authority serve this purpose. Environmental protection regulations grant him numerous legal measures which he may apply after conducting inspection proceedings.

It needs to be noted that inspection powers are also granted to other entities, especially to inspectors of the Inspectorate of Environmental Protection. When examining legal relationships between a commune head (mayor, president of the city) and the Inspectorate's bodies, it should be concluded that the inspection measures applied by the former are complementary, not competitive [Gruszecki 2014, 16]. This observation results from the fact that the environment in a public good of all the people of the Earth and everyone is obliged to protect it. Inspection authorities play a special role in this respect. This is why it is important that the legal instruments of inspection granted to them be appropriate and complete, devoid of legislative flaws.

Legal measures of inspection granted to a commune head (mayor, president of the city) have a varied form, starting from information measures not involving a penalty to penalty-involving decision-making and financial measures. The latter take the form of an administrative decision, which is why they should be rather included among supervisory measures, since they affect the inspected entity in an authority-related manner [Barczak and Kowalewska 2015, 183]. Usually, decisions falling under this group are issued *ex officio* as result of the inspection.

Information measures that do not involve a penalty are associated with gathering information and making it available in various legal forms, using ICT means to an ever greater extent. Taken as first, they serve to detect preliminarily irregularities in terms of occurrence of threats to the environment. The role of these instruments is to have an information-related impact, involving provision of information on legal obligations related to environmental protection [Korzeniowski 2015, 121]. They have a diverse character and mainly take the form of substantive and technical activities, also called non-formal acts [Stahl 2013, 381].

Decision-making and financial measures that involve a penalty, in turn, have the most important role to play in environmental protection. They take the form of administrative sanctions, ensuring implementation of norms by coercive measures or by bringing about other harsh implications of violation of the law [Szu­biakowski 2017, 373ff]. In the opinion of M. Wincenciak, administrative san-

ctions mean “negative (unfavourable) effects imposed my means of an act of application of the law by a public authority on entities which do not comply with obligations resulting from legal norms or act of application of the law” [Wincenciak 2008, 73]. Sanctions that result from the environmental protection law are primarily envisaged as means of protection of public interest, which is why proceedings on imposing them should be initiated *ex officio* by a competent authority [Jerzmański 2010, 399–400]. Violation of substantive environmental protection regulations is, as a rule, a basis for imposing such a sanction.

The above shows that the legislator, making a commune head (mayor, president of the city) an inspection authority, confers upon them not only inspection powers, but also supervisory powers. The latter are related to outcomes of an inspection in the course of which unlawfulness of activity of certain entities is found. They are corrective in nature. Hence, a commune authority transforms from an inspection authority into a supervisory authority.

Supervisory measures include acts in law undertaken in order to remove the existing state of threat by revoking or limiting previously granted powers and those that change the legal position of the supervised entity.

In order to facilitate a general outlook, legal measures employed by a commune head (mayor, president of the city) may be classified. The following may be identified: 1) general legal measures; 2) legal measures concerning collective water supply and collective waste water disposal; 3) legal measures concerning protection of animals; 4) legal measures concerning protection against municipal waste.

When it comes to general legal measures, they result from EPL and the Entrepreneurs Act. A decision issued by a commune head (mayor, president of the city) pursuant to Art. 363 EPL is particularly important. Upon issuing it, the commune authority orders a natural person to carry out activities intended to limit the negative impact on the environment and dangers to it or to restore the environment to its proper state. At that, it is significant for issuing a decision that it is concluded in a way that does not raise doubts about the occurrence of the negative impact on the environment. Judicial and administrative decisions emphasize that this order is a legal form of a broadly understood normative goal of the obligation to protect the environment. It creates objective and subjective conditions necessary for undisturbed use of the environment under the universal right to use it. The need to ensure rational conditions for using the environment specifies the material scope of a decision issued on the basis of Art. 363, sect. 1 EPL. Issuing a decision referred to in Art. 363, sect. 1 EPL is admissible where its addressee violates the obligation involving a prohibition of causing negative effects to the environment.<sup>12</sup> The above demonstrates that in order to apply the analysed provision it is necessary to establish that applicable standards of environment use have been violated, that is that operation of an installation or a device causes nega-

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<sup>12</sup> Judgement of the Supreme Administrative Court of 21 November 2017, II OSK 516/16, LEX no. 2428638.

tive (that is harmful) effect to the environment thus in essence deteriorating its state.<sup>13</sup> Proceedings in the case of issuing the decision in question are initiated *ex officio*. This decision is discretionary in nature.

Whereas pursuant to Art. 60 of the Entrepreneurs Act, on hearing about a business activity operating contrary to the provisions of the Entrepreneurs Act, and also in the event of establishing a threat to life or health, a risk of grave financial damage or direct threat to the environment as a result of operation of this business activity, a commune head (mayor, president of the city) notifies a competent authority immediately. The notified authorities immediately notify the commune head (mayor, president of the city) about measures taken. Where a notification referred to in Art. 60, sect. 1 of the Entrepreneurs Act cannot be made, the commune head (mayor, president of the city) may order, by way of a decision, that the operation of the business activity be suspended for the necessary time, no longer than 3 days. The above-mentioned decision is enforced immediately.

In the case of legal measures for collective water supply and collective waste water disposal it needs to be pointed out that a commune head (mayor, president of the city), as a result of the establishment of a government agency *Gospodarstwo Wodne "Wody Polskie"* (transl. Water Management "Polish Waters") on 2 January 2018, was deprived of most powers in this regard, also the inspection competence. Most tasks involved in it rest with the regional water management board of the *Państwowe Gospodarstwo Wodne Wody Polskie* agency. A commune head (mayor, president of the city) was mainly granted information-related measures by the legislator (Art. 8, sect. 3; Art. 17a; Art. 18c; Art. 21, sect. 4 of the Collective Water Supply Act). He only acts as a supervisory authority in one case (Art. 18a of the Collective Water Supply Act).

In turn, legal measures on protection of animals concern their humanitarian protection (that is general norms and resulting rules that specify human attitude towards animals [Górski 2008, 1]). A commune head (mayor, president of the city) takes actions aiming to enforce observance of obligations specified in the Animal Protection Act.<sup>14</sup> These actions take the form of administrative decisions [Radecki 2015, 82–89]. This authority is competent to take decisions on temporary taking the animal away and handing it over to relevant persons or institutions (Art. 7, sect. 1 APA) should the animal be treated in an inhumane manner [Janiak 2019, 45–49]. The above shows that for an animal to become subject of administrative proceedings for temporary taking it away, the prerequisite of the animal being abused must be met [Sługocka 2017, 45–56].

Legal measures concerning protection against municipal waste result from the Clean Commune Act [Barczak 2013, 233–38]. The legislator clearly points to a commune head (mayor, president of the city) as an entity that carries out inspe-

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<sup>13</sup> Judgement of the Voivodship Administrative Court in Poznań of 22 February 2018, II SA/Po 801/17, LEX no. 2467968.

<sup>14</sup> Act of 21 August 1997 on the protection of animals, Journal of Laws of 2020, item 638 [henceforth cited as: APA].

ction of observance and application of the Clean Commune Act regulations (Art. 9u, sect. 1). Producers of municipal waste (that is owners of occupied or unoccupied real estate) and entities collecting waste from the real estate occupied by its residents and other areas are both subject to inspection [Gruszecki 2014, 16–26]. Legal regulations emphasize that the above-mentioned authority is obliged to perform an inspection at least once every two years. This time frame refers to inspection of strictly specified operators, that is those who collect municipal waste from real estate owners. If a commune head (mayor, president of the city) has difficulties with inspection activities where it necessary to perform them he may file a request for help at the territorially competent chief of Police (Art. 9v, sect. 1 of the Clean Commune Act). When a commune head (mayor, president of the city) requests such help, a relevant Police authority is obliged to provide it. They cannot refuse to take specific actions. The legislator granted the commune head (mayor, president of the city) the following legal measures: information-related (Art. 6ka, sect. 1 of the Clean Commune Act), registration-related (Art. 3, sect. 3, point 3 of the Clean Commune Act); penalty and decision-making-related (Art. 5, sect. 7; Art. 6o; Art. 9 of the Clean Commune Act), repressive (Art. 9zb, sect. 1–1b of the Clean Commune Act).

## CONCLUSIONS

The above-presented reflections show that the material scope of inspection of observance of environmental protection regulations performed by a commune head (mayor, president of the city) is restricted solely to activities of a local community. This means that the legislator is consistent in the legislative process. It did not infringe the essence of commune self-government or the role of the commune head (mayor, president of the city) in the environmental protection law. Due to the above, the executive authority of the commune, being at the same time an environmental protection authority, is responsible for municipal activity and the activity of natural persons in terms of regular use of the environment.

The research revealed that the commune head (mayor, president of the city) acts in a dual role in the system of environmental inspection. It is an inspection authority and a supervisory authority. These functions are interrelated. It needs to be emphasized that it has a stronger position as an inspection authority, which dominates in the case of observance of provisions concerning municipal waste, which must be considered as an apt legal solution.

Regulations of environmental protection law specify precisely the measures it may apply in the course of inspection and supervision. It should be pointed out *de lege lata*, that regulations concerning inspection-supervision measures applied by a commune head (mayor, president of the city) in the course of proceedings conducted by them are in principle correct. However, it should be clarified *de lege ferenda* whether regulations of chapter 5 of the Entrepreneurs Act apply to

inspection of regulations of the Clean Commune Act. It is because absence of such regulations leads to a legal discourse.

The above-described functions attributed to the commune head (mayor, president of the city) trigger specific legal effects which affect the state of the environment and people. When evaluating them one needs to start with the role of this entity as an inspection authority. During inspection proceedings it should detect irregularities and prevent detrimental phenomena occurring in nature conservation and environmental protection. When inspecting appropriate entities, it verifies whether the inspected actors act according to established rules of environmental protection law and published guidelines. Besides, inspection allows detection of environmental errors which can be corrected and avoided in the future.

In turn, as a supervisory authority, the entity in question contributed to removing the existing environmental threat by revoking or restricting authorisation previously granted to the inspected individual or to change its legal position.

#### REFERENCES

- Bar, Magdalena, Marek Górski, Jerzy Jendrośka, et al. 2011. *Prawo ochrony środowiska. Komentarz*. Warszawa: Wydawnictwo C.H. Beck.
- Barczak, Anna. 2013. *Model gospodarowania odpadami komunalnymi w Polsce i Niemczech. Analiza prawnoporównawcza*. Szczecin: ZAPOL.
- Barczak, Anna, and Ewa Kowalewska. 2015. *Zadania samorządu terytorialnego w ochronie środowiska. Aspekty materialne i finansowe*. Warszawa: Wolters Kluwer Polska.
- Bojarski, Paweł, Wojciech Radecki, and Jerzy Rotko. 2011. *Ustawa o zbiorowym zaopatrzeniu w wodę i zbiorowym odprowadzaniu ścieków. Komentarz*. Warszawa: Wolters Kluwer Polska. <https://sip.lex.pl/#/commentary/587311783/109223> [accessed: 27.07.2020].
- Ciechanowicz–McLean, Janina. 2009. *Prawo i polityka ochrony środowiska*. Warszawa: Difin.
- Górski, Marek. 2001a. “Podział kompetencji administracji publicznej w dziedzinie ochrony środowiska w świetle przepisów nowego systemu prawa. Kto za co odpowiada.” *Ekoprofit* 10:17.
- Górski, Marek. 2001b. “Komentarz do art. 379.” In *Ustawa – Prawo ochrony środowiska. Komentarz*, ed. Jerzy Jendrośka, 898–99. Wrocław: VERLAG DASHÖFER.
- Górski, Marek. 2008. “Humanitarna ochrona zwierząt.” In *Prawo ochrony środowiska dla praktyków*, ed. Jerzy Jendrośka, 1. Wrocław: VERLAG DASHÖFER.
- Gruszecki, Krzysztof. 2014. “Kontrola działalności w zakresie utrzymania czystości i porządku oraz unieszkodliwiania odpadów komunalnych.” *Samorząd Terytorialny* 6:16–26.
- Jagielski, Jacek. 2018. *Kontrola administracji publicznej*. Ed. 4. Warszawa: Wolters Kluwer Polska.
- Janiak, Piotr. 2019. “Czasowe odebranie zwierząt w trybie administracyjnym – podstawowe zagadnienia.” *Casus* 1:45–49.
- Jerzmański, Jan. 2010. “Odpowiedzialność administracyjna.” In *Institucje prawa ochrony środowiska. Geneza – rozwój – perspektywy*, ed. Wojciech Radecki, 399–400. Warszawa: Difin.
- Jerzmański, Jan. 2011. “Gospodarka odpadami komunalnymi – nowe zasady.” *Przegląd Komunalny* 9:92.
- Korzeniowski, Piotr. 2015. “Charakter prawny obowiązku ochrony środowiska.” In *Zagadnienia systemowe prawa ochrony środowiska*, ed. Piotr Korzeniowski, 119–34. Łódź: Wydawnictwo Uniwersytetu Łódzkiego.
- Kwaśnicka, Kamila. 2011. *Odpowiedzialność administracyjna w prawie ochrony środowiska*. Warszawa: Wolters Kluwer Polska.
- Radecki, Wojciech. 2002a. *Odpowiedzialność prawna w ochronie środowiska*. Warszawa: Difin.

- Radecki, Wojciech. 2002b. *Organy administracji oraz instytucje ochrony środowiska. Tytuł VII ustawy – Prawo Ochrony Środowiska*. Wrocław: Wydawnictwo Prawo Ochrony Środowiska.
- Radecki, Wojciech. 2015. *Ustawy o ochronie zwierząt. Komentarz*. Warszawa: Difin.
- Radecki, Wojciech. 2016. *Utrzymanie czystości i porządku w gminach. Komentarz*. Ed. 5. Warszawa: Wolters Kluwer Polska.
- Rakoczy, Bartosz. 2012. "Koncepcja współczesnego prawa ochrony środowiska a jego dynamiczny rozwój." *Przegląd Prawa Ochrony Środowiska* 2:57–69.
- Rakoczy, Bartosz. 2016. "Stan badań nad polskim prawem wodnym i konieczne kierunki ich rozwoju." In *Prawo i polityka ochrony środowiska w doktrynie i praktyce*, ed. Anna Barczak, and Adrianna Ogonowska, 119–27. Szczecin: Wydawnictwo Naukowe Uniwersytetu Szczecińskiego.
- Ślugocka, Martyna. 2017. "Praktyczny wymiar instytucji czasowego odebrania zwierzęcia właścicielowi lub opiekunowi." *Przegląd Prawa i Administracji* 108:45–55.
- Stahl, Małgorzata. 2013. "Akty informacji." In *System Prawa Administracyjnego*. Vol. 5: *Prawne formy działania administracji*, ed. Roman Hauser, Zbigniew Niewiadomski, and Andrzej Wróbel, 381. Warszawa: Wydawnictwo C.H. Beck.
- Szubiakowski, Marek. 2017. "Administracyjne kary pieniężne." In *Postępowanie administracyjne – ogólne, podatkowe, egzekucyjne i przed sądami administracyjnymi*, ed. Marek Wierzbowski, 273–78. Warszawa: Wydawnictwo C.H. Beck.
- Ubysz, Karolina, and Beata Bryńczak. 2015. *Ustawa o zbiorowym zaopatrzeniu w wodę i zbiorowym odprowadzaniu ścieków. Komentarz*. Warszawa: Wolters Kluwer Polska. [https://sip.lex.pl/#/search-unitrelated/16904006/art\(18\(e\)\)/COMMENTARY](https://sip.lex.pl/#/search-unitrelated/16904006/art(18(e))/COMMENTARY) [accessed: 27.07.2020].
- Wincenciak, Mirosław. 2008. *Sankcje w prawie administracyjnym i procedura ich wymierzania*. Warszawa: Wolters Kluwer Polska.

#### KONTROLA PRZESTRZEGANIA PRZEPISÓW OCHRONY ŚRODOWISKA SPRAWOWANA PRZEZ WÓJTA (BURMISTRZA, PREZYDENTA MIASTA)

**Streszczenie.** Przedmiotem opracowania jest analiza kontroli realizowanej przez wójta (burmistrza, prezydenta miasta) w zakresie przestrzegania przepisów środowiskowych przez określone podmioty. Wybór tematu jest uzasadniony tym, że brak jest w nauce prawa ochrony środowiska aktualnych, szczegółowych analiz dotyczących kontroli środowiskowej i roli organu wykonawczego gminy w badanym obszarze. Celem artykułu jest uzyskanie odpowiedzi na dwa pytania, z których pierwsze ma charakter ogólny, a drugie szczególne. Są to następujące problemy badawcze: 1) czy wójt (burmistrz, prezydent miasta) jest tylko środowiskowym organem kontroli, czy też jego zakres kompetencji jest szerszy i sprowadza go do roli środowiskowego organu nadzoru?; 2) jakie skutki prawne wynikają z faktu, że wójt (burmistrz, prezydent miasta) występuje w podwójnej roli w podawanym analizie zagadnieniu? Jako metodykę badań przyjęto metodę dogmatyczno-prawną. Z przeprowadzonych poniżej rozważań wynika, że wójt (burmistrz, prezydent miasta) jest nie tylko organem kontroli w zakresie przestrzegania przepisów ochrony środowiska, ale także w określonych obszarach prawa ochrony środowiska pojawia się jako organ nadzoru, co implikuje, że pozycja prawna wójta (burmistrza, prezydenta miasta) w zakresie kontroli środowiskowej jest modelem docelowym (istniejącym). Oznacza to, że przyznane uprawnienia kontrolno-nadzorcze tytułowego organu są w zasadzie wystarczające.

**Słowa kluczowe:** ochrona środowiska, kontrola, nadzór, wójt (burmistrz, prezydent miasta)

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