Compliance with the Time Limit of Article 129 (4) of the Act of 27 April 2017 the Environmental Law in the Case-Law of the Supreme Court

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Abstract. *The study discusses issues related to maintaining the deadline for suing claims due to restrictions on the use of real estate provided for in Article 129 (1–3) of the Environmental Protection Law. Provided for in the provisions of Articles 129–136 of the Environmental Protection Law liability for damages was formed as a statutory obligation to compensate for damages resulting to property owners (holders of perpetual usufruct) from the introduction of legal regulations that narrow down the possibilities of using these properties. The conditions for liability are: entry into force of a regulation or act of local law resulting in a limitation on the way the property is used, damage suffered by the owner of the property, the holder of perpetual usufruct or the person holding property law, and a causal link between the restriction on the use of the property and the damage. Claims for damages derived from these sources meet the requirements of Articles 361–363 of the Civil Code of the Republic of Poland. They are property claims, subject to limitation (art. 117 § 1 of the Civil Code), however — without being tort claims — they are subject to limitation on general principles arising from Article 118 of the Civil Code. An important legal issue is whether, and if so, to what extent, it is possible to apply by analogy provisions on suspension or interruption of the limitation period to the preclusion period contained in Article 129 (4) of the Environmental Protection Law. The starting point for reflection on this issue are the arguments originating from the current case law of the Supreme Court. Based on the views and arguments of the Supreme Court, the author tries to answer the question on the conditions that meet the three-year period provided for in Article 129 (4) of the Environmental Protection Law asserting claims for restrictions on the use of real estate.*

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Introductory Remarks

The issue of compliance with the time limit for claims concerning restrictions on the use of property has been discussed in Polish literature and in the Supreme Court's judicature for a long time. At this point it is worth to clearly indicate that the starting point for considerations on this issue will be the arguments stemming from the current case-law of the Supreme Court. In Article 129 of the Environmental Law[1], the legislator provided for two types of claims in relation to restrictions on the use of property:

1. a request for buyout of the property or a part of it, and
2. a request for compensation[2].

[1] Ustawa z dnia 27 kwietnia 2001. Dz.U. 2017, item 519 as amanded.

[2] Art. 129 (1). If, due to a limitation of the use of the property, its use or part of it in the current manner or in accordance with the current purpose has become impossible or significantly restricted, the owner of the property may demand the buyout of the property or part of it.

The former arises when the use of property or a part of it in the manner or in accordance with its former purpose has become impossible or significantly restricted, the latter — when the owner of the property has suffered damage due to the restriction regarding the use of it, which also includes a reduction in the value of the property.

A request for buyout or compensation may be made within two years from the date of entry into force of the legal act restricting the use of property. In accordance with Article 136 (2) of the Environmental Law, the one whose activity resulted in the introduction of restrictions in connection with the establishment of an area of limited use is obliged to pay compensation or buy out the property. The above mentioned regulations show that the legislator, in Articles 129–136 of the Environmental Law, has regulated independent grounds for compensation liability related to the restriction of the use of property and the creation of an area of limited use, based on the assumption that the risk of damage related to activities which are burdensome for the surroundings should be borne by the entity which undertakes these activities for their own. The grounds for this liability are: the entry into force of a regulation or local law act restricting the use of property, damage suffered by the owner of the property, its perpetual usufructuary or a person who has a right *in rem* to the immovable property, and the causal link between the introduced restriction of the use of property and the damage.

Grounds For Compliance With The Time Limit

The presented issue has been reflected in the case-law of the Supreme Court. The time limit provided for in Article 129 (4) of the Environmental Law, in accordance with the prevailing view of the Supreme Court's case-law, is defined as a strict time limit (final date), the expiry of which leads to the expiry of the claims indicated in Article 129 (1–3) of the Environmental Law[3]. However, in its judgments of 26 March 2009[4] and of 4 July 2013[5], the Supreme Court assumed — without justification — that the period provided for in Article 129 (4) of the Environmental Law is the limitation period for a claim[6]. It can now be considered that, in line with the prevailing view of the case-law, this is a strict time limit. However, if the two-year period referred to in Article 129 (4) of the Environmental Law is met, claims referred

2. In connection with the restriction of the use of property, its owner may claim compensation for the damage suffered, the damage also includes the reduction in the value of the property.

4. The claim referred to in sections 1–3 may be made within two years from the date of entry into force of a regulation or local law act restricting the use of property.

[3] *See:* Uchwała składu siedmiu sędziów SN z 20 czerwca 2013, III CZP 2/13, OSNC 2014, No. 2, item 10, uchwała SN of 9 lutego 2017, III CZP 114/15, BSN 2017, No. 2, uchwała SN of 12 maja 2017, III CZP 7/17, OSNC 2018 No. 2, item 13 and Wyrok SN z 4 grudnia 2013, II CSK 161/13, OSNC — ZD 205, No. 2, item 16 oraz nie publikowane *Wyrok*i SN of 29 listopada 2012 r., II CSK 254/12, z 21 sierpnia 2013, II CSK 578/12, 2 października 2015, II CSK 720/14.

[4] I CSK 312/08, unpublished.

[5] I CSK 645/12, unpublished.

[6] *De lege lata* the latter view is not defensible.

to in Article 129(1–3) of the Environmental Law are undoubtedly time-barred under Article 118 et seq. of the Civil Code.[7] From this perspective, Article 129 (4) of the Environmental Law is one of the provisions which combine the final date, which is a special solution, with a limitation period resulting from the general rules of civil law.

There is no doubt that the compliance with the two-year time-limit provided for in Art. 129 (4) of the Environmental Law requires the owner of the property to make the claim referred to in Art. 129 (1–3) of the Environmental Law. A claim is a subjective right, which consists in the possibility to demand from another person to behave in a certain way, consisting in the contemplated situation of buying out all or part of the property or paying compensation for the damage suffered. However, it should be noted that the claims, with the exceptions specified in the Act, are actionable, i.e. they can be executed under state compulsion. This is related to the issue of the so-called right of complaint, i.e. the right to bring an action. 'Making a claim' may therefore mean taking action against the other party to the legal relationship, e.g. a request for payment, as well as procedural actions, e.g. bringing an action or a motion for a summons to a conciliation hearing to the court.

In the case-law and literature there is no doubt about the possibility of attributing certain effects in the sphere of substantive law to procedural actions. An example of such a situation is the interruption of the limitation period of a claim by bringing an action (Article 123 § 1 point 1 of the Civil Code). According to the view presented in the Supreme Court's judgment of 16 April 2014[8] also a summons to a conciliation hearing (Article 185 of the Code of Civil Procedure[9]) may lead to the interruption of the period of limitation of the claim, if the content of the application clearly indicates the subject of the claim and its amount. The submission of a summons to a conciliation hearing is also considered to be a claim, since this can achieve the objective of pursuing a claim by bringing an action.

In turn, in the justification of the resolution of 27 June 2008[10], the Supreme Court explained that in legal science and in the judicature there is a clear distinction between situations in which a specific material legal effect is caused by a legal action implicit in the procedural action taken (e.g. a summons to make a performance included in the petition if the claimant has not previously summoned the defendant to make a performance), from situations in which the substantive law directly binds certain effects to the procedural act itself (e.g. Article 123 § 1 point 1 of the Civil Code). In the first case, the substantive effects of the action taken and the time of its occurrence shall be determined according to the provisions of substantive law (compare: Article 61 of the Civil Code).

According to the view of the Supreme Court expressed in the judgment of 4 December 2013[11], if Article 129 (4) of the Environmental Protection Law establishes a two-year period for making a claim, understood as submitting a claim to the liable party, its meaning is exhausted when such a claim is made. In support of their

[7] *See:* unpublished Wyrok SN z 4 grudnia 2013, II CSK 161/13. Ustawa z 23 kwietnia 1964 — Kodeks cywilny. Dz.U. 2017, item 459 as amended.

[8] V CSK 274/13, unpublished.

[9] Ustawa z 17 listopada 1964 — Kodeks postępowania cywilnego Dz. U. 2018, item155 as amended.

[10] III CZP 54/08, OSNC 2009, No. 7–8, item 105.

[11] II CSK 161/13, unpublished.

position, they stressed that an interruption of the time limit can be said to have occurred when an action restricted by the time limit has not been carried out, but other actions have been taken by the parties before the expiry of the time limit, indicating their willingness to carry out voluntarily an obligation for which timely action was essential. However, if the target action has been carried out within the time limit, this action shall be effective and terminate the time limit.

It is worth noting that the phrase 'a claim may be submitted' according to the view included in the justification of the Supreme Court resolution of May 12 2017[12], means both a request for payment and filing a suit[13]. In its extensive justification, the Supreme Court stated that the interpretation of Article 129 (4) in conjunction with Article 136 (1) of the Environmental Law leads to the conclusion that the claims provided for in Article 129 (1–3) of the Environmental Law should be made (submitted) within 2 years from the entry into force of the regulation or local law act restricting the use of the property to the person obliged to pay or buy out the property or to take legal action. Therefore, there are no grounds for assuming that a claim for compensation or buyout of the property will expire if it is not submitted to the obliged person before the expiry of the prescribed period, despite the fact that the claim has been brought before that time. In that connection, it pointed out that it does not result from the abovementioned provisions that a request for compensation or buyout of the property before the expiry of that time limit is a condition for the admissibility of pursuing those claims before the courts, and that there is no time limit for the injured party to respond to the request.

The above considerations support — the Supreme Court emphasized — the statement that when interpreting Art. 129 (4) of the Environmental Protection Law it is impossible to ignore its exceptional character, which has no analogy in other provisions. This is evidenced by the use of the phrase 'to make a claim' instead of the phrase ' to claim', as adopted in the normative acts, and by allowing for the duplication of the strict time limits and limitation periods. For this reason it is justified to classify the motion for a summons to a conciliation hearing as a procedural action and a substantive action with elements of a statement of will and a statement of knowledge. There are no justified reasons to consider a procedural act — a summons to a conciliation hearing, as not meeting the statutory requirement of 'submitting a claim' within the meaning of Article 129 (4) Environmental Law. Assuming that the mere submission of the indicated motion (a summons to conciliation hearing) is not sufficient and in order to have a substantive legal effect it will be necessary to deliver a copy of it to the other party, introduces an element of uncertainty, total dependence on the actions of another entity, even threatening the certainty of legal transactions. In practice, this could lead to discontinuation of the conciliation procedure, contrary to the directive on the settlement of cases contained in Article 10 of the Code of Civil Procedure. There are also significant axiological arguments in favour of considering that compliance with the two-year time limit provided for in Article 129 (4) of the Environmental Law is satisfied by the mere fact that a summons to a conciliation hearing before its expiry is made to the court. There is no doubt about the compensatory nature of claims

[12] Footnote 3.

[13] *Compare:* Wyrok SN z 29 listopada 2012, II CSK 254/12, unpublished.

based on this provision aimed at protecting property rights on the one hand (Article 21 and Article 64 § 1 of the Constitution), and on the other hand, at compensating for property rights violated as a result of the action of public authority (Article 77 § 1 of the Constitution). The interpretation adopted aims to simplify procedures and remove obstacles that may hinder or limit the exercise of the protection of these constitutionally guaranteed rights.

Conclusions

I believe that at present there can be no doubt that the maintenance of the two-year time limit provided for in Article 129(4) of the Environmental Law requires the owner of the property to make a claim referred to in Article 129 (1–3). 'Making a claim' may therefore mean both actions addressed to the other party to the legal relationship, e.g. a request for payment, as well as procedural actions, e.g. bringing an action or a motion for a summons to a conciliation hearing to the court. Filing a motion to summon a person to an conciliation hearing to the court, without prior notification of the claim to the person required to satisfy the claim, shall lead to compliance with the two-year time limit provided for in Article 129(4) of the Environmental Law also if a copy of the motion has been served on that person after the expiry of that time limit. There are no grounds for assuming that a claim for compensation or buyout of the property will expire if it is not submitted to the obliged person before the expiry of the prescribed period, despite the fact that the claim has been brought before that time. It cannot be inferred from the aforementioned provisions that a request for compensation or buyout of the property before the expiry of the said time limit is a condition for the admissibility of pursuing these claims in court.

References

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3. Uchwała SN of 9 lutego 2017, III CZP 114/15, BSN 2017, No. 2,
4. Ustawa of 17 listopada 1964 — Kodeks postępowania cywilnego. Dz.U. 2018, item 155 as amended.
5. Ustawa of 23 kwietnia 1964 — Kodeks cywilny Dz.U. 2017, item 459 as amended
6. Ustawa of 27 kwietnia 2001, Prawo ochrony środowiska. Dz.U. 2017, item 519 as amended.
7. Wyrok SN of 4 grudnia 2013, II CSK 161/13, unpublished.
8. Wyrok SN of 16 kwietnia 2014, V CSK 274/13, unpublished.
9. Wyrok SN of 2 października 2015, II CSK 720/14, unpublished.
10. Wyrok SN of 21 sierpnia 2013, II CSK 578/12, unpublished.
11. Wyrok SN of 26 marca 2009, I CSK 312/08, unpublished.
12. Wyrok SN of 27 czerwca 2008, III CZP 54/08, OSNC 2009, No. 7–8, item 105.
13. Wyrok SN of29 listopada 2012, II CSK 254/12, unpublished.

14. Wyrok SN of 29 listopada 2012., II CSK 254/12, unpublished.
15. Wyrok SN of 4 grudnia 2013, II CSK 161/13, OSNC–ZD 205, No. 2, item 16
16. Wyrok SN of 4 grudnia 2013, II CSK 161/13, unpublished.
17. Wyrok SN of 4 lipca 2013, I CSK 645/12, unpublished.

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Streszczenie. *W opracowaniu została omówiona problematyka związana z zachowaniem terminu dochodzenia roszczeń z tytułu ograniczenia sposobu korzystania z nieruchomości przewidzianych w art. 129 ust.1–3 — Prawo ochrony środowiska. Przewidziana w przepisach art. 129–136 Prawo ochrony środowiska odpowiedzialność odszkodowawcza ukształtowana została jako ustawowy obowiązek zrekompensowania szkód wynikłych dla właścicieli nieruchomości (użytkowników wieczystych) z wprowadzenia uregulowań prawnych, które zawężają możliwości korzystania z tych nieruchomości. Przesłankami odpowiedzialności są: wejście w życie rozporządzenia lub aktu prawa miejscowego powodującego ograniczenie sposobu korzystania z nieruchomości, szkoda poniesiona przez właściciela nieruchomości, jej użytkownika wieczystego lub osobę, której przysługuje prawo rzeczowe do nieruchomości, i związek przyczynowy między wprowadzonym ograniczeniem sposobu korzystania z nieruchomości a szkodą Roszczenia odszkodowawcze wywodzone z tych źródeł odpowiadają wymaganiom art. 361–363 k.c. Są roszczeniami majątkowymi, podlegającymi przedawnieniu (art. 117 § 1 k.c.) przy czym — nie będąc roszczeniami deliktowymi — podlegają przedawnieniu na zasadach ogólnych wynikających z art. 118 k.c. Istotnym zagadnieniem prawnym jest czy, a jeśli tak, to w jakim zakresie, do terminu o charakterze prekluzyjnym zawartego w art. 129 ust. 4 Prawo ochrony środowiska, możliwe jest stosowanie w drodze analogii przepisów o zawieszeniu lub przerwaniu biegu przedawnienia'. Punktem wyjścia do rozważań na ten temat tego zagadnienia są argumenty wypływające z aktualnego orzecznictwa Sądu Najwyższego. Autor stara się w oparciu o poglądy i argumentacje Sądu Najwyższego udzielić odpowiedzi na pytanie jakie są warunki do zachowania trzyletniego terminu przewidzianego w art. 129 ust. 4 — Prawo ochrony środowiska, dochodzenia roszczeń z tytułu ograniczenia sposobu korzystania z nieruchomości.*

Zusammenfassung. *Die Studie erörtert die Fragen im Zusammenhang mit der Einhaltung der in Artikel 129 Absatz 1–3 — Umweltschutzgesetz — vorgesehenen Frist für Ansprüche auf Beschränkung der Nutzung von Immobilien. Die in den Bestimmungen des Artikels 129–136 des Umweltschutzgesetzes vorgesehene Schadensersatzverpflichtung wurde als gesetzliche Verpflichtung ausgestaltet, die Eigentümer von Immobilien (ewige Nießbraucher) für die Schäden zu entschädigen, die sich aus der Einführung von Rechtsvorschriften ergeben, die die Möglichkeiten der Nutzung dieser Immobilien einschränken. Die Haftungsgründe sind: das Inkrafttreten einer Verordnung oder eines lokalen Gesetzes, das die Nutzung der Immobilie einschränkt, Schäden, die der Eigentümer der Immobilie, ihr ständiger Nutznießer oder eine Person, der das dingliche Recht an der Immobilie zusteht, erlitten hat, und der Kausalzusammenhang zwischen der eingeführten Einschränkung der Nutzung der Immobilie und dem Schaden. Schadensersatzansprüche aus diesen Quellen entsprechen den Anforderungen der Artikel 361–363 des Bürgerlichen Gesetzbuches. Es handelt sich um vermögensrechtliche Ansprüche, die der Verjährung unterliegen (Artikel 117 § 1 des Bürgerlichen Gesetzbuches), die aber — da es sich nicht um deliktische Ansprüche handelt — der Verjährung nach den allgemeinen Regeln unterliegen, die sich aus Artikel 118 des Bürgerlichen Gesetzbuches ergeben. Eine wichtige rechtliche Frage ist, ob und wenn ja, in welchem Umfang es möglich ist, die Bestimmungen über die Aussetzung oder Unterbrechung der Verjährungsfrist analog auf die in Artikel 129(4) des Umweltschutzgesetzes enthaltene Zeit räuberischer Natur anzuwenden". Ausgangspunkt der Überlegungen zu dieser Frage sind die Argumente, die sich aus der aktuellen Rechtsprechung des Obersten Gerichtshofs ergeben. Der Autor versucht, auf der Grundlage der Ansichten und Argumente des Obersten Gerichtshofs die Frage zu beantworten, unter welchen Voraussetzungen die in Artikel 129 Absatz 4 — Umweltschutzgesetz — vorgesehene Dreijahresfrist eingehalten werden kann, um Ansprüche auf eine Beschränkung der Nutzung des Eigentums geltend zu machen.*

Резюме. *В статье рассматриваются вопросы, связанные с соблюдением сроков подачи исков в связи с ограничениями по использованию недвижимости, предусмотренными статьей 129 (1–3) Закона об охране окружающей среды. Предусмотренная в положениях статей 129–136 Закона об охране окружающей среды ответственность за ущерб была сформулирована в виде законодательного обязательства по возмещению ущерба, причиненного владельцам собственности (обладателям вечного пользования) в результате введения законодательных норм, ограничивающих возможность использования этих недвижимостей. Условиями ответственности являются: вступление в силу постановления или акта местного права, в результате которого ограничивается способ использования имущества, ущерб, причиненный собственнику недвижимости, обладателю вечного права пользования или лицу, обладающему имущественным правом, а также причинная связь между ограничением на использование недвижимости и нанесенным ущербом. Иски о возмещении ущерба, вытекающие из этих источников, соответствуют требованиям ст. ст. 361–363 Гражданского кодекса РП. Они являются имущественными исками, подлежащими ограничению (ст. 117 § 1 Гражданского кодекса), однако — не являясь деликтными исками — они подлежат ограничению согласно общим принципам, вытекающим из ст. 118 Гражданского кодекса. Важным правовым вопросом является то, можно ли, и если да, то в какой степени, по аналогии применять положения о приостановлении или прекращении срока исковой давности к периоду исковой давности, предусмотренному статьей 129 (4) Закона об охране окружающей среды. Отправной точкой для рассмотрения этого вопроса являются рекомендации, основанне на положениях действующего прецедентного права Верховного суда. Основываясь на мнениях и рекомендациях Верховного суда, автор пытается ответить на вопрос об условиях, которые соответствуют трехлетнему периоду, предусмотренному статьей 129 (4) Закона об охране окружающей среды, предъявляя иски об ограничениях на использование недвижимости.*