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The concept of liability for the degradation of the natural environment under Article 86 of the Constitution of the Republic of Poland

Introduction

There is no doubt that contemporary constitutionalism, followed by constitutional legislation, is strongly involved in matters related to environmental protection¹. The present-day challenges and ecological problems force the constitutional legislator to accommodate ecological issues in the constitution.

It should be noted that ecological issues have not always been the subject of interest to the constitutional legislator. However, this was because constitutionalism in the era of Enlightenment did not stem from ecological problems. The state of the then environment was not alarming enough to rank this problem as a constitutional issue.

Over more than two hundred years, when constitutionalism was developing², the situation was changing dynamically, and, at present, these issues are among the most significant constitutional issues. Currently, it is difficult to imagine a constitutional lawmaker being completely indifferent to issues related to environmental protection.

The constitutional legislator's wide interest in environmental protection issues does not necessarily mean that the constitutional norms model is identical. Furthermore, the analysis of equal normative solutions adopted by individual legal systems points to a significant diversity of the adopted solutions.

The model of constitutional solutions referring to environmental protection adopted in the Constitution of the Republic of Poland of 2 April 1997³ should

¹ J. e. Szilágyi (ed.), *Constitutional protection of the environment and future generation*, Budapest 2022.

² K. Sójka-Zielińska, *Historia prawa*, ed. 15, Warsaw 2015.

³ Constitution of the Republic of Poland of 2 April 1997 (LJ of 1997, No. 78, item 483 as amended).

be evaluated positively⁴. The solutions adopted in the Constitution of the Republic of Poland should be evaluated as very good and comprehensive solutions.

The constitutional legislator refers directly to environmental protection in as many as five provisions. Given the overall number of constitutional provisions and the context of this reference, it can be concluded that environmental protection is a very significant and legal value.

This is testified, for instance, by Article 5 of the Constitution of the Republic of Poland referring to environmental protection or making environmental protection a material and legal premise for restricting the rights and freedoms of an individual (Article 31 Paragraph 3 of the Constitution of the Republic of Poland).

Environmental protection issues regulated by five provisions can be divided into three groups⁵.

The first is the sustainable development principle that, *de lege lata*, is a foundation of modern environmental protection law. This principle is regulated in Article 5 of the Constitution of the Republic of Poland.

The second group are regulations concerning the legal status of an individual in the context of environmental protection. This group comprises provisions regarding the rights and freedoms of an individual, obligations of an individual, and constraints on the rights and freedoms of an individual.

Individual matters related to environmental protection are exceptionally low-keyed as the legislator declares only the right of every individual to information on the environment and its protection (Article 74, Paragraph 3 of the Constitution of the Republic of Poland).

As regards the obligation, the legislator expressed it explicitly in Article 86 of the Constitution of the Republic of Poland. According to this provision, everyone has an obligation to care for the quality of the environment.

Finally, in the previously quoted Article 31, Paragraph 3 of the Constitution of the Republic of Poland, the legislator introduces the possibility of restricting an individual's rights and freedoms concerning environmental protection.

The third group are issues regulating the obligations of public authorities to the extent of environmental protection. This is the most numerous group, next to Article 5 of the Constitution and Article 74 Paragraph 2 expressing a general obligation, and the constitutional legislator also mentions more specific obligations in Article 74 Paragraph 1 and Article 74 Paragraph 4. The

⁴ These issues were the subject of many scientific studies that are too numerous to be quoted here, both in terms of the constitution and environmental law. The latest literature includes a monograph by E. Czech, *Publicznoprawne prawa podmiotowe do środowiska podmiotów korzystających ze środowiska*, Białystok 2021, in which the author presents a synthetic view of the doctrine.

⁵ Cf. B. Rakoczy, [in:] Z. Bukowski, E. Czech, K. Karpus, B. Rakoczy, *Ustawa Prawo ochrony środowiska. Komentarz*, Warsaw 2013.

obligation is also implied by Article 74, Paragraph 3 of the Constitution of the Republic of Poland, which regulates the right of every person to information on the environment and its protection. However, the public authority is obligated to provide such information.

The constitutional legislator established a normative relationship between legal responsibility for environmental protection and the obligation of every individual to take care of the environment. Thus, the constitutional legislator finds legal responsibility for environmental protection an effect of violating the constitutional obligation to care for the quality of the environment.

This paper will analyse the solutions adopted in Article 86 of the Constitution of the Republic of Poland, with a particular focus on the relationship between obligation and responsibility. Further, it will review the model of responsibilities stemming from Article 86 of the Constitution of the Republic of Poland.

Constitutional obligation to take care of the environment and legal liability concepts in environmental protection

Legal liability in environmental protection is a problem that is sometimes of interest to the constitutional legislator. The various models regulating the constitutional bases for environmental protection sometimes touch upon related legal liability but sometimes do not.

The Constitution of the Russian Federation of 12 December 1993 is a good example of such adopted solutions. Not only does it give a restrictive treatment to the problem of liability, but it also significantly deems it a separate issue. Article 42 of the Constitution of the Russian Federation reads, "Everyone shall have the right to a favourable environment, reliable information about its state and for a restitution of damage inflicted on his health and property by ecological transgressions"⁶. It regulates the right of an individual to live in a favourable environment but also the issues of legal liability for environmental protection.

The Polish legislator did not decide to give a separate treatment to legal liability in environmental protection. He established a relationship between responsibility and the general obligation to care for the quality of the environment. The normative basis for this relationship is Article 86 of the Constitution of the Republic of Poland, stating that "Everyone shall care for the quality of

⁶ Cf. M.M. Brinczuk, [in:] *Konstytucja Rosyjskiej Fiedieracji. Nauczno-praktyczeskiej komentarij* [Constitution of the Russian Federation. Scientific and practical commentary], Moscow 2003; E.J. Barchatowa, *Kommentarij k Konstytucji Rosyjskiej Fiedieracji* [Commentary on the Constitution of the Russian Federation], Moscow 2004; B. Rakoczy, *Problematyka ochrony srodowiska w Konstytucji Federacji Rosyjskiej*, „Prawo i Środowisko” 2004, Vol. 3.

the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute”.

In fact, this provision has two parts. In the first part, the legislator imposes a general obligation to care for the quality of the environment. The second part sets out the constitutional basis of liability in environmental protection. With regard to the normative significance of each part, they could be deemed separate articles or at least paragraphs. However, this relationship between care for the environment’s quality and liability is essential to interpreting this provision.

In the first place, the relationship between these two elements refers to the existence of the obligation itself and the consequences of breach. Not only does the legislator regulate the obligation to care for the quality of the environment, but it also indicates that a breach of this obligation deteriorating the state of the environment also gives rise to legal liability. Thus, as M. Florczak-Wątor aptly notes, “a breach of the obligation to care for the quality of the natural environment deteriorating the state of the environment gives rise to legal liability on the part of the perpetrator”⁷. Similarly, M. Górski claims that “Article 86 of the Constitution assumes that the obligation to care for the quality of the environment should be fulfilled according to statutory principles, hence obliging the legislator to define such principles”⁸. Therefore, the constitutional obligation to care for the quality of the environment is the only constitutional obligation that, when breached, gives rise to legal liability.

Constitutional obligation to care for the quality of the environment

In the context of constitutional regulations, the distinction should be made between the constitutional obligation to protect the environment and the constitutional obligation to care for the quality of the environment. However, there are also voices that this obligation is addressed to public authorities and includes the constitutional obligation to protect the environment⁹. The Constitution of the Republic of Poland expresses the constitutional obligation to protect the environment.

The legislator mentions this obligation in Article 5 for the first time and for the second time in Article 74, Paragraph 2. According to Article 5 of the

⁷ M. Florczak-Wątor, [in:] P. Tuleja (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2019.

⁸ M. Górski, [in:] M. Safjan, L. Bosek (eds.), *Konstytucja RP, Vol 1: Komentarz art. 1–86*, Warsaw 2016.

⁹ See for example J. Boć, [in:] J. Boć (ed.), *Konstytucje Rzeczypospolitej Polskiej oraz komentarz do Konstytucji RP z 1997 r.*, Wrocław 1998.

Constitution of the Republic of Poland, “the Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment according to the principles of sustainable development”. In contrast, according to Article 74 Paragraph 2 “protection of the environment shall be the duty of public authorities”.

It should be highlighted that in both cases, the legislator associates the obligation to protect the environment with the obligation of the public authorities. Although in Article 5 of the Constitution of the Republic of Poland, the addressee of the obligation is the Republic of Poland, this obligation is *de facto* and *de iure* performed by public authorities. In contrast, Article 74, Paragraph 2 of the Constitution of the Republic of Poland mentions public authorities *expressis verbis*. Therefore, a significant characteristic of the constitutional obligation to protect the environment is that it is associated with an obligation of public authorities. Put differently, this is an obligation of public authorities.

In turn, the obligation to care for the quality of the environment is a general obligation of everyone. This difference in subjects is the source of the distinction between the obligation to protect the environment and the obligation to care for the quality of the environment. Thus, a comprehensive treatment of this obligation’s subjective scope, including public authorities, cannot be accepted. If this were the case, Article 74, Paragraph 2 of the Constitution of the Republic of Poland would be redundant.

The legislator used different terms to emphasise that these are two separate obligations of different subjects – public authorities and everyone. It should also be underlined that the content of these obligations is different, as discussed hereinafter.

Had the legislator used one term only - the obligation to protect the environment - this obligation, in fact, should be fulfilled both by public authorities and everyone. This would give rise to many doubts regarding interpretation and chaos in establishing who should perform specific obligations related to environmental protection – public authorities or everyone. As a matter of fact, the issue is who, in principle, bears the environmental responsibilities, whether it is the public authorities with the complementary role of a general obligation incumbent on everyone or whether it is everyone with the complementary role of the obligation of a public authority. This dilemma, in turn, is resolved by objective aspects, as care for the quality of the environment is a narrower concept than that of environmental protection.

The obligation of environmental protection has the widest scope. It includes all actions and omissions, the object and target of which is the environment, which are necessary to ensure that it functions correctly.

However, it is quite natural that public authorities are not in a position, by themselves and through themselves, to carry out these activities or adopt a passive attitude¹⁰. Universal participation is necessary; without it, environmental protection would be illusory. Indeed, it is impossible to ensure proper pro-environmental behaviour without including everyone. The issue, therefore, remains not so much the inclusion of everyone in protective behaviour but the extent of this inclusion. Indeed, the more everyone is involved in this behaviour, the more the scale of the public authorities' responsibilities decreases. From the point of view of public authorities, this is a very good solution, as it shifts the burden of environmental responsibilities onto everyone.

The acceptable margin for imposing obligations on everyone is determined by the mechanisms of the proportionality principle regulated by Article 31, Paragraph 3 of the Constitution of the Republic of Poland¹¹. This provision stipulates that "any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when 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 shall not violate the essence of freedoms and rights".

It is, therefore, only permissible to impose environmental obligations on everyone if necessary and expedient. Therefore, the obligation to care for the quality of the environment encompasses the needed, necessary and expedient pro-environmental behaviour imposed on everyone, complementary to the obligations of public authorities, without which protective measures would not be effective or less effective. Such a mechanism is, for example, the mandatory separate collection of municipal waste. Separate collection is impossible if no obligations are imposed on waste producers or holders. Simultaneously, the need for separate municipal waste collection is not questioned.

Consequently, the obligation to care for the quality of the environment includes only duties without which it would not be possible to protect the environment effectively.

¹⁰ K. Działocha, [in:] L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2003, p. 1 and 2 of the commentary on Art. 86.

¹¹ Cf. B. Rakoczy, *Ograniczenie praw i wolności ze względu na ochronę środowiska w Konstytucji Rzeczypospolitej Polskiej*, Toruń 2006.

Concept of liability in environmental protection according to Article 86 of the Constitution of the Republic of Poland

The second part of this provision, starting with the conjunction “and”, refers to the concept of liability. Liability is included in this provision as a certain negative consequence linked to the obligation to care for the quality of the environment.

In Article 86 of the Constitution of the Republic of Poland, the legislator uses the term “responsibility” but does not further define all its referents.

The theory of law indicates various possibilities for the normative framing of the issue of liability. According to R. Tokarczyk, we can be liable for something. A distinction can also be made between liability to someone or liability of some kind (e.g., for hunting damage). The way in which it is framed may not only vary, but it is up to the legislator to decide which type of liability from those indicated above it will choose¹².

According to the classification by R. Tokarczyk, the responsibility to which Article 86 of the Constitution refers is the liability for something. In this provision, the legislator does not indicate that it is a liability to someone, nor does it specify that it is a liability “of some kind”. Of course, this does not mean that it does not make any difference to whom the responsible party is liable. This is relevant but regulated at a statutory level. The constitutional legislator, therefore, considered that the basic referent of the concept of responsibility in Article 86 is a liability for something. This “something” is described as “causing its degradation”. Given the general and abstract nature of constitutional norms, this is an elaborate description of the referent of this responsibility. However, the literature mentions that “responsibility is of the individual, which is testified by the way this provision is formulated »causing its degradation«”. This phrase implies that liability is individual. This is certainly true but should be interpreted in broader terms.

It consists of two principal elements determining the whole concept of legal liability in environmental protection.

The first and most important element refers to the indication that legal liability in environmental protection is linked with the degradation of the environment. This is an extremely important phrasing, as the legislator has clearly indicated a causal relationship between liability and effect, which is undesirable by the constitutional legislator. It is made explicit that this liability can only be linked to conduct that will cause degradation of the environment. To the contrary, it is therefore not permissible in environmental protection to be held liable for conduct that did not lead to the degradation of the environment.

¹² R. Tokarczyk, *Filozofia prawa*, Warsaw 2009.

Thus, in order to hold any entity liable for environmental protection, it should be demonstrated that its conduct, either an action or omission, actually caused the degradation of the environment. This degradation can be indirect, but its occurrence is the prerequisite.

In this context, deeper reflection is required on the concept of administrative responsibility in environmental law, particularly regarding legislative or information obligations. A question arises about how, even indirectly, a failure to submit some report or information caused the degradation of the environment. Unfortunately, the legislator does not hold the degradation test back for this type of obligation. It would also be useful to reflect on other obligations of an entity under the Environmental Law by asking about their rationality in the context of environmental degradation. However, reporting and information obligations are ideal examples of a failure to meet the premise of environmental degradation.

This is because Article 86 of the Constitution of the Republic of Poland links legal liability only to conduct causing degradation of the environment¹³. As regards the concept of legal liability in environmental protection, it is, therefore, necessary to conduct a test checking whether the conduct to which the legislator attaches legal liability is the conduct that caused the degradation of the environment. This test requires establishing the quality of the environment prior to the specific conduct, which gave rise to legal liability for the quality of the environment after the occurrence of such conduct. If this comparison shows that the environment has indeed been degraded, then linking this conduct to legal liability will be reasonable. On the other hand, if the test shows that the environment has not been degraded as a result of certain conduct, the question arises as to the constitutionality of such provisions, which nevertheless attach legal liability to such conduct.

The aforementioned environmental reporting issues do not in any way stand up to this test, as the state of the environment does not change at all due to failure to report on time or comply with this obligation. Therefore, no causal link exists between the failure to comply with reporting obligations and the environmental violation. Failure to fulfil such an obligation will not cause degradation of the environment. Another legally protected good has suffered, namely the authority's knowledge of certain legal events. However, the lack of such knowledge does not cause the environment to degrade. Indeed, regarding the causal link, it should be demonstrated that had the authority received the report within the specified time limit, certain elements of the environment would not have been degraded.

¹³ Vide: B. Rakoczy, *Filozoficzne podstawy odpowiedzialności prawnej w prawie ochrony środowiska*, [in:] A. Barczak, P. Korzeniowski (eds.), *Administracja a środowisko. Prace dedykowane prof. zw. dr. hab. Markowi Górnemu z okazji jubileuszu 45-lecia pracy naukowej*, Szczecin 2018.

Unfortunately, the legislator lacks a deeper reflection on including environmental obligations in the legal liability regime. This is probably due to the ease of penalising certain conduct without considering the impact of that conduct on environmental issues in general. The general penalisation trend of the Polish legislator can also be seen here. According to Article 86 of the Constitution of the Republic of Poland, an important referent of the construction of liability is also the fact that the legislator associates liability with the degradation of the environment caused directly and exclusively by the entity that committed the conduct. The legislator has seemingly expressed here an obvious rule of personalised liability, which presupposes only the personal liability of the perpetrator of the prohibited act. However, articulating the perpetrator's liability in environmental protection is normatively justified, as the legislator is aware of the potential for environmental degradation.

This is due to the fact that several actors take part in conduct involving impacts on the environment or extraction of its resources; it suffices to point to the process of rainfall management in which several specialised actors are involved as an exemplification. The organisation of this system results in the dispersion of liability. In such a case, it is necessary to capture the conduct which led to the degradation of the environment and link it to the conduct of the actor who committed that conduct.

Hence, it is legitimate for the concept of liability to refer to degradation caused by the perpetrator himself and not by another party.

In the provision under review, the legislator explicitly references the concept of legal liability. On a constitutional level, highlighting legal liability is particularly important, for the legislator himself in the Constitution also refers to political responsibility. Such a procedure is also evident regarding environmental protection, as Article 74, Paragraph 1 of the Constitution of the Republic of Poland imposes an obligation to pursue a policy of ecological safety in a specified direction. Breaching this obligation, therefore, entails only political and not legal liability.

The problem of legal liability in legal theory has been analysed and raised many times. There is no scientific justification for discussing these issues. The definition of legal liability by W. Lang explains as much as possible the essence of liability under Article 86 of the Constitution. According to this Author, "legal liability means incurring by a subject the negative consequences foreseen by the law for events or states of affairs subject to a negative normative qualification and attributable to a legally defined subject in a given legal regime"¹⁴. The quoted definition of legal liability, according to W. Lang, can, as much as possible, be raised to Article 86 of the Polish Constitution. Indeed, this author identified two important features of liability. The first is the requirement to

¹⁴ W. Lang, *Struktura odpowiedzialności prawnej*, „Zeszyty Naukowe Uniwersytetu Mikołaja Kopernika” 1968, Vol. 31 – Prawo VIII, No. 12.

describe the right or wrong conduct normatively. In the first case, legal liability will follow if the entity has not behaved as it should. In the latter, in contrast, liability will arise when the subject has behaved as they should not have done. In both cases, however, the description of the conduct must be normative.

The second feature is that the sanction for a breach of a legal norm should also be normative in the sense that the law must expressly provide for it.

Of course, the constitutional norm does not have to contain the requested sanctions explicitly, for the legislator here refers to the ordinary law. However, there is no doubt that such sanctions can be provided for in ordinary laws, provided that the legislator does not introduce *lex in perfecta*.

Several reflections should also be made on the addressee of this constitutional norm. It should be emphasised that the addressee of the obligation to care for the quality of the environment, and the addressee the concept of liability, is the same as was already indicated in the provisions of the legal norm. The constitutional legislator takes a broad view of entities, for it uses the broadest possible phrase relating to entities – “everyone”. The term “everyone” denotes either a natural person or a legal person, as well as an unincorporated organisational unit. Thus, while the legislator narrows the object of liability only to the degradation of the environment, from a subjective point of view, we are dealing with a very broad definition.

Obligation to care for the quality of the environment and the liability for its degradation

A close validation relationship exists between the said care for the quality of the environment and the liability for its deterioration, irrespective of the fact that the legislator has included obligation and responsibility in a single provision. This relationship manifests itself in the fact that the degradation of the environment results from conduct which, in its essence, is a breach of the obligation to care for the quality of the environment. It is, therefore, primary to articulate the constitutional obligation to care for the quality of the environment. In contrast, other elements of Article 76 of the Constitution of the Republic of Poland are secondary; against the background of this relationship, it is necessary to distinguish between a breach of the obligation to care for the quality of the environment, which did not cause its degradation, and a breach of the obligation to care for the quality of the environment, which at the same time caused its degradation. Article 86 of the Constitution of the Republic of Poland, therefore, concerns only such a breach of the obligation of care for the quality of the environment, the breach of which simultaneously entails degradation of the environment. The legislator gives a narrow treatment

to the issue. It is necessary to link this effect to the breach of the obligation to care for the quality of the environment. A mere breach of an obligation may not give rise to legal liability, nor does a mere degradation of the environment necessarily give rise to such liability either, for it is only the compilation of these two elements that fulfil all the normative prerequisites set out in Article 86 of the Constitution of the Republic of Poland. Thus, the ordinary legislator should consider several conditions arising from Article 86 of the Constitution of the Republic of Poland. Contrary to appearances, therefore, the scope of this responsibility is not particularly broad. While the legislator describes it as addressed to everyone, the objective scope is much narrower. Interestingly, the Polish legislator has not linked liability in environmental protection to the violation by public authorities of their constitutional obligation to protect the environment. Of course, this does not mean that public authorities are not legally liable for breaching their obligation to protect the environment, but this point is not explicitly articulated, which weakens the effectiveness of the obligation to protect the environment.

Liability is therefore linked to the breach of specific obligations towards the environment within a general framework defined as the obligation to care for the quality of the environment. When the environment has been degraded, but this degradation was not the result of a failure to fulfil the obligation to care for the quality of the environment, liability is out of the question.

Conclusions

Different constitutions differently see liability in environmental protection, if they regulate this issue at all. The Polish constitutional legislator is one constitutional legislator who has directly regulated legal liability in environmental protection. The constitutional legislator has regulated this issue in Article 86 of the Constitution of the Republic of Poland.

Polish law links legal liability in environmental protection to the general obligation of everyone to care for the quality of the environment. The ordinary law itself specifies two referents of this liability. Firstly, it is personal responsibility for the consequences it has caused. Secondly, it is a liability for environmental degradation.

Thus, it is explicitly indicated that this is individual liability and liability resulting from environmental degradation. However, some liability-related environmental law institutions do not stand the test of constitutionality. Indeed, it is difficult to see the degradation of the environment in the breach of reporting and information obligations. This raises the question of the constitutionality of legal liability for breaching these obligations.

In addition, it should be pointed out that the degradation of the environment must be a result of breaching the constitutional obligation to care for the quality of the environment. This link stems from the very construction of Article 86 of the Constitution of the Republic of Poland and the conjunction “and” used by the legislator. The model of the concept of liability in environmental protection in the Constitution of the Republic of Poland is linked to a universal obligation and not, for example, to the State’s duties or public authorities. It provides a modern solution to make everyone aware that contemporary environmental problems do not concern only the State and that their solution should be the common domain of all the subjects of the law. It also strengthens everyone’s awareness of their environmental responsibilities.

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Summary

The concept of liability for the degradation of the natural environment under Article 86 of the Constitution of the Republic of Poland

Keywords: environmental law, environmental protection, constitutional basis for environmental protection, liability in environmental law, legal liability.

The concept of liability in environmental protection is addressed in the Constitutions in various ways if at all this issue is regulated in this type of act. The Polish constitutional legislator belongs to this group of constitutional legislators who have regulated the issues of legal liability in environmental protection in a direct manner. The constitutional legislator regulated this issue in Article 86 of the Constitution of the Republic of Poland. In the system of Polish Law, legal responsibility in environmental protection has been linked to the universal duty of everyone to care for the state of the environment. The Basic Law itself defines two designations of this responsibility. Firstly, it is personal responsibility for the effects caused by oneself. Secondly, it is responsible for the deterioration of the environment. Thus, it is indicated that it is a model of individualised liability, as well as liability that results from the deterioration of the state of the environment. However, some of the institutions of the Environmental Law related to liability do not stand the test of constitutionality. It is difficult to see the deterioration of the state of the environment in the breach of reporting and information obligations. This raises the question of the constitutionality of legal liability for the breach of these obligations. Additionally, it should be pointed out that the deterioration of the state of the environment must be the result of a breach of the constitutional obligation to care for the state of the environment. Such a link results from the very construction of Article 86 of the Constitution of the Republic of Poland and the conjunction “and” used by the legislator. The model of the concept of responsibility in the protection of the environment in the Constitution of the Republic of Poland is a model linked to a universal duty, and not, for example, to the duties of the State or public authorities. It constitutes a modern solution making everyone aware that contemporary problems of environmental protection do not concern only the State, and that their solution should be the common domain of all subjects of the law. It also strengthens everyone’s awareness of their environmental responsibilities.

Streszczenie

Koncepcja odpowiedzialności za pogorszenie stanu środowiska według art. 86 Konstytucji Rzeczypospolitej Polskiej

Słowa kluczowe: prawo ochrony środowiska, ochrona środowiska, konstytucyjne podstawy ochrony środowiska, odpowiedzialność w prawie ochrony środowiska, odpowiedzialność prawna.

Koncepcja odpowiedzialności w ochronie środowiska jest ujmowana w konstytucjach w różny sposób, o ile w ogóle tę kwestię uregulowano w tego rodzaju akcie. Polski ustawodawca konstytucyjny należy do tej grupy prawodawców konstytucyjnych, którzy uregulowali kwestie odpowiedzialności prawnych w ochronie środowiska w sposób bezpośredni – uregulował ją w art. 86 Konstytucji Rzeczypospolitej Polskiej.

W polskim systemie prawnym odpowiedzialność prawna w ochronie środowiska została powiązana z powszechnym obowiązkiem każdego dbałości o stan środowiska. Sama ustawa zasadnicza określa dwa desygnaty tej odpowiedzialności: 1) odpowiedzialność osobista za spowodowane przez siebie skutki; 2) odpowiedzialność za pogorszenie stanu środowiska.

Wyraźnie zatem wskazano, że jest to model odpowiedzialności indywidualizowanej, a także odpowiedzialności, która jest skutkiem pogorszenia stanu środowiska. Część instytucji prawa ochrony środowiska powiązanych z odpowiedzialnością nie wytrzymuje jednak testu zgodności z Konstytucją. Trudno bowiem dopatrzeć się pogorszenia stanu środowiska w naruszeniu obowiązków sprawozdawczych i informacyjnych. Rodzi się zatem pytanie o konstytucyjność odpowiedzialności prawnej za naruszenie tych obowiązków.

Dodatkowo należy wskazać, że pogorszenie stanu środowiska musi być skutkiem naruszenia konstytucyjnego obowiązku dbałości o stan środowiska. Takie powiązanie wynika z samej konstrukcji art. 86 Konstytucji Rzeczypospolitej Polskiej i użytego przez prawodawcę spójnika „i”. Model koncepcji odpowiedzialności w ochronie środowiska w Konstytucji Rzeczypospolitej Polskiej jest modelem powiązaniem z powszechnym obowiązkiem, a nie np. z obowiązkami państwa czy też władz publicznych. Stanowi nowoczesne rozwiązanie uświadamiające każdemu, że współczesne problemy ochrony środowiska nie dotyczą tylko państwa, a ich rozwiązanie winno być wspólną domeną wszystkich podmiotów prawa. Wzmacnia także osobistą świadomość każdego w kontekście ciążących na nim obowiązków środowiskowych.