Chapter VI

Poland: One of the Most Protected Values of the Constitution and its Limited Conceptualization in the Practice of the Constitutional Court

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1. Introduction

1. The legal framework for environmental protection in Poland is well developed. This can be explained by the legislator's concern for the fullest possible implementation of the value defined as the 'natural environment'[1] or a 'healthy environment'[2] as well as the increasing degradation of this universal good. As proof of this concern, the Constitution of the Republic of Poland of April 2, 1997[3] (hereinafter the 'Constitution', 'Fundamental Law'), refers to the environment in as many as five articles (Arts. 5, 31.3, 68.4, 74, and 86), which is an exceptional situation when compared to the protection of other constitutional values.[4] At the same time, in these provisions of the Constitution, the obligation to protect the environment, which rests with the

1 Cf. Judgment of the Constitutional Court of July 1, 2014, case ref. SK 6/12 (OTK ZU no 7/A/2014, item 68).
2 Cf. Judgment of the Constitutional Court of May 13, 2009, case ref. Kp 2/09 (OTK ZU no. 5/A/2009, item 66).
3 Journal of Laws No. 78, item 483, as amended.
4 Cf. Majchrzak, 2020, p. 102; Rakoczy, 2015, pp. 75–76.

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'Republic of Poland' (Art. 5), 'public authorities' (Art. 74 (2)), and 'everyone' (Art. 86), has been emphasized in a special way.

Although the Constitution uses the term 'environment', it does not introduce this term's legal definition. This was pointed out by the Constitutional Court in its judgment of May 13, 2009, case ref. Kp 2/09, pursuant to which the term has an established doctrinal content generally known to the judicature. Moreover, in the opinion of the Court, 'the environment' as a constitutional concept is autonomous and should not be assessed solely through the lens of statutory terminology. However, referring to such terminology is not a mistake in itself; hence, for the purposes of individual cases, it can be assumed, pursuant to the Act of April 27, 2001 – the Environmental Protection Law[5] (hereinafter EPL) – that 'environment' is the totality of natural elements; those transformed by human activity, in particular, land, minerals, water, air, landscape, climate, and other elements of biodiversity; and the interaction among these elements (EPL Art. 3 (39)).[6] Additionally, the judgment of the Constitutional Court of December 10, 2014, case ref. K 52/13,[7] is the basis for the conclusion that the constitutional concept of environment does not include farm animals (only wild and free-living animals are part of the environment).[8]

The above-mentioned provisions of the Constitution are operationalized by means of several dozen normative acts of the act rank and hundreds of ordinances and acts of local law that directly implement the acts.[9] First, it is worth considering the EPL, which, together with the Act of October 3, 2008, on Sharing Information on the Environment and Its Protection, Public Participation in Environmental Protection, and on Environmental Impact Assessments[10] (hereinafter SIEA) and the Act of April 13, 2007, on the Prevention and Repair of Environmental Damage[11] (hereinafter PREDA), form a collection of the so-called horizontal acts set. These acts concern institutions that are important for the entire legal framework for environmental protection (including all of its components),[12] namely, general principles of environmental law, the protection of environmental resources, emission permits, financial and legal measures for environmental protection, legal liability in environmental protection, access to information on the environment, public participation in environmental protection, and environmental impact assessment as a result of planning the implementation of acts as well as specific projects. In the context of the latter issue, it is worth emphasizing that, in addition to typical natural elements (indicated in Art. 3 (39) EPL), environmental impact assessment also covers monuments and tangible goods (see Art. 51 (2) (2) letter e) and Art. 62 (1) (1) letter b) and c) of

5 Journal of Laws of 2021, item 1973, as amended.
6 Cf. Judgment of the Constitutional Court, case ref. Kp 2/09.
7 OTK ZU no. 11/A/2014, item 118.
8 Ibid.
9 Cf. Górski, 2014, p. 12.
10 Journal of Laws of 2022, item 1029.
11 Journal of Laws of 2020, item 2187.
12 Górski, 2014, pp. 9–12.

SIEA). In other words, pursuant to SIEA regulations, the environment as an object of protection is understood specifically and broadly, also including elements of cultural heritage (monuments) or even real estate (e.g., facilities) of third parties.[13] Cultural heritage and property are also subject to constitutional protection (see Arts. 5, 21 (1), and 64 (2) of the Constitution), with the proviso that the constitution explicitly leaves these elements outside the objective scope of the concept of 'environment'.

Referring to the above-mentioned horizontal regulations, it is also worth mentioning the Act of April 16, 2004, on the Nature Conservation[14] (hereinafter NCA), which, due to its subject matter as declared in Art. 1 ("goals, principles and forms of protection of living and inanimate nature and landscape") as well as its nature also comes close to horizontal laws.[15]

A highly extensive set of environmental regulations is made up of 'sectoral' acts, covering individual elements of the environment or specific types of actions affecting them.[16] Such normative acts include, for example, the Act of July 20, 2017, the Water Law[17] (hereinafter WL); the Act of December 14, 2012, on Waste[18]; the Act of October 13, 1995, the Hunting Law[19] (hereinafter HL); and the Act of September 28, 1991, on Forests,[20] This group includes also 'non-sectoral' laws, the main purpose of which is not to protect the environment, but the structures these laws contain are also used for the implementation of environmental tasks. An example is the Act of July 7, 1994, the Construction Law,[21] and the Act of July 23, 2003, on the Protection of Monuments and the Care of Historical Monuments.[22].

The provisions on legal liability contained in the Act of June 6, 1997, the Criminal Code[23] (hereinafter CrC), and the Act of April 23, 1964, the Civil Code[24] (hereinafter CiC), can also be placed in this 'non-sectoral' framework. In the first section and in a separate XXII chapter of the CrC, 'offenses against the environment' were regulated.

Including such deeds in the CrC regulation, placing the indicated chapter in the structure of the act before offenses against freedom, and the volume of this fragment of the regulation (covering as many as 59 types of offenses) justify the statement that the environment is a general social value of particular importance.[25] The CrC standardization does not exhaust the problem of environmental offenses. They are

13 Cf. Daniel, 2013, pp. 52–53.
14 Journal of Laws of 2022, item 916.
15 Cf. Habuda, 2019, p. 107.
16 Górski, 2014, p. 13.
17 Journal of Laws of 2021, item 2233, as amended.
18 Journal of Laws of 2022, item 699, as amended.
19 Journal of Laws of 2022, item 1173.
20 Journal of Laws of 2022, item 672.
21 Journal of Laws of 2021, item 2351, as amended.
22 Journal of Laws of 2022, item 840.
23 Journal of Laws of 2022, item 1138.
24 Journal of Laws of 2022, item 1360.
25 Zawłocki, 2014, pp. 129, 133.

additionally provided for in a number of other 'extra-code' acts, in particular, in the provisions of the NCA, WL, and HL.[26] The catalog is also supplemented by offenses against the environment regulated in the Act of May 20, 1971, the Code of Petty Offenses,[27] as well as the EPL and other specific acts.

On the other hand, the provisions of the CiC do not deal directly with the protection of the environment; in fact, they do not even use the concept of the (natural) environment. The CiC aims to protect the interests of individual entities in their mutual relations. Nevertheless, environmental goals can be achieved through safeguarding the subjective rights of an individual. Destructive effects on the environment may violate such rights[28] and result in civil law liability. The general regulations of the CiC are detailed in Art. 323–328 of the EPL, which, in this respect, added a specialized nature in terms of environmental protection to civil liability. Moreover, a certain specification can be found in Art. 126 of the NCA. In particular, it introduces the State Treasury's liability for damages caused by certain protected wild animals (e.g., bison, wolves, lynx, bears, and beavers). Thus, this regulation is not directly aimed at nature protection; rather, this is a consequence of its implementation. In this way, it can indirectly strengthen the achievement of protection goals, guarding the property rights of an individual and thus increasing the acceptance of specific inviolability of the indicated animal species.

2. The analysis of the system of normative acts concerning environmental protection provides grounds for the conclusion that, in this respect, the instruments typical for administrative law prevail. The legislator establishes certain public tasks performed directly by public administration bodies in their typical forms of activity. Moreover, on the grounds of the legal language, the concept of 'environmental protection authority' is specified in Art. 3 point 15 of the EPL. Disregarding the doubts arising from this definition,[29] it can be assumed that such authorities are 1) administrative bodies in the systemic sense (ministers, central government administration bodies, voivodes, other local government administration bodies and local government units) or 2) other administrative entities (public or private) that perform public tasks related to the environment and its protection (e.g., the so-called environmental protection institutions listed in Art. 386 of the EPL).[30]

In accordance with the Act of September 4, 1997, on Government Administration Departments[31] (hereinafter GADA), the following were distinguished among government administration departments: climate and environment. According to the regulation of the Prime Minister of October 27, 2021, on the detailed scope of

26 Cf. Radecki, 2015, pp. 85–87.
27 Journal of Laws of 2021, item 2008, as amended.
28 Skoczylas, 1989, pp. 52–53.
29 For more on this, see Majchrzak, 2016, pp. 112–113; Walas, 2009, pp. 42–44.
30 Majchrzak, 2016, p. 113.
31 Journal of Laws of 2021, item 1893, as amended.

activities of the Minister of Climate and Environment,[32] both of the above-mentioned departments are managed by the Minister of Climate and Environment.

As bodies subordinate to the Minister of Climate and the Environment, the GADA lists the following central government administration bodies: the Chief Inspector of Environmental Protection and the General Director of Environmental Protection. In turn, these administrative bodies are hierarchically superior to provincial environmental protection inspectors and regional environmental protection directors, respectively, as specialized local government administration bodies (combined and not combined, respectively). It is also worth noting that the indicated bodies of the Environmental Protection Inspection, in addition to performing typical functions of public administration, are appointed to prosecute crimes against the environment specified in the CrC as well as environmental offenses, including bringing and supporting indictments.

Public tasks related to environmental protection are also performed by the constitutive and executive bodies of local self-government, as the so-called general administration. Care for the environment condition is only one of many of their public administration functions.

The environmental administration system is complemented by other administrative entities, an example of which are the so-called earmarked funds (National Fund for Environmental Protection and Water Management and provincial funds for environmental protection and water management).

3. The jurisprudence of international and EU bodies also influences the shape of the legal framework for environmental protection in Poland. Key examples in this respect include the relatively recent judgment of the European Court of Human Rights (hereinafter ECHR) of October 14, 2021, in the case of Kapa and others v. Poland (applications nos. 75031/13 and three others). Its importance for domestic jurisprudence has not yet been confirmed in specific judicates. However, it may turn out to be significant, especially in light of doubts as to the existence of an individual's right to the environment in the Polish normative system. In that case, the ECHR clearly refers to the Polish reality in its line of jurisprudence regarding the inference of the right to a clean and quiet environment from Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms[33] (hereinafter Convention).

The judgment of the Court of Justice of the European Union of February 22, 2018, in case C-336/16 European Commission v. Republic of Poland had a real and significant impact on domestic law. It forced legislative changes to the EPL[34] aimed at improving the remedial actions provided for in air protection programs to ensure compliance with the permissible levels of harmful substances in the air.

32 Journal of Laws item 1949.

33 Journal of Laws of 1993, No. 61, item 284.

34 Act of June 13, 2019, on amending the Act – Environmental Protection Law and the Act on crisis management (Journal of Laws item 1211, as amended).

2. Actors of the formation of constitutional law and constitutional jurisdiction related to the protection of future generations and the environment

1. The fundamental role in shaping constitutional regulations as to the basic rights relating to the protection of future generations, in particular, the environment, is played by the bicameral Parliament of the Republic of Poland, namely the Sejm and the Senate. With regard to environmental issues, two standing parliamentary committees have been established: 1) one for Energy, Climate, and State Assets and 2) one for Environmental Protection, Natural Resources, and Forestry.[35] The permanent Senate committee is the Environment Committee.[36]

In respects other than legislation, it is difficult to speak of any significant influence by Parliament. However, the function of this body consisting in 'accepting the international law' [37] should be formally mentioned here. In particular, after the Constitution entered into force, the ratification by the President of the Republic of Poland of international agreements on the environment and its protection required the consent of the Sejm and the Senate expressed in the form of a separate act (differing, however, in its nature from typical normative acts).[38]

2. The jurisprudence of the Constitutional Court is potentially of great importance for the analyzed area of regulation. However, it must be assessed in the context of the systemic cognition of this body, as a 'court of law' rather than a 'court of facts'.[39] "Its competences include – in short – the assessment of the compliance of legal acts with the Constitution (…), but in no case may it adjudicate on the application of the law or make a legally significant assessment of the activities of state organs, including courts."[40] It is not changed even by the fact that the Constitutional Court performs the so-called specific control initiated by a constitutional complaint (Art. 79 of the Constitution) or a legal question from a court (Art. 193 of the Constitution), which depends on the existence of a relationship between the questioned legal norm and an individual case of application of the law.

35 Art. 18(1) of the Resolution of the Sejm of the Republic of Poland of July 30, 1992 – Rules of Procedure of the Sejm (Monitor Polski of 2021, item 483, as amended).

36 Art. 15(1) of the Resolution of the Senate of the Republic of Poland of July 30, 1992 – Rules of Procedure of the Senate (Monitor Polski of 2018, item 846, as amended).

37 Bałaban, 2007, pp. 145–146.

38 Cf. ibid., p. 146.

39 The case in which the Constitutional Court controls the procedure of the authority that issued the normative act (i.e., the exercise of its legislative powers), pursuant to Art. 68 of the Act of November 30, 2016, on the Organization and Proceedings Before the Constitutional Court (Journal of Laws of 2019, item 2393), is to be treated as an exception – cf. Syryt, 2019, p. 324.

40 Order of the Constitutional Court of October 26, 2005, case ref. SK 11/03 (OTK ZU no. 9/A/2005, item 110).

> In the event of a constitutional complaint, only a legal norm that violates constitutional rights or freedoms on the basis of which a final decision had already been issued may be the subject of review. In the event of a legal question, the subject of inspection may be a legal norm that has not yet been applied but the application of which is relevant for the resolution.[41]

At the same time, the Constitutional Court, as it stated itself in the case initiated by a constitutional complaint, does not have systemic and related procedural solutions adapted to examining the facts that determine the content of the acts for applying the law of other organs of public authority.[42] The competence of this Court does not include "assessing the practice of other authorities' activities or making any factual findings"[43] or "making a binding interpretation of acts' or 'determining which of the possible interpretative variants of the provision under consideration should be the basis for the court's decision."[44] "A constitutional complaint in the Polish legal system is always a «complaint against a provision and not against a specific defective application of it, even if it would lead to an unconstitutional effect."[45] "A legal question […] cannot […] be treated as a means of removing doubts that arise in practice as to the content of specific provisions."[46]

In the context of the role of the Constitutional Court in the scope of our interest, two elements are worth considering. First, this court is called upon to provide a binding interpretation of the constitutional law,[47] and therefore, the results of interpreting the provisions of the Constitution relating to the environment and its protection presented in its jurisprudence have unique value in the Polish legal system. Second, several judgments of the Constitutional Court, which assessed the constitutionality of statutory provisions, contributed to strengthening the level of protection of the environment (including nature). At the same time, it should be emphasized that the jurisprudence of the Polish Constitutional Court in the matters in question is relatively poor. It is often limited to simple ('dogmatic') statements devoid of broader legal argumentation, including a critical analysis of doctrine views. Hence, pursuant to this judicature, it is difficult to assume that there is any well-established concept of the perception of the environment and its protection.

41 Order of the Constitutional Court of June 10, 2009, case ref. P 4/09 (OTK ZU no. 6/A/2009, item 93).
42 Cf. Order of the Constitutional Court of October 6, 2004, case ref. SK 42/02 (OTK ZU no. 9/A/2004, item 97).
43 Order of the Constitutional Court of July 22, 2021, case ref. SK 24/20 (OTK ZU no. A/2021, item 43).
44 Order of the Constitutional Court of January 8, 2013, case ref. P 48/11 (OTK ZU no. 1/A/2013, item 8).
45 Order of the Constitutional Court, case ref. SK 24/20.
46 Order of the Constitutional Court, case ref. P 48/11.
47 Judgment of the Constitutional Court of November 13, 2013, case ref. P 25/12 (OTK ZU no. 8/A/2013, item 122).

However, the judgments of the Constitutional Court have some interpretative significance: 1) of June 6, 2006, case ref. K 23/05[48] concerning the Act of April 10, 2003, on special principles for the preparation and realization of investments in national roads[49]; 2) of May 13, 2009, case ref. Kp 2/09 concerning the issue on amending the organization and division of public tasks related to environmental protection; 3) of November 28, 2013, case ref. K 17/1[50],2, concerning changes in the municipal waste management system; 4) of July 10, 2014, case ref. P 19/13[51], concerning the creation of hunting districts including private real estate; 5) of September 28, 2015, case ref. No. K 20/14[52] concerning limitations of the State Treasury's liability for damages caused by wild animals covered by species protection. In these judgments, the Constitutional Court referred to such constitutional issues as the existence of individual rights in the field of the environment, the concept of ecological security, the content of the task consisting in the protection of the environment and the obligation to care for its condition, the importance of the principle of sustainable development, and the nature of the norm resulting from Art. 5 of the Constitution.

In turn, the judgments of the Constitutional Court strengthening the legal protection of the environment are: 1) of July 3, 2013, case ref. P 49/11[53], and of July 21, 2014, case ref. K 36/13[54] declaring the unconstitutionality of the provisions of NCA, which were limiting the liability of the State Treasury for damages caused by certain protected wild animals; and 2) of September 10, 2020, case ref. K 13/18[55] recognizing the provision of the EPL as compliant with the Constitution providing for an 'objective' increased fee for placing waste at a dumping site without a permit.

3. The current President of the Republic of Poland also takes steps to protect the environment. In this regard, it is worth paying attention to the adoption of the program document entitled 'Eco-Card' in July 2020. It is a declaration by the President of the Republic of Poland of strong support for initiatives for clean air, the development of renewable energy sources, efficient use of water resources, nature protection, proper waste management, increasing expenditure on environmental education, and promoting these values among children and adolescents.[56] In addition, in June 2021, the President of the Republic of Poland established the Council for Environment, Energy and Natural Resources. Its tasks include supporting the activities of the President of the Republic of Poland in the context of analyzing current problems in the field of the environment, energy, and natural resources; review and

48 OTK ZU no. 6/A/2006, item 62.
49 Journal of Laws of 2022, item 176.
50 OTK ZU no. 8/A/2013, item 125.
51 OTK ZU no. 7/A/2014, item 71.
52 OTK ZU no. 8/A/2015, item 123.
53 OTK ZU no. 6/A/2013, item 73.
54 OTK ZU no. 7/A/2014, item 75.
55 OTK ZU no. A/2020, item 58.
56 Official profile of the President of the Republic of Poland on Facebook, 2020 [Online]. Available at: https://bit.ly/3HY9Iwu (Accessed: 16 February 2022).

analysis of legal solutions as well as the development of assumptions and drafting of presidential legislative initiatives on these topics; and creating a forum for debate and dialogue in this area as well as education and promotion of activities and initiatives to protect the natural environment.[57]

4. Tasks covering environmental protection and ensuring ecological security for the present and future generations (Art. 74 (1) and (2) of the Constitution) are primarily related to the competences and responsibilities of the Council of Ministers and its individual members managing relevant departments of government administration.[58] In this context, it is also worth mentioning the appointment of appropriate government plenipotentiaries 1) for Water Management and Investments in Maritime and Water Management, 2) for Hydrogen Management, 3) for forestry and hunting, and 4) for Renewable Energy Sources as well as for the appointment of the Plenipotentiary of the Prime Minister for the 'Clean Air' Program.[59]

5. The judiciary authorities also have an impact on shaping the constitutional law relating to environmental issues. This is due to, inter alia, their entitlement to the direct application of the provisions of the Constitution (Art. 8 (2) of the Fundamental Law). Hence, the regulations of this act relating to the environment and its protection are the subject of interpretation by, inter alia, administrative courts. For example, the Supreme Administrative Court (hereinafter SAC), in its jurisprudence, repeatedly referred to the constitutional principle of sustainable development (Art. 5), stressing that it concerns both the sphere of lawmaking and the sphere of law application; it includes the need to take into account various constitutional values and to balance them accordingly.[60] Another example of a reference to the provisions of the fundamental act is Art. 86, which, in the opinion of administrative courts, is the constitutional source of deriving the EU's 'polluter pays' principle.[61]

Important theses were also presented in the judgement of the Voivodship Administrative Court in Warsaw of February 10, 2015, case ref. IV SA/Wa 1304/14[62], although they have not yet been upheld in other decisions of administrative courts, particularly the Supreme Administrative Court. In line with this isolated view expressed in the judgment, case ref. IV SA / Wa 1304/14 states the following:

57 Official website of the President of the Republic of Poland, 2021 [Online]. Available at: https://bit.ly/34PXdEZ (Accessed: 16 February 2022).

58 Cf. Order of the Constitutional Court of May 20, 2009, case ref. Kpt 2/08 (OTK ZU no. 5/A/2009, item 78).

59 https://bit.ly/3rlLkzm (Accessed: 1 February 2022).

60 Cf. Judgments of the Supreme Administrative Court: of January 19, 2012, case ref. II OSK 2077/10 (https://bit.ly/357E15G); of January 19, 2012, case ref. II OSK 2078/10 (https://bit.ly/3rUhPVj); of April 25, 2012, case ref. II OSK 233/11 (https://bit.ly/3GRD3Yd) (Accessed: 16 February 2022).

61 Cf. Judgments of the Supreme Administrative Court: of April 29, 2020, case ref. II OSK 144/19 (https://bit.ly/3uW03CY); of April 29, 2020, case ref. II OSK 256/19 (https://bit.ly/36kiXcF) (Accessed: 16 February 2022).

62 Central Database of Administrative Courts Decisions [Online]. Available at: https://bit.ly/3LNPMip (Accessed: 21 February 2022).

> The subjective right in environmental protection is an element of ecological security regulated in Art. 74 (1) of the Polish Constitution. Ecological security is not only a legal guarantee of the public authorities ensuring the protection of the environment itself, but also the broadly understood subjective right to the environment (…). Within the scope of the subjective law, there is an interweaving of rights and obligations of administrative bodies and parties to proceedings. Such a situation may induce a party to the proceedings to demand that administrative bodies ensure the implementation of their subjective right, including ecological security and the right to the environment. In this sense, we can also talk about the implementation of the right to ecological security and the fulfillment of obligations related to it (…). Ensuring ecological security is connected with the obligation to avert threats and provide protection in the event of a threat to humans and the environment (…). The structure of the subjective law is a consequence of assigning entities using the environment comprehensive obligations in the field of environmental protection.

In the analyzed context, the Resolution of the Supreme Court of May 28, 2021, case ref. III CZP 27/20, must be mentioned.[63] According to the theses of this resolution:

> 1) The right to live in a clean environment is not a personal good. 2) Protection, the way it is provided for personal rights, (Art. 23 CiC in conjunction with Art. 24 CiC and Art. 448 CiC) covers health, freedom, privacy, which may be violated (threats) by breach of air quality standards specified in legal provisions.

The Supreme Court responded in this way to the legal question of the District Court in Gliwice dealing with the case of a Rybnik resident who brought an action against the State Treasury for protection of personal rights in connection with serious violations of air quality standards in the plaintiff's place of residence. In the justification of the resolution, the Supreme Court emphasized that personal rights result from those non-material values that combine a unique, self-realizing 'individuality' of a person, their dignity, and their position among other people (these are "values closely related to (…) [a human being] and their dignity as a human"). Therefore, the natural environment of man does not have the characteristics of a personal good. It is a good common to humanity, with a material substrate in the form of air, water, soil, and the world of plants and animals. Moreover, the Supreme Court noted that in their constitutions and international agreements, individual states establish public subjective rights in a vertical relationship to a clean, unpolluted environment. In this context, the Supreme Court recalled the obligations entered into by the Polish State, including the Convention for the Protection of Human Rights and Fundamental Freedoms, to ensure that every person subject to its jurisdiction has the

63 Official website of the Supreme Court [Online]. Available at: https://bit.ly/3gRNKPX (Accessed: 16 February 2022).

rights and freedoms specified in Chapter I of the Convention, including the right to life (Art. 2) and to respect for private and family life and home (Art. 8).

In the opinion of the Supreme Court, although public subjective rights are indirectly aimed at securing personal rights as well, they are not identical to personal rights. The natural environment will remain a common good and not a personal good within the meaning of Art. 23 of the CiC when living in an environment in which air, soil, and water meeting standards established by science, conducive to maintaining health and the exercise of human freedom in its various forms, is directly recognized as a human right as well. The Supreme Court further stated that air, water, and soil quality standards have been indicated in science to define the conditions in which human health and freedom are free from threats. Failure to comply with them – and in some cases, even a one-off breach – is detrimental to personal rights, such as health, freedom, and privacy.

Summarizing the above theses of the Supreme Court, it should be noted in particular that, in its opinion, in the current legal state – under both the Constitution and international agreements binding the Republic of Poland – there are no grounds for deriving the subjective right of a person to live in a healthy environment, ensuring that everyone can exercise their freedom.

6. In this subjective analysis, the Ombudsman, a constitutional body guarding human and civil rights and freedoms defined in the Constitution and in other normative acts (Art. 208 (1) of the Basic Law), must be mentioned. It is worth noting that according to the Act of July 15, 1987, on the Ombudsman,[64] they exercise their powers not only in relation to the supreme and central organs of state administration, government administration bodies, local government units and local government organizational units, courts, public prosecutor's offices, and other law enforcement bodies but also toward the bodies of cooperative, social, professional, and social-professional organizations and bodies of organizational units with legal personality (cf. Art. 13 (1) of the Act on the Ombudsman). The criterion for the subject to be included in the Ombudsman's jurisdiction is only the fact that the legislator entrusted a given body, organization, or institution with the exercise of public authority (cf. Art. 80 of the Constitution).[65]

In recent years, there has been a noticeable intensification of the activities of this body to confirm the existence of a "subjective right to use the environment"[66] under the Polish legal system as well as activities ensuring respect for and the protection of the right to a clean environment as being a human right.[67] Regarding the first issue, the Ombudsman expressed its opinion, inter alia, in the procedural letter

64 Journal of Laws of 2020, item 627, as amended.

65 Trociuk, 2020, point 8.

66 Cf. Litigation document of the Ombudsman of November 30, 2018, in case III CA 1548/18, p. 8. Available at: https://bit.ly/3JDTh9l (Accessed: 17 February 2022).

67 Cf. *Klimat a Prawa Człowieka. Prawo do czystego środowiska jako prawo człowieka*, Global Compact. Network Poland 2019, p. 39. [online]. Available at: https://bit.ly/3rTPBKy (Accessed: 17 February 2022).

of November 30, 2018, in the case with reference number III CA 1548/18 initiated by the above-mentioned action of an inhabitant of Rybnik against the State Treasury for the protection of personal rights.[68] The Ombudsman recalled in this letter that the 'right to use the environment' was explicitly stated in Art. 71 of the Constitution of the Republic of Poland adopted by the Sejm on July 22, 1952[69] (hereinafter the 1952 Constitution; "'Citizens of the Republic of Poland have the right to use the value of the natural environment and the obligation to protect it"). The Constitution currently in force does not contain an analogous regulation but refers to the environment in a number of provisions, and the constitution maker thus attaches great importance to its protection. Moreover, according to the Ombudsman, the following arguments for the 'continuity' of the right to (use) the environment as a subjective constitutional right are correct: 1) it would be difficult to assume that the entry into force of the currently binding Constitution would result in a regression of the protection of individual freedoms and rights, and 2) the subjective law must comply with numerous constitutional obligations in the field of environmental protection. Moreover, even considering the indicated reasons as insufficient does not mean that the existence of the subjective right to use the environment is negated. In the opinion of the Ombudsman, although it was not explicitly mentioned among the constitutional freedoms and rights of an individual, it is *expressis verbis* guaranteed by ordinary legislation, in particular in Art. 4 (1) of the EPL. Its statutory structure additionally supports the recognition of the indicated right as a personal right (personal right within the meaning of Art. 23 CiC). In accordance with the above EPL provision, "universal use of the environment is granted by law to everyone and includes the use of the environment, without the use of installations, in order to meet the needs of personal and household needs, including recreation and sports, in the scope of: 1) introducing into the environment substance or energy; 2) types of common water use other than those listed in point 1 within the meaning of the provisions of the Act of 20 July 2017 – Water Law." The analysis of the so defined right to use the environment allows the Ombudsman to formulate two main conclusions. First, it is a right for 'everyone' who is under the authority of the Republic of Poland (and, therefore, not only for 'citizens'). Second, in the context of recognizing this right as personal and fundamental, it applies only to natural persons. Only they can have "personal and household needs." Summarizing the above, it must be stated that the right to use the environment for personal needs is vested with every person and is inherently related to being a human being. At the same time, the Ombudsman emphasized, referring to the judgment of the Constitutional Court of December 17, 1991, case ref. 2/91,[70] that it is the right to an environment of an appropriate standard ("of adequate quality and of an ensured ecological balance").

68 Connected with the above-mentioned resolution of the Supreme Court, case ref. III CZP 27/20.

69 Journal of Laws of 1976 No. 7, item 36, as amended (a version in force by December 31, 1989).

70 OTK ZU of 1991, item 10. However, it should be emphasized that this decision concerned Art. 71 of the Constitution of 1952.

This right is 'born' together with man; hence, it cannot be disposed of by them. It is, therefore, a personal right.[71]

3. Basis of fundamental rights

1. Since the entry into force of the presently binding Constitution, a discussion has begun regarding the doctrine of environmental protection law as to whether its provisions constitute the right of an individual (citizen) to the environment.[72] This question arises primarily from the fact that the constitutional legislator has not decided to repeat a regulation similar to that resulting from Art. 71 of the Constitution of 1952. Against this background, the Constitutional Court made an unequivocal statement, stating that Arts. 5, 68 (4), 74, and 86 as well as Art. 31 sec. 3 of the Constitution (and, therefore, the general provisions of the constitution relating to the environment) do not establish or guarantee the subjective right to 'live in a healthy environment'.[73] At the same time, however, according to the Constitutional Court, a 'healthy' environment is a constitutional value, the implementation of which should be subject to the process of constitutional interpretation. Some representatives of the legal doctrine expressed a similar opinion regarding the impossibility of deriving from the constitutional law an individual's subjective right to the environment.[74] In particular, L. Garlicki stated that "the Polish constitution does not guarantee the general right of an individual to live in a healthy environment, because the authors of the constitution wanted to avoid introducing a clause of an unrealistic nature and difficult to define legal consequences." [75]

The literature also presents an opposite position, according to which certain regulations of the Constitution are the basis for deriving the constitutional right to the environment (interpreted differently in terms of content). However, depending on the concept, it is sometimes reconstructed on the basis of 1) the concept of sustainable development (Art. 5 of the Constitution)[76]; 2) the obligation of public authorities to ensure ecological security (Art. 74 (1) of the Constitution)[77]; 3) the set of duties of public authorities to ensure ecological security, environmental protection, and support for citizens' activities to protect and improve the condition of

71 Litigation document of the Ombudsman…, pp. 7–9.
72 Cf. e.g., Radecki, 1998, p. 36.
73 Judgment of the Constitutional Court, case ref. Kp 2/09; similarly, Judgment of the Constitutional Court, case ref. K 23/05.
74 Cf. Ciechanowicz-McLean, 2021, p. 7; Habuda, 2019, pp. 108, 111, 112 and 119; Radecki, 1998, p. 36;
75 Garlicki, 2003a, p. 2.
76 Cf. Trzewik, 2016, p. 200.
77 Cf. Korzeniowski, 2012, pp. 173, 177.

the environment (Art. 74 of the Constitution) and to prevent negative health effects of environmental degradation (Art. 68 (4) of the Constitution)[78]; 4) all of the above sources, together with everybody's obligation to care for the state of the environment and responsibility for the deterioration caused to it (Art. 86 of the Constitution)[79]; 5) all the grounds indicated thus far supplemented with the right to life (Art. 38 of the Constitution), the right to health protection (Art. 68 (1) of the Constitution), the right to ownership (Art. 64 (1) of the Constitution), and the right to safe and hygienic working conditions (Art. 66 (1) of the Constitution)[80]; 6) the right to information regarding the environment and its condition (Art. 74 (3) of the Constitution) as well as the general right to a fair trial (the administration of justice – Art. 45 (1) of the Constitution) [81]; and 7) freedom to use the environment as a concept resulting from the assumption that life and use of the environment are inscribed in the very nature of man[82] (cf. Art. 30 and Art. 31 (1) of the Constitution).

2. A contentious issue in the Polish legal literature is also the content of the 'right to the environment'. According to some authors, in the foreground is the right of an individual to use the environment in conditions of ecological security, which is correlated with the obligation of public authorities to conduct a policy ensuring ecological security for contemporary and future generations, in particular, the obligation to prevent the negative health effects of environmental degradation.[83] According to other researchers, this is a matter of 'human rights in environmental protection in Polish law'. These include the constitutional right to information regarding the environment, public participation in environmental protection proceedings, and access to justice.[84] In light of the next position, the right to the environment is a 'complex of rights' containing elements of personal freedom (relating to the use of elements of the environment to satisfy one's needs, which is free from interference by public authorities and other entities), political law (as an opportunity to influence the activities of public authorities that are important for the environment), and social law (imposing on the state the obligation to provide citizens with the environment necessary for their proper development).[85] According to another concept, we should distinguish the subjective right to ecological security, which has a superior position in determining all other types of rights and obligations in environmental protection.[86] This 'superior' right means, in material terms, the right of every human being to meet certain basic needs resulting from the use of

78 Cf. Paczuski, 1999, pp. 234-235.
79 Cf. Haładyj, 2002, p. 37; Karski, 2006, pp. 322–323.
80 Cf. Trzewik, 2016, pp. 238–239.
81 Cf. Jendrośka, 2002, pp. 29–32.
82 Cf. Rakoczy, 2006, p. 208.
83 Cf. Paczuski, 1999, pp. 234–235.
84 Cf. Jendrośka, 2002, pp. 29–32.
85 Cf. Trzewik, 2016, p. 209.
86 Cf. Korzeniowski, 2012, p. 381.

the environment and, moreover, the state of ecological security provided for by law and guaranteed to everyone.[87]

An interesting proposal was also expressed by B. Rakoczy. The starting point is the statement that the silence of the constitutional legislator in the matter of interest results in the need to seek unwritten regulation. Therefore, it is necessary to establish the reasons for which the environment is protected in the Constitution: human life and health, which results from the principle of sustainable development (Art. 5 of the Constitution) and requires implementation for the sake of man and their well-being.[88] Art. 68 (4) of the Constitution may be additionally highlighted here, indicating one of the measures guaranteeing the right to health protection, which is to prevent the effects of environmental degradation. This anthropocentric trend is the basis for considering whether, in the field of the environment, the freedom of the individual should not be included in the discussion. Freedom in its essence (unlike the 'right to the environment') is not defined by the subject law, which can only define the limits of the exercise of this freedom.[89] The source of freedom is natural law, which is objectively binding and irrespective of the declaration of its validity in positive law (here, in the Constitution).[90] In the opinion of B. Rakoczy, in this context, a very important issue should be noted that a man, regardless of any factors, lives in a specific environment and is its element and its most important user. He remains in the environment, can use the environment, and does so regardless of whether such a law is explicitly formulated. Life and the use of the environment are inscribed in the very nature and essence of man, and therefore, it is pointless to formulate such a law. Hence, it is appropriate to formulate the 'freedom to use the environment' as the possibility of using this environment to the full extent and, at the same time, to define the limits of this freedom at the statutory level. B. Rakoczy also noted that adopting this concept does not eliminate the admissibility of formulating positive laws; it is advisable and even necessary. However, these rights will always be secondary to that freedom. In reference to this, among its guarantees, B. Rakoczy mentions the principle of sustainable development under the Constitution (Art. 5 of the Constitution), guaranteeing the development of an individual and satisfying their personal needs, the right to information regarding the environment and its condition (Art. 74 (3) of the Constitution), and the right to live in a „favorable, clean, healthy, and friendly environment" (reconstructed on the basis of Art. 74 (2) of the Constitution).[91]

3. In the Polish Constitution, one can see provisions that clearly link a specific subjective right to the obligations of public authorities in the field of environmental protection. This applies to Art. 68 (4) in connection with Art. 68 (1) of the Fundamental Law. According to the first regulation, "Public authorities shall combat

87 Ibid., p. 380.
88 Rakoczy, 2006, pp. 207–208.
89 Cf. ibid., p. 208.
90 Cf. Garlicki, 2003b, pp. 4–5.
91 Rakoczy, 2006, pp. 208–210, 230.

epidemic illnesses and prevent the negative health consequences of degradation of the environment." They should be seen as complementary to the provisions of Art. 68 (1)[92]. The latter provision is the basis for deriving the "subjective right of an individual to health protection."[93] In the opinion of the Constitutional Court, the content of the indicated subjective right is not some abstractly defined (and in fact undefined) state of health of individuals but the possibility of using a healthcare system functionally oriented at combating and preventing diseases, injuries, and disabilities. At the same time, this system as a whole must be effective.[94] In turn, under Art. 68 (4) of the Constitution, a program norm follows,[95] and therefore, it cannot be considered a source of constitutional subjective rights. At the same time, it does not exclude treating it as a basis for assessing the constitutionality of statutory provisions. It *expressis verbis* imposes certain obligations on public authorities. However, they are so generally defined that Parliament is free to judge whether the adopted regulations are within the limits set out in Art. 68 (4) of the Constitution. The possibility of interference by the Constitutional Court is limited only to cases in which those obligations are manifestly breached.[96]

Against the background of the above-identified content of the right to health protection, it can be noted that the possibility of deriving implicit rights to the environment from it is highly doubtful. It is difficult to conclude that it falls within the scope of the individual's right to use the healthcare system in the institutional sense, meeting the defined conditions of effectiveness.

Next, when referring to the specific rights of an individual related to environmental protection, it is necessary to indicate Art. 74 (3) and (4) of the Constitution. The first provision specifies that everyone has the right to be informed regarding the state and protection of the environment. It is a specification of the more general right to information, including public information, resulting from Art. 54 (1)[97] and Art. 61 (1)[98] of the Constitution.[99] Art. 74 (4) of the Constitution states the obligation of

92 Trzciński, 2003, p. 2.

93 Cf. Judgment of the Constitutional Court of January 7, 2004, case ref. K 14/03 (OTK ZU no. 1/A/2004, item 1).

94 Judgments of the Constitutional Court: of March 23, 1999, case ref. K 2/98 (OTK ZU no. 3/1999, item 38); case ref. K 14/03; of September 29, 2015, case ref. K 14/14 (OTK ZU no. 8/A/2015, item 124); of December 4, 2018, case ref. P 12/17 (OTK ZU no. A/2018, item 71); Order of the Constitutional Court of June 5, 2019, case ref. SK 29/18 (OTK ZU no. A/2019, item 28).

95 Cf. Judgment of the Constitutional Court of July 22, 2008, case ref. K 24/07 (OTK ZU no. 6/A/2008, item 110); Trzciński, 2003, p. 4.

96 Cf. Judgment of the Constitutional Court, case ref. K 24/07.

97 Pursuant to this provision: "The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone."

98 Pursuant to this provision: "A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal or the State Treasury assets."

99 Cf. Garlicki, 2003a, p. 5.

public authorities to support citizens' activities for the protection and improvement of the environment. At the same time, both provisions of Art. 74 (similarly to Art. 68) are included in this sub-chapter of the Fundamental Law, which regulates "Economic, social and cultural freedoms and rights." According to the view presented by the Constitutional Court, they are "less" protected by the Constitution than "classical" (i.e., personal and political) rights and freedoms of man and citizen.[100]

Only Art. 74 (3) of the Constitution may be considered a source of a subjective right of an individual. However, a certain difficulty in assessing the nature of this provision results from Art. 81 of the Fundamental Law,[101] pursuant to which "the rights specified in Art. 65 (4) and (5), Art. 66, Art. 69, Art. 71 and Arts. 74–76, may be asserted subject to limitations specified by statute." Against this background, it is worth noting that thus far, the Constitutional Court has not expressed its position on the direct derivation of a subjective right from Art. 74 (3) of the Constitution.

In turn, the legal literature presents various views on this issue.[102] According to some authors, the above provision does not result in any constitutional subjective right because Art. 81 of the Constitution does not constitute an independent basis for its judicial investigation.[103] Nevertheless, a different opinion prevails: that Art. 74 (3) of the Constitution contains the same inherent right.[104] This thesis deserves approval, as the right to environmental information is a more detailed right to public information,[105] established in Art. 61 (1) of the Constitution, in regard to which the Constitutional Court clearly expresses itself as of a public subjective right, ensuring the possibility of effectively requesting specific behavior from public authorities, enforceable, if necessary, through appropriate procedural institutions.[106] Against this background, it is difficult to assess the legal situation of a citizen differently simply because they demand from the public authority access to information on specific content, namely that concerning the state of environment or environmental protection.

Additional arguments are provided by the case law of the Constitutional Court against the background of economic, social and cultural freedoms and rights listed in Art. 81 different to those specified in Art. 74 (3) of the Constitution. In the opinion

100 Cf. Judgments of the Constitutional Court: of November 10, 1998, case ref. K 39/97 (OTK ZU no. 6/1998, item 99); of June 29, 2005, case ref. SK 34/04 (OTK ZU no. 6/A/2005, item 69). See also Garlicki, 2003c, pp. 5–6.

101 Cf. Tuleja, 2006a, p. 220.

102 In general, there are no decisions of the Constitutional Court relating to Art. 74 (3) of the Constitution. This provision was mentioned exceptionally in the Judgment of December 18, 2018, case ref. SK 27/14 (OTK ZU no. A/2019, item 5), concerning the right to public information. The Court pointed out that information may be protected under regulations guaranteeing the protection of various goods, such as, inter alia, the right to information on the environment or the freedom of the press.

103 Tarnacka, 2009, p. 136.

104 Cf. e.g., Ciechanowicz and Mering, 1999, p. 476; Ciechanowicz-McLean, 2021, p. 7; Haładyj, 2003, p. 52; Krzywoń, 2012, p. 14; Rakoczy, 2006, pp. 220–223.

105 Cf. Garlicki, 2003a, p. 5; Rakoczy, 2006, p. 219.

106 Judgment of the Constitutional Court, case ref. SK 27/14.

of this court, the inclusion of a given right within the scope of Art. 81 of the Fundamental Law does not preclude it from being considered a public subjective right.[107] This provision reduces the scope of claims available to an individual but does not completely exclude them; thus, we can still speak of a constitutional subjective right. In this context, an objection that a statutory regulation is unconstitutional can only be raised when it falls "below a certain minimum of protection and will lead to a situation where a given right is devoid of its actual content." Compliance with Art. 74 (3) of the Constitution would, therefore, be limited, in particular, to examining whether the act clearly and unequivocally contradicts the essence of the right to information on the state and protection of the environment and whether it takes into account a certain minimum standard of requirements.[108]

The subject of the analyzed subjective right is "everyone", that is, both citizens and foreigners as well as legal persons and other organizational units, regardless of any circumstances related to these entities.[109] Art. 74 (3) of the Constitution does not clearly specify the addressee of the obligation to disclose environmental information. Due to the content of the other provisions contained in Art. 74 of the Fundamental Law, it includes 'public authorities' (i.e., the legislative, executive, and judiciary authority as well as institutions other than state and local government, provided that they perform the functions of public authority). The literature also includes the viewpoint that Art. 74 (3) of the Constitution also refers to 'horizontal' relations, which allows for demanding relevant information from non-public entities, provided that they have any impact on the condition or protection of the environment.[110]

In view of these doubts, it would be desirable to supplement Art. 74 (3) of the Constitution with an unambiguous indication of the addressee of the obligation, which would remove any possible interpretation disputes and strengthen the 'capacity' of this provision to being applied directly, in accordance with Art. 8 (2) of the Constitution.

At the same time, it should be noted that the Constitution does not *expressis verbis* provide for a broader right of public participation in the performance of public environmental tasks. However, in the literature on the subject and in the jurisprudence, the statutory provisions contained in the SIEA as well as those relating to public participation in environmental protection are considered to be a substantiation of the obligation resulting from Art. 74 (4) of the Constitution.[111] This provision of the Fundamental Law does not imply a subjective right but only a program norm

107 Cf. e.g., Judgments of the Constitutional Court: of November 24, 2015, case ref. K 18/14 (OTK ZU no. 10/A/2015, item 165); and of October 30, 2018, case ref. K 7/15 (OTK ZU no. A/2018, item 65).

108 Cf. Judgment of the Constitutional Court, case ref. K 18/14.

109 Cf. Garlicki, 2003a, p. 5; Rakoczy, 2006, p. 220.

110 Jabłoński and Wygoda, 2003, pp. 128–129; Węgrzyn, 2010, pp. 450–451. Cf. also Gardjan–Kawa, 1999, p. 115.

111 Górski, 2016a, point XII.1–XII.2; Korzeniowski, 2010, p. 467. Cf. Judgment of the Constitutional Court of July 1, 2021, case ref. SK 23/17 (OTK ZU no. A/2021, item 63).

addressed to public authorities (this issue is discussed in more detail in point 3.5 of this study).

4. Despite that the Constitution only exceptionally combines the subjective rights of an individual with obligations in the field of environmental protection, it is a common practice in the literature on the subject. In particular, the following regulations of the Constitution related to the environment can be indicated, usually in order, to justify the existence of the constitutional right to the environment: the right of access to information on the environment (Art. 74(3) of the Constitution), the right to life (Art. 38 of the Constitution), the right to a court (Art. 45(1) of the Constitution), the right to ownership (Art. 64(1) of the Constitution), and the right to safe and hygienic working conditions (Art. 66(1) of the Constitution).[112]

In the context of issues of public participation in environmental protection, it is also worth referring to Art. 63 of the Constitution,[113] which establishes the right to petition as a public subjective right vested "on the principle of universality (*actio popularis*) in the broadest sense (…), with every person, regardless of their citizenship or place of residence (seat), both a natural person and any collective entities (with and without legal personality)."[114] Its relationship with environmental issues has not yet been considered by the Constitutional Court. However, it is raised by representatives of the legal doctrine, especially through the lens of SIEA regulations, providing for the possibility of submitting comments and motions in proceedings that require public participation.[115]

On the other hand, pursuant to the jurisprudence of the Constitutional Court, a conclusion can be drawn that the relationship between environmental protection and the right to a fair trial as well as respect for property rights and other property rights is recognized.[116] In judgment of May 12, 2021, case ref. SK 19/15, attention was drawn to the fact that in administrative proceedings the subject of which is the right (license) to take actions that may have a negative impact on the environment, the status of a party (and thus the right to a court) to this entity that may suffer due to these interactions must be ensured. Similarly, in the judgment of the Constitutional Court of July 1, 2021, case ref. SK 23/17, the need for the legislator to reconsider the issue of the appropriate shaping of legal procedures guaranteeing public participation in proceedings leading to the adoption of air protection programs was signaled.

112 Trzewik, 2016, p. 239.

113 Pursuant to this provision: "Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person – with his consent – to organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration. The procedures for considering petitions, proposals and complaints shall be specified by statute."

114 Judgment of the Constitutional Court of July 12, 2016, case ref. K 28/15 (OTK ZU no. A/2016, item 56). See also Goleń, 2008, pp. 120–123.

115 Cf. Trzewik, 2016, pp. 118–121.

116 Cf. Judgments of the Constitutional Court: case ref. P 49/11; case ref. K 36/13; case ref. SK 23/17; of May 12, 2021, case ref. SK 19/15 (OTK ZU no. A/2021, item 25).

In the opinion of the Constitutional Court, this postulate is justified by the obligation of public authorities to support the actions of citizens for the protection and improvement of the environment (Art. 74 (4) of the Constitution). In the judgements of July 3, 2013, case ref. P 49/11, and of July 21, 2014, case ref. K 36/13, the Constitutional Court pointed to the important relationship between the liability of the State Treasury for damages caused by certain wild animals and the implementation of species protection of these animals. As the Constitutional Court stated, "depriving some of the entities of the right to claim compensation may have a negative impact on the implementation of species protection, as it does not lead to greater acceptance of the statutory prohibitions resulting therefrom. On the contrary, it can cause actions to be taken against such species to prevent damage and to protect property."[117]

5. While the establishment of a subjective right to the environment in the Constitution is the subject of fundamental doubts, the introduction of appropriate state tasks in the provisions of this act does not raise any controversy. The Constitutional Court identified such a task under Art. 5 of the Constitution,[118] according to which "the Republic of Poland (…) shall ensure the protection of the natural environment pursuant to the principle of sustainable development." According to the Constitutional Court, the content of the task is 'environmental protection', which can be understood as all actions (or omissions) that enable the preservation or restoration of natural balance, in particular involving the rational shaping of the environment and management of its resources in accordance with the principle of sustainable development, preventing pollution, and restoring natural elements to their proper condition (cf. Art. 3 (13) EPL).[119]

Similarly, in the opinion of the Constitutional Court, the source of the tasks of public authorities are Art. 74(1)[120] and Art. 74(2)[121] of the Constitution.[122] The concept of 'ecological security' in the first provision should be understood as obtaining such a state of the environment that allows for a safe stay in this environment and enables its use in a way that ensures human development. Environmental protection is among the elements of 'ecological security', but the tasks of public authorities are broader – they also include activities improving the current state of the environment and programming its further development.[123]

117 Judgment of the Constitutional Court, case ref. P 49/11.

118 Judgments of the Constitutional Court: case ref. Kp 2/09; case ref. SK 6/12. See also Czekałowska, 2015, p. 111; Wołpiuk, 2004, pp. 23–24.

119 Judgments of the Constitutional Court: of November 28, 2013, case ref. K 17/12 (OTK ZU no. 8/A/2013, item 125); case ref. K 23/05.

120 Pursuant to this provision: "Public authorities shall pursue policies ensuring the ecological security of current and future generations."

121 Pursuant to this provision: "Protection of the environment shall be the duty of public authorities."

122 Judgments of the Constitutional Court: case ref. K 23/05; case ref. K 17/12. See also Kosieradzka-Federczyk, 2012, p. 82.

123 Ibid. See also Jurgilewicz, 2013a, pp. 387-388; Jurgilewicz, 2013b, pp. 162-163; Jurgilewicz and Ovsepyan, 2017, p. 74; Korzeniowski, 2012, pp. 47–69; Trzcińska, 2020, pp. 18–27.

The norm establishing the tasks of public authorities is also in Art. 68 (4) and Art. 74 (4) of the Constitution. A public task can be defined to be such a legal order addressed to these authorities, which includes the maintenance or achievement of certain states of affairs that constitute the implementation of values distinguished for the common good. On the basis of these provisions, it is undoubtedly possible to reconstruct such positively qualified states of affairs as no environmental degradation or support for citizens' activity to protect and improve the state of the environment. They, in turn, serve to make the values of public health and the environment a reality.

The performance of the above tasks is mandated for public authorities. This concept refers to all authorities in the constitutional sense, namely legislative, executive, and judiciary. Moreover, this term also includes institutions other than state and local government, as long as they perform functions of public authority as a result of entrusting or delegating these functions to them by an organ of state or local government authority. In other words, the exercise of public authority concerns all forms of activity of the State, local government, and other public institutions used in the performance of public tasks.[124]

It is also worth noting that Arts. 5, 68 (4), 74 (1), 74 (2), and 74 (4) of the Constitution are the sources of the so-called program norms,[125] that is, norms prescribing the implementation of (or striving to achieve) a certain goal.[126] They have the nature of legal principles (as opposed to "rules"), namely optimization norms, that oblige the implementation of a certain state of affairs to the highest possible degree, taking into account the factual and legal possibilities. Their characteristic feature, therefore, is that they can be satisfied to a varying degree.[127] At the same time, they can be used as a criterion for assessing the constitutionality of regulations. In particular, the Constitutional Court examines whether a given act meets or is compliant with a specific program norm, that is, whether means have been chosen that, in light of empirical knowledge, lead to the achievement of the goal or whether the conflict of program norms has been properly resolved, such as the case in which one of the normative goals has been given proper weight over the another.[128] Program norms do not grant an individual 'positive' claims for a specific performance of public authority. At most, we can discuss the resulting 'negative' claims, that is, for creasing or refraining from certain actions or for counteracting behaviors that make it difficult or impossible to achieve the goal set in the program norm.[129]

124 Cf. Judgments of the Constitutional Court: of December 4, 2001, case ref. SK 18/00 (OTK ZU no. 8/2001, item 256); of January 20, 2004, case ref. SK 26/03 (OTK ZU no. 1/A/2004, item 3).

125 Cf. Judgments of the Constitutional Court: case ref. Kp 2/09; case ref. K 24/07; Czekałowska, 2015, p. 110–111; Dzieżyc, 2019, pp. 177–178; Gizbert-Studnicki and Grabowski, 1997, pp. 97–98, 111.

126 Gizbert-Studnicki and Grabowski, 1997, p. 97.

127 Ibid., p. 101.

128 Cf. Judgment of the Constitutional Court, case ref. K 24/07; Gizbert–Studnicki and Grabowski, 1997, p. 109-110.

129 Gizbert–Studnicki and Grabowski, 1997, p. 111–112.

6. Environmental protection as an object normalized by the Constitution also occurs in the context of the conditions for the admissibility of restrictions on constitutional freedoms and rights. Pursuant to Art. 31 (3) of the Fundamental Law, "Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights." Therefore, the subjective rights of an individual are not absolute, and environmental protection considerations constitute a constitutionally legitimate justification for interference with human and civil rights and freedoms.[130] Additional constitutionality conditions are the statutory form of the introduced restriction and the preservation of its maximum limits, that is, 'necessity' and the prohibition of violating the 'essence' of rights and freedoms.[131] According to the established jurisprudence of the Constitutional Court, this 'necessity' consists of the requirements of usefulness, indispensability, and proportionality in the strict sense. Their evaluation leads to answering three questions concerning the analyzed limiting norm: 1) whether it is able to lead to the effects intended by the legislator (the norm's usefulness), 2) whether it is indispensable (necessary) to protect the public interest to which it is related (the need for the legislator to take action), and 3) whether its effects are in proportion to the burdens or restrictions imposed on a person or a citizen (proportionality *sensu stricto*).[132] On the other hand, the concept of the 'essence' of rights and freedoms is based on the assumption that within each specific right and freedom, it is possible to distinguish certain basic elements (core), without which such a right or freedom cannot exist at all, and certain elements additional (envelope/shell), which may be perceived and modified by the ordinary legislator in various ways without destroying the identity of a given right or freedom.[133]

The subjective rights in conflict with the protection of the environment that are assessed under Art. 31 (3) of the Constitution include, first and foremost, the freedom of engaging in business activity and having property.[134] This conclusion is confirmed, in particular, by several cases decided by the Constitutional Court.[135]

130 For more on this, see Rakoczy, 2006, *passim*.

131 Cf. Garlicki, 2001, p. 6.

132 E.g., Judgment of the Constitutional Court of July 6, 2011, case ref. P 12/09 (OTK ZU no. 6/A/2011, item 51).

133 Judgment of the Constitutional Court of January 12, 2000, case ref. P 11/98 (OTK ZU no. 1/2000, item 3).

134 Leśniak, 2013, p. 285.

135 Cf. e.g., Judgments of the Constitutional Court: of October 13, 2010, case ref. Kp 1/09 (OTK ZU no. 8/A/2010, item 74); case ref. SK 6/12; case ref. K 13/18.

4. Regulation of issues regarding responsibility

1. Pursuant to Art. 86 of the Constitution, "Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute." Against the background of this provision, the judgement of September 28, 2015, case ref. K 20/14, the Constitutional Court applauded the view presented in the doctrine, according to which the obligation to care for the state of the environment results in negative obligations, such as the prohibition of destroying or degrading elements of the environment and polluting water, air, or land, as well as in positive obligations, including, in particular, the imperative to prevent environmental damage and provide the environment's rational shaping.[136] However, it is difficult to deny M. Górski's statement on the legislator deliberately distinguishing between the concepts of "care for the state of the environment" (Art. 86, first sentence *in principio* of the Constitution) and "environmental protection" (Art. 5 and Art. 74 (2) of the Constitution). In this context, it should be recognized that 'care for the state of the environment' is narrower in scope than its 'protection'. Care should be taken not to deteriorate the condition of the environment, and the starting point for the assessment of the fulfillment of this obligation should be the condition of the environment at the time when the impact occurs. However, there are no grounds to recognize that the duty of care also includes improving the amelioration of the condition of the environment. This would be part of the obligation to 'protect the environment', which is understood as formative protection.[137]

2. Art. 86 of the Constitution is considered the basis for deriving the 'polluter pays' principle.[138] It is true that the Fundamental Law does not use the term 'pollution' and recognizes "the deterioration of the environment caused" as a premise of liability. However, this concept of liability is not autonomous due to the reference resulting from the second sentence of Art. 86 of the Constitution. Thus, it means a reference to the types of liability known to the Polish law system, i.e., penal *sensu stricto* for petty offenses, civil or administrative,[139] regulated in a number of acts (especially in the EPL, PREDA, CiC, and CrC). In particular, the above principle has an additional source in Art. 7 of the EPL, which already explicitly refers to 'pollution'. According to this provision, "Whoever pollutes the environment bears the costs of removing the effects of this pollution. Whoever may cause environmental pollution bears the costs of preventing this pollution." By 'pollution', the act refers to emissions that may be harmful to human health or the environment, may cause damage to material goods, may deteriorate the aesthetic value of the environment, or may conflict with other, justified ways of using the environment (EPL Art. 3 (49)). At the

136 OTK ZU no. 8/A/2015, item 123.
137 Górski, 2016b, point VI.2. Cf. also Kielin–Maziarz, 2020, p. 223; Rakoczy, 2006, pp. 240–241.
138 Haładyj, 2003, p. 54; Trzcińska, 2021, p. 144.
139 Ciechanowicz–McLean, 2021, p. 8; Haładyj, 2003, p. 55; Radecki, 2002, p. 38.

same time, analyzing the detailed instruments for the implementation of the 'polluter pays' principle (e.g., ordinary fees for using the environment or civil liability on a strict basis), including Art. 325 of the EPL,[140] it should be stated that the above rule applies not only to illegal activities but also to legal behavior. As a result, it often requires interpretation in isolation from the definition of pollution, approaching the principle of 'impactor pays'.[141] The issue of the legality or illegality of impact is not irrelevant – it will have an influence on the scope and extent of liability of the entity using the environment.

3. Both the obligation and the liability under Art. 86 of the Constitution rest with 'everyone'. In light of the case law of the Constitutional Court, this means that the addressees of this provision are natural persons, legal persons, and organizational units regardless of their nature or type of activity.[142] The thesis on a wide subjective scope of Art. 86 of the Constitution is confirmed in the literature on the subject. J. Boć and A. Haładyj mention the following in this framework: Polish citizens, foreigners, Polish, mixed, and foreign economic entities subject to the Polish legal order, other organizational units, and public administration bodies, namely the government and local government.[143] This is logically justified by J. Boć, who claims, "It is rather understandable that deterioration made physically by the citizens themselves would be clearly small (except in special cases). It is the economic entities that cause the basic and major deterioration and degradation of the environment."[144]

5. Strong protection of natural resources

The currently binding Constitution does not contain regulations that would specifically protect natural resources – in general or a particular one indicated by name[145] (understood through the lens of the definition contained in Art. 3 point 39 of the EPL[146]). This may come as a surprise due to the fact that the Constitution of 1952 introduced such a regulation, providing the following in Art. 12 (1): "National property, in particular: mineral deposits, basic energy sources, state land, waters, state forests (…) – is subject to special care and protection of the state and all citizens."

140 Pursuant to this provision: "The liability for damage made by the impact on the environment is not excluded by the circumstances that the activity being the reason for said damage is conducted under a decision and within its scope."
141 Pchałek, 2019, point 5. See also Borodo, 2016, p. 53; Jurgilewicz and Jurgilewicz, 2013, p. 64.
142 Judgment of the Constitutional Court, case ref. K 13/18.
143 Boć, 2000, p. 194; Haładyj, 2003, pp. 55–56.
144 Boć, 2000, pp. 194–195.
145 Cf. Habuda, 2019, pp. 119–120.
146 This is the meaning suggested by Haładyj and Trzewik, 2014, p. 30.

An attempt was made to amend the Constitution in the above scope by introducing a provision specifying special protection of forests owned by the State Treasury, not subject to ownership transformations (but with exceptions specified in the Act) and made available to everyone on an equal basis. According to the drafters of the amendment, the basis for introducing this special protection is the assumption that state forests are a national good, an essential element of national culture, and one of the natural foundations of civilization. For this reason, care for such forests and the duty of maintaining them in proper condition rests with the State. Such a valuable element of forest property requires forest management, which would be significantly difficult or even impossible in the event of changes in the ownership structure of state-owned forests. Such changes would also threaten the availability of forests for the population, which should be guaranteed as access to the 'common good'.[147] Despite these arguments, the proposed amendment did not obtain the required majority in the Sejm, for which only five votes of support were missing. MPs from the Law and Justice Parliamentary Club were against the act. They opted for the strict exclusion of the admissibility of ownership transformations of state forests, that is, for the exclusion of exceptions to this constitutional rule provided for in the act.[148]

A separate act, the Act of July 6, 2001, on Preserving the National Character of the Country's Strategic Natural Resources,[149] serves a similar purpose of displaying certain natural resources in the context of their increased protection. These types of elements include 1) groundwater and surface water in natural watercourses and in the sources from which these watercourses originate, in canals, lakes, and water reservoirs with a continuous inflow within the meaning of the provisions of the WL[150]; 2) waters of Polish maritime areas together with the coastal range and their natural living and mineral resources as well as natural resources of the bottom and interior of the earth located within the limits of these areas under the meaning of the Act of March 21, 1991 on Maritime Areas of the Republic of Poland and Maritime Administration[151]; 3) state forests; 4) mineral deposits not covered by the ownership of land real estate[152] under the meaning of the Act of June 9, 2011 – the Geological and Mining Law[153]; and 5) natural resources of national parks. At the same time, this catalog is subject to criticism in the legal doctrine, especially due to the fact that it does not cover certain categories of resources (e.g., 'biodiversity'), despite meeting the 'strategic' criterion[154] (a criterion that is not specified by statute, which causes doubts as to its meaning).

147 Druk sejmowy nr 2374/VII kadencja. Available at: https://bit.ly/35t2iDF (Accessed: 3 March 2022).
148 Cf. Szmyt, 2015, p. 25.
149 Journal of Laws of 2018, item 1235.
150 Water (without specifying its type) was also defined as "the basic natural resource of the earth" in the Judgment of the Constitutional Court of March 21, 2000, case ref. K 14/99 (OTK ZU no. 2/2000, item 61).
151 Journal of Laws of 2022, item 457.
152 Cf. Haładyj and Trzewik, 2014, pp. 37–38.
153 Journal of Laws of 2022, item 1072.
154 Cf. Haładyj and Trzewik, 2014, pp. 41–45.

6. Reference to future generations

In the Constitution, environmental issues were clearly referred to in regard to, in particular, "future generations." This was done in Art. 74 (1) of the Fundamental Law, according to which "Public authorities shall pursue policies ensuring the ecological security of current and future generation." The normative significance of this provision is discussed in more detail in section 3.5. The indicated regulation covers the so-called the program standard defining the task of public authorities. Its implementation is to serve the good of the present and future generations. In other words, the 'future generation' appears here as one of the main beneficiaries of designated activities of public authorities and the achievement and maintenance of the State of 'ecological security' (i.e., a state of the environment that "allows for a safe stay in this environment and enables the use of this environment in a manner ensuring human development"[155]). It is worth noting that in Art. 74 (1) of the Constitution, only in one case was given as a model of control exercised by the Constitutional Court, specifically in the judgment of June 6, 2006, case ref. K 23/05. Much more often, it appeared only as an element of strengthening the arguments of this Court while applying other control grounds resulting from the Constitution.[156]

The reference to 'future generations' is also included in the preamble to the Constitution. According to the relevant fragment, "We, the Polish Nation – all citizens of the Republic (…), obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage." In the opinion of the legal doctrine representatives, this 'intergenerational deposit' includes both tangible and intangible elements, including, for example, cultural heritage[157] as well as the natural environment and the environment transformed by man.[158] In this context, it is worth asking a question about the legal nature of the indicated provisions of the preamble. Above all, all of the doubts as to the normative nature of the preamble to the Fundamental Law should be recalled here.[159] In this regard, the view presented by the Constitutional Court in the judgment of December 16, 2009, case ref. Kp 5/08[160] is worthy of approval.

Pursuant to this judgment, the preamble being part of the text of the Constitution, its provisions may have a normative value in the context of a specific issue, especially in connection with the detailed provisions of the Constitution. This value manifests itself in various aspects: 1) it has an interpretative dimension, consisting in indicating

155 Judgments of the Constitutional Court: case ref. K 23/05; case ref. K 17/12.

156 Judgments of the Constitutional Court: case ref. Kp 2/09; of June 7, 2001, case ref. K 20/00 (OTK ZU no. 5/2001, item 119); of July 25, 2006, case ref. P 24/05 (OTK ZU no. 7/A/2006, item 87); of July 9, 2012, case ref. P 8/10 (OTK ZU no. 7/A/2012, item 75); case ref. K 17/12; case ref. SK 6/12; of March 17, 2015, case ref. K 31/13 (OTK ZU no. 3/A/2015, item 31); of September 28, 2015, case ref. K 20/14 (OTK ZU no. 8/A/2015, item 123).

157 Zalasińska and Bąkowski, 2009, p. 264.

158 Cf. Bukowski, 2009, p. 461; Ciechanowicz-McLean, 2021, p. 8; Haładyj, 2003, p. 49.

159 For more on this, see Stefaniuk, 2009, pp. 63–78.

160 OTK ZU no. 11/A/2009, item 170.

the way of understanding both the remaining constitutional provisions and the entirety of the provisions that make up the Polish legal system; 2) it involves the use of the provisions of the preamble in the process of building constitutional norms by extracting from them elements of content for the norm being constructed (the so-called co-application situation); 3) consists in independent expression of a constitutional principle of a normative nature in a situation where there are no other constitutional provisions concerning the same issue[161] (e.g., the principle of subsidiarity).

A reference to the heritage of the Polish nation and future generations appeared in judgments of the Constitutional Court of May 25, 2016, case ref. Kp 2/15,[162] and of March 16, 2017, case ref. Kp 1/17[163]. At that time, it was an argument that strengthened the motives for the decision (the fragment of the preamble to the Constitution under analysis has not been used as a model for constitutional review thus far). In the first of the judgements, the above provisions of the preamble were referred to as the 'justification' for the purpose of the challenged provision of the Act, the aim of which was to increase the effectiveness of the protection of movable monuments of particular importance for the national heritage. Moreover, in the assessment of the Constitutional Court in case ref. Kp 2/15, the quoted fragment of the preamble is "an expression of the legislator's assumptions about the existence of an intergenerational bond" expressed in the values associated with a set of rules and directives to achieve them. "One of the means of maintaining the aforementioned intergenerational bond is passing on what is valuable from over one thousand years' heritage." Undoubtedly, this applies at least to the preservation of cultural goods.[164] In turn, in the judgment case ref. 1/17, the Constitutional Court has already clearly indicated that certain socially important values "are to be protected by public authorities and citizens, which results from the preamble to the Constitution (e.g., concern for the existence and future of the homeland and the common good, obligation to pass on to future generations all that is valuable from over a thousand years' heritage of the Republic of Poland (…))."[165]

Therefore, it can be assumed that the Constitutional Court recognizes the normativity of the fragment of the preamble to the Constitution referring to 'future generations'. This fragment includes the obligation to implement values, which is subject to co-application with other regulations of the Fundamental Law aimed at indicating and protecting specific values that make up the intergenerational deposit. In other words, the aforementioned 'heritage' aggregates constitutional values, which are, for example, a democratic state ruled by law, a healthy environment, national heritage, human life and health, human freedom, family, property or availability of public information, the universal or general values listed in the preamble to the Constitution,

161 Ibid.
162 OTK ZU no. A/2016, item 23.
163 OTK ZU no. A/2017, item 28.
164 Judgment of the Constitutional Court: case ref. Kp 2/15.
165 Judgment of the Constitutional Court: case ref. Kp 1/17.

which are derived from the Christian heritage of the Nation or other sources, the reliability and efficiency of public institutions, and subsidiarity.

In summary, both regulations, that is, Art. 74 (1) of the Constitution and the relevant fragment of the preamble, can be assessed as imposing specific obligations on the current generation, appearing here in the 'form' of public authority and 'the Polish Nation – all citizens of the Republic'. The beneficiaries are 'future generations', a concept that has been defined neither at the level of the constitutional law nor on the basis of the judgments of the Constitutional Court. However, taking into account the justification of the judgment, the case ref. K 23/05,[166] it is possible to point to a rather weak basis for considering, in the interpretation of the constitutional concept of 'future generations', of international documents relating to the concept of 'sustainable development', 'protection of the environment', and 'intergenerational solidarity'.

In this context, it is essentially about generations yet unborn (cf. 'Brief summary of the general debate' at the United Nation's Conference on the Human Environment, Stockholm, June 5–16, 1972),[167] "none of its members is alive at the time the reference is made."[168] Such an approach was also presented in more detail in the Report of the Secretary-General of United Nations' General Assembly, prepared after the United Nations' Conference on Sustainable Development 'Rio + 20' in Rio de Janeiro, Brazil, on June 20–22, 2012. The Report primarily uses the term 'future generations, who do not yet exist'[169] and quite clearly differentiates this concept from 'our children and grandchildren'.[170] The concept presented in the Report is important because the document refers to a very large extent to the international legal acquis concerning 'future generations' (treaties and declarations on regional and international levels).[171] For this reason, the concept can be considered authoritative in light of the sources of international law indicated above. It is also justified in the context of placing the concept of 'future generations' next to the term 'current generation' (Art. 74 (1) of the Constitution), because of which a specific 'continuity of the subjective scope of the entitled persons' is preserved.

A certain reinforcement for legitimacy of making reference to the 'international definition' is referring to the so-called 'existing concepts'. It is a mechanism of interpreting legal concepts, the meaning of which has not been exhaustively indicated

166 According to the relevant fragment: "Environmental protection is one of the elements of 'ecological security', but the tasks of public authorities are wider – they also include activities improving the current state of the environment and programming its further development. The basic method of achieving this goal is – prescribed by Art. 5 of the Constitution – by following the principle of sustainable development, which refers to international arrangements, in particular the conference in Rio de Janeiro in 1992."

167 Report of the United Nations Conference on the Human Environment. Stockholm June 5–16, 1972, p. 45 [online]. Available at: https://bit.ly/3w4z09k (Accessed: 15 March 2022).

168 Tremmel, 2009, p. 24.

169 Report of August 5, 2013, 'Intergenerational solidarity and the needs of future generations', pp. 7, 9, 14 [online]. Available at: https://bit.ly/3jWgHMa (Accessed: 21 April 2022).

170 Ibid., pp. 9–10, 32.

171 Cf. ibid., pp. 22–24.

in the Constitution, leading to the recognition that a given concept functions in its current and established meaning, resulting from tradition, legal doctrine, or jurisprudence as well as the law established earlier (i.e., before the entry of the Constitution into force).[172] Additionally, considering, the place in which the term 'future generations' appears in the Constitution of the Republic of Poland and its normative context, especially the properly applied Art. 37 (1) of the Constitution,[173] it should be assumed that it refers to the meaning of 'future types of people'.[174] Therefore, it refers to the collection of all future people with a set of properties,[175] that is, to the Polish nation and anyone who finds themselves under the authority of the Polish State. Following the indication contained in the judgment of the Constitutional Court, case ref. Kp 2/09 on the admissibility of cautious reference to the definitions contained in EPL regulations for the purposes of interpreting constitutional notions, it can be concluded that 'future generations' should be treated both in terms of individual persons (citizens) and particular communities (e.g., constituting commune, poviat, self-government voivodship, national minorities or the whole nation; cf. Art. 3 point 50 EPL). This shows the constitutional legislator's concern for the comprehensive inclusion in the activities of the 'contemporary generation' of the interests of 'future people', both individually and globally. It is also possible to approximate the time limits of this obligation very generally. As the preamble and Art. 74 (1) of the Constitution use the term 'future generations' (plural), they refer to at least two generations. According to various sources, the generation cycle lasts 30–40[176] or 20–25 years.[177] In other words, the indicated concept determines the period of at least several dozen years (depending on the concept, 80 or 50 years) counted from the reference moment.

7. Reference to sustainable development

The Constitution refers to the concept of sustainable development in Art. 5. At this point, it is worth quoting this provision in its entirety, rather than limiting only to its references to environmental protection. Therefore, according to this regulation, "The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the

172 Cf. Judgment of the Constitutional Court of February 18, 2003, case ref. K 24/02 (OTK ZU no. 2/A/2003, item 11); Riedl, 2015, p. 95.
173 Pursuant to this provision: "Anyone, being under the authority of the Polish State, shall enjoy the freedoms and rights ensured by the Constitution."
174 Cf. Herstein, 2009, pp. 1182–1187.
175 Ibid., p. 1182.
176 Kowalski, 2016, pp. 507–508.
177 Hysa, 2016, p. 387.

natural environment pursuant to the principle of sustainable development." It should be noted that this is a provision in the first chapter of the Fundamental Law, entitled 'the Republic'. Considering the jurisprudence of the Constitutional Court, this chapter contains "fundamental systemic principles",[178] "general principles",[179] "constitutional principles",[180] and "fundamental constitutional provisions which define the basic and most characteristic systemic features of the Republic of Poland."[181] Representatives of the doctrine of law indicate that "these principles are particularly important because they constitute the strongest foundations of a democratic state",[182] and the first chapter of the Constitution, which contains them, serves to gather "such provisions concerning the state and its relations with society, which should be distinguished from the brackets of further regulation" and "indication of constitutional principles determining the way of understanding and applying further provisions of the Constitution."[183]

Art. 5 of the Constitution and the 'principle' of sustainable development *expressis verbis* introduced in it raise serious problems of interpretation as to the content of this principle, its legal nature, and the subjective and objective scope.[184] These doubts have been resolved to some extent by the Constitutional Court in its jurisprudence. In particular, pursuant to the judgment in case ref. Kp 2/09, the above provision of the Fundamental Law indicates the basic goals and tasks of the State, that is, all public authorities of the Republic of Poland – both the legislative and executive authorities as well as judicial and local self-government bodies (i.e., bodies responsible both for establishing the law and law enforcement). The Court also states that although the concepts used in Art. 5 of the Constitution have an autonomous meaning, the reference in their context to statutory definitions is not a mistake in itself. Therefore, with caution, for the purposes of resolving specific cases, the Constitutional Court defines 'sustainable development' as "such social and economic development which extends to the process of integrating political, economic and social actions, with maintaining the environmental balance and sustainability of basic natural processes, with a view to guaranteeing the capability of satisfying basic needs of particular communities or citizens of both the present and future generations" (Art. 3 pkt 50 EPL). For the Court, this means the requirement that the interference with the environment should be as limited as possible (the least harmful),

178 E.g., Judgment of the Constitutional Court of February 23, 2010, case ref. P 20/09 (OTK ZU no. 2/A/2010, item 13).

179 E.g., Order of the Constitutional Court of December 14, 2004, case ref. SK 29/03 (OTK ZU no. 11/A/2004, item 124).

180 E.g., Judgment of the Constitutional Court of November 9, 2010, case ref. K 13/07 (OTK ZU no. 9/A/2010, item 98).

181 E.g., Judgment of the Constitutional Court of November 23, 1998, case ref. SK 7/98 (OTK ZU no. 7/1998, item 114).

182 Kruk, 1998, p. 9.

183 Garlicki, 2007a, p. 4.

184 Cf. Rakoczy, 2006, p. 148.

and the social benefits should be proportional and socially commensurate with the damage caused.[185]

In another judgment, case ref. K 17/12, the Constitutional Court responded to the nature of the principle of sustainable development. In this judgment, it assumed that this case is dealing with a 'systemic principle', which requires action that is 'more comprehensive' than that a directive of the State's policy to ensure ecological security for contemporary and future generations contained in Art. 74 (1) of the Constitution.

In subsequent judgments, the Constitutional Court has expressed its position on the issue giving rise to possibly the greatest number of disputes, namely the scope of application of the principle in question. Here, representatives of the legal doctrine adopt the following different solutions: 1) the principle of sustainable development applies only to the task of ensuring environmental protection,[186] 2) it relates to all 'functions of the State' listed in Art. 5 of the Constitution,[187] 3) it includes some of the functions indicated in this provision (not only environmental protection), [188] and 4) it concerns the tasks of the State listed in Art. 5 as well as other areas of social life or spheres of social relations.[189] In this context, the Constitutional Court held that:

> The principles of sustainable development include not only the protection of nature or shaping the spatial order, but also due care for social and civilization development, related to the need to build appropriate infrastructure, necessary for the life of man and individual communities, taking into account civilization needs. The idea of sustainable development therefore includes the need to take into account various constitutional values and to balance them accordingly.[190]

The Constitutional Court referred to the principle of sustainable development several times in matters related to the financing of local government units, in particular the so-called income equalization system for these units.[191] On this ground, it stated, inter alia, that the above principle is one of the foundations for introducing a mechanism ensuring protection for financially weaker local communities.[192]

185 Judgment of the Constitutional Court, case ref. Kp 2/09. See also Judgment of the Constitutional Court of July 10, 2014, case ref. 19/13 (OTK ZU no. 7/A/2014, item 71).
186 Rakoczy, 2021, p. 125; Wołpiuk, 2004, p. 22.
187 Haładyj, 2003, p. 48; Kielin–Maziarz, 2020, p. 215.
188 Bukowski, 2009, p. 456.
189 Rakoczy, 2006, p. 150; Skrzydło–Niżnik and Dobosz, 2003, pp. 624–625.
190 Judgments of the Constitutional Court: case ref. K 23/05; case ref. K 17/12; similarly: Judgment of the Constitutional Court, case ref. K 20/14.
191 Judgments of the Constitutional Court: of April 9, 2002, case ref. K 21/01 (OTK ZU no. 2/A/2002, item 17); of January 31, 2013, case ref. K 14/11 (OTK ZU no. 1/A/2013, item 7); of March 4, 2014, case ref. K 13/11 (OTK ZU no. 3/A/2014, item 28); of March 6, 2019, case ref. K 18/17 (OTK ZU no. A/2019, item 10).
192 Judgments of the Constitutional Court: case ref. K 14/11; case ref. K 13/11; case ref. K 18/17.

In summary, the Constitutional Court unequivocally declared the necessity of applying the principle of sustainable development (Art. 5 of the Constitution) in a broader subject scope than environmental protection, even opting for the independent (autonomous) nature of this principle,[193] which, in its essence, includes the "mechanism of weighing values."[194] It should be emphasized that in this approach, the Constitutional Court departed from the use of the definition contained in Art. 3 point 50 of the EPL to clarify the constitutional concept.

To show the full normative meaning of Art. 5 of the Constitution, it is worth recalling the findings contained in point 3.5. of this study. They show that the indicated provision contains the so-called program norm based on which the Constitutional Court formulates "applicable" criteria for the control of the constitutional nature of the law. Moreover, it is worth noting that the jurisprudence of the Constitutional Court does not contain sufficient grounds for recognizing sustainable development as a constitutional value (rather, it is called an 'idea'[195]). This position is worthy of approval. According to the definition adopted in some judgments based on Art. 3 point 50 of the EPL as well as in a broader sense, the content of 'sustainable development' is richer – two groups of values are encoded in it, namely socioeconomic development and the appropriate state of the environment (or any other value that conflicts with the 'pro-development' value), as are the guidelines for weighing these values (integrating them, ensuring the possibility of meeting the basic group or individual needs of the contemporary generation of adults and children and future generations). Therefore, the 'principle of sustainable development' means the order in which to implement the above-mentioned positive states using the above 'axiological calculus mechanism'. Thus, 'sustainable development' is not an element of the 'world of values' but, rather, belongs to the 'sphere of describing the way in which they are actually implemented'. This is confirmed by the view of the Constitutional Court expressed in the judgment of June 6, 2006, case ref. K 23/05, according to which 'the idea of sustainable development includes (…) the need to take into account various constitutional values and balance them accordingly.'[196]

The normative significance of the principle of sustainable development is also considered by administrative courts. According to the Supreme Administrative Court, it serves primarily as an interpretation directive when doubts arise as to the scope of obligations as well as their type and manner of implementation. Therefore, its function is similar to the principles of social coexistence or socioeconomic purpose in civil law. At the same time, SAC emphasizes that, in the first place, the legislator is obliged to take into account the principle of sustainable development in the law-making process, but on the other hand, this principle should be taken into account by the authorities applying the law. Sometimes, the actual state of affairs requires

193 Cf. Bukowski, 2009, p. 609.
194 Cf. Judgments of the Constitutional Court: case ref. K 23/05; case ref. K 17/12.
195 Cf. ibid.
196 Cf. also Judgments of the Constitutional Court: case ref. K 20/14; case ref. K 17/12.

consideration and balancing of more favorable solutions,[197] applying the principle of sustainable development. This means that wherever there is an interference in the environment, care should be taken not only to ensure that the interference is as small as possible (the least harmful) but that the achieved social benefits are at least proportional and socially adequate in relation to the losses that occur.[198]

8. Other values relevant to the protection of the environment and future generations in the Constitution

The analysis of the text of the Constitution in terms of indirect references to the requirements of environmental protection and future generations allows for a conclusion that they are noticeable particularly on the basis of the fundamental axiological assumptions of the constitution. Of course, they should be treated in normative categories, that is, the disclosure of values recognized by the constitutional legislator, which should also guide the ordinary legislator and other entities creating or applying the law.[199] In this context, the preamble has a special value in conjunction with Arts. 1, 2, 5, and 82 of the Constitution. According to the relevant excerpts:

> We, the Polish Nation – all citizens of the Republic, both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources, equal in rights and obligations towards the common good – Poland, beholden to our ancestors for (…) our culture rooted in the Christian heritage of the Nation and in universal human values (…), obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage (…), hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice (…). We call upon all those who will apply this Constitution for the good of the Third Republic to do so paying respect to the inherent dignity of the person, his or her right to freedom, the obligation of solidarity with others, and respect for these principles as the unshakeable foundation of the Republic of Poland.

197 E.g., Judgments of the Supreme Administrative Court: of March 19, 2019, case ref. II OSK 1097/17 (https://bit.ly/3tfEtIx); of September 11, 2019, case ref. II OSK 2155/18 (https://bit.ly/3IeV9nN); of May 26, 2020, case ref. II OSK 3327/19 (https://bit.ly/36mObzG) (Accessed: 16 March 2022).

198 E.g., Judgments of the Supreme Administrative Court of October 1, 2019, case ref. II OSK 2050/18 (https://bit.ly/3qafJiW); of December 2, 2021, case ref. I OSK 171/21 (https://bit.ly/3w8hsZW) (Accessed: 16 March 2022).

199 Stefaniuk, 2009, pp. 285–286.

The above-mentioned rights and obligations toward the 'common good' as a subject of regulation have also been repeated in Art. 1 ("The Republic of Poland is the common good of all its citizens") and Art. 82 of the Constitution ("(…) concern for the common good is the duty of every Polish citizen"). Respect for justice is detailed in Art. 2 of the Fundamental Law ("The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice"). A reference to "all that is valuable from over a thousand year's heritage" can be found in Art. 5 of the Constitution ("The Republic of Poland shall (…) safeguard the national heritage (…)").

First, when referring to the 'Christian heritage of the Nation', it is worth remembering that the preamble reflects the philosophical and religious pluralism of the society (cf. also Art. 25 (1) and (2) of the Constitution). Nevertheless, from the perspective of tradition, Christian heritage is an essential element that creates the identity of today's Poland.[200] Therefore, by its very nature, it determines the axiological foundations of the Republic of Poland, especially in terms of the general human values rooted in this heritage.

In the above context, it should be noted that the achievements of Christian thought (starting from the message of the Bible, through the teaching of the Magisterium of the Church, especially the last 'eco-oriented popes') are also a command of responsible care for the world (including nature) created by God and entrusted to man who as "the gardener of paradise" is to "cultivate it and look after it."[201] According to St. John Paul II, this 'ecological concern' includes the awareness of the limited resources available, the need to respect the integrity and rhythms of nature, take them into account when programming development, and not sacrifice them for demagogic ideas.[202] It is also a reaction to the 'ecological crisis' that is a call for the entire human family to protect 'our common home', to 'ecological conversion' in the personal and community dimensions, and to unite in the pursuit of sustainable and integrated development.[203] Hence, the view expressed by Professor Szilágyi is worthy of approval, according to which "Christian culture and Christianity (…) can also be seen as an institution that helps to protect the interests of future generations and embodies the traditional element of environmental protection."[204]

Referring, then, to the catalog of the so-called universal values declared in the preamble to the Constitution, 'beauty' deserves to be exposed from the environmental perspective. Its definition raises serious cognitive problems (whether it is an objective property of objects and states of affair, or a property of the mind: 'beauty is in the eye of the beholder', or maybe beauty is neither objective nor subjective but universal and intersubjective [in within the species][205]). However, for our needs, it is

200 Cf. Garlicki, 2007b, pp. 9, 11.
201 Podzielny, 2014, pp. 1–4.
202 St. John Paul II, 1987, point 26.
203 Francis, 2015, pp. 12–13, 171–174.
204 Szilágyi, 2021, p 138.
205 Skolimowski, 2003, p. 1.

enough to signal that this value is quite commonly related to the feature that characterizes 'nature', the 'natural world', or 'landscape'.[206] In other words, 'striving for beauty' is especially about caring for the (natural) environment and its individual natural elements.

The relevant fragment of the preamble in connection with Arts. 1 and 82 of the Constitution may additionally be the basis for the conclusion that "the subject of protection by public authorities and citizens' is to be, inter alia, 'common good'."[207] By accepting the views expressed in the literature, the Constitutional Court understands this good to be the sum of "conditions of social life enabling the integral development… of members of the political community."[208] One such condition should undoubtedly be the appropriate state of the environment. Moreover, this is unequivocally confirmed by the jurisprudence of the Constitutional Court, which in the judgment of September 28, 2015, stated that "the Constitution treats the environment as a common good subject to special protection."[209]

The preamble mentions the "duty of solidarity with others" among the "principles" that are "the unshakable foundation of the Republic of Poland." The source of this principle is also seen in Arts. 1 and 2 of the Constitution.[210] Thus, solidarity is a constitutional value that must be respected by both public authorities and citizens. The very concept of solidarity means concerted and joint striving and action as well as supporting each other.[211] This general idea, to which, at the same time, the preamble gave the character of a legal norm-principle, should be implemented in the manner specified in other norms of the Constitution[212] (i.e., inter alia, in Arts. 5 and 74 (1)). This, in turn, makes it possible to perceive the indicated obligation, in particular in the relations between the existing generations (intergenerational solidarity) and between the present generations and the unborn ones (intergenerational solidarity).[213] In other words, the constitutional 'solidarity' is also the normative basis for protecting the interests of future generations.

In the opinion of the Constitutional Court, the imperative to implement the values of solidarity can also be seen in the 'principle of social justice'[214] resulting from Art. 2 as well as from the preamble to the Constitution. Among the many

206 Gorlewska, 2017, pp. 118–119, 123.

207 Judgment of the Constitutional Court of March 16, 2017, case ref. Kp 1/17 (OTK ZU no. A/2017, item 28).

208 Judgment of the Constitutional Court of September 21, 2015, case ref. K 28/13 (OTK ZU no. 8/A/2015, item 120); Piechowiak, 2012, p. 433; similarly: Judgment of the Constitutional Court, case ref. Kp 1/17.

209 Case ref. K 20/14.

210 Cf. e.g., Judgment of the Constitutional Court of December 19, 2012, case ref. K 9/12 (OTK ZU no. 11/A/2012, item 136).

211 Pułło, 2015, pp. 334–335.

212 Mędrzycki, 2021, pp. 113, 148–149.

213 Ibid., p. 113.

214 Judgment of the Constitutional Court of July 12, 2012, case ref. P 24/10 (OTK ZU no. 7/A/2012, item 79).

approaches to the content of this principle, the following can be mentioned, which is presented in the jurisprudence:

> Social justice is the measure by which we evaluate the distributive aspects of the fundamental structure of society (…). [All] disputed values – freedom and opportunity, income and wealth, and the basis of self-respect – are to be distributed equally, unless the unequal distribution of any (or all) of these values is to everyone's advantage.[215]

The Constitutional Court thus links the concept of social justice with equality, especially in the distribution of goods and of people associated therewith.[216] It is true that the judicature of this Court does not clearly link the principle of social justice with the protection of future generations; however, it may occur as a result of the interpretation of Art. 2 of the Constitution in the context of the preamble to the Fundamental Law and its fragment: "obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage". On these grounds, 'social justice' assumes both 'intra-generational justice' and 'intergenerational (intergenerational) justice', and the principle of social justice thus also applies to intergenerational relations.[217] Thus, the implication of this principle is also that the redistribution of goods in society requires taking into account the interests not only of the present but also the future generations. It is worth noting that they include, in particular, ensuring a 'healthy environment' or 'ecological security'. Moreover, all of these elements are aggregated by the principle of sustainable development, which assumes. among other things, environmental protection, 'intra-generational justice', and 'intergenerational justice'.[218]

Another element of significant importance from the perspective of the protection of the interests of future generations is Art. 5 of the Constitution in connection with the relevant fragment of the preamble, which provides for "safeguarding the national heritage." As indicated by the Constitutional Court in one case, ref. Kp 2/15, the concept of 'the national heritage' has not been defined at the constitutional level, but the linguistic context in which it occurs allows us to assume that the constitutional legislator referred to "generational solidarity and the continuity of the cultural and systemic traditions of the Republic of Poland."[219] In the literature on the subject, the term is not understood uniformly; in particular, according to some authors, it should be equated with the term 'the national cultural heritage', which appears in Art. 6 (2)[220] of

215 Judgments of the Constitutional Court: of December 22, 1997, case ref. K 2/97 (OTK ZU no. 5-6/1997, item 72); of December 2, 2008, case ref. P 48/07 (OTK ZU no. 10/A/2008, item 173).
216 Cf. ibid.
217 Cf. Papuziński, 2014, pp. 17–20, 28.
218 Bukowski, 2009, pp. 31–32, 37; Nyka, 2016, pp. 356–357.
219 Judgment of the Constitutional Court, case ref. Kp 2/15.
220 Pursuant to this provision: "The Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage."

the Constitution.[221] However, the view according to which 'the national heritage' has a broader meaning is worthy of approval. It includes not only 'the national cultural heritage'[222] but – related to a specific nation[223] – all "cultural, scientific and other goods, both tangible and intangible, left to future generations."[224] Such a broader approach is also indicated by the Constitutional Court in the judgment cited above, defining 'the heritage' (Art. 5 of the Constitution) through the lens of the term "all that is valuable from our over one thousand years' heritage" included in the preamble of the Constitution. At the same time, in its jurisprudence, the Constitutional Court endorses the view expressed in the literature that 'the cultural heritage' consists of "the stock of immovable and movable property, together with related values, historical and moral phenomena, considered worthy of legal protection for the good of society and its development and transmission to future generations."[225]

In this way, both the Court and the representatives of legal science emphasize the interesting relationship between the protection of future generations and the 'national heritage'. At the same time, in the context of the latter term, it is worth paying attention to one more important element. There are arguments that the term 'national heritage' also includes the so-called 'natural heritage'.[226] When interpreting the constitutional concept, it should be taken into account that the analogous term – 'the world heritage' – appears in the Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted by the General Conference of the United Nations at its 17th session in Paris on November 16, 1972).[227] In addition, it is also worth considering the relevant provisions of the NCA Act, namely Art. 4 (1), according to which nature is "national heritage and wealth." The analyzed constitutional concept contained in Art. 5 of the Constitution is autonomous in relation to the international or statutory order, but it does not seem incorrect to also perceive its meaning in terms of 'environmental or natural goods' that should be passed on to future generations.

With regard to the protection of future generations, it can further be mentioned that the Constitution provides for special care for children, that is, persons under 18 years of age.[228] Of course, as entities endowed with the attribute of inherent and inalienable dignity, they are also rightful beneficiaries of constitutional guarantees relating to human rights and freedoms (only due to the specificity of certain rights is a child unable to use them to the full extent).[229] Nevertheless, Art. 72 (1) and the

221 Sarnecki, 2007, p. 2.
222 Sobczak, 2018, p. 196.
223 Zeidler, 2004, p. 345.
224 Ibid., p. 344.
225 Judgments of the Constitutional Court: of October 8, 2007, case ref. K 20/07 (OTK ZU no. 9/A/2007, item 102); case ref. Kp 2/15.
226 Maciejko, 2009, p. 26.
227 Journal of Laws of 1976 No. 32, item 190.
228 Judgment of the Constitutional Court of October 11, 2011, case ref. K 16/10 (OTK ZU no. 8/A/2011, item 80); Bucoń, 2020, p. 13; Morawska, 2007, p. 127.
229 Bielecki, 2019, pp. 7, 22; Morawska, 2007, pp. 127–128.

first sentence of the Constitution[230] clearly established the "constitutional principle of the protection of the good (welfare) of the child",[231] also referred to as a program norm, which does not provide for any subjective right.[232] Moreover, the 'good of the child' should be considered an intrinsic and exceptionally important constitutional value, complementing the wider value that is the good of the family.[233] According to the Constitutional Court, the concept of the 'protection of the rights of the child' used in the indicated provision of the Constitution should be understood as an imperative to ensure protection of the interests of the minor who, in practice, may pursue it independently to a very limited extent.[234] This concept covers many different types of rights provided for in the Constitution, including the right of the child to be brought up in the family (Art. 18 in conjunction with Art. 48 (1) of the Constitution), protection of the child in employment (Art. 65 (3) of the Constitution), special protection of the child's health (Art. 68 (3) and (5)) of the Constitution), the child's right to education (Art. 70 (1), (2), and (4) of the Constitution),[235] the right to request that public authorities protect the child against violence, cruelty, exploitation, and demoralization (Art. 72 (1) – second sentence of the Constitution), the right to care and assistance of public authorities for a child deprived of parental care (Art. 72 (2) of the Constitution), and the obligation to hear and, as far as possible, take into account the opinion of the child by public authorities and persons responsible for the child in the process of determining the rights of the child (Art. 72 (3) of the Constitution).[236] A very important institutional guarantee for the protection of children's rights is also the establishment of the Ombudsman for Children's Rights (Art. 72 (4) of the Constitution) at the level of the Fundamental Law.

Taking into account the findings made in point 6 of this study, the constitutional values underlying the protection of children's rights may be considered elements of the 'intergenerational deposit' which, in accordance with the relevant fragment of the preamble to the Constitution, should be passed on to 'future generations.' Thus, this normative imperative expresses the relationship between the above-mentioned protection and the protection of the rights of future generations as an expression of the intergenerational bond.

Child protection is closely related to Art. 18 of the Constitution, which provides for the protection and care of the Republic of Poland over marriage, family, motherhood, and parenthood. The right to parentage derives from this regulation

230 Pursuant to this provision: "The Republic of Poland shall ensure protection of the rights of the child."

231 Judgment of the Constitutional Court of April 28, 2003, case ref. K 18/02 (OTK ZU no. 4/A/2003, item 32); Bucoń, 2020, p. 12.

232 Stadniczeńko, 2017, p. 15.

233 Judgments of the Constitutional Court: of November 15, 2000, case ref. P 12/99 (OTK ZU no. 7/2000, item 260); of June 29, 2016, case ref. SK 24/15 (OTK ZU no. A/2016, item 46).

234 Judgments of the Constitutional Court: case ref. K 18/02; of September 27, 2017, case ref. SK 36/15 (OTK ZU no. A/2017, item 60).

235 Judgment of the Constitutional Court, case ref. SK 36/15.

236 Cf. Blicharz, 2021, p. 16.

(especially from the protection of parenthood). This means a prohibition of taking actions that limit the freedom of having children as well as a prohibition of taking actions forcing one to have children. In particular, his right applies i to the voluntary decision to conceive a child and belongs to both the mother and the father.[237] At the same time, it can be noted that the Constitution contains regulations that are intended to encourage people to have children. These include provisions obliging public authorities to provide special healthcare for children and pregnant women (Art. 68 (3) of the Constitution) and special assistance to mothers before and after childbirth (Art. 71 (2) of the Constitution).

9. Financial sustainability

In the decision of January 12, 1995, case ref. K 12/94, the Constitutional Court stated that "Ensuring budget balance is a constitutional value, as it determines the State's ability to act and resolve its various interests"[238]. It was then confirmed in subsequent judgements, incl. in judgment of November 24, 2009, case ref. SK 36/07, in which the Court noted that this value was not expressed directly in a specific provision of the Constitution.[239] At the same time, other judgments of the Constitutional Court found the sources of the imperative (value) to maintain the budget balance or, more broadly, the protection of the proper state (balance) of public finances, in Art. 216 (5) and Art. 220 (1) in conjunction with Art. 1 of the Constitution.[240] Additionally, judgments in which the 'budget balance' is combined with the principle of social justice (cf. Art. 2 of the Constitution) can be indicated as 'the constitutive value' of this justice.[241] It is also worth noting the view of the Constitutional Court expressed in the judgment of July 12, 2012, case ref. P 24/10[242]:

> The recognition (…) of [budgetary balance, public finance] as a constitutional value is supported primarily by the principle of the common good, proclaimed in Article 1 of the Fundamental Law (detailed regulations concerning the financial security of the state are, however, specified in Chapter X of the Constitution), and not – as it was sometimes pointed out in jurisprudence – the principle of social justice, expressed in its Art. 2.

237 Cf. Judgment of the Constitutional Court of May 28, 1997, case ref. K 26/96 (OTK ZU no. 2/1997, item 19); Dobrowolski, 1999, p. 25.
238 OTK ZU 1995, item 2.
239 OTK ZU no. 10/A/2009, item. 151.
240 E.g., Judgment of the Constitutional Court of December 12, 2012, case ref. K 1/12 (OTK ZU no. 11/A/2012, item. 134) and the case law cited there.
241 E.g., Judgment of the Constitutional Court of September 5. 2006, case ref. K 51/05 (OTK ZU no. 8/A/2006, item 100). Cf. Gorgol, 2014, pp. 28–29.
242 OTK ZU no. 7/A/2012, item 79.

In accordance with Art. 216 (5) of the Constitution, "It shall be neither permissible to contract loans nor provide guarantees and financial sureties which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product. The method for calculating the value of the annual gross domestic product and national public debt shall be specified by statute." According to the Constitutional Court, the purpose of this regulation is to counteract excessive state indebtedness, which is to prevent the deficit from growing in the upcoming budget years and increase Poland's economic credibility in the international arena. The addressees of the above prohibition are 'public authorities' empowered to borrow or grant guarantees and sureties, in particular, the Council of Ministers and the National Bank of Poland. Indirectly, the provision also applies to Parliament, which cannot pass laws resulting in the State being burdened with public debt exceeding the indicated debt limit.[243]

According to Art. 220 (1), "The increase in spending or the reduction in revenues from those planned by the Council of Ministers may not lead to the adoption by the Sejm of a budget deficit exceeding the level provided in the draft Budget." The Constitutional Court has defined the purpose of this provision as "achieving a budget balance, a state in which state budget expenditure is covered by income." The Court also noted that the legislator *expressis verbis* admitted the existence of a budget deficit.[244] Thus, it did not order the achievement of full budget balance; on the contrary, it assumed the existence of a certain deficit that is limited in size. Therefore, the (relative) balance should be understood as maintaining the deficit in the amounts specified in the draft budget act.[245] Obviously, Art. 220 (1) does not imply a government obligation to plan 'some' deficit.[246] It would be irrational to claim that, in particular, the planning of a budget surplus in the draft violates the provisions of the Constitution.

The Constitutional Court has emphasized several times in its jurisprudence that the values of budget balance and the proper condition of public finances are placed very high in the hierarchy of constitutional goods because the State's ability to act and solve its various problems depends on their implementation.[247] Moreover, in the opinion of the Court, the necessity to protect these values sets the limits for the implementation of the rights and freedoms expressed in the Constitution (especially those of a social nature) and may constitute an independent premise for their limitation on the basis of Art. 31 (3) of the Constitution.[248] However, this view is the subject of criticism in the literature, especially due to the lack of an explicit

243 Judgment of the Constitutional Court, case ref. K 1/12.
244 Ibid.
245 Sokolewicz, 2005, p. 1.
246 Zubik, 2000, p. 11.
247 Judgment of the Constitutional Court, case ref. K 1/12, and the case law cited there.
248 Ibid.; e.g., Judgment of the Constitutional Court of December 7, 1999, case ref. K 6/99 (OTK ZU no. 7/1999, item 160).

introduction of such a limiting premise by the indicated provision of the Fundamental Law.[249] In this context, however, the thesis of the Constitutional Court expressed in the judgment of July 14, 2015, case ref. SK 26/14,[250] should be noted. According to this judgment, maintaining the budget balance may be 'translated' into the category of 'state security' (in the financial dimension) resulting from Art. 31 (3) of the Constitution. At the same time, in the opinion of the Court, it does not have absolute precedence over other constitutionally protected values, and it cannot be a mere, automatic justification of unjust decisions.[251] In addition to assigning 'budget equilibrium' as a 'constitutional value', the Constitutional Court also employs the concept of the 'principle of budget equilibrium'.[252] With some caution, resulting from the few statements of this Court in the indicated scope, one may risk a thesis that we are dealing with a systemic principle.[253] It does not have an absolute value and is – similar to other rules – subject to weighing in the constitutionality assessment of a statutory regulation.[254]

In the context of the findings thus far (cf. point 6 of this study), it is worth noting that despite the lack of explicit reference in Arts. 216 (5) and 220 (1) of the Constitution, there are grounds for relating the budget balance (public finances) to the interests of future generations. This requires approval of the normative nature of the preamble to the Constitution, in particular, in the scope in which it concerns the obligation to pass on to future generations "all that is valuable from over one thousand years' of heritage." The proper condition of public finances can be considered the value that makes up this 'intergenerational deposit'.[255] In addition, the Constitutional Court clearly identified the axiological foundations of Arts. 216 (5) and 220 (1) of the Constitution in its preamble and the "idea of solidarity, including intergenerational one" expressed therein.[256] Moreover, one of the judgments of this body reads as follows:

> Keeping an unbalanced state budget for a long time, which may be influenced by subsidizing the pension fund, is living on credit for future generations, because it limits their development opportunities, and thus is a failure to hand over to them the state in a condition that is at least not deteriorated.[257]

249 Sokolewicz, 2005, pp. 5–6.
250 OTK ZU no. 7/A/2015, item 101.
251 Ibid.
252 E.g., Judgments of the Constitutional Court: of December 13, 2004, case ref. K 20/04 (OTK ZU no. 11/A/2004, item 115); of February 21, 2006, case ref. K 1/05 (OTK ZU no. 2/A/2006, item 18); of January 27, 2010, case ref. SK 41/07 (OTK ZU no. 1/A/2010, item 5); of June 17, 2020, case ref. SK 26/19 (OTK ZU no. A/2020, item 28).
253 Cf. Judgment of the Constitutional Court, case ref. SK 41/07.
254 Cf. Dissenting opinion of the Judge Mirosław Granat to the Judgment of the Constitutional Court of November 4, 2015, case ref. K 1/14 (OTK ZU 10/A/2015, item 163); Sokolewicz, 2005, p. 5.
255 Cf. Judgments of the Constitutional Court: case ref. Kp 2/15; case ref. Kp 1/17.
256 Judgment of the Constitutional Court of May 7, 2014, case ref. K 43/12 (OTK ZU no. 5/A/2014, item 50).
257 Ibid.

Moreover, in the literature on the subject, attention is drawn to the fact that the impulse to ensure special protection of the level of the budget deficit assumed in the government bill draft is "care that the public debt resulting from the deficit does not overburden future generations."[258]

10. The protection of national assets

First, it should be noted that the Constitution does not use the concept of 'national assets'. The Constitutional Court refers to it extremely rarely,[259] at the same time providing no arguments for the existence of a need for a wider introduction or a specific definition of the indicated term.[260] However, the Fundamental Law uses the terms 'the State Treasury assets' and 'the State assets'. They appear in various normative contexts, namely the subjective and objective scope of access to public information, restrictions on the economic activity of members of parliament, the scope of control of the Supreme Audit Office, and references to the regulation of certain issues in the act (cf. Arts. 61 (1), 107 (1), 203 (3), and 218 of the Fundamental Law).

Importantly, none of these regulations provide for the protection of this property, nor do they explicitly refer to the principle of sustainable development or the interests of future generations. The Fundamental Law also does not contain a definition of the analyzed concept, nor does it indicate – even for the sake of an example – the assets of the 'State' or 'State Treasury'. To a very limited extent, this concept is approximated in the jurisprudence of the Constitutional Court, according to which the "assets of the State Treasury (…) are a public property serving the society and the entire state as an organizational structure (…). Its purpose and protection are ultimately to serve the common good."[261] The concept of state assets "includes the assets of the State Treasury and the assets of state legal persons."[262]

State property is protected pursuant to the provisions of the Constitution relating to 'non-adjective property', namely Art. 21 (1) of the Constitution ("The Republic of Poland shall protect ownership and the right of succession"). At the same time, it should be emphasized that 'ownership' in this provision is autonomous in relation to the civil law approach and is considered a synonym for 'assets' (a total

258 Sokolewicz, 2005, p. 13.

259 Judgments of the Constitutional Court: of June 10, 2003, case ref. K 16/02 (OTK ZU no. 6/A/2003, item 52); of April 24, 2007, case ref. SK 49/05 (OTK ZU no. 4/A/2007, item 39).

260 Ibid.

261 Judgment of the Constitutional Court of October 18, 2016, case ref. P 123/15 (OTK ZU no. A/2016, item 80).

262 Judgment of the Constitutional Court of March 21, 2000, case ref. K 14/99 (OTK ZU no. 2/2000, item 61).

of property rights).[263] At the same time, in light of the Constitutional Court's jurisprudence, the State Treasury is not the subject of constitutional property freedom or the right to equal protection of 'assets and other property rights' (here, property in the civil meaning), as provided for in Art. 64 sec. 1 and 2 of the Constitution. Due to the nature and functions of public property, the State Treasury and private entities cannot be considered similar.[264]

The Constitution clearly distinguishes the 'assets of local government' (Art. 107 (1)) and 'communal assets' (Art. 61 (1), Art. 203 (3)) from 'the State Treasury assets' and 'the State assets'. Above all, however, this is provided for in Art. 165 (1) of the Fundamental Law: "Units of local government shall possess legal personality. They shall have rights of ownership and other property rights." Considering this, the Constitutional Court noted the following:

> Art. 165 sec. 1 of the Constitution treats communal property as a guarantee of the legal personality of local government (...), in particular a guarantee of the legal personality of communes. Thanks to it, while maintaining independence, the commune can be a partner of a governmental body. Property vested in communes plays a special, constitutional role and has a systemic significance. In the light of the provisions of Chapter VII of the Constitution, communal property must first of all be perceived as an instrument for the implementation of public tasks and protection of collective interests of the local community (Article 163 of the Constitution).[265]

In connection with the above, it can be noted that the position of a local government unit as the subject of ownership differs significantly from the situation of private-law entities.[266] Hence, in its jurisprudence, the Constitutional Court denies these units (such as the State Treasury) protection of assets and property rights under Art. 64 of the Constitution.[267] At the same time – as in the case of the State Treasury – the Court indicates the validity of Art. 21 (1) of the Constitution in the field of communal property. This provision is the basic constitutional principle that protects property, regardless of its subject.[268] However, the property rights of local government units are subject to special constitutional protection under Art. 165 (1)

263 Jarosz-Żukowska, 2003, pp. 32–43; Judgment of the Constitutional Court of April 3, 2008, case ref. K 6/05 (OTK ZU no. 3/A//2008, item 41).

264 Judgment of the Constitutional Court, case ref. P 123/15, and the case law cited there; similarly: Jarosz-Żukowska, 2003, pp. 104-109.

265 Judgment of the Constitutional Court of October 21, 2008, case ref. P 2/08 (OTK ZU no. 8/A/2008, item 139).

266 Ibid.

267 Cf. e.g., Order of the Constitutional Court of February 23, 2005, case ref. Ts 35/04 (OTK ZU no. 1/B/2005, item 26); Kosieradzka-Federczyk and Federczyk, 2014, p. 225; Jarosz-Żukowska, 2003, p. 141.

268 E.g., Judgments of the Constitutional Court: of December 8, 2011, case ref. P 31/10 (OTK ZU no. 10/A/2011, item 114); of July 11, 2012, case ref. K 8/10 (OTK ZU no. 7/A/2012, item 78).

of the Constitution to the extent that it secures the independence of self-government and the ability to perform public tasks of local importance.[269]

As it results from the considerations made thus far (cf. points 6 and 7 of this study), despite the lack of explicit references in Art. 21 (1) or 165 (1) of the Constitution, there are grounds for applying – with regard to the protection of the assets of the State Treasury and local government or managing them – the principles of sustainable development and the requirement to focus on the interests of future generations. The adoption of such an interpretation is conditional, first, upon accepting the Constitutional Court's view on the independent (autonomous) nature of the indicated principle,[270] and second, it requires approval of the normative nature of the preamble to the Constitution in the scope in which it concerns the obligation to pass on to future generations all that is "valuable from over a thousand-year heritage." The assets of the State Treasury and local government can be considered the value that makes up this 'intergenerational deposit'.[271] Thus, although the link between the protection of the assets of the State Treasury (state) or local government and the principle of sustainable development and the interest of future generations has not been clearly noticeable in the jurisprudence of the Constitutional Court, such a relationship may be derived by drawing conclusions based on general theses presented by said Court.

11. Other uniquenesses and peculiarities of the given Constitution, constitutional regulation, and constitutional jurisdiction

A 'breakthrough' in the Constitution is the introduction of provisions concerning the creation of law and, in particular, the distinction between the sources of universally binding law and those of an internal nature.[272] The acts of universally binding law are those that may contain norms addressed to each entity – natural persons, public authorities, and public and private organizations. The Constitution has 'closed' the system of such sources of law both in terms of their subject (i.e., the forms of normative acts – Arts. 87, 91 (3), and 234 of the Constitution[273]) and object (entities

269 Judgments of the Constitutional Court: case ref. K 18/17.

270 Cf. Judgments of the Constitutional Court: case ref. K 14/11; case ref. K 13/11; case ref. K 18/17.

271 Cf. Judgments of the Constitutional Court: case ref. Kp 2/15; case ref. Kp 1/17.

272 Bałaban, 1997, pp. 34–35.

273 Art. 87 of the Constitution: "(1) The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations. (2) Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments." Art. 91(3) of the Constitution: "If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws." Art. 234 of the Constitution: "(1) Whenever, during a period of

authorized to issue them).[274] The acts of internal law have been specified in the basic scope in Art. 93 of the Constitution. According to this regulation, they may contain norms addressed only to "organizational units subordinate to the organ which issues such act." Nor can they be the basis for decisions (in the broad sense of the word) in relation to citizens, legal persons, and other entities. The constitutional catalog of internally binding acts is neither subjectively nor objectively limited.[275]

Against the background of the above-mentioned, seemingly clear decisions of the constitutional legislator, there is an extensive system of the so-called environmental planning acts.[276] These are very important instruments of environmental protection in Poland, of varying nature, legal forms, and names (e.g., strategy, plan, program, policy). However, these acts of public authorities share the feature that they prospectively define the values (tasks, goals, directions) to be implemented and the means leading to their achievement, without regulating the specific factual state in relation to which the order or prohibition of this action is updated.[277] In many cases, these acts contain legal norms (including the so-called planned norms) also directed at entities situated 'outside' of the public authority's apparatus. Moreover, the legislator sometimes clearly declares the normative nature of environmental planning acts, indicating that they are acts of local law or ordinances of ministers,[278] or making the content of an administrative decision dependent on their provisions.[279]

Nevertheless, the qualification of environmental planning acts within the constitutional catalog of sources of law causes serious interpretation problems, the resolution of which has significant consequences for the jurisprudence's practice. For example, administrative courts quite commonly endorse the thesis that environmental protection programs resulting from Art. 17 EPL do not constitute acts of local law, and their content is, by definition, directional and does not specify the rights or obligations of 'external entities'.[280] However, a different conclusion may be made with reference to Art. 186 (1) point 4 of the EPL, pursuant to which the authority competent to issue a permit will refuse to issue it if doing so would be inconsistent with the action program established based on Art. 17 EPL. Therefore, this regulation

martial law, the Sejm is unable to assemble for a sitting, the President of the Republic shall, on application of the Council of Ministers, and within the scope and limits specified in Art. 228, paras. 3–5, issue regulations having the force of statute. Such regulations must be approved by the Sejm at its next sitting. (2) The regulations, referred to in para.1 above shall have the character of universally binding law."

274 Działocha, 2005, pp. 9–10; Judgment of the Constitutional Court of June 28, 2000, case ref. K 25/99 (OTK ZU no. 5/2000, item 141).

275 Działocha, 2005, p. 9, 13.

276 Cf. e.g., Górski and Kierzkowska, 2012, pp. 212–217.

277 Cf. Gajewski, 2017, pp. 67–68; Duniewska, Z. et al., 2005, p. 149.

278 E.g., Art. 84(1) EPL, Art. 19(5) NCA.

279 E.g., Art. 186(1) point 4 EPL.

280 E.g., Judgment of the Voivodship Administrative Court in Cracow of January 25, 2005, case ref. II SA/Kr 1385/04 (https://bit.ly/3O0n5jj); Order of the Voivodship Administrative Court in Warsaw of December 29, 2017, case ref. IV SA/Wa 1649/17 (https://bit.ly/3v6BguF) (Accessed: 11 April 2022).

indicates a typical feature of a local law act as a source of universally binding legal norms that may constitute the basis for issuing an administrative decision.[281]

The judicature also provides examples of judgments in which – contrary to the express designation in the act for a given environmental planning act to be qualified as an 'act of local law' – courts refuse such a character. Such a situation took place in the Order of the Constitutional Court of October 6, 2004, case ref. SK 42/02. In the justification of this decision, it was stated that the local master zoning plan is a special type of act of local law, which does not fully correspond to the features of normative acts and, therefore, is not subject to the control of the Constitutional Court. This plan lies between the 'classic normative act' and the 'classic individual act' of applying the law.[282]

In practice, doubts related to the constitutional catalog of sources of law are also to be found in the provisions of the acts that require local government bodies to include in their environmental planning acts the provisions contained in analogous acts adopted by other local government units or government administration bodies. Often, such an obligation is a consequence of a planning act that is formally not universally applicable (e.g., Art.91c (1) EPL), and therefore, in accordance with Art. 93 (1) of the Constitution, it may only be addressed to an organizationally subordinate unit, whereas it refers to an entity of public administration with constitutionally guaranteed independence. In light of this, one can observe attempts to remove this contradiction by recognizing that the requirement to 'take provisions into account' should not be compared with binding legal norms contained in normative acts. This means that the above-mentioned acts are excluded from the scope of the provisions of the Constitution on the sources of law, in particular, Art. 93 (1). [283] In this context, a view is also formulated regarding the need to distinguish a new type of normative act that does not correspond to any of the types adopted in the Constitution.[284]

A peculiar phenomenon in the jurisprudence of the Constitutional Court is extending the meaning of the principle of proportionality beyond its traditional understanding derived from German jurisprudence and the *Rechtsstaat* idea. It consists in combining this principle not only with interference with the fundamental rights of an individual (human and citizen[285]) but also with the rights of an individual defined only at the level of the act or in the legal situation (rights) of "variously understood public entities (most often local government units),"[286] for example, the independence or property of a local government or the autonomy of universities.

281 Cf. Judgment of the Voivodship Administrative Court in Cracow of April 23, 2010, case ref. II SA/Kr 88/10 (https://bit.ly/37FI6Pt) (Accessed: 11 April 2022).

282 Order of the Constitutional Court, case ref. SK 42/02.

283 Judgment of the Constitutional Court of July 3, 2012, case ref. K 22/09 (OTK ZU no. 7/A/2012, item 74).

284 Cf. Kokocińska, 2014, p. 153.

285 Cf. Tuleja, 2006b, p. 64.

286 Judgment of the Constitutional Court of February 11, 2014, case ref. P 24/12 (OTK ZU no. 2/A/2014, item 9).

As to the latter, the Constitutional Court does not refer to Art. 31 (3) of the Constitution on the "limitation upon the exercise of constitutional freedoms and rights" of man and citizen but to Art. 2 of the Constitution ("The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice"). The requirement that the legislator respect the adequacy of goals and means and the prohibition of excessive interference can be inferred from the latter provision.[287] At the same time, it states that the 'test of proportionality' under Art. 2 of the Constitution (similarly to Art. 31 (3)) includes the examination of 1) whether the challenged regulation is necessary for the protection and implementation of the public interest with which it is related, 2) whether it is effective and enables the achievement of the intended goals, and 3) whether its effects are proportionate to the burdens imposed on a citizen or other legal entity.[288] Such an approach to the principle of proportionality (Arts. 2 and 31 (3) of the Constitution) makes it possible to see in it the guidelines for balancing values, which is required by the principle of sustainable development (narrowly or as an independent principle, going beyond the task of environmental protection or other tasks listed in Art. 5 of the Constitution).

12. Good practices and *de lege ferenda* proposals

As part of the *sui generis* summary, it is worth referring to two additional issues that emerge from the above considerations. First, it can be noted that the analysis of the Constitutional Court's jurisprudence in matters relating to the environment and its protection also shows some 'good practices' of this Court, the application of which is not directly mandated by law but is an expression of finding a specific 'self-solution' to them. In principle, their consequence is to strengthen (streamline) the implementation of the systemic functions of the above-mentioned body within the limits of the applicable law. As previously mentioned, the jurisprudence of the Polish Constitutional Court on the matters in question is poor, but it can signal a specific action that develops the statutory obligations of the Constitutional Court.

In this context, in the Judgment of July 1, 2021, case ref. SK 23/17, despite that the challenged regulation was found to be compliant with the Constitution, it was indicated that the legislator should reconsider the problem of the appropriate shaping of legal procedures guaranteeing public participation in proceedings leading to the adoption of air protection programs. In this regard, the judgment is an example of

287 Ibid.

288 In relation to Art. 2 of the Constitution – cf. e.g., Judgment of the Constitutional Court of July 16, 2009 r., case ref. Kp 4/08 (OTK ZU no. 7/A/2009/7, item 112); in the context of Art. 31(3) of the Constitution – cf. e.g., Judgment of the Constitutional Court of July 6, 2011, case ref. P 12/09 (OTK ZU no. 6/A/2011, item 51).

a practice where the Constitutional Court non-bindingly suggests to the legislator additional directions for reflection related to the case, going beyond the legal obligations of the legislator resulting from the judgment. In this way, the Court, developing its systemic competences as the guardian of the constitutional order, attempts to improve the Polish legal system through a higher degree of implementation of the values resulting from the Constitution or international and European law. There is a certain similarity of such action to that resulting from Art. 35 of the Act of November 30, 2016, on the Organization and Proceedings Before the Constitutional Court. This provision provides for the Court's obligation to notify the law-making bodies of the existence of shortcomings and gaps in normative acts, the removal of which is necessary to ensure the consistency of the legal system of the Republic of Poland. In the case of the Judgment, case ref. SK 23/17, the 'signaling' contained therein does not meet the condition of 'necessity'.

The second important consequence of the analyses carried out is an attempt to formulate *de lege ferenda* postulates for the Constitution in force. Therefore, it should be recalled, above all, that the United Nations' Human Rights Council on October 8, 2021, adopted a resolution recognizing "the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights." Moreover, it encouraged states to strengthen cooperation among themselves and to adopt policies for the implementation of the above-mentioned right. In light of the above, it is difficult to disagree with the postulate put forward in the literature[289] on the need to explicitly establish in the Constitution the 'right to the environment' as everyone's separate subjective right.

In addition to the factual determinants related to the desire to strengthen environmental protection in a reaction, in particular, to 'the climate and environment emergency',[290] there are also significant constitutional and legal grounds for expressly articulating such a right in the Constitution. First, there is no doubt that the Constitution establishes a value in the form of a 'healthy' and 'ecologically safe' environment,[291] which is placed high in the hierarchy of all constitutional values. This is due to a significant number of provisions of the Constitution relating to the protection of this value, including indicating it as a sufficient motive for limiting the rights and freedoms of a person or citizen (Art. 31 (3) of the Constitution).

The obvious consequence of establishing such a value in the Constitution is the obligation to implement it to the highest possible degree. Considering these circumstances, it is reasonable to say that the implementation of the indicated value should result from the implementation not only of an imperative addressed to public authorities and 'everyone' (cf. Arts. 5, 74 (2), and 86 of the Constitution) but also of a

289 Danecka and Radecki, 2019, p. 119; Rakoczy, 2006, p. 206; Rakoczy, 2009, pp. 161–162.

290 Cf. European Parliament resolution of November 28, 2019, on the climate and environment emergency (2019/2930(RSP)) (Official Journal of the European Union of June 16, 2021, C 232, pp. 28–29).

291 Cf. Judgments of the Constitutional Court: case ref. SK 6/12; case ref. K 23/05.

subjective right of an entity. The necessity for public authorities to implement and protect such a right guarantees meeting the underlying values to a greater extent. However, this is a value with a unique position within the constitutional axiology that deserves optimal protection. Furthermore, the provisions of the right to the environment in question should be developed taking into account the provisions of the Fundamental Act related to the environment. Therefore, similar to the above resolution of United Nations' Human Rights Council, the postulate includes "the right to a safe, healthy and sustainable environment." This is a consequence of specifying the scope of the value of the environment in Arts. 5 *in fine*, 68, and 74 (1) of the Constitution. These regulations show that the environment should be "sustainable" and guarantee human health and safety.

Another postulate is related to the proper articulation in the Constitution of what in fact results from the jurisprudence of the Constitutional Court, that is, the independence of the 'principle of sustainable development'. This would lead to an appropriate modification of Art. 5 *in fine* of the Constitution, which may currently suggest that the indicated principle should be applied only to the implementation of the task consisting in the protection of the environment. Therefore, it is reasonable to supplement Art. 2 of the Constitution in the direction of giving it the following wording: "The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice *and sustainable development*."

After introducing this change, the principle of sustainable development would require a systemic interpretation (similar to the current one, on the grounds of Art. 5 of the Constitution). In other words, starting from the 'existing concepts' and the meaning given to 'sustainable development' in international law, one should look for the wording of this rule in the principles of solidarity and social justice (intragenerational and intergenerational), the requirements of so-called proportionality (i.e., Arts. 2 and 31 (3) of the Constitution, respectively), related to the weighting of values focused on development in the social or economic dimension, and other values conflicting with the previous ones, including, for example, ecological security (as a consequence of Art. 74 (1) of the Constitution). At the same time, it needs to be emphasized that for the principle of sustainable development to apply, there is no need for interference with the state of the environment to take place (only, for example, regarding national heritage, the appropriate state of public finances or state property, or the existence of a need to properly balance only the 'pro-development' values).

The legal literature includes a postulate to regulate in the Constitution the issue of the protection of the country's natural resources as a special public good.[292] Such regulations are provided for in a number of constitutions of European countries (e.g., Hungary, the Czech Republic, Croatia, Romania, Serbia, Slovakia, and Slovenia). Hence, it is desirable to introduce an appropriate regulation to the Constitution of the Republic of Poland. It could take the form of a listing of the most important

292 Rakoczy, 2009, pp. 166–167.

activities serving the implementation of the environmental protection obligation by public authorities. Therefore, Art. 74 (2) of the Constitution, which refers to such an obligation, could read as follows: "Protection of the environment, in particular through the conservation and economic use of natural resources, effective water management and water retention, reduction of greenhouse gas emissions, and waste prevention is the responsibility of public authorities." This type of enumeration may raise doubts due to the possible accusation of not including other important elements in it or pointing to issues that are not sufficiently important. Nevertheless, in this case, it is only an exemplary catalog, the main aim of which is to evoke constant reflection of public authorities on at least the seemingly most sensitive environmental problems in Poland.

Moreover, an amendment to Art. 74 (4) of the Constitution consisting of the replacement of its current wording with a clear guarantee of public participation in matters relating to environmental protection is worth considering.[293] Thus, the provision, which currently has little normative significance due to the general nature of the obligation of public authorities to support the actions of citizens, would contain a specific obligation of these authorities to ensure that everyone participates in the decision-making and adoption of environmental policy acts. At the same time, this regulation could even provide for the subjective right of public participation and thus, in fact, lead to an increase in the rank of this right that results in the current legal circumstances from the provisions of the SIEA. The argument in favor of adopting such a constitutional regulation is once again the desire to strengthen the fulfillment of the obligation to care for the state of the environment (cf. Art. 86 of the Constitution) and the fact that these are the rights of society expressed in the Act related to participation in proceedings regarding environmental protection that represent the real implementation of Art. 74 (4) of the Constitution.

293 Similarly: Leśniak, 2014, p. 746.

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