Abstract

of the doctoral dissertation of Karol Hermanowski MA entitled

“Felling trees and shrubs - administrative and legal issues"

In recent years, regulations on the felling of trees and shrubs have become a widely discussed topic due to controversial changes introduced by the legislator. The legal regulation in this area has undergone a significant transformation due to numerous amendments that significantly modified the existing regulations.

The main research objective of the dissertation was to analyze the administrative and legal issues related to the felling of trees and shrubs, including the indication of inaccuracies in their application and directions of activities ensuring the proper implementation of the principle of sustainable development in this matter. The priority of the conducted research was to determine whether all activities undertaken by public administration authorities, including, in particular, all measures used by them, are capable of guaranteeing the effectiveness of protection of trees and shrubs against their felling.

The basic thesis demonstrated in the work is the recognition that the current legal regulations regarding the felling of trees or shrubs allow the competent public administration authorities to assess their natural value and the purposefulness of the intention to fell them, and guarantee the use of appropriate administrative and legal instruments to protect them. These regulations are not perfect, but they largely protect trees and shrubs from uncontrolled felling, and in the case of replacement plantings, they require changes to ensure an effective system of their protection in line with the principle of sustainable development.

Such a thesis was possible as a result of the analysis of the applicable legal regulations and the assessment of their complexity. It also led to the conclusion that the constant changes in the regulations governing the rules for the felling of trees or shrubs cause many problems in understanding the issues that are currently subject to the procedures for their felling. In addition, attention was drawn to the fact that the currently applicable regulations on the felling of trees or shrubs are scattered in many legal acts, including the so-called special acts, which does not always guarantee their proper protection.

Demonstrating the thesis required an assessment of whether public administration authorities properly use legal solutions in the course of administrative proceedings related to the felling of trees or shrubs.

The regulations of substantive administrative law, in particular the Nature Conservation Act, provide for specific administrative and legal instruments for the protection of trees and shrubs. They include:

- permit to fell trees or shrubs;
- notification of the intention to fell a tree and the related tacit consent or objection of the authority;
- fees for the of trees or shrub felling under the required permit;
- administrative fines for the felling of trees or shrubs without the required permit.

The development of a coherent concept for the protection of trees and shrubs, in which the guiding principle of environmental protection postulating sustainable development will actually compensate for the losses in the natural environment caused by the removal of these elements, is of significant importance for the scope of the measures taken.

The dissertation has a theoretical and legal nature. The basic research method used in the dissertation is the dogmatic and legal method. To the necessary extent, the analytical and comparative method was also used in relation to the analysis of the indicated legal instruments and the historical method in order to show the evolution of legal regulations in the field of tree and shrub protection and their felling, applicable not only in Poland, but also in other countries.

The dissertation consists of five chapters preceded by an introduction. All considerations end with remarks and final conclusions.

The first chapter presents the genesis of administrative and legal regulations in the field of tree and shrub felling and the evolution of protective measures in this regard.

The second chapter presents the regulations of international law, EU law and the provisions regulating the principles of environmental protection contained in the Constitution of the Republic of Poland. This chapter discusses the provisions on the protection of green areas and wooded areas as well as the terms used in the Act. An important part of the considerations is the principle of sustainable development, which should take into account the importance of trees and shrubs when issuing permits for the felling of trees and shrubs.

The subject of chapter three is a detailed analysis of the key instruments used to protect trees or shrubs from unjustified felling. The considerations relate to the subjective and objective scope and the legal nature of the permit for the felling of trees or shrubs, as well as the notification of the intention to fell a tree, which is a new legal measure protecting only trees. In addition to the notification procedure or permit issued regulated in the Nature Conservation Act, more and more often the legal basis for the felling of trees or shrubs are other legal acts or

the so-called special acts. This forces entities using the environment, as well as authorities responsible for issuing permits, to precisely verify the applicable legal solutions. With regard to the felling of trees or shrubs, little attention is paid to measures ensuring that the losses caused by their felling are covered. In accordance with the principle of sustainable development, the means of ensuring appropriate natural compensation is replanting a tree or shrub or performing replacement plantings.

Chapter four deals with the legal nature of the fee for the felling of trees or shrubs. As a rule, the real estated owner pays fees for the felling of a tree or shrub, and the necessity to pay them is an important factor that influences the decision on the need to fell them. The obligation to pay fees is not categorical, as the legislator has provided for quite numerous exceptions in certain cases. In recent years, the specificity of fees for feeling trees or shrubs and determining them has been subject to fundamental modifications. For a certain period, the competences in this regard have been entrusted to municipal councils, which have gained a real influence on shaping the level of their income from these fees.

The last chapter is devoted to the issues of imposing administrative fines for damage, destruction or felling of trees or shrubs, resulting in liability and the application of an appropriate sanction. This liability is objective in nature, and the imposed penalty is a financial consequence of breaching the legal regulation due to actions inconsistent with the law. Administrative proceedings in this matter are mainly conducted on the basis of procedures regulated in the Nature Conservation Act. These regulations are supplemented by the provisions of the Code of Administrative Procedure.

The final comments and conclusions allow for the assessment of the legal status, the formulation of *de lege lata* remarks and *de lege ferenda* conclusions that emerged in the course of the analysis of the research material relating to the presented issues outlined in the title of the dissertation.

The dissertation relates to the legal status in force on October 30, 2021.