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THE ROLE OF LOCAL GOVERNMENT IN CLIMATE CHANGE ADAPTATION: INSIGHTS FROM THE POLISH LEGAL SYSTEM

SUMMARY: 1. Introduction. – 2. The concept of climate change in Polish and international law. – 3. The legal basis for the functioning of all Polish local government units in the context of climate change. – 4. Analysis of local government tasks in the area of climate and environment. – 5. Legal-philosophical context: Ronald Dworkin's concept. – 6. Conclusion.

1. Introduction

The issue of climate resilience is a major challenge for the modern legislator. For obvious reasons, it is not possible to regulate situations occurring in nature through legal instruments; however, it is possible to try to prevent human-induced phenomena that may affect climate change, as well as to regulate the effects of climate change using legal norms. Moreover, it is also possible to regulate the process of adaptation to climate change using legal norms. Although climate change itself cannot be subject to legal regulation, adaptation to these changes can be regulated through law. Legal doctrine indicates that environmental law sometimes proves insufficient in matters of climate change. It does not take into account the specific nature of the entire issue of climate change, primarily how quickly climate change processes are occurring and how the scientific perspective on this problem is changing¹.

The aim of this article is to indicate how and with what legal instruments the legislator can adapt to climate change. However, the article does not contain only purely theoretical considerations but refers to Polish experiences. The Polish model serves to exemplify the

¹ R. CRAIG, "Stationarity is dead" - long live transformation: Five principles for climate change adaptation law, in *Harvard Environmental Law Review*, no. 1 (34), 2012, pp. 16-17.

ongoing law-making processes and can be used in building theoretical models.

Poland is a unitary state in which legislative powers are concentrated at the central level. Local government units primarily perform administrative and executive functions. The territorial structure consists of three levels: the voivodeship (*województwo*), the county (*powiat*), and the commune (*gmina*). Although these entities do not possess primary legislative powers, they play a crucial role in implementing environmental and climate policies.

It should be noted that climate adaptation is not a value protected by law in the sense that legal language does not explicitly use this term. No legal norm regulating the competences of public administration bodies indicates climate adaptation as a task within the scope of public administration. Hence, the reconstruction of legal norms that can regulate issues related to climate adaptation must take into account other tasks that relate to or concern climate adaptation.

Climate policy generally relies on two main pillars: mitigating climate change and adapting to its effects². While the concept of mitigation is relatively straightforward – primarily involving the reduction of human-induced greenhouse gas emissions, especially carbon dioxide – adaptation encompasses a broad range of diverse actions and lacks a single, universally accepted definition³.

At the outset, it should be noted that we will be dealing with a reconstruction of public administration tasks, scattered across various other tasks and competences that are recognized in legal terminology.

2. *The concept of climate change in Polish and international law*

As already indicated above, climate adaptation does not exist as an independent value protected by law. Although the concept of climate

² A. GERMANÒ, E. ROOK BASILE, F. BRUNO, M. BENOZZO, *Commento al codice dell'ambiente*, Torino, 2008, *passim*.

³ I. PRZYBOJEWSKA, *Adaptation to Climate Changes with Particular Focus on the Legal Environment of the Energy Sector*, in *Gdańskie Studia Prawnicze*, no. 3, 2021, p. 34.

change adaptation is well-established in international and EU climate policy, it has not yet functioned in Polish law as a separate legal category that directly defines the powers of public authorities. Instead, adaptation-related obligations are implemented through legal institutions related to environmental protection, spatial planning, water management, crisis management, and sustainable development. Only the most recent changes in the Polish legal system have introduced this concept into legal acts; however, it still does not appear to be the subject of more in-depth legislative work, but is rather the result of aligning the law with European Union law⁴. Therefore, the statement that the term “climate change adaptation” is not used in legal language should not be taken literally. Rather, it means that, in Polish legislation, climate change adaptation has not yet been treated as a separate legal competence or as a protected legal interest comparable to environmental protection. Adaptation measures are part of the broader scope of statutory tasks and powers of public administration.

This formulation therefore has extra-juridical origins and originates in fields outside of legal science. Of course, this does not mean that the problem of climate resilience is a legally irrelevant problem, and the national legislator remains indifferent to the issue of climate adaptation. On the other hand, as already indicated above, the problem of climate adaptation may be the subject of other clearly and directly legally formulated competences and tasks of public administration. Hence, the reconstruction of the legal basis for the tasks of local government units, as well as other entities, will highlight the tasks and competencies that could incorporate climate adaptation, after first defining what climate resilience may mean in legal sciences. The issue of climate adaptation is defined in other sciences. Leaving aside the emerging discrepancies and doubts, it can be indicated that climate adaptation means a certain flexibility of the state and its bodies in responding to the effects of climate change. When constructing law, the state should assume that climate changes are occurring, which directly and indirectly affect the functioning of the state and the performance

⁴ Due to noticeable trends in law, climate protection can be treated as a separate legal problem from environmental protection. See J. CIECHANOWICZ-MCLEAN, *Prawo ochrony klimatu*, Warszawa, 2016.

of its tasks. The state's task is to identify such areas in which these changes occur, to link these changes with climate change, and above all to be able to predict and respond to these changes. The state performs its tasks primarily through lawmaking, but not only.

When enacting laws, the state should assume that changes are occurring. However, it must ultimately be noted that adaptation to climate change in the Polish legal system appears to be only just taking shape⁵. A branch of Polish legal scholarship dealing strictly with climate law has not yet been established. Furthermore, in Polish law and jurisprudence, the issue of climate and climate change is rather rare. In contrast, in international law, particularly in European Union law, adaptation to climate change appears to be a much more developed category. Adaptation to climate change is the subject of numerous international and EU legal instruments. The issue of climate adaptation or climate protection also frequently arises in the case law of the Court of Justice of the European Union⁶. A disparity in this regard can therefore be observed between Polish law and EU and international law.

Climate change is a concept that has been extensively developed in international law, particularly within the framework of the United Nations. The United Nations Framework Convention on Climate Change⁷ defines climate change as a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere. This definition has been further elabo-

⁵ One example of such measures – one of the few taken in the past year – is the *Regulation of the Minister of Climate and Environment on the detailed scope of reports monitoring the implementation of climate change adaptation measures, as well as the monitoring metrics and indicators included in municipal adaptation plans*. Although the act is still in the draft stage, if adopted, it will serve as a concrete expression of legislative action in the area of climate change adaptation. The draft concerns the development of municipal adaptation plans and specifies metrics that will be used to assess whether local governments are effectively and efficiently implementing climate adaptation measures. Local authorities will submit a report to the Minister of the Environment and Climate, including details on how much funding they have allocated to climate adaptation.

⁶ *Vide e.g.* Case T-625/22: Judgment of the General Court of 10 September 2025 *Austria v. Commission*.

⁷ UNFCCC.

rated in subsequent international instruments, including the Paris Agreement of 2015, which emphasises both mitigation and adaptation as core components of global climate policy.

In European Union law, climate change is regulated through an increasingly comprehensive and multi-level legal framework. A central role is played by Regulation (EU) 2021/1119 (the European Climate Law), which establishes the objective of climate neutrality by 2050 and introduces binding obligations for Member States. Although primarily focused on mitigation, the regulation also emphasises the need to enhance adaptive capacity and resilience.

Adaptation is further developed in strategic and policy instruments, most notably the EU Strategy on Adaptation to Climate Change, which aims to make Europe climate-resilient by 2050. The strategy promotes the integration of adaptation into all policy areas, including spatial planning, infrastructure, agriculture, and water management.

Further considerations will focus solely on normative aspects.

3. The legal basis for the functioning of all Polish local government units in the context of climate change

The legal basis for the functioning of all local government units in the context of climate change is Article 5 of the Constitution of the Republic of Poland, which states that «The Republic of Poland shall guard the independence and inviolability of its territory, ensure human and civil freedoms and rights and the safety of citizens, guard the national heritage and ensure environmental protection, guided by the principle of sustainable development».

It follows from this provision that the task of the state (Republic of Poland) is to ensure environmental protection, and in performing this task the state should be guided by the principle of sustainable development. It is precisely the principle and concept of sustainable development, expressed normatively in art. 5 of the Constitution of the Republic of Poland, that constitutes the basis for the claim that the state has certain obligations and tasks concerning climate adaptation. At the level of law, the principle of sustainable development obliges to

balance conflicting interests and values protected by law, considering environmental protection and climate protection⁸. Remaining at the level of the constitution, it is necessary to indicate the norms regulating the performance of public tasks by local government units. In accordance with art. 163 of the Constitution of the Republic of Poland «Local government performs public tasks not reserved by the Constitution or statutes for bodies of other public authorities».

This provision regulates the presumption that the performance of public tasks is entrusted to local government units. This also applies to climate adaptation. In turn, the next provision of Article 164, Section 3 of the Constitution of the Republic of Poland creates another presumption that it is the commune that performs public tasks reserved to local government units, which at the same time have not been expressly entrusted to other local government units.

An important element of the Polish approach to climate adaptation is the Strategic Adaptation Plan for Sectors and Areas Sensitive to Climate Change until 2020 with a perspective until 2030 (SPA 2020), adopted in 2013. This document constitutes the first comprehensive national strategy addressing climate adaptation and identifies key sectors particularly vulnerable to climate change, such as water management, agriculture, transport, and urban areas. The plan outlines objectives and directions for adaptive actions, emphasising the need to strengthen the resilience of the economy and society. Although the SPA 2020 does not have the status of a normative act, it plays a significant role in shaping public policies and guiding the activities of public authorities, including local government units, in the field of climate adaptation.

It is also appropriate at this point to refer to another legal act of fundamental importance for climate adaptation, namely the Act of 27 November 2024 amending the Environmental Protection Law and certain other acts. The act introduces an obligation for municipalities with more than 20,000 inhabitants to prepare urban climate adaptation plans. This constitutes the first such concrete legislative step to-

⁸ B. RAKOCZY, *Elastyczność zasady zrównoważonego rozwoju w kontekście adaptacji do zmian klimatu*, in *Gdańskie Studia Prawnicze*, no. 3, 2021, pp. 21-33.

wards addressing climate change and the need for legal measures in the field of adaptation.

The significance of the Act of 27 November 2024 amending the Environmental Protection Law and certain other acts extends beyond the introduction of municipal adaptation plans. For the first time, the Polish legislator expressly linked local government planning obligations with climate adaptation objectives. Municipalities with more than 20,000 inhabitants are now required to identify climate risks, assess local vulnerabilities, establish adaptation measures, and monitor their implementation. Consequently, climate adaptation has moved from a largely doctrinally reconstructed obligation to a partially institutionalised legal responsibility. Although the Act does not create a comprehensive climate adaptation regime, it represents a decisive shift toward integrating climate resilience into the tasks of local public administration.

4. Analysis of local government tasks in the area of climate and environment

The analysis of individual competences should therefore begin with the provincial self-government, for which the basic constitutional legal act is the Act of 5 June 1998 on provincial self-government⁹.

In the aforementioned Constitution of the Republic of Poland, the legislator set on the provincial government the objectives of its activities, contained in art. 11 sec. 1 of the u.s.w. This is an open catalogue, and specific standards can be derived from the provisions contained therein. Nevertheless, the «preservation of the values of the cultural and natural environment, taking into account the needs of future generations» indicated in art. 11 sec. 1 item 4 of the u.s.w. clearly indicates the necessity of not only current activities in the field of the environment, but also to take into account in these activities the effects of the passage of time and climate change and, consequently, the obligation to maintain the environment in such a state that it is available in the

⁹ Ustawa z dnia 5 czerwca 1998 r. o samorządzie województwa (Dz. U. z 2025 r. poz. 581), hereinafter: u.s.w.

future¹⁰. We are therefore talking about adaptation to changes – implicitly negative – occurring in the environment, both anthropogenic and *in the broad sense* natural. Specific activities of the provincial government in the field of environmental protection are contained in art. 11 sec. 2 item 5 of the constitutional act. This provision states that the provincial government conducts a development policy, which consists of, among others: «rational use of natural resources and shaping the natural environment in accordance with the principle of sustainable development».

This sustainable development, which is a concept taken from the above-quoted art. 5 of the Constitution of the Republic of Poland, has its definition in art. 3 point 50 of the Act of 27 April 2001 - Environmental Protection Law¹¹. According to it, it is «such socio-economic development in which the process of integrating political, economic and social activities takes place, while maintaining natural balance and the durability of basic natural processes, in order to guarantee the possibility of meeting the basic needs of individual communities or citizens of both the current generation and future generations». Natural balance, referred to in the legal definition, is a state that is expressed by balancing the mutual interaction of «man, components of living nature and the system of habitat conditions created by components of inanimate nature, with other justified ways of using the environment»¹². Therefore, the obligation of the voivodeship to ensure adaptation to climate change, by eliminating or minimizing the effects of these changes, should also be derived from this provision.

In addition to the constitutional provisions, other legal provisions also impose obligations on the provincial government or its individual

¹⁰ v. R. CYBULSKA, J. GLUMIŃSKA-PAWLIC, *Art. 11*, in B. DOLNICKI (red.), *Samorząd województwa. Komentarz*, Warszawa, 2023, pp. 151-157.

¹¹ Dz. U. z 2022 r. poz. 2556 ze zm., hereinafter referred to as: p.o.ś.

¹² B. RAKOCZY, *Konstytucja Rzeczypospolitej Polskiej*, in B. RAKOCZY, B. WIERZBOWSKI, *Prawo ochrony środowiska*, Warszawa, 2023. More on systemic environmental protection and sustainable development see also P. TULEJA, *Art. 5*, in ID. (red.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, wyd. II, Warszawa, 2023, pp. 41-43; M. FLORCZAK-WĄTOR, *Art. 74*, in P. TULEJA, *op. cit.*, pp. 267-269; P. WINCZOREK, *Komentarz do Konstytucji Rzeczypospolitej Polskiej*, Warszawa, 2008, pp. 25-26.

bodies in the field of environmental protection. These provisions, similarly to art. 11 of the Environmental Protection Act, should be used to derive standards in the field of climate resilience. The most important legal act in this matter is the Environmental Protection Law. This act, in the provision of art. 17 sec. 1, imposes the obligation to prepare a provincial environmental protection program. It must be consistent with the province development strategy in the scope in which they relate to environmental protection. In addition, art. 91 sec. 1 of the Environmental Protection Act imposes on the provincial board the obligation to prepare a draft resolution on the air protection program (hereinafter: the Air Protection Program) and to present it to the competent executive bodies of the communes and *starosts* (heads of county administration). On the other hand, sec. 3 of art. 91 of the Environmental Protection Act makes the provincial assembly responsible for adopting the relevant resolution within the statutory deadline. Therefore, the obligation of the provincial government to determine the Environmental Protection Program results from art. 91 of the Environmental Protection Act. Its purpose is to diagnose exceedances of permissible or target levels of substances, estimate future levels of air pollution and take corrective measures in this regard. Undoubtedly, these actions fall within the principle of sustainable development, referred to above. Therefore, from this legal norm, one can derive the obligation of the provincial government to ensure an appropriate level of air protection, and therefore also the necessary adaptation to climate change in the subject matter and within the framework of the regulations already in force.

Another provision that requires considering adaptation to climate change in its implementation is the obligation to prepare a spatial development plan, resulting from art. 3 sec. 3 of the Act of 27 March 2003 on spatial planning and development¹³. Regardless of the lack of normative acts that would assign the task of adaptation to climate change to provincial governments in the scope of spatial planning, this obligation should be derived directly from the previously indicated systemic provisions. The provincial spatial development plan should, in accordance with art. 39 sec. 3 of the Spatial Development Act, take

¹³ Dz. U. z 2023 r. poz. 977 ze zm., hereinafter referred to as: upzp.

into account the assumptions of the development strategy and the provisions of the landscape audit. Moreover, a plan prepared in accordance with the obligation to preserve the value of the natural environment for future generations should consider the perspective of climate change and be coherent with all local government documents in the scope of broadly understood environmental protection. The issue of climate adaptation in spatial planning will be discussed more broadly in the further part concerning the tasks of the commune. Moreover, the voivodeship marshal is the geological administration authority of the first instance, in accordance with Article 161 paragraph 1 of the Act of 9 June 2011 - Geological and Mining Law¹⁴.

Thus, the actions of the voivodeship or its individual bodies for the purpose of adaptation to climate change find their legal basis not only in the systemic local government act, but also in the competences contained in many separate legal acts in the field of broadly understood environmental protection.

Moving on to discussing the tasks related to adaptation to climate change, which may be the subject of a county, the systemic provisions concerning this local government unit are regulated in the Act of 5 June 1998 on county self-government¹⁵. The list of county tasks is included in Art. 4 sec. 1 of the systemic act. These tasks are supra-municipal in nature and cannot infringe on the tasks of municipalities.

Tasks in the field of environmental and nature protection, referred to in art. 4. sec. 1. item 13 of the Act are those that *prima facie* seem most appropriate in the context of adaptation to climate change. However, at least some specific tasks in this field should be distinguished from this broad group of activities.

One of such tasks is the environmental protection program, the obligation to prepare which results from art. 17 sec. 1 of the Environmental Protection Act. The provision does not oblige to include in its content solutions in the scope of climate adaptation. However, if we were to be guided by the presumption referred to in the introduction that it is the commune that is competent to implement the task called climate adaptation, then we should conclude that adaptation to cli-

¹⁴ Dz. U. z 2023 r. poz. 633, hereinafter referred to as: pgg.

¹⁵ Dz. U. z 2022 r. poz. 1526 ze zm., hereinafter referred to as: usp.

mate change of a supra-commune nature is a task of the county in the scope of environmental protection.

Other tasks in the field of environmental protection carried out by the *starost* (head of county administration) include, among others: issuing permits for greenhouse gas emissions, referred to in the Act of 12 June 2015 on the greenhouse gas emission allowance trading system¹⁶, issuing integrated permits and permits for the introduction of gases or dust into the air, in accordance with the Environmental Protection Law. In addition, the *starost* is responsible for issuing permits in the field of waste management, which is included in the content of the cited art. 4 sec. 1 item 13 *usp*. It should also be noted that it is the *starost* who also issues concessions, referred to in art. 22 sec. 2 *pgg*.¹⁷

All of these competences of the *starost* in the field of environmental protection, scattered across many legal acts, allow us to state that he is the body that is most certainly entitled, and even obliged, to undertake activities related to climate resilience-building policies.

In addition to tasks related to environmental and nature protection, the district also deals with matters of agriculture, forestry and inland fisheries (article 4, paragraph 1, item 14 of the Land and Forests Act). A task on the borderline between agriculture and environmental protection is issuing decisions on reclamation, issued on the basis of article 22, paragraph 1 of the Act of 3 February 1995 on the protection of agricultural and forest land¹⁸. Reclamation itself is an extremely important process not only due to land resources issues, but also climate adaptation discussed in this analysis. Proper management of owned land is crucial from the point of view of sustainable development, which – as already mentioned in the part concerning voivodeships – is a relevant element of climate resilience-building policies.

In the area of inland fishing, which is also an area burdened with the effects of climate change, the *starost* performs the tasks specified in the Act of 18 April 1985 on inland fishing¹⁹. The issuance of fishing cards and underwater fishing cards, as well as other matters specified

¹⁶ Dz. U. z 2023 r. poz. 589 ze zm.

¹⁷ Dz. U. z 2023 r. poz. 633 ze zm.

¹⁸ Dz. U. z 2022 r. poz. 2409 ze zm.

¹⁹ Dz. U. z 2022 r. poz. 883 ze zm.

in the aforementioned Act, are inextricably linked to the threats from climate change. Given the constant decrease in water levels in reservoirs and rivers, without taking resilience measures, this power of the starost may turn out to be irrelevant if there is nowhere to fish due to low water levels and their stocking.

As for the tasks of the county in the area of forestry, they are performed by the *starost*, who supervises forest management in forests that are not the property of the State Treasury, in accordance with art. 5 section 1 point 2 of the Act of 28 September 1991 on forests²⁰. He is the one who prepares a simplified forest management plan or issues decisions on changing the forest to agricultural use. The task of permanently sustainable forest management²¹ requires considering the impact of the forest on the climate and changes in the climate itself, and therefore an even more urgent need for forest protection.

Among the list of tasks of the county or its individual bodies, it is possible to indicate at least several more, which may directly or indirectly concern the issue of adaptation to climate change. These include, among others, competences resulting from the Act of 14 December 2012 on waste²². Many of the tasks indicated above, as well as those not listed separately in this analysis, are shared by county bodies with the bodies of the province or commune. Considering the regulations of the systemic act, as well as the provisions of constitutional rank, it should be stated that counties can and should also undertake activities in the field of climate resilience-building policies.

As a *de lege ferenda* postulate, it could be possible to include in the constitutional act a provision analogous to art. 11 sec. 1 item 4 of the Act on the System of Local Government. It would directly specify the need to consider such activities, e.g. in the district development strategy, prepared in accordance with separate provisions.

Another important *de lege ferenda* postulate is the development of normative solutions for public participation in the participatory bud-

²⁰ Dz. U. z 2023 r. poz. 1356 ze zm.

²¹ More on this subject in v. B. WIERZBOWSKI, *Ochrona lasów*, in B. RAKOCZY, B. WIERZBOWSKI, *op. cit.*

²² Dz. U. z 2023 r. poz. 1587 ze zm.

get related to climate change projects²³. Undoubtedly, another positive aspect of introducing such legal provisions is raising public awareness of climate change.

Polish legal doctrine notes that there is a need to enact legislation on climate protection²⁴. The most appropriate solution seems to be the framework law proposed in the literature, which could not only be a simple implementation of EU legislation objectives, but also a Polish perspective on the issue of EU climate protection and adaptation to climate change as a policy direction of the European Union.

In determining the scope of the commune's activities in the area of adaptation to climate change, it is necessary, as in the case of previous territorial governments, to begin reconstructing the provisions of the constitutional act, which is the Act of 8 March 1990 on local government²⁵. The catalogue of the commune's own tasks is specified in art. 7 sec. 1 of the Self-Government Act. In this study, the tasks regulated in art. 7 sec. 1 item 1 of the Self-Government Act will be developed – and in part – in the above-mentioned act. Similarly to the Act on Provincial Self-Government and the Act on County Self-Government, the obligation to adapt to climate change is not *expressly specified*. As indicated in the introduction, the provision of art. 164 sec. 3 of the Constitution provides grounds for presuming the commune's competence in the area of tasks that have not been delegated to other local government units. This presumption is broader than the commune's competence in local matters specified in art. 6 of the Self-Government Act²⁶.

Matters within the scope indicated in art. 7 sec. 1 item 1 are those whose connection with the issue of climate adaptation is the most obvious and the closest. Tasks in the scope of water management (art. 7

²³ J. BARANOWSKI, *A theoretical model for the use of participatory budgeting in implementing an environmental policy and combating climate change*, in *Studia Prawnicze KUL*, no. 4, 2024, pp. 189-190.

²⁴ M. STOCZKIEWICZ, *Kluczowe założenia polskiego projektu ramowej ustawy o ochronie klimatu*, in A. BARCZAK, M.M. KENIG-WITKOWSKA, M. STOCZKIEWICZ (red.), *Współczesne wyzwania prawa ochrony klimatu*, Warszawa, 2024.

²⁵ Dz. U. z 2023 r. poz. 40 ze zm., hereinafter referred to as: u.s.g.

²⁶ For more details, see S. PŁAŻEK, *Komentarz do art. 7*, in P. DREMBKOWSKI, P. SUWAJ (red.), *Ustawa o samorządzie gminnym. Komentarz*, Warszawa, 2023.

sec. 1 item 1 *in fine* usg) are generally defined obligations of the commune resulting primarily from the Act of 20 July 2017 - Water Law²⁷ and are noted here only in general terms. These include, among others, the announcement of the bathing season, which is the responsibility of the commune's legislative body, as well as the list of bathing areas, which is specified in the draft resolution prepared by the mayor and made public (art. 37 pw), as well as the obligation to include areas at risk of flooding in the commune's development strategy. Since there is no possibility of any greater interference of the commune and introduction of adaptation solutions in this matter, the commune's tasks in the scope of water management should be treated only as subsidiary to the general adaptation to climate change.

In the area of environmental and nature protection, the commune has many more competences, which can also be implemented in accordance with the task of climate adaptation. The tasks of the commune include financing environmental protection to the extent indicated in art. 403 sec. 2 of the Environmental Protection Act. The aforementioned material provisions establish a minimum threshold for this financing, so if the commune, due to the actions taken in the area of adaptation to climate change, considers it appropriate to increase the funds transferred for this purpose, then this will of course be possible. Thus, by implementing a seemingly separate task, named directly in the constitutional act, it meets the obligation to adapt to climate change, which – as mentioned above – results primarily from art. 5 of the Constitution.

Spatial planning, referred to in art. 7 sec. 1 item 1 *in principio*, is probably the greatest challenge for local government units at every level. Especially when it comes to shaping spatial development plans that will consider the need to adapt to climate change, which is a narrower concept than environmental protection or the principle of sustainable development. According to art. 1 sec. 2 of the Spatial Development Act, it is precisely these issues that are taken into account by spatial planning. The local spatial development plan is developed in accordance with the highly formalized procedure specified in the Spa-

²⁷ Dz. U. z 2023 r. poz. 1478 ze zm., hereinafter referred to as: p.w.

tial Development Act²⁸. It is this procedure that is extremely important for ensuring environmental protection. In the absence of other regulations, it is from the standards concerning environmental protection that the obligation to consider adaptation to climate change in spatial planning should be derived. It should be noted here that the amendment to the Spatial Planning and Development Act, which entered into force on 24 September 2023, introduced significant changes to the procedure for developing a spatial development plan. First of all, it abolished the institution of a study of the conditions and directions of spatial development of the commune, introducing a general plan in its place. The difference between these two documents is fundamental and lies in their type. In the doctrine, there is a division of sources of law into internal and external legal acts²⁹. External law corresponds to the universally binding acts listed in art. 87 of the Constitution. According to the amendment to the UPL, the general plans introduced will be local law acts (APM), i.e. external, universally binding acts. Previous studies of conditions were *sui generis* internal acts. Therefore, including adaptation measures or the issue of protection against climate change in an act of local law, such as a general plan, will significantly increase the rank of these norms.

The importance of the task of climate adaptation is evidenced by the fact that a draft law introducing solutions in this area in systemic and material regulations was developed in 2021³⁰. This act was supposed to enter into force in 2022. Nevertheless, the law introducing climate-related obligations was ultimately passed only in 2024. Cities with more than 20,000 inhabitants will be required to develop urban climate adaptation plans. This is a significant and necessary legislative move that may serve as a starting point for the creation of further legal acts addressing the issue of climate change.

²⁸ B. WIERZBOWSKI, *Miejscowy plan zagospodarowania przestrzennego*, in B. WIERZBOWSKI, B. RAKOCZY, *op. cit.*

²⁹ M. WIĄCEK, *Komentarz do art. 87*, in M. SAFJAN, L. BOSEK (red.), *Konstytucja RP. Tom II. Komentarz do art. 87–243*, Warszawa, 2016.

³⁰ Draft Act amending the Environmental Protection Law and certain other acts, UD 246, Sejm 9th term, available in, <https://www.legislacja.rcl.gov.pl/projekt/12350802> (accessed: 26/11/2023).

5. Legal-philosophical context: Ronald Dworkin's concept

In addition to considerations *strictly related to* legal regulations and their correlation with the topic of adaptation to climate change and the obligations of local government in this area, attention should also be paid to the issue of legal philosophy, which is a coherent element of a reliable legal analysis. It is reasonable to recall here Ronald Dworkin's concept, which assumes the division of legal norms into rules, principles and policies³¹. In Dworkin's philosophy, rules are applied on the principle of *all or nothing*. Principles also form a system of positive law, except that they may sometimes experience certain exclusions. Policies, on the other hand, are the directions of the legislator's policy, non-normative axiological values, creating the reality in which the law is established and applied. Undoubtedly, climate change underpins the legislative thinking and actions of the European Union. In Dworkin's view, this is precisely *policy*. Policy that determines the goals of the enacted law and the directions of action of the Community states, while at the same time being a model for the interpretation of law.

P. Schlag wrote that «law is an aesthetic enterprise»³². The aesthetics of law, its beauty, are expressed primarily in the external dimension³³. The external aesthetics of climate change law consist in the fact that the subject of protection is the natural environment, threatened by climate change. The law being created should therefore introduce such norms that will provide real and practical instruments for public authorities in adapting to climate change. On the other hand, the internal aesthetics of law should consist primarily in the clear, understandable and precise construction of legal acts. At the same time, the law being created should clearly indicate how important it is for the legal system to introduce legal solutions in the field of climate adapta-

³¹ R. DWORKIN, *Taking Rights Seriously*, Massachusetts, 1977, pp. 24-25.

³² P. SCHLAG, *The Aesthetics of American Law*, in *Harvard Law Review*, 115(4), 2002, p. 1049.

³³ Cfr. J. ZAJADŁO, *Estetyka - zapomniany piąty człon filozofii prawa*, in *Ruch Prawniczy, Ekonomiczny i Społeczny*, no. 4, 2016, p. 21, also J. ZAJADŁO, *Axiology of Law - from General to Specific Philosophy of Law*, in *Studia Iuridica Lublinensia*, no. 4, 2023, p. 212.

tion, because it touches on fundamental issues for every society. Therefore, the enacted law should be read in accordance with the axiology of the European Union, in which sensitivity to climate change is the primary goal of enacting and applying law. Hence the conclusion that climate change and the adaptation of law to this phenomenon, although it is not a *strictly* legal concept, using Dworkin's philosophy, should be recognized as an important direction (policy) of the European Union and the Community states³⁴. As mentioned above, Dworkin's distinction between rules, principles, and policies is intended primarily to facilitate the proper interpretation of the law, but also to establish a theoretical and philosophical foundation for its application. By pointing out that the law is an interpretive fact, Dworkin suggests, that it is precisely these rules, principles, and policies that guide that interpretation. Policies are meta normative values – axiological, social, and political – that constitute the substance of the enactment and application of the law, including legal climate protection³⁵.

Furthermore, given its fundamental importance for the development of modern law, and considering the growing significance of climate resilience in Polish and Union law, climate resilience may become a new legal principle that will be relevant to the enactment and application of law, as well as to the development of the theory and philosophy of climate protection law.

6. Conclusion

In conclusion, it should be stated that, in principle, in the Polish legal system, the role of local government in adapting to climate change is very important. The Acts on the System of Local Governments, the Constitution of the Republic of Poland and other legal acts

³⁴ v. B. WOJCIECHOWSKI, *Teoretycznoprawne założenia roli zasad prawnych w procesie stosowania prawa*, in *Zeszyty Naukowe Sądownictwa Administracyjnego*, nos. 3-4, 2021, pp. 23-25.

³⁵ W. DROPIEWSKI, *Sztuczna inteligencja w procesie orzekania, a poglądy Ronalda Dworkina*, in *Studia z zakresu nauka prawnoustrojowych. Miscellanea*, t. XV, 2025, p. 153.

at the national and EU level constitute a framework that defines the basic scope of tasks of local governments in the field of environmental protection. All these provisions should ultimately be considered with the European Union's climate change policy in mind. An analysis based on detailed legal provisions, supported by the science of legal philosophy and Ronald Dworkin's concept, allows us to state that climate resilience should be regarded as a policy objective guiding the interpretation of local government responsibilities, according to which the tasks of local government should be shaped and interpreted. Undoubtedly, the Polish legal system guarantees territorial governments sufficient freedom to develop adaptation-oriented policies, considering the needs of the local community. This, in turn, should be assessed positively, considering the provisions of the European Charter of Local Self-Government. Although the Polish legal system does not have a *strict concept* of climate change, climate resilience can be treated as a non-normative value, a direction of state and local government policy. Considering the natural situation, this is an important and urgent direction, of which territorial governments are aware. Furthermore, it is also worth noting, that the 2024 amendment to the Environmental Protection Act and other laws demonstrates that adaptation to climate change is gradually gaining independent normative significance within the Polish legal system and sets the direction in which the Polish legislature will consistently move. It is to be hoped that the perspective of climate change will become a permanent consideration for lawmakers and that climate protection law will be incorporated into future legislation at both the national and local government levels.

Abstract

En

Climate adaptation is not the subject of specific normative regulations in Polish law. Climate adaptation has not traditionally functioned in Polish law as an autonomous legal category defining public authorities' competences. However, this does not mean that the legislator is entirely indifferent to cli-

mate change. This concern is expressed indirectly through constitutional and statutory provisions, including the foundational acts governing territorial self-government. Although these laws do not impose explicitly defined responsibilities in this area, such responsibilities arise from the reference to constitutional values.

Using the example of Polish territorial self-government acts, the authors present a comparative perspective on local government tasks in which this specific extra-statutory responsibility of climate adaptation may become manifest. In relation to individual local government responsibilities, the authors present correlating provisions of applicable environmental protection laws. Reflection on legal provisions in the strict sense should be supported by a legal-philosophical foundation, and in this context, it was appropriate to draw upon Dworkin's theory of rules, principles, and policies.

The analysis of the foundational acts of territorial self-government, as well as the provisions of the Constitution of the Republic of Poland and other relevant laws, leads to the conclusion that climate adaptation is not, strictly speaking, a statutory responsibility of territorial governments. Nevertheless, it should be regarded as a policy guideline in the implementation of current tasks by territorial government units. This paper also includes observations *de lege lata* in this regard, as well as *de lege ferenda* proposals in reference to draft amendments to certain laws.

Keywords: law, territorial self-government, climate change, adaptation, environmental protection law, climate resilience

Ita

L'adattamento ai cambiamenti climatici non forma oggetto di una specifica disciplina normativa nell'ordinamento polacco, né ha tradizionalmente rappresentato una categoria giuridica autonoma idonea a delimitare le competenze dei pubblici poteri. Ciò non implica, tuttavia, un'assoluta indifferenza del legislatore rispetto alla materia: tale attenzione emerge infatti, in via indiretta, sia a livello costituzionale sia nella legislazione ordinaria, ivi comprese le leggi organiche sugli enti locali. Sebbene queste ultime non contemplino attribuzioni espressamente codificate in materia, tali funzioni si desumono dal costante rinvio ai valori di rango costituzionale.

Muovendo dall'esame della normativa polacca in materia di autonomie locali,

il contributo adotta una prospettiva comparata per individuare i compiti degli enti territoriali nei quali può manifestarsi tale specifica responsabilità extra-codicistica di adattamento climatico. In relazione alle singole funzioni locali, gli autori evidenziano i corrispondenti raccordi con la legislazione di settore in materia di tutela ambientale. L'analisi del dato positivo viene affiancata da un inquadramento filosofico-giuridico, individuato, nel caso di specie, nella teorizzazione di Dworkin su regole, principi e *policies*.

L'esame dei testi normativi sugli enti locali, unitamente al dettato della Costituzione della Repubblica di Polonia e alle altre fonti pertinenti, conduce a escludere che l'adattamento climatico costituisca, in senso stretto, una competenza tipizzata per gli enti territoriali. Esso deve ciononostante configurarsi quale direttiva d'azione (*policy guideline*) nell'esercizio delle loro competenze ordinarie. L'articolo offre infine alcune riflessioni *de lege lata* sul quadro vigente, unitamente a proposte *de lege ferenda* formulate alla luce di specifici progetti di riforma legislativa.

Parole chiave: diritto, enti locali, cambiamento climatico, adattamento, diritto dell'ambiente, resilienza climatica