

**PROTECTION OF PUBLIC SPACE IN THE LIGHT
OF THE LANDSCAPE ACT**

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ABSTRACT

The article presents the new regulations contained in the landscape act. The landscape act introduces new regulations to the Polish legal system in the area of advertising space, advertisement fees and specifies the tools of landscape protection such as landscape audit, areas of protected landscape and others. Legislative changes in the area of landscape protection approach Polish legal system to the provisions of the European Landscape Convention. Legal solutions proposed in the act should contribute to strengthening the landscape protection in Poland.

Key words: landscape act, landscape protection, advertisement, advertising fee, landscape audit

The act of April 24, 2015 amending certain acts in order to strengthen the tools of landscape protection (Journal of Laws of the Republic of Poland, abbreviated J.of L. of 2015, item 774), known as the landscape act (*Ustawa krajobrazowa*) was passed by the Parliament after more than 18-month period of parliamentary work. The act significantly differs from the one presented by the President of Poland in a bill proposal in July,

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2013¹. The works on the preparation of project of the Landscape Act were initiated by a public debate and with public consultation which highlighted the need to create a coherent legal regulations concerning the protection of the cultural and natural landscape.

The objective of the project of the bill presented by the President was to create legal instruments for preventing the increasing degradation of landscape value, particularly through the legal regulation of the advertising industry.

The project aimed to strengthen and improve the effectiveness of scarce and dispersed solutions in the legal system of the landscape protection.

Legislative changes in the field of landscape protection were forced by European Landscape Convention drawn up in Florence on October 20, 2000 and later signed and ratified by Poland. (J. of L. of 2006, No. 14, item 98). According to the European Landscape Convention, landscape is an important element affecting the quality of life of societies and therefore is a subject of protection and management based on the principles of sustainability to preserve its assets for future generations.

The Convention obliges signatory countries to establish and implement landscape policies and to integrate landscape into its policy on regional and urban planning as well as cultural, environmental, agricultural, social and economic policy. Despite of its ratification a decade ago, Poland has failed to introduce specific legislation implementing the commitments adopted in the Convention. Regrettably, the detailed legal changes are not introduced by the landscape act, which regulates only partial provisions of the European Landscape Convention. The landscape act is in fact a set of changes to other laws that relate, among others, to Construction Law, Tax Code, or administrative enforcement procedure².

¹ Bill on amending certain acts in order to strengthen the tools of landscape protection (Projekt ustawy o zmianie niektórych ustaw w związku ze wzmocnieniem narzędzi ochrony krajobrazu), Sejm of Republic of Poland (VII Term), print no. 1525.

² Amendments to acts: act of June 17, 1966 on administrative enforcement procedure [o postępowaniu egzekucyjnym w administracji], (J. of L. of 2014, item 1619 with later amendments); the act of May 20, 1971 – Violations Code, (J. of L. of 2013, item 482 with later amendments); act of March 21, 1985, on public roads [o drogach publicznych], (J. of L. of 2015, item 460); act of January 12, 1991 on taxes and local fees [o podatkach

Since the beginning, the legislative work on the Landscape Act was accompanied by strong emotions and criticism from advertising companies. The landscape act provides for municipality councils the right to determine the form, where and how the ads can be placed, what size can they have and the type of construction materials they are made of. Opinions on the act were voiced by the architects, urban planners, NGOs and local authorities who fought for the aesthetics of public space. Wind energy sector was also protesting the landscape act. The law passed is a result of a compromise between all actors involved in the landscape protection and the business lobby.

The landscape is a common good and its protection and rational formation is an important task for individuals, government bodies and local authorities. The issue of protection and landscaping became important during the political changes that took place in Poland after 1989. The poor state of the Polish landscape is as noted by K. Pawłowska, the consequence of loosening spatial planning rules and the current law on spatial planning and development is an example of far-reaching liberalization³.

The issue of the landscape and its protection is present in an inadequate degree in the Polish legislation. There is no legal definition of the landscape present in the legislation. The act on nature protection (art. 5 point 20) states only that the landscape is one of the elements of the natural environment, equivalent to its other components, such as air, water and land surface.

i opłatach lokalnych], (J. of L. of 2014, item 849 and J. of L. of 2015, items 528 and 699); act of July 7, 1994 – Construction Law, (J. of L. of 2013, item 1409 with later amendments); act of April 27, 2001, – Environmental Protection Law, (J. of L. of 2013, item 1232 with later amendments) ; act of March 27, 2003 on spatial planning and development [o planowaniu i zagospodarowaniu przestrzennym,] (J. of L. of 2015, items 199 and 443); act of July 23, 2003 on protection and preservation of monuments [o ochronie zabytków i opiece nad zabytkami], (J. of L. of 2014, item 1446 and J. of L. of 2015, item 97); act of April 16, 2004 on nature protection [o ochronie przyrody], (J. of L. of 2013, item 627 with later amendments) and act of October 3, 2008 on disclosing information on environment and its protection, public participation in environment protection and environmental impact assessments [o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko] (J. of L. of 2013, item 1235 with later amendments).

³ K. Pawłowska, “Udział społeczeństwa w ochronie i kształtowaniu krajobrazu”, Samorząd Terytorialny, No. 12 of 2014, p. 22.

The Polish legal system contains a definition of the cultural landscape, formulated in the law on protection and preservation of monuments, which describes it as a *“space historically shaped by human activities, containing products of civilization and the elements of nature”*. The fact that there is no uniform definition causes practical difficulties concerning its protection.

The answer to the question of what should be protected can be provided by European Landscape Convention, which when defining the landscape protection states that it should include *“actions to conserve and maintain the significant or characteristic features of a landscape, justified by its heritage value derived from its natural configuration and/or from human activity”*⁴. European Landscape Convention also differentiates landscape management as an *“action, from a perspective of sustainable development, to ensure the regular upkeep of a landscape, so as to guide and harmonize changes which are brought about by social, economic and environmental processes”*⁵. These definitions assume two basic approaches to landscape conservation: passive - related to its preservation and maintenance and active - involving channeling and harmonizing the change of landscape.⁶

It is the landscape act which changes the law on spatial planning and development and introduces a legal definition of landscape and priority landscape. The landscape - the light of the amendment - should be understood as a *space perceived by people, containing elements of nature or products of civilization, formed as a result of natural factors or human activity* (article 2 paragraph 16e), while by the priority landscape - *a landscape particularly valuable to society because to its natural, cultural, historical, architectural, urban, rural or scenic values, and as such requiring preservation or determining the terms and conditions of its shaping* (art. 2 point 16f).

The Polish legal system includes various forms of landscape protection, such as landscape parks, areas of protected landscape, natural landscape

⁴ European Landscape Convention, Florence, October 20, 2000, Chapter I, Article I, point d.

⁵ European Landscape Convention, Chapter I, Article I, point e.

⁶ See M. Kistowski, “Bierna ochrona krajobrazu jako podstawa utrzymania korzystnych warunków życia człowieka”, *Przegląd Przyrodniczy*, XXI, 2(2010), p. 24.

areas, cultural parks and preservation agreements in local spatial development plans.

To make passive protection of the landscape more effective, the legal system should be adapted to the provisions of the European Landscape Convention, modified according to it, and above all, the rules of spacial planning must be changed. It is also necessary to establish the cooperation between central government and local governments in the field of landscape protection⁷. Moreover, active protection of landscape should be complementary to the passive protection. Citizens, acting through organizations should be involved in the landscape protection in a form of public participation. Landscape has its value for all citizens and should be protected for them. It is a principal reason for making efforts of landscape protection and management⁸.

The landscape act introduced into the Polish legal system new solutions, which aim at allowing more effective protection of the landscape. The act contains regulations on advertisement location, charging advertisement fees, defines tools to protect the landscape, especially the landscape audit, landscape parks and protected landscape areas.

The act defines what is an advertisement in the public space. It is a "billboard or advertising device (as defined in the act on spatial planning and development) placed in the road user's view, as well as any other medium of visual information, along with its structural elements and fixings, other than a traffic sign (as in traffic regulations), informational sign of objects located by the road, including public buildings, a sign informing about the form of monuments protection or names of the forms of nature protection (within the meaning of the act on nature protection) set by the municipality.

This is of course one of the many definitions introduced among others, including signs, billboards or advertising devices.

Advertising sign - should be understood as a material object designed or used for the exposure of advertising with its structural elements and fixings, with a flat surface serving for the exposure of advertisement, in particular advertising banner, advertisement placed on the windows of build-

⁷ M. Kistowski, p. 27.

⁸ K. Pawłowska, p. 31.

ings and advertisement placed on the scaffolding, fence or used in accordance with their purpose (art. 2 point 16b). Advertising device - should be understood as a material object used for advertising purpose together with its structural elements and fixings, other than a billboard, with the exception of small everyday items used for their intended purpose (art. 2 point 16c). Signboard - should be understood as a billboard or advertising device providing information on the activities carried out on the property on which the billboard or advertising device is located (art. 2 point 16d).

The act allows the municipality councils to establish by local legal acts the terms and conditions of locating objects of small architecture, signs and advertising devices and fences, their size, quality standards, types of materials used, and introduce an advertising fee.

The resolution sets out the principles and conditions of situating the signboards, their size and number of signboards that can be placed on the property by the entity managing its activities. The resolution of the municipal council may determine a ban on locating the fences, billboards and advertising devices, with the exception of signboards.

The resolution applies to the entire municipal area, with the exception of closed areas established by authorities other than the minister responsible for transport. A resolution may provide different rules for different areas of the municipality, defining clearly the boundaries of these areas. In this case a resolution may contain graphic attachment with a description which clearly defines their boundaries.

The resolution sets out the conditions and a deadline to adapt objects of small architecture, fences, billboards and advertising devices existing at the date of its entry into force, to comply with terms and conditions set out therein, in a period not shorter than 12 months from the resolution's entry into force date.

The resolution can: 1 / indicate the types of small architecture objects that does not require adjustment to the bans, terms or conditions specified in the resolution; 2 / to identify areas and types of fences for which it is exempted from the obligation to adjust the fences existing at the date of its entry into force to the bans, terms or conditions specified in the resolution.

A new type of local government revenue will be an advertising fee, collected from property owners, regardless of whether on the advertising devices held by him at any given time any advertisement is exhibited.

Such fee can be imposed on the basis of the aforementioned resolution introduced by the municipal council concerning the conditions of locating such objects. In addition, local governments are given powers to impose fines for the illegal placement of ads in public spaces covered by the regulation. From the municipalities standpoint, this act will function more as an advertisement act because these local governments will gain the authority to regulate precisely the environment to such an extent - they could regulate even the smallest slices of the environment.

Advertising fee can be imposed by the municipal council. The fee is imposed on billboards or advertising devices - if given municipality has in force the terms and conditions of locating objects of small architecture, billboards or advertising devices and fences, adopted by the municipal council.

The advertising fee charged will be from property owners with the exception of land in perpetual usufruct, users of land in perpetual usufruct, proprietors of independent real estate or buildings, full and partial ownership of properties where parts of the buildings or property are owned by the State Treasury or local government entity.

Advertisement fee is exempted from the advertising signs or devices which are not visible in the space accessible to the public, if they are a sign-board or constitute a fulfillment of the informational obligation imposed by law. No fee will be charged for any advertising signs or devices related to the activities of churches or other religious organizations.

The new fee will consist of a fixed part and a variable part. The first is intended as a lump sum unrelated to the surface area of the advertising device. The second, variable part is on the other hand directly related to the size of the advertisement area. The fixed fee can amount up to 2.50 zloty per day and the variable fee up to 0.2 zloty per 1 square meter. It is easy to estimate that the billboard of an average size can generate for the municipality a revenue in the form of tax of approximately 2000 zloty annually. The regulation was opposed by the advertising industry, which forecasts a drop in profits resulting from the entry of the new regulation into force.

The act also introduces into Violations Code the possibility of fines and community sentences for advertising that does not comply with the resolution.

Who places an advertisement, referred to in Art. 4 Section 23 of the act on public roads in violation of its situating specified in Art. 42a of the Act, with dimensions larger than allowed or made of materials other than permitted, is subject to a community sentence or a fine (Art. 63b § 1 and 2 of the Violations Code). In the case of violation of the law, court can order the forfeiture of objects used or intended to be used to commit the violation, even if they do not constitute the property of the perpetrator, or order an obligation of restoration to the previous state (Art. 63b §). Incitement, aiding and abetting are also punishable (Art. 63B § 2).

The entity which has placed a billboard or advertising device in violation of the provisions of the resolution (Art. 37a paragraph 1) is subject to a financial penalty. In case where it is not possible to identify the entity, a financial penalty will be imposed to the owner, perpetual user or owner of the independent property or a building on which a billboard or advertising device was placed. The financial penalty be imposed by a decision of commune head (wójt), mayor or president of the city. The decision is immediately enforceable.

The amount of the fine is calculated by multiplying the surface area of the billboard or advertising device in square meters and 40-fold of the variable part of the advertising fee adopted by the municipal council along with the 40-fold of the fixed part of the advertising fee for each day of non-compliance of the billboard or advertising device to the regulations.

In the light of the changes introduced by the landscape act the most important task imposed on the regional level of the local government is to conduct the landscape audit. Regional governments had 3 years after the act's entry into force for the preparation of first audits. Landscape audit-conducted at least once every 20 years - is to be the main tool to achieve universal identification of the types of landscapes in the region and their valorization, identify priority landscapes and to identify the threats to the priority landscapes as intended in the act.

Landscape audit is specifically defining the following: types of landscapes present in a given region, location of priority landscapes, location and boundaries of cultural parks, national parks, natural reserves, landscape parks, protected landscape areas, objects that are on the World Heritage sites list, areas of UNESCO World Network of Biosphere Reserves (MaB) and areas and buildings proposed for the inclusion on these lists.

Landscape audit identifies threats to the ability to preserve the value of landscapes and the value of landscapes within areas and provide recommendations and proposals for managing and protection of landscapes notably by identifying the areas that should be covered by forms of protection and local architectural building forms within the landscape (Art. 38A, paragraph 3).

Detailed guidelines for the preparation of the landscape audit, ie. the classification of landscapes, ways of evaluating the identified landscapes, identifying priority landscapes, how to take into account the objects, landscapes, and the detailed scope and methodology is to be defined by the Council of Ministers by regulation (art. 38S, paragraph 6). A project of landscape audit is prepared by the voivodeship board and adopted by the regional assembly (*sejmik województwa*).

The landscape act also introduces bans on locating new buildings and afforestation in the protection areas covered by the local zoning plans, while on the areas of protection areas not covered by the local zoning plan it is prohibited, as before, to locate new buildings and afforestation, but also to locate new buildings deviating from a local architectural style or new buildings with a height exceeding 2 floors or 7 meters.

The existing buildings erected before the entry into force of the resolution introducing a protection area and violating its provisions do not require adaptation, but at the request of the owner, whose construction works flagrantly violate the rules, the voivodeship government can cover the costs of adapting the building to the requirements of the resolution, which in turn transfers the financial burden on the regional government.

When creating protection areas, voivodeship government authorities should ensure the possibility of public participation in the creation of the resolution.

In the interest of road safety, a number of regulations on the roadway were introduced. Competent local entities (municipal, county, regional) from now on will only issue permits for advertising located near the roads after having examined whether or not they pose a threat to traffic.

The bill in the first draft envisioned, among others, an introduction into law the concept of “spatial domination” (*dominanta przestrzenna*) to restrict the rules of location of wind power plants, skyscrapers and all the other facilities that would be considered as “spatial domination”. Accord-

ing to the draft of the bill, this kind of facilities would be erected only on the basis of local zoning plan, adopted by the municipalities. This solution was abandoned and rules restricting construction of such facilities were not introduced into the bill.

Legal solutions in the so-called landscape act were subjected to criticism throughout the legislative process. Some of these comments were adopted, but numerous expert opinions have been ignored by the legislature. The criticism concerned:

1 / non-compliance with the European Landscape Convention by omitting the guiding principle of subsidiarity;

2 / violation of the Polish Constitution and the duplication of a number of regulations causing over-regulation and legislative chaos;

3 / generation of unnecessary costs and failure to determine the sources of financing;

4 / lack of reliable calculations estimating the potential costs of preparing new tools of landscape protection, based on individual natural conditions of individual regions;

5 / the preparation of the landscape audit was estimated at approximately 150 million to 750 million zloty, compared to the disproportionate amount estimated by the creators of the landscape act at 6.4 million zloty⁹.

The solutions proposed in the landscape act are enhancing the protection of the Polish landscapes from their increasing degradation. The introduction of obligation of universal identification and valorization of landscapes should be assessed positively. The provisions that organize the issues related to the location of advertising signs and devices also seem to be beneficial. The project also envisages partial implementation of the European Landscape Convention provisions.

The so-called landscape act aims to help in the fight against advertising chaos. How will it turn out eventually? After a long battle, the landscape act introduces fairly stringent (as for Polish conditions) rules of ad loca-

⁹ Assessment of the impact of implementation of the so-called landscape act, R. Zajdler, *“Opinia prawna na temat zgodności z Konstytucją RP prezydenckiego projektu ustawy o zmianie niektórych ustaw w związku ze wzmocnieniem narzędzi ochrony krajobrazu”* [print 1525], Instytut Sobieskiego, Warsaw, November 31, 2013.

tion. This is consistent with social expectations, as confirmed in a survey where 87% of respondents answered affirmatively when asked whether the state should intervene in the form of advertising in public space.

Urban planners claim that there is a chaos in Polish public space and every initiative to restore order should be received positively, but more opportunities in this area could be provided by the amendments to the spatial planning and development act, on which the reform has been delayed.

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