

ISSUES OF THE PROFESSION OF A LAND CLASSIFIER

Szczepan Budkowski

Summary

From the legal point of view, the soil science classification is regulated by the Geodetic and Cartographic Law, where it is defined as the division of soils into valuation classes due to their production quality determined on the basis of the genetic characteristics of the soil. The executive act regulating the issue of soil science classification of land are the provisions included in the Regulation of the Council of Ministers of September 12, 2012 on soil science classification of land (Journal of Laws 2012, item 1246). The aim of the article was to present the problems resulting from the lack of regulation of the profession of land classifier and the lack of uniform administrative procedures regarding the selection of the classifier for the purposes of the classifications. The research method used is the case study. The method was supported by the analysis of legislation in the above-mentioned scope.

Key words

land and building register • soil science classification • law • classifier • space

1. Introduction – historical outline and research issues

Soil science classification of land is closely related to keeping land and property registers by starostas. In accordance with the provisions of law (Polish *Geodetic and Cartographic Law*), Article 2, point 12, whenever the soil science classification of land is referred to, it is understood as the division of soils into valuation classes due to their productivity determined on the basis of their genetic characteristics. Pursuant to the above-mentioned act, keeping both soil science classification of land as well as land and property records is the responsibility of a starosta [Budkowski and Litwin 2019]. Data that is the subject of the decision issued by the authority in the field of soil science classification of land, are the elements of the subject information set of land and property records in accordance with Article 23, section 3, point 1 (g) of the *Geodetic and Cartographic Law* [pgik].

The soil science classification of land dates back to the inter-war period, drawing on the experience of the former Austrian and German cadastre. It was then for the first time that, under the so-called agricultural reform of 1920, the land parcellation plan was also to include a 'detailed classification of land' [*Agricultural Reform*].

Another legal act imposing the obligation to carry out a general soil science classification of agricultural land based on the principles of soil science was imposed by the Decree of February 2, 1955 *on the land and property records*. The basic legal acts for the implementation of land classification were:

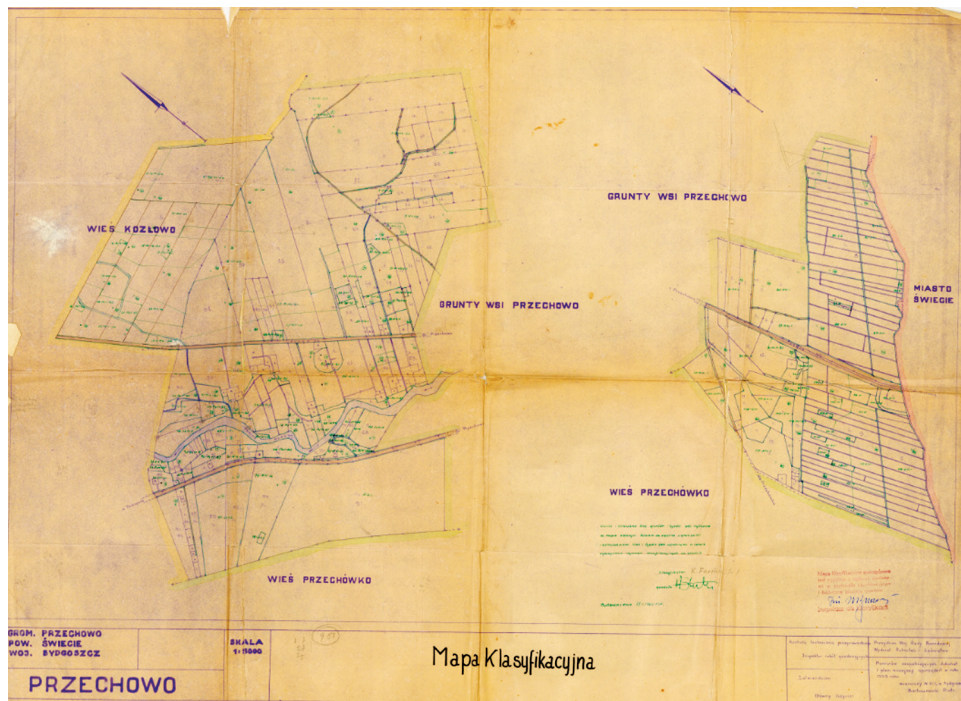
- 1) Regulation of the Council of Ministers of June 4, 1956 *on the classification of land* with an attached table of land classes,
- 2) Regulation No. 127 of the Minister of Agriculture of June 14, 1956 *on the principles and methods of technical implementation of land classification and the required qualifications for persons carrying out this classification*,
- 3) *Instruction on land classification*, as an appendix to the regulation.

Classifications made from 1956 to 1970 in many places are still the only source of information on the productivity of soils [Bielska and Kupidura 2010]. Results of the work were approved by rulings issued by the Presidia of the Poviats National Councils and are still valid due to the fact that the productivity of soils is determined on the basis of their genetic characteristics, and these are relatively constant [Cymermann 2011]. The regulation of June 4, 1956 on the classification indicated that:

- a) the classification is carried out in a uniform manner for the entire country, on the principles set out in the regulation and on the basis of the table of land classes,
- b) the land classification project was developed by a classifier authorised to perform these works by the Presidium of the National Council,
- c) authorisation to develop a classification project could be issued to persons having the qualifications specified by the Minister of Agriculture in Regulation No. 127 of June 14, 1956,
- d) the land classification project was checked on the spot by an inspector authorised by the Presidium of the Voivodeship National Council.

Classification maps were developed in Poland in the 1960s [Hopfer and Urban 1975]. The classification maps prepared in accordance with the provisions were studies usually made in the scales of 1:5000 and even 1:25000 [Strzemiński et al. 1964]. Thus, such studies were affected by certain errors related to the accuracy of determining the boundaries of classification contours [Siuta and Witek 1973]. In addition, all maps created in the process of establishing the records, including classification maps from that period, were analogue.

Another legal act regulating the issues of contemporary classification is *the Geodetic and Cartographic Law* [pgik] of May 17, 1989. It should be emphasised that under Art. 59 of this Act, executive regulations issued on the basis of the decree of February 2, 1955 *on land and property records*, remained in force until the executive regulations provided for in this act were issued, unless they were inconsistent with it. On November 29, 2012, the regulation of the Council of Ministers of September 12, 2012 *on land classification* entered into force, specifying the official land table and the method and procedure for soil classification of land. However, the regulation does not regulate the profession of a classifier.



Source: Author's own studies

Fig. 1. An example of a classification map of a survey from 1954

2. Research results

The soil science classification is carried out by a starosta in two modes. It may be performed upon request of a party or ex officio. Classification carried out ex officio may apply to land:

- a) which have never been classified before,
- b) drained after 3 years since the implementation of water drainage,
- c) on which a starosta ordered a modernisation of land and property records,
- d) after a natural disaster causing changes in the soil environment,
- e) afforested for the Rural Development Programme.

In the case of classification carried out upon request, *the Regulation of the Council of Ministers on the soil science classification of land of September 12, 2012* [klas 2012] does not specify precisely the cases that may be carried out in the upon request mode. The professional experience of the author of the publication shows that in such a case, the initiation of the classification process is sometimes quite discretionary.

An important issue already raised in the previous chapter of the published article is the lack of regulation of the profession of a classifier. It is true that in section 5 paragraph 1, the regulation defines the activities that include the soil science classification of land, nevertheless paragraph 2 indicates that the person to carry out these activities is authorised by a starosta. The lack of regulations applies not only to the competences of the persons performing the classification, but also to the authorisation procedure itself. The author of the publication decided to conduct research in this area, asking for information on the procedure for obtaining authorisations for the implementation of soil science classification of land in several starosties upon request, using the case study research technique as one of the qualitative research methods. As a result of the inquiry concerning the classification works and the method of obtaining the authorisation, the author received various information depending on the locations of individual starosties. Due to the functioning of *the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation)*, the author of the publication does not decide to provide information regarding the personal details of people responding to inquiries, as well as the local jurisdiction of selected starosties [RODO].

Particular starosties approached the issue of authorisations very differently. In response to the inquiry about the possibility of obtaining authorisation to perform works in the field of soil science classification of land in the upon request mode:

- a) Starosty No. 1 – informed that such authorisation can be obtained for the need to develop a specific order. Documents confirming 2 years of professional practice in the field of soil science classification of land carried out under the supervision of another classifier and a postgraduate diploma should also be appended to the application. In addition, a list of at least 3 works accepted for the documentation centre should be attached. It was also informed that the selection of a classifier upon request takes place by way of a letter of inquiry, and the list of classifiers is not kept. As a result of another inquiry, it was possible to establish that the above requirements for classifiers result from the ordinance of the starosta;
- b) Starosty No. 2 – provided the information that ‘(...) *in accordance with the Regulation of the Council of Ministers of June 12, 2012 on the soil science classification of land (Journal of Laws 2012, item 1246), the application should be appended with:*
 - *Classifier information sheet,*
 - *List of performed works in the field of land classification certified by the relevant Centres for Geodetic and Cartographic Documentation (minimum 10 works in the last 5 years),*
 - *Graduation certificate confirming education,*
 - *Certificate of completion of a course/postgraduate study in the field of land classification,*
 - *Other documents influencing the assessment of professional achievements, if in the opinion of the person concerned, they deserve to be taken into account;*
- c) Starosty No. 3 replied that the authorisation ‘(...) *is granted to a classifier indicated by the interested party (applicant), bearing the costs of carrying out the classification, for*

a specific case. In the letter, the starosty also informed about a list of classifiers from which the applicant can select a classifier;

- d) Starosty No. 4 informed that the authorisation to perform classification works can be obtained indefinitely until further notice, after presenting documentation confirming professional experience and information from the Central Registration And Information On Business (CIDG) or an excerpt from the National Court Register (KRS) on conducting business activity in this area. The source of the above requirements is the ordinance of the starosta;
- e) Starosty No. 5 indicated: *'In response to your speech regarding the soil science classification in the (here the name of the powiat), I would like to inform you that we are not interested.'* The author turned to the starosty again in order to obtain information on the procedure of obtaining authorisations to perform the soil science classification of land, this time only getting information by phone that the content of the letter is related to the specificity of the starosty which (as mentioned in the telephone conversation) *"has its own classifier"*, who works in the area.

The research was carried out on randomly selected starosties from various voivodeships in Poland. Five starosties in relation to the total of 314 powiats [GUS] is a very modest representation, which allows, however, to identify the differences. When analysing the positions of individual starosties regarding the implementation of soil science classification of land upon request, it can be concluded that the nature of the classification works carried out in Poland is not unitary in terms of administration. The differences relate primarily to the assessment of the classifiers' achievements. Based on the research, it can be concluded that each of the starosties has developed its own algorithm for the assessment of professional achievements, which in turn translates into differences in the selection of a classifier. Some starosties currently keep lists of classifiers, which were required by archival regulations that are no longer applicable today. Keeping lists by some starosties and not keeping them by others, as well as the fact that the selection of a classifier in some starosties may also be influenced by the applicants may lead to violation of the principle of competition. Situations in which the selection of a classifier by the applicant is the only criterion may be very dangerous from the legal point of view and create conditions for violating the impartiality and independence of classifiers, because the applicants themselves, without the knowledge of the starosties, settle accounts with soil scientists. Similar conclusions were drawn by the audit carried out by the Supreme Audit Office [reg. No. 28/2021/P/20/059/LBY], indicating that *'classifiers, when issuing opinions on the soil science classification of land, were in a situation of double loyalty, on the one hand towards the public interest, and the private interest on the other. Such a conflict of interest is widely regarded as one of the mechanisms leading to corruption.'*

The lack of clearly defined regulations in the field of requirements for classifiers, as well as a nationally uniform procedure for selecting classifiers led to an unauthorized cession of public authority in the field of official soil classification to a party interested in resolving the case. The Supreme Audit Office also indicates that *'in 71% of the*

controlled cases (10 out of 14) the soil valuation class was underestimated. This proves that the starostas do not properly fulfil the role of the guardians of the priceless natural resource which is agricultural and forest land. The number of differences caused by the existence of 'poviat law' indicates the necessity to undertake legislative actions in the scope of determining the requirements for classifiers and the definition of a uniform procedure.

It should be noted that the topic has already been discussed several times at the ministerial level, and the last reply of the Minister of Agriculture and Rural Development of May 27, 2020 [case ref. No.: GZ.ge.641.1.2020] indicates the existing dispute over powers in this regard. The competent minister for rural development was obliged to issue, by way of an ordinance, the conditions to be met by entities carrying out land classification activities and the necessary professional qualifications of persons performing this classification. Delegation of the regulation by the Judgement of the Constitutional Tribunal of December 5, 2007, file ref. No. K 36/06 was, however, found unconstitutional. The Constitutional Tribunal indicated that the relevant act of law to regulate the profession is a legal act with the rank of an act, not a regulation. In addition, the dispute also concerned the administrative belonging of the soil classification of land, the matters of which - due to the wide spectrum of impact - are partly within the scope of the activities of the Ministry of Agriculture and Rural Development; the Ministry of the Environment in terms of environmental protection issues; the Minister of Development in terms of planning and spatial development issues, as well as the performance of the tasks of Geodetic and Cartographic Service, and in particular conducting soil science classification of land as a component of land and property records; the Minister of Finance in the scope of taxation; and the Minister of Justice when it comes to keeping land registers and civil law transactions. It was not until *the Act of May 7, 2009 on the revocation or amendment of certain authorisations to issue executive acts (Journal of Laws No. 98, item 817)* that *the Geodetic and Cartographic Law [pgik]* was changed, transferring the obligation to issue the regulation to the Council of Ministers. On November 29, 2012, *the Regulation of the Council of Ministers of September 12, 2012 on the soil science classification [klas 2012]* entered into force, which, however, does not regulate the issues related to the profession of a classifier.

When analysing further correspondence between the Ministry of Agriculture and Rural Development and the Ministry of Infrastructure and Construction, as well as the Ombudsman and the Permanent Committee of the Council of Ministers, it should be noted that the issue of professional regulation remains an open issue, for example due to the stance of the Minister of Investment and Development (letter from July 13, 2018 sign: DAB-VII.070.25.2018 and from July 31, 2018 sign: DAB-VII.070.33.2018, addressed to the Ombudsman) in which it is claimed that the Geodetic and Cartographic Law is not the appropriate act to regulate the issue of possible eligibility regarding soil science classification of land. In the Minister's opinion, this issue should be regulated in an act of statutory rank remaining within the exclusive competence of a minister responsible for the soil science classification of land, i.e., Minister of Agriculture and Rural Development.

3. Conclusions and summary

Referring to the issues of soil science land classification, it should be stated that the regulation of the profession a classifier as well as the administrative procedures related to it should be a priority for the authorities in the near future. Soil science classification of land is an indispensable support in the field of arranging large-scale farms, developing programmes and plans for the economic development of rural areas, selecting plant species and varieties to local climatic conditions, optimising fertilisation, assessing melioration needs and designing melioration systems, land consolidation and replacement, soil protection or reclamation. It is also worth noting that unreliably carried out classifications may lead to changes in the use of agricultural lands of classes I–III, contributing to the reduction of the natural resource, that is agricultural and forest land, and also cause a loss to both budget of communes coming from the agricultural tax and to the budget of voivodeships due to the lack of exclusion fees. The author of the publication believes it is therefore necessary to undertake appropriate legislative work, which, in the author's opinion, should be included in *the Geodetic and Cartographic Law* [pgik] as an interministerial act with an included delegation to the regulation contained therein, as is the case with qualifications of geodetic professionals.

Funded by a subsidy from the Ministry of Education and Science for the University of Agriculture in Krakow for 2021.

References

- Bielska A., Kupidura A. 2010. Influence of soil conditions on landscape shaping in rural areas. Contemporary problems of management and environmental protection, UWM Olsztyn, Faculty of Environmental Management and Agriculture, Monograph 3A, Natural and Cultural Transformation of Landscape, Chap. 6, 67–82.
- Budkowski S., Litwin U. 2019. Synergia w przestrzeni – modelowe ujęcie katastru nieruchomości. *Acta Scientiarum Polonorum*, 18(1), 127–135.
- Cymermann R. 2011. Podstawy rolnictwa i wycena nieruchomości rolnych. Educaterra, Olsztyn.
- Dekret z dnia 2 lutego 1955 r. o ewidencji gruntów i budynków (Dz.U. 1955 nr 6 poz. 32).
- Główny Urząd Statystyczny. <https://stat.gov.pl/statystyka-regionalna/jednostki-terytorialne/podzial-administracyjny-polski/> [GUS]
- Hopfer A., Urban M. 1975. Geodezyjne urządzenia terenów rolnych. PWN, Wrocław.
- Informacja o wynikach kontroli. Najwyższa Izba Kontroli. 2021. Wykonanie gleboznawczej klasyfikacji gruntów na terenie województwa kujawsko-pomorskiego, delegatura w Bydgoszczy. LBY.430.001.2021. Nr ewid. 28/2021/P/20/059/LBY.
- Pismo Ministra Inwestycji i Rozwoju z dnia 13 lipca 2018 r., znak: DAB-VII.070.25.2018, do Rzecznika Praw Obywatelskich.
- Pismo Ministra Inwestycji i Rozwoju z dnia 31 lipca 2018 r., znak: DAB-VII.070.33.2018, do Rzecznika Praw Obywatelskich.
- Pismo Ministra Rolnictwa i Rozwoju Wsi z dnia 27 maja 2020 r., znak sprawy: Gz.ge.641.1.2020, do Prezesa Polskiego Stowarzyszenia Klasyfikatorów Gruntów.

- Rozporządzenia Parlamentu Europejskiego i Rady (UE) 2016/679 z dnia 27 kwietnia 2016 r. w sprawie swobodnego przepływu takich danych oraz uchylenia dyrektywy 95/46/WE (ogólne rozporządzenie o ochronie danych [RODO]).
- Rozporządzenie Ministra Rozwoju Regionalnego i Budownictwa z dnia 29 marca 2001 r. w sprawie ewidencji gruntów i budynków (Dz.U. 2001 nr 38 poz. 454 ze zm.) [egib].
- Rozporządzenie Rady Ministrów z dnia 4 czerwca 1956 r. w sprawie klasyfikacji gruntów wraz z załączoną tabelą klas gruntów (Dz.U. 1956 nr 19 poz.97) [klas 1956].
- Rozporządzenie Rady Ministrów z dnia 12 września 2012 r. w sprawie gleboznawczej klasyfikacji gruntów (Dz.U. 2012 poz. 1246) [klas 2012].
- Siuta J., Witek T.** 1973. Przydatność rolnicza gleb Polski. PWRiL, Warszawa.
- Strzemski M., Bartoszewski Z., Czarnowski F., Dombek E., Siuta J., Truskowska R., Witek T.** 1964. Instrukcja w sprawie wykonywania map glebowo-rolniczych w skali 1: 5000 i 1: 25 000 oraz map glebowo-przyrodniczych w skali 1: 25 000. Załącznik do Zarządzenia nr 115 Ministra Rolnictwa z dnia 28 lipca 1964 r. w sprawie organizacji prac gleboznawczo- i rolniczo-kartograficznych (Dz.Urz. Min. Rol. nr 19, poz. 121).
- Ustawa z dnia 15 lipca 1920 r. o wykonaniu reformy rolnej (Dz. U. 1920 nr 70 poz. 462) [reforma rolna].
- Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny (Dz.U. 1964 nr 16 poz. 93 ze zm.) [kc].
- Ustawa z dnia 17 maja 1989 r. – Prawo geodezyjne i kartograficzne (Dz.U. 1989 nr 30 poz. 163 ze zm.) [pgik].
- Ustawa z dnia 7 maja 2009 r. o uchyleniu niektórych upoważnień do wydawania aktów wykonawczych (Dz.U. 2009 nr 98 poz. 817).
- Zarządzenie nr 127 Ministra Rolnictwa z dnia 14 czerwca 1956 r. w sprawie zasad i metod technicznego wykonania klasyfikacji gruntów oraz wymaganych kwalifikacji dla osób przeprowadzających tę klasyfikację.

Dr inż. Szczepan Budkowski
University of Agriculture in Krakow
Department of Geodesy
ul. Balicka 253a, 30-149 Kraków
Correspondence address:
al. Mickiewicza 21, 30-120 Kraków
e-mail: Szczepan.budkowski@urk.edu.pl
ORCID: 0000-0002-1806-1173