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Monika A. Król
University of Lodz
ORCID: 0000-0001-9689-2266
ikakrol@uni.lodz.pl

Review of the Legislation Regulating the Use of Land. Legal and Administrative Issues

Przegląd ustawodawstwa reglamentującego korzystanie z powierzchni ziemi. Zagadnienia administracyjnoprawne

SUMMARY

Degradation of the land in various forms is one of the basic and persistent global problems. Irrational agricultural activity, deforestation, increasing industrialization and progressive urbanization lead to the loss of important functions of this natural resource. This is a serious problem throughout the European Union, as evidenced by statistical data disclosed in reports of the European Commission. Due to the failure to develop regulations at the EU level ordering the issues of protection of land surface and the fragmentary nature of binding regulations, each of the Member States, including Poland, selected legal means to achieve the assumed objectives related to both the obligation to protect the function of this resource, quality monitoring, registration pollution, or restoring utility and natural values. The aim of the conducted research was to analyze legal regulations establishing administrative law forms of rationing for the use of earth's surface and their assessment in terms of implementing the principles of sustainable management of this resource. It should be stated that the gradually introduced instruments of land use regulation are not completely used to implement the principle of sustainable land management, although *de lege ferenda* would have to make an application for ensuring stable, comprehensive and coherent solutions.

Keywords: land management; soil; thematic strategy; rationing the use of natural resources; remediation; recultivation

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INTRODUCTION

The earth's surface is the upper layer of the lithosphere, it is the basic resource of nature conditioning the existence of all other resources[1]. It has a wide variety of socially important functions, both ecological and related to human activity. It is also the source of the natural history of humanity[2]. In reference to indicated functions and the fact of irreplaceability and non-reliance of this element of the environment, the natural[3] and economic[4] sciences pointed to the need for special protection and regulation of the use of this resource. Despite the vital role for the ecosystem and economy, functions of the earth surface are underestimated and its resources have until recently been considered inexhaustible. Soil degradation is a slow process and is generally unnoticed. As emphasised in the Report of the European Commission from 2012[5] this phenomenon is associated in many countries with global development, poverty, and what is currently associated with it – the migration process. According to UN data[6] there is a loss of 50,000 square kilometers per year due to soil degradation, mainly because of erosion. This unfavorable change broadens[7]. In the 2012 report *State of Soil in Europe*[8], it was emphasised that the level of protection of land and soil in the Member States is varied, but even in the legislations where specific regulation was adopted, it refers to the issue of pollution. For this reason, it is necessary to take all measures for sustainable management of this resource, both at international level as well as in national legislation. Instruments of administrative and law regulations on the use of land area combine, in accordance with the principle of sustainable development, the need to

[1] For example, see W. Radecki, *Ustawa o ochronie gruntów rolnych i leśnych. Komentarz*, Warsawa 2009, p. 8.

[2] The catalogue of land surface functions is included in Annex A of the Recommendations of the Committee of Ministers of the Council of Europe No. 8 on Soil Protection, adopted at 476th meeting on 18 May 1992. See M.A. Król, *Obowiązki wynikające z ochrony powierzchni ziemi*, [in:] *Prawa i obowiązki przedsiębiorców w ochronie środowiska. Zarys encyklopedyczny*, red. P. Korzeniowski, Warszawa 2010, p. 382.

[3] B. Smyk, *Gleba bogactwem ludzkości*, „Aura" 1987, nr 5, p. 28; L. Zimny, *Mały leksykon rolniczy*, Warszawa 1995, p. 34.

[4] For example, see K. Górka, S. Chomątowski, *Ekonomika ochrony i kształtowania środowiska*, Kraków 1985, p. 12.

[5] Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The implementation of the Soil Thematic Strategy and ongoing activities, Brussels, 13 February 2012, COM (2012) 46 final.

[6] Global Environment Outlook GEO-4, Environment for Development, United Nations Environment Programme 2007, p. 95.

[7] *The European Environment. State and Outlook 2010. Soil, European Environment Agency*, Luxemburg 2010, p. 28.

[8] *State of soils in Europe*, European Environment Agency, European Commision, EUR 25186 EN 2012, p. 49; *Soil – a key resource for the EU*, European Commission, September 2010, p. 4.

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protect this environmental resource with the need for its diversified exploitation. For this reason, they must be considered through the prism of prohibitions, orders and restrictions laid down in statutory regulations and through decisions taken through individual administrative acts.

The aim of the conducted research is to analyze legal regulations establishing administrative forms of rationing for the use of land. Due to the size of the research topic and the size of this study, the assessment is preliminary in respect of the implementation of the principles of sustainable management of this resource. The article is of review nature.

PROTECTION OF THE EARTH' SURFACE IN THE EU LAW

The necessity to protect the land and soil appeared in both international and European ecological programs relatively late. Undertaking an initiative for soil protection and sustainable land management was caused by a growing awareness of the importance of environmental protection and its protection. The basic assumptions of the resource protection were created in the provisions of Resolution 19 of the Council of Europe Committee of Ministers from 1972 the European Soil Charter[9] and in the World Soil Charter, elaborated by the FAO in 1981[10]. At the Community level, the soil has not been covered by a specific protection policy until recently, although some aspects of protection are found in other existing policies, in particular, the Common Agricultural Policy, their implementation contributed to the protection of soil[11].

In the European Union, works on the protection of this element were undertaken in 2002 as part of the development of seven thematic strategies on environmental protection (including those related to land surface, pesticides, marine environment,

[9] Resolution of the Committee of Ministers of the Council of Europe No. 19 European Soil Charter, 30 May, 1972. See M.A. Król, *Europejskie systemy prawa ochrony powierzchni ziemi a polskie rozwiązania prawne*, „Studia Prawno-Ekonomiczne" 1994, t. 50, p. 74. It is also necessary to indicate Council of Europe Recommendation No. (89)15 on rational land use, adopted at 430th meeting on 7 November 1989, or the Recommendation No. (72)8 referred to above, and UN Conventions: from 1992 on the Protection of Biodiversity (OJ 2002, No. 184, item 1532), and 1994 on Combating Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (OJ C 2002, No. 185, item 1538). See R. Dębicki, J. Gliński, *Międzynarodowa konwencja o ochronie gleb*, Lublin 1999.

[10] Resolution 8/81, FAO Doc. 81/27. See also the draft international convention on the protection of the soil, *Tutzing Project of Convention of Sustainable Use of Soil. Preserving soils for life*, "Time Ecology", München 1998, and I. Hannam, B. Boer, *Legal and institutional frameworks for sustainable soils*, IUCN Environmental Policy and Law Paper No. 45, Cambridge–Bonn 2002, p. 71.

[11] The introduction of cross compliance requirements as well as instruments implementing the rural development policy assumptions has a positive impact on the state of agricultural land.

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air pollution). The 2002 Commission statement Towards a Thematic Strategy for Soil Protection[12] identifies eight major threats to soil in the EU: erosion, organic matter decline, pollution, salinisation, compaction, loss of soil biodiversity, sealing, landslides and floods. The Thematic Strategy on Soil Protection was adopted by the European Commission in 2006[13]. On this basis, the European Parliament adopted a resolution on the Thematic Strategy for Soil Protection on 13 November 2007[14]. The main goal of the strategy was to ensure sustainable soil use. A comprehensive strategy in the field of soil protection took into account the diverse functions of the soil, their variability and complexity, and the various degradation processes to which soil is subject, while taking into account the economic and social aspects. The result of the activities carried out was the 2007 EU[15] directive draft. However, due to the lack of consensus on the cross-border effects of degradation and the possibility of introducing at EU level the requirement of administrative rationing instruments, the work on the draft directive was abandoned[16].

A call to intensify the efforts of the legislative bodies and the possibility of cooperation between Member States in the field of soil protection is also found in other European Parliament resolutions, including Resolution of 10 April 2008 on the mid-term review of the Sixth Community Environment Action Program[17], Resolution of 6 July 2010 on the Commission Green Paper about the management of bio-waste in the European Union[18] or Resolution of 23 June 2011 on the CAP until 2020: to meet the challenges of the future related to food, natural resources and territorial aspects[19]. The most important in the discussed area has recently been attributed to the Directive 2010/75/EC of the European Parliament and Council of 24 February 2010 on industrial emissions (integrated pollution prevention and control)[20], which through transposition to national legislation to some extent or-

[12] COM(2002)179.

[13] Communication from the Commission to the Council and the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Thematic Strategy for Soil Protection, COM(2006)231.

[14] 2006/2293 (INI) (OJ WE C 282 E from 6 November 2008, pp. 138–144).

[15] European Parliament Resolution of 14 November 2007 on a directive establishing a framework for soil protection (OJ WE 282E from 6 November 2008, p. 281–306). See A.A. Semikolennykh, *European Thematic Strategy for Soil Protection: A Review of Major Documents*, "Eurasian Soil Science" 2008, Vol. 41(12), DOI: https://doi.org/10.1134/S1064229308120168, p. 1349. About directive see J. Stelmasiak, *Prawo ochrony środowiska*, Warszawa 2009, pp. 273–274.

[16] On 21 May 2014 the project was withdrawn as a obsolete application, OJ WE C 153 from 21 May 2014 according to OJ WE C 163 from 28 May 2014.

[17] 2007/2204(INI) (OJ UE C 247 E/18 from 15 October 2009).

[18] 2009/2153(INI), P7_TA(2010)0264 (OJ UE CE 351/48 from 2 December 2011).

[19] 2011/2051(INI), P7_TA-PROV(2011)0297 (OJ EU CE 390/49 from 18 December 2012).

[20] OJ WE L 334 from 17 December 2010, p. 17, hereinafter referred to as the IED Directive.

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ganizes the system legal protection of the land surface and the principles of its recultivation[21].

In conclusion, it should be noted that provisions relating to protection of the earth's surface (land, soil) appear more and more often in the Community legislation, but there is still no comprehensive protection legislation in this area. For this reason, the status of general rules for sustainable land management and soil protection is left to national legislation.

PROTECTION OF EARTH' SURFACE IN POLISH LEGISLATION

As J. Jerzmański[22] emphasises, until entering into force of the Act of 27 April 2001 on Environmental Protection Law[23], Polish regulations did not provide for specific administrative obligations related to the so-called universal earth's surface protection, concerning land all over the country, taking into account the problem of shaping the earth's surface and soil contamination elimination. Special duties, according to the author, were related only to the classification of a given area as agricultural or forest land, or degraded as a result of mining activities and consisted mainly in the need to restore the land's utility value (recultivation). By sharing the above view, in principle, there are several exceptions. One of them was the establishment in Article 15 paragraphs 1–3 of the Act of 31 January 1980 on the protection and shaping of the environment[24] of a normative basis for the protection of soils against the negative impact of agriculture. Land users were required to protect soils against erosion, mechanical destruction, and entities conducting activities related to agricultural use, in particular those using chemical and biological agents, were obliged to apply appropriate cultivation methods, organic fertilization, and crop rotation[25]. It was not until the harmonization of the Polish law with EU law that for the first time in the Act of 3 February 1995 on the protection of agricultural and forest land[26], defective agricultural activity (e.g. caused by improper use of

[21] More on the subject see M. Górski, *Ochrona powierzchni ziemi w przepisach nowelizacji ustawy Prawo ochrony środowiska i innych ustaw z lutego 2014 r.*, [in:] *Remediacja, rekultywacja i rewitalizacja*, red. G. Malina, Poznań 2014, pp. 61–77.

[22] J. Jerzmański, *Nowe zasady ochrony powierzchni ziemi*, „Acta Universitatis Carolinae. Iuridica" 2015, nr 2, p. 209.

[23] Journal of Laws 2017, item 519 as amended; hereinafter referred to as E.P.L.

[24] Oryginal text of the Act: Journal of Laws 1980, No. 3, item 6.

[25] M.A. Król, *Instrumenty prawne ochrony jakościowej gruntów rolnych*, „Studia Prawno-Ekonomiczne" 1997, t. 55, p. 52.

[26] Journal of Laws 2017, item 1161 as amended.

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plant protection products) was indicated as one of the reasons for degradation and devastation of land[27].

After Poland's membership in the EU, rational land use and soil protection became the subject of many programs and policies, including Poland Climate Policy (2003)[28], Government post-industrial areas program (2004)[29], and National strategy for protection and moderate use of biological biodiversity (2007)[30]. Soils have been indicated as one of the basic resources for country's spatial development in the Concept of Spatial Development of the Country by 2030 (2011)[31], and as the basic production resource of agriculture in the Strategy for Responsible Development (2017)[32]. Ensuring the proper way of using the earth's surface, as well as limiting the impact of soil and soil degradation on human health and the condition of the elements of environments has been taken into account in the Strategy for Energy Security and Environment (2014)[33]. The legal protection of the surface of the earth as a limited and relatively renewable property in our legal system is dispersed. This resource is subject to special protection in several regulations: general issues are regulated by the provisions of the Environmental Protection Law, while detailed issues, depending on the function of the land surface, are included in the Act on protection of agricultural and forest land, the Act of 28 September 1991 on forests[34] or the Act of 14 December 2012 on waste[35]. On the other hand, the Act of 13 April 2007 on the prevention and repair of damage to the environment[36] regulates the pollution of the surface of the earth with substances, preparations, organisms or microorganisms.

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[27] See Article 4 item 16 (Journal of Laws 1995, No. 16, item 78). See more M.A. Król, *Przejawy europeizacji w prawie rolnym*, „Studia Iuridica Agraria" 2009, t. 7, DOI: https://doi.org/10.15290/sia.2009.07.05, p. 82.

[28] *Polityka klimatyczna Polski. Strategie redukcji emisji gazów cieplarnianych w Polsce do 2020 r.* Document adopted by the Council of Ministers on 4 November 2003.

[29] Document adopted by the Council of Ministers on 27 April 2004. The aim of this program was to create mechanisms for the development of brownfield sites, in accordance with the principles of sustainable development.

[30] Adopted with the Action Program for 2007–2013, Annex to Resolution of the Council of Ministers No. 270/2007 of 26 October 2007.

[31] Adopted by the Resolution of the Council of Ministers No. 239 from 13 December 2011 (Official Journal [M.P.] 2012, item 252).

[32] Adopted by the Resolution of the Council of Ministers No. 8 from 14 February 2017 on the adoption of the Strategy for Responsible Development until 2020 (with a view until 2030) (Official Journal [M.P.] 2017, item 260).

[33] Adopted by the Resolution of the Council of Ministers on 15 April 2014 (Official Journal [M.P.] 2014, item 429).

[34] Journal of Laws 2017, item 788 as amended.

[35] Journal of Laws 2018, item 21.

[36] Journal of Laws 2014, item 1789 as amended.

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BASIC CONCEPTUAL CATEGORIES RELATED TO THE PROTECTION OF THE EARTH'S SURFACE

Nowadays, the legislator introduces the notion of "earth's surface", the legal definition of which appeared for the first time in the Environmental Protection Law of 2001 regulations, for the legal term of this biosphere resource. Until then, only the constitutional term "land" existed, which, due to the function of land as a means of production in agriculture, was referred to as "one of the most important factors of the nation and state"[37], or "nationwide good"[38]. According to Article 3 item 25 E.P.L. after the 2014 amendment[39], the earth's surface – terrain, soil, ground (earth) and groundwater. According to the indicated provision, the term consists of three elements that are defined in this provision: soil, ground (earth) and groundwater, where:

a) soil[40] means the upper layer of the lithosphere, composed of mineral parts, organic matter, soil water, soil air and organisms, including the topsoil and subsoil,
b) ground (earth) means the upper layer of the lithosphere, located below the soil, to the depth of human interaction,
c) groundwater means groundwater within the meaning of Article 16 item 68 of the Act of 20 July 2017 – Water Law[41], which is in the saturation zone and remain in direct contact with the ground or subsoil.

This concept deviates from the colloquial understanding of the term "surface", which would indicate the outer, upper layer of the earth's crust[42]. Extending the scope of the conceptual term "surface of the earth" from the point of view of protective tasks clearly indicates a greater location of the accent on all functions performed by the surface of the earth.

The legislator does not give an unambiguous answer to the question about the spatial extent of the earth's surface, using only with the element 'earth' the determinant 'to the depth of human interaction'. The use of this term indicates the use of a functional criterion of the spatial extent of the earth's surface, which is

[37] Article 99 of the Polish Constitution of 17 March 1921 (Journal of Laws No. 44, item 267).

[38] Article 15 paragraph 2 of the Constitution of the Polish People's Republic of 22 July 1952 (Journal of Laws 1976, No. 7, item 36 as amended).

[39] Definition in the version adopted by Artticle 1 item 2g of the Act of 11 July 2014 amending the Act – Environmental Protection Law and certain other acts (Journal of Laws 2014, item 1101).

[40] The term "soil" in the original version of the Act was defined as the upper layer of the lithosphere, composed of mineral parts, organic matter, water, air and organisms, including the topsoil and subsoil. As indicated in the literature, the legal definition was based on natural assumptions distinguished in the pedological sciences. See D. Czępińska-Kamińska, E. Janowska, K. Konecka-Betley, M. Okołowicz, *Leksykon terminów z zakresu nauki o glebie*, Warszawa 2004, p. 32.

[41] Journal of Laws 2017, item 1566 as amended.

[42] See A. Kaźmierska-Patrzyczna, *Ochrona powierzchni ziemi*, [in:] *Prawo ochrony środowiska*, red. M. Górski, Warszawa 2014, p. 450.

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related to the property of a given area and the function performed by the surface of the earth. For example, a different range will be in the case of agricultural land, another in the landfill, another in the case of communication routes (tunnels). The concept in question is separated from the concept of ownership of land (Article 46 of the Civil Code)[43].

There is doubt that the surface of the earth includes water and minerals. It is recognized that at least a part of the waters, located in the saturation zone and in direct contact with the ground or subsoil, is covered by protective regimes regarding "land surface", but further protective requirements are provided for in the Water Law, and in relation to mineral deposits Articles 125–126 E.P.L.[44] On the other hand, the soil component "soil air" refers to gases in the soil.

The typology and characteristics of particular types of soils are indicated in the Annex to the Regulation of the Minister of National Defense of 12 September 2012 on the classification of the soil of grounds[45]. The regulations specify the official table of land classes and the manner and mode of conducting the soil classification of land. The legislator in the Polish law system also uses the term "land" making a distinction between agricultural land and forest land. The legal protection of agricultural and forest land in our legislation has an older origin than the protection of the earth's surface, reaching as indicated above in the early 1970s. The term "agricultural land" belongs to the category of the most complex concepts in the Polish law[46].

In Article 2 of the Act on the protection of agricultural and forest land, the legislature indicates a certain catalogue of land, whose calculation differs significantly from the colloquial understanding of the term "agricultural land" associated with the top layer of land suitable for cultivation[47] or with a civilized approach from Article 46^1 of the Civil Code (in which it is identified with agricultural real estate)[48]. The term "agricultural land" has always had an overestimating character, it was related to the sphere of administrative law relations, it served to register land and protect it.

The basic conceptual category in the discussed area is also the term "controlling the surface of the earth". According to Article 3 item 44 E.P.L. – it shall

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[43] A. Lipiński, [in:] *Ustawa – Prawo środowiska. Komentarz*, red. J. Jendrośka, Wrocław 2001, p. 393.

[44] *Ibidem*, p. 394. Otherwise J. Rotko, *Komentarz do ustawy – Prawo ochrony środowiska. Ochrona zasobów środowiska. Tytuł II ustawy – Prawo ochrony środowiska*, Wrocław 2002, p. 66.

[45] Journal of Laws 2012, item 1246.

[46] B. Rakoczy, [in:] *Leksykon ochrony środowiska*, red. J. Ciechanowicz-McLean, Warszawa 2009, p. 62.

[47] Meaning of Polish term *grunt* see in *Słownik języka polskiego*, red. L. Drabik, oprac. E. Sobol, t. 1, Warszawa 2007, p. 212.

[48] In civil law, this term appears as a synonym for agricultural real estate in Article 461 of the Civil Code and as an element of an agricultural holding in Article 55^3 of the Civil Code. See R. Budzinowski, *Koncepcja gospodarstwa rolnego w prawie rolnym*, Poznań 1992, pp. 91–92.

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be understood by the owner of the land, and if another entity is disclosed in the land and building register – it is the entity disclosed in the register as the owner. The intention of the legislator was surely to include both owners and categories of owners of independent or dependent land (e.g. land tenants) with this concept. However, the dependent holder does not have to be disclosed in the land and building register. As B. Wierzbowski and B. Rakoczy point out critically, "this definition is based on a formal element, not an actual one"[49]. The authors' position should be accepted, because from the point of view of the objectives of protecting the earth's surface, the legal title of land ownership is less important, or who is disclosed in the register of lands and buildings, but who actually owns the land. On the other hand, this issue becomes important in determining damage liability caused in this element of the environment, for exceeding the permissible content of a substance that causes a risk particularly important for soil or land, and in the event of the obligation of recultivation.

REGULATION ON THE ENVIRONMENT USE

Set in Article 4 E.P.L. rules for using the environment and the obligation to prevent negative impact on the environment and preservation of foresight, when this impact is not fully recognized (Article 6 E.P.L.), they provide the basis for applying administrative forms of regulation. As pointed out by E. Zębek and M. Szwejkowska[50], the regulation and protection function of law with respect to the environment shows the introduction of rules and restrictions on the use of its resources.

As indicated in the doctrine[51], rationing will mean a limitation on the basis of the legal provisions of a certain activity by setting rules and conditions (requirements, duties) to conduct it, including issuing orders and prohibitions of specific behavior[52], to protect essential public interest values. As P. Korzeniowski emphasises[53],

[49] B. Wierzbowski, W. Rakoczy, *Podstawy prawa ochrony środowiska*, Warszawa 2005, p. 160.

[50] E. Zębek, M. Szwejkowska, *Pozwolenia i koncesje jako prawne instrumenty ochrony zasobów środowiska naturalnego*, „Prawo i Środowisko" 2007, nr 4, p. 65.

[51] M. Cherka, *Tryb zmiany decyzji ostatecznej jako instrument polityki konserwatorskiej. Zagadnienia wybrane*, [in:] *Energetyka i ochrona środowiska w procesie inwestycyjnym*, red. M. Cherka, F.M. Elżanowski, M. Swora, K.A. Wąsowski, Warszawa 2010, pp. 269–271 and the literature.

[52] B. Dolnicki (*Prawne zagadnienia reglamentacji administracyjnej w gospodarce narodowej*, „Administracja" 1988, z. 2, p. 14) indicated that the regulatory function assigned to the administration is performed by means of orders and prohibitions, as the main regulatory forms, issued in the form of general acts, and as permissive forms in the regulation, the permits and activities included in the administrative supervision are applied.

[53] P. Korzeniowski, *Sprawiedliwość ekologiczna w prawnej regulacji korzystania z zasobów środowiska*, [in:] *Sprawiedliwość i zaufanie do władz publicznych w prawie administracyjnym*, red. M. Kasiński, M. Stahl, K. Wlaźlak, Warszawa 2015, p. 703.

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regulation in environmental law is a set of administrative instruments ensuring environmental justice in the use of the environment, in order to achieve a stable regulation of ways of using the environment through the use of legal instruments often in the form of permits and concessions.

With regard to legal protection of the earth's surface, M. Górski[54] indicates four groups of legal instruments: repressive (including administrative sanctions) and preventive measures, affecting the surface of the earth in a way that protects against degradation. To the second group of instruments, the author classifies planning instruments (e.g. local spatial development plans) and regulatory instruments limiting the accessibility of using the land surface. Rationing the use of land will mean limiting the use of this resource, by establishing obligations related to it. Responsibilities to take specific actions were also imposed on public administration bodies. Forms of legal actions taken by administrative bodies depend on the limits of the general use of the environment established by law. The administrative and legal measures of rationing may result directly from the act, and then the tasks of the administration authorities include undertaking actions aimed at direct enforcement of obligations resulting from the power of the law itself. In accordance with the principle of rationing, the limitation of the possibility of using the environment beyond the scope of general use may only be established by law[55] and may also be subject to the obligation of issuing an administrative decision by the competent administration (Article 4 paragraph 2 E.P.L.).

RESPONSIBILITIES RELATED TO THE PROTECTION OF THE EARTH'S SURFACE

According to Article 101 E.P.L., the legislator indicates a certain set of actions whose fulfillment is to be fulfilled to ensure the best possible condition of the earth's surface and to preserve all functions performed by it. It includes rational management of the resource, prevention of contamination mass movements of soil, soil destruction (including sealing, salting, acidification), destruction of land cover with vegetation, counteracting adverse changes in the natural shape and also re-shaping the function or preparing to perform new functions of the areas on which there is an adverse transformation of the natural shape of the earth's surface.

[54] M. Górski, *Prawna ochrona powierzchni ziemi i odpowiedzialność za szkody wyrządzone w powierzchni ziemi*, „Geologia" 2009, nr 1, p. 8.

[55] The Supreme Administrative Court in its judgement of 22 March 2017, II OSK 1747/15 (CBOSA) pointed out that restrictions on the use of the environment may only be introduced by law, and not a lower-ranking act, which is a local law act.

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For this reason, the Act on Environmental Protection Law establishes several instruments of restrictions on the use of land in the form of precepts: preservation of the function of the surface of the earth, monitoring the quality of the earth's surface, preventing mass movements of the earth, or registration of historical pollution.

1. Injunction to preserve the function of the earth's surface

The legal concept of land surface function appeared for the first time in the 2001 Environmental Protection Act. The legislator defines in Article 101 item 2 of the law functions of the land surface, after the amendment of 2014 with their specification. The regulation distinguishes environmental, economic, social and cultural functions realized by: food and biomass production, or storage, filtering and transformation of nutrients, substances and water. The surface of the earth is also the basis for the development of life and biodiversity, related to the supply of raw materials, reservoir of the element of coal, a function that connects with the geological, geomorphological and archaeological heritage.

The functions specified in the Act are a determinant for setting the permissible content of substances causing a risk in ground or soil[56], beyond which none of the functions performed by the land surface is significantly affected (Article 101a paragraphs 1 and 2 E.P.L.). When evaluating the permissible content, the effect of this substance on human health and the state of the environment is taken into account. Based on Article 101a paragraph 3 E.P.L., the function performed by the surface of the earth is assessed on the basis of actual land use and utilization. However, if another function results from the local spatial development plan, it is not their actual use that decides, but the function resulting from the plan is assumed[57]. The production functions performed in agriculture and forestry constitute a distinction that causes special protection in a separate legal act, which is the Act on the protection of agricultural and forest land.

2. Injunction to monitor the quality of the earth's surface

Implementing regulations[58] to the act specify the methods of conducting the assessment of the surface pollution, including: 1) considering substances that

[56] After the amendment of 2014, the legislator departed from the concept of land or soil quality standards.

[57] More on the subject of recultivation, enabling the implementation of all the functions provided for soils in the plan and the situation of the lack of a plan see K. Gruszecki, *Prawo ochrony środowiska*, Warszawa 2008, p. 269.

[58] Regulation of the Minister of the Environment of 1 September 2016 on the method of conducting the assessment of soil surface pollution (Journal of Laws 2016, item 1395).

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cause risks[59] particularly important for the protection of the earth's surface, their permissible contents in ground and soil, different for individual soil properties and soil groups, based on the way their use; 2) specific requirements regarding the determination of the permissible content in the ground and soil of the substance causing other risk categories, including the analysis of the impact on human health and the state of the environment; 3) stages of identification of contaminated areas; 4) activities that are likely to cause historical pollution of the earth's surface; 5) reference methodologies for ground and soil pollution testing; 6) detailed requirements for the assessment of soil, ground or groundwater contamination on the premises of the plant where the installation requiring an integrated permit is or was in the past.

Land is considered contaminated when the permissible content of substances causing the risk is exceeded. The permissible content of substances is the limit value below which one of the functions performed by the surface of the earth will be significantly affected. The statement of a substance of natural origin is not considered impurity. Substances that pose a risk particularly important for the protection of the earth's surface, their permissible content in land and soil, are specified in the implementing regulations[60].

Land and soil quality assessment and observation of changes are carried out within the framework of state environmental monitoring (Article 101b E.P.L.). The provisions of the Environmental Protection Law impose on the voivodeship inspector of environmental protection the obligation to conduct measurements of ground and soil quality, and the foreman (in Polish *starosta*) is obliged to conduct periodic research in this area. If the permissible content of substances causing a risk in soil or land is exceeded, the voivodeship environmental protection inspector provides the old town with the results of measurements. The foreman also ensures that every 3 years there are periodic tests of the level of soil and plant contamination for land located in areas of limited use around industrial plants, as well as on devastated and degraded grounds outside of restricted use areas (Articles 18 and 19 of Act on protection of agricultural and forest land). If, as a result of the tests, contamination of crops that does not allow their consumption or processing is found, the consequence for the industrial plant responsible for contamination is: charging research costs, excluding from production contaminated land at its expense, and at the request of the land owner the obligation to purchase these lands together with

[59] Activities that include activities that pose a risk of environmental damage are activities that pose a risk of environmental damage within the meaning of the act.

[60] Annex No. 1 to the regulation from 2016. Special, more stringent limit values for heavy metals in soils have been determined for soils located in farms where agricultural production can be conducted using ecological methods. These values are determined by the provisions of the Act of 25 June 2009 on organic farming (Journal of Laws 2017, item 1054) and implementing acts.

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buildings and equipment. In the event of loss or limitation of the land's value in use, the foreman by decision imposes an obligation on land recultivation (Article 22 paragraphs 1 and 2 of the Act on the protection of agricultural and forestry).

3. Injunction to counteract of mass wasting

Earth mass wasting constitute one of the basic conceptual categories in the legal regulation of the protection of land. Based on Article 4 item 32a E.P.L. it means landslides, arising naturally or as a result of human activity, subsidence, crawling or breaking off of rock surface layers, debris and soil. Preventing earth mass wasting and their effects is the subject of protection of the land surface pursuant to Article 101 item 6 E.P.L.[61]

Areas of occurrence and threats to the occurrence of mass wasting are covered by the observation carried out by the foreman, which has a part of the county (in Polish *powiat*) protection fund. The foreman, pursuant to Article 110a paragraph 1 E.P.L., maintains a register containing basic information about the area[62]. Areas threatened by landslides and degraded as a result of this phenomenon have to be indicated on the basis of the Act of 27 March 2003 on spatial planning and development[63], in the study of conditions and directions for land development and the local spatial development plan.

Prevention of damage to farm and forest production resulting from mass wasting is the subject of the Act on the protection of agricultural and forest land. Based on Article 15 paragraph 1 of the Act the owner is obliged to counteract mass wasting. The substantiation of this obligation, due to the particularly protected good that is the protection of the earth's surface, may be related to the interference of public administration bodies by establishing the possibility of ordering by way of a decision some counter-measures against soil degradation and ground mass movements, with the partial possibility of covering costs and compensation for damages related to the reduction of agricultural production from the resources at the disposal of the voivodeship board (Article 15 paragraph 2 of the Act on protection of agricultural and forestry).

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[61] According to J. Boć and E. Samborska-Boć regulating the effects of mass wasting should be among the issues covered by the problem of natural disasters. See J. Boć, E. Samborska-Boć, [in:] J. Boć, K. Nowacki, E. Samborska-Boć, *Ochrona środowiska*, Wrocław 2008, p. 236.

[62] The methods, scope and frequency of periodic observation of areas are determined by regulation of the Minister of the Environment of 20 June 2007 on information regarding mass wasting (Journal of Laws No. 121, item 840).

[63] Journal of Laws 2017, item 1073 as amended. In Article 10 paragraph 2 item 11 the legislator uses the term "landslides" in the act, which causes terminological chaos.

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4. Injunction to register historically contaminated land

Historically contaminated land pursuant to Article 3 paragraph 5a E.P.L. is a contamination of land that occurred before 30 April 2007 or results from an activity that was completed before that date. By this is meant also damage to the environment (land or soil) within the meaning of Article 6 item 11c of the Act on the prevention and repair of damage to the environment which was caused by emission or an event, in practice, mainly caused by production plants, from which more than 30 years have elapsed.

Due to the importance of the phenomenon and the difficulty of finding the perpetrators of potential historical pollution of the earth's surface the identification is made on the basis of Article 101d paragraph 1 E.P.L. by the foreman. The obligation imposed on this body includes determination of activities likely to cause historically land contamination that was carried out on the site before 30 April 2007 as well as a determination of the list of substances causing the risk which occurrence in the soil or the earth is expected due to the activity. The foreman also performs analysis of available information on the threat of soil or earth pollution and if necessary, carries out the first stage of soil and earth pollution testing (the so-called preliminary examination). In order to carry out examinations, the body authorized is entitled to enter the area of the land wielding the land surface, and the land owner is obliged to allow the execution of examinations in the area in his possession. Exclusions relate to areas where the activity is carried out whose main purpose is defense and security of the state or international security.

The legislator imposes on the foreman obligation to draw up and update every 2 years a list of potential historically contaminated land including plots, information about current and planned land use, activities conducted in the area at present and in the past, information on soil properties and substances causing risk and information on their content[64]. The foreman forwards the list to the regional director for environmental protection, as the competent authority to carry out environmental damage proceedings. Based on Article 101e paragraph 1 E.P.L., also the one ruling the surface of the earth, who stated historically contaminated land in the area in its possession, is obliged to report this fact to the public. Applications can be also made by anyone who has found a potential historically contaminated land. These provisions are closely related to the next instrument of regulation, which is the remediation order, so that this area ceases to pose a threat to human health and the environment. The solutions adopted allow for the application of an exception to the general principle of land ownership for historical pollution and

[64] The list contains information on the remediation procedures carried out and the data of the entity obliged to carry it out, as well as data concerning the land surface.

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allow individual risk assessment for each contamination case based on collected data, which counteracts excessive burdens for entities required to remedy and administrations.

RATIONING OF THE USE OF AGRICULTURAL AND FOREST LAND

Regulation on the use of agricultural and forest land is included in both environmental law and the Act on the protection of agricultural and forest land, while environmental law introduces regulations protecting the land surface irrespective of the function performed, and the Act on the protection of land concerns the protection of land fulfilling production function in agriculture and forestry[65]. As regards the protection of the discussed resource, the Act on the protection of agricultural and forest land is the most important and the most detailed regulation whose aim is to preserve the largest possible area of land, improve their value and fully use the needs of agricultural and forestry production.

As B. Wierzbowski and B. Rakoczy emphasise from the fact that the surface of the land is a nonrenewable natural element, it is necessary not only quality protection (protection of soil productivity, including prevention of soil erosion, restoration of degraded land by the obligation to reclaim land, but also quantifying the allocation of agricultural and forest land for other purposes, among others, by the need to obtain consent to change the use of agricultural and forest land and decisions to exclude land from agricultural and forestry production[66].

The solutions adopted in the Act allow to distinguish two basic directions of land protection: 1) quantitative protection – limiting the allocation of agricultural and forest land for other purposes, among others through the need to obtain consent to change the use of agricultural and forest land and decisions to exclude land from agricultural and forestry production; and 2) quality protection – protection of soil productivity, among others by preventing soil erosion or restoring value to degraded agricultural and forest land through the obligation to reclaim land.

1. Consent to change the use of agricultural and forest land and permission to exclude land from agricultural and forestry production

It does not require a proof that the management of rural areas is one of the current development challenges. This trend is in line with the multifunctional development of these areas, which are the space for economic and social de-

[65] M.A. Król, *Wpływ regulacji prawno-rolnej na zakres korzystania z gruntu rolnego*, „Studia Prawno-Ekonomiczne" 2005, t. 72, pp. 103–128.

[66] B. Wierzbowski, B. Rakoczy, *op. cit.*, p. 158.

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velopment, but also the basis for the preservation of the natural environment. Nowadays, the global demand for investment areas increases the pressure on the environment. We observe this clearly through the progressive liberalization of the rigor of protection of agricultural and forest land, the establishment of which was associated with the introduction of rationing, due to the need to preserve the production function of the land surface. The tendency observed in recent decades has been partially reversed. In 2014, the provision of Article 5b of the Act on the protection of agricultural and forestry, which excluded the application of the Act in relation to agricultural land (that is one of the categories of agricultural land defined in Article 2 of the Act on the protection of agricultural and forestry). The repeal of the indicated provision was an expression of the adaptation of the Polish regulation to the requirements of the IED Directive, since the exclusion of the legal regime of the Act on the protection of agricultural and forestry in relation to land located within the administrative boundaries of cities caused a number of complications and prevented the application of provisions obliging to prevent land degradation and their reclamation.

The basic principle of rationing is still maintained, that in the first place non-agricultural and non-forestry can be used for wastelands, and only if they are not available, other lands with the lowest production suitability. This rule, as emphasised by J. Bieluk and D. Łobos-Kotowska, is not absolute, and the decision, which is made after the appropriate procedure, is discretionary[67].

In the Act, as pointed out by P. Czechowski and K. Marciniuk[68], legal regulation covered both the procedure of changing the use of agricultural land or forest land for other purposes as well as actions aimed at *de facto* exclusion. Since the 1980s[69], the principle of the primacy of the local spatial development plan has been in force, consisting in the admissibility of a change in the manner of property management systemically related to the regulation of spatial planning[70]. However, in 2016 there was a serious deviation from this rule by adding Article 7 paragraph 1a of the Act[71]. This provision excludes the requirement to change the destination in the local spatial development plan to areas for which the plan is not drawn up. It is related to

[67] J. Bieluk, D. Łobos-Kotowska, *Ustawa o ochronie gruntów rolnych i leśnych. Komentarz*, Warszawa 2015, pp. 49–51.

[68] P. Czechowski, K. Marciniuk, [in:] *Prawo rolne*, red. P. Czechowski, Warszawa 2017, p. 382.

[69] Article 7 paragraph 1 of the Act of 26 March 1982 on the protection of agricultural and forest land (Journal of Laws No. 11, item 79 as amended).

[70] As indicated in the doctrine, the legislator, by waiving the obligation to create local zoning plans, provided for an exception, which is the allocation of agricultural land for non-agricultural purposes in accordance with the regulations. See M.A. Król, *Przeznaczenie gruntów rolnych na cele nierolnicze i ich wyłączenie z produkcji rolnej w procesie planowania przestrzennego*, „Samorząd Terytorialny" 1998, nr 7–8, p. 48.

[71] Added by the Act of 10 June 2016 on anti-terrorist activities (Journal of Laws 2018, item 452).

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the construction of public administration infrastructure facilities[72]. The legislator withdrew from the primacy of the local spatial development plan due to the state's ability to perform defense and security tasks. As indicated in the justification to the act on terrorist activities[73] performing tasks related to the maintenance and security of these facilities, together with the accompanying infrastructure, encounters major difficulties resulting from the interpretation of regulations in the field of planning and spatial development. The introduced derogation, indicating the terrorist threat as *ratio legis*, may in the future become an easy way to change the allocation of agricultural and forest land beyond the local plan, which significantly weakens the legal protection of this resource and must be assessed negatively.

Currently, the regulation of using the surface of the land consists in limiting the possibility of changing the use of agricultural land only to the highest grades I–III (but regardless of the size of the land area), through the need to obtain the consent of the minister competent for agriculture and forest land, which depending on whether they are owned by the Treasury or are forests belonging to other entities (commune, legal person, natural person), require the consent of the minister responsible for environmental affairs or the marshal of the voivodeship.

Another departure from the regulation of the use of agricultural and forest land is the exemption from the requirement of obtaining the consent of the minister responsible for rural development for non-agricultural and non-agricultural purposes for agricultural land classes I–III with an area not exceeding 0.5 ha, if these lands meet jointly the conditions specified in Article 7 paragraph 2a of the Act on the protection of agricultural and forestry. The provision streamlines the procedure of changing the allocation of agricultural land in the areas of compact buildings along public roads, but at the same time reduces the protection of the most valuable agricultural land, which can be gradually allocated for construction purposes.

As emphasised in literature[74], only the head of the commune (mayor, president of the city) may apply for this kind of consent, because the proceedings in this matter cannot be initiated at the investor's request. Doubts in the doctrine are raised by the legal form of consent. The form of the decision is, among others, W. Radecki[75],

[72] As indicated in Article 2 paragraph 3 of the Act are necessary to ensure the safe and continuous functioning of public administration bodies, and critical infrastructure (construction facilities, equipment, installations, services for the security of the state and its citizens, and to ensure the efficient functioning of public administration bodies, institutions and entrepreneurs.

[73] Sejm Printing No. 516, www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=516 [access: 30.04.2018].

[74] A. Lipiński, *Prawne podstawy ochrony środowiska*, Warszawa 2010, p. 117; W. Radecki, *Ustawa o ochronie gruntów rolnych i leśnych. Komentarz*, Warszawa 2012, p. 91.

[75] *Ibidem*, pp. 90–91.

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or T. Kurowska[76], this form is negated by E. Klat, L. Klat-Wertelecka[77], or P. Korzeniowski[78]. Despite the fairly uniform position expressed in the case-law advocating the form of the decision[79], attempting to address the problem of the legal nature of consent, it can be indicated that under the current legal status, an acceptable legal form is "taking a position" by the supervisory authority referred to in Article 89 of the Act on commune self-government[80], i.e. the action taken by the obligatory cooperation of bodies. As noted in the doctrine[81], the legislator frequently uses terms such as "approval", "agreement", "opinion" to mark acts of association with commune authorities.

According to Article 4 paragraph 11 of the Act on the protection of agricultural and forest land the exclusion of agricultural and forest land is a factual activity, consisting in the commencement of use other than agricultural, forestry. However, the formal condition is to obtain a decision to exclude land from production, issued in accordance with Article 11 of the Act. The exception is when agricultural land is to be used for forestry purposes. The decision includes the authorization to exclude and imposes duties related to the exclusion, e.g. the obligation to pay the amount due and the annual fee. This obligation, laid down in Article 12 of the Act, imposed on the person obtaining the permit arises from the date of *de facto* exclusion of land from production. Derogation from the order for payment of fees and charges provided for in Article 12a of the Act is related to the fulfillment of the constitutional commitment of public authorities to conduct policies conducive to satisfying the housing needs of citizens[82].

The conducted analysis showed that in Polish legislation in the field of spatial development, ensuring social and economic development is implemented taking into account various interests. In this respect, the legislator takes into account several contradictory values: on the one hand, the need to efficiently carry out the investment and construction process, enabling the implementation of assumptions in the area of entrepreneurship development as well as technical and social infrastructure. On the other hand, it seeks to ensure spatial order and sustainable development

[76] T. Kurowska, [in:] *Prawo rolne*, red. A. Stelmachowski, Warszawa 2008, s. 264; M. Krawczyk, *Przeznaczenie gruntów na cele nierolnicze i nieleśne*, [in:] *Administracja publiczna a ochrona przyrody. Zagadnienia prawne*, red. M. Górski, M. Niedziółka, R. Stec, D. Strus, Warszawa 2012, p. 190.

[77] E. Klat, L. Klat-Wertelecka, *Ochrona gruntów rolnych a miejscowy plan zagospodarowania przestrzennego*, „Rejent" 1996, nr 9, pp. 77–78.

[78] P. Korzeniowski, *Instytucje prawne ochrony środowiska a proces inwestycyjno-budowlany. Studium prawno-administracyjne*, Warszawa 2012, p. 200.

[79] Resolution of the composition of 7 NSA judges from 29 November 2010, II OPS 1/10, CBOSA.

[80] Act of 8 March 1990 r. on commune self-government (Journal of Laws 2017, item 1875).

[81] W. Chrościelewski, Z. Kmieciak, *Postępowanie w sprawach nadzoru nad działalnością komunalną*, Warszawa 1995, pp. 115–117.

[82] M.A. Król, *Przeznaczenie gruntów rolnych…*, p. 63.

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in rural areas, protecting both production and ecological functions of these areas and, for this reason, identifies various factors affecting the shaping of rural space.

It should be emphasised that in the regulation relating to the protection of agricultural and forest land, we find clear manifestations of the implementation of the principle of sustainable development. However, after many legal changes, the legislator has significantly liberalized the standards for the protection of this valuable resource. Subsequent amendments to the Act caused several deviations from the rules for the quantitative protection of agricultural land, or weakened the requirement to change the use of agricultural land in the local spatial development plan only in relation to one category of agricultural land, the highest bonitation classes for which the statutory obligation to obtain the consent of the competent authority was maintained government administration.

2. Injunction to prevent soil degradation

Another instrument to regulate the use of land is the obligation to prevent soil erosion. Pursuant to Article 15 of the Act on the protection of agricultural and forest land the owner of land constituting agricultural land and land recultivated for agricultural purposes is obliged to counteract soil degradation, in particular erosion and mass movement of land. The concept of degradation has not been defined in the Act, it can be derived from the definition of degraded lands as a phenomenon leading to the deterioration of the utility value of lands. The only mentioned forms of degradation are erosion and earth mass movements. The legislator mentions three reasons for degradation: 1) deterioration of natural conditions or environmental changes – erosion, acidification; 2) industrial activity – chemical pollution, physical changes; 3) defective agricultural activity – remains of agriculture chemization, drainage of agricultural land. It is envisaged the possibility of imposing on the landowner a number of duties: 1) afforestation, shrubbery or permanent grassland; 2) maintaining the technical condition of anti-erosion devices and water-melioration facilities located on the land in the condition of technical efficiency; 3) order to execute, within a specified time limit, procedures imposed by a decision of the commune head, in the case of occurrence, due to the fault of the land owner, one of the forms of degradation; 4) the obligation to refund the costs of performing substitute treatments, imposed by the decision of the head of the commune head, and not performed by the owner. The owner is entitled to a claim for reimbursement and compensation if the applied plant coatings cause damage to agricultural production. These claims are covered from the voivodeship budget.

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INJUNCTION TO RESTORE THE UTILITY AND NATURAL VALUE OF THE LAND

Based on the European Commission Report from 2017, European achievements in land remediation and redevelopment of degraded areas[83] have shown that all local pollution in 33 European Economic Area countries and 6 cooperating countries has been estimated at 2.5 million potentially contaminated sites. However, only one-third of the estimated total number of 342,000 contaminated areas have been fully identified, of which only 15% of the value in use has been restored. Due to the fragmentary nature of binding regulations at the EU level, each Member State, on the basis of national policy, selects legal means to achieve the assumed objectives.

The Polish law system can distinguish as many as five different legislative instruments of a regulatory character, imposing obligations to restore the utility and natural value of the land: land recultivation, repair of natural elements, recultivation, land recultivation and landfill.

1. Injunction to recultivate land

The legal definition of the concept of land recultivation is introduced in Article 4 item 18 of the Act on the protection of agricultural and forestry, according to which it is granting or restoring degraded or devastated utility or natural values by properly shaping the relief, improving physical and chemical properties, regulating water relations, restoring soils, strengthening scar and rebuilding or building the necessary roads. The term inseparable from recultivation is the term "land development", which means agricultural, forestry, or other use of land reclaimed. The Act introduces an order to plan, design and implement land recultivation and development at all stages of industrial activity. A rule was also laid down that land should be recultivated successively as it becomes unnecessary in the conducted production activity, however, maximum within 5 years from its cessation. A person causing land degradation is obliged to recultivate at his own expense, and if the activity is carried out by several persons, this obligation is on each of them, corresponding to the scope of activity causing the need for recultivation. In case of devastation of land by undetermined persons, as a result of natural disasters or ground mass movements, the recultivation depends on the purpose for which the recultivated land will be allocated. In this situation, agricultural land located in agricultural areas is recultivated for agricultural purposes using the voivodeship budget funds, forest land and land designated for afforestation with the use of state

[83] *European achievements in soil remediation and brownfield redevelopment. A Report of the European Information and Observation Network's National Reference Centres for Soil (Eionet NRC Soil)*, eds. A.P. Pérez, S.P. Sánchez, European Commission 2017, p. 18.

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budget funds, and recultivation for other purposes from the state budget or persons interested in doing business on reclaimed land.

In case of land contamination with substances, preparations, organisms or microorganisms, pursuant to Article 22a paragraphs 1 and 2 of the Act on the protection of agricultural and forestry, the recultivation shall apply accordingly: 1) to the contaminated land after 30 April 2007 – provisions of the Act on preventing and repairing damage to the environment – repair of natural elements; 2) to land contaminated before 30 April 2007 defined as historically contaminated land – provisions of the Environmental Protection Law – remediation.

2. Injunction to repair natural elements

In the Act on the prevention and repair of damage to the environment the legislator does not use the concept of recultivation but the term "repair of natural elements". Under this term, in relation to the surface of the earth, it is meant to remove the threat to human health and the environment. It also includes natural regeneration. Criteria for assessing the occurrence of damage in the surface of the earth are indicated in the provisions of the Regulation of 2016[84]. In the event of a threat or damage to the surface of the earth, the entity using the environment is obliged to immediately take appropriate measures preventive and corrective. Performing remedial actions must be agreed with the right entity by way of a decision (the so-called reconciliation decision), for damage in the environment in the land area determining the remediation plan, specifying, among others, names of substances that cause the risk, manner and timing of remediation. When the obliged entity does not take preventive or remedial actions by decision (the so--called commitment decision), it imposes an obligation on them to carry them out. Regional Directorate for Environmental Protection may also take preventive or corrective actions *ex officio*.

3. Injunction to carry out remediation

Another remedy for rationing the use of land is remediation. Pursuant to Article 3 item 31b E.P.L. means the submission of soil, ground and groundwater to activities aimed at removing or reducing the amount of substances causing risk, controlling them and limiting the spread, so that the contaminated land ceases to pose a threat to human health or the environment, taking into account current and planned way of using the land in the future. Remediation may involve self-purifi-

[84] Regulation of the Minister of Environment of 1 September 2016 on the criteria for assessing the occurrence of environmental damage (Journal of Laws 2016, item 1399).

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cation[85]. Remediation involves the total soil, soil and groundwater. It is assumed that remediation of groundwater will be accompanied by remediation of soil or soil, and the effects will be assessed based on the content of substances causing risk in soil and in the ground, and not based on separately defined permissible contents for groundwater.

The obligation to carry out remediation rests, pursuant to Article 101h paragraphs 1 and 2 E.P.L., on the ruling surface of the earth, where there is historically contaminated land, unless it shows that the pollution made after the day of taking possession of it resulted in another indicated entity, the so-called "other perpetrator". Those who control the surface of the earth and other perpetrators are obliged to carry out remediation jointly, if the pollution was caused by the perpetrator with the consent or knowledge of the ruler.

Remediation is carried out in accordance with the established plan. The development of plans for areas for which historical pollution has been confirmed is carried out by the Regional Directorate for Environmental Protection, based on the schedule updated at least once every 5 years. When establishing the schedule, the need to conduct remediation of areas that pose the greatest threat to human health, environmental status and taking into account the possibility of financing the tasks in the following years is taken into account. Regional Directorate for Environmental Protection performs remediation *ex officio* in a few cases indicated in Article 101i E.P.L., when no liability for carrying out remediation, or if due to the threat to human health or immediate carrying it is dictated by the possibility of irreparable damage to the environment. In the last case, however, the rules for reimbursement of remediation costs incurred by Regional Directorate for Environmental Protection were defined.

4. Injunction to carry out land reclamation and landfill

Obligations related to the restoration of lost utility and natural properties are set two specific laws. Land recultivation was provided for in the Act of 28 July 2008 on mining waste[86]. The provision of Article 3 paragraph 1 item 11 defines land recultivation as land development, including land treatment, which was affected by the mining waste disposal facility, in such a way as to restore it to its proper utility and natural conditions, with particular emphasis on soil quality, wild fauna and flora, habitats natural, fresh water systems and landscapes. Determination of

[85] Under Article 3 item 32d E.P.L. biological, chemical and physical processes result in reduction in the amount, load, concentration, toxicity, availability and spread of pollutants in soil, land and waters, spontaneously occurring, without human intervention, but whose course can be helped by people.

[86] Journal of Laws 2017, item 1849.

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activities related to land recultivation is an indispensable excerpt of the mining waste management program approved by a decision issued at the request of the owner of the mining waste disposal facility.

On the other hand, the responsibility of the manager of the landfill site is to recultivate and reuse the landfill site (Article 121 paragraph 1 of the Act on landfills). Conducting landfill recultivation is included in the operational phase of the landfill and is an integral procedure prior to the closure of the landfill.

CONCLUSION

One of the primary functions of environmental law is the regulatory and protective function, consisting of on the introduction of restrictions and rules for the use of environmental resources[87]. This function is fulfilled by legal regulations related to the protection of the land, due to the fact that this resource is subject to diversified exploitation (distributive function), as well as regulation aimed at preserving this resource in an unchanged condition (conservative function).

Degradation of the land in various forms is one of the basic and persistent global problems. Irrational agricultural activity, deforestation, increasing industrialization and progressive urbanization lead to the loss of important functions of this natural resource. This is a serious problem throughout the European Union, as evidenced by statistical data disclosed in the abovementioned reports and reports of the European Commission.

Due to the failure to develop regulations at the EU level ordering the issues of protection of land surface and the fragmentary nature of binding regulations, each of the Member States, including Poland, selected legal means to achieve the assumed objectives related to both the obligation to protect the function of this resource, quality monitoring, registration pollution, or restoring utility and natural values.

Rational management of soil, agricultural and forest land resources has been recognized since the 1980s as one of the basic directions of environmental policy. The conducted research allows to state that in our legislation this regulation is still fragmentary and dispersed. Instruments essential for this protection are normalized in several specific legal acts. The lack of coherence and a clear initial concept may be demonstrated by the introduction of several different instruments to restore the usable and natural properties of the earth's surface. The functions of the earth's surface are still not protected to the same degree, the legislator's attention is focused on qualitative protection.

To sum up, it should be stated that the established instruments do not fully realize the assumption of sustainable management of the land surface. The legis-

[87] R. Paczuski, *Ochrona środowiska. Zarys wykładu*, Bydgoszcz 2008, p. 65.

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lator, contrary to the initial concept of protection of this resource, often succumbs to emerging particular interests and attempts to reconcile them. Therefore, *de lege ferenda* application should be made to ensure stability, comprehensiveness and consistency of the solutions implemented.

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STRESZCZENIE

Degradacja powierzchni ziemi w różnych formach to jeden z podstawowych i utrzymujących się problemów globalnych. Nieracjonalna działalność rolnicza, deforestacja, coraz większe uprzemysłowienie oraz postępująca urbanizacja prowadzą do utraty ważnych funkcji tego zasobu naturalnego. Jest to poważny problem na terenie całej Unii Europejskiej, o czym świadczą dane statystyczne ujawnione w przywołanych sprawozdaniach i raportach Komisji Europejskiej. Z uwagi na fiasko opracowania regulacji na poziomie UE, porządkującej problematykę ochrony powierzchni ziemi, oraz fragmentaryczność wiążących przepisów każde z państw członkowskich, w tym Polska, dokonało doboru środków prawnych do realizacji zakładanych celów, związanych zarówno z obowiązkiem ochrony funkcji tego zasobu, monitoringu jakości, rejestracji zanieczyszczeń, jak i przywracania wartości użytkowej i przyrodniczej. Celem prowadzonych badań była analiza regulacji prawnych ustanawiających administracyjne formy reglamentacji korzystania z powierzchni ziemi oraz ich ocena dokonana pod kątem implementacji zasad zrównoważonego gospodarowania tym zasobem. Reasumując, należy stwierdzić, że wprowadzane stopniowo instrumenty reglamentacji korzystania z powierzchni ziemi nie do końca służą wdrożeniu zasady zrównoważonego gospodarowania powierzchnią ziemi, chociaż *de lege ferenda* należałoby wnioskować o zapewnienie stabilności, kompleksowości i spójności wprowadzanych rozwiązań.

Słowa kluczowe: powierzchnia ziemi; gleba; tematyczna strategia; reglamentacja korzystania z zasobów naturalnych; remediacja; rekultywacja