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Table of Contents

Articles

Book review

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Volume 9 Issue 1 (2023)

Restriction of the Right of Ownership of Real Property due to Environment Protection in Light of the Constitution of the Republic of Poland

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Abstract

Nowadays, there is a noticeable trend aimed at ensuring broad protection of the natural environment – both for the sake of preserving biodiversity and the quality of life of the future generations. However, the related activities of public authorities and private entities often involve limiting the rights of property owners. The Polish Constitutional Tribunal has ruled on the conflict between property rights and conservation of nature. The Tribunal has pointed out that the principles of sustainable development require an appropriate balance between environment protection on one hand and social and civilizational development on the other.

In accordance with the previous jurisprudence of the Tribunal, the article will present the limits set for the state's environment policy in certain specific areas by the Constitution. It is acceptable to establish mechanisms to control the exploitation of plantings belonging to real property. Property owners may be required to obtain permits for their removal, and in the absence of such permits, they may be punished with forfeiture of timber or a fine. However, it is incom-

patible with the principle of proportionality and infringes the right of owners by arbitrary restrictions or imposed automatically sanctions, without the possibility of taking into account the circumstances. Moreover, the Tribunal has pointed out that the Constitution does not allow disproportionate narrowing down of the possibility to seek compensation for restrictions in the use of real property for the sake of environment protection. Only the two-year deadline for submitting claims in this respect has been considered too painful – too short and impossible to be reinstated for justified reasons.

Keywords
real property, environment protection, property rights, sustainable development

Introduction

Today – alongside growing ecological awareness manifesting itself in both individual expectations and legislative efforts – a significant factor impacting the real property market are broadly conceive environment issues. They may both raise the value of real property – by the factor of so-called ecological value,[1] as well as reduce it – as a result of the associated restrictions of ownership rights. This paper discusses the issues associated with the constitutional conditions for state interference into the ownership title and other property rights related to real property – on account of environment protection. On the basis of the theses arising from the selected judgments of the Constitutional Tribunal, an attempt shall be made to outline the limits of the property ownership right at the junction with the ecological policy of the state.

The method adopted in this paper will be primarily the analysis of legislation (sources of law) and legal texts (thematic studies), as well as supportively the specialist real property materials, including online ones. The sources of data include documents of international law, such as the Rio de Janeiro Declaration, judicial decisions, especially judgments of the Constitutional Tribunal, as well as legislative acts, first of all the Environment Protection Law.

1. R. Cymerman, *Wycena nieruchomości a ochrona środowiska*, Educaterra 2000, pp. 84–95.

Volume 9 Issue 1 (2023)

Constitutional prerequisite of environment protection. Sustainable development

Restriction of the property right (including ownership of real property), which is one of fundamental human rights and at the same time is protected in the supreme legal document, namely the Constitution, is possible exclusively due to other socially important values that are constitutionally protected. One of them is protection of the environment, expressed, *inter alia*, in the principle of sustainable development in Art. 5 of the Constitution, pursuant to which "The Republic of Poland (...) shall ensure the protection of the natural environment pursuant to the principles of sustainable development."[2]

Environment protection is also contemplated in the articles of the Constitution devoted to economic, social and cultural rights. According to Art. 74, protection of the environment is the duty of public authorities, which shall pursue policies ensuring the ecological security of current and future generations (which is an elaboration on the principles of sustainable development referred to in Art. 5). This article also guarantees everyone the right to be informed of the quality of the environment and its protection, as well as the support of public authorities for the activities of citizens to protect and improve the quality of the environment. Those norms are of a guiding nature: they are bindings as to the objective rather than the method of implementation, so they warrant no claims addressed directly to the government. Nevertheless, the give rise to certain obligations of the government and authorise monitoring of its activities in this area in the form of public control.

On the other hand, according 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." This formula provides for the obligation of every natural person and organisational entity, not only public authorities.

The term "sustainable development" itself was introduced during the so-called the Earth Summit, i.e. the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, on 3-14 June 1992. The summit was a continuation of the initiative commenced two decades earlier, i.e. the 1972 UN Conference in Stockholm, the result of which was a definition of environment protection as one of the functions of a state that requires conducting a separate policy both on the national as well as the international level. The message of both conferences, as well as the next one that was held in 2002 in Johannesburg and already straightforwardly called the World Summit on Sustainable Development, was to emphasise the need to introduce, at every level, laws that take into account the protection of the natural resources or the plants against degradation.

2. Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz.U. 1997 nr 78 poz. 483, [Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997, No. 78, item 483].

Originally, the term "sustainable development" referred to forest management and meant limited felling of trees so that the forest from which timber is extracted always retained the ability of self-regeneration.[3] In the 1980s, the term caught on in the activities of ecological movements and in political sciences. In that meaning, it was used in the Rio declaration, where it is deciphered as a development which allows to exploit natural resources to meet current needs and at the same time does not impede developmental and environment needs of present and future generations.[4] Political and legal doctrine have added new elements to this definition. The up to date achievements of literature are in a large degree reflected by the legal definition adopted by the legislator in Art. 3(50) of the Environment Protection Act, which described sustainable development as "such socio-economic development which embraces the process of integration of political, economic and social efforts, contributing to maintaining natural balance and durability of basic natural processes in order to guarantee the possibilities of satisfying basic needs of individual communities or citizens both of this and also future generations."[5]

Since the adoption of the Constitution in 1997, the principle of sustainable development needs to be considered in all legal acts passed in Poland. Its functioning has allowed to determine the limits of the right of real property ownership where it coincides with such value as environment protection. Of paramount importance for the proper functioning of the regal system in this respect have been the judgments of the Constitutional Tribunal, which in the course of examining the consistency of lower-order legal acts with the Constitution has fine-tuned the contents of the legal norm contained in Art. 5 of the Constitution. Such a decoded legal regulation serves as a basis for correct legislation by allowing to understand properly the prerequisite sanctioning restriction of rights and freedoms, including the right of ownership.

In its judgment of 6 June 2006,[6] the Tribunal invoked the principle laid down in Art. 5 of the Constitution in the context of the case initiated by the motion of the municipality of Chełmiec, which questioned the consistency with the basic law of the provisions of the Act of 10 April 2003 on special rules for the preparation and implementation of trunk road investment projects,[7] i.e. so-called Road Act.

The Municipal Council pointed out in the motion that in its opinion granting exclusive authority to decide on road location to a voivode (acting upon request of the General Directorate for Roads and Motorways) was in conflict with several provisions of the Constitution establishing the systemic position of local governments (the role of a municipality had been reduced to issuing an opinion

3. A. Płachciak, *Geneza idei rozwoju zrównoważonego*, "Ekonomia", 2011, No. 5 (17), pp. 232–234.

4. *Rio Declaration on Environment and Development*, http://libr.sejm.gov.pl/tek01/txt/inne/1992.html, (access 11.04.2023).

5. Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska, Dz.U. 2018 poz. 799, [Environment Protection Act of 27 April 2001, Journal of Laws 2018, item 799].

6. Wyrok Trybunału Konstytucyjnego z dnia 6 czerwca 2006 r., K 23/05, [Judgment of the Constitutional Tribunal of 6 June 2006, K 23/05].

7. Ustawa z dnia 10 kwietnia 2003 r. o szczególnych zasadach przygotowania i realizacji inwestycji w zakresie dróg krajowych, Dz.U. 2018 poz. 1474, [Act of 10 April 2003 on special principles of the preparation and implementation of trunk road investment projects, Journal of Laws 2018, item 1474].

by its head, the content of which was not of a binding nature). Moreover, such a formula – failing to provide for carrying out the hitherto binding procedures involving environment impact assessments and public consultations – violated, in the opinion of the Municipal Council, Art. 5 and Art. 74(1) and 74(2) of the Constitution. In particular, a departure from the hitherto standard was the exclusion of the provisions of the Act on the protection of agricultural and forest land[8] and the Act on the conservation of nature[9] introducing an obligation to obtain permits and pay fees in case of removing trees or shrubs from a property.

Responding to those charges, the Tribunal pointed out that protection of the environment is one of the fundamental values guaranteed in the Constitution and may justify restriction of other constitutional rights and freedoms. At the same time, it found no infringement of the provisions of the basic law in the challenged regulation. It showed that Art. 74 relating to the duty of public authorities to conduct a policy guaranteeing ecological security expresses a rule of state policy though does not give rise to any substantive rights on the part of an individual. The challenged regulation has been introduced to the Road Act in order to reduce the already high costs of trunk road construction, which is to contribute to the creation of infrastructure indispensable for human development. Ecological security, referred to in Art 74(1), should be understood – in the opinion of the Tribunal – as "attaining such a condition of the environment which allows for staying safely therein and allows for using it in a manner ensuring human development."[10] Therefore it is a concept embracing broader tasks of the authorities than solely protection of the environment.

This aim is to be attained – in the Tribunal's opinion – through following the principle of sustainable development laid down in Art. 5. The idea incorporates "the need to consider various constitutional values and balance them properly."[11] Among those values, the Tribunal names conservation of nature and development of spatial order, but also due concerns for social and civilizational development associated with "the need to build an adequate infrastructure necessary for the life of people and individual communities in accordance with their civilizational needs."[12] In this interpretation, the creation of certain exclusions in the procedures for the sake of environment protection is justified by the developmental needs of the society, which fits into the concept of sustainable development.

What is important, the Tribunal used the phrase "the principles of sustainable development" in the plural, which emphasizes that fact that the notion embraces two or more principles which need to be adequately balanced. As a result, the Tribunal did not find the exclusion of certain provi-

8. Ustawa z dnia 3 lutego 1995 r. o ochronie gruntów rolnych i leśnych, Dz.U. 2017 poz. 1161, [Act of 3 February 1995 on the protection of agricultural and forest land, Journal of Laws 2017, item 1161].

9. Ustawa z dnia 16 kwietnia 2004 r. o ochronie przyrody, Dz.U. 2018 poz. 1614, [Environment Protection Act of 16 April 2004 on nature protection, Journal of Laws 2018, item 1614].

10. Wyrok Trybunału Konstytucyjnego z dnia 6 czerwca 2006 r., K 23/05..., op. cit.

11. Ibidem.

12. Ibidem.

Volume 9 Issue 1 (2023)

sions by the Road Act as an infringement of the constitutional norms relating to environment protection since an equilibrium had been kept between the regulations on environment protection and those catering for the justified developmental needs as regards roadbuilding.[13]

Therefore the abovementioned judgment of the Constitutional Tribunal provides grounds for the broadened understanding of the notion of sustainable development. In its light, environment protection should not be identified with sustainable development. In legal literature, it is pointed out that such a differentiation is not explicitly indicated in the legal definition of sustainable development in Art. 3(50) of the Environment Protection Law, which may be treated as a kind of a flaw on the part of the legislator.[14]

Another issue dealt with the Constitutional Tribunal as regards the principle of sustainable development was associated with landscape parks and resolved in the judgement of 13 May 2009.[15] The case was initiated by the motion of the President of the Republic of Poland, who questioned compliance of the provisions of the Act amending the Environment Protection Act with Art. 5 of the Constitution.[16] The regulation that was challenged by the President referred to entrusting voivodship councils with the competences – so far enjoyed by voivodes – associated with the creation, liquidation or changing the boundaries of landscape parks, and the President put forward his doubts as to the absence of duties combined with those competences and relating to environment protection, such as consultations with Regional Environment Protection Directors.

In its treatment of the case, the Tribunal started with emphasizing that the duty to protect the environment in accordance with the principle of sustainable development, referred to in Art. 5 of the Constitution, is one of the fundamental responsibilities and systemic foundations of the state, which is indicated by the fact that this provision has been placed at the very beginning of the basic law, in Chapter One, among other norms of fundamental importance for the shape of the state, expressing its fundamental goals and principles of operation. Although – as the Tribunal pointed out – the concepts laid down in Chapter One of the Constitution are of a general nature and are not defined in the basic law, they have their significance established by the doctrine and reference to statutory concepts (in this case the Environment Protection Law) is not an error in itself. The Tribunal also argued for the understanding of the concepts of "environment" and "environment protection" in accordance with the definitions laid down in the Environment Protection Act. Citing the statutory definition of sustainable development, the Tribunal at the same time also referred to the sources of this concept in inter-

13. A. Ploszka, *Zrównoważony rozwój w orzecznictwie Trybunału Konstytucyjnego*, in: *Zrównoważony rozwój – debiut naukowy 2011,* eds. T. Jemczura, H. Kretek, Akademia Nauk Stosowanych w Raciborzu 2012, p. 36.

14. B. Rakoczy, *Glosa do wyroku TK z dnia 6 czerwca 2006 r., K 23/05*, "Państwo i prawo", 2009, No. 4, pp. 130–135.

15. Wyrok Trybunału Konstytucyjnego z dnia 13 maja 2009 r., Kp 2/09, [Judgment of the Constitutional Tribunal of 13 May 2009, Kp 2/09].

16. Ustawa z dnia 23 stycznia 2009 r. o zmianie niektórych ustaw w związku ze zmianami w organizacji i podziale zadań administracji publicznej w województwie, Dz.U. 2009 nr 92 poz. 753, [Act of 23 January 2009 amending certain acts in connection with changes in the organization and division of tasks of public administration in the voivodship, Journal of Laws 2009, No. 92, item 753].

national law and gave its own proposal for a definition indicating that it means "the requirement that interference in the environment should be maximally restricted (least harmful), while social benefits should be proportionate and adequate to the harms done."[17]

Referring to the merits of the motion, the Tribunal found that the regulations did not infringe on the basic law since the introduced changes fit into the limits of legislative freedom. It pointed out that although the duty to consult a landscape park resolution did not directly effect from the challenged regulation, it might be inferred from other regulations and also after the amendment it would be retained. In addition, consultation is the broadest possible form of seeking advice, giving a Regional Environment Protection Director the right to express (or not) consent not only for the very fact of adopting a landscape park resolution, but also its contents, including the number and extent of prohibitions in force in a concrete park. Every such resolution also operates as an act of local law; therefore, everyone whose legal interest or right has been violated is entitled to file a complaint with an administrative court. This path may also be used by the owners of real properties situated in a landscape park. Therefore – in the opinion of the Tribunal – no infringement of the constitutional principles associated with environment protection has occurred.

17. Wyrok Trybunału Konstytucyjnego z dnia 13 maja 2009 r., Kp 2/09..., op. cit.

Property right and its restrictions in light of the Constitution

The property right – as mentioned earlier – is one of the fundamental human rights. It is protected both in the acts of international law as well as the Constitution of the Republic of Poland and the acts of a lower order passed on its basis. Art. 1 of Protocol no. 1 to the European Convention on Human Rights[18] provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. In literature, this regulation is interpreted as the delineation of the following principles by the European Convention on Human Rights: respect for property, admissibility of seizing the right to property and admissibility of state's introducing controls of how a property is used.[19]

It is in this light that the legal regulations of the property right at the national level should be seen. In the Polish Constitutions this right is guaranteed under Art. 21 which reads that "the Republic of Poland shall protect ownership and the right of succession," while potential "expropriation may be allowed solely for public purposes and for just compensation." Moreover, pursuant to Art. 64 of the Constitution "everyone shall have the right to ownership, other property rights and the right of

18. Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, done in Paris on 20 March 1952, and Protocol No. 4 to the above Convention, done at Strasbourg on 16 September 1963, Journal of Laws 1995, No. 36, item 175.

19. I. Nakielska, *Prawo do własności w świetle Europejskiej Konwencji Praw Człowieka*, Wydawnictwo Uniwersytetu Gdańskiego 2002, p. 119.

succession, which are subject to legal protection on an equal basis. Apart from the understanding of ownership as a substantive right of individuals presented in the abovementioned articles, in Art. 21 it is indicated as a foundation of a social market economy, which is the basis of the economic system of the state.

The wording of the constitutional provisions has been a basis for formulating two meanings of the notion of ownership in the doctrine. On one hand, it is understood as a synonym of property (in Art. 20 and 21 of the Constitution), and on the other as an asset in the form of one of substantive property rights (Art. 64 of the Constitution).[20] Also the Constitutional Tribunal referred to those two approaches to ownership by pointing out in its judgments[21] that Art. 21 expresses a systemic principle of the state that is useful as a standard for the control of constitutionality in case of no detailed regulations in the basic law. With regard to ownership, such a detailed regulation is Art. 64 of the Constitution, which "in some cases repeats and in others – supplements the norm provided for in Art. 21."[22] It is worth noting that the group of entities to whom the Constitution guarantees protection of the right of ownership and other property rights as well as the right to succession has been regulated broadly – according to Art. 64 "everyone" shall have this right, i.e. both natural persons as well as other subjects of private law. Although this regulation does not apply to juridical persons of subject to public law, their property is protected under Art. 21 and – local government property – Art. 165 of the Constitution.[23]

The co-existence of two rights guaranteed at the same legal level may cause a so-called conflict of constitutional values, when in a specific situation one cannot be fully preserved without infringement of the other. In case of the occurrence of a conflict of values it is necessary for the competent state institutions (primarily the courts) to indicate which of the values will received greater legal protection in a given situation. The lens through which one should look when delimiting the boundaries of constitutionally protected rights are the supreme constitutional principles such as human dignity and common good,[24] but also other principles provided for in the basic law, inter alia the principles of sustainable development laid down in Art. 5. On one hand, we deal here with the interest of an individual, and on the other individuals always function within a community, the general interest of which should also be taken into account. Restriction of the rights of individuals gives rise to a threat of excessive interference of the state in these rights.

20. M. Bednarek, *Mienie. Komentarz do art. 44-55 k.c.*, Wolters Kluwer 1997, p. 28.

21. Wyrok Trybunału Konstytucyjnego z dnia 12 stycznia 1999 r., P 2/98, [Judgment of the Constitutional Tribunal of 12 January 1999, P 2/98]; Wyrok Trybunału Konstytucyjnego z dnia 25 lutego 1999 r., K 23/98, [Judgment of the Constitutional Tribunal of 25 February 1999, K 23/98].

22. Ibidem.

23. S. Jarosz-Żukowska, *Przedmiot i specyfika ochrony własności w przepisach konstytucyjnych – ujęcie polskie na tle porównawczym*, in: *Własność w prawie i gospodarce*, ed. U. Kalina-Prasznic, E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego 2017, pp. 29–30.

24. M. Piechowiak, *Dobro wspólne jako fundament polskiego porządku konstytucyjnego*, Wydawnictwo Trybunału Konstytucyjnego 2012, pp. 38–41; M. Piechowiak, *Klauzula limitacyjna a nienaruszalność praw i godności*, "Przegląd Sejmowy", 2009, No. 2 (91), p. 59.

Volume 9 Issue 1 (2023)

Therefore, there is a need to delimit the boundaries of admissible state interference in the rights of individuals, including the right of ownership. In its Art. 31(3), the Constitution stipulates that any limitation of rights and freedoms may not violate the substance of a given right, may be imposed only by statute (not by an act of a lower order) and must be 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" (so-called proportionality principle). Therefore, in the above context, it may be stated that a prerequisite for limitation of the right of ownership may be protection of the environment providing it is necessary in a democratic state, does not violate the substance of the right of ownership and has been stipulated in a statute in accordance with the rules of proper legislation. The point of reference for the assessment whether the above prerequisites have been met and for balancing conflicting values may be, in turn, invoking the principles of sustainable development.

The prerequisites referred to in Art. 31(3) to a certain extent overlap with the regulation of Art. 64(3) of the Constitution, according to which "the right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right." The Constitutional Tribunal commented on the relationship between the two provisions pointing out that none should be treated as a *lex specialis* towards the other, though in the case of the charge that the principle of proportionality has been violated in connection with the restriction of the right of ownership "Art. 64(3) of the Constitution should be treated as the constitutional confirmation of general admissibility of introducing limitations of that right."[25]

The Constitutional Tribunal also found that the cumulative satisfaction of all prerequisites (non-violation of the substance of the right, the statutory form, the necessity in a democratic state, a functional relationship with one of the values specified in the regulation) has to be evaluated separately in each concrete case of the right being limited, "in particular by confronting the values and interests protected by a given regulation with those which in its consequence become subject to a restriction, as well as by assessing how this restriction is effected."[26]

With respect to ownership, its substance would be violated by such restriction which would undermine the fundamental rights of the owner in a manner preventing him to use and dispose of a thing.[27] Thus, statutory regulations must not – even when motivated by the need of the protection of the environment – encroach on an owner's rights to such an extent as to exclude the possibility to use, collect benefits from or directly or indirectly exploit a thing.

25. Wyrok Trybunału Konstytucyjnego z dnia 25 maja 1999 r., SK 9/98, [Judgment of the Constitutional Tribunal of 25 May 1999, SK 9/98] and wyrok Trybunału Konstytucyjnego z dnia 29 lipca 2013 r., SK 12/12, [Judgment of the Constitutional Tribunal of 29 July 2013, SK 12/12].

26. Such a position is taken by the Constitutional Tribunal in many judgments, e.g. wyrok Trybunału Konstytucyjnego z dnia 22 września 2005 r., Kp 1/05, [Judgment of the Constitutional Tribunal of 22 September 2005, Kp 1/05].

27. S. Rudnicki, *Komentarz do kodeksu cywilnego, księga druga: Własność i inne prawa rzeczowe*, Wolters Kluwer 2005, p. 32.

Volume 9 Issue 1 (2023)

The values which most frequently clash with environment protection are: the freedom of economic activity and the right of ownership. As pointed out by the Constitutional Tribunal in its judgment of 15 May 2006: "The fact that this prerequisite is explicitly provided for in Art. 31(3) emphasises not only the admissibility but also the need to impose restrictions of rights and freedoms with a view to environment protection (...).The requirements in the area of environment protection reflect primarily on shaping the freedom of economic activity; they may also justify interference into the rights of owners, providing the proportionality of interference has been observed and the substance of the right of ownership has not been violated."[28] However, another important problem is pointed out in literature concerning this prerequisite for the restriction of rights, which is associated with its regulation both in the statutes as well as the ordinances or acts of local law and which may arouse doubts as to the meeting of the statutory form of this restriction.[29]

In the abovementioned judgment, the Tribunal commented on the relation between the right of ownership and environment protection. The matter was initiated by the District Court in Zamość, which filed a legal query to the Tribunal with respect to Art. 158 § 2 of the Code of Petty Offences[30] regulating the penalty of a fine and mandatory confiscation of timber obtained from felling trees without a required permit.[31] In the District Court's opinion, this provision could be out of compliance with the right of ownership laid down in Art. 21(1) of the Constitution. In its response, the Tribunal invoked the *ratio legis* of the challenged regulation, which was to stop "the uncontrolled escalation of felling in private forests"[32] following the depenalisation of felling on one's own land as a result of repealing by a new act of the Act of 1973 on the management of forests not owned by the state (adopted still in the times of the Polish People's Republic in line with its state ideology).

The Tribunal stressed that the Code of Petty Offences merely sanctions the duties provided for in the Forest Act and it was the provisions of the latter that introduced the restriction of the right of ownership which should be examined as regards its potential violation of the Constitution. In particular, the Tribunal pointed to Art. 13(1)(5) of the Forest Act, according to which the owners of forests are obliged to "use the forest rationally, in a manner permanently ensuring optimal realisation of its function, by obtaining timber within the limits that do not exceed production capacities of a forest." Those activities should be in line with a simplified forest development plan (for forests whose area exceeds 10 hectares) or a district prefect's decision defining tasks in the area of forest management (for smaller forests), which specify the limits of permissible activities, including the quantity of timber that could be obtained without a permit. However, it is possible to obtain a decision to obtain

28. Wyrok Trybunału Konstytucyjnego z dnia 15 maja 2006 r., P 32/05, [Judgment of the Constitutional Tribunal of 15 May 2006, P 32/05].

29. N. Leśniak, *Granice ingerencji w sferę praw i wolności jednostki ze względu na konstytucyjną przesłankę "ochrony środowiska"*, in: *Współczesne koncepcje ochrony wolności i praw podstawowych*, eds. A. Bator et al., Wydawnictwo Uniwersytetu Wrocławskiego 2013, p. 285.

30. Ustawa z dnia 20 maja 1971 r. – Kodeks wykroczeń, Dz.U. 2018 poz. 618, [Act of 20 May 1971 - Code of Petty Offences, Journal of Laws 2018, item 618].

31. The obligation to obtain such a permit arises under the provisions of ustawa z dnia 28 września 1991 r. o lasach, Dz.U. 2017 poz. 788, [Forest Act of 28 September 1991, Journal of Laws 2017, item 788].

32. W. Radecki, *Wykroczenia i przestępstwa leśne*, Agencja Rozwoju Regionalnego 1995, p. 27.

timber in a quantity other than specified in those documents, which may be issue by a district prefect in individual cases at the request of the forest owner.

In the opinion of the Tribunal, this actually allows for a change in the forest development plan at the request of an owner and, together with Art. 31 of the Forest Act entitling owners to file requests and objections to the draft of a forest development plan, points to non-arbitrariness as regards determination by public authorities of restriction concerning the use of forests by their owners. It is also impossible to speak about violation of the substance of the right of ownership since – as raised by the Tribunal – "the restrictions laid down in Art. 158 of the Code of Petty Offences concern only those forest owners who fail to respect the rules of forest use reflecting the common good (environment protection)," while "confiscation of the obtained timber does not mean interference into the ownership of the forest, which remains intact."[33] Both penalties: a fine and confiscation of timber constitute a form of depleting property, and the difference between them consists only in the type of performance: monetary or in kind. As a result, the challenged regulation brings about only an apparent restriction of the right of ownership since we deal here with a sanction rather than actual interference into ownership. In the Tribunal's opinion, "without this painful consequence of the confiscation of timber it would not be possible to attain the goals of the penalty."[34]

Another judgment in which the Tribunal referred to the relation between the right of ownership of a real property and environment protection concerned the joined constitutional complains of several people, on whom public authorities imposed monetary penalties for removal of trees without required permits.[35] The decisions were based on Art. 88 and Art. 89 of the then Environment Protection Act, which provided for a mandatory penalty, to be imposed by a head of a municipality, a mayor or town president for removal without a permit or destruction of a tree or a shrub, according to fixed rates regardless of circumstances.

The Tribunal found this regulation to be against the constitutional protection of the right of ownership stipulated in Art. 64 in connection with the violation of the principle of proportionality laid down in Art. 31(3). Although the Tribunal found the very mechanism obligating landowners to obtain a permit for the removal of trees or shrubs under the pain of a fine as adequate and meeting the needs of environment protection – the method of imposing the penalty was wrong. In accordance with the nature of an administrative sanction it is possible to base liability on the lawlessness of an action alone (without examining guilt as it is done in criminal cases), though a necessary precondition is to

33. Wyrok Trybunału Konstytucyjnego z dnia 15 maja 2006 r., P 32/05..., op. cit.

34. Ibidem.

35. Wyrok Trybunału Konstytucyjnego z 1 lipca 2014 r., SK 6/12, [Judgment of the Constitutional Tribunal of 1 July 2014, SK 6/12].

ensure that the individual circumstances of the specific case are taken into account in the process of wielding punishment. The challenged provision failed to provide for such a possibility, while the penalty was imposed automatically regardless of whether e.g. the removed tree had been damaged by the forces of nature or posed a threat to human health or life. Moreover, the Tribunal questioned the amount of the penalty, which it found excessively oppressive. Those charges determined the finding that the solution provided for in the statute constituted an interference into the constitutional right of ownership that was too far-reaching.

The question of the conflict between the right of ownership and environment protection cropped up also in the judgment passed after the motion of the Ombudsman challenging the merely two year period for filing claims in connection with the restriction of the use of the property stipulated in the Environment Protection Act.[36] According to the said provision, an owner or a perpetual usufructuary could file a compensation claim if they suffered a loss as a result of imposing on their property (or a part thereof) one of the instruments of environment protection – the precondition for exercising this rights was filing the claim with two years from the effective date of the ordinance or the local law act under which the use of the property had been restricted.

The Tribunal found that provision unconstitutional owing to the failure to observe the principle of proportionality referred to in Art. 31(3) – the two-year deadline (non-restorable for justified reasons) is not the least painful measure that could be applied by the legislator to protects its interest (associated with budgetary stability). As the Tribunal pointed out: "The damage to constitutional values arising from the waiver of those claims after such a short deadline is disproportionate with a possible impairment in the value of budgetary predictability as a result of prolonging the period of limitation."[37]

In that case, it turned out that given such an important value as the right of ownership and other property rights associated with real property the regulation provided for excessive interference. As a result, that provision was eliminated from the legal order, although the consequences of the judgment of the Tribunal would become effective in the future and therefore provided no grounds for reopening the already finalised proceedings under which the opportunity to file claims had been already lost. Within the time limit specified by the Tribunal, after which the provision was to become ineffective (by 15 March 2019), the Parliament passed an amendment,[38] which prolonged the deadline up to three years.

36. Wyrok Trybunału Konstytucyjnego z dnia 7 marca 2018 r., K 2/17, [Judgment of the Constitutional Tribunal of 7 March 2018, K 2/17].

37. Ibidem.

38. Ustawa z dnia 22 lutego 2019 r. o zmianie ustawy – Prawo ochrony środowiska, Dz.U. 2019 poz. 452, [Act of 22 February 2019 amending the Environment Protection Act, Journal of Laws 2019, item 452].

Volume 9 Issue 1 (2023)

Conclusion

Environment protection is a value that is extensively regulated in the Polish legal system. The Constitutional provisions stipulate that it is a duty of both public authorities and private individuals. Those guarantees are not meant as substantive rights, but constitute principles to be observed by all other legislative acts. This does not mean, however, that environmental tasks enjoy priority since the adopted regulations have to ensure – in accordance with the definition of sustainable development – appropriate equilibrium between this value on one hand and social and civilizational development on the other, while any potential restriction of one of those rights for the sake of the other has to be provided for in a statute, must be proportionate (the least painful) and not violate the substance of a given right. It is in this spirit that any arising conflicts with the right of ownership (and other property rights), including the entitlements relating to real property, are resolved.

The hitherto judgments of the Constitutional Tribunal in this respect makes it possible to indicate certain boundaries delimited by the Constitution for the ecological policy of the state. It can be undoubtedly stated that it is admissible to establish the mechanism of controlling exploitation of plantings on a real property – both production forests as well as isolated trees and shrubs. Real property owners may be obliged to obtain permits for their removal or otherwise be punished by confiscation of timber or a fine. However, setting restrictions of an arbitrary nature or sanctions that are imposed automatically without the possibility to consider actual circumstances is against the principle of proportionality and infringes the right of ownership.

Moreover, the Constitutional Tribunal finds it unconstitutional to disproportionately narrow down the possibility to seek compensation for restrictions concerning the use of property in connection with environment protection. The merely two-year deadline allowed for filing such claims has been considered excessively oppressive – too short and unrestorable for justified reasons. In this case, one can only wonder whether the lengthening of this deadline by the legislator to three years constitutes an adequate safeguard of landowners' interests. It should be also noted that the regulation that was subject to the Tribunal's judgment originated from the Environment Protection Act, whereas a similar regulation stipulating merely a two-year deadline for filing claims is still provided for in the Water Act[39] (in a similar situation of restricting the use of real property owing to environment protection measures). It would be desirable for the Tribunal to appraise also this regulation.

39. Ustawa z dnia 20 lipca 2017 r. - Prawo wodne, Dz.U. 2017 poz. 1566, [Water Act of 20 July 2017, Journal of Laws 2017, item 1566].

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Volume 9 Issue 1 (2023)