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THE DUTY TO CARE FOR THE STATE OF THE ENVIRONMENT IN POLISH CONSTITUTIONAL REGULATIONS

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ABSTRACT: According to the Polish constitutional tradition, regulations concerning the duties of man and citizen can be found in chapter II of the Constitution of the Republic of Poland devoted to the rights and freedoms of the Polish Constitution, specifically in Articles 82–86 inclusive. The Constitution devotes relatively little space to its duties, and the catalog indicated therein is not extensive. The purpose of articulating obligations in the Constitution of the Republic of Poland is primarily to emphasize the most important ones from the point of view of the state, society and individual. In each country, some constitutional obligations are addressed only to citizens, while others are imposed on all who are subject to the authority of a given country. The Constitution of the Republic of Poland also does so. Indicated in art. 86 the obligation to care for the state of the environment and responsibility for its deterioration is in the group of universal obligations in terms of subject, which are imposed on every person who is within the jurisdiction of the Republic of Poland. This study is an analysis of the concept of environment, care for the state of the environment and the provisions of the constitution on this subject.

INTRODUCTORY REMARKS

According to the Polish constitutional tradition, regulations concerning the duties of citizen can be found in the chapter II of the Constitution of the Republic of Poland devoted to the rights and freedoms of the Polish

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Constitution, specifically in Articles 82–86. The Basic Law devotes relatively little space to responsibilities, and the indicated catalog is not extensive. The purpose of articulating obligations in the Constitution of the Republic of Poland is primarily to emphasize the most important ones from the point of view of the state, society and individual. This means that the catalog indicated by the legislator is not enumerative. Therefore, one should agree with J. Matwiejuk, who emphasizes that: “The Constitution as a basic law is not a normative act appropriate to enact all obligations existing in the legal system of a given state” (Matwiejuk, 2014, p. 109).

As B. Banaszak points out that in each state some constitutional obligations are addressed only to citizens, while the others are imposed on all who are subject to the authority of a given state. The Constitution of the Republic of Poland also does so (Banaszak, 2017, p. 420). The obligation to care for the state of the environment and responsibility for its deterioration, indicated in art. 86, is in the group of universal obligations in terms of subject, which are imposed on every person who is within the jurisdiction of the Republic of Poland (Garlicki, 2017, p. 187).

The catalog of the individual’s obligations contained in the Constitution of the Republic of Poland is undoubtedly a response to contemporary expectations regarding the individual’s obligations toward other people and the state. At this point, it is worth emphasizing that the creators of the Constitution apply the appropriate style, which is not only very modern, but also devoid of many imprecise phrases (Gronokowska, 2015, pp. 187–188).

The term “duty” is commonly used in everyday speech in most languages (Banaszak, 2017, p. 416). By reaching to the Polish dictionary, we can find a definition according to which an obligation is an order related to an individual or a prohibition of specific behavior in a given situation (*Słownik języka polskiego*, 1984, p. 419). Nevertheless, the term is too general for particular scientific disciplines. Therefore, more and more often some authors attempt to define this concept using the appropriate terminological apparatus. A similar situation occurs when it comes to legal science. The term “legal obligation” often is used instead of the “obligation” concept. However, there is a disagreement about the meaning of this concept (Banaszak, 2017, p. 416).

In the field of legal literature, one can find numerous proposals for defining the legal obligation. Among them are short definitions that emphasize the most important characteristic of a legal obligation, i.e. the fact that it is expressed by means of a legal norm (Banaszak, 2017, p. 416) (as an example the black legal definition of the legal obligation in which it is a human action in accordance with legal standards to be observed) (*Black's Law Dictionary*, 1979, p. 453).

In addition to short definitions, there are also much more extensive definitions of legal obligation. For example, F. Siemieński specifies other elements, such as: the inability to choose specific behavior by the recipient of the obligation; imposing on the state the necessity of undertaking efforts to ensure the fulfillment of obligations by entities that are recipients of legal norms; the need to provide a legal basis according to which there is an obligation of specific behavior by state authorities that request its implementation (Siemieński, 1976, pp. 124–125).

In the absence of one universally acceptable definition, the simplest should be used. Therefore, a legal obligation is an order directed to an individual or a prohibition of specific behavior in a specific situation, which is expressed by means of a legal norm. On the other hand, the notion of constitutional obligation should be understood as an obligation which is indicated in the constitutional norm. At this point, one should agree with the opinion of B. Banaszak, who indicates that the terminology regarding legal obligations is definitely less developed than the terminology regarding rights and freedoms. Nevertheless, the author emphasizes that both terminologies are very similar, especially in terms of basic terms (Banaszak, 2017, p. 417).

Here, two more concepts should be clarified, namely human and citizen obligations. Human duties are the basic duties of each individual toward other people. They come from the very essence of humanity. For this reason, they should be carried out, also in situations in which they are not regulated by law. In a situation where a given state decides to place one of its obligations in the Constitution, it is equivalent to the fact that for certain reasons it attaches great importance to it. In turn, the notion of citizen's obligations should be understood as obligations arising from the fact that a given unit belongs to a particular country. It is the state that

decides whether it will impose a specific obligation on its citizens when it has an interest in it. Some representatives of the doctrine of constitutional law indicate that the constitution's formulation of the citizen's obligations is also addressed to foreigners who are in the territory of a given country and also outside it, while being in legal relationships closely related to the territory, considering both subjective and objective aspects (Banaszak, 2017, p. 417).

The Constitution of the Republic of Poland in its provisions establishes citizens' right to the environment. The content of this right can be found in art. 5 ("The Republic of Poland protects the independence and integrity of its territory, ensures human and citizen freedom and rights and the security of citizens, protects the national heritage and ensures environmental protection, guided by the principle of sustainable development"), Art. 68 paragraph 4 ("Public authorities are obliged to combat epidemic diseases and prevent adverse health effects of environmental degradation"), Art. 74 section 1–4 ("1. Public authorities pursue policies ensuring ecological security for present and future generations. 2. Environmental protection is the responsibility of public authorities. 3. Everyone has the right to be informed about the state and protection of the environment. 4. Public authorities support citizens' activities for protection and improvement of the environment) and art. 86 of the Polish Constitution ("Everyone is obliged to care for the state of the environment and bears responsibility for its deterioration. The principles of this liability are specified by statute"). However, the subjective law that guarantees its implementation is found in the Article 74 (3) of the Constitution ("3. Everyone has the right to be informed about the state and protection of the environment"). It is worth pointing out that recognizing the principle of sustainable development as a constitutional principle has imposed an obligation on the state to be guided by this principle during the implementation of the basic functions indicated in the Article 5 of the Constitution of the Republic of Poland. The situation applies to all kinds of public authorities. Therefore, it concerns the activities of the legislative, executive and judicial authorities (Jabłoński, 2010, p. 8).

Environmental protection is classified as a field of interdisciplinary law in which the basic principle is to use terms relevant to legal, technical, natural or chemical sciences. For this reason, as practice clearly shows, they often have different conceptual meanings, depending on the context in which they were used (Jabłoński, 2010, p. 8).

The term 'environment' is found in the group of basic terms related to environmental law. Its current significance comes from the fact that the environment is subject to legal protection. In turn, the scope of legal protection depends on how society will perceive the environment. Therefore, it is necessary to determine what is meant by this term, which in turn will make it possible to indicate the scope of the environmental law in question (Wierzbowski, Rakoczy, 2007, p. 15).

The concept of 'environment' is primarily influenced by legal sciences. Nevertheless, it is worth emphasizing the important importance of other disciplines of scientific knowledge. Despite the fact that legal sciences belong to a group of scientific disciplines whose subject is environmental protection, attention should be paid to their huge contribution in shaping the concept of "environment" (Wierzbowski, Rakoczy, 2007, p. 15).

Definition of the environment, which can be found in the Act of April 27, 2001. – Environmental protection law (Dz.U. 2001, No. 62, idem. 627.) indicates the scope of legal protection of the environment. It is worth emphasizing that the definition of the term 'environment' in this Act is not the only definition of the term that would be adopted in each of the scientific disciplines. Nevertheless, there is a noticeable tendency to harmonize this term in various scientific disciplines (Wierzbowski, Rakoczy, 2007, p. 15).

The legal definition of the term "environment" first appeared in the Act of 31 January 1980 on the protection and shaping of the environment (Dz.U. 1980, No. 3, idem. 6.). It is in art. 1 clause 2, according to which: "The environment within the meaning of the Act is all-natural elements, in particular the surface of the earth, including soil, minerals, water, air, the plant and animal world, as well as the landscape and climate, both in the natural state and transformed as a result of human activities".

Currently, the legal definition of the term “environment” can be found in the art. 3 point 39 of the Environmental Protection Law, according to which the term environmental should be understood as: “[...] all natural elements, including those transformed as a result of human activity, in particular the surface of the earth, minerals, water, air, landscape, climate and other elements of biodiversity as well as the interaction between these elements” (The Act of April 27, 2001. – Environmental protection law).

It is worth noting that the first part of the definition defines the environment as “all-natural elements”. This means that the environment should be treated as a collective category, which includes its individual elements. Nevertheless, it should be emphasized that these are only natural elements. The scope of the definition contained in the Act covers not only natural elements that are the result of nature itself, but also those natural elements that have been transformed as a result of human activity (Wierzbowski, Rakoczy, 2007, p. 16).

In the Environmental Protection Law, in addition to the term ‘environment’, the legislator also defined the term ‘environmental protection’. According with the art. 3 point 13 of this Act, environmental protection should be understood as: “[...] taking or refraining from actions enabling the preservation or restoration of natural balance; this protection consists in particular in: rational shaping of the environment and management of environmental resources in accordance with the principle of sustainable development, prevention of pollution, restoration of natural elements to their proper state” (Act of April 27, 2001. – Environmental protection law).

One of the basic obligations indicated in the Constitution of the Republic of Poland of April 2, 1997 (Dz.U. 1997, No. 78, idem. 483.) is the duty to care for the state of the environment and responsibility for its deterioration (Radecki, 2000, p. 2). According to art. 86: “Everyone is obliged to care for the state of the environment and bears responsibility for its deterioration. The principles of this liability are specified by statute”.

This provision is contained in the Chapter II of the Polish Constitution, which concerns freedom, rights and obligations in the group regulating the latter issue, i.e. obligations. According to M. Górski, the discussed provision should be considered as a part of the entire constitutional regulation concerning matters related to the environment as well as its protec-

tion, which is also composed of Art. 5, art. 68 paragraph 4 and art. 74 (Górski, 2016, p. 1897).

The term “environment” in all cited provisions of the Polish Constitution is addressed to the natural environment (Haczkowska, 2014, p. 215). As indicated by K. Działocha, art. 86 refers to “politically neutral and supranational (human) nature of the good, which is the human environment” (Działocha, 2003, p. 1).

The obligation to protect the environment in legal regulations is usually combined with the right to use it and with the right to the environment. Nevertheless, the Polish Constitution did not adopt such a structure. Very often the right to the environment is considered a new category of human rights (Górski, 2016, p. 1897). It is worth emphasizing that it was defined as the most developed law that belongs to the third generation. This is due to the fact that the right environment is a basic condition for exercising human rights (Radecki, 1987, p. 12). Representatives of the doctrine also recognize environmental protection as an important condition in the context of respect for human rights (Radecki, 1987, p. 1897).

The article 86 of the Polish Constitution is a declaration. This provision clearly indicates that its concretization is specified at statutory level. Nevertheless, in the case of liability for non-performance of obligations, the enforcement of liability is possible only after prior specification of the content of the obligation (Radecki, 1987, p. 1898).

Referring to earlier regulations, it is worth noting that the Constitution of the Polish People’s Republic after the introduction of the amendment in 1976 contained art. 71, according to which: “Citizens of the People’s Republic of Poland have the right to use the value of the natural environment and the obligation to protect it”. The mentioned provision after changes of a systemic nature was maintained in force on the basis of art. 77 of the Small Constitution. This means that it was in force until the entry into force of the current Basic Law (Radecki, 1987, p. 1898).

According to W. Radecki, the discussed provision recognized the right to use the natural environment as a right to the environment of appropriate quality. It was about quality, which was evaluated not only in the context of nature, but also in terms of its impact on human health. From this observation follows that it is about the right to the environment,

which is not burdened with the average pollution. However, there is another, much narrower interpretation, according to which the right to use the natural environment should be equated with the right to use the value of non-disfigured landscape, so it is a right to an environment with mainly aesthetic values, an environment that has not been distorted in this respect (Radecki, 1987, p. 1898).

According with the art. 71 of the Constitution of the Polish People's Republic, in connection with the collection of personal rights contained in the Civil Code, the conclusion was also made that the use of the value of an uncontaminated natural environment may be considered a personal right, which is additionally protected at the statutory level (Górski, 2016, p. 1898; Dalka, p. 146). The current Constitution of the Republic of Poland does not contain such a clearly formulated law in its provisions. However, this does not mean that the institution of personal rights and claims for their protection in circumstances similar to those indicated can be completely ruled out. Such opportunities can be found, for example, in protecting everyone's health. It is about the health of every human being understood as a personal right, where the quality of the environment undoubtedly influences the state of health. It is worth emphasizing that the provision of the art. 68 paragraph 1 of the Polish Constitution establishes a universal right to health protection. However, in accordance with paragraph 4 of this provision, the legislator imposes an obligation on public authorities to take actions that are to prevent the negative consequences of environmental degradation (Górski, 2016, p. 1898).

During the preparation of the draft of the current Constitution of the Republic of Poland, the idea of introducing regulations related to environmental law and the obligation to protect it was initiated by social organizations. It was they who put forward proposals to include in the Constitution of the Republic of Poland, among others, current art. 86. A representative of these organizations during discussions at the Constitutional Committee of the National Assembly strongly emphasized that the project knowingly resigns from the advanced concept of the right to the environment, as applicants are aware that a guarantee of this type of right in the Basic Law, which is impossible to guarantee to everyone, is unreal (Górski, 2016, p. 1898). The recorded statement was: "...I would like

to draw your attention to the fact that the Social Ecology Committee in the Constitution and numerous ecological groups did not request to write unrealistic expressions, for example in the form of the universal right to live in a healthy environment. On the contrary, in the case of ecological safety, we did not apply for the principle that the state is responsible for ecological safety. It is also unrealistic. The state can only create conditions to ensure ecological security” (Biul. KKZN 1995, No. 16).

As M. Górski emphasizes, these words are worth quoting at least because they result from the fact that the applicants were aimed at linking the provisions of Art. 86 and art. 74. It should be noted here that the obligation on public authorities to take measures to ensure ecological safety was considered to be a kind of replacement of the universal right to live in an environment of adequate quality (or right to an adequate quality of the environment). This position was supported by members of the Constitutional Committee of the National Assembly, and the proposals were adopted in this version. Nevertheless, it should be emphasized that dissenting opinions have also appeared in this discussion, recognizing that the adoption of the right to the environment in the Constitution of the Republic of Poland is an unrealistic concept, which may become the basis for claims in the future, the scope of which may be unlimited (Górski, 2016, p. 1899).

INTERNATIONAL CONTEXT

Referring to EU regulations related to environmental protection, first of all reference should be made to the EU Charter of Fundamental Rights of March 30, 2010 (Dz.Urz.UEC, No. 83, p. 389). The provisions contained in this document relate to the subject matter regulated in art. 86 of the Polish Constitution. Despite the fact that the CPP is not a universally binding act, representatives of the doctrine very often emphasize that it is not a document constituting this type of law, but rather unifying and systematizing it (it is about gathering in one act) (Górski, 2016, p. 1899).

The Charter of Fundamental Rights does not expressly mention the right to the environment or the general obligation to protect the environ-

ment in its provisions. However, in the art. 2 of this act, a regulation can be found that guarantees everyone the right to life. It is worth noting that the implementation of this right would be impossible, including in the absence of adequate quality of the environment (Górski, 2016, p. 1899).

The Charter of Fundamental Rights directly refers to environmental issues only in art. 37. This provision is a reference to the one regulated in art. 74 integration principles. Included in art. 37 KPP, the regulation relates to the subject of individual rights in the context of linking the right to the environment with that contained in art. 74 paragraph 1 of the Polish Constitution as a duty of public authorities. From the one indicated in art. 37 KPP references to the principle of sustainable development can also be inferred from a general obligation to protect the environment. According to M. Górski, ideas that relate to such a development model will not be achieved without the simultaneous existence and implementation of this obligation (Górski, 2016, p. 1899).

NATIONAL CONTEXT

As results from previous considerations, one of the obligations indicated in the Constitution of the Republic of Poland is found in art. 86: obligation to care for the state of the environment. It is worth noting that the environment and its protection has been subject to the special care of the legislator, as evidenced by the imposition of obligations in the Constitution – an act of the highest legal force (Rakoczy, *Komentarz...*).

A good that is protected in art. 86 is the environment. One should agree with the opinion of K. Działocha, who indicates that the obligation exists in relation to the environment, not as it might seem in relation to the Homeland or the Republic of Poland. The author notes that environmental protection is not only a universal good, but also supranational and politically neutral (Działocha, 2003, p. 1).

As pointed out by B. Rakoczy, limiting the understanding of the obligation to care for the state of the environment only to the environment would make his execution impossible. The entity responsible for environmental protection is the Republic of Poland, which carries out this task

through public authority. The author emphasizes that this obligation is not related to the obligations of the constitutional state, which are to ensure the implementation and enforcement of the obligation to care for the environment and its condition (Rakoczy, *Komentarz...*).

Subjective scope indicated in the art. 86 of the Polish Constitution, the obligation to care for the state of the environment is universal. This means that this provision covers anyone who uses environmental resources. Therefore, this applies to: natural persons (Polish citizens, foreigners, stateless persons who are subjected to the jurisdiction of the Republic of Poland), as well as legal persons – the so-called defective legal persons (thus they will be entrepreneurs within the meaning of the Act of April 23, 1964 – Civil Code (Dz.U. 1964, No. 16, item. 93), the Act of September 15, 2000, the Code of Commercial Companies (Dz.U. 2000, No. 94, item. 1037) and the Act of July 2, 2004 on the freedom of economic activity (Dz.U. 2004, No. 173, item. 1807), of all kinds public law units, all types of private law units, public authorities, public administration bodies – government administration and self-government administration) (Haczkowska, 2014, p. 216).

Referring to the enforcement of this obligation, it is worth emphasizing that it can also be directed to entities that operate abroad, provided that it does not cause negative effects on the environment within the territory of the Republic of Poland (Haczkowska, 2014, p. 216).

One should agree with the opinion of W. Radecki, who indicates that: “the most serious threats to the environment are a consequence of the behavior of economic entities, not natural persons” (Radecki, 2000, p. 6). Therefore, attempts to narrow down the obligation to care for the environment only to natural persons would prove to be inaccurate. We would have to deal with a situation where the legislator would impose a constitutional obligation on entities that harm the environment to a lesser extent, and also have a much smaller impact, while leaving entities that have a much greater negative impact on the environment behind (Rakoczy, *Komentarz...*).

As indicated in the earlier considerations referred to in the art. 86 of the Polish Constitution, the duty is to care for the state of the environment. This means that the legislator clearly distinguished the obligation of pub-

lic authority to protect the environment from the obligation to care for the state of the environment. The very concept of “care for the state of the environment” has not been clarified by the legislator (Rakoczy, *Komentarz...*). Reaching for the Polish dictionary, we can find in it a definition of the concept of “care”, which means “taking care of, caring for someone, something; paying special attention to something; care; solicitude” (*Słownik współczesnego języka polskiego*, 1998, p. 157).

One should agree with K. Działocha, who emphasizes that the term “care for the state of the environment” can be considered in two aspects: positive and negative. Regarding the first one – i.e. the positive aspect – it is expressed by the order of active behavior (as an example, the order for rational use of the environment can be indicated), while the second – the negative aspect consists of passive behavior (it is, for example, refraining from actions consisting in environmental pollution) (Działocha, 2003, p. 2).

As results from previous considerations, the concept of “care” is a definition of a kind of actions, and at the same time a way of conducting them by the appropriate entity. At this point, it should be noted that the mentioned actions are targeted in a certain way, because “care” means taking care of someone or something. With reference to the art. 86 of the Constitution of the Republic of Poland, the subject of care is the state of the environment, and the subject that is to care for them is everyone. Therefore, it will be anyone who has any impact on the environment and its condition (Górski, 2016, p. 1900).

Referring to the linguistic context, regulated in the art. 86 of the Polish Constitution, the obligation to care for the state of the environment means that the condition of the environment will not deteriorate. Nevertheless, in the analyzed provision, the legislator does not clearly indicate which state of the environment should be taken care of. In addition, it does not specify at what state of the environment this obligation should be considered as fully implemented. The exact determination of this expected state, considering the content of the provision of Art. 86 should rely on the assumption that the legislator means the state of the environment at the time when the impact of a particular entity on this state begins. Therefore, the obligation to care also means the obligation to not damage the envi-

ronment, whereas in relation to the existing state of the environment, it should be understood as the obligation not to aggravate that state. However, it cannot be concluded that the duty of care should be equated with the obligation to improve the state of the environment. This is demonstrated, e.g. by the content of the analyzed art. 86, in which the legislator clearly indicates the obligation to be responsible for the deterioration of the state of the environment. It causes that the obligation to care for the state of the environment should be understood as care for not deteriorating its condition. As a starting point in the context of assessing whether this obligation has been fulfilled, it is necessary to assume the state of the environment at the time the impact occurs by a particular entity (Górski, 2016, p. 1900).

Considering the protected good, it is not only active or passive behavior that is directed directly at protection, but also behavior consisting in a lack of indifference or a disrespectful attitude toward the environment. Therefore, as B. Rakoczy observes, in this aspect we are dealing with the educational and integrative function of regulating this constitutional obligation. The author emphasizes that the legislator “forces” even that the environment should also be protected primarily by individuals (Rakoczy, *Komentarz...*).

From the analyzed art. 86 of the Polish Constitution clearly shows that the implementation of the obligation to care for the state of the environment should be enforced in accordance with the principles established by statute. This means that the legislator is obliged to indicate these principles. The concept of “responsibility” cannot be included only in the legal categories, as this concept also appears in other sciences. However, the rule is that liability usually involves the fulfillment of a specific obligation. In this situation, it means a kind of “settlement” of the performance of this obligation. However, there is no doubt that the legislator in art. 86 means legal liability, which it specifies at statutory level (Górski, 2016, p. 1901).

Here, the concept of “legal liability” should be clarified. This concept means liability which is based on legal norms. The legal norm itself indicates not only the obligation, but also the method of settlement of its implementation. Therefore, liability will be incumbent on a particular entity in connection with its violation of law (Górski, 2016, p. 1901).

In accordance with the concept adopted by W. Lang, responsibility should be understood as bearing legally regulated negative consequences in connection with events or states of affairs that have been legally assigned to a specific entity in a specific legal order and additionally subject to negative normative qualification (Lang, 1968, p. 12).

The guarantee function, which is the basic function of legal liability, means guarantees that the legal obligations are of great importance, therefore they are defined by legal norms, which in turn indicate how to enforce them. Therefore, as pointed out by M. Górski, in order to be able to speak of responsibility, a legal obligation should first be clearly defined (Górski, 2016, p. 1901).

The legislator in the art. 86 of the Polish Constitution, apart from the obligation to care for the environment, establishes the principle of responsibility for its violation. It is worth noting that this responsibility is individual. This is evidenced by the way in which this provision was drafted: “for its deterioration”. The legislator, in the remaining scope, refers us to the act. Therefore, in this situation, general principles of civil liability should be applied, which are indicated in the Civil Code, as well as provisions on civil liability, the provisions of the Act on Environmental Protection (Articles 322–328), or directed to environmental protection, e.g. the provisions of the Act of July 20, 2017 Water Law (Dz.U. 2017, item. 1566) and the Act of July 7, 1994 Construction Law (Dz.U. 1994, No. 89, item. 414).

Any entity which, through unlawful action, causes damage to the environment or as a result of an unlawful impact on the environment directly threatens to cause such damage, is obliged to restore the lawful state and is also required to take appropriate preventive measures. In a situation where it is excessively difficult or impossible, this entity must terminate the activity which caused the threat or infringement. Every injured party has the right to make a claim for damages. If the threat or violation is directed to the environment as a common good, then such entities as the State Treasury, local government unit and ecological organization have the right to claim. In addition, it should be emphasized that entities that have violated the principles of environmental protection may also be subject to criminal liability under the provisions of the Environmental

Protection Act, the Act of June 6, 1997, the Criminal Code (Dz.U. 1977, No. 88, item. 553) and the Act of May 20, 1971, the Code of Misdemeanors (Dz.U. 1971, No. 12, item. 114) or administrative responsibility also based on the provisions of the Environmental Protection Act (Haczkowska, 2014, p. 216–217).

Indicated in the art. 86 of the Polish Constitution, the obligation to care for the environment and responsibility for its non-compliance can be adopted as a formula that reflects at the constitutional level known to international law (Art. 16 of Rio Declaration...), EU law (Art. 191 TFUE) and the legislation of other states “Perpetrator’s principle”, i.e. the polluter pays principle. This rule, in the context of legal regulations, appeared in a narrower sense and in a broader sense. It is worth noting that it is always associated with environmental pollution. As for the broader significance of the “polluter pays” principle, it manifests itself in the fact that the perpetrator of the pollution is liable, in particular in financial terms, for the damage he caused as a result of his own activities, and it is irrelevant whether that activity was consistent with the law or not. As practice shows, the narrower definition is much more common, according to which the polluter is only responsible for compliance with only quality standards or impact standards (considering the effects of such impacts, which are introduced within a specific jurisdiction. The perpetrator of pollution is an entity, which directly or indirectly damages the environment or creates conditions that lead to damage (Górski, 2016, p. 1901).

The legislator’s goal is to integrate society regarding the idea of common environmental protection. The constitution-maker, at the same time, is trying to force individuals to mobilize each other to protect the environment together. A manifestation of this motivation is undoubtedly the constitutional obligation on the state to support citizens’ activities for the environment and its protection. However, as practice shows, the implementation of this obligation is very difficult, therefore it is not achieved (Rakoczy, *Komentarz...*).

It should be emphasized that the legislator significantly strengthened the rank of environmental protection. He did so by establishing it as one of the material premises for limiting the constitutional rights and freedoms of human and citizen next to the protection of health, protection of

public morality, security or public order as well as the freedoms and rights of others. Therefore, in a situation where it is necessary, in a democratic state of law, protection of the environment for the common good (without, of course, violating the essence of freedom or law at the same time), considering the public interest as well as the implementation of significant state tasks, may justify cases of limitation other constitutional rights and freedoms of the individual (Haczkowska, 2014, p. 217).

ARTICLE 86 OF THE POLISH CONSTITUTION IN THE JURISPRUDENCE OF COURTS AND TRIBUNALS

Referring to the content of art. 86 of the Constitution of the Republic of Poland (duty to care for the state of the environment) The Constitutional Tribunal has adjudicated several times. An interesting example of a decision in this respect is certainly the judgment of the Constitutional Tribunal of September 28, 2015 regarding the compliance with the Constitution of the Republic of Poland of the provisions of the Act of April 16, 2004. on nature protection (Dz.U. 2013, item. 627). The initiator of the proceedings for examining the constitutionality of the indicated provisions of the Act was the Prosecutor General. In this judgment, the Constitutional Tribunal has ruled that the provisions challenged by the applicant are in accordance with the Constitution, among others stressing that: "...assessing the constitutionality of the regulations challenged by the Prosecutor General, the Tribunal cannot ignore that the case concerns environmental protection, which constitutes a good fixed in the Constitution on several levels, including as an obligation to ensure ecological safety for present and future generations (Article 74 (1)) as well as one of the reasons justifying the restriction of constitutional rights and freedoms (Article 31 (3))" (OTK-A 2015/8/123, LEX No. 1800053).

In the further part of the ruling, continuing this issue, the Tribunal indicates that "...the Constitution treats the environment as a common good which is subject to special protection. The formulation of the requirement for environmental protection already in the first chapter of the Constitution allows us to conclude that the Republic of Poland treats

environmental protection issues as one of the most important, as well as safeguarding the independence and integrity of its territory, human and citizen freedoms and rights, the security of citizens and national heritage. The Article 5 of the Constitution highlights the need to protect the environment through sustainable development among the main political and social goals of the state. This principle obliges the state not only to protect nature and shape spatial order, but also to take due care for social and civilizational development, considering various constitutional values and balancing them accordingly. It should be emphasized that the obligation of such protection was addressed to both public administration bodies (Article 74 (2) of the Constitution) and other entities. This confirms the content of the art. 86 of the Constitution, according to which everyone is obliged to care for the state of the environment. This is one of the few obligations expressed *expressis verbis* in the Constitution, which further emphasizes the importance of the need to protect the environment” (reference number K 20/14) (OTK-A 2015/8/123, LEX No. 1800053).

Responding to the applicant’s arguments in the legal justification, the Constitutional Tribunal also referred to the Constitutional Tribunal’s judgment of May 13, 2009, indicating that: “...The obligation to care for nature as a national heritage and wealth, lies with public administration bodies, legal entities (other entities organizational entities) and natural persons” (*Judgment of the Constitutional Court, 2009*). Therefore, the Constitutional Tribunal clearly indicated the subjective scope of the duty to care for nature.

In the remainder of the mentioned judgment of September 28, 2015, the Constitutional Tribunal also speaks on the issue of the nature contained in the art. 86 of the Polish Constitution, the obligation to care for the state of the environment, stating that: “...Obligations arising from art. 86 of the Constitutions may have a diverse character. In the doctrine, the obligation to care for the state of the environment not only derives obligations of a negative nature, such as a ban on destruction or degradation of the elements of the environment of water, air or soil pollution, but also positive obligations, including primarily an order to prevent damage and rational shaping” (OTK-A 2015/8/123, LEX No. 1800053). Therefore, the Constitutional Tribunal has clearly stated that the obligation to care for

the state of the environment should be considered not only in the negative aspect, limiting it only to various types of prohibitions, but also in the positive aspect – expressed by orders of specific behavior.

In the remainder of this judgment, the Court further states that “...The obligation to care for the state of the environment cannot be limited to liability for the deterioration that results from the second part of Article 86 of the Constitution, but it should be decoded from other constitutional regulations. Among them, art. 31 section 3 of the Constitution allowing the restriction of the use of constitutional freedoms and rights, including due to environmental protection. The Constitution allows the legislator to limit freedoms and rights, but the essence of a given law is the impassable limit of interference. The cited regulations show that the universal obligations set out by the Constitution in the field of environmental protection are not limited to prohibiting or ordering specific behavior, but they go much further – because they enable the legislator to limit constitutional rights and freedoms when it is necessary to fulfill the obligation to protect the environment” (OTK-A 2015/8/123, LEX No. 1800053).

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