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## **The Concept of Sustainable Development as a Constitutive Element of the Polish Political and Legal System and a Specific Human Right**

**Keywords:** Constitution, Concept of Sustainable Development, Human Rights, Political System,

**Słowa kluczowe:** konstytucja, koncepcja zrównoważonego rozwoju, prawa człowieka, system polityczny,

### **Abstract**

The term ‘human rights’ is used to describe the rights of every person, regardless of their nationality or social position. In the doctrine, the term is also understood differently as the material, social and cultural premises of human independence. Both the concept and the content of the principle of sustainable development are the subject of a broad debate involving representatives of different scientific disciplines, publicists, and politicians representing different options.

The authors of the article analyze the principle of sustainable development in the context of human rights. From the text of Art. 5 of the Constitution, it can be deduced that the principle of sustainable development in this layer is a human and civil right, broader than the law, relating to living in an uncontaminated environment. The core of the con-

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cept of sustainable development, which is not sufficiently emphasized due to its “appropriation” by ecologists and its complexity unduly perceived by lawyers, is that it formulates rights for future generations. The perception of these rights by the creators of the Polish Constitution, both in its preamble and in its Article 5, should be considered momentous and anticipating its creation.

## Streszczenie

### **Koncepcja zrównoważonego rozwoju jako konstytucyjnego elementu polskiego systemu polityczno-prawnego i swoistego prawa człowieka**

Termin „prawa człowieka” jest używany do opisanego praw każdej osoby, niezależnie od jej narodowości czy pozycji społecznej. W doktrynie termin ten jest też różnie rozumiany jako materialne, społeczne i kulturowe przesłanki samodzielności człowieka. Natomiast koncepcja, jak i treść zasady zrównoważonego rozwoju są przedmiotem szerokiej debaty z udziałem przedstawicieli różnych dyscyplin naukowych, publicystów i polityków reprezentujących różne opcje.

Autorzy artykułu w swoim opracowaniu poddają analizie zasadę zrównoważonego rozwoju w kontekście praw człowieka. Z treści art. 5 Konstytucji można wywnioskować, że zasada zrównoważonego rozwoju w tej warstwie jest szerszym od prawa prawem człowieka i obywatela, odnoszącym się do życia w środowisku nieskażonym. Sednem koncepcji zrównoważonego rozwoju, niedostatecznie podkreślanej ze względu na jej „zawłaszczanie” przez ekologów i niewłaściwie postrzeganą przez prawników złożoność, jest formułowanie praw dla przyszłych pokoleń. Postrzeganie tych praw przez twórców Konstytucji RP, zarówno w jej preambule, jak i w art. 5, należy uznać za doniosłe i antycypujące jej powstanie.

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## I.

The term ‘human rights’ is used to describe the rights of every person, regardless of their nationality or social position<sup>4</sup>. In the doctrine, the term is also understood differently as the material, social and cultural premises of human in-

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<sup>4</sup> W. Kägi, *Die Menschenrechte und ihre Verwirklichung*, Aarau 1969, p. 3.

dependence<sup>5</sup>. It sometimes is stated that human rights are the rights included in constitutions of different states vested in all individuals under the jurisdiction of those states, i.e., both citizens and noncitizens<sup>6</sup>. It is also pointed out that human rights are the freedoms, means of protection, and benefits that all people should be able to claim as rights by the society in which they live<sup>7</sup>. Some authors argue that human rights are both the freedoms of the individual and the powers that can be used to demand a specific action from a state or another entity. They contain rights that are considered natural, unchangeable, and seen only as an expression of the will of the state<sup>8</sup>.

## II.

Both the concept and the content of the principle of sustainable development are the subject of a broad debate involving representatives of different scientific disciplines, publicists, and politicians representing different options. They address both the content of the principle and, in the first instance, whether the concept of sustainable development should be linked only to environmental protection or whether it is broader in nature and relates to other aspects of the functioning of organs<sup>9</sup>.

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<sup>5</sup> J. Hersch, *La Suisse et les Droits de l'homme*, "Zeitschrift für Schweizerisches Recht" 1974, p. 249.

<sup>6</sup> M. Piechowiak, *Pojęcie praw człowieka*, [in:] *Podstawowe prawa jednostki i ich sądowa ochrona*, ed. L. Wiśniewski, Warsaw 1997, p. 7.

<sup>7</sup> L. Henkin, *The Rights of Man Today*, Boulder (Colorado) 1978, p. 2.

<sup>8</sup> B. Banaszak, *Ogólne wiadomości o prawach człowieka*, [in:] *Prawa i wolności obywatelskie w Konstytucji RP*, eds. B. Banaszak, A. Preisner, Warsaw 2002, p. 16.

<sup>9</sup> A. Papuziński, *Filozoficzne aspekty zrównoważonego rozwoju. Zrównoważony rozwój a justitia socialis*, [in:] *Filozoficzne, społeczne i ekonomiczne uwarunkowania zrównoważonego rozwoju. Monografie Komitetu Inżynierii Środowiska PAN*, vol. 26, ed. A. Pawłowski, Lublin 2004, pp. 51–71; T. Kosiek, *Zrównoważony rozwój – rozwiązanie czy ideologia?*, "Zeszyty Naukowe Politechniki Śląskiej" 2015, No. 85 (1943), pp. 233–244; L. Pawłowski, *Rola monitoringu środowiska w realizacji zrównoważonego rozwoju*, "Rocznik Ochrony Środowiska" 2011, vol. 13, pp. 333–346; L. Manikowska-Wróbel, *Międzynarodowe uwarunkowania wprowadzania zasad zrównoważonego rozwoju w gospodarce wodno-ściekowej*, "Ekonomiczne Problemy Usług" 2009, No. 43, pp. 197–209; Cz. Wodzikowski, *Koncepcja zrównoważonego rozwoju w polityce państwa*, "Świat Idei i Polityki" 2012, vol. 11, pp. 133–148; A. Kuzior, *Internet jako narzędzie*

However, the literature points out that the idea of positive, harmonious human development has accompanied civilization since the dawn of time<sup>10</sup>. The term “sustainable development” is undoubtedly ambiguous and vague, as reflected in its numerous definitions and interpretations. Starting in the mid-20<sup>th</sup> century, new concepts for understanding the term were emerging, created primarily by economists, ecologists, and sociologists<sup>11</sup>. The functioning of the term “sustainability” in the conceptual networks of different and quite distant disciplines also makes it difficult to define the concept. Due to its complex, multi-faceted and interdisciplinary nature, the concept of sustainable development is applied in many areas of the economy<sup>12</sup>. At the same time, this concept is embodied in numerous normative acts, both in the area of public international law and regional law, especially in the system of European Union Law and the normative acts of individual countries.

The idea of eco-development preceded the concept of sustainable development. It appeared at the UN conference in Stockholm in 1972. “Environment and man”, taking the then adopted Stockholm Declaration on the Natural Human Environment. The principle of “sustainable development” was developed at the Rio de Janeiro World Conference held under the auspices of the UN from June 3 to 14, 1992 as the Conference on Environment and Development. Sustainable development has been reverted to in successive UN “Earth Summits” in Kyoto in 1997 and in Johannesburg in 2002. In 2005, the Decade of Education for Sustainable Development 2005–2014 was proclaimed,

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*budowania świadomości dla zrównoważonego rozwoju*, “Problemy Ekorozwoju” 2007, vol. 2, No. 2, pp. 95–100; A. Płachciak, *Utopistyczny wymiar rozwoju zrównoważonego*, “Annales. Etyka w życiu gospodarczym” 2011, vol. 14, No. 1, pp. 91–100.

<sup>10</sup> Z. Bukowski, *Zrównoważony rozwój w systemie prawa*, Toruń 2009, p. 23 et seq.

<sup>11</sup> B. Piontek, *Koncepcja rozwoju zrównoważonego i trwałego Polski*, Warsaw 2002, p. 15 and 27; R.K. Turner, *Pluralism in an environmental economics: a survey of sustainable economic development debate*, “Journal of Agricultural Economics” 1988, No. 39; D. Dunphy, J. Benveniste, A. Griffiths, P. Sutton, *Sustainability: The Corporate Challenge of the 21<sup>st</sup> Century*, New South Wales 2000; P. Dasgupta, *Measuring Sustainable Development: Theory and Application*, “Asian Development Review” 2007, No. 24; T. Borys, *Koncepcja zrównoważonego rozwoju w naukach ekonomicznych*, [in:] *Ekonomia zrównoważonego rozwoju. Zarys problemów badawczych i dydaktyki*, ed. B. Poskrobko, Białystok 2010; M. Stanny, A. Czarnecki, *Zrównoważony rozwój obszarów wiejskich Zielonych Płuc Polski. Próba analizy empirycznej*, Warsaw 2011, pp. 13–30.

<sup>12</sup> A. Poczta-Wajda, A. Sapa, *Paradygmat rozwoju zrównoważonego – ujęcie krytyczne*, “Progress in Economic Sciences” 2017, No. 4, p. 132.

and its main objective was to educate and disseminate the idea of sustainable development, social, economic, and ecological, as activities implementing the new global human rights strategy. The principle of sustainable development and environmental security also function in European Union law.

On the Polish ground, an attempt at a linguistic interpretation of the term *zrównoważony rozwój* (sustainable development) does not lead to satisfactory results. In everyday language, *zrównoważony* (sustainable) is “spokojny, opanowany, rozważny” (calm, steady, prudent), but *równoważyć* means “doprowadzać do stanu równowagi, wyrównać działanie jakieś siły, zbilansować” (to balance” is “to harmonize, to balance the action of some forces, make equal; cause to have equilibrium)<sup>13</sup>. *Rozwój* (development) is usually understood as a “process of transformation, transition to a more complex state or forms”<sup>14</sup>. It is pointed out that “sustainable development” is a social and political idea that should be understood as a model of life for individuals as members of a human union and society as a union of individuals. The realization of this model should be a necessity and, at the same time, an order to act<sup>15</sup>. It is pointed out that the idea of sustainable development is a reaction of the representatives of politics and economy to interpretations of the ecological crisis in terms of contradictions between nature and culture and in the traditionally understood principles of nature protection<sup>16</sup>. “Sustainable development” is a political idea “that has been translated into the language of politics and law, and political, economic and social programmes and strategies”<sup>17</sup>.

### III.

In the Polish legal system, the concept of sustainable development was incorporated into the normative regulations in a resolution of the Sejm of May

<sup>13</sup> *Słownik języka polskiego*, vol. III, ed. M. Szymczak, Warsaw 1989, p. 1060.

<sup>14</sup> *Ibidem*, p. 131.

<sup>15</sup> A. Papuziński, *Filozofia zrównoważonego rozwoju jako subdyscyplina badań filozoficznych*, “Problemy ekorozwoju” 2007, vol. 2, No. 2, p. 28; S. Czarnowski, *Idee kierownicze ludzkości*, [in:] *Wybór pism socjologicznych*, Warsaw 1982, p. 79.

<sup>16</sup> A. Papuziński, *Filozofia zrównoważonego rozwoju...*, p. 8.

<sup>17</sup> A. Papuziński, *Realizacja zrównoważonego rozwoju*, “Problemy Ekorozwoju” 2011, vol. 6, No. 1, p. 108.

10, 1991 (i.e., even before the Rio Conference) State Environmental Policy even before the Constitution of 1997 came into force. The new version of the State Environmental Policy was prepared already after the Rio Conference in 1992 by the Ministry of Environment, Forestry, and Natural Resources<sup>18</sup>. It should be noted that in October 1994, the Council of Ministers, together with information on the implementation of the Act of January 31, 1980 on the protection and shaping of the environment (Sejm Print No. 679), presented two additional documents to the Sejm, namely: The Report on the implementation of the state ecological policy 1991–1993 and the Executive Programme for the state ecological policy until 2000. Compare the Justification to Ordinance No. 32 of the Prime Minister of October 28, 1994 on the establishment of the Commission for Sustainable Development (Originally it was to be the Council of Ministers' Sustainable Development Committee)<sup>19</sup>. The concept of sustainable development also applies to the resolution of the Senate of November 4, 1994 and finally to the Act of July 7, 1994 on Spatial Development.

As set out in Art. 5 of the Constitution, the principle of sustainable development has no legal definition. The legislator refers to different areas of activity of the state and thus to different spheres of its policy, mentioning in the text of the provision in addition to the obligation to safeguard the independence and inviolability of its territory, ensuring freedom and human and civil rights and the security of citizens, as well as guarding national heritage and protecting the environment. However, such a comprehensive reference to the principle of sustainable development may be a source of concern or even surprise. The question arises whether the principle of sustainable development refers only to environmental protection, which is mentioned as if at the end of the elements indicated in the content of Art. 5 of the Constitution or to all the levels indicated in this provision. If it is assumed that it concerns all the elements listed in the content of Art. 5, the concern should increase.

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<sup>18</sup> E. Berkowska, M. Sobolewski, *Realizacja polityki ekologicznej w kontekście postanowień Szczytu Ziemi w Rio*, "Kancelaria Sejmu. Biuro Studiów i Ekspertyz. Wydział Analiz Ekonomicznych i Społecznych" 1995, No. 1, pp. 1–17.

<sup>19</sup> G. Ignatowicz, *Realizacja zasady zrównoważonego rozwoju w polityce ekologicznej Polski po konferencjach w Rio de Janeiro w 1992 oraz 2012 roku*, "Białostockie Studia Prawnicze" 2015, No. 18, pp. 223–236; Z. Bukowski, *Zrównoważony...*, p. 26.

How to understand the obligation to safeguard the independence and integrity of the territory of the Republic of Poland in the context of this principle? Does it mean that such guarding can be incomplete, selective? That could lead to the conclusion that the principle of sustainable development could indicate, in certain situations, the possibility, or even the need, to abandon such guarding of independence or the inviolability of the territory in a situation where the composition of political forces would seem to indicate an inability to achieve the objective declared in Article 5 of the Constitution. Similarly, human and civil liberties and rights and the security of citizens could be adopted, and the safeguarding of the national heritage would not always have to be “guaranteed”, but only if the principle of sustainable development speaks for itself. In other words, there is a mystery in the wording “guided by the principle of sustainable development”, which relates to the extent of the impact of this principle.

The literature notes that Art. 5 of the Constitution is programmatic and does not indicate the means necessary to achieve its final objectives, and should be considered by the state in every aspect of its activities<sup>20</sup>. It is also stressed that the principle of ‘sustainable development’ is an autonomous, instrumental political principle in the sense that public authorities should be guided by it when conducting state policy<sup>21</sup>. It was noted that the way the principle of the sustainable system was expressed in the text of Art. 5 of the Constitution may give rise to doubts as to which principles of the state policy it refers to, and it was considered unquestionable that it should be combined with environmental protection. However, it was pointed out that before the content of which this principle was formulated, the legislator put a comma that may prove that it should apply not only to the last sentence in the form of ensuring environmental protection but to all tasks listed in Art. 5 of the Constitution. Then it would be an independent political principle. If interpreted differently, it would refer only to environmental protection. The positions are divided as to the resolution of this issue. M. Florczak-Wątor

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<sup>20</sup> M. Florczak-Wątor, [in:] *Konstytucja RP, vol. I, Komentarz*, eds. M. Safjan, L. Bosek, Warsaw 2016, p. 279.

<sup>21</sup> R. Paczuski, *Zrównoważony rozwój jako zadanie współczesnego państwa oraz rola polityki i prawa w jego realizacji*, [in:] *Polityka, ekologia, kultura. Społeczne przesłanki i przejawy kryzysu ekologicznego*, ed. A. Papuziński, Bydgoszcz 2000, p. 39.

believes that the principle of sustainable development should be associated only with environmental protection, which makes it an accessory principle to the principle of environmental protection and excludes the possibility of using it as an independent control model<sup>22</sup>. The opposite view is held by B. Rakoczy, according to whom “sustainable development should concern not only environmental protection but also the other tasks of the State mentioned in this provision”<sup>23</sup>.

The judiciary states that this principle forces the integration of political, economic, and social activities to be considered while maintaining the balance and sustainability of fundamental natural processes<sup>24</sup>. It was also stressed that it is primarily a directive of interpretation when doubts arise about the scope and type of obligations and how they are to be met. It was indicated that this principle plays a role similar to the principles of social coexistence or socio-economic purpose in civil law. It was noted that the legislator is obliged to take this principle into account in the law-making process. However, on the other hand, this principle should be remembered by the authorities applying the law, as sometimes the facts require consideration and balancing of more favorable solutions, resulting from the principle of sustainable development<sup>25</sup>.

W. Wołpiuk pointed out that sustainable development is a non-legal term of economic nature that causes difficulties in determining its content and consequently its normative meaning. The author notes that the norm expressed in Art. 5 of the Constitution is primarily of programmatic value, guiding the state’s policy, which, however, must find appropriate concretization in ordinary laws<sup>26</sup>. A similar view was presented by J. Boć, who pointed out that nowadays, the concept of sustainable development seems to be

<sup>22</sup> M. Florczak-Wątor, *op.cit.*, p. 290.

<sup>23</sup> B. Rakoczy, *Art. 5 Konstytucji*, [in:] *Prawo ochrony środowiska. Komentarz*, ed. Z. Bukowski, LEX Polonica/el 2013.

<sup>24</sup> Judgment of the Provincial Administrative Court in Gdańsk of April 5, 2018, file No. II SA/Gd 87/2018, LEX No. 2478191.

<sup>25</sup> Judgment of the Provincial Administrative Court in Gorzów Wielkopolski of March 25, 2009, file No. II SA/Go 825/08, LEX No. 526352.

<sup>26</sup> W. Wołpiuk, *Zasada zrównoważonego rozwoju. Zasada konstytucyjna czy zasada polityki społeczno-ekonomicznej w zakresie ochrony środowiska?*, “Zeszyty Naukowe Wyższej Szkoły Informatyki, Zarządzania i Administracji w Warszawie” 2003, No. 1, pp. 7–18.



more of a political idea than a concept allowing for building a sustainable economic strategy<sup>27</sup>.

It is pointed out that the legislator has to reconcile the obligation to protect the environment resulting from the content of Art. 74 sec. 1 of the Constitution with the principle of freedom of economic activity leading to their balancing. None of these principles can be protected in an absolute manner<sup>28</sup>. The entity using the environment, being an entrepreneur, is the addressee of most of the provisions of the Environmental Protection Law Act, defining its obligations, limiting the scope of economic freedom under the principle of sustainable development. It results from the fact that the principle of economic freedom is not an unambiguous term. The interpretation of this notion requires, under the principle of sustainable development, a multi-dimensional analysis from an interdisciplinary perspective, taking into account various factors determining economic freedom itself<sup>29</sup>. It is emphasized that the approach to environmental protection through its economization, which encourages the participants of economic life and market economy entities to take pro-ecological actions, is implemented in the form of sustainable development<sup>30</sup>.

During the work of the Constitutional Committee of the National Assembly, the concept of sustainable development has become the subject of numerous controversies, resulting from its vagueness and ambiguity. Opponents of this term proposed replacing it with sustainable and comprehensive social and economic development<sup>31</sup>. The supporters of using this term indicated that the concept of sustainable development “has an established meaning in

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<sup>27</sup> J. Boć, [in:] *Konstytucje Rzeczypospolitej oraz komentarz do Konstytucji RP z 1997 roku*, ed. J. Boć, Wrocław 1998, p. 26; J. Ciechanowicz-McLean, *Konstytucyjna zasada wolności gospodarczej, a ochrona środowiska*, “Gdańskie Studia Prawnicze” 2014, vol. XXXI, pp. 99–108.

<sup>28</sup> M. Rosik-Bera, M. Borowiak, *Natura 2000 a wolność działalności gospodarczej*, [in:] *Problemy wdrażania systemu Natura 2000 w Polsce*, eds. A. Kaźmierska-Patrzyzna, M.A. Król, Szczecin–Łódź–Poznań 2013, pp. 514–524.

<sup>29</sup> A. Powalkowski, *Klauzula ochrony środowiska w ustawie o swobodzie działalności gospodarczej z dnia 4 lipca 2004*, [in:] *Prawo ochrony środowiska jako warunek prowadzenia działalności gospodarczej*, eds. J. Ciechanowicz-McLean, T. Bojar-Fijałkowski, Gdańsk 2009, pp. 20–24.

<sup>30</sup> *Instytucje gospodarki rynkowej*, eds. T. Władyka, M. Smaga, Warsaw 2012, pp. 398–399.

<sup>31</sup> S. Sadowski, [in:] *Biuletyn Komisji Konstytucyjnej Zgromadzenia Narodowego*, 1995, No. 13, p. 10.

world literature. It means principles of ecological development, i.e., one that considers the needs of the natural environment<sup>32</sup>. The term sustainable development was combined in constitutional works with the need to protect the environment, not only the natural one<sup>33</sup>. Finally, Art. 5 used the term “environment”, not “natural environment”. This phrase functions not only in the content of Art. 5 but also in Art. 31 sec. 3, Art. 68 sec. 4, Art. 74 sec. 2–4, and Art. 86 of the Constitution.

The key objectives of the concept of sustainable development are prosperity, understood as the satisfaction of needs; justice – both in terms of generational, intergenerational, and international dimensions; and security. The objectives of the second stage of this concept, and at the same time the means of achieving these fundamental objectives, are to develop and ensure the sustainability of ecological functions. As J. Boć reminds, this development must take into account the need to maintain unchanged environmental resources. According to A. Bałaban, treating the principle of sustainable development exclusively as a method of environmental protection would be an excessive narrowing of its content which exceeds the traditionally understood issue of environmental protection<sup>34</sup>. B. Rakoczy takes the view that sustainable development concerns not only environmental protection but also other tasks of the state, as referred to in Art. 5, including those not expressly mentioned in the text of that provision<sup>35</sup>. It is noted that the systemic interpretation of the Constitution leads to the conclusion that the principle of sustainable development is systemic. At the same time, its content and place in international environmental law and European law indicate that it is also a political principle<sup>36</sup>.

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<sup>32</sup> I. Lipowicz, [in:] *Biuletyn Komisji Konstytucyjnej Zgromadzenia Narodowego*, 1995, No. 13, p. 10; K. Działocha, [in:] *Biuletyn Komisji Konstytucyjnej Zgromadzenia Narodowego*, 1997, No. 44, p. 7.

<sup>33</sup> K. Drozdek, [in:] *Biuletyn Komisji Konstytucyjnej Zgromadzenia Narodowego*, 1995, No. 11, p. 153.

<sup>34</sup> A. Bałaban, *Konstytucyjna zasada zrównoważonego rozwoju*, [in:] *Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje*, eds. L. Garlicki, A. Szmyt, Warsaw 2003, p. 20.

<sup>35</sup> B. Rakoczy, *Wolność działalności gospodarczej, a ochrona środowiska. Zasada zrównoważonego rozwoju*, “Rzeczpospolita”, 31 May 2006, p. C4.

<sup>36</sup> H. Lisicka, I. Macek, W. Radecki, *Leksykon ochrony środowiska. Prawo i polityka*, Wrocław 1999, p. 225.

The Constitutional Tribunal seems to combine the principle of sustainable development explicitly only with the content of environmental protection. It is proved by its judgment of June 6, 2016<sup>37</sup>, in which it was explained that under the principle of sustainable development, public authorities must protect the environment and pursue policies ensuring environmental safety for present and future generations (Art. 71 sec. 1, 2 of the Constitution). In some instances, it was added that environmental protection may justify a restriction of constitutional rights and freedoms. It has been clearly stated that this “principle is inspired by international arrangements, in particular the 1992 Rio de Janeiro Conference”<sup>38</sup>. It was also noted that “the principles of sustainable development include not only the protection of nature or the shaping of spatial order, but also due care for social and civilizational development associated with the need to build appropriate infrastructure necessary for – considering the civilizational needs – human life and individual communities”. It was also stressed that “the idea of sustainable development includes the need to take into account different constitutional values and to balance them properly”. A similar position was taken by the Constitutional Tribunal in the judgment of May 13, 2009<sup>39</sup>. In the doctrine, a similar definition was formulated by P. Sarnecki, noting that ensuring environmental protection under the principle of sustainable development means “not only providing the inhabitants with uncontaminated air, healthy drinking water or recreational areas (...), but also protecting (...) a specific landscape, terrain or river network, which individualizes Poland and constitutes a factor of its identity”<sup>40</sup>.

The legislator in Art. 3 point 50 of the Act of April 27, 2001 on environmental protection law<sup>41</sup> concluded that sustainable development should be understood as such social and economic development in which the process of integration of political, economic, and social activities takes place with the preservation of natural balance and sustainability of basic natural processes to guarantee the possibility of satisfying the basic needs of particular commu-

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<sup>37</sup> Reference number of files K 23/05, OTK-A ZU 6A/2006, item 62.

<sup>38</sup> J. Boć, *op.cit.*, p. 24 et seq.

<sup>39</sup> Reference number of files Kp 2/09, OTK-A 2009, No. 5, item 66.

<sup>40</sup> P. Sarnecki, *Uwagi do art. 5*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 1, 2<sup>nd</sup> ed., eds. L. Garlicki, M. Zubik, Warsaw 2016, p. 235.

<sup>41</sup> Dz.U. 2019, item 1396.

nities or citizens, both the present and future generations. In the mentioned act, in the content of Art. 3 point 13, it was stated that environmental protection is understood as “undertaking or abandonment of activities enabling to maintain or restore the natural balance; this protection consists in particular in rational shaping of the environment and management of resources under the principle of sustainable development”<sup>42</sup>.

#### IV.

In the system of the Constitution, the principle of sustainable development has been included among the systemic principles of chapter one, and it is very much more important than the norms relating to the freedoms, rights, and duties of a person and a citizen. It seems to concern only environmental protection. It is difficult to agree that it can be applied to the other elements in Art. 5 of the Constitution, i.e., the independence and inviolability of the territory, freedom and human rights, security of citizens, or guarding of the national heritage. When interpreting the content of Art. 5 of the Constitution of the Republic of Poland, one cannot ignore the international conditions of the term “sustainable development principle”. Although it is difficult to accept that the legislator wanted to give the principle of sustainable development a priority position, it is possible, and even necessary, to point out that the legislator was undoubtedly aware that sustainable development is not a rhetorical ornament but carries certain content. It is much broader than that formulated in Art. 74 sec. 2 of the Polish Constitution. Given the text of the preamble, it should be emphasized the obligation to “pass on to future generations all that is valuable”. This passage could only refer to the “best traditions”, but it seems to have much deeper content, in line with what has been agreed in terms of sustainability. It is, among other things, an injunction to our contemporaries to leave future generations an environment that allows them to live a life that is not worse. From the text of Art. 5 of the Constitution, it can be deduced that the principle of sustainable development in this layer is a human and civil right, broader than the law, relating to living in an uncontaminat-

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<sup>42</sup> M. Nowacki, *Prawne aspekty bezpieczeństwa energetycznego w Unii Europejskiej*, Warszawa 2010, p. 46 et seq.

ed environment. The content of Art. 74 sec. 2 of the Polish Constitution does not formulate the human right to live in an uncontaminated environment; it only indicates that public authorities must protect the environment. Thus, the principle of sustainable development is a human and civil right to live in an uncontaminated environment, but it also contains other elements and layers.

The core of the concept of sustainable development, which is not sufficiently emphasized due to its “appropriation” by ecologists and its complexity unduly perceived by lawyers, is that it formulates rights for future generations. The perception of these rights by the creators of the Polish Constitution, both in its preamble and in its Article 5, should be considered momentous and anticipating its creation.

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