

Summary

Legal protection of the rural landscape

The monograph concerns the legal aspects of rural landscape protection, and thus the concept of rural landscape as a legally protected good, as well as the role of law in its protection. The rural landscape is a special type of landscape with a rich natural and cultural identity shaped by historical processes, and currently subject to enormous anthropogenic pressure and radical transformations. The aim of this book is to characterize the system of legal norms concerning the protection of the rural landscape and to formulate a model of this system in order to draw conclusions about its essence. The aim is therefore to answer two questions. Firstly, what is protected by law as the rural landscape? Secondly, how is the rural landscape protected by law? This aim is complemented by a practical goal, which is to evaluate the system of legal norms concerning rural landscape protection and to formulate comments on its possible improvement.

Two research hypotheses are put forward in the study. According to the first, while legal norms relating to the protection of the rural landscape are diverse and scattered throughout the legal system, they exhibit functional and content-related connections due to the specificity of the rural landscape they protect, and their purpose and protective function. The second hypothesis is that within the legal system for protecting the rural landscape, it is possible to identify directions of protection in which legal norms are grouped together. However, at the same time, these norms retain their character determined by their branch-specific normative contexts. In order to verify these hypotheses, research was conducted based on the research questions. It was necessary to consider and resolve specific issues. These included: defining the concept of rural landscape; defining it as an object of legal protection and its relationship to other related protected goods; identifying the impact of other than legal and interdisciplinary concepts of rural landscape on the legal system for its protection; defining the structure of this system (the arrangement of its legal instruments and institutions and their form); and formulating a model of this legal system and explaining its essence. As a result of this research, the hypotheses were successfully verified and conclusions were formulated.

In answering the question about the subject of protection, the legal concept of rural landscape was defined. It constitutes a legally protected good with specific characteristics,

which allows it to be distinguished from the broader legal concept of “landscape.” This overarching concept is the starting point for developing the concept of “rural landscape.” The legal definition of landscape contained in Article 2(16e) of the Act on Spatial Planning and Development must be taken into account. It indicates the following characteristics: spatiality, complexity, subjectivity (humanistic and social dimension), processuality/dynamism. The specific characteristics of landscape as a legally protected good are also revealed through comparisons with other (to some extent related) objects of legal protection, such as space and spatial order, the environment and nature, cultural heritage and monuments, land and land ownership. The concept of “rural landscape” has been distinguished from the concept of “landscape” characterized in this way. Its specificity stems from its connection with rurality and specific features that can be identified by differentiating it from the concepts of rural area, agricultural landscape, urban landscape, and by defining its relationship to the concepts of “working landscape” and rural cultural heritage. On this basis, the concept of “rural landscape” was defined. It is a legally protected good constituting a specific rural type of landscape with the following attributes: genetic connection with agriculture, multifunctionality, biocultural diversity, status of a working landscape, rural dimension of cultural landscape heritage, visual and structural openness. The concept of rural landscape forms the basis for establishing a system of legal norms that regulate human behaviour that affects the rural landscape. Its specific characteristics shape its protection needs and influence the structure of the legal system for its protection.

In response to the question about ways of protecting the rural landscape in law, it should first be noted that rural landscape protection operates in various regulatory contexts, with these regulations also being influenced by protection concepts developed within specific branches of law and their links to non-legal areas in which different approaches to landscape are applied. Despite this dispersion and diversity, a permanent mechanism exists which connects the norms within the legal system for the protection of the rural landscape. This is the concept of the rural landscape, as well as the common goal of protection and the protective function of legal instruments and institutions within this system. This leads to the conclusion that, in response to the protection needs of the protected good—the rural landscape—in terms of building a specific legal protection system (especially one that differs from the approach to urban space management), such a subsystem is beginning to emerge and crystallize within the entire legal system.

Analysing the model for the legal protection of rural landscapes led to the conclusion that its elements—legal norms—can be grouped together, thereby revealing a pattern. This allows three directions for rural landscape protection to be identified: special, subjective, and systemic. While these directions are not formally distinguished in legal provisions, legal norms within the framework of these directions operate in diverse regulatory areas and therefore retain their branch specificity. Nevertheless, they can be seen to converge due to the similarity of their legal structure and the common context of specific theoretical concepts (non-legal and interdisciplinary). These include complexity theory (in particular, the concept of landscape as a complex adaptive system), the theory of protected goods (especially public goods and commons), and the concept of landscape stewardship.

An important integrating element for the model of legal protection of rural landscapes is the regulatory model set out in the European Landscape Convention (ELC). It not only

defined a holistic concept of landscape, integrating various approaches, but also formulated a model of an integrated and sustainable approach to landscape and landscape policy. Therefore, compliance with the model set by the ELC was adopted as a criterion for evaluating the Polish model of legal protection of rural landscapes. The results of this assessment indicate incomplete compliance with the ELC model, both in terms of the general model of landscape protection and its specific type—the rural landscape. Among these inconsistencies, the following can be mentioned in particular: lack of conceptual uniformity (despite the adoption of a legal definition of landscape in line with the ELC concept); incomplete compliance of individual legal protection instruments and institutions with the principles of the ELC (this applies in particular to the principle of participation, but also to integration and coherence in the approach to landscape); incomplete establishment and implementation of landscape policy (this applies in particular to the setting of landscape quality objectives in accordance with Article 6D of the ELC).

As regards the protection of rural landscapes, the following inconsistencies can be identified: lack of an integrated approach to rural landscapes; only formal universal protection (the protection of all rural landscapes is only declarative); a predominant focus on landscapes considered valuable; a sectoral approach to rural landscape (most often as a nature protection issue); insufficient consideration of the biocultural dimension of rural landscape (including uncoordinated protection regimes focused on its particular dimension); insufficient public participation; limited implementation of landscape approaches.

As regards the rural landscape, an important element of the ELC model involves integrating the landscape with other policies, in particular, spatial planning, cultural, environmental, agricultural, social, and economic policies. Research shows that landscape issues in the legal basis of agricultural policy (both at the national and EU level) are marginalized or confined to the sectoral, nature protection dimension. However, there have been some attempts (especially in soft law, strategic documents) to recognize the systemic concept of landscape and draw attention to the issue of resilience.

In the context of assessing the legal model for the protection of rural landscapes, the question finally arises as to whether this matter needs to be regulated within a single legal act. In light of the research conducted, it must be acknowledged that such a solution is impossible to implement due to the complex, multifaceted nature of rural landscapes as a legally protected good. It also seems that it would not be appropriate for the needs of protection (their diversity). It is therefore suggested to strive to coordinate individual legal instruments and institutions, especially around the ideas and concepts indicated above. In this respect, the concept of rural landscape has significant integrative potential.

In terms of the optimal model structure of the legal system for rural landscape protection and the relationship between separate areas of protection, it can be concluded that this system should have the following structure: At the highest level (ideological and conceptual), the regulation forming the basis for protection instruments should be based on a systemic approach (especially landscape approaches) and draw on the discussed concepts of landscape (especially those derived from complexity theory and the approach to landscape as a complex adaptive system). The concept of resilience has particular untapped potential in this regard. In terms of the concept of legal protection of rural landscape, it is suggested to include the objective of supporting its resilience. At lower levels, executive instruments

should be specified in terms of the impact of protective legal norms on their addressees—people who take action in relation to the rural landscape. At this level of the system, it is important to strive for the integration and coordination of legal instruments. An adequate guiding principle in this regard may be landscape approaches, understood as an integrated land-sharing philosophy. Regarding the issue of rural landscape protection in agricultural policy (and its legal basis), the general postulate is to base this policy on landscape approaches, and in particular to move away from narrow concept of landscape protection as a nature conservation issue and to incorporate the concept of landscape stewardship (protection of landscape “workers”).

An assessment of the current model of legal protection of the rural landscape has shown that the concept of landscape policy adopted in Poland is not suited to the specific nature of the rural landscape. This policy has been approached mainly as an issue of spatial planning. However, given the dominance of urban issues in this planning and the inadequacy of its tools to the specific nature of the rural spatial context, as well as the general crisis of spatial planning in Poland, this approach does not provide a good basis for an effective rural landscape protection system. This leads to the final proposal, which is to introduce mandatory landscape plans at the local level. Their main purpose should be to define landscape quality objectives (in accordance with Article 6D of the ELC).