Received: 21.01.2020
Accepted: 5.02.2020
Published: 30.06.2020

Roczniki Administracji i Prawa
Annuals of The Administration and Law
2020, XX, z. 2: s. 249-260
ISSN: 1644-9126
DOI: 10.5604/01.3001.0014.1711
https://rocznikiadministracjiiprawa.publisherspanel.com

Gabriel Radecki*
Nr ORCID: 0000-0003-1311-5635

FEES GOVERNED BY THE GEOLOGICAL AND MINING LAW IN THE LIGHT OF THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT

OPŁATY UREGULOWANE W PRAWIE GEOLOGICZNYM I GÓRNICZYM W ŚWIETLE ZASADY ZRÓWNOWAŻONEGO ROZWOJU

Summary: The article evaluates the fees governed by the act of 9 June 2011 Geological and Mining Law using the criteria determined by the directives of the principle of sustainable development. It focuses on subjects and rates of the fees in order as follows: the fees for the prospecting for or exploration of mineral deposits and an underground carbon dioxide storage complex, the exploitation fee and the fees for underground storage of substances, storage of waste, or storage of carbon dioxide. After that the article analyzes more general aspects of problem, connected with application of relevant provisions of the act of 29 August 1997- the Tax Ordinance and with the redistribution of fees. The author came to the conclusion that the fees concentrate on the fiscal function and do not sufficiently contribute to the implementation of the principle of sustainable development.

Keywords: principle of sustainable development, exploitation fee, fee for the prospecting for or exploration of mineral deposits, fee for underground storage of substances, fee for underground storage of substances

Streszczenie: Artykuł ocenia opłaty uregulowane w ustawie z dnia 9 czerwca 2011 r. – Prawo geologiczne i górnicze według kryterium wyznaczanego przez dyrektywy zasady zrównoważonego rozwoju. Koncentruje się na przedmiocie i stawkach opłat w następującej kolejności: opłata za poszukiwanie lub rozpoznawanie złóż kopalin i kompleksu podziemnego składowania dwutlenku węgla, opłata eksploatacyjna, opłata za podziemne magazynowa-

* dr; Uniwersytet Śląski, Wydział Prawa i Administracji. Źródła finansowania publikacji: środki własne autora; e mail: gabriel.radecki@us.edu.pl

nie substancji i podziemne składowanie odpadów oraz dwutlenku węgla. Następnie artykuł analizuje bardziej generalne aspekty problemu, związane z odpowiednim stosowaniem przepisów ustawy z dnia 29 sierpnia 1997 r. – Ordynacja podatkowa oraz z redystrybucją opłat. Autor doszedł do wniosku, że opłaty ogniskują się wokół funkcji fiskalnej i nie przyczyniają się wystarczająco do implementacji zasady zrównoważonego rozwoju.

Słowa kluczowe: zasada zrównoważonego rozwoju, opłata eksploatacyjna, opłata za poszukiwanie lub rozpoznawanie złóż kopalin, opłata za podziemne magazynowanie substancji, opłata za podziemne składowanie odpadów

I

The article is intended to familiarize the English – speaking reader with the results of my research conducted as part of the project entitled *Sustainable development as a factor determining the legal bases for management of geological resources of the environment*[1]. It focuses on the most important part of the research, dedicated to financial instruments.

Article 272 of the Act of 27 April 2001 Environmental Protection Law[2] lists fees for the use of the environment among legal and financial instruments for the protection of the environment (point 1), next to e.g. administrative penalties (point 2). Meanwhile, Article 273(3) of the EPL stipulates that provisions of e.g. the Geological and Mining Law[3] lay down separate cases and principles of the payment of fees for the use of the environment and administrative fines. The fees governed by this act are therefore fees for the use of the environment and financial measures for the protection thereof. Such fees are considered to be an economic measure for the protection of the environment that applies not so much the principle of sustainable development, but rather the "polluter pays" principle, intended, as set forth in Article 16 of the Rio Declaration, to internalize environmental costs, i.e. include them in the costs of the activity that caused pollution of the environment[4]. They pay a crucial role in the implementation of the provisions of the environmental protection law and in improving the condition of the environment, as an environmental policy tool allowing to either grant preference to specific measures carried out by entities using the environment,

[1] The project was financed from resources granted by the National Science Centre pursuant to decision no. DEC-2012/05/B/HS5/00632 and resulted in e.g. the publication of two books: G. Dobrowolski (ed.), *Zrównoważony rozwój jako czynnik determinujący prawne podstawy zarządzania geologicznymi zasobami środowiska,* Katowice 2016 and G. Dobrowolski, A. Lipiński, R. Mikosz, G. Radecki, *Gospodarowanie geologicznymi zasobami środowiska w świetle zasady zrównoważonego rozwoju. Zagadnienia prawne,* Katowice 2018. I would like also to express my gratitude to Ms Agata Galbierz for her significant linguistic help.

[2] JoL of 2019, item 1396, as amended, further referred to as the EPL.

[3] Currently the act of 9 June 2011, JoL of 2019, item 868, as amended, further referred to as the GML.

[4] P. Korzeniowski, *Zasady prawne ochrony środowiska*, Łódź 2010, pp. 426-439. Cf. also M. Stoczkiewicz, *Zasada „zanieczyszczający płaci" a pomoc państwa na ochronę środowiska*, „Przegląd Ustawodawstwa Gospodarczego" 2009, No. 3, pp. 10-12.

or to restrict or eliminate those measures altogether[5]. For this reason, they can and should be subject to evaluation from the point of view of the values and objectives of sustainable development. This applies in particular to exploitation fee for exploiting minerals from deposits. The fee should implement the principle of rational management of mineral deposits derived from the principle of sustainable development, and should play both protective functions and functions connected with the need to safeguard sufficient amounts of resources in the national economy[6]. Nevertheless, all fees for the use of the environment should ensure actual implementation of this principle in practice and conform to the respective directives that follow from it.

II

The assessment of fees governed by the Geological and Mining Law from this point of view requires a brief analysis of the provisions of the GML in the scope discussed herein. The provisions in question are laid down in Section VII of the GML, entitled "Fees". The Section encompasses financial instruments that differ significantly, despite partial correspondence between their names. The aforesaid differences concern not only the subject of the fee, which is obvious, but also the legal construction of the respective fees, especially the manner in which they are calculated. What is more, the legal character of the fees is not homogeneous, either. On the one hand, there are fees connected with lawful activity, especially activity carried out on the basis and within the limits of a concession, that are paid by entrepreneurs, i.e. those who – in the light of the definition laid down in Article 6(1) point 9 of the GML – were granted a concession. On the other hand, there is also the increased fee and additional fee, both of which are types of sanctions for illegal activity. However, description of these sanctions would surpass admissible quantitative limits of the article.

Only the fee for exploitation of minerals from deposits was given an individual name – it was named, as already mentioned, the exploitation fee (Article 134(1) of the GML). Hence, in order to refer to other fees, the term "quasi-exploitation fees" was adopted in the doctrine[7].

---

[5] J. Ciechanowicz-McLean, *Finansowanie i obciążenia działalności gospodarczej związanej z ochroną środowiska,* [in:] Z. Bukowski (ed.), *Księga pamiątkowa profesora Ryszarda Paczuskiego*, Toruń 2004, p. 133; J. Głuchowski, *Regulacje fiskalno-ekologiczne w prawie unijnym i międzynarodowym,* [in:] Z. Bukowski(ed.), *Księga pamiątkowa…*, p. 163; S. Moczko-Wdowczyk, *Funkcja podatków w ochronie środowiska*, „Ochrona Środowiska. Prawo i Polityka"2003, No. 1, p. 36 and 51.

[6] K. Karpus [in:] B. Rakoczy (ed.), *Prawo geologiczne i górnicze. Komentarz LEX,* Warsaw 2015, p. 707 and the literature referenced there.

[7] See A. Lipiński, R. Mikosz, *Instrumenty ochrony środowiska w nowym Prawie geologicznym i górniczym*, Katowice 1995, p. 179 and *Ustawa prawo geologiczne i górnicze. Komentarz,* Warszawa 2003, p. 400, as well as R. Mikosz, G. Radecki, *Leksykon opłat i kar pieniężnych związanych z korzystaniem ze środowiska*, Wrocław 2010, p. 110.

The construction of the quasi-exploitation fee incurred by an entrepreneur who was granted a concession for prospecting for or exploration of mineral deposits, a concession for prospecting for or exploration of an underground carbon dioxide storage complex, or a concession for prospecting for and exploration of hydrocarbons deposits and exploiting hydrocarbons from deposits is different from that of all the other fees. Pursuant to Article 133(1) and (4) of the GML, the fee is established in the concession, is payable within 14 days from the day on which the concession becomes final, is a one-off payment, and its amount depends on the area, expressed in square kilometres, covered by the concession.

Meanwhile, Articles 137-138 of the GML provide for a different mechanism for the calculation of the other fees, referred to as the self-calculation principle. Under the mechanism, the entrepreneur determines on his own the amount of fee payable for the operational period, i.e. for a half-year period calculated, respectively, from 1 January until 30 June, and from 1 July until 31 December, and before the end of the month following that period transfers the payment, without notice, into the bank accounts of the municipality in which activity is conducted, and the National Fund for Environmental Protection and Water Management (further referred to as the Fund); in the case of concessions concerning hydrocarbons the payment is also transferred into the bank accounts of the *poviat* (county) and *voivodship* (province). It is only in the event that the entrepreneur fails to fulfil this obligation, i.e. fails to make the payment of the fee on time or a wrong amount was transferred, that the concession authority can issue a decision determining the amount of the fee due.

What follows is that the fees covered by the self-calculation principle have a periodic character, and their amount changes and depends on the scale of activity carried out in a specific operational period, and more precisely on: the amount of minerals extracted during the period in question (Article 134(1) of the GML), stored substances, stored waste or carbon dioxide (Article 135(2-4) of the GML). The rates of all quasi-exploitation fees are indicated in the GML, whereas the rates of the exploitation fee are specified in the annex thereto.

The income from all the fees referred to above is in 60% the income of the municipality within the boundaries of which the activities are performed and the remaining 40% is the income of the Fund; the only exception to this rule is hydrocarbons, in the case of which the share of the Fund in the fee is 10%, and the remaining part is divided between the *poviat* and the *voivodship*, each of which receives 15% of the income from the fees (Article 141(1) and (1a) of the GML). If the activity is carried out in more than one municipality, the income from the fee is the income of the municipalities in proportion to the size of the surface area covered by the activity, amount of extracted minerals, amount of substance injected to the formation, amount of waste, or amount of carbon dioxide. Likewise, if the activity is carried out within maritime areas of the Polish Republic, the income from the fee as a whole constitutes the revenue of the Fund (Article 141(2) and (3) of the GML).

Pursuant to provisions of Article 142(1) of the GML, the provisions of the act of 29 August 1997 – the Tax Ordinance[8] concerning tax obligations apply as appropriate to all of the fees referred to above. The competences of the authorities defined by these regulations are applicable to the creditors. This means that the obligation to pay the fee has a public law character, similar to obligations to pay taxes or other public levies.

The above remarks and observations on the fees allow us to assess them using the criteria determined by the directives of the principle of sustainable development.

III

The fees for the prospecting for or exploration of mineral deposits and an underground carbon dioxide storage complex are not fully in line with these directives[9]. It is indeed difficult to see any objective, beside a fiscal one, these fees are supposed to fulfil. Exploratory activity intrudes upon the environment far less that other ventures governed by the Geological and Mining Law; in particular, as a general rule, it does not result in damage to mineral deposits – just the contrary, it helps to identify and document them.

Pursuant to Article 133(1) of the GML, the amount of the fee is based on the area covered by the concession, whereas in the light of Article 133(2-3c) of the GML, the rate for exploration or prospecting and exploration is two times the rate for prospecting alone, which delivers less documented information[10]. The rate differs depending on what is examined. The highest rate for activities involving hard coal and uranium is more than two times the rate for brown coal and more than five times the rate for other minerals whose deposits are covered by mining ownership, with the exception of hydrocarbons. For hydrocarbons, the rate is a little lower, and is the same for prospecting and exploration, even though their exploitation from the deposit is profitable. A rate this low gives privilege to prospecting for and exploration of those selected minerals, as it stimulates this type of activity more than measures consisting in determination of the geological structure of the country in the remaining part, especially as regards other energy minerals. Likewise, priority was also given to prospecting for (and exploration of) an underground carbon dioxide storage complex. This relatively narrow selection of objectives that were given support through the decreasing of the quasi-exploitation fee

[8] JoL of 2019, item 900, as amended, further referred to as the TOA.

[9] G. Radecki [in:] *Zrównoważony*…, pp. 312-313 and [in:] G. Dobrowolski, A. Lipiński, R. Mikosz, G. Radecki, *Gospodarowanie*…, pp. 339-340.

[10] Pursuant to Article 6 of the GML, prospecting for means the carrying out of geological works in order to identify and preliminarily document mineral deposits, ground water or an underground carbon dioxide storage complex (point 7), whereas exploration is defined as the carrying out of geological works in the area of mineral or groundwater deposits or an underground carbon dioxide storage complex with respect to which preliminary documentation process was previously carried out (point 13). What follows is that prospecting for precedes exploration, which utilizes and supplements the preliminary documentation of a mineral deposit obtained through prospecting.

can raise doubts, as it may to a certain extent reduce other valuable prospecting initiatives by increasing their costs and thus decreasing their profitability.

The mechanism for the calculation of the fee is simple and does not present difficulty for the obligor since, as set forth in Article 133(1) and (4) this is a one-off payment determined in the concession. The concession, like any other concession provided for by the Geological and Mining Law, furthermore specifies the area within which the intended activity is to be conducted (Article 30(1) point 2 of the GML) – in the case analysed herein it cannot exceed 1.200 square kilometres (Article 31(2) of the GML). The area is also the only factor that determines the amount of the fee applicable to a specific subject of prospecting of exploration, as the rate of the fee was defined with reference to a square kilometre of area covered by this activity and does not differ depending on e.g. geological conditions in which the activity is conducted. These conditions may, in fact, either facilitate or impede the carrying out of the activity, thus influencing the amount of funds the carrying out of the activity requires.

IV

Meanwhile, the amount of the exploitation fee depends on the amount of minerals extracted during the operational period. Annex to the GML specifies the rates of this fee for units of measurement applicable to specific types of minerals, or weight, or – less often – volume. The rates are fixed, and – in line with provisions laid down in Article 134(3) of the GML – can only be reduced to 50% for the accompanying mineral and concomitant minerals extracted from deposits of hydrocarbons, which is viewed as a financial incentive to maximize the use of resources in the deposits under exploitation[11]. The status of the accompanying mineral is determined predominantly in the wording of the concession decision[12].

Nevertheless, the aforementioned annex offers better incentives to undertake preferred activity. One example of these is the zero rates for the extraction of methane from hard coal (point 31) and the extraction of thermal waters (point 57) – the latter reflects a postulate presented in the literature with respect to the law not in force that this kind of exemption can e.g. contribute to the use of thermal waters for heating purposes and thus lead to decreasing air pollution[13]. In the remaining cases, without specialist geological and economic knowledge, it is difficult to pin down the

[11] M. Ptak, *Funkcjonowanie opłat z tytułu wydobycia kopalin w Polsce i innych krajach europejskich,* [in:] A. Graczyk(ed.), *Problemy koncepcyjne i implementacyjne zrównoważonego rozwoju,* Wrocław 2011, p. 280 and the literature referenced there.

[12] A. Lipiński, R. Mikosz, *Ustawa*…, p. 392 and R. Mikosz, G. Radecki, *Leksykon*…, pp. 114-115.

[13] A. Lipiński, *Opłata eksploatacyjna w prawie geologicznym i górniczym*, „Przegląd Ustawodawstwa Gospodarczego" 1999, No. 11, p. 19. Cf. Also the view that this solution leads to "increasing the share of renewable energy" – M. Ptak, *Funkcjonowanie*…, p. 280 and the literature referenced there.

criteria that were adopted while determining the rates. Indeed, these criteria were not included in the act and the statement of reasons to the draft version thereof.

The rates of the exploitation fee only include the type of mineral and how much of it was extracted in an operational period; other factors related to conditions in which a mineral is extracted and how it is put on the market are not factored in. Further still, the rate cannot go up or down. This type of flexibility would make it possible to grant a sort of bonus or relief for pro-environmental measures, i.e. for the use of extraction techniques preventing an adverse impact on the environment and at the same time going beyond these protective measures that follow directly from the law or from derived administrative acts that specify the obligations of the entrepreneur in this regard. Examples could include extraction cuts having a pro-environmental effect, or rational use of the accompanying mineral that is often treated as waste and is collected on dumps. The criterion for an increase or decrease of the exploitation fee could be the geological and economic conditions of extraction. Yet another factor determining the rate should be the value of the extracted mineral as it in fact determines whether extracting activity is profitable or not. Making the rate dependent solely on the amount of extracted minerals means the rate is detached from the current price of the mineral and thus from current profitability of the extraction process. Nevertheless, it is beyond any doubt that fixed rates, not linked to the conditions and circumstances referred to above, make it easier for entrepreneurs to fulfil their obligations related to the principle of self-calculation.

The exploitation fee furthermore concentrates on fiscal goals and overlooks other values that should be implemented as part of the principle of sustainable development[14]. It is particularly difficult to subscribe to the view that exploitation fees play extra-fiscal functions, including stimulating functions, and encourage rational management of raw minerals[15], unless one assumes that the very establishment of the fee is a negative stimulus reducing environmental disruption[16].

V

The rates of quasi-exploitation fees for activity involving underground storage of substances, storage of waste, or storage of carbon dioxide are rightly differentiated according to the type of substance or waste, which makes the rate to go up if the substance or waste have properties that increase the risk of negative consequences to the environment and human health if placed in the rock mass[17]. However, the small range and low level of accuracy of these criteria raises questions. Article 135(2) of the

[14] Cf. more broadly G. Radecki [in:] *Zrównoważony*…, pp. 313-324.
[15] M. Ptak, *Funkcjonowanie*…, p. 280 and the literature referenced there.
[16] K. Karpus [in:] *Prawo*…, p. 710.
[17] In Article 6(1) point 5a and 6 of the GML, both an underground carbon dioxide storage and an underground waste storage are defined as parts of the rock mass having specific properties.

GML specifies the rate applicable to the storage of liquid substances as well as rates, lower by almost half and nearly identical, for the storage of gas and other substances. Therefore, the act lays down two rates that depend on the state of aggregation, i.e. on whether the form of a substance is liquid or other, and do not change based on the potential harmfulness of a substance resulting e.g. from its chemical composition. It is beyond any doubt, however, that a liquid substance may be more dangerous when stored underground due to the increased risk of polluting ground waters.

The rate applicable to underground storage of a ton of dangerous and radioactive waste is identical and more than ten times the rate for waste other than dangerous and neutral, which in turn stands at approximately 1.3 times the rate for neutral waste (Article 135(3) of the GML). Potential harmfulness of waste as a criterion affecting the rate for the storage of waste does not cause reservations, since raising the costs of storage may in fact reduce the scale of storage and thus minimize the risk of an adverse environmental impact and at the same time implement the "polluter pays" principle.

It is up for debate whether these rates should be more diverse so as to take into account specific properties or composition of different types of waste. Another issue not factored in when establishing the rate of the fee was related to waste management, and in particular the priorities of waste management laid down in Article 17 of the Act on Waste of 14 December 2012[18], which introduces a hierarchy of ways of dealing with waste, wherein preference is given to processes involving the use of waste, whereas the disposal of waste, including storage thereof, comes last in the hierarchy[19]. Therefore, the fee for underground storage of waste is, to the extent analysed herein, neutral in that its rate does not discourage entities from disposing waste that could be recovered.

Underground storage of waste carries a smaller fiscal burden than above-ground storage. Only the rate for above-ground storage of dangerous waste can be compared to some of the rates established in the Regulation of the Council of Ministers of 22 December 2017 on unit fees for the use of the environment[20] for waste containing dangerous substances, although it is still two or three times lower than other rates laid down in the law as regards this matter. Meanwhile, the rate for underground storage of waste other than dangerous and neutral waste was set at a level two times lower than the lowest rate specified in the Regulation. The disproportions are even bigger in the case of the rate applicable to underground storage of neutral waste. This means that underground storage of waste, although technically more complicated, more cost-consuming and risky, is the preferred form of storage in the Polish legal system. This is understandable. This way of storing of waste does not always

[18] JoL of 2019, item 701, as amended.
[19] The hierarchy is as follows: 1) waste prevention, 2) preparing for re-use, 3) recycling, 4) other recovery processes, and 5) disposal.
[20] JoL of 2017, item 2490.

boil down to waste disposal in a landfill; instead, it often serves to fill mine voids (backfilling of pits), which can be classified as recovery of waste[21]. Furthermore, its impact on spatial order and possible ways of using the area for other purposes is not as negative as it is in the case of above-ground storage.

In Article 135(4) of the GML, the rate for underground storage of carbon dioxide is set at the same level as the rate for underground storage of waste other than dangerous and neutral waste, i.e. as the lowest possible rate for waste. It is beyond any doubt, however, that the adoption of a zero rate could contribute to the promotion and growth of this activity.

VI

Reflections on the compatibility of provisions of GML regulating fees with the directives resulting from the principle of sustainable development furthermore make it possible to formulate more general conclusions, applicable to all fees[22].

The character and scope of responsibility for these fees largely follows from Article 142(1) of the GML, which includes a reference to the application of relevant provisions of the TOA concerning tax obligations and laid down in Section III of the TOA. The reference in question equates the person or entity obligated to pay the fee with the taxpayer and gives his or their responsibility in this regard similar to fiscal responsibility. This is indicative of the fiscal dimension of the fees, which consists in safeguarding in the first place the interests of the beneficiary of a public levy through ensuring that the levy is paid. This is to be achieved e.g. thanks to provisions laid down in chapter 15 Section III of the TOA, which establish third-party responsibility for tax arrears of the taxpayer, i.e. according to the definition laid down in Article 51 § 1 of the TOA, for taxes not paid when they are due. Based on these provisions, used in connection with Article 142(1) of the GML, third parties can be held responsible for fees not paid in time by the obligor.

The geological and mining law does not provide for any preferential solutions, especially ones that would make it possible for the obligor to be exempted from having to pay the fee in exchange for achievement of a positive effect for the environment. This is certainly not offered by the provisions concerning fiscal obligations, which apply to these fees as appropriate. Spreading out payments of tax arrears, the cancellation of outstanding payments or deferral was, first of all, left wholly to the discretion of the tax authority, and secondly, was made conditional upon the taxpayer's important interest and public interest, which does not necessarily have to be connected with protection of the environment.

[21] A. Lipiński, R. Mikosz, *Ustawa*…, p. 19.

[22] Cf. more broadly G. Radecki [in:] *Zrównoważony*…, pp. 329-344 and [in:] G. Dobrowolski, A. Lipiński, R. Mikosz, G. Radecki, *Gospodarowanie*…, pp. 331-336 and 352-355.

It would be particularly relevant to establish a mechanism similar to the one provided for in Articles 316-321 of the EPL with respect to financial sanctions governed by this law. The mechanism provides for reducing the amounts due by funds allocated for implementation of measures intended to eliminate the causes of the imposition of these sanctions. This solution was considered one of the most important instruments motivating the prevention of environmental pollution[23]. The Geological and Mining Law could also introduce such incentives to make investments reducing negative impacts of mining activity on the environment and improving the effectiveness of this activity, including improvements in the level of safety and the use of mineral deposits through extending extraction to geologically inconveniently located parts of deposits. This could make it possible to factor in these values that are important for the realization of the principle of sustainable development and that are – as pointed out above – were not sufficiently included in the provisions concerning exploitation and quasi-exploitation fees. In the context analysed here, it is crucial that the applied bonuses deliver environmental benefits[24].

VII

That said, a key issue is the redistribution of the fees, i.e. the purposes for which, under the law, the income from these fees is allocated. Indeed, financing of environmental protection measures is an important element of the principle of sustainable development[25]. Sourcing of funds for the protection of the environment can be considered the main function of financial instruments of environmental protection law[26]. However, the fees laid down in the Geological and Mining Law only fulfil this function to a marginal extent, for they are not fully connected with environmental protection as municipalities, and in the case of hydrocarbons also other local government units, can within the limits of the law manage the income from these fees at their own discretion, meaning that they are not obliged to allocate them to measures intended to protect the environment[27].

Only a portion of proceeds from the fees, namely a share of the Fund, which stands at 40% and in the case of hydrocarbons – 10% of the fee, must be allocated to specific goals. What is more, Article 401c(2) and (3) includes a reservation that the Fund al-

[23] K. Gruszecki, *Glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 30 listopada 2000 r., sygn. akt IV SA 1340/98,* „Orzecznictwo Sądów Polskich" 2003, No. 1, item 14, p. 58.

[24] Cf. K. Gruszecki, *Realizacja zasady zrównoważonego rozwoju środowiska („nasadzenie zastępcze")*, „Zeszyty Naukowe Sądownictwa Administracyjnego" 2007, No. 5-6, p. 38 and A. Erechemla, *Prewencyjne cechy opłat za korzystanie ze środowiska,* [in:] *Prawo ochrony środowiska i prawo karne. Książka jubileuszowa z okazji 40-lecia pracy naukowej [Profesora Wojciecha Radeckiego],* Wrocław 2008, p. 87.

[25] Z. Bukowski, *Zrównoważony rozwój w systemie prawa*, Toruń 2009, p. 472.

[26] W. Radecki, *Fiskalizacja prawa ochrony środowiska*, [in:] R. Mikosz (ed.), *Rozprawy prawnicze. Księga pamiątkowa dla uczczenia pracy naukowej Profesora Antoniego Agopszowicza*, Katowice 2000, p. 246.

[27] A. Lipiński, R. Mikosz, *Instrumenty*…, p. 175.

locates no less than half of is proceeds from the fees, minus costs of management of these proceeds, which reduces the amount allocated to specific goals. Although their scope is limited, these fees fully contribute to implementation of the principle of sustainable development as the Fund is obliged to allocate them in particular to finance the needs of mining industry as regards reducing the adverse environmental impact resulting from extraction of minerals and liquidation of mining plants.

The fees are predominantly the same source of income as all the other public proceeds. This means that their character is primarily fiscal, although they were classified as financial measures for the protection of the environment. They serve mainly fiscal purposes – are intended to raise money, regardless of other benefits that could be achieved by using them.

VIII

To recapitulate, it should once more be stressed that the fees governed by the Geological and Mining Law do not sufficiently contribute to the implementation of the principle of sustainable development. They predominantly concentrate on the fiscal function. Values important from the point of view of the sustainable development principle were not sufficiently covered in provisions concerning the applicable rates. As a result, the fees do not stimulate attitudes and behaviours that reflect the directives following from this principle. The Geological and Mining Law furthermore does not provide for any relief mechanisms that would on the one hand suit the specific nature of mining activity and on the other one make the award of the relief conditional upon reducing negative impacts of this activity, especially on the environment. Last but not least, the fees do not play a redistributory role as only a minor proportion thereof must be allocated to purposes that fulfil the requirements of the principle of sustainable development.

References

Bukowski Z., *Zrównoważony rozwój w systemie prawa*, Toruń 2009.

Ciechanowicz-McLean J., *Finansowanie i obciążenia działalności gospodarczej związanej z ochroną środowiska,* [in:] Z. Bukowski (ed.), *Księga pamiątkowa profesora Ryszarda Paczuskiego*, Toruń 2004.

Dobrowolski G., Lipiński A., Mikosz R., Radecki G., *Gospodarowanie geologicznymi zasobami środowiska w świetle zasady zrównoważonego rozwoju. Zagadnienia prawne*, Katowice 2018.

Dobrowolski G. (ed.), *Zrównoważony rozwój jako czynnik determinujący prawne podstawy zarządzania geologicznymi zasobami środowiska*, Katowice 2016.

Erechemla A., *Prewencyjne cechy opłat za korzystanie ze środowiska*, [in:] *Prawo ochrony środowiska i prawo karne. Książka jubileuszowa z okazji 40-lecia pracy naukowej [Profesora Wojciecha Radeckiego]*, Wroclaw 2008.

Głuchowski J., *Regulacje fiskalno-ekologiczne w prawie unijnym i międzynarodowym*, [in:] Z. Bukowski (ed.), *Księga pamiątkowa profesora Ryszarda Paczuskiego*, Toruń 2004.

Gruszecki K., *Glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 30 listopada 2000 r., sygn. akt IV SA 1340/98*, „Orzecznictwo Sądów Polskich" 2003, No. 1.

Gruszecki K., *Realizacja zasady zrównoważonego rozwoju środowiska („nasadzenie zastępcze")*, „Zeszyty Naukowe Sądownictwa Administracyjnego" 2007, No. 5-6.

Korzeniowski P., *Zasady prawne ochrony środowiska*, Łódź 2010.

Lipiński A., *Opłata eksploatacyjna w prawie geologicznym i górniczym*, „Przegląd Ustawodawstwa Gospodarczego" 1999, No. 11.

Lipiński A., Mikosz R., *Instrumenty ochrony środowiska w nowym Prawie geologicznym i górniczym*, Katowice 1995.

Lipiński A., Mikosz R., *Ustawa prawo geologiczne i górnicze. Komentarz*, Warszawa 2003.

Mikosz R., Radecki G., *Leksykon opłat i kar pieniężnych związanych z korzystaniem ze środowiska*, Wrocław 2010.

Moczko-Wdowczyk S., *Funkcja podatków w ochronie środowiska*, „Ochrona Środowiska. Prawo i Polityka" 2003, No. 1.

Ptak M., *Funkcjonowanie opłat z tytułu wydobycia kopalin w Polsce i innych krajach europejskich*, [in:] A. Graczyk (ed.), *Problemy koncepcyjne i implementacyjne zrównoważonego rozwoju*, Wrocław 2011.

Radecki W., *Fiskalizacja prawa ochrony środowiska*, [in:] R. Mikosz (ed.), *Rozprawy prawnicze. Księga pamiątkowa dla uczczenia pracy naukowej Profesora Antoniego Agopszowicza*, Katowice 2000.

Rakoczy B. (ed.), *Prawo geologiczne i górnicze. Komentarz LEX*, Warszawa 2015.

Stoczkiewicz M., *Zasada „zanieczyszczający płaci" a pomoc państwa na ochronę środowiska*, „Przegląd Ustawodawstwa Gospodarczego" 2009, No. 3.