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Water Security in Poland. Conceptualization and General Constitutional Conditions

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Abstract

The summer 2019 in Poland was hot and dry. A similar trend was also observed in previous years, so Poles partly got used to the view of extremely low levels of rivers. But at the beginning of June, Skierniewice – a town of 47 000 people, ran out of water. Similar situations, which are expected to happen in Poland repeatedly, undermine the social sense of security, indicating that access to water may be at risk and it cannot be taken for granted. They also trigger discussion on the state's responsibility to secure water of adequate quality and quantity to meet social and environmental water-related needs, in other words – to provide water security. The purpose of this article is to analyze a complex issue of “water security” in Poland, through the lenses of its general constitutional conditions. The article is divided into four sections. The first section considers the concept of “water security” as a theoretical framework and increasingly significant water governance paradigm; the second one briefly outlines the most pressing water security problems in Poland; the third one is focused on the constitutional characteristics of water se-

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curity as a special task norm of the Polish basic law; finally, the fourth section analyzes water security as the constitutional right of an individual.

Streszczenie

Bezpieczeństwo wodne w Polsce. Konceptualizacja i ogólne warunki konstytucyjne

Lato 2019 r. w Polsce było rekordowo upalne i suche. Podobne tendencje widoczne były w poprzednich latach, dlatego po części przywykliśmy do widoku ekstremalnie niskich poziomów rzek. Jednak na początku czerwca w Skierniewicach – mieście zamieszkałym przez 47 000 osób, po prostu zabrakło wody. Tego typu sytuacje, które mają powtarzać się w Polsce, zakłócają społeczne poczucie bezpieczeństwa, wskazując, że dostęp do wody może być zagrożony i nie można go uznać za absolutny pewnik. Sprzyjają także dyskusji na temat odpowiedzialności państwa za zapewnienie bezpieczeństwa dostępu do wody. Celem artykułu jest analiza złożonego zjawiska bezpieczeństwa dostępu do wody w Polsce, przez pryzmat jego ogólnych uwarunkowań konstytucyjnych. Rozważania podzielono na cztery części. W pierwszej analizie poddano koncepcję bezpieczeństwa dostępu do wody jako formułę teoretyczną i zyskującą na znaczeniu paradygmat zarządzania zasobami wodnymi; w drugiej zwięźle omówiono najistotniejsze problemy bezpieczeństwa dostępu do wody w Polsce; w trzeciej dokonano ogólnej konstytucyjnej charakterystyki bezpieczeństwa wodnego jako szczególnej normy programowej polskiej ustawy zasadniczej, a w czwartej jako konstytucyjnego prawa jednostki.

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I. The Concept of Water Security

It is nearly impossible to overemphasize the significance of water in every single aspect of human biological and social existence. Water pertains to the very essence of all life and maintains all ecosystems on Earth. It touches all dimensions of development, representing an indispensable economic, cultural and strategic asset. In recent decades this precious resource – in terms of quality and quantity – has been under increasing anthropogenic pressure arising from rapid population growth, urbanization, and changing consump-

tion patterns; and form natural challenges with climate change as a factor of prime concern.

The figures on the worldwide status and the major trends in water-related issues, although seemingly well known, bear repetition as they indicate critical challenges which are expected to escalate in the future. About 30% of global population do not have access to safely managed drinking water³. More than 2 billion people live in countries with high water stress⁴, two-thirds of the global population face severe water scarcity for at least one month every year⁵. Global water demand has been steadily increasing by about 1% a year since the 1980's and is predicted to rise at similar rate until 2050⁶, accompanied by intensifying physical water stress. Agriculture is the largest consumer and the main source of global water pollution, accounting for nearly 70% of annual water withdrawal, mainly for irrigation purposes. It has been estimated that if environmental degradation continues along with unsustainable pressure on water resources, 52% of the world's population and 40% of grain production will be put at risk by 2050⁷. Furthermore, an extensive study considering jointly human and biodiversity perspectives on water security finds that nearly 80% of the world's population is already exposed to high levels of threats in these regards⁸.

As global water resources are becoming scarcer and more polluted, water-related extreme events such as floods and droughts more frequent, and the number of people, ecosystems, and social life domains affected by thereof are on the rise, the social, political and academic narrative of uncertainty, risks and threats, including those of existential nature, are inevitably trig-

³ United Nations Children's Fund (UNICEF) and World Health Organization, *Progress on household drinking water, sanitation and hygiene 2000–2017. Special focus on inequalities*, New York 2019, p. 46.

⁴ WWAP (UNESCO World Water Assessment Programme), *The United Nations World Water Development Report 2019: Leaving No One Behind*, Paris 2019, UNESCO, p. 13.

⁵ M. M. Mekonnen, A.Y. Hoekstra, *Four billion people facing severe water scarcity*, "Science Advances" 2016, vol. 2, No. 2.

⁶ WWAP (UNESCO World Water Assessment Programme), *op.cit.*, p. 13.

⁷ United Nations, *Sustainable Development Goal 6: Synthesis Report 2018 on Water and Sanitation*, New York 2018.

⁸ C.J. Vörösmarty, C. McIntyre, P. Gessner et al., *Global threats to human water security and river biodiversity*, "Nature" 2010, vol. 467.

gered. Moreover, the mentioned factors have led to the perception of water resources through the prism of security⁹.

The specific “career” of the “water security” concept reflects a broader tendency toward multiplying the referent objects of the scholarly research in security; and – in the policy language – toward integrating different issues concerning water resources management under capacious “water security” framework. Placing the problems related to water in the area of the post- Cold War redefined security research resulted from the already well-established trend toward comprehensive recognition of security connected to discursive practices of securitization. The latter involve extending the notion of security far beyond the phenomena typical of the military field – the use of force and power politics. The process of securitization is founded on a discourse presenting something as an existential threat, in terms of urgency and priority¹⁰. Whereas the precise definition and the criteria of securitization for a specific referent object stem from “the intersubjective establishment of an existential threat with saliency sufficient to have substantial political effects”¹¹. The special character of security threats justifies implementing extraordinary measures to cope with them, and the act of including an issue into the area of security concerns entails shifting it to emergency, locating among matters of particular attention, as well as initiating an intensified political and academic debate and actions. It is worth emphasizing that certain objects and sectors, among which water and environmental sector represent a model example, and also display increased susceptibility to securitization. At the same time the environmental sector provides fertile ground for “dramatic securitization” at the conceptual and narrative level, but with rather moderately successful practical effects leading to extraordinary measures being actually undertaken¹². Water security seems to be highly illustrative here.

⁹ C. Tortajada, V. Fernandez, *Toward Global Water Security: A Departure from the Status Quo?*, [in:] *Global Water Security: Lessons Learn and Long-Term Implications*, ed. World Water Council, Springer, Singapore 2018, p. 1.

¹⁰ B. Buzzan, O. Wæver, J. De Wilde, *Security: A New Framework for Analysis*, London 1998, p. 21.

¹¹ *Ibidem*, p. 25.

¹² *Ibidem*, p. 74.

Over the last two decades, the concept of water security has been an object of increased attention, both in political and academic debates, engaging states, intergovernmental bodies, non-governmental sector, as well as industry and scholars of various disciplines¹³. Within that time the notion of “water security” went beyond its early connotations to military security and hydropolitics¹⁴, has become more widely used, it has been given various meanings and put into broad integrative frameworks. As M. Jarraud, the former secretary general of World Meteorological Organization, and chair of UN-Water, stated: “in the past few decades definitions of security have moved beyond a limited focus on military risk and conflict”. “Security has now come to mean human security and its achievement through development. Water fits within this broader definition of security embracing political, health, economic, personal, food, energy, environmental and other concerns and acts as a central link between them”¹⁵.

Within the increasing uptake of water security multiple and diverse definitions have emerged. For instance, Global Water Partnership’s definition, which is assumed to have introduced a complex multidimensional framework, states that: “water security at any level from the household to the global means that every person has access to enough safe water at affordable cost to lead a clean, healthy and productive life, while ensuring that the natural environment is protected and enhanced”¹⁶. One of the most frequently cited is D. Grey and C.W. Sadoff’s definition originated in development studies. For the authors, water security means “the availability of an acceptable quantity and quality of water for health, livelihoods, ecosystems and production, coupled with an acceptable level of water-related risks to people, environments and economies”¹⁷. However, K. Bakker and C. Cook suggest that water secu-

¹³ C. Cook, K. Bakker, *Water security: Debating an emerging paradigm*, “Global Environmental Change” 2012, vol. 22, No. 1.

¹⁴ Ibidem, p. 97; Ch. Staddon, N. James, *Water Security: A Genealogy of Emerging Discourses*, [in:] *Globalized Water. A Question of Governance*, ed. G. Schneier-Madanés, Dordrecht–New York 2014, p. 261.

¹⁵ UNESCO and UNESCO i-WSSM, *Water Security and the Sustainable Development Goals (Series I)*. Global Water Security Issues (GWSI) Series, Paris 2019.

¹⁶ Global Water Partnership, GWP, *Toward Water Security: A Framework for Action*, Stockholm 2000, p. 12.

¹⁷ D. Grey, C.W. Sadoff, *Sink or swim? Water security for growth and development*, “Water Policy” 2007, vol. 9, No. 6, p. 548.

urity is “an acceptable level of water-related risks to humans and ecosystems, coupled with the availability of water of sufficient quantity and quality to support livelihoods, national, security, human health, and ecosystem services”¹⁸. Scott et al. consider water security in terms of “sustainable availability of adequate quantities and qualities of water for resilient societies and ecosystems in the face of uncertain global change”¹⁹. UN-Water – mechanism coordinating efforts on all water-related issues within the United Nations System, defines water security as “the capacity of a population to safeguard sustainable access to adequate quantities and acceptable quality of water for sustaining livelihoods, human wellbeing, and socio-economic development, for ensuring protection against waterborne pollution and water-related disasters, and for preserving ecosystems in a climate of peace and political stability”²⁰.

This referenced sample consists of prominent, oft-quoted examples of water security definitions. They are representative with regard to dominant sources of water security conceptualizations – scholarly publications and policy documents, as well as for the spectrum of attributes constituting the notion of water security. According to meta-analysis of water security studies, aimed at looking for some repeatable patterns within variety of works operationalizing the issue, most of them encapsulate themes such as: the availability of sufficient quantity and acceptable quality of water for broadly understood human (including access, health, livelihoods, food security, human development, cultural values, inter alia) and ecosystem needs, protection against water-related hazards (floods, droughts and pollution), sustainability, socio-economic growth, national security, transboundary water resources management, good governance, and uncertainty due to the global environmental change²¹.

As a broad and integrative concept – water security is multi-scalar and operates at all levels, from individual, household, to local, sub-national, national, regional and international settings. It is also multidimensional and cross-sec-

¹⁸ K. Bakker, *Water Security: Research Challenges and Opportunities*, “Science” 2012, vol. 337, p. 914.

¹⁹ Ch.A. Scott et al., *Water Security and Adaptive Management in the Arid Americas*, “Annals of the Association of American Geographers” 2013, vol. 103, No. 2, p. 281.

²⁰ UN-Water, *Water Security & the Global Water Agenda. A UN-Water Analytical Brief*, UN University, Hamilton 2013, p. 2.

²¹ A. K. Gerlak et al., *Water security: A review of place-based research*, “Environmental Science and Policy” 2013, vol. 82, pp. 80–82; C. Cook, K. Bakker, op.cit.; UN-Water, op.cit., p. 3.

toral, due to the existential significance of water and its critical role in many sectors, to name just food production or energy sector. What is particularly important is that there is an intricate network of interdependencies between water security and the range of other security areas including human security, national security, environmental and climate security, food security, and energy security, among others²². The concept of “water security” also recognizes multidirectional intersections between different water-related realms of security (like water-energy-food security nexus, water-human-state security nexus, climate-water-national security nexus and so on)²³, and identifies a need to mediate trade-offs between different stakeholders, scales and uses of water²⁴.

Water security may be approached as an influential theoretical framework – a paradigm and an overarching goal of water management²⁵. The enormous complexity of the issues constituting water security, no matter whether the term is explicitly expressed or not by the competent authorities, translates into an equally complex governance and regulatory challenge. What makes it even more nuanced from the perspective of state’s responsibilities and obligations, is the approach to water security based on human rights, enhanced by formal recognition of the right to water and sanitation by the United Nations General Assembly and the UN Human Rights Council.

II. Is Poland Water-Secure?

The alarming statistics on the current state of global water resources and the prognosis concerning hydrological implications of climate change show that the world is far from being water secure. Contrary to a popular view, the problems with reliable access to water of sufficient quantity and appropriate quality to meet human and ecosystem needs, do not affect only developing coun-

²² M. Zeitoun, *The Global Web of National Water Security*, “Global Policy” 2011, vol. 2, No. 3; UN-Water, op.cit., pp. 11–17.

²³ M. Zeitoun, op.cit.

²⁴ C. Cook, K. Bakker, op.cit., p. 98.

²⁵ A. E. Hoekstra et al., *Urban water security: A review*, “Environmental Research Letters” 2018, vol. 13, p. 2.

tries, with a significant number of people lacking everyday access to drinking water. They are also faced by developed, seemingly well-watered states. Does Poland have an issue with water security?

Water is a scarce resource in Poland which is one of the water scantiest European states, as it was admitted in a 2019 Polish Supreme Audit Office's report, ominously headlined "Poland, European Desert". River runoff – a variable reflecting renewable water resources of a particular area is much below the average for Europe. In addition, the proportion of the total yearly river runoff to the number of inhabitants – the volume of renewable river flow per capita, which represents water availability indicator, is 1600 m³/year. Again, it is much lower than the European average – 4500 m³/year. According to P. Kowalczak and Z.W. Kundzewicz's interpretation of internationally accepted classifications, this figure – the third lowest among European states, is "not far from the threshold of water stress"²⁶. Poland is a country with clearly defined hydrographic boundaries and only 13% of the outflow is formed outside its territory. It means that Polish water resources are largely "indigenous", and so is the responsibility for their sufficient quality and quantity²⁷.

Polish rivers are highly vulnerable to precipitation variability, which results partly from natural fluctuations typical of the transient climate²⁸. What is important from the water security perspective, is that the most reliable (although not free from intrinsic scientific uncertainty) projections of the possible climate change impact on the hydrological situation of the country, say that Poland should prepare for coping with water crisis. Although climate change simulations are inconsistent with respect to the predicted changes in seasonal precipitation in Poland, they expect aggravation of extreme phenomena resulting from the intensification of the hydrological cycle and predict deepening water deficits, with considerable social and economic impact²⁹. The frequency and severity of droughts have been increasing significantly in recent

²⁶ P. Kowalczak, Z.W. Kundzewicz, *Water-related conflicts in urban areas in Poland*, "Hydrological Sciences Journal" 2011, vol. 56, No. 4, p. 589.

²⁷ *Hydrologia Polski*, eds. P. Jokieli, W. Marszelewski, J. Pociask-Karteczka, Warsaw 2017, p. 4.

²⁸ *Ibidem*.

²⁹ *Ibidem*, pp. 301–305. Z.W. Kundzewicz et al., *Assessment of climate change and associated impact on selected sectors in Poland*, "Acta Geophysica" 2018, No. 66.

years and this trend is very likely to continue in the future³⁰, translating into potential water shortages in water supplies for agriculture, the industry- including the energy sector, and even households. The predicted intensification of extreme precipitation, in turn, bears a higher risk of destructive floods³¹.

Water scarcity along with current and predicted water-related hazards, enhanced by vulnerability to climate change, comprise a warning sign for the competition for water resources between municipal economy, energy sector, industry, and agriculture in Poland³². This vision, predicting growing water-related social conflicts and tensions, pictures Poland as a state with significant susceptibility to water security issues.

III. Is “Water Security” a Constitutional Normative Category in Poland?

The analysis of water security from the perspective of constitutional law is a multidimensional and complex issue. At the same time, this issue concerns the basic problems of modern constitutional law, both in the aspect of theoretical conditions (constitutional theory and theory of fundamental rights), as well as dogmatic and practical ones. To a large extent this refers to the ambiguously interpreted and, consequently, also the assessed issues related to the so-called constitutional task norms and their possible “enforceability”, the issues of state positive obligations in the field of protection of human rights³³, as well as the horizontal impact of norms protecting individual rights. The issue of water security is directly a model exemplification of these problems.

The Polish Constitution³⁴ does not explicitly express the concept of “water security” in any of its provisions. The constitutional provisions also do not explicitly guarantee the right of access to water. This does not mean, however, that the concept does not currently have an indirect legal basis in the

³⁰ L. Łabędzki, *Actions and measures for mitigation drought and water scarcity in agriculture*, “Journal of Water and Land Development” 2016, No. 26, p. 3.

³¹ P. Kowalczak, Z.W. Kundzewicz, op.cit., p. 589.

³² *Hydrologia Polski...*, p. 305.

³³ D. Xenos, *The Positive Obligations of the State under the European Convention of Human Rights*, London–New York 2012.

³⁴ The Constitution of the Republic of Poland, April 2, 1997 (Dz.U. No. 78, item 483).

Polish Constitution and international law binding in Poland³⁵. The constitutional provisions, which undoubtedly allow an indirect reconstruction of the normative category of “water security”, include regulations that refer to directly constitutional concepts, i.e. “citizens’ security” and “principle of sustainable development” (Article 5 of the Constitution), “environmental protection” (Article 5 and Article 74 of the Constitution) and “ecological security” (Article 74 of the Constitution), as well as “legal protection of life” (Article 38 of the Constitution) and “right to health protection” (Article 68 of the Constitution). Water security is in general equally connected with all these constitutional values. This determines the need to treat water security as a normative category of the Polish Constitution. Another fact, which also results from the constitutional nature of the cited regulations of the Polish Constitution, is that water security as a constitutional normative category should be characterized as a special constitutional principle in the form of a constitutional task norm and as a constitutional individual fundamental right.

IV. Water Security as a Task Norm of the Polish Constitution

In theoretical terms, the constitutional task norms are, with certain simplification, a normative expression of the constitutionalization of the state’s objectives. Their characteristic feature is that they (usually) do not indicate the means of achieving the goal set by the constitution-maker. These theoretical characteristics correspond to the cited constitutional regulation of the Article 5 of the Polish basic law regarding the ‘final’ state goals indicated there. These objectives include, inter alia, ensuring ‘citizens’ security’ and ‘environmental protection’, i.e. objectives which are directly linked to water security. The analyzed constitutional norm also contains a specific general directional norm relating to the methods of achieving these objectives in the form of the “sustainable development principle”, which thus also plays a key consti-

³⁵ Article 11 of International Covenant on Economic, Social and Cultural Rights 1966 (Dz.U. 1977, No. 38, item 169), which recognizes the right of everyone to an adequate standard of living. K.F. Braig, *The European Court of Human Rights and the right to clean water and sanitation*, “Water Policy” 2018, vol. 2 (20), p. 1–26.

tutional role in the selection of measures to ensure water security. First of all, while turning to a detailed discussion of these concepts, it should be noted that, in terms of constitutional norms, the sphere of citizens' security is not completely identical to the sphere of state security³⁶. In principle the Constitution treats these terms separately, but it is possible to combine them normatively, mainly on the basis of the Article 1 of the Constitution, which defines the state as the "common good" of all citizens. In the context of water security analyzed here, this approach is fully justified, because, as indicated, access to water has not only an individual or social dimension, but it is also a strategic nation-wide value. At the same time, the analyzed concept of security should be widely interpreted and encompass a wide spectrum of factors affecting the protection of citizens and the state, including ecological and water security. Most importantly, the protection of citizens and the state in the field of water security should cover both real and current threats, but also those of potential and future nature³⁷.

First of all, in the context of ensuring environmental protection as the goal of the Polish state expressed in the Article 5 of the Constitution, it should be emphasized that natural environment is one of the basic values constitutionally protected, which also clearly confirms the jurisprudence of the Polish constitutional court³⁸. This means that environmental protection is thus one of the basic constitutional goals of the state, which achievement should be given priority. In turn, the actual role of water for the entire ecosystem requires prioritizing the protection of its resources. The constitutional protection of the environment, including the protection of water resources analyzed in detail here, requires the selection of such measures that both prevent (or significantly impede) the degradation of the ecosystem (the negative aspect of protection), as well as counteract threats to the natural environment, rationally shape its use and lead to any necessary restoration of individual elements of the ecosystem to the

³⁶ J. Marszałek-Kawa, D. Plecka, *Social Security as a Factor Contributing to the Evolution of the Political System in Poland after the Parliamentary Elections of 2015*, "Środkowoeuropejskie Studia Polityczne" 2017, No. 4, pp. 79–94.

³⁷ M. Florczak-Wątor, *Komentarz do art. 5 Konstytucji*, [in:] *Konstytucja RP. Tom I. Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warsaw 2016.

³⁸ Judgment of the Constitutional Tribunal of June 7, 2001, Ref. No. K 20/00.

appropriate state (positive aspect of protection). In view of the mentioned current and future threats to Poland's water security, constitutional directional norms in this respect lead us to the conclusion that they need to be urgently and realistically applied in practice and treated as a constitutional duty of the state.

First of all, the constitutional duties of the state in the scope of general environmental protection, and its basic element in the form of water resources protection, require actual reference to the aforementioned principle of sustainable development. This principle is one of the most important supreme constitutional principles, and its meaning is certainly not less than the more "classical" supreme constitutional rules, such as the principle of a democratic state ruled by law. The practical significance of this principle can and should gain importance, especially in view of not only the real threats to the water security of Polish citizens and the entire Polish state, but also other hazards to the natural environment. First of all, the constitutional practical dimension of this principle is expressed in the fact that it directs the state's activity in the field of water security protection and is an interpretation directive of the relevant legal regulations. Most importantly, the Polish legal system contains a legal definition of "sustainable development" in the Article 3 point 50 of the Environmental Protection Law 2001³⁹. According to this provision, sustainable development means that "the socio-economic development in which the process of integrating political, economic and social activities takes place, while maintaining natural balance and sustainability of basic natural processes, in order to guarantee the possibility of satisfying the basic needs of individual communities or citizens, both modern and future generations". As emphasized in the jurisprudence of the Constitutional Tribunal⁴⁰, the principle of sustainable development requires that various constitutional values and their balance be considered, which in turn requires referring to the constitutional principle of proportionality. The principle of sustainable development from the Article 5 of the Constitution should also be complementarily referred to the three pillars of the Polish economic system based on the principle of social market economy, i.e. to the freedom of economic activi-

³⁹ Dz.U. 2019, item 1396.

⁴⁰ Judgment of the Constitutional Tribunal of June 6, 2006, Ref. No. K 23/05.

ty, to private property and to solidarity, dialogue and cooperation of social partners (Article 20 of the Constitution). The principle of sustainable development should be treated as an equivalent fourth constitutional pillar of the economic system, while the premise of “development” requires consideration when shaping the economic policy of the Polish state, not only current economic goals, but also prospective and future goals, regarding “future generations” (Article 74.1 of the Constitution).

The fulfillment of the duties related to the constitutional task norm of ensuring water security for Polish citizens (and the entire state) rests primarily with state organs. In the first place this refers to the Council of Ministers, which, pursuant to the Article 146 of the Constitution is responsible, among others, for the proper conduct of the “water policy” of the state and ensuring water security⁴¹. This does not mean, however, that other state and local bodies are exempt from this obligation. The addressees of the indicated constitutional norms in the scope of achieving this objective in a universal, nationwide dimension are generally all public authorities operating in Poland, and thus also other state organs, including courts and local government bodies. The necessity to implement the constitutional principle of ensuring water security does not preclude also the correction of erroneous decisions of other bodies. Obligations in this regard should be related to all aspects of the state’s functioning and include the plane of creating the law, the plane of applying the law and the actions of the actual state officers. Equally broadly, the premise of guaranteeing (“ensuring”) water security should be laid out and should include all forms of guarantee, which will be discussed in detail below in the context of the analysis of water security as a constitutional right.

Ensuring water security in Poland is not only a constitutional task (duty) of state bodies, but also of Polish citizens. There is a clear general obligation to care for the state as a common good of all citizens (Article 1 and Article 82 of the Constitution), which concretization results from the Article 86 of the Constitution – the duty to care for the state of the environment. Pursuant to the latter norm, it is possible to hold a citizen legally responsible for

⁴¹ Resolution No. 67 of the Council of Ministers of July 16, 2019 on the adoption of the “2030 ecological policy of the state – a development strategy in the field of environment and water management” (M.P. 2019, item 794).

the deterioration of the natural environment caused by him, including acts or omissions in relation to the aquatic ecosystem. At the same time, it requires the issues discussed below, regarding the understanding of water security as a constitutional right of an individual, to be combined with care for its implementation by the citizens themselves.

V. Constitutional Right to Water Security in Poland

According to the norms of the Polish Constitution, water security can also be treated as a constitutional right of every person (not only citizens) to access sufficient quantities, safe water (right to water, right to access water, right to water security), with necessary consideration of ensuring environmental protection. Reconstruction of this right, in addition to the already discussed Article 5 of the Constitution, is possible on the basis of constitutional regulation of the right concerning environmental protection and ecological security (Article 74 of the Constitution)⁴², but also from the legal guarantee of protection of life (Article 38 of the Constitution)⁴³ and the right to health protection (Article 68 of the Constitution)⁴⁴.

The right to water security should be interpreted broadly in line with the assumptions of the theory of fundamental rights. Thus, in a constitutional sense, it should include the right to substantially free use of the available water resources (“right-freedom”), but also the legal possibility of obtaining protection of this sphere by the state (“right-entitlement”) and the power to seek protection in the cases of violation, which updates the state’s obligation to provide or restore protection (“right-competence”)⁴⁵. From the state perspective, the obligation to protect the right to water security in this sense should be understood broadly and modeled in the form of refraining

⁴² W.J. Wołpiuk, *O konstytucyjnym zadaniu państwa w zakresie ochrony środowiska – zgodnie z zasadą zrównoważonego rozwoju*, “Prakseologia” 2004, vol. 144, pp. 21–31.

⁴³ R. Grabowski, *Prawo do ochrony życia w polskim prawie konstytucyjnym*, Rzeszów 2006.

⁴⁴ M. Piechota, *Konstytucyjne prawo do ochrony zdrowia jako prawo socjalne i prawo podstawowe*, “Roczniki Administracji i Prawa” 2012, vol. 12, pp. 93–104.

⁴⁵ M. Jabłoński, *Klasyfikacja wolności i praw jednostki w Konstytucji RP*, [in:] *Wolności i prawa jednostki w Konstytucji RP*, t. I: *Idee i zasady przewodnie konstytucyjnej regulacji wolności i praw jednostki w RP*, ed. M. Jabłoński, Warsaw 2010, pp. 95–96.

from action (Latin: *non facere*) or withstand (Latin: *pati*) and action (Latin: *facere*) and giving (Latin: *dare*). The first two forms of protection should consist of setting legal restrictions on the right to use water resources, primarily considering the general water resources of the country and the “affordable price” of water. In turn, two further forms of protection, are related to the positive obligations of the state in terms of guaranteeing water security, and in this regard mainly concern the rational provision of water resources to individual entities and taking possible actions to guarantee the appropriate level of these resources or restore their proper level. It also seems that there are no obstacles to speaking about the potential horizontal impact of constitutional norms in this area, i.e. in relations between private entities, in the context of the right to water security. In particular, in relations of citizens with (large) economic entities, appealing to constitutional protection in this respect may in practice strengthen and make the protection of this right more real.

In addition, water security is also a premise specifying the general category of “security” which is the basis for limiting the freedoms and rights of individuals under the Article 31 section 3 of the Constitution, but also under the premise of “freedom and rights of others” as the right to water (right to access water). Water security may also constitute the basis for restricting the freedom of economic activity under the Article 22 of the Constitution, as part of the constitutional premise of “important public interest”. In this perspective, it is worth considering the result of a possible test of proportionality of restrictions on the freedom of economic activity, including agricultural production, due to the protection of the right to water security, and it should be stated unequivocally that such restrictions are constitutionally permissible in principle. The interference in economic activities, including agricultural practices, due to the protection of the state’s water security and the individual right of access to water, may in a particular situation prove necessary, useful for the protection of these constitutional values and at the same time be in the right proportion to the means of the interference used. However, in relation to agricultural production, it should be emphasized that the interference cannot produce the opposite of the intended effect, in turn resulting in, for example, nutritional threat. It should also be stressed that in some situations, not necessarily related to the

state of natural disaster in the form of drought (Article 232 of the Constitution), the constitutional proportionality mechanism can paradoxically justify rationing of water as a means of providing access to it. In conclusion, it should be noted that water security is a general basis for restricting other constitutional rights, while at the same time access to water may also be restricted, although in exceptional cases.

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