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The Right to the Environment in the Republic of Poland*

1. The shape of the Polish environmental law

Polish environmental law has constitutional fundaments, but the main part of the legal regulation in this area is contained in ordinary law. The two most important acts determining the Polish environmental law are Act on the Environmental Protection of 2001¹ and the Nature Conservation Act of 2004². They are of a cross-cutting nature and cover essentially all elements of the environment. The Act on the Environmental Protection is more focused on the use of the environment, while the Nature Conservation Act focuses on conservation – its basic part concerns forms of nature conservation.

A number of other legal acts pertain to individual resources (elements) of the environment. For example, the Water Law Act of 2017³ governs the protection and use of water. The 1991 Forest Act⁴ governs Forest protection. The Waste Act of 2012⁵ covers waste protection. In total, dozens of laws directly related to the environment can be identified.

1.1. The constitutional basis for environmental protection in Poland

The Constitution of the Republic of Poland of 2nd April 1997 in five places refers directly to the environment and its protection⁶.

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¹ T. jedn. Dz. U. z 2019 r., poz. 1396

² T. jedn. Dz. U. z 2018 r., poz. 1614 ze zm.

³ T. jedn. Dz. U. z 2018r., poz. 2268ze zm.

⁴ T. jedn. Dz. U. z 2018 r., poz. 2129 ze zm.

⁵ T. jedn. Dz. U. z 2019r., poz. 701.

⁶ Previously, the 1952 Constitution entered the environment in two places: Art. 12: The Polish People's Republic provides protection and rational development of the natural environment, which

Art. 5 states that the Republic of Poland protects the independence and inviolability of its territory, assures freedom and the rights of man and the citizen and the security of citizens, protects the national heritage and ensures environmental protection, guided by the principle of sustainable development.

In paragraph 3 of Art. 31 we read that restrictions on the use of constitutional freedoms and rights can only be established by statute and only if they are necessary in a democratic state for its security or public order, or for the protection of the environment, public health and morals, or freedom and rights of other people. These limitations cannot affect the substance of freedoms and rights.

Article 68, and specifically paragraph 4 thereof, provides that public authorities are obliged to fight against epidemics and to prevent the negative effects of environmental degradation on health.

The environment in whole is devoted art. 74 of the Polish Basic Law: Public authorities are pursuing policies that ensure ecological safety for modern and future generations. Environmental protection is the responsibility of the public authorities. Everyone has the right to information on the condition and the environment. Public authorities support citizens' actions to protect and improve the environment.

According to article 86, everyone is obliged to care for the condition of the environment and is responsible for the deterioration caused by him. The law determines the principles of this liability.

It can be assumed that whenever the legislator speaks of the environment in the Constitution, it also means nature. This is justified in the often-overlooked view that nature is part of the environment, and that the basic act is a framework act and quite general. It is common ground that the protection of the environment is in the public interest. It may be added that it is a very important public interest, since the legislator places the task of the state in the form of environmental protection already in art. 5 Constitutions.

This task of the state is not correlated, however, with the citizen's right to claim the appropriate state (good) of the environment from the state. In other words, we cannot talk about the subjective right of citizens in terms of the proper state of the environment.

Although the design of the subjective rights of citizens in the field of public law was not one of the prerogatives recognized in socialist law, the Polish Constitution of 1952 in Art. 71 meant that citizens were entitled to benefit from the value of the environment.

This difference, apparently speaking in favor of the previous Constitution, should be seen in the light of all the political solutions of the People's

is a national good; Art. 71: Citizens of the People's Republic of Poland have the right to use the value of the environment and to protect it.

Republic of Poland where civil rights and freedoms were not in practice the most important values. Rather, it seems to be difficult to grasp the right to the environment of the right quality in terms of subjective law applicable in the courts.

This is a problem not only in Poland. Also in European law neither the EU Treaty nor the EC Treaty formulates individual rights to the environment.

More broadly, M. Kenig-Witkowska concludes that there is no provision in international law or EU law for a provision which would be the basis for claims arising from such a right⁷. The individual's right to the environment can not be derived from the case law of the Court of Justice of the European Union, which admits that the protection of the environment is one of the general objectives of the Community but does not entail the right of EU citizens to the environment⁸.

Environmental protection is also linked to the constitutional principle of sustainable development, which in principle determines environmental protection. Namely, such is the use of the environment (because it is not possible to be comprehensive, absolute protection of the environment, rather rational, limited and above all wise use) that will guarantee and be in harmony with sustainable development.

The concept of sustainable development hides a rather flexible content, which is probably justified given the variability of protective and economic needs. The concept of sustainable development requires that the environment be treated as a value in the production process as well as capital and labor. This means that industry must ensure growth while maintaining a balance between ecology and the market. The concept of sustainable development will be integrated into the everyday life of the economy when the economic leaders fully understand and apply not only the principles on which economic development depends but also the principles on which the natural balance and the state of the environment are based, between economy and the environment⁹.

In addition, art. 5 of the Constitution is included in the so-called. programming norms. Programming norms set the goals and stages of state action and means of their implementation. These are sometimes called deferred or indirect use laws. They give flexibility to the legal order, and their main addressee is the parliament on whose pace and means of their imple-

⁷ M. Kenig-Witkowska, *Prawo do środowiska w prawie międzynarodowym*, „Państwo i Prawo” 2000, nr 9, *Prawo środowiska Unii Europejskiej. Zagadnienia systemowe*, Warszawa 2005, p. 26–29.

⁸ C-240/83 *Procureur de la République v. Association de Défense de Brûleurs de Huiles Usagées*, ECR 1985/531.

⁹ J. Sommer, *Prawo ochrony środowiska w Polsce*, Wrocław 1993.

mentation depends. They usually express not definite or partially undefined¹⁰.

Despite the general principle of direct application of the Constitution, art. 5 is an exception that needs clarification and detail in ordinary legislation.

In Polish legislation the definition of sustainable development is contained in art. 3 Act of Environmental Protection. This is understood as the socio-economic development in which the process of integrating political, economic and social activities takes place, with the preservation of the natural balance and the sustainability of fundamental natural processes, in order to guarantee the ability to meet the basic needs of particular communities or citizens of both modern Generations as well as future generations.

The mention by the Constitution of the term “sustainability” as well as the number of references to this term in other acts requires it to be regarded as one of the most important terms in nature and environment protection¹¹.

This notion, as well as the concept of sustainable development itself, can be regarded as “the cause of the content of the law (the will of the states)”. At the World Conference in Rio de Janeiro in 1992, the concept of sustainable development was recognized as the basic concept of human development, which has since then significantly influenced national legislation and international law.

In general, the view of the Constitution of the Republic of Poland in terms of regulation of the environment, including nature, demonstrates that nature, the environment, and their protection are treated by the legislature as important and in the public interest.

The influence of international law and scientific thought in the field of nature and the environment is reflected in the Polish constitutional terms (sustainable development, ecological safety). Environment, nature are treated as constitutional values. Environmental protection is explicitly recognized as an obligation of public authorities.

It is not absolutized at this point – and rightly so, with complete protection, civilization development, including economic ones, could not be possible.

It must be borne in mind that the protection of the environment (nature) is not the only value protected by the Constitution and must be considered by reference to other rights and obligations of citizens as well as the obligations of the state¹².

¹⁰ J. Boć (red.), *Komentarz do Konstytucji RP z 1997 roku*, Wrocław 1998, p. 23.

¹¹ Zob. Z. Bukowski, *Zrównoważony rozwój w systemie prawa*, Toruń 2009, p. 24.

¹² M. Mazurkiewicz, *Regulacja konstytucyjna ochrony środowiska w Polsce*, “Ochrona Środowiska. Prawo i Polityka” 1997, nr 2, p. 13.

1.2. Statutory sources of Polish environmental law

The Polish law on environmental protection consists of the following regulations:

- 1) regulations governing protection against pollution (emission rights)
- 2) regulations regulating the protection of natural phenomena (nature conservation law)
- 3) regulations governing the use of nature resources
- 4) regulations governing procedural and organizational issues
- 5) regulations regulating product control from the point of view of environmental protection requirements¹³.

In general, the Law of 2001 states the Environmental Protection Law expresses all of the foregoing directions of environmental law. It has been conceived as a quasi-code act that has a leading role in the legal environment. It is a continuum of the concept of a comprehensive law, which was already the 1980 law¹⁴.

The Act lays down certain general principles applicable to specific areas of environmental protection and establishes common environmental protection institutions (eg, rules on legal liability), but also covers exhaustive regulation of other parts of the environment, particularly those related to emission rights. Particularly noteworthy is the novelty in our tradition of trying to separate the environmental protection regulations (Title II) from the anti-pollution regulations (Title III). The approach taken is aimed at ensuring horizontal coherence (between water, air, etc.) while maintaining internal consistency within each of the environmental components of vertical harmonization¹⁵.

The law aims to ensure the integration of regulations in two ways: 1) through norms that play the role of fundamental norms within the whole scope of environmental law, which are subject to all other norms in this field, 2) ordering the application of its provisions on the regulation of other environmental laws.

2. Attempts to construct the right to the environment on the basis of the Constitution

The currently binding Constitution of the Republic of Poland does not directly create a subjective right to the environment. In general, there are also no convincing arguments to attempt to interpret such legislation from

¹³ J., Sommer, *Efektywność prawa ochrony środowiska – problemy udatności jego struktury*, Wrocław 2005, p. 39–40.

¹⁴ L. Łustacz, *Kompleksowa ochrona środowiska*, „Państwo i Prawo” 1980, nr 3.

¹⁵ Zob. J. Jendrośka, M. Bar, *Prawo ochrony środowiska. Podręcznik*, Wrocław 2005, p. 520–523.

the provisions of the Constitution, particularly those relating to the environment and its protection. As Tomasz Bojar-Fijałkowski points out, the Constitution of the Republic of Poland quite freely defines the state's obligations in the field of environmental protection, imposing on them the obligation to secure and organize such protection. Only specific laws clarify in which areas state bodies take an active role¹⁶.

Neither the letter nor the spirit of the Basic Law in force in Poland constitutes a condition for conclusions about a constitutionally guaranteed public subjective right to the environment.

Leszek Garlicki, well-known Polish constitutionalist, correctly stated that the Constitution of the Republic of Poland does not guarantee the general right of individuals to live in a healthy environment, because its creators want to avoid the clause of unreal shape and difficult to determine legal consequences¹⁷.

This is particularly evident if we refer to those provisions of the Constitution of the Republic of Poland, which public subjective rights create.

I mean here, by way of example, art. 68 sec. 1 stating that everyone has the right to health or art. 66 sec. 1 announcing everyone's right to safe and hygienic working conditions. Only the constitutional right to information about the protection of the environment, but it is a construction completely different from the postulate of the subjective right to the environment, can be treated as a public subjective right.

An additional argument is historical: the Polish Basic Law does not contain a provision similar to the Constitution of the Polish People's Republic introduced by the amendment of 10 February 1976 – Art. 71 stated that citizens of the Polish People's Republic have the right to use the value of the environment and to protect it¹⁸.

In Polish legal literature there are attempts to link the right to environment with two concepts: ecological security and environmental justice.

2.1. Ecological security as a source of the right to the environment

In contemporary Polish legal literature, voices emanating from the environment of the state's tasks (responsibilities) in the form of environmental protection or the pursuit of ecological security are emerging. Such views, though interesting, are not convincingly justified.

¹⁶ T. Bojar-Fijałkowski, *O wycofywaniu się państwa z aktywności w sferze ochrony środowiska i gospodarki komunalnej*, „Studia Prawnoustrojowe” 2017, nr 37, p. 111.

¹⁷ L. Garlicki, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, t. III, Warszawa 2003.

¹⁸ The nature of this law was thoroughly analyzed in the legal literature of the 1980s: J. Sommer, *Prawo jednostki do środowiska – aspekty prawne i polityczne*, Warszawa 1990; W. Radecki, *Obywatelskie prawo do środowiska w Konstytucji PRL*, Jelenia Góra 1984.

According to Piotr Korzeniowski, since there is an obligation to ensure ecological security, we therefore have the right to environmental protection and indirectly also the right to the environment. The right to environmental protection is directly linked to the right to the environment. The right to environment is an instrument of subjective right for ecological security¹⁹.

2.2. Environmental justice as a source of the right to the environment

Environmental law is also linked to the concept of environmental justice. Ecological justice is not a legal term, it is not the wording of the Constitution of the Republic of Poland nor in the ordinary legislation.

In the Polish legal literature, Janina Ciechanowicz-McLean and Piotr Korzeniowski were probably the most keenly interested in environmental justice.

According to J. Ciechanowicz-McLean, the essence of environmental justice is not only a narrowly understood environmental protection but, above all, its equal treatment, together with social development and historical justice, which together should create environmental justice. Ecological justice is most often linked to the activity of movements and ecological organizations that can protect the environment from the possibility of using it as a common good. It is manifested, for example, by providing a broad social contribution to environmental protection, in particular social participation in environmental protection, and environmental information²⁰.

Piotr Korzeniowski sees ecological justice in terms of the axiological foundations of the legal forms of using the environment. In his opinion, environmental justice is one of the values of environmental law, in addition to biodiversity, sustainable development or a high level of environmental protection²¹.

The author proposes to consider ecological justice – as I have understood his view – on three levels:

1. In connection with the legal forms of use of the strategic natural resources of the country referred to in the Act of 6 July 2001, About preserving the national character of strategic natural resources of the country (the resources listed in Article 1 of the Act).

2. In relation to the administrative regulation of the use of the environment, the different forms of environmental use take into account the various

¹⁹ P. Korzeniowski, *Bezpieczeństwo ekologiczne jako instytucja prawna ochrony środowiska*, Łódź 2012, p. 381–382.

²⁰ J. Ciechanowicz-McLean, *Environmental Justice jako rodzaj sprawiedliwości*, „Gdańskie Studia Prawnicze” 2016, Tom XXXV, p. 119.

²¹ P. Korzeniowski, *Bezpieczeństwo ekologiczne jako instytucja prawna ochrony środowiska*, Łódź 2012, p. 249.

aspects of environmental justice, and environmental justice is in particular the basis for a rationalized,

3. In connection with the use of forms of nature conservation, where environmental justice is perceived as the basis of the function of nature conservation law. Notes that in order to ensure ecological justice within the framework of the legal regulation of the use of nature resources, there is a way of accomplishing the objectives of nature conservation²².

Looking at three distinctive levels, each based on the use of the environment, it is easy to come to the conclusion that environmental justice – in the view of Piotr Korzeniowski – is a model of the use of different environmental resources that will be fair.

Unparalleled considerations will be found in regard to justice in general, regarded as value in social relations, including the value of the law and the legal system. Legal and philosophical literature provides many definitions of justice, beginning with antiquity²³. In order to address these considerations, the basis for them and the limits should be based on a certain definition of justice.

To this end, following the views of Kazimierz Ajdukiewicz, I acknowledge that justice is lawfulness, understood both as *lex* and as *ius*²⁴, and – in support of Maria Ossowski's position – justice is the adoption and observance of certain rules for the distribution of goods, distribution of burdens, mutual benefits²⁵.

Environmental justice is such a state; it is justice, in which the three conditions must be met together:

1. Legal regulations, including environmental law, are respected, both in terms of their letter and what is under the letter (the spirit of law)

2. Access to and use of environmental resources is governed by rules that are either explicitly expressed in environmental laws or can be derived from them through logical interpretations.

3. Establishing these rules respects such concepts and principles as the principle of sustainable development, the principle of treating the environment as a common good, the principle of pursuing such policies that will ensure ecological security, the principle of equity between the generations, which can be deduced from this part The Constitution on ecological security, which orders not only contemporary but also future generations, or from the

²² P. Korzeniowski, *Sprawiedliwość ekologiczna w prawnej regulacji korzystania z zasobów środowiska*, [in:] M. Stahl (red.), M. Kasiński (red.), K. Właźlak (red.), *Sprawiedliwość i zaufanie do władz publicznych w prawie administracyjnym*, Warszawa 2015, p. 695–705.

²³ R. Tokarczyk, *Sprawiedliwość: próba syntetycznej systematyzacji zagadnień*, „Gdańskie Studia Prawnicze” 2016, Tom XXXV, p. 13–50.

²⁴ K. Ajdukiewicz, *O sprawiedliwości*, [in:] K. Ajdukiewicz, *Język i poznanie*, t. 1, Warszawa 1985, p. 368.

²⁵ M. Ossowska, *Normy moralne. Próba systematyzacji*, Warszawa 1985, p. 139.

fragments of the Introduction to the Constitution, which refers to the gratitude of ancestors, the reference to the traditions of the First and Second Republic, and the obligation to convey to the future generations all the precious things, over a thousand years of accomplishment.

It is worth mentioning that the use of the concept of “environmental justice” is a simplification, a sort of redirection of the legal language and its concepts towards policy.

First of all, because the word “ecological” is colloquially understood as being compatible with nature, not harmful to the environment.

In the meantime, ecology is a science about the structure and function of nature, which deals with the study of interactions between organisms and their environment and between them.

In this context, the first impression that comes after hearing the phrase “environmental justice” leads us towards a fair use of environmental resources. In this sense, environmental justice is a policy principle, as is the principle of sustainable development, or the principle of ecological security. These last two concepts still have a stronger legal position, because they are directly contained in the legal texts. Meanwhile, the principle of environmental justice must be interpreted.

In this sense, environmental justice is not a source of subjective rights for an individual. Anyway, you can see that the Constitutional Court does not generally use this term; He also spends a lot of time on ecological safety or sustainable development.

However, if we assume that:

1) Environmental law is not only about protection but above all regulating the use of the environment – and then it is better to use the term environmental law instead of environmental law, which is clear from the laws and doctrines of other states.

2) justice, especially intergenerational is an element of the concept of sustainable (sustainable) development, as Magdalena Kenig-Witkowska writes²⁶,

3) ecological does not have to be “pro-environmental”, but taking account of the relationship between man and his environment,

then we can come to the conclusion that ecological justice is in fact close to the notion of sustainable development. In other words, justice, especially intergenerational and ecological, is the basis for sustainable development.

On such a legal background, environmental justice can be treated as a principle of law in a directive context, that is a directive of conduct which we decode from the legal text or derive from the legal norms interpreted from that text and which is consequently legally binding, ie the legal principle of

²⁶ M.M. Kenig-Witkowska, *Międzynarodowe prawo środowiska*, Warszawa 2011, p. 29–30.

strict sense. It is therefore not a misuse of interpretations to use the term “principle of environmental justice”.

This is a second degree principle, decoded from a number of other constitutional principles: the principles of social justice, the rule of law, the principle of sustainable development, the principle of solidarity (and not only intergenerational but also within generational). There is a doctrinal justification, and there is a necessary and substantive link between the above principles and the principle of environmental justice.

It is therefore difficult to recognize that there is a manifestation of inflation in the sense of unnecessary multiplication of the law and, consequently, the neglect of their significance for the process of interpretation in relation to other constitutional norms.

According to some, such arbitrariness in deriving, and the creation of them in violation of logic and systematics, lead them to be treated as non-textual rules governed by the principles of equity and justice²⁷.

It seems that the Polish Constitutional Court does not treat ecological justice as a firm legal principle, the source of subjective rights for the individual. In essence, it does not directly refer to ecological justice, and thus does not confirm its status as a constitutional principle of law. It seems to treat ecological justice as a policy principle, a way of doing things to protect the environment.

Despite less ideological treatment of ecological justice, some of the judgments of the Tribunal will find some structural elements that can actually be categorized as a model of ecological justice as a model for its comprehension. The fact that the Tribunal does not use this concept directly, or rather forces its finding in its case-law of the essential elements that promote the achievement of ecological justice, does not mean that the Court is against the pursuit of environmental justice. This can be explained as follows.

First of all, the Constitutional Court does not want to multiply in the legal discourse the expressions quite blurred, not expressly expressed by the constitutional legislator, but also by the ordinary legislator.

Secondly, the very concept of justice (without adjectives), the Court uses sparingly and even temperately – probably because the excess of axiology and attempts to interpret the notion of vaguely unclear do not break the Constitution and patterns of constitutional control.

It seems that, based on a number of statements by the Court relating to the environment and its protection as a legal value, it is possible to approximate environmental justice and read guidelines that will allow it to be seen not only in the context of environmental policy, but also in the context of environmental law.

²⁷ L. Morawski, *Zasada państwa prawnego – próba reinterpretacji*, „Acta UNC Prawo” 1995, nr 35, p. 21.

3. The manifestations of the right to environment in ordinary legislation

It seems that instead of general “right to the environment” it is better to use the construction of many individual rights to certain environmental resources.

In this context, it is possible to indicate the right to use particular environmental resources:

For example, in the Forest law of 1991, the right of access to the Treasury State’s forests (art. 26).

For example, in the 2004 Nature Conservation Act, the right of access to certain forms of nature conservation (art. 12. Par. 1).

For example, in the Act of 2017 Water Law – the right to universal use of water (art. 32).

Let us note, however, that in the abovementioned legislation it is not protection, only the individual’s right to use certain environmental resources, and it can be considered whether it is a subjective right, of course, in a balanced manner, taking into account the protection requirements.

4. The right of access to forests and the right of access to water as an example of realisation of right to the environment

The subject of the right to the environment will always be a specific good, not a collection of them. There is no doubt that legal protection can only be given because of the threat or infringement of a particular good, sometimes indicated by the person whose rights have been violated, but always determined by the court. Different positions cannot be justified by lack of individualization. Such a good thing will be the forest.

The core of Polish forestry legislation is the Forest Act of 28 September 1991.

Article 26 of the Forest Act provides that forests owned by the State Treasury, with certain exceptions, are made available to the public.

Article 27 states that forests owned by the State Treasury are made available (with specific exceptions) for harvesting forest fodders, for their own needs, but also for industrial purposes – it is however conditional upon the conclusion of an agreement with the superintendent.

Article 28 states that a forest owner who is not a State Treasury may, by means of an appropriate sign, prohibit access to his forest.

There are therefore legal grounds for constructing a public subjective right as the right of access to the Treasury forest.

The question is what is the content of “forest access rights”. Hypothetically, one can distinguish the following situations:

- 1) the right of access to the state forest, that is actually entering the area legally recognized as a forest (for recreation, nature, walking, etc.), in fact,
- 2) the right to harvest forest fodder for own use in the state forest,
- 3) the right to place apiaries – in the latter case the provisions of the Act only stipulate that this is in the state forest free of charge and the detailed rules of such localization will define the executive act.

Forests and public access rights appear to be a more rational and real example of a legal instrument than the enigmatic, postulate, and political slogan of the “subjective right to the environment”. More than a demand for environmental protection or a claim for existence in a suitable environment, it should be read as a right to use the environment (of course, with other constitutional principles, with the principle of sustainable development).

Similar conclusions can be derived from the analysis of the right of access to water. In either case, the laws make quite clear what can be enforced and what is demanded, and to whom the claim is made. And in this sense they allow the construction of effective and real subjective law.

5. Summary and conclusions

Different philosophical and political bases allow you to create a multifacetedness of the right to environment, and allow – depending on how you look:

- see human rights in the environment as collective law (collective – regarding group of people and quality of life) and interpersonal and intergenerational solidarity,

- see individual law that the individual can oppose the state, which leads to the individual’s right to the environment as a subjective right or even a public subjective right.

If we respect such a distinction, and separate – of course an important political-ideological sphere, strictly legal, the status and content of the law of the environment will be more transparent. It is simply that the laws which make up the law of the environment as collective must not be interpreted hastily as the creation of the subjective right, the right of the individual. It seems that these provisions of the Polish Constitution, which relate to the environment and its protection, treat the environment primarily in terms of collective law.

It can be argued that the attempts to construct public subjective law into the environment under the Polish law are doomed to failure.

First of all, because they assume too much uncertainty and imprecision (what is good, right, good environment?).

Secondly, in fact, we do not have a claim, which is an instrument for the effective application of a certain positive behaviour – and thus the postulated design does not fall within the accepted definition of a public subjective right.

Thirdly, it is not certain what it is about to walk: whether the right to demand protection of the environment (ie living in a friendly environment) or the right to use the environment and its value). Two marked variants (postulates) will pay more attention.

This first postulate is derived from the Stockholm Declaration, and is more political and declarative than legal. In the first point, the declaration formulates the principle that a person has the right to freedom, equality, and adequate living conditions in an environment that would allow for a decent life in prosperity; Man has a serious responsibility to protect and improve the environment for present and future generations.

The second one can be combined with the Socialist Constitution of the Polish People's Republic and the above mentioned provision on the right to use the value of the natural environment. In short, the value of the environment does not have to be purely aesthetic and purely natural, but can be interpreted as a resource from which man can (and must) benefit. If we look at the statutory definitions of the environment or the natural environment, then we have there m. Elements such as minerals, water, land and other elements of diversity; When we read the definition of environmental protection contained in the Act of 27 April 2001 Environmental Protection Law, the management of environmental resources is planned in the first place.

That is why, when we talk about the right to environment, its content should be less perceived as a right to environmental protection or as a right to live in an environment that provides a dignified living environment but as a right to use the environment. The right to the environment is the right to regulate access to various goods.

Such a position was presented by Jerzy Sommer (supporting foreign literature) while writing that the right to environmental protection was reduced to the right to participate in decision-making processes, including the right to cooperate, while the right to live in a dignified man's environment. This is a formulation so general that it cannot be given a different meaning than the legal and political idea.

Contemporary jurisprudence also deals with the design of a "subjective right to the environment" with a reserve. The right to the environment as individual, individual and individual rights can only be sought in the manner provided for by art. 74 Constitution almost everyone to information about the protection and state of the environment.

The Constitution also does not give grounds for talking about the special protection of any element of the environment, although there have been at-

tempts to amend the essential law in such a direction, nor do they authorize the construction of a subjective right to any element of the environment. In the years 2013–2015 there was a political discussion in Poland, which in turn found legal endorsement in the form of a parliamentary vote on the amendment of the Constitution, concerning the introduction into the Basic Law of the statute expressing the special protection of the forests of the State Treasury. The proposed amendment did not obtain the necessary majority.

Wykaz literatury

- Ajdukiewicz K., *Język i poznanie*, t. 1, Warszawa 1985.
- Boć J. (red.), *Komentarz do Konstytucji RP z 1997 roku*, Wrocław 1998.
- Bojar-Fijałkowski T., *O wycofywaniu się państwa z aktywności w sferze ochrony środowiska i gospodarki komunalnej*, „Studia Prawnoustrojowe” 2017, nr 37.
- Bukowski Z., *Zrównoważony rozwój w systemie prawa*, Toruń 2009.
- Ciechanowicz-McLean J., *Environmental Justice jako rodzaj sprawiedliwości*, „Gdańskie Studia Prawnicze” 2016, Tom XXXV.
- Garlicki L. (red.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, t. III, Warszawa 2003.
- Jendrośka J., Bar M., *Prawo ochrony środowiska. Podręcznik*, Wrocław 2005.
- Kenig-Witkowska M., *Prawo do środowiska w prawie międzynarodowym*, „Państwo i Prawo” 2000, nr 9.
- Kenig-Witkowska M., *Prawo środowiska Unii Europejskiej. Zagadnienia systemowe*, Warszawa 2005.
- Kenig-Witkowska M., *Międzynarodowe prawo środowiska*, Warszawa 2011.
- Korzeniowski P., *Bezpieczeństwo ekologiczne jako instytucja prawna ochrony środowiska*, Łódź 2012.
- Łustacz L., *Kompleksowa ochrona środowiska*, „Państwo i Prawo” 1980, nr 3.
- Mazurkiewicz M., *Regulacja konstytucyjna ochrony środowiska w Polsce*, „Ochrona Środowiska. Prawo i Polityka” 1997, nr 2.
- Morawski L., *Zasada państwa prawnego – próba reinterpretacji*, „Acta UNC Prawo” 1995, nr 35.
- Ossowska M., *Normy moralne. Próba systematyzacji*, Warszawa 1985.
- Sommer J., *Prawo ochrony środowiska w Polsce*, Wrocław 1993.
- Sommer J., *Efektywność prawa ochrony środowiska – problemy udatności jego struktury*, Wrocław 2005.
- Stahl M., Kasiński M., Właźlak K. (red.), *Sprawiedliwość i zaufanie do władz publicznych w prawie administracyjnym*, Warszawa 2015.
- Tokarczyk R., *Sprawiedliwość: próba syntetycznej systematyzacji zagadnień*, „Gdańskie Studia Prawnicze” 2016, Tom XXXV.

Streszczenie

Prawo do środowiska w Rzeczypospolitej Polskiej

Słowa kluczowe: prawo do środowiska, prawo środowiska, konstytucja, prawo dostępu do lasu, sprawiedliwość ekologiczna, bezpieczeństwo ekologiczne.

Artykuł skupia się na rozumieniu prawnym terminu „prawo do środowiska”. Autor analizuje owo sformułowanie w kontekście Konstytucji RP oraz odnosząc się do ustawodawstwa zwykłego z zakresu ochrony przyrody. Zaznacza, że źródła prawa do środowiska można poszukiwać w koncepcji sprawiedliwości ekologicznej oraz w terminie „bezpieczeństwo ekologiczne”. Konkluduje, że są wątpliwości co do mówienia o ogólnym prawie do środowiska, i że lepiej chyba używać terminu „prawo do poszczególnych wartości środowiska, w tym przyrody”.