

ENVIRONMENTAL IMPACT ASSESSMENTS IN POLAND AND THE CZECH REPUBLIC – SELECTED ISSUES

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1. Introduction

Environmental impact assessments are an essential legal instrument for implementing the principle of prevention and foresight.¹ Environmental impact assessments are a process that requires interdisciplinary knowledge, including legal knowledge. This, in turn, determines the procedure, public participation or verification of decisions made. According to G. Dobrowolski,² these assessments have earned their place in the catalogue of contemporary environmental protection instruments. This instrument appeared in Poland relatively recently, in 2001, although the current model was introduced by the 2008 Act³ (hereinafter referred to as “PIE”), which regulates these issues in detail. In Czech law, most provisions are found in Act No. 100/2001 Sb. of 20 February 2001 on environmental impact assessments and amending certain other acts.⁴ Due to the membership of both countries in the European Union, the above-mentioned Acts implement Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment⁵ and Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.⁶

The subsequent part of the article will address the themes first with regard to the Polish legal order and then with regard to the Czech legal order. This in turn will allow, in the final section, to draw *de lege ferenda* conclusions. The authors realise that a comprehensive study of this subject matter is impossible within the confines of this paper, therefore only selected issues will be presented to the reader.

¹ GÓRSKI, M. (eds.), *Prawo ochrony środowiska*, Warszawa: Wolters Kluwer, 2021, pp. 134–135.

² DOBROWOLSKI, G., *Decyzja o środowiskowych uwarunkowaniach*, Toruń: Dom Organizatora, 2011, p. 45 ff.

³ The Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and on Environmental Impact Assessments, *Journal of Laws* 2023, item 1094, as amended (hereinafter referred to as “PIE”). The Act adapts to the Polish legal order the Council Directive No. 85/337/EEC and the European Parliament and Council Directive No. 2011/92/EU amending it (Dz.U.UE.L.2012. 26. 1).

⁴ Zákon č. 100/2001 Sb. o posuzování vlivů na životní prostředí a o změně některých souvisejících zákonů (zákon o posuzování vlivů na životní prostředí), dále: c.u.o.o.s. lub czeska ustawa o ocenach.

⁵ OJ EU L 197/30.

⁶ OJ EU L 26/1.

2. The typology of environmental impact assessments in Poland Selected issues

The presentation of the most important issues covered by the article should begin with the typology of assessments in the Polish legal order and their definitions.⁷ The following divisions of environmental impact assessments can be distinguished in Polish legislation.⁸

- a) strategic assessment,
- b) individual assessment, the environmental impact assessment of a project (it distinguishes between the basic,⁹ supplementary¹⁰ and “Natura 2000” procedures¹¹),
- c) cross-border assessment¹² and
- d) simplified assessment, if any, for strategic investments.

The first of these, according to the statutory definition, is the procedure for assessing the environmental impact of the effects of implementing a policy, strategy, plan or programme, including in particular:

- a) determination of the scope and level of detail of the information contained in the environmental impact assessment,
- b) preparation of an environmental impact forecast,
- c) obtaining the opinions required by law,
- d) ensure that the public is given the opportunity to participate in the proceedings.¹³

As it results from the above, as part of this assessment, an environmental impact forecast,¹⁴ is prepared which should identify, analyse and evaluate the existing environmental protection problems significant from the point of view of the implementation of the draft document. The elements of the environment analysed in the forecasts include *inter alia*: plants, water, air, landscape, climate and natural resources.¹⁵

⁷ For more about assessments, see: RAKOCZY, B. (ed.), *Oceny oddziaływania na środowisko w praktyce*, Warszawa: Wolters Kluwer, 2017; BUKOWSKI, Z., *Postępowanie administracyjne w sprawach z zakresu ocen oddziaływania na środowisko*, Toruń: Dom Organizatora, 2010; GÓRSKI, M., *Procedura oceny oddziaływania na środowisko przedsięwzięć jako element procedury administracyjnej*, *Ochrona Środowiska. Prawo i Polityka* 2/2009, p. 15; KAŁUŻA, D., PŁOSZKA, M., ROBACZEWSKA, R., WACH, P., *Decyzje środowiskowe*, Warszawa: Wolters Kluwer, 2015.

⁸ The origin of the institution of environmental impact assessments in Poland and related changes are presented by G. DOBROWOLSKI, G., *Decyzja...*, p. 45 ff.

⁹ The obligation follows from Article 59(1) of the PIE.

¹⁰ See Article 88(1) of the PIE.

¹¹ See Article 59(2) of the PIE.

¹² GÓRSKI, M. (eds.), *Prawo...*, p. 108 ff.

¹³ See Article 3(1)(14) of the PIE.

¹⁴ See Articles 51–53 and Article 74(a) of the PIE.

¹⁵ For more, see: Article 51 of the PIE.

The second of the above-mentioned types of environmental impact assessments is the environmental impact assessment procedure of a planned project, which includes in particular:

- a) verification of the environmental impact report of a project¹⁶,
- b) obtaining the opinions and agreements required by law,
- c) ensuring that the public is given the opportunity to participate in the proceedings.¹⁷

A report is a collection of information, prepared at the request of the investor in a formalised form, which describes numerous aspects related to the environmental effects of a project.¹⁸ The scope of the information to be included in the report is detailed in Article 66 of the PIE.

Both a forecast and a report are prepared by a person who fulfils the statutory requirements, which include appropriate education and experience.¹⁹

The third procedure is the cross-border procedure,²⁰ which can be carried out when the effects of a document or project may extend beyond national borders, thus involving in the procedure the authorities of the country potentially affected by the resulting impacts.

The final one, which is a novelty in the Polish legal system,²¹ is carried out in exceptional situations and concerns only strategic investments.²² It follows

¹⁶ The Act in question also defines the concept of a project. According to Article 3(1)(13) of the PIE, it is a construction project or other interference in the environment consisting in the transformation or change of the way the land is used, including the extraction of minerals; technologically related projects are qualified as one project, also if they are carried out by different entities.

¹⁷ See Article 3(1)(8) of the PIE.

¹⁸ For more, see: DOBROWOLSKI, G., *Decyzja...*, p. 185.

¹⁹ Pursuant to Art. 74a of the PIE, the author of the environmental impact assessment, the environmental impact assessment report and the Natura 2000 impact assessment report, and in the case of a team of authors - the head of the team should be a person who: (1) graduated, within the meaning of the regulations on higher education and science, from at least first-cycle studies or second-cycle studies, or from uniform master's studies in fields related to education in: (a) sciences in the field of chemical sciences, (b) natural sciences in the field of biological sciences and earth sciences, (c) technical sciences in the field of technical sciences in the disciplines of: biotechnology, mining and engineering geology or environmental engineering, (d) agricultural, forestry and veterinary sciences in the field of agricultural sciences, forestry sciences, or (2) graduated, within the meaning of the provisions on higher education and science, from the first-cycle or second-cycle studies or from uniform master's studies, and has at least 3 years of experience in works in teams of authors preparing reports on the impact of a project on the environment or forecasts of the impact on the environment, or has been a member of teams of authors preparing reports on the impact of a project on the environment or forecasts of the impact on the environment at least 5 times.

²⁰ See Article 104 *ff* of the PIE.

²¹ As a result of the changes to the PIE in 2023, section Va was added, entitled. "Special arrangements for certain strategic investments". This section was added by Article 1(24) of the Act of 13 July 2023 (Journal of Laws of 2023, item 1890) amending the Act as of 30 September 2023.

²² The definition of a strategic investment was introduced in Article 59a(4) of the PIE. According to its wording, these are 23 investments considered strategic at the statutory level. Other possible

from the wording of Article 103a of the PIE that a strategic investment may, in exceptional cases, be subjected to an environmental assessment if individual circumstances justify taking immediate action to implement the investment and where the following conditions are cumulatively met:

- 1) no possibility of significant cross-border environmental impact of the project;
- 2) no negative impact on the possibility of achieving the environmental objectives referred to in Article 56, Article 57, Article 59 and Article 61 of the Act of 20 July 2017 – Water Law;
- 3) the absence of alternative solutions for the project, in the case of a strategic project likely to have a significant impact on a Natura 2000 site.

It should also be added that public participation plays an extremely important role in these assessments, as in the course of the procedure it is possible to submit comments and motions and to involve environmental organisations. The implementation of the obligation to exhaust consultations is carried out according to the principles provided for in Chapter III of the PIE (Articles 39 to 43).²³ As A. Habuda notes²⁴, this procedure can be divided into three stages:

- 1) information stage – dissemination of data (concerning the commencement of the development of the plan, defining its subject, indicating the possibility of familiarising oneself with the necessary documentation;

investments are to be defined at the level of an executive act, i.e. the Council of Ministers by means of a regulation. The premise for its recognition as strategic is to be the significance of the planned strategic investment for the interests of the Republic of Poland (Article 103 of the PIE). Examples defined at the statutory level include: public roads, public water supply facilities, projects requiring a concession for the exploration of mineral deposits or a concession for the extraction of minerals from deposits covered by mining property, as well as a concession for the exploration of hydrocarbon deposits and the extraction of hydrocarbons from deposits, with the exception of projects carried out in maritime areas; investments related to regional broadband networks, investments in the construction of nuclear power facilities or accompanying investments carried out pursuant to the Act of 29 June 2011 on the Preparation and Implementation of Investments in Nuclear Energy Facilities and Associated Investments.

²³ For more, see e.g. JERZMAŃSKI, J., Udział społeczeństwa w procesach decyzyjnych. In: RADECKI, W. (eds.), *Podstawy teoretyczne zintegrowanej ochrony prawnej środowiska*, Wrocław: Wydawnictwo Prawa Ochrony Środowiska, 2001, p. 289 ff; SOMMER, J., Udział obywateli i ich organizacji w ochronie środowiska. In: RADECKI, W. (eds.), *Instytucje prawa ochrony środowiska. Geneza – rozwój – perspektywy*, Warszawa: Difin, 2010, p. 329 ff; BARCZAK, A., Udział organizacji ekologicznych w ochronie środowiska a granice realizacji przez nie prawa do udziału w postępowaniu wymagającym udziału społeczeństwa. *Studia Prawnicze KUL*, 3/2020, pp. 29–44; FLAGA-GIERUSZYŃSKA, K., Udział organizacji pozarządowych w postępowaniach w sprawach cywilnych z zakresu ochrony środowiska. In: BARCZAK, A., KORZENIOWSKI, P. (eds.), *Administracja a środowisko. Prace dedykowane prof. zw. dr hab. Markowi Górskiemu z okazji 45-lecia pracy naukowej*, Szczecin: Wydawnictwo Uniwersytetu Szczecińskiego, 2018, p. 408; MICIŃSKA, M., *Udział społeczeństwa w ochronie środowiska. Instrumenty administracyjno-prawne*, Toruń: Wydawnictwo Adam Marszałek, 2011.

²⁴ HABUDA, A., *Obszary Natura 2000 w prawie polskim*, Warszawa: Difin, 2013, p. 99.

informing about the possibility of submitting comments and requests, including the manner²⁵ and place of submitting comments and requests, the authority competent to consider them);

- 2) analytical stage – the consideration of comments and requests;²⁶
- 3) decision-making stage – responding to the comments and requests made, explaining the reasons for the position taken.²⁷

Nevertheless, it is worth noting that for strategic investments the rules of public participation have been significantly and rather restrictively modified. The provisions of Sections III and V of the Act, i.e. those entitled respectively “Public participation in environmental protection” (procedures for submitting comments, requests, in certain cases an administrative hearing and the participation of environmental organisations under the principles of Article 44 of the PIE) and “Assessment of the impact of a project on the environment and on a Natura 2000 area” do not apply to these investments. In this respect, Articles 103c et seq. of the Act introduce their own specific regulations for strategic investments. The rights of public participation have been limited only to the participation of environmental organisations and in a rather special way, as the decisions issued under Article 103d of the PIE are not subject to a complaint to an administrative court. Such shaping of these legal regulations should be regarded as extremely limiting, especially in the situation when these proceedings concern significant national investments whose scale, with a high degree of probability, may significantly affect the environment.

3. Selected aspects of the environmental impact assessment procedure of a project – the Polish variant

The environmental impact assessment selected for preparation is required for the implementation of the planned project which may always significantly affect the environment (the so-called Category I project) and the planned project which may potentially significantly affect the environment (the so-called Category II project),²⁸ if the obligation to conduct the environmental impact assessment of the project was established pursuant to Article 63(1) of the PIE or if the entity planning to undertake the project located in areas covered by forms of nature conservation referred to in Article 6(1)(3) and (4) of the Act of 16 April 2004 on Environmental Protection applies for its performance.

²⁵ See Articles 34 and 40 of the PIE.

²⁶ See Articles 37 and 42(1) of the PIE. It should be borne in mind that comments and requests are not binding.

²⁷ See Articles 38 and 43 of the PIE.

²⁸ The types of projects are defined in detail at the level of an implementing act. The Regulation of the Council of Ministers of 10 September 2019 on projects likely to have a significant impact on the environment (Journal of Laws 2019, item 1839 as amended).

It follows, therefore, that we will be dealing with

- a) a mandatory assessment (for Category I projects),
- b) an assessment carried out on an optional basis (for Category II projects), the obligation to carry out (or not) of which will be established by the competent authority for the issuance of the decision on environmental conditions.

The scope and subject matter of this assessment is set out in detail in Article 62(1) of the PIE, according to which the assessment determines, analyses and assesses (a) the direct and indirect impact of the project on the environment and the population, including human health and living conditions and other goods; (b) the risk of major accidents and natural and construction disasters; (c) the possibilities and ways of preventing and reducing the negative impact of the project on the environment.

Proceedings on this subject are, as a rule, initiated by an appropriate application, which must be accompanied by a considerable number of appendices (for details, see Article 74(1) of the PIE).²⁹ Perhaps the most important place will be occupied by the aforementioned report.

The authorities competent to issue a decision on environmental conditions are set out in detail in Article 75 of the PIE. These are: the regional director of environmental protection, the General Director of Environmental Protection, district governor (*starosta*), the director of the Regional Directorate of State Forests and mayor. In the course of the proceedings it is necessary to make arrangements with and opinions of the competent authorities.³⁰

As a rule, these proceedings end with the issuance of a decision on environmental conditions,³¹ both for the procedure initiated as a result of an application for a Category I and a Category II project. The special nature of the investment procedure sometimes requires obtaining several administrative decisions. Obtaining this decision is, the first stage, before obtaining the decisions referred to in the literature as “investment” decisions,³² as it is the decision on environmental conditions that constitutes an annex to the issuance of investment decisions or the

²⁹ MIKOSZ, R., Wprowadzenie do prawa środowiska, Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2021, p. 206.

³⁰ See Articles 77 and 18 of the PIE.

³¹ Possible decisions (e.g. a “refusal” decision or a decision to discontinue proceedings) are analysed in detail by KAŁUŻA, D., PŁOSZKA, M., ROBACZEWSKA, R., WACH, P., *Decyzje...* In Chapter 8.

³² For more, see Article 72(1) of the PIE. These investment decisions include, *inter alia*, a decision to grant a building permit, a decision to approve a plot or area development project or an architectural and construction project and a decision to allow the resumption of construction works; a concession to extract minerals from deposits, a concession for underground tankless storage of substances, a concession for underground storage of waste; a water permit to regulate water, a water permit to construct water facilities and a water permit to extract stone, gravel, sand from water.

submission of the notification referred to in Article 72(1) of the PIE. The issuance of a decision on environmental conditions is of major practical significance, as it significantly regulates economic activity, as well as the use of environmental resources.³³ Furthermore, it is binding on the authorities issuing the investment decisions mentioned.

4. Introductory issues to environmental impact assessments in the Czech Republic

Czech literature emphasises the importance of environmental impact assessments as the most important and effective tool for environmental protection.³⁴ As in Polish law, they are divided into strategic environmental impact assessment and assessment of the impact of projects on the environment.³⁵

The Czech Act also defines the concept of a project and according to § 3(a) of the Czech Assessment Act (hereinafter referred to as the “CAA”), for the purposes of this Act, a project means the structures, installations, activities and technologies listed in Annex 1 to this Act, as well as structures, installations, activities and technologies which, according to the opinion of the nature conservation authority issued on the basis of the Nature Conservation and Landscape Protection Act, may, on their own or in conjunction with others, significantly affect the object of protection or the integrity of a European area or a bird area.³⁶

It should be added that in the Czech Republic, projects and their division are set out in Annex 1 to the CAA, and not in an implementing act, as in Polish law.³⁷ As can be seen from the definition, even structures, installations, activities or technologies not listed in Annex 1 may fall within the scope of the CAA on the basis of an opinion of a nature conservation authority that does not exclude significant effects on the subject of conservation or on the integrity of a European conservation area or bird area. In such a case, the structure, installation, activity or technology in question will be subject to a screening procedure.³⁸

³³ MIKOSZ, R., Wprowadzenie..., p. 207.

³⁴ DVOŘÁK, L., Zákon o posuzování vlivů na životní prostředí, Praga: C.H. Beck, 2016, p. XVII; BAHÝLOVÁ, L., KOCOUREK, T., VOMÁČKA, V., Zákon o posuzování vlivů na životní prostředí: komentář, Praga: C.H. Beck, 2015, p. VII; ZDRÁHALOVÁ L., Environmental impact assessment of agricultural projects, [in:] RADECKA, E., NAWROT, F., Green Deal or green disorder? Selected issues. Zielony Ład czy zielony nieporządek? Wybrane zagadnienia, Toruń: Dom Organizatora, 2021, p. 355.

³⁵ VOMÁČKA, V. In: JANČÁROVÁ I. a kolektiv, Právo životního prostředí: obecná část, Brno: Masarykova univerzita 2016, p. 351.

³⁶ DVOŘÁK, L., Zákon..., p. 8; BAHÝLOVÁ, L., KOCOUREK, T., VOMÁČKA, V., Zákon..., p. 12.

³⁷ Czech law repeats the solution found in the EIA Directive. In Poland, this list can be found in the previously discussed regulation on projects.

³⁸ DVOŘÁK, L., Zákon..., p. 8.

It is necessary to clarify the concept of follow-up proceedings and, according to the wording of § 3(g)(7) and (8) of the CAA, for the purposes of the CAA in question, it means proceedings conducted in relation to a project or its modification which is the subject of an environmental impact assessment of a project if it is, *inter alia*, proceedings for the establishment of a mining area or a proceeding for the granting of a mining permit.³⁹

The Czech Assessment Act distinguishes between two categories of projects – those that are always subject to assessment on the basis of § 4(1)(a) of the CAA, i.e. projects designated as Category I in Annex 1, and those that are optionally subject to assessment, listed in § 4(1)(b) – (h) of the CAA, i.e. Category II.⁴⁰ Attention should be drawn to letter (f), according to which the subject of assessment under this Act are the projects referred to in Article 3(a)(2) of the CAA. These projects are subject to an assessment of the environmental impact of the project if it is determined in the screening and scoping procedure.⁴¹

The administration of the environmental impact assessment is carried out by the Ministry of Environment and the regional bodies within the framework of the delegated competences, i.e. the regional authorities. The Ministry of the Environment and the regional authorities are the competent authorities in the field of environmental impact assessment. The division of competences between these authorities is set out in § 21 and § 22 of the CAA.⁴²

5. Selected aspects of the environmental impact assessment – the Czech variant

As regards the procedure itself for assessing the environmental impact of a project, it shows a number of differences compared to the Polish regulation, despite the common EU law basis. In the case of Category I projects, the subject of the assessment procedure is to determine the information that must be included in the environmental report referred to in § 8 of the CAA. For projects subject to an optional assessment, the purpose of the screening procedure is to determine whether the project is likely to have a significant impact on the protected entity or the integrity of a European bird area. The criteria for the screening procedure are contained in Annex 2 to the Act.⁴³

If the administrative body comes to a positive conclusion, i.e. the project may have a significant negative impact on the environment, the procedure is

³⁹ *Ibid.*, p. 13; BAHÝLOVÁ, L., KOCOUREK, T., VOMÁČKA, V., Zákon..., pp. 16–20.

⁴⁰ ZDRÁHALOVÁ L., Environmental..., p. 361.

⁴¹ VOMÁČKA, V. In: JANČÁŘOVÁ I. a kolektiv, Právo..., pp. 367–368 and p. 370.

⁴² *Ibid.*, p. 364.

⁴³ ZDRÁHALOVÁ, L., Environmental..., p. 362.

the same as for compulsory projects. The information necessary to be included in the environmental report is then determined. This is followed by the stage of elaboration and discussion of the project's environmental impact report under § 8 of the CAA, and an optional public hearing, followed by the preparation of an expert report under § 9 of the CAA.⁴⁴

An environmental report and an expert report

Up to this point, the procedure does not show many differences compared to Polish law, it is only with regard to the preparation of an environmental report that significant differences appear. An investor ensures that this document is prepared by a person authorised to do so in accordance with § 19 of the CAA, in paper form, in the number of copies specified in agreement with the competent authority and in electronic form.⁴⁵ The elements of the report are laid down in Annex 4 to the CAA. It is drawn up taking into account the current state of knowledge and methods of assessment as well as the results of other environmental impact assessments, if carried out in accordance with the relevant regulations.⁴⁶

If the report meets the legal requirements, the authority publishes it and sends it to the local authorities and units concerned for comments. The competent authority delivers the report to the entity preparing the environmental impact assessment without undue delay. Pursuant to section 3 of the discussed provision, the public, local authorities and bodies may submit written comments on the environmental report to the competent authority within 30 days of the publication of the information. Comments sent after the deadline are taken into account by the competent authority. After expiry of this period, the competent authority forwards the comments received without delay to the person preparing the assessment.⁴⁷

The competent authority may, on the basis of comments received on the environmental report, or on the basis of a recommendation from a person drawing up the assessment, but no later than 40 days after its submission to the person drawing up the assessment, return the report to the notifier for redrafting or completion. If the completed or redrafted document is not submitted within 3 years from the date of its return in accordance with the first sentence, the competent authority terminates the assessment.⁴⁸

Czech legal scholarship points out that an environmental report is the most important document prepared during the environmental impact assessment process and reflects one of the primary objectives of the assessment, i.e. to describe

⁴⁴ VOMÁČKA, V. In: JANCÁŘOVÁ I. a kolektiv, *Právo...*, p. 370.

⁴⁵ BAHÝLOVÁ, L., KOCOUREK, T., VOMÁČKA, V., *Zákon...*, pp. 66–68.

⁴⁶ DVOŘÁK, L., *Zákon...*, pp. 42–43.

⁴⁷ VOMÁČKA, V. In: JANCÁŘOVÁ I. a kolektiv, *Právo...*, p. 371.

⁴⁸ DVOŘÁK, L., *Zákon...*, pp. 43–44.

and assess potential environmental impacts and to propose specific preventive and other measures to avoid or mitigate negative environmental impacts (mitigation measures). The preparation of an environmental report is carried out entirely by the notifier – therefore, the law does not provide any time constraints for this process. The notifier is also obliged to cover all costs involved.⁴⁹

However, the Czech Assessment Act provides for the preparation of a second document in the course of the procedure, which is a kind of response to an environmental report submitted by the investor. Pursuant to § 9(1) of the CAA, the competent authority ensures that an expert report is prepared by a person authorised to do so in accordance with § 19 of the CAA. The person preparing this report draws it up on the basis of the environmental report and the comments made on it, taking into account the conclusions of the public hearing in accordance with § 17 of the CAA, if it has been held.⁵⁰ The requirements to be met by an expert report are set out in Annex 5 to the Czech Assessment Act.

The competent authority sets a time limit for the submission of an expert report by the person preparing it which must not be more than 60 days from the date on which the environmental report, including any comments received on it, is received by it. This time limit may be extended by the competent authority at the request of the person preparing the report in justified cases, in particular complex cases, but by no more than further 20 days.⁵¹

If the person preparing an expert report requests partial supplementary documents from other experts in order to verify data concerning the environmental effects of a project, he or she is obliged to mention this fact in the assessment. A person who has participated in the preparation of a notification or an environmental report may not participate in the preparation of an expert report, even in a partial way. The person preparing the report may not rework or supplement the environmental report under assessment. The notifier is obliged to provide the preparer, at its own expense, with the documents used to prepare the environmental report and other data necessary for the preparation of the report within 5 working days from the date of receipt of the request. The preparer sends the report to the competent authority in the agreed amount, time and form. If the expert report does not meet the requirements set out in the CAA, the competent authority directs it to be corrected, setting an additional deadline.⁵²

⁴⁹ *Ibid.*, pp. 42–43.

⁵⁰ BAHÝLOVÁ, L., KOCOUREK, T., VOMÁČKA, V., *Zákon...*, pp. 72–73; DVOŘÁK, L., *Zákon...*, pp. 46–47.

⁵¹ VOMÁČKA, V. In: JANCÁŘOVÁ I. a kolektiv, *Právo...*, p. 371; DVOŘÁK, L., *Zákon...*, p. 48.

⁵² DVOŘÁK, L., *Zákon...*, pp. 48–49.

It is necessary to clarify here what qualifications are necessary, on the basis of § 19 of the CAA, for the preparation of an environmental report, expert report and evaluation. According to section 1 of this provision, only natural persons holding an environmental impact assessment permit are entitled to prepare them. A legal person or a natural person authorised to carry out a business activity may undertake to draw up such documents only if the natural person holding the authorisation performs this activity on its behalf. For some of the projects, part of the documentation concerning must be prepared by a person holding a certificate of competence in public health impact assessment, awarded by the Ministry of Health.⁵³

According to section 3, the conditions for granting or extending the authorisation are integrity, professional competence, experience in the field for at least 3 years, as well as full capacity to perform legal acts. Professional competence is demonstrated by proof of a university degree of at least Master's level in a natural science or technical field, and proof of having taken a proficiency examination no more than 2 years before the date of application for granting or renewing the authorisation and no later than the date of application for granting or renewing the authorisation.⁵⁴

The permit is issued for a period of 5 years and may be renewed for another 5 years, even repeatedly. The introduction of these requirements is justified by the fact that the preparation of important documents in the field of environmental impact assessments is a specialised and highly professional activity, requiring considerable qualifications from the person performing this activity, both in terms of professionalism (education, experience, professional examination) and in terms of a more general, ethical aspect (integrity). If a person meets these requirements, he or she is granted a permit and is thus professionally competent to carry out the activity.⁵⁵

These requirements are much stricter than in the case of Article 74a of the Polish Assessment Act, which should be viewed very positively. As rightly pointed out in the Czech literature, the preparation of documentation during the environmental impact assessment procedure requires specialist knowledge and, more importantly, impartiality.⁵⁶ Polish legislation in this area needs to be amended, as has long been proposed.⁵⁷

⁵³ BAHÝLOVÁ, L., KOCOUREK, T., VOMÁČKA, V., Zákon..., p. 186; DVOŘÁK, L., Zákon..., pp. 140–141.

⁵⁴ DVOŘÁK, L., Zákon..., pp. 142–143.

⁵⁵ *Ibid.*, pp. 143–144.

⁵⁶ BAHÝLOVÁ, L., KOCOUREK, T., VOMÁČKA, V., Zákon..., pp. 230–233; DVOŘÁK, L., Zákon..., pp. 140–141.

⁵⁷ See, *intra alia*, KLIMEK, G., Raport o oddziaływaniu przedsięwzięcia na środowisko w świetle przepisów prawa polskiego [in:] RAKOCZY, B. (ed.), Oceny oddziaływania na środowisko

A ruling

The environmental impact assessment procedure ends with the issuance of a binding opinion on the environmental impact assessment of the project implementation, pursuant to § 9a of the CAA. It is issued on the basis of the environmental report, the comments submitted to it, the public hearing and the expert report, within 30 days of its receipt. The details of the opinion are set out in Annex 6 to the CAA.⁵⁸

The opinion serves as a basis for the decision in the follow-up procedure and is submitted by the notifier in the application as one of the documents for the follow-up procedure. It is valid at the time of the decision in the further proceedings at first instance. It is valid for seven years from the date of its issuance. At the request of the notifier, the competent authority extends the validity of the opinion for 5 years, even repeatedly, unless there have been changes in the conditions of the area or in the knowledge and methods of assessment which could lead to significant effects of the project on the environment, which have not yet been assessed.⁵⁹

No earlier than 90 days prior to the request for a follow-up procedure but no later than the date on which the request for a follow-up procedure is submitted, the notifier submits to the competent authority that issued the opinion documentation for the relevant follow-up procedure, including a full description of any changes, compared to the project for which the opinion was issued, to the part or stage of the project that is the subject of the follow-up procedure. The competent authority reviews each project on the basis of the notice of initiation sent to it by the administrative authority responsible for carrying out the follow-up procedure and issues a binding opinion of disagreement if changes have been made to the project that would have a significant negative impact on the environment, in particular an increase in capacity and scale or a change in technology, operation management or manner of use. Such changes are subject to assessment in accordance with § 4(1)(g) of the CAA. If the project does not contain the changes referred to in the second sentence, the competent authority issues a binding approval opinion. In this opinion the competent authority, taking into account the documents referred to in section 1, specifies which of the conditions contained in the opinion are impracticable as a result of other changes to the project, where appropriate in cooperation with the competent authorities concerned. If the documents referred

w praktyce, Warszawa: Wolters Kluwer 2017, p. 80. Under the previous legal framework, see DOBROWOLSKI, G., *Decyzja...*, p. 190 ff.

⁵⁸ VOMÁČKA, V. In: JANCÁŘOVÁ I. a kolektiv, *Právo...*, pp. 373–374.

⁵⁹ BAHÝLOVÁ, L., KOCOUREK, T., VOMÁČKA, V., *Zákon...*, pp. 84–85.

to in the first sentence have not been submitted within the prescribed period, they are deemed not to have been submitted.⁶⁰

With regard to public participation in decision-making processes, the public then has the opportunity to comment in a follow-up procedure for a given project and, in addition, representatives of the affected community have the opportunity to appeal against the decision made in the supplementary procedure.⁶¹

Indicated above is what happens if the administrative authority determines that the screening is positive. If the administrative authority decides that the project is unlikely to have a significant negative impact on the environment, it will issue an appropriate decision. The professional judgment of the administrative authority that the project will not have a significant negative impact must be made with certainty. By ensuring that a negative conclusion for the applicant in the assessment procedure takes the form of an administrative decision, it allows the notifier, but in most cases the community affected by the outcome of the assessment procedure, to file an appropriate appeal.⁶²

6. Conclusion

The core of the regulations in Poland and the Czech Republic is very similar, as in both countries the regulations are the result of the implementation of EU directives. However, they differ in detail, sometimes even dramatically. The Czech definition of a project is similar to the Polish one and they are also divided into two categories, according to the appendix to the Czech Assessment Act. The division of assessments is similar and, in both legal orders, the procedures are very important in terms of the functions performed by the assessments.

The first major difference occurs with the environmental report, as in the Czech procedure it is not only drawn up at the request of the investor, but also an authority commissions a second document – an expert report. Such a solution removes one of the basic problems associated with the Polish procedure, i.e. the accusation of lack of objectivity in the preparation of the environmental impact report. In the Czech Republic, the report, which is prepared at the expense of the applicant, is not the only document on the basis of which the authority issues its ruling.

Moreover, the qualification requirements for persons who prepare these reports are also much higher than in Polish law. As indicated earlier, the addition of Article 74a to the Polish Assessment Act was a step in the right direction, but

⁶⁰ DVOŘÁK, L., Zákon..., p. 58.

⁶¹ For more on public participation in environmental procedures, see: VOMÁČKA, V. In: JANČÁŘOVÁ I. a kolektiv, Právo..., p. 266 ff.

⁶² DVOŘÁK, L., Zákon..., p. 60.

it did not remove all the problems. The requirements for drafters of documents during the environmental impact assessment procedure in Polish law are not very high, in contrast to those in the Czech Assessment Act. It is necessary to have the relevant knowledge, qualifications and to obtain the relevant permit, which is issued for a limited period of time. This implies the need for its systematic renewal. *De lege ferenda*, it would be worth considering the introduction of similar requirements in Polish law, in order to improve impartiality and raise the level of the reports produced.

The final ruling in the Czech Republic does not take the form of a decision, as it does in Poland. The authority conducting the proceedings issues a binding opinion, which becomes the basis for issuing a decision in the follow-up proceedings. Such a solution also seems better than the decision on environmental conditions criticised in Poland.

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ENVIRONMENTAL ASSESSMENTS IN POLAND AND THE CZECH REPUBLIC – SELECTED ISSUES

Abstract

At the beginning, the article presents a typology of environmental impact assessments in the Polish legal system, referring to the most critical issues related to them. Then, it briefly explains the procedures for assessing the environmental impact of projects, and then moves on to introductory issues to environmental impact assessments in the Czech Republic, as well as selected aspects of the procedure for assessing the environmental impact of projects in the Czech Republic. The last part of the work contains *de lege ferenda* conclusions, the presentation of which is possible thanks to the comparative method used in the study.

Keywords: environmental impact assessment, environmental protection, project, strategic investment.



POSUZOVÁNÍ VLIVŮ NA ŽIVOTNÍ PROSTŘEDÍ V POLSKU A ČR – VYBRANÉ PROBLÉMY

Abstrakt

Článek začíná představením typologie posuzování vlivů na životní prostředí v polském právu s odkazem na nejdůležitější otázky s tím související. Následně stručně představuje postupy při posuzování vlivů záměrů na životní prostředí a poté přechází k úvodním otázkám posuzování vlivů na životní prostředí v České republice a dále k vybraným aspektům postupu při posuzování vlivů záměrů na životní prostředí v České republice. Poslední část práce obsahuje závěry *de lege ferenda*, jejichž prezentace je možná díky komparativní metodě.

Klíčová slova: posuzování vlivů na životní prostředí, ochrana životního prostředí, projekt, strategická investice.

