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THE ROLE, TASKS AND LEGAL FORMS REGARDING THE ACTIVITY OF A NATIONAL PARK DIRECTOR IN ENSURING THE SAFETY OF TOURISTS VISITING NATIONAL PARK AREAS

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Abstract

Purpose: The aim of the article is to analyse a national park director's legal position, roles, tasks and legal forms of operations in ensuring the safety of tourists visiting a national park.

Method: The theoretical nature of this article determines the choice of research methods and their application. A dogmatic method (analytical and dogmatic) involving legal exegesis using linguistic and non-linguistic rules of legal interpretation is the predominant method applied in the article.

Findings: The national park director's legal status is not clearly defined by the legislator and therefore, raises doubts. The legislator defines a national park director as a national park authority and a nature protection authority, directly indicating that this authority performs the tasks of a regional director aimed at nature protection within the national park area. The director of a national park may be classified as an administering entity, or on account of his/her tasks and powers, a public administration authority in a functional sense. However, it is misleading to treat national park directors as public administration authorities *sensu stricto*, i.e. the authorities who are part of the state machinery (authorities acting directly on behalf of the state or local self-governments), whose basic and, in principle, sole purpose is to perform public administration tasks (e.g. minister, province administrator, commune head). However, some authors consider national park directors to be public administration bodies *sensu stricto* [Makuch 2020, p. 527]. It has been confirmed in research that there is great diversity concerning tasks, powers and legal forms of operations at the disposal of a national park director, which can be used to ensure the safety of tourists visiting national parks. These are legal and factual activities of regulatory and non-regulatory nature. The tasks and competencies of national park directors include, first of all, protecting national park resources (environmental protection), and also providing access to national parks so as to ensure the safety of people who visit them.

Research and conclusions limitations: The author focuses on analysis of the national legal framework. The origin of institutions and comparative legal analyses have been omitted.

Practical implications: In the research, the current legal status is shown, and this can be considered the basis for further legislative work.

Originality: To date, research on the national park directors' tasks, roles and legal forms of operation in ensuring the safety of tourists visiting national parks has been very scarce. Most of such issues are raised while discussing wider problems related to nature protection as well as tourism, and are not subject to in-depth examination [Wolski 2010, pp. 75-83].

Type of paper: The article presents some theoretical concepts. It is a general overview article.

Keywords: national park director; national park; safety of tourists; legal forms of public administration activity; administering entities; administrative apparatus.

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Introduction

The fundamental research issues and objectives of the article include analysis of a national park director's position in the state political system, his/her tasks and legal forms of activity in ensuring the safety of tourists visiting national parks. In this article, of particular interest will be the evaluation of a park director's position in the administrative apparatus structure and legal forms of operations applied by directors along with their classification within the system of legal forms of public administration activity.

The issues analysed in this article are significant for the reason that a national park director's powers and legal forms of activity define his/her effectiveness not only in achieving the main objective of nature protection, but also in ensuring the safety of tourists visiting national parks. The above issues raise doubts in the doctrine and need in-depth reflection. The final outcome of the author's research is to determine whether the legal status, powers and legal forms of operations at a park director's disposal are sufficient to effectively ensure the safety of national park visitors.

Within this context, it is worth emphasizing that, as Janusz Sondel rightly pointed out, broadly-understood tourism law 'also contains provisions, the aim of which is not to protect tourists but rather to protect nature against them, and above all, to protect it from excessive or uncontrolled tourist traffic'. These are primarily areas of particular natural, historical, cultural and other value, which could be devastated by too much tourism. This specifically applies to national parks that are very sensitive to excessive numbers of visitors, as well as to nature reserves, landscape parks and, to some extent, other woodland areas. There is a clear conflict of interest here between tourism and ecology, and it is precisely the role of law to find a sensible compromise in this respect. In particular, the Act from 16 April 2004 on nature conservation is intended to serve this purpose [Sondel 2006, p. 8].

The nature of the article determines the choice of research methods and their application. A dogmatic method (analytical and dogmatic) involving legal exegesis using linguistic and non-linguistic rules of legal interpretation is the predominant method applied in this article. Due to the adopted research assumptions, neither historical nor comparative legal methods have been used.

Literature overview

Analysis of the national park director's legal position, competences and legal forms of activity mostly appears in papers devoted to broader issues of nature protection or tourism [Rakoczy 2009, p. 82; Gruszecki 2016, pp. 623-645; Sondel 2006, pp. 7-26; Radecki 2011, pp. 99-100]. However, it is seldom

the subject-matter of any specific studies [Wolski 2010, pp. 75-83; Makuch 2020, pp. 514-528]. The-above also applies to the national park director's activity in the field of ensuring the safety of tourists.

In literature, there is no clear answer to the question of the park director's legal position or status in administrating the system's entity. This issue is either omitted or presented in a limited scope and without wider justification. Some authors, however, clearly support the view that a national park director is not only a public administration authority, within the meaning of Article 5 (3) in conjunction with Article 1 (2) of the Code of Administrative Procedure [Act from 14 June 1960 – the Code of Administrative Procedure, consolidated text: Dz. U. 2021, item 735, as amended] – hereinafter abbreviated as k.p.a., but also a public administration authority *sensu stricto* (in the doctrinal sense) [Makuch 2020, p. 516, p. 527].

Discussion

The position, tasks and powers of nature protection authorities are primarily defined by the Act on the protection of nature [Act from 16 April 2004 on the Protection of Nature, consolidated text in Dz. U. 2021, item 1098, with later amendments] – further abbreviated as u.o.p. This also applies to directors of landscapes and national parks. Because of the issues outlined in the title of the article, we will focus on the analysis of the park director's legal status, tasks, powers and legal forms of his/her operations related to the safety of tourists visiting national parks.

The legal status of a national park director is determined by several factors that should be identified. First of all, the-following must be enumerated: 1) appointment procedures; 2) tasks and competencies; and 3) legal forms of operations assigned to this entity.

The director of a national park is appointed for a period of 5 years by the Minister of Environmental Issues from among candidates selected in a competition. The minister also dismisses the park director. In the case of dismissal, the minister may entrust the performance of his/her duties to a deputy until a new national park director is appointed, but for a period not exceeding 6 months.

The legislator defines a national park director as a national park (Art. 8c (1) of u.o.p.) as well as a nature protecting authority (Art. 92 (2c) of u.o.p.). In this context, it is worth noting how the term of a national park is understood. A national park is a state legal entity within the meaning of the Public Finance Act [Public Finance Act from 27 August 2009, consolidated text: Dz. U. 2021, item 305, as amended], and is one of the forms of nature protection (Art. 6 (1) (1) and Art. 8a (1) of u.o.p.). According to Art. 8 (1) and (2) of u.o.p., the national park covers an area of outstanding environ-

mental, scientific, social, cultural and educational value, with an area of no less than 1,000 ha, which protects the whole of the nature and qualities of the landscape. National parks are created to preserve biodiversity, resources and components of inanimate nature and qualities of the landscape, to restore the proper condition of nature resources as well as components, and to reconstruct distorted natural habitats, plants, habitats of animals or fungi [Radecki 2011, pp. 92-94]. As it can be seen, the purpose of national parks is primarily the protection of nature, while the use of their resources for tourism purposes is of secondary importance and is, in a sense, conditioned and regulated by the need to take protective measures (national parks in other countries such as Germany or Austria serve similar purposes, see R. Breuer [2008, pp. 677-678; Jahnel 2010, p. 538]. Nevertheless, the tasks of national park authorities also include the provision of access to national park areas, *inter alia*, as part of promotional education and nature protection activities.

It should be emphasized that the legal status (including the position in the administering entity system) of a national park director is not clearly defined by the legislator and may raise doubts. In particular, the question may be asked as to whether we are dealing with a public administration entity in a strict and doctrinal sense, or maybe such an entity but in a functional sense (an entity additionally performing functions and tasks of public administration). It is worth noting that the legislator does not explicitly mention the national park director among consolidated local government authorities (acting under the authority of the province administrator) and non-consolidated government authorities (local government authorities subordinate to the relevant minister or central government authorities/heads of state legal entities and heads of other state organisational units performing government administration tasks in the province). National park directors have not been listed in the catalogue of non-consolidated government authorities in the current wording of Art. 56 (1) 1 of the Act from 23 January 2009 on province administrators and government administration in provinces [*Act from 23 January 2009 on province administrator and government administration in provinces*, consolidated text: Dz. U. 2019, item 1464 - hereinafter abbreviated as "u.w.a.r.w."], despite the fact that s/he is, *de facto*, the head of the state legal entity (national park). Nevertheless, in the case of the law based on Art. 9 (3) of the Act on government administration in a province that is no longer in force [*Act from 5 June 1998 on government administration in provinces*, consolidated text: Dz. U. 2001, No. 80, item 872], the national park director was identified as a non-consolidated administration authority [Ruling of the Poznań Regional Administrative Court from 9 November 2010, IV SA/Po 938/10, CBSA]. Also, in another ruling from 29 September 2011, the administrative court recognised park directors as public administration authorities [Judgment of the Warsaw Regional Administrative Court from 29 September 2011, IV SA/Wa 999/11 CBOSA].

However, it should be stressed here that, as a rule, a public administration authority is an administering entity, who either acts directly on behalf of the state, e.g. a minister, province administrator, or on behalf of a local self-government unit, e.g. a commune head, and was created specifically (exclusively) to carry out relevant tasks of public administration, i.e. to perform public tasks [see: Detterbeck 2008, pp. 62-65; Kahl, Weber 2011, pp. 155-156; Zimmermann 2016, pp. 177-178].

As mentioned above, a national park director is a body of a legal person (a body of a national park) and acts on its behalf. This body performs tasks assigned to a national park by law, including national park management and its representation before third parties.

The analysis of the national park director's position in the state political system, including his/her tasks and powers, as defined by the legislator, may indicate that s/he should be classified as an administering entity or a public administration authority on the basis of his/her functions, within the meaning of the provisions of Art. 5 (2) (3), in conjunction with Art. 1 (2) of k.p.a. At this point, it should be noted that according to the above-mentioned provisions of k.p.a., public administration authorities comprise both the authorities *sensu stricto*, e.g. ministers, central government administration authorities, province administrators, local government administration authorities (both consolidated and non-consolidated administration), as well as other entities established by virtue of law or under agreements to deal with individual matters by issuing administrative decisions or silent settling of matters in administrative proceedings (i.e. public administration authorities in a functional sense). The national park director who has regulatory powers can certainly be included in this category. However, it is misleading to classify a national park director as a public administration authority *sensu stricto* (in a doctrinal sense), including non-consolidated government administration authorities because, as indicated above, the national park director was not listed in the catalogue of such administration authorities under Art. 56 (1) of u.w.a.r.w. Nonetheless, within this context, it should be borne in mind that the national park director performs the tasks of regional director of environmental protection in the field of nature conservation in the national park areas (Art. 94 (1) of u.o.p.). As it can be seen, the national park director not only carries out tasks assigned to a national park by law, including management of the national park and its representation before third parties, but also performs additional functions typical for public administration. As indicated above, currently, some representatives of the doctrine include the national park director of the public administration authorities *sensu stricto* [Makuch 2020, p. 527].

Concluding, a national park director is primarily a public administration authority in the functional sense (at present, not included in the list of non-consolidated government authorities) and performs tasks assigned to

a national park by law, among others, the management of the national park and its representation before third parties. Furthermore, the director performs functions and applies methods as well as legal forms of activity characteristic of public administration; it is an entity responsible for nature protection and s/he is an employee of the National Park Service, whose responsibility is primarily to conserve nature.

In u.o.p. and other provisions, the legislature does not define the national park director's tasks related to the safety of tourists visiting the park. However, such competencies may be derived from the provisions defining the scope of a national park director's operations, in particular, from his/her general authority to manage the national park, making it accessible to the public, and duties related thereto. Since the primary purpose of national parks is to conserve nature, it seems obvious that the legislature has stressed the importance of implementing this goal. The performance of other tasks, including access to the park area for tourist and recreational purposes, take place alongside the primary objective, which is nature conservation in the park area.

It should also be noted that the protection of tourists' interests (as tourism service consumers) is not, in principle, the subject-matter of u.o.p. but of other provisions, in particular, the Act on Package Travel and Linked Travel Arrangements [Act from 24 November 2017 *on Package Travel and Linked Travel Arrangements*, consolidated text: Dz. U. 2019, item 458, as amended]. However, in the case of adventure tourism, especially mountain- or water-related, issues concerning the tourists' safety are regulated in separate normative acts [Act from 18 August 2011 *on Safety and Rescue in the Mountains and at Organised Ski Areas*, consolidated text: Dz. U. 2019, item 1084 – hereinafter referred to as “u.b.r.g.”; Act from 18 August 2011 *on the Safety of Persons in Water*, consolidated text: Dz. U. 2020, item 350 – hereinafter referred to as “u.b.o.w.”]. The provisions of the aforementioned acts specify, in particular: 1) entities responsible for ensuring mountain and organised ski area safety; 2) safety conditions for persons in the mountains and at organised ski areas, in particular, of those practising sports, recreation or tourism there; 4) duties of tourists in the mountains and at organised ski areas, in particular, those practising sports, recreation or tourism, as well as 1) entities responsible for ensuring safety of persons swimming, bathing or practising sports or recreation in water; and 2) safety conditions for persons swimming, bathing or practising sports or recreation in water. The aforementioned acts impose obligations on the management of national and landscape parks to ensure the safety of tourists, which will be discussed below.

Returning to the provisions of u.o.p., it should be stressed that the national park director is required to draw up a draft for the national park protection plan (this plan is published as a decree of the competent minister in charge of the environment). The plan must take the existing external and

internal threats into account, also from the point of view of threats to people visiting national park area. It should be noted that the national park protection plan should indicate areas and places available for scientific, educational, tourist, recreational, sports, amateur fishing and fishing purposes, and specify the ways of accessing them (Art. 20 (1) and (2) of u.o.p.). The designation of accessible areas and places, *inter alia*, for tourist purposes, must ensure that such destinations are safe for the persons visiting them.

The national park director implements the protection plan and issues orders specifying how to use the national park areas for scientific, educational, tourist, recreational and sports purposes. Among the detailed competencies of the park director, the marking of hiking, cycling, skiing and horse-riding trails must be mentioned (Art. 15 (1) (15) of u.o.p), as well as places designated for climbing, caving or water reservoir exploration (Art. 15 (1) (17) of u.o.p.). Such activities must be intended not only to conserve nature but also to ensure the safety of people visiting national parks. An example of implementing the above-mentioned regulations is Order No. 13/2019 from 12 March 2019 issued by Ojców National Park Director, on the detailed rules of making Ojców National Park available for hiking, cycling, horseback riding and cross-country skiing [Online: <http://www.ojcowski-parknarodowy.pl/main/zarzadzenia.html> (20.09.2020)]. Annex No. 1 to the Order specifies the rules governing access to Ojców National Park for hiking, cycling, horseback-riding and cross-country skiing. In the rules routes, trails and facilities available for hiking, cycling, skiing and horseback-riding are enumerated, as well as the ways of using them for tourist and recreational purposes, taking the safety of people visiting the park into account. In particular, the possible occurrence of biotic, abiotic and anthropogenic threats was indicated and the prohibited forms of tourism and recreation were defined.

In the article, no room is left for detailed analysis of the above-mentioned rules, but it should be highlighted that similar rules have been introduced by directors managing other national parks who take distinctive features of the parks managed by them into consideration.

It is also worth noting the tasks of the National Park Service defined in Art. 103 (1) and (2) of u.o.p., which include, among others, combating environmental crimes and offences committed in parks, giving access to parks for tourist purposes and maintaining the infrastructure managed by parks in a proper condition, which also translates into ensuring the safety of tourists visiting them.

As mentioned above, national and landscape park authorities are obliged to ensure the safety of tourists in the mountains under the provisions of u.b.r.g. (see: Art. 3(1) and (2)). In compliance with Art. 3(1) of u.b.r.g., the authorities of national and landscape parks situated in the mountains are responsible for the safety of persons visiting the them. To ensure safety in

the mountains, the authorities must, in particular: 1) designate and mark areas, facilities and equipment used for sports, recreation or tourism; 2) establish the rules for the use of given areas, facilities or equipment; 3) provide entities authorised to deliver mountain rescue services with conditions enabling them to offer assistance and rescue to persons who have suffered accidents or are at risk of losing their lives or health; 4) announce avalanche alerts. Moreover, under Art. 19 (1) of u.b.r.g., the managers of organised ski areas are responsible for the safety of users of such areas.

The obligation to ensure the safety of persons in water areas located within national or landscape parks applies to national park directors (see: Art. 4 (2) (1) of u.b.o.w.). The persons responsible for safety in water, including national and landscape park directors, are referred to as “water area managers” (Art. 4 (2) of u.b.o.w.). According to Art. 4(1) of u.b.o.w., ensuring safety in water areas consists of: 1) preparing, in co-operation with the police and entities operating in the given area, as referred to in Article 12(1), risk analysis, including identification of places where the safety of persons swimming, bathing, doing sports or recreational activities is endangered; 2) marking and protecting areas, facilities and equipment intended for swimming, bathing, doing sports or recreational activities in water; 3) conducting preventive and educational activities regarding water safety, which consist, in particular, of: a) marking dangerous spots, b) supervising, in co-operation with the police and the entities referred to in Article 12 (1) as dangerous places, including those traditionally used for bathing, (c) raising awareness of risks associated with water areas, specifically, through educational campaigns targeting schoolchildren and young people, (4) providing weather warnings and information about other factors that may cause inconvenience or weather-related health and life threats; (5) creating conditions for providing assistance and rescue to persons who have had accidents or are at risk of losing their lives or health.

A manager of the designated water area is obliged to put the following information in publicly accessible places: 1) rules for the designated water area usage; 2) restrictions on the use of the designated water area; 3) accident notification methods along with emergency numbers. The responsibilities of the designated water area manager include: 1) in the case of bathing beaches, swimming pools and other facilities with pool basins with a total area exceeding 100 m² and a depth of more than 0.4 m at its deepest point or more than 1.2 m: a) marking zones for swimmers and non-swimmers, b) providing paddling pools for children, 2) providing lifeguards for permanent pool supervision; 3) building lifeguard observation stands; 4) providing rescue and auxiliary equipment as well as signalling and warning devices (visual and auditory); 5) removing any objects which may cause injuries or other accidents from the bottom surface of the swimming or bathing area; 6) creating rules for designated water area usage known to the public;

7) providing information on decisions to prohibit or give approval for use of the designated water area.

Under Art. 6 of u.b.o.w., a designated water area manager or a person authorised by him/her may refuse to admit or require a person to leave this area if the person's behaviour clearly shows that s/he is under the influence of alcohol or drugs.

Finally, it is worth recalling that according to Art. 8e (4) of u.o.p., national park directors are also responsible for some tasks and competences defined in the Act on Forests [*Act from 28 September 1991 on Forests*, consolidated text: Dz. U. 2021, item 1275 – hereinafter abbreviated as u.l.]. These activities are, first of all, related to forest management but among them, we can also identify the measures intended to ensure safety of persons visiting forests. Such measures may include temporary bans on access to forests when wood stands have been destroyed or significantly damaged, or when there is a high fire risk or economic operations in respect of breeding, forest protection or logging are being conducted (See Art. 26 (2) of u.l.). Such situations may be a real threat to the health and lives of people visiting forests for tourist and recreational purposes.

Conclusions

The legislator does not clearly define a national park director's legal status or his/her position in the administrative apparatus structure. A national park director has not been explicitly classified as a local unit of consolidated or non-consolidated government administration. The employer defines a national park director as a national park authority and nature conservation authority, and clearly indicates that s/he director carries out the tasks of a regional nature protection director in respect of nature conservation in the park assigned to his/her care. Appointment procedures, tasks, powers and legal forms of his/her operations indicate that he should be classified as an administering entity or a public administration authority in a functional sense, including public administration authorities within the meaning specified in Art. 5 (2) (3) in conjunction with Art. 1 (2) of k.p.a. However, it is misleading to classify a national park director as a public administration authority *sensu stricto*, i.e. an authority who is part of state administration, whose primary and, in principle, sole purpose is the performance of public administration duties.

It is worth highlighting that some authors include national park directors not only into public administration authorities within the meaning of Art. 5 (2) (3), in conjunction with Art. 1 (2) of k.p.a. but also into public administration authorities *sensu stricto* (in a doctrinal sense) [Makuch 2020, p. 527].

It is also worth emphasizing that national park directors are facing a conflict between the value of protecting various precious components of animate and inanimate nature and the value of ensuring tourist safety. In the author's opinion, the life and health of tourists should be given priority over the protection of valued environmental components since human life is undoubtedly the supreme value. In balancing these two goods, the principle of proportionality of the measure applied to achieve the aim should be taken into account. In this study, large variety has been shown of tasks, powers and legal forms of activity at the disposal of the national park director which can be used to ensure the safety of tourists in the national park. The national park director's tasks and powers include not only protecting national park resources, but also granting access to national park areas and determining the ways of such access, *inter alia*, for tourist and recreational purposes, in a manner that ensures the safety of people in the area. Among the above mentioned forms of national park director's operations, legal and factual actions (material and technical operations as well social and organisational activities) can be mentioned, both of a regulatory and non-regulatory nature. Among the legal acts of the director, there are general and abstract (e.g. orders), general and specific (e.g. periodic bans on entering the forest) and individual acts (e.g. administrative decisions).

As it appears, both the national director's tasks, powers and forms of legal activity allow him/her to effectively ensure the park visitors' safety in typical circumstances. There is no doubt, however, that even the most perfect legal regulations would not replace experience, common sense or caution, and the laws of nature often have the upper hand. They can only help minimise the risks of tourism. Additionally, not only does the research allow to present a national park director's current legal status, but it should also encourage the legislature to reorder and enhance the scope of national park director's tasks, powers and legal forms of activity related to the safety of national park visitors. Such amendments should primarily aim at extending directors' authoritative legal forms of activity in respect of tourist traffic management and strengthening human and material resources of the services directly connected with national park directors. It seems necessary to undertake such legislative work because of the ever-increasing tourist traffic and new threats and challenges experienced by entities responsible for nature conservation and other national park resources, as well as the safety of persons visiting national park areas.

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