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Protection of the environment under the provisions of the Constitution of the Republic of Poland

Keywords: protection of the environment, Constitution of the Republic of Poland, rights and freedoms of the individual, tasks of public authorities

Słowa kluczowe: ochrona środowiska, Konstytucja RP, prawa i obowiązki jednostki, zadania władz publicznych

Summary

The article is devoted to the constitutional protection of the environment in Poland. The analysis includes environmental protection as one of the tasks of the Republic of Poland, duty of public authorities, a condition limiting the rights and freedoms of man and citizen, as well as rights and obligations of the individual in the area of environmental protection, including right to be informed of the quality of the environment and its protection. According to the author the scope of constitutional protection of the environment is sufficient. However the Constitution of the Republic of Poland does not guarantee right of the individual to use unpolluted environment.

Streszczenie

Ochrona środowiska w świetle przepisów Konstytucji Rzeczypospolitej Polskiej

Artykuł jest poświęcony konstytucyjnej ochronie środowiska w Polsce. Analiza obejmuje ochronę środowiska jako jedno z zadań Rzeczypospolitej Polskiej, obowiązków

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władz publicznych, przesłankę ograniczenia wolności i praw człowieka i obywatela, jak również prawa i obowiązki jednostki w sferze ochrony środowiska, w tym prawo do informacji o stanie i ochronie środowiska. Zdaniem autorki zakres konstytucyjnej ochrony środowiska jest wystarczający. Niemniej Konstytucja RP nie gwarantuje prawa podmiotowego jednostki do korzystania z nieskażonego środowiska naturalnego.

I.

Environmental issues in the constitutional regulations of various states began to appear relatively recently². Some constitutions do not deal with the issues of environmental protection at all, or do it by using more general formulations, particularly specifying the range of responsibilities of public authorities. The individual's right for the use of unpolluted environment appears relatively rarely in the constitutions of the states, and – what is characteristic – neither in the earlier constitutions nor in these of the latest generation. The right to be informed about the state of the environment also frequently occurs at the constitutional level.

The Constitution of the Republic of Poland of 2nd April, 1997³ belongs to the latest generation of the constitutions of the European states. Thus it is not surprising that many of its provisions refer to environmental issues. First, mentions it among the basic tasks of the Republic of Poland (Art. 5). Then considers environmental protection as a condition limiting the rights and freedoms of man and citizen (Art. 31 para. 3). Finally points at the specific obligations of public authorities in the field of environmental protection (Art. 68, para. 4 and art. 74 para. 1, 2 and 4) and the rights and obligations of the individual (Art. 74, para. 3, art. 86).

II.

According to art. 5 of the Constitution Republic of Poland safeguards the independence and integrity of its territory, ensures the freedoms and rights

² E. Daly, *Constitutional Protection for Environmental Rights: The Benefits of Environmental Process*, "International Journal of Peace Studies" 2012, vol. 17, no. 2, p. 71 et seq.

³ Journal of Laws no. 78, item 483 as amended.

of persons and citizens, the security of the citizens, safeguards the national heritage and ensures the protection of the natural environment pursuant to the principles of sustainable development. From a theoretical point of view art. 5 has been recognized as the norm of a programmatic character. A provision, which is being commented upon, defines the general political and social goals of the Polish State. One of the basic tasks of the Republic of Poland, referred to in art. 5 of the Constitution, is to protect the environment. To fulfill this task, public authorities are obliged to strive not only to provide people with unpolluted air, safe drinking water and recreational areas etc., but also to protect a particular landscape, terrain, or network of rivers⁴.

In its efforts to protect the natural environment a legislator binds public authorities to be lead by the principle of sustainable development. The result of the global environmental conference in Rio de Janeiro in 1992 was the popularization of this rule which relatively soon took the form of law regulations⁵. Broadly speaking, the authorities are required to carry out a policy of economic growth at the least cost of the environment. Respect for the principle of sustainable development means that wherever as a result of human activity comes to interference in the environment, not only should we lessen this interference to a minimum (to make the interference the least harmful), but also make the social benefits, achieved in this way, at least proportionate, socially relevant to the losses that are then borne by the environment⁶.

⁴ P. Sarnecki, *Commentary to art. 5*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. V, ed. L. Garlicki, Warszawa 2007, p. 6.

⁵ See: R. Stanhope, *A Vision for the Future? The Concept of Sustainable Development in the Netherlands and New Zealand*, "New Zealand Journal of Environmental Law" 2000, vol. 4, pp. 149–150; H. Izdebski, *Fundamenty współczesnych państw*, Warszawa 2007, p. 165; J. Boć, *Ochrona środowiska w postanowieniach Konstytucji Rzeczypospolitej Polskiej*, [in:] *Current Problems of English and European Law and Reforms in Central Europe (Poland, Hungary)*, ed. K. Nowacki, Wrocław 2000, pp. 189–191; H. Lisicka, J. Sommer, *Ochrona środowiska jako funkcja państwa?*, [in:] *Współczesne państwo. Wybrane problemy*, ed. S. Wróbel, Poznań–Chorzów 2009, p. 104; W.J. Wołpiuk, *O niektórych nowych określeniach i wyrażeniach w tekście Konstytucji RP*, [in:] *Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje*, eds. L. Garlicki, A. Szmyt, Warszawa 2003, pp. 341–348.

⁶ See: A. Bałaban, *Konstytucyjna zasada zrównoważonego rozwoju*, [in:] *Sześć lat...*, p. 19 et seq.; J. Sommer, *Podstawy traktatowe wspólnotowego prawa ochrony środowiska*, [in:] *Między tradycją a przyszłością w nauce prawa administracyjnego. Księga jubileuszowa dedykowana Profesorowi Janowi Bociowi*, ed. J. Supernat, Wrocław 2009, p. 633.

Article 74 of the Constitution is an extension of the provisions of art. 5 for the protection of the environment. This provision mainly included as a programmatic norm concretizes the responsibilities of the State authorities in this sphere. Under its provisions, public authorities pursue policies ensuring the ecological security of current and future generations (§ 1) and support the activities of citizens to protect and improve the quality of the environment (§ 4). Although the legislator in art. 74 does not use the term “natural environment”, the association of the term “environment” with “environmental security”, referred to in the provision, clearly indicates that it is a precise reference to the natural environment, and not to any other⁷.

Article 74 § 1 of the Constitution obliges public authorities to pursue policies ensuring the ecological security of current and future generations. Such formulation – as the programmatic norm – specifies the tasks (the rules of policies) of the state, however it cannot serve as a direct basis for lodging any claims by the individual. It is, however, difficult to share the view that this provision is more of a political declaration rather than a legal norm⁸.

Conducting the policy of ecological security is a part of the overall competence of the Council of Ministers to conduct the internal affairs and foreign policy of the Republic of Poland (Art. 146, § 1 of the Constitution). The obligation of conducting policies ensuring ecological security of current and future generations means, among other the need to achieve a compromise between temporary measures and activities that will bring effect at a later time. The financial possibilities of the State are of essential meaning at this point⁹.

In turn supporting of the activities of the citizens to protect and improve the environment comes down to undertaking the actions by public authorities aiming at providing financial support and initiating of pro-ecological actions. In the judgment of 6 June 2006 the Constitutional Tribunal held that the obligations of public authorities in the field of ecological safety come

⁷ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2012, p. 438; M. Karpiuk, *Nature Conservation in the Sphere of Ecological Safety*, [in:] *Legal Aspects of the Efficiency of Public Administration*, eds. P. Stanisławski, M. Czuryk, K. Ostaszewski, J. Świątek, Lublin 2013, p. 203 et seq.

⁸ In this way: B. Rakoczy, *Ograniczenie praw i wolności jednostki ze względu na ochronę środowiska w Konstytucji Rzeczypospolitej Polskiej*, Toruń 2006, p. 247.

⁹ L. Garlicki, *Commentary to art. 74*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. III, ed. L. Garlicki, Warszawa 2003, p. 3.

down not only to preserve the existing state of the environment, but they have a wider dimension because “also include actions improving the current state of the environment and programming of its future development”¹⁰.

A particularly important sphere of supporting by public authorities the activities of the citizens aiming at the protection and improvement of the state of the environment is scientific research and appropriate educational policy in order to broaden the knowledge on the ecological safety¹¹. The pressure put by a legislator on supporting the activities of citizens means that – on the one hand – law regulations defining the framework of cooperation with non-public bodies must be adopted; on the other – this cooperation must be constantly present in the practice of the functioning of public authorities. “Support” should also have the financial aspect, rested on making appropriate measures, whether budgetary or derived from abroad, available to non-public bodies. At the same time, “support” implies ecological undertakings, initiated and carried out primarily by non-public bodies, so also – at least in part – by these financed entities. These projects are intended not only to “protect” the environment (thus preventing the deterioration of its condition), but also to “improve the state of the environment”, and thus the scope of normalization of art. 74 para. 4 is wider than the para. 2, which provision deals with the obligation of public authorities to protect the environment.

Individual rights of citizens to obtain the support of public authorities in the area of protection and improvement of the environment do not result from art. 74 para. 4. This provision has been in fact designed as a programmatic norm. However, the citizens (including their organizations) can expect from public authorities to support their actions, since such a duty has been imposed on them by the Constitution¹².

III.

In accordance with the provisions of art. 74 para. 2 of the Constitution the obligation to “protect the environment” has been imposed on the public au-

¹⁰ K 23/05 (OTK-A 2006, no. 6, item 62).

¹¹ B. Banaszak, op.cit., p. 437.

¹² Cf. P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Warszawa 2008, p. 176.

thorities. This term means totality of activities and instruments preventing the deterioration of the environment¹³. Protection of the environment is closely linked to the implementation of the right to health. In accordance with art. 68 para. 4 of the Constitution public authorities have the duty to undertake preventive actions to combat epidemic illnesses and prevent the negative health consequences of spreading epidemic illnesses as well as preventing degradation of the environment.

If the threat of epidemic disease becomes a particular danger and if ordinary constitutional measures are inadequate, the Council of Ministers, in accordance with art. 232 of the Constitution may impose the state of natural disaster¹⁴. Provisions of the Act of 18 April 2002 *on the state of natural disaster*¹⁵ will then be applied. As a result such a step may lead to the imposition of the limits of the rights and freedoms provided for in this statute on the individual¹⁶.

IV.

Article 86 establishes a general obligation (of each individual) to care for the environment, the responsibility of each for causing its degradation and directs to the definition of the principles of this accountability to the statute. The duty to protect the environment is expressed not only in the prohibition of deterioration or destruction of natural components (negative aspect), but also includes an obligation of undertaking actions to prevent harm to the environment (positive aspect)¹⁷.

The key concept of this provision defining a domain (field), to which the obligation refers, is the environment. It should be noted that the Constitution of the Republic of Poland also in this provision uses the term “the envi-

¹³ L. Garlicki, *op.cit.*, p. 3.

¹⁴ K. Prokop, *Stany nadzwyczajne w Konstytucji RP z dnia 2 kwietnia 1997 r.*, Białystok 2005, pp. 108–109.

¹⁵ Consolidated text: Journal of Laws of 2014, item 333 as amended.

¹⁶ T. Bąkowski, *Prawne formy ograniczania wolności oraz praw człowieka i obywatela w ustawie o stanie klęski żywiołowej*, “Państwo i Prawo” 2003, no. 8, p. 76 et seq.; E. Ura, *Uprawnienia organów administracji w czasie stanu klęski żywiołowej*, [in:] *Nauka administracji wobec wyzwań współczesnego państwa prawa*, ed. J. Łukaszewicz, Rzeszów 2002, p. 537 et seq.

¹⁷ Cf. J. Boć, *op.cit.*, p. 194; B. Rakoczy, *op.cit.*, p. 239.

ronment”, and not “the natural environment”. However, it should be noted again that the content of both terms is referred to the existing natural conditions of human life¹⁸.

Article 86 clearly establishes the principle of responsibility of each individual for the deterioration of the environment. Furthermore, in accordance with this provision, each individual bears the responsibility for causing the deterioration of the natural environment, and the scope of this responsibility is based on the relevant laws. Broadly speaking, it may take the form of criminal or civil liability¹⁹. To sum up the normalizations of art. 74 and art. 86 it can be concluded that the obligation to care for the environment is of a universal character. This applies both to the public authorities, as well as all legal entities under the jurisdiction of the Republic of Poland: individuals (citizens, foreigners, stateless persons) and legal persons²⁰.

When it comes to the way of implementing this obligation, it is not only refraining from actions that harm the environment, but also preventing the negative influences on the environment and taking actions that serve to restore the natural environmental balance²¹. Article 86 imposes an obligation on the legislator to adopt appropriate regulations, and on the other public authorities – the obligation of consistent enforcement of these regulations. It is also obvious that the public authorities – to protect the environment – can impose on legal entities specific duties within their competence. The responsibility for the deterioration of the environment is of an absolute character. According to art. 86 of the Constitution the procedures for exemption from such responsibility cannot exist²².

Article 86 of the Constitution does not link the obligation to care for the environment with the subjective right to use of the environment. It is not being established in any other provision, either²³. The legislator consciously resigned from

¹⁸ K. Działocha, *Commentary to art. 86*, [in:] *Konstytucja...*, vol. III, p. 3.

¹⁹ It should be noted that the responsibility for violation of the quality of the environment is not dependent on the fault. On the subject of responsibility for violation of the environment see more: B. Wierzbowski, B. Rakoczy, *Prawo ochrony środowiska*, Warszawa 2012, p. 105 et seq.

²⁰ P. Winczorek, *op.cit.*, p. 197.

²¹ B. Banaszak, *op.cit.*, p. 494.

²² J. Boć, *op.cit.*, p. 194.

²³ Cf. A. Haładaj, *Konstytucyjne prawo do korzystania z wartości środowiska*, “Prawo i Środowisko” 2002, no. 2, p. 37 et seq.

the introduction to the Constitution of a provision establishing a subjective right to the use of the environment, due to the problem of defining the limits of this law. Instead, there are provisions in the Constitution of the Republic of Poland, which read together, may constitute an equivalent of the right to use the environment, as for example the right to have our health protected (Art. 68 para. 1) or the right to have a rest (Art. 66 para. 2)²⁴. It should also be remembered that there has been constructed a subjective right of the individuals to be informed about the quality of the environment and its protection in art. 74 para. 3.

V.

Article 74 para. 3 guarantees the right to be informed of the quality of the environment and its protection. The provision is included in the form of a subjective law. As such, it raises certain claims on the side of the individual, which can constitute the basis for the legal plea in the constitutional complaint. It should be noted, however, that – in accordance with art. 81 – the scope of investigation of this right is designated by the statutes, particularly the act of October 3, 2008 on the availability of information about the environment and its protection, public participation in environmental protection and environmental impact assessments²⁵.

The right to information of the quality of the environment and its protection is a particular aspect of the right to public information, referred to in art. 61 of the Constitution²⁶. If, however, the Constitution limits the right of gaining public information only to citizens, the right to information about the quality of the environment and its protection is provided to “everyone”, and therefore also to foreigners. The reason for this legislative procedure is relatively easy to explain. The right to public information is closely related to the political rights of the individual, to exercising of sovereign power in the State by the citizens (Art. 4), mainly through the implementation of the right to vote (Art. 62). This sphere of the rights of an individual is reserved only for

²⁴ The right to use the environment, which is designed in this way, is correlative of the obligation to care for the environment (Art. 86).

²⁵ Journal of Laws of 2013, item 1235, as amended.

²⁶ B. Rakoczy, *op.cit.*, p. 218.

citizens because only they make the entity of sovereign power, which is the Nation. The right to information about the quality of the environment and its protection has no connection with the implementation of sovereign power. All the people living in the territory of the Republic of Poland are obliged to preserve the ecological security for their own good. Therefore, the right to information about the quality of the environment and its protection has been granted to anyone. The person requesting the information does not need to prove legal or actual interest in obtaining information.

The Constitution – in contrast to art. 61 – does not determine who is the addressee of the submitted requests for information about the quality of the environment and its protection. It thus should be noted that this obligation cannot be limited only to public authorities²⁷. It may be incurred by the various legal entities, if the provisions of applicable law clearly define which entity and in what circumstances has to fulfill this obligation.

VI.

Environmental protection is also a prerequisite of restrictions on rights and freedoms of the individual and citizen. The Constitution of the Republic of Poland guarantees respect for a series of rights and freedoms which may be restricted under the terms of art. 31 para. 3. According to this provision any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when it is necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations cannot violate the essence of freedoms and rights.

Under the terms of this provision the limitations of the rights and freedoms of the individual can be made in both formal and material aspect. The formal aspect of restrictions on rights and freedoms is that these restrictions can only be introduced on the basis of the statute. In the material aspect art. 31 para. 3 allows the restriction of the rights and freedoms of the in-

²⁷ Cf. A. Barczewska-Dziobek, J. Romański, *Informacja o środowisku w kontekście realizacji prawa jednostki do dobrej administracji. Zagadnienia wybrane*, "Studia Prawnicze KUL" 2008, no. 3, pp. 26–32.

dividual only because of one of the six values mentioned in this provision. This is a closed catalogue, and it is not subjected to extended interpretation²⁸. Restrictions made in this way must comply with the principle of proportionality and cannot violate the essence of rights and freedoms. The value, because of which the rights and freedoms of the individual can be restricted, is among others – as stated above – the protection of the environment.

The premise of environmental protection in art. 31 para. 3 of the Constitution may be seen as part of the “health protection”, but it does not cover the issues because environmental protection is primarily connected with the issue of freedom of business activity²⁹. Its indication in art. 31 para. 3 is intended to emphasize the importance of ecological safety and corresponds both to the determination of the overall objectives of the State (Art. 5) and the formulation of the rules of its policy (Art. 74), and the formulation of the obligation of the individual (Art. 86)³⁰.

The need to protect the environment can become a premise of restrictions on rights and freedoms of the individual (Art. 31 § 3 of the Constitution). It may in particular refer to the limiting of the economic rights, especially freedom of business activity, ownership, etc. As stated by the Constitutional Tribunal, “the requirements in the field of environmental protection impinge primarily on the development of freedom of business activity, may also justify an interference with the sphere of the rights of owners while maintaining proportionality of the interference and not violating the essence of the right to property”³¹.

VII.

As it follows from the above analysis, the Constitution of the Republic of Poland contains a number of provisions that ensure the protection of the en-

²⁸ Judgment of the Constitutional Tribunal of 25 February 1999, K 23/98 (OTK 1999, no. 2, item 25).

²⁹ L. Garlicki, *Commentary to art. 31*, [in:] *Konstytucja...*, vol. III, p. 25; cf. B. Rakoczy, *op.cit.*, pp. 117–188.

³⁰ L. Garlicki, *Commentary to art. 31...*, p. 25.

³¹ Judgment of the Constitutional Tribunal of 15 May 2006, P 32/05 (OTK-A, no. 5, item 56); B. Rakoczy, *Glosa do wyroku TK z dnia 15 maja 2006 r. (sygn. akt P 32/05)*, “Przeegląd Sejmowy” 2007, no. 5, p. 172 et seq.

vironment. They have been formulated in a way requiring a certain type of responsibilities not only from public authorities but also from individuals. Public authorities are obliged to pursue a policy that ensures the protection of the environment (guided by the principle of sustainable development) and the ecological security of current and future generations. The Constitution of the Republic of Poland imposes an obligation to protect the environment on both public authorities and the individual. The citizens can take action to protect and improve the environment, and public authorities are obliged to support them in these efforts.

The analysis also clearly shows that the protection of the environment is considered by the Polish legislator as one of the most important Constitutional values. This statement affects the process of interpreting all Constitutional provisions, since we are talking about the value comparable to such important values as the protection of the independence of the State or the guarantee of the rights and freedoms of the individual. However, the subjective right of the individual to use unpolluted environment is not present in the Constitution of the Republic of Poland. It can only be constructed in connection with other human rights, especially the right to health protection.

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