

# Environmental Duties and Liability in the Constitution of the Republic of Poland

## Abstract

*The aim of this article is to present the provisions of the Constitution of the Republic of Poland relating to the environment and future generations, particularly through the lens of their interpretation in the case law of the Polish Constitutional Court. Focusing on the environmental regulations, the analysis embraces the following aspects: the notion of 'environment', the principle of sustainable development, constitutional rights and freedoms of the individual, the duties of public authorities and individuals, and legal liability. An important purpose of the analysis is an attempt to determine the legal consequences of violating these provisions which may be triggered in court proceedings.*

**Keywords:** Constitution of the Republic of Poland, environmental constitutionalism, right to a healthy environment, obligation to protect the environment, legal liability

## 1. Introduction

The 'environment' is the subject of extensive regulations in the Constitution of the Republic of Poland of 2 April 1997<sup>1</sup> (hereinafter 'the Constitution' or 'the Fundamental Law'). The reference to this concept in as many as five articles of the Constitution (namely Arts. 5, 31(3), 68(4), 74 and 86) demonstrates the constitutional legislator's particular concern for protecting environment-related values.<sup>2</sup>

The constitutional concept of the 'environment', just as most terms employed in the Fundamental Law, has not been further specified by means of a legal

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1 | Journal of Laws No 78, item 483, as amended.

2 | Cf. Rakoczy 2015, 75–76; Idem 2021, 124.



definition contained in this normative act. The Constitutional Court also noted it in its judgment of 13 May 2009, case ref. Kp 2/09, while pointing out that the term belongs to the category of constitutional 'general notions' with an established doctrinal content, generally known in the jurisprudence and having an 'autonomous meaning' which should not be assessed solely through the prism of corresponding concepts used in statutes (i.e. normative acts of a lower rank than the Constitution). However, the Constitutional Court emphasised that reference to statutory definitions does not *per se* constitute an error. Therefore, for the purposes of resolving individual cases, the Court may rely on the definition contained in the Act of 27 April 2001 – Environmental Protection Law<sup>3</sup> (hereinafter 'EPL'), according to which the 'environment' means "the totality of natural elements, including those transformed as a result of human activity, in particular the surface of the earth, minerals, waters, air, landscape, climate and other elements of biological diversity, as well as the mutual interactions between these elements" (Art. 3(39) EPL).<sup>4</sup>

Moreover, the Constitutional Court perceives the 'environment' as an element of constitutional axiology. In its jurisprudence, it has stated, *inter alia*, that 'environmental protection'<sup>5</sup> or the '(natural) environment' represents a constitutional value of particular importance, to which the process of interpreting the Fundamental Law should be subordinated.<sup>6</sup> In a different judgment, however, the Court pointed to the value of a 'healthy environment', a term that better reflects the notion of 'value' as defined in the Dictionary of the Polish language, i.e. "a feature of something that is good in a particular respect"<sup>7</sup> or "the qualities of something that determine that it satisfies specific needs".<sup>8</sup> As a result, it is not the 'environment' itself that ought to be regarded as a constitutional value but rather the environment in a 'proper condition' – notably, a 'healthy' one. In this context, the environment-related values under the Fundamental Law include, in addition to a "healthy environment", also an 'ecological balance' – which, according to the Constitutional Court, represents a defining element of the constitutional notions of 'environmental protection' and 'sustainable development' (Art. 5 of the Constitution)<sup>9</sup> – as well as 'ecological security' (Art. 74(1) of the Constitution), 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."<sup>10</sup>

3 | Journal of Laws of 2025, item 647, as amended.

4 | Cf. Judgment of the Constitutional Court of 13 May 2009, case ref. Kp 2/09 (OTK ZU no 5/A/2009, item 66).

5 | Judgment of the Constitutional Court of 20 December 2022, case ref. SK 66/21 (OTK ZU no A/2023, item 1).

6 | Judgments of the Constitutional Court of: 15 May 2006, case ref. P 32/05 (OTK ZU no 5/A/2006, item 56); 1 July 2014, case ref. SK 6/12 (OTK ZU no 7/A/2014, item 68).

7 | See: <http://bit.ly/3ZPiYOJ> [25.06.2025].

8 | See: <http://bit.ly/44hhIFw> [25.06.2025].

9 | Cf. Judgment of the Constitutional Court, case ref. Kp 2/09.

10 | Judgments of the Constitutional Court of: 6 June 2006, case ref. K 23/05 (OTK ZU no 6/A/2006, item 62); 28 November 2013, case ref. K 17/12 (OTK ZU no 8/A/2013, item 125).

Accepting the systematics proposed in the literature<sup>11</sup> as a starting point, the provisions of the Fundamental Law relating to the environment and its protection may be classified into four groups, which refer, respectively to: 1) the principle of sustainable development (Art. 5); 2) the rights and freedoms of the individual (Arts. 31(3) and 74(3)); 3) the duties of public authorities and individuals (Arts. 5, 68(4), 74(1), 74(2), 74(4) and 86); 4) legal liability (Art. 86). This division structures the discussion in the following sections of this article; the principle of sustainable development being examined within the part dedicated to the duty to protect the environment, since according to Art. 5 of the Constitution this principle constitutes the framework for the realisation of said duty. The analysis places particular emphasis on the interpretation of the above provisions in the case law of the Constitutional Court which is of particular importance as the body entrusted with delivering binding interpretations of the Fundamental Law.<sup>12</sup> It should be noted, however, that constitutional provisions concerning the environment have relatively rarely been the subject of interpretation by the Constitutional Court, as most of these provisions have only exceptionally served as substantive standards of review in proceedings before the Court.<sup>13</sup> More frequently, the term ‘environmental protection’ has appeared in the Court’s case law as one of the elements of the limitation clause associated with the principle of proportionality (Art. 31(3) of the Constitution).<sup>14</sup> In those instances, however, the Constitutional Court has focused primarily on the application of the requirements of suitability, necessity, and proportionality *sensu stricto*, rather than on the interpretation of the duty to protect the environment. Only the judgments in cases ref. SK 6/12, K 20/14, K 17/12 and K 13/18. show exceptions to this approach.

## 2. Fundamental rights and freedoms in the field of environmental protection

Upon the entry into force of the Constitution on 17 October 1997 the question arose as to whether it establishes a subjective right of the individual to an environment of proper quality.<sup>15</sup> This question was justified by the fact that the formerly binding

11 | Cf. Rakoczy 2021, 124–125; Zębek 2024, 127.

12 | Cf. Judgment of the Constitutional Court of 13 November 2013, case ref. P 25/12 (OTK ZU no 8/A/2013, item 122).

13 | Judgments of the Constitutional Court: case ref. K 23/05; case ref. Kp 2/09.

14 | Judgments of the Constitutional Court: case ref. P 32/05; case ref. SK 6/12; case ref. SK 66/21; of 21 April 2004, case ref. K 33/03 (OTK ZU no 4/A/2004, item 31); of 25 July 2006, case ref. P 24/05 (OTK ZU no 7/A/2006, item 87); of 26 March 2007, case ref. K 29/06 (OTK ZU no 3/A/2007, item 30); of 13 October 2010, case ref. Kp 1/09 (OTK ZU no 8/A/2010, item 74); of 28 November 2013, case ref. K 17/12 (OTK ZU no 8/A/2013, item 125); of 10 July 2014, case ref. P 19/13 (OTK ZU no 7/A/2014, item 71); of 28 September 2015, case ref. K 20/14 (OTK ZU no 8/A/2015, item 123); of 10 September 2020, case ref. K 13/18 (OTK ZU no A/2020, item 58); of 5 December 2023, case ref. P 2/17 (OTK ZU A/2023, item 94).

15 | Cf. Radecki 1998, 36.

Constitution of the Republic of Poland of 22 July 1952,<sup>16</sup> in Art. 71, provided as follows: “Citizens of the Republic of Poland have the right to use the value of the natural environment (...)”. According to the Constitutional Court, this provision gave rise to a ‘fundamental right’ of citizens to benefit from the natural environment, “and the Constitution undoubtedly refers here to an environment meeting the standards of proper quality and ensured ecological balance.”<sup>17</sup> The currently binding Fundamental Law contains no corresponding provision. At the same time, in its judgment in case ref. Kp 2/09, the Constitutional Court stated – in the context of Arts. 5, 68(4), 74 and 86, as well as Art. 31(3) of the Constitution – that these provisions do not establish or guarantee a subjective right to ‘live in a healthy environment’.<sup>18</sup> This position has been affirmed by certain representatives of legal doctrine.<sup>19</sup> However, an opposing view is also present in the literature, according to which the Constitution may serve as a basis for deriving a constitutional right to the environment, albeit differently defined in terms of its content.<sup>20</sup> Furthermore, in a limited number of judgments, voivodship administrative courts have pointed to a ‘subjective right to the environment’ or a ‘subjective right to ecological security’ derived from Art. 74 of the Constitution.<sup>21</sup>

In the field of environmental rights, the Fundamental Law quite clearly recognises only the right to be informed of the quality of the environment and its protection (Art. 74(3) of the Constitution).<sup>22</sup> This right is granted to ‘everyone’ – that is, to citizens and foreigners alike, as well as to legal persons and other organisational entities, regardless of their legal status, form of activity, or any other distinguishing characteristics.<sup>23</sup> However, it should be noted that, in the context of Art. 81 of the Constitution, ‘constitutional subjective right’ as derived from the above is questioned in legal doctrine.<sup>24</sup> Pursuant to that provision, the rights specified, *inter alia*, in Art. 74 of the Constitution “may be asserted subject to limitations specified by statute”. Thus far, the Constitutional Court has not had the opportunity to resolve this controversy under Art. 74(3), but it has unequivocally ruled on the nature of the more general right of access to public information (Art. 61 of the Constitution), the right to environmental information constituting then a specific manifestation thereof.<sup>25</sup> As seen by the Court, Art. 61(1) of the Constitution forms the source of

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

17 | Ruling of the Constitutional Court of 17 December 1991, case ref. U 2/91 (OTK ZU 1991, item 10).

18 | Cf. Judgment of the Constitutional Court, case ref. Kp 2/09.

19 | E.g. Garlicki 2003, 2; Habuda 2019, 108, 110–111; Uliasz 2021, 154.

20 | Survey of views presented in: Majchrzak 2022, 261–263.

21 | Cf. Judgments of the Voivodship Administrative Court in Warsaw of: 10 February 2015, case ref. IV SA/Wa 1304/14 (<http://bit.ly/4nlxckf>) [27.06.2025]; 7 July 2015, case ref. IV SA/Wa 1280/15 (<http://bit.ly/44m6tM2>) [27.06.2025]; Order of the Voivodship Administrative Court in Łódź of 30 December 2019, case ref. II SA/Lu 506/19 (<http://bit.ly/4eqT61x>) [27.06.2025].

22 | Cf. e.g. Haładyj 2003, 52; Rakoczy 2006, 220–223; Majchrzak 2022, 265.

23 | Cf. Garlicki 2003, 5; Rakoczy 2006, 220.

24 | Cf. Tarnacka 2009, 136.

25 | Cf. e.g. Garlicki 2003, 5; Rakoczy 2006, 219.

a ‘public subjective right’, meaning that “a citizen is guaranteed the possibility of effectively demanding specific conduct from public authorities, enforceable, if necessary, through appropriate procedural instruments”.<sup>26</sup> Therefore, the nature of this right should not vary depending on the subject matter of the public information – environmental or any other one. Moreover, it should be noted that, in the Constitutional Court’s view, Art. 81 of the Fundamental Law reduces only 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 situation 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 this act takes into account “a certain minimum standard of requirements”.<sup>27</sup>

As regards other subjective rights linked to environmental protection, it is necessary to refer to Art. 68(4) of the Constitution stating: “Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment”. This provision must be interpreted in conjunction with Art. 68(1) of the Fundamental Law, which lays down the right of everyone to have their health protected.<sup>28</sup> The Constitutional Court expressed the view that the latter provision constitutes the basis for deriving an individual’s subjective right to health protection. In the Court’s view, the substance of this right is the possibility to use a healthcare system functionally oriented towards combating and preventing diseases, injuries and disability. This right is accompanied by the obligation of public authorities to ensure the effective realisation of the conditions necessary for its enjoyment – such realisation cannot be illusory or merely potential; rather, the system in its entirety must be efficient. However, the Constitution does not make it possible to precisely determine the types or categories of health benefits falling under Art. 68(1) of the Fundamental Law, their sources of financing, the nature and structure of the entities responsible for their funding, or the ownership structure of healthcare providers. As a result, ‘the burden of constitutional guarantees is thereby transferred to the procedural level’, particularly to the correct determination by the legislator of the organisational framework requiring establishing a healthcare system that is precise, unambiguous, and functionally effective.<sup>29</sup> This

26 | Judgment of the Constitutional Court of 18 December 2018, case ref. SK 27/14 (OTK ZU no A/2019, item 5).

27 | Cf. Judgment of the Constitutional Court of 24 November 2015, case ref. K 18/14 (OTK ZU no 10/A/2015, item 165).

28 | Cf. Trzeciński 2003, 2.

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

system is also shaped by the duty imposed on public authorities under Art. 68(4) of the Constitution.<sup>30</sup> However, this provision does not constitute a source of a subjective right<sup>31</sup> and, therefore, cannot serve as a basis for lodging a constitutional complaint by an individual. This is due to the fact that, under the case law of the Constitutional Court, the right to health protection consists in the possibility of benefiting from the institutional and procedural solutions that form the healthcare system (i.e. access to health services), and not in the realisation by public authorities of the duty to prevent the consequences of environmental degradation.<sup>32</sup>

In exceptional instances, the Constitutional Court draws attention to the connection between environmental protection and certain subjective rights, namely the right to a court (Art. 45(1) of the Constitution),<sup>33</sup> as well as the right to ownership and other property rights (Art. 64(1) and (2) of the Constitution).<sup>34</sup>

The duty to protect the environment arises indirectly from Art. 31(3) of the Fundamental Law, which provides that “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”. Consequently, neither constitutional rights nor freedoms are absolute; among other things, considerations relating to environmental protection may constitute a legitimate justification for interference with such rights or freedoms.<sup>35</sup> Importantly, the ‘environmental premise’ is not limited solely to the expression ‘to protect the natural environment’ but may also be understood as encompassed within the phrase ‘protection of state security’, which includes, *inter alia*, ‘ecological security’.<sup>36</sup> This entails broader obligations upon public authorities than those derived strictly from the requirement ‘to protect the environment’.<sup>37</sup> Further constitutional conditions for the permissibility of such limitations include their introduction by statute, as well as the observance of their outer boundaries, namely the requirements of necessity and the prohibition on infringing the essence of rights and freedoms.<sup>38</sup> Under the established case law of the Constitu-

30 | Cf. Judgment of the Constitutional Court of 21 May 2024, case ref. K 27/23 (OTK ZU no A/2024, item 77).

31 | Cf. Judgment of the Constitutional Court of 22 July 2008, case ref. K 24/07 (OTK ZU no 6/A/2008, item 110); Florczyk-Wątor 2023, point 1.

32 | A different view, however, is expressed in: Trzciński 2003, 4–7.

33 | Cf. Judgments of the Constitutional Court of: 12 May 2021, case ref. SK 19/15 (OTK ZU no A/2021, item 25); 1 July 2021, case ref. SK 23/17 (OTK ZU no A/2021, item 63).

34 | Cf. Judgments of the Constitutional Court of: 3 July 2013, case ref. P 49/11 (OTK ZU no 6/A/2013, item 7); 21 July 2014, case ref. K 36/13 (OTK ZU no 7/A/2014, item 75).

35 | For more on this, see Rakoczy 2006, *passim*.

36 | Dissenting opinion of the Judge Teresa Liszcz to the Order of the Constitutional Court of 20 May 2009, case ref. Kpt 2/08 (OTK ZU 5/A/2009, item 78); Korzeniowski 2012, 182.

37 | Cf. Judgment of the Constitutional Court, case ref. K 23/05.

38 | Cf. Garlicki 2001, 6.

tional Court, this ‘necessity’ entails three elements: usefulness, indispensability, and proportionality *sensu stricto*. Based on the above constitutional provisions, the case law of the Constitutional Court has thus far examined the constitutionality of statutory provisions introducing restrictions – on the grounds of ‘environmental protection’ – on the right to property<sup>39</sup> and the freedom of economic activity.<sup>40</sup>

### 3. The protection of the environment and future generations as a duty and obligation

The regulation of environmental issues in the Fundamental Law emphasises the duty to protect the environment, which is imposed upon ‘the Republic’ (Art. 5 of the Constitution), ‘public authorities’ (Art. 74(1) and (2) of the Constitution), and ‘everyone’ (Art. 86 of the Constitution). Among these provisions, Art. 5 holds particular significance, as it is included in Chapter I of the Constitution, entitled ‘The Republic’, and thus forms part of the “fundamental constitutional provisions which define the basic and specially protected systemic features of the Republic of Poland”.<sup>41</sup> Following this provision, “The Republic of Poland (...) shall ensure the protection of the natural environment pursuant to the principle of sustainable development”. In the view of the Constitutional Court, the ‘primary method’ for achieving the aim of this provision (as well as other constitutional provisions on environmental protection and ecological security) is by adhering to the principle of sustainable development, which reflects international consensus, particularly the outcomes of the 1992 Rio de Janeiro Conference.<sup>42</sup> With appropriate caution, given the implications of interpreting constitutional provisions through statutory definitions, the Court proposes to understand the concept of ‘sustainable development’ in line with Art. 3(50) EPL. Accordingly, the Court understands it 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”.<sup>43</sup> Moreover, the Constitutional Court has noted that ‘sustainable development’ implies “the requirement that interference with the environment be limited as much as possible (i.e. the least harmful), and that the social benefits

39 | Judgments of the Constitutional Court: case ref. P 32/05; case ref. SK 6/12; case ref. SK 66/21; case ref. P 19/13; case ref. K 20/14; case ref. K 13/18; case ref. P 2/17.

40 | Judgments of the Constitutional Court: case ref. SK 66/21; case ref. K 33/03; case ref. P 24/05; case ref. K 29/06; case ref. Kp 1/09.

41 | Judgment of the Constitutional Court of 10 July 2000, case ref. SK 21/99 (OTK ZU no 5/2000, item 144).

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

43 | Judgment of the Constitutional Court, case ref. Kp 2/09.

be proportionate and socially adequate in relation to the damage caused”.<sup>44</sup> At the same time, the Court emphasised that: “The principles of sustainable development encompass not only nature conservation and spatial planning, but also adequate concern for social and civilisational development, which includes the need to build essential infrastructure to support human life as well as the life of individual communities, in accordance with civilisational standards. The idea of sustainable development therefore entails the need to consider various constitutional values and to balance them appropriately”.<sup>45</sup> The Constitutional Court further pointed out that “the principle of sustainable development is of an objective nature only and does not provide a normative basis for deriving specific subjective rights enforceable by way of a constitutional complaint”.<sup>46</sup>

Arts. 5 and 74(2) of the Constitution impose the duty to protect the environment upon public authorities, while Art. 74(1) requires them to “pursue policies ensuring the ecological security of current and future generations”. Additionally, Art. 74(4) of the Constitution obliges public authorities to “support the activities of citizens to protect and improve the quality of the environment”. In the context of the constitutional meaning of the term ‘environmental protection’, the Constitutional Court, in its judgment in case ref. Kp 2/09, referred to the statutory definition provided in Art. 3(13) EPL, at the same time suggesting reliance on this definition when adjudicating at least certain matters before the Court. According to this definition, environmental protection means: “taking or abandoning actions, which allows environmental balance to be maintained or restored; the protection includes, in particular: a) reasonable managing of the environment and environmental resources in line with the principle of sustainable development; b) preventing pollution; c) restoring items of the environment to a favourable status”. The Constitutional Court also referred this concept to Art. 74(1) of the Constitution, particularly to the phrase ‘ecological security’ used therein, understood as “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”.<sup>47</sup> It held that: “environmental protection is one of the components of ecological security, but the tasks of public authorities are broader – they also include activities aimed at improving the current state of the environment and planning for its future development”.<sup>48</sup> At the same time, however, the Court emphasised that ensuring environmental protection, by virtue of being set out in a provision of systemic importance – namely Art. 5, Chapter I of the Constitution – requires a more comprehensive approach than the state policy directive contained in Art. 74(1) of the Constitution.<sup>49</sup>

44 | *Ibid.*; cf. also Judgment of the Constitutional Court, case ref. P 19/13.

45 | Judgments of the Constitutional Court: case ref. K 23/05; case ref. K 17/12; case ref. K 20/14.

46 | Order of the Constitutional Court of 7 April 2016, case ref. Ts 54/15 (OTK ZU no B/2016, item 462).

47 | Judgment of the Constitutional Court, case ref. K 23/05.

48 | *Ibid.*

49 | Judgments of the Constitutional Court: case ref. K 17/12; case ref. K 52/12.

The addressees of the above-mentioned duties are the ‘public authorities’. In the interpretation of the Constitutional Court these obligations are directed “primarily to the Parliament, the pace and manner of their implementation depending thereon”. Nevertheless, they apply to “all public authorities of the Republic of Poland” – encompassing not only the legislative and executive bodies, but also the judiciary and local government ones,<sup>50</sup> as well as other institutions – including those which do not constitute state or self-government entities – insofar as they exercise delegated public authority functions.<sup>51</sup>

The beneficiaries of public activities under Arts. 5 and 74 of the Fundamental Law are not only the ‘present generation’, but also ‘future generations’. This follows from the express wording of Art. 74(1) of the Constitution, as well as the above-mentioned concept of sustainable development (cf. Art. 5 of the Constitution). Furthermore, such an orientation of the duty to protect the environment and ensure ecological security may also be derived from the Preamble to the Constitution.<sup>52</sup> According to the relevant part thereof: “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”. It may be assumed that this intergenerational legacy encompasses a set of constitutional values: the democratic state of law, a healthy environment, national heritage, human life and health, individual liberty, ecological security, and property, as well as the universal values referred to in the Preamble – those derived from the Christian heritage of the Nation or from other sources. Under the case law of the Constitutional Court, the above-quoted passage of the Preamble should be interpreted as imposing a duty to protect these values, incumbent upon both public authorities and citizens.<sup>53</sup> Respecting the interests of future generations also reflects the implementation of the duty of intergenerational solidarity and intergenerational justice, as derived from the principles of solidarity and social justice laid down in the Preamble and in Art. 2 of the Constitution.<sup>54</sup>

In the opinion of the Constitutional Court, Arts. 5, 74(1), 74(2), and 74(4), as well as Art. 68(4) of the Constitution – discussed in subsection 2 of this study – constitute sources of ‘program norms’.<sup>55</sup> They identify the goals and tasks of the State,<sup>56</sup> and impose specific obligations upon public authorities with respect to the development and implementation of policies relating to environmental

50 | Judgment of the Constitutional Court, case ref. Kp 2/09.

51 | Cf. e.g. Judgment of the Constitutional Court of 26 July 2012, case ref. P 8/11 (OTK ZU no 7/A/2012, item 84).

52 | For more on this, see Majchrzak 2022, 274–277.

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

54 | For more on this, see Majchrzak 2022, 283–284.

55 | Cf. Judgment of the Constitutional Court, case ref. Kp 2/09; Order of the Constitutional Court, case ref. Ts 54/15; Gizbert-Studnicki & Grabowski 1997, 97–98, 111; Czekałowska 2022, 101, 146, 151.

56 | Cf. Judgment of the Constitutional Court, case ref. Kp 2/09.

protection and ecological security.<sup>57</sup> However, “according to the settled case law of the Constitutional Court, such provisions do not, in themselves, provide a sufficient basis for construing concrete subjective rights of the individual that would be protected by means of a constitutional complaint”.<sup>58</sup> Program norms do not confer upon individuals the right to raise ‘positive’ claims to specific actions of or benefits from public authorities,<sup>59</sup> since they leave those authorities with discretion as to the selection of the means for achieving the constitutionally prescribed goals.<sup>60</sup> Nevertheless, despite their nature, the Constitutional Court does not rule out the possibility of relying upon such norms as independent standards for constitutional review. This approach stems from the fact that such provisions allow for the identification of a “minimum threshold of constitutional guarantees” within the areas they address. On this ground, it is possible, for instance, to challenge a complete failure to act on the part of public authorities or allege the creation of illusory measures, which, in practice, fail to fulfil the stated constitutional goals. “The Constitutional Court should limit its role in such review to assessing whether the means adopted by the legislature were clearly and unequivocally unsuitable for achieving the goal defined in such a provision”.<sup>61</sup>

In addition to specifying the obligations of public authorities, the Constitution establishes in Art. 86 “a general duty of care for the condition of the environment; this general obligation is accompanied by the principle – also of a general nature (imposed on ‘everyone’) – of responsibility for causing the deterioration of the environment”.<sup>62</sup> This is one of the few general obligations explicitly expressed in the Fundamental Law, which further emphasises the importance of environmental protection.<sup>63</sup> According to the Constitutional Court, the ‘duty to care for the environment’ comprises not only a ‘negative’ aspect – the prohibition on destroying or degrading elements of the environment, polluting water, air or soil – but also a ‘positive’ one: the duty to prevent environmental damage, manage it rationally, and restore natural elements to a proper condition.<sup>64</sup> Moreover, in the Court’s view, “the general obligations regarding environmental protection, set out in the Constitution, are not limited to prohibiting or requiring specific behaviour; they go much further as they empower the legislator to restrict constitutional rights and freedoms when necessary to fulfil the obligation to protect the environment”<sup>65</sup> (cf. Art. 31(3) of the Constitution).

57 | Order of the Constitutional Court, case ref. Ts 54/15.

58 | *Ibid.*

59 | Gizbert-Studnicki & Grabowski 1997, 111–112.

60 | E.g. Judgment of the Constitutional Court of 18 October 2017, case ref. K 27/15 (OTK ZU no A/2017, item 74).

61 | *Ibid.*

62 | Judgments of the Constitutional Court: case ref. Kp 2/09; case ref. SK 6/12.

63 | Judgment of the Constitutional Court, case ref. K 20/14.

64 | Judgments of the Constitutional Court: case ref. SK 6/12; case ref. K 20/14.

65 | Judgment of the Constitutional Court, case ref. K 20/14.

The Constitutional Court has also expressed its position on the interpretation of the term ‘everyone’ as defining the personal scope of the obligation laid down in Art. 86 of the Fundamental Law. In its judgment in case ref. K 13/18, it explained that this obligation has a ‘universal nature’ and is addressed to “natural persons, legal persons, as well as organisational units, regardless of their nature or the type of activity they pursue”.<sup>66</sup> The legal literature defines the group of addressees even more precisely, listing: Polish citizens, foreigners, economic entities – Polish, mixed, and foreign ones – subject to the Polish legal order, other organisational units, as well as public administration bodies – both governmental and self-governmental.<sup>67</sup>

#### **4. Liability for violation of constitutional rights and obligations (including judicial enforcement)**

1. The concept of legal liability may be understood, following W. Lang, as the attribution to a specific entity of negative legal consequences (sanctions – *author’s note*) resulting from incidents or conditions subject to negative normative qualification.<sup>68</sup> Here, the question arises as to what these consequences are, how they are to be concretised (applied), and what the competences of the relevant authorities (particularly, the courts) are in cases involving violations of the above-mentioned provisions of the Constitution relating to environmental matters. This question is linked to the assumption that normative nature is one of the features of the Fundamental Law, and therefore, it is an act composed entirely of provisions capable to provide grounds for the construction of legal norms.<sup>69</sup>

In the Polish legal order, most constitutional provisions are (and must be) detailed and further developed through regular statutes,<sup>70</sup> and subsequently – where appropriate – through secondary legislation implementing those statutes (i.e. regulations and acts of local law). This rule also applies to the constitutional provisions on environmental protection. Therefore, legal responsibility for their violation may encompass, firstly, the actions of the legislator in operationalising these provisions through normative acts of a lower order than the Constitution (in particular, statutes, regulations, and acts of local law); secondly, the conduct of other public authorities – in particular, executive bodies (public administration) – involving the combined application of relevant constitutional provisions and other normative acts adopted to implement them; and thirdly, the actions of other

66 | Judgment of the Constitutional Court, case ref. K 13/18.

67 | Boć 2000, 194; Haładyj 2003, 55–56.

68 | Lang 1986, 385.

69 | Cf. Order of the Constitutional Court of 22 March 2000, case ref. P 12/98 (OTK ZU no 2/2000, item 67).

70 | Cf. *ibid.*

entities (as part of the category referred to as ‘everyone’) in connection with the fulfilment of the constitutional duty to care for the state of the environment (Art. 86 of the Constitution), as operationalised in other normative acts (especially statutes, regulations, and acts of local law). The issue of the liability of the above-mentioned ‘public authorities’ and ‘everyone’ for the violation of constitutional environmental provisions is closely linked to the problem of the direct application of the Constitution (cf. Art. 8(2) of the Fundamental Law). This concerns, in particular, the judicial authorities which are empowered to determine such liability and the negative legal consequences arising therefrom for an individual or an entity that has breached the constitutional provisions. The direct application of the Fundamental Law may take three forms: 1) autonomous application – where a constitutional provision constitutes the main, and sometimes even the sole, basis for a judgment (a scenario occurring only exceptionally); 2) combined application of the Constitution and a statute, or possibly another normative act – where the matter at hand is regulated simultaneously at both levels; 3) confrontational (collision-based) application – where the Constitution serves as a benchmark for reviewing the constitutionality of a lower-ranking normative act.<sup>71</sup>

2. As a preliminary point, it should be emphasised that the issue of legal liability is directly addressed in the Fundamental Law in Art. 86 which stipulates that “everyone shall be held responsible for causing degradation of the environment and the principles of such responsibility shall be specified by statute”. It is widely recognised as the constitutional basis for the ‘polluter pays’ principle.<sup>72</sup> However, due to the statutory reference embedded in this provision, the constitutional concept of liability does not possess an autonomous character. Rather, it entails a reference to the forms of liability that exist within the Polish legal system, including penal liability *sensu stricto*, liability for misdemeanours, civil liability, and administrative liability, all of which are regulated by various statutes<sup>73</sup> – in particular, the EPL, the Act of 13 April 2007 on the Prevention and Repair of Environmental Damage,<sup>74</sup> the Act of 23 April 1964 – Civil Code,<sup>75</sup> the Act of 6 June 1997 – the Penal Code.<sup>76</sup> In such cases, a breach of Art. 86 of the Constitution – and, consequently, the attribution of liability based thereon – will result from a violation of specific statutory provisions that operationalise this constitutional norm and from the fulfilment of the statutory premises for liability. Therefore, in essence, the statutory provisions themselves constitute the proper and sufficient legal basis for adjudication. Provided they are clear, precise, and free from constitutional doubt, they exclude the conclusion that the constitutional provision in question forms, even partially, the

71 | Florczak-Wątor 2014, 320, 329, 332, 343; Garlicki 2022, 34–35.

72 | Haładyj 2003, 54; Trzcińska 2021, 144.

73 | Czekałowska 2022, 171; Haładyj 2003, 55; Radecki 2002, 38.

74 | Journal of Laws of 2020, item 2187.

75 | Journal of Laws of 2025, item 1071, as amended.

76 | Journal of Laws of 2025, item 383, as amended.

basis of the legal assessment<sup>77</sup> or serves as a normative standard for evaluating the conduct of the party held liable.

From the perspective of liability for a breach of constitutional environmental rights or obligations, particular importance must be attached to those mechanisms for the protection of the legal order in which the provisions of the Constitution form one of the elements of the legal basis for adjudication – without which the normative standard for evaluating the contested conduct of a ‘public authority’ or ‘anyone’ cannot be reconstructed. Undoubtedly, such situations arise in the context of the exercise of powers by the Constitutional Court or an administrative court, especially involving the direct ‘collision-based’ (or ‘confrontational’) application of the Constitution by these judicial authorities.<sup>78</sup>

3. Potentially, all provisions of the Fundamental Law relating to the environment may serve as standards of review in proceedings before the Constitutional Court (for the specific nature of standards derived from program norms, see subsection 3 of this study; for the standard arising from Art. 74(3), see subsection 2). However, the review exercised by the Court is not uniform in application. Its subjective and objective prerequisites vary depending on whether it concerns an abstract review (initiated by an application from an authorised body) or a specific review (initiated by a constitutional complaint or a legal question of a court).<sup>79</sup> An application for abstract review (i.e. not related to a specific case pending before a court or public authority) may be submitted by entities whose procedural standing is either not subject to material limitations (Art. 191(1) point 1 of the Constitution)<sup>80</sup> or is restricted to challenging provisions concerning “matters falling within the scope of their activity” (Art. 191(1) points 2–5<sup>81</sup> in conjunction with Arts. 186(2) and 191(2) of the Constitution).<sup>82</sup> Among the entities with limited standing, these are only the constitutive organs of units of local government that are of relevance in the context of challenging compliance with the environmental provisions of the Constitution, since only the scope of their activity encompasses matters of environmental protection.

As part of the abstract review of constitutionality, statutes, international agreements and legal provisions issued by central state organs may be challenged (Art.

77 | Cf. Florczak-Wątor 2014, 329–330.

78 | Cf. Masternak-Kubiak 2022, 139–141; Mączyński & Łyszowska 2005, 35–36.

79 | E.g. Judgment of the Constitutional Court of 15 May 2012, case ref. P 11/10 (OTK ZU no 5/A/2012, item 50).

80 | “The President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens’ Rights”.

81 | “2) the National Council of the Judiciary, to the extent specified in Art. 186(2); 3) the constitutive organs of units of local government; 4) the national organs of trade unions as well as the national authorities of employers’ organizations and occupational organizations; 5) churches and religious organizations”.

82 | Cf. Order of the Constitutional Court of 23 September 2009, case ref. P 81/08 (OTK ZU no 8/A/2009, item 130).

188 points 1–3 of the Constitution). The latter include, in particular, implementing regulations (Arts. 87(1) *in fine* and 92 of the Constitution),<sup>83</sup> resolutions of the parliamentary chambers,<sup>84</sup> and internal acts of central government bodies<sup>85</sup> (Art. 93 of the Constitution), provided that they express general and abstract norms binding on their addressees (since the decisive criterion is the substantive normativity, not merely the formal classification of an act, e.g. as a regulation issued by the Council of Ministers or a minister<sup>86</sup>). Environmental policy acts adopted by the Council of Ministers may also, in principle, be subject to an application for constitutional review, provided they possess normative features – in particular, if they interfere with constitutional rights or freedoms of individuals or with the legal status of local government units.<sup>87</sup> It should be noted, however, that the Constitutional Court takes a cautious approach towards the admissibility of reviewing ‘state policy acts’. The Court has held that planning (policy) norms, which constitute the ‘material content’ of such acts, are not legal norms of a general and abstract nature. Moreover, the process of making political and economic choices, as well as the assessment of the accuracy and fairness of such decisions, remains, in principle, outside the scope of a review carried out by the Constitutional Court.<sup>88</sup>

In the case of a constitutional complaint, the constitutional review concerns the provision of a normative act based on which a final ruling for the law enforcement was issued, regarding freedoms, rights, or obligations defined in the Constitution. Such a complaint may be lodged by “anyone whose constitutional freedoms or rights have been infringed” (Art. 79(1) of the Constitution). This construction of the conditions for a constitutional complaint implies that only those provisions of the Fundamental Law which give rise to individual subjective rights may serve as the standard for review.<sup>89</sup> In the context of environmental provisions, this essentially includes only Art. 74(3), and additionally Art. 31(3) of the Constitution when applied in conjunction with another provision establishing a subjective right that is being restricted on the grounds of ‘environmental protection’. It is also worth noting that, due to the broad subjective scope of the right under Art. 74(3) of the Constitution, a complainant may not only be a natural person (a Polish citizen, a foreign national, or a stateless person), but also a legal person or another organisational unit (in

83 | E.g. Judgment of the Constitutional Court of 27 November 2012, case ref. U 4/12 (OTK ZU no 10/A/2012, item 124).

84 | E.g. Judgment of the Constitutional Court of 29 November 2008, case ref. U 1/08 (OTK ZU no 9/A/2008, item 160).

85 | E.g. Judgment of the Constitutional Court of 14 April 2014, case ref. U 8/13 (OTK ZU no 4/A/2014, item 39).

86 | Cf. Judgments of the Constitutional Court of: 5 June 2001, case ref. K 18/00 (OTK ZU no 5/2001, item 118); 8 April 2009, case ref. K 37/06 (OTK ZU no 4/A/2009, item 47).

87 | Cf. e.g. Judgment of the Voivodship Administrative Court in Warsaw of 17 October 2023, case ref. I SA/Wa 404/23 (<http://bit.ly/4nM1tjx>) [9.07.2025].

88 | Cf. Order of the Constitutional Court of 20 June 2001, case ref. K 35/00 (OTK ZU no 6/2001, item 167).

89 | E.g. Order of the Constitutional Court, case ref. Ts 54/15.

particular, an environmental organisation) – generally, any entity possessing legal capacity to act as an autonomous holder of the right to environmental information, the violation of which is being alleged.<sup>90</sup> Nevertheless, entities performing public authority functions in the material sense, such as units of local government, public economic operators,<sup>91</sup> or political parties,<sup>92</sup> are excluded from this group.

A legal question may be submitted by a court (subjective criterion) and may concern the constitutionality of a provision of a normative act (objective criterion), if the resolution of a case pending before that court is preconditioned by the answer to that question (functional criterion)<sup>93</sup> (Art. 193 of the Constitution).

It is worth noting that the aforementioned ‘normative act’, as the subject of a constitutional complaint or a legal question, includes not only the acts listed in Art. 188 points 1–3 of the Constitution, but also all acts meeting the material criterion of normativity – i.e. those that contain general norms directed to a generically defined addressee, prescribing for them essentially repeatable (abstract) conduct. This definition may include, in particular, acts of local law, EU regulations,<sup>94</sup> and even planning acts (e.g. environmental policies),<sup>95</sup> insofar as they establish general and abstract rules of conduct that are legally binding on their addressees.<sup>96</sup>

4. The constitutional provisions concerning environmental protection are also applied by administrative courts in the exercise of their competence to review the activities of public administration (Art. 184 of the Constitution). Pursuant to Art. 1(2) of the Act of 25 July 2002 – Law on the Organisation of Administrative Courts,<sup>97</sup> such review is – in principle – exercised in terms of compliance with the law, including compliance with the Constitution.<sup>98</sup> Art. 3(2) of the Act of 30 August 2002 – Law on the Proceedings before Administrative Courts<sup>99</sup> (hereinafter: ‘LPAC’) lists the categories of conduct by public administrative authorities that may be challenged before an administrative court. These include both individual

90 | Cf. e.g. Order of the Constitutional Court of 12 October 2004, case ref. Ts 35/04 (OTK ZU no 1/B/2005, item 25).

91 | Order of the Constitutional Court of 20 December 2007, case ref. SK 67/05 (OTK ZU no 11/A/2007, item 168).

92 | Order of the Constitutional Court of 15 September 2011, case ref. Ts 256/09 (OTK ZU no 5/B/2011, item 359).

93 | E.g. Judgment of the Constitutional Court of 21 November 2024, case ref. P 11/24 (OTK ZU no A/2024, item 109).

94 | Judgment of the Constitutional Court of 16 November 2011, case ref. SK 45/09 (OTK ZU no 9/A/2011, item 97); Szmulik 2006, 172–178; Wiącek 2011, 91, 113–117.

95 | Majchrzak 2023, 54–60.

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

97 | Journal of Laws of 2024, item 1267.

98 | E.g. Judgments of the Supreme Administrative Court of: 6 May 2013, case ref. II OSK 2608/11 (<http://bit.ly/3InFxUF>) [09.07.2025]; 6 May 2013, case ref. II OSK 2609/11 (<http://bit.ly/3liUHe0>) [9.07.2025]; 9 January 2018, case ref. II GSK 1760/17 (<http://bit.ly/407QpMG>) [9.07.2025]; 23 January 2018, case ref. II GSK 3614/17 (<http://bit.ly/44y1Sc8>) [9.07.2025].

99 | Journal of Laws of 2024, item 935, as amended.

acts (e.g. administrative decisions, orders issued in administrative or enforcement proceedings, and other acts or actions in the field of administration relating to rights or obligations arising under legal provisions) and general acts (in particular, local laws adopted by the bodies of local self-government units and territorial government administration authorities).

A complaint to the administrative court against the above-mentioned actions of public administration may, in principle, be lodged by “anyone who has a legal interest therein, the public prosecutor, the Commissioner for Citizens’ Rights, the Commissioner for Children’s Rights, and a social organisation within the scope of its statutory activities, in matters concerning the legal interests of other persons, provided that it participated in the administrative proceedings” (Art. 50(1) LPAC). The last stipulation means that a social organisation’s standing to lodge a complaint is limited solely to decisions and orders issued in such ‘proceedings’ (i.e. a series of procedural acts aimed at resolving an individual case by means of an administrative decision), and does not extend, in particular, to general acts of public administration (including acts of local law).<sup>100</sup> This requirement of prior participation in the ‘administrative proceedings’ does not apply, however, to ‘environmental organisations’ participating in proceedings ‘requiring public participation’ in environmental protection. Nevertheless, even these provisions allow such organisations to file a complaint with the administrative court only against a decision issued in the above-mentioned proceedings,<sup>101</sup> which also encompasses orders related to such proceedings (in particular, an order refusing to admit the environmental organisation to participate in the proceedings).

A review of the case law of administrative courts concerning the application of constitutional environmental provisions reveals several issues that have emerged in this context.

Firstly, the violation of these provisions has often been raised by complainants as a legal argument (sometimes directly, independently of an allegation of statutory violation) and has subsequently served as a standard for reviewing the legality of individual ‘acts’ of public administrative authorities, particularly administrative decisions and cases of inaction regarding access to environmental information. This has concerned the following standards invoked in conjunction with one another: Arts. 5 and 74 of the Constitution;<sup>102</sup> Arts. 5 and 74(4) of the Constitution;<sup>103</sup>

100 | Cf. Order of the Supreme Administrative Court of 29 May 2015, case ref. II GSK 976/15 (<http://bit.ly/44C1FCb>) [9.07.2025].

101 | Art. 44(3) of the Act of 3 October 2008 on Sharing Information on the Environment and Its Protection, Public Participation in Environmental Protection, and on Environmental Impact Assessments, Journal of Laws of 2024, item 1112, as amended.

102 | Judgments of the Supreme Administrative Court of: 2 February 2009, case ref. II OSK 62/08 (<http://bit.ly/46LkyEX>) [11.07.2025]; 18 October 2023, case ref. II OSK 1952/23 (<http://bit.ly/4gxDMkW>) [11.07.2025].

103 | Judgment of the Voivodship Administrative Court in Poznań of 25 February 2009, case ref. II SA/Po 702/08 (<http://bit.ly/45ZH8Jy>) [11.07.2025].

Arts. 5, 74 and 86 of the Constitution;<sup>104</sup> Art. 31(3) in connection with Art. 86 of the Constitution<sup>105</sup> (in the context of the proportionality of an interference with the right to property); Art. 68(4), Arts. 74(1), (2), (4) and 86 of the Constitution;<sup>106</sup> Arts. 74(1) and (2) of the Constitution;<sup>107</sup> Art. 74(3) and (4) of the Constitution;<sup>108</sup> Art. 74(3) in connection with Art. 31(3) of the Constitution.<sup>109</sup>

Secondly, the constitutional provisions relating to environmental protection served as the basis for alleging a violation of the law, and subsequently as a standard for review of the local law acts' legality. These included: Art. 31(3) in connection with Arts. 5 and 74(1) of the Constitution (in the context of the proportionality of interference with the right to property<sup>110</sup> or the freedom of economic activity);<sup>111</sup> Art. 74(1), (2), and (4) of the Constitution.<sup>112</sup>

Thirdly, constitutional environmental provisions were invoked by complainants as a source of a legal interest justifying the lodging of a complaint against an act of local law or another resolution of a local government authority (cf. Art. 50(1) LPAC). In response, administrative courts held that such an 'interest' cannot be derived from the constitutional obligations to protect the environment, as the Fundamental Law in this regard does not create a specific entitlement that could be pursued, for example, through judicial proceedings; it does not constitute a source of direct, individual, and specific legal interest of the complainant<sup>113</sup> that would entitle them to lodge an administrative court complaint.

104 | Judgment of the Voivodship Administrative Court in Warsaw of 4 April 2017, case ref. VII SA/Wa 199/17 (<http://bit.ly/3K3Zsjk>) [11.07.2025].

105 | Judgment of the Voivodship Administrative Court in Szczecin of 18 November 2009, case ref. II SA/Sz 992/09 (<http://bit.ly/3VW8mLk>) [11.07.2025].

106 | Judgment of the Voivodship Administrative Court in Lublin of 29 June 2022, case ref. II SA/Lu 801/21 (<http://bit.ly/4mivaQd>) [11.07.2025].

107 | Judgments of the Supreme Administrative Court of: 18 January 2008, case ref. II OSK 1887/06 (<http://bit.ly/4nGtMIp>) [11.07.2025]; 14 December 2011, case ref. II OSK 1871/10 (<http://bit.ly/4pxJ0kz>) [11.07.2025].

108 | Judgments of the Voivodship Administrative Court in Lublin of: 11 October 2022, case ref. II SAB/Lu 108/22 (<http://bit.ly/41Ku2xm>) [11.07.2025]; 27 October 2022, case ref. II SAB/Lu 88/22 (<http://bit.ly/45G5BSR>) [11.07.2025].

109 | Judgment of the Voivodship Administrative Court in Lublin of 28 February 2023, case ref. II SA/Lu 885/22 (<http://bit.ly/47CEKty>) [11.07.2025].

110 | Judgments of the Supreme Administrative Court of: 6 September 2011, case ref. II OSK 1217/11 (<http://bit.ly/4lwS7yN>) [11.07.2025]; 24 May 2012, case ref. II OSK 624/12 (<http://bit.ly/41dzvg0>) [11.07.2025]; 9 December 2024, case ref. II OSK 2318/23 (<http://bit.ly/3jihQxL>) [11.07.2025]; Judgment of the Voivodship Administrative Court in Warsaw, case ref. IV SA/Wa 1280/15.

111 | Judgment of the Supreme Administrative Court, case ref. II OSK 1217/11.

112 | Ibid.

113 | Orders of the Supreme Administrative Court of: 9 April 2019, case ref. II OSK 883/19 (<http://bit.ly/4mjAmNC>) [11.07.2025]; 5 May 2023, case ref. II OSK 659/23 (<http://bit.ly/4mrgkrG>) [11.07.2025]; Judgment of the Voivodship Administrative Court in Poznań of 25 March 2009, case ref. II SA/Po 1052/08 (<http://bit.ly/3UFzRZ8>) [11.07.2025]; Orders of the Voivodship Administrative Court in: Lublin of 30 December 2019, case ref. II SA/Lu 506/19 (<http://bit.ly/44EiUTs>) [11.07.2025]; Opole of 19 May 2022, case ref. II SA/Op 556/21 (<http://bit.ly/3GiImG8>) [11/07.2025].

Fourthly, in exceptional cases, administrative courts have addressed the characteristics of program norms derived from Arts. 5, 74, and 86 of the Constitution and the consequences arising therefrom. The Voivodship Administrative Court in Warsaw, in its judgment in case ref. VII SA/Wa 199/17, noted that the above provisions “determine the directions of the state’s action, both in the process of law-making and law application. These provisions, however, do not contain legal norms that impose precise patterns of conduct on clearly defined addressees, to be conclusively applied. The above-mentioned provisions of the Constitution of the Republic of Poland may and should, therefore, serve as a basis for interpreting statutes in conformity with the Constitution (so-called pro-constitutional interpretation). Nevertheless, they serve only as a standard for interpreting and applying statutory provisions in a way that allows for the fullest implementation of the constitutional values set out in the cited provisions”. At the same time, the view expressed by the Court did not prevent it from concluding that “in the case under consideration, there was no violation of the constitutional provisions indicated by the complainant”.<sup>114</sup>

5. Liability for the violation of constitutional norms concerning environmental protection, as determined by the Constitutional Court and administrative courts, is linked to a sanction which, according to the terminology adopted in legal theory, may be described as “relative nullity (annulability)” of a conventional act<sup>115</sup> – in this context, specifically a normative act or an administrative decision.

The effect of a judgment of the Constitutional Court declaring legal norms unconstitutional is the loss of their binding force, understood as a legal event resulting in the cessation of the obligation to apply the legal norm by its addressees. The Polish model of constitutional review adopts the concept of revocability/invalidation of a normative act, which may be derived from Art. 190(3) of the Constitution. This provision indicates the consequences of a Constitutional Court judgment, including a judgment of unconstitutionality. As of the date of publication of the ruling in the relevant official journal – or upon the date indicated by the Constitutional Court, provided that the legislator has not amended the norm during the deferral period – the unconstitutional norm is eliminated from the system of sources of law.<sup>116</sup>

A judgment of an administrative court recognising a complaint and thereby establishing the unlawfulness (including unconstitutionality) of the challenged conduct of a public administration authority is, as a rule, of a cassatory nature. The court adjudicates only on: the annulment or declaration of nullity of a decision or order (Art. 145(1) LPAC); the annulment of an individual act or the declaration of

114 | Judgment of the Voivodship Administrative Court in Warsaw, case ref. VII SA/Wa 199/17. Cf. also Judgment of the Supreme Administrative Court, case ref. II OSK 1952/23.

115 | Cf. Chauvin, Stawecki & Winczorek 2017, 117.

116 | Judgment of the Constitutional Court of 10 March 2022, case ref. K 7/21 (OTK ZU no A/2022, item 24).

ineffectiveness of an action (Art. 146(1) LPAC); the declaration of nullity of a resolution or act (including an act of local law) of local government bodies and their associations or territorial government administration bodies (Art. 147(1) LPAC); or the annulment of a supervisory act (Art. 148 LPAC). This results in the removal of the defective administrative acts from legal circulation either with *ex tunc* or *ex nunc* effect.

## 5. In lieu of a conclusion – best practices and *de lege ferenda* proposals

An analysis of the case law of the Constitutional Court and the views expressed by representatives of legal scholars, conducted for the purposes of this study makes it possible to identify two elements that may be regarded as best practices in the application of constitutional provisions relating to the environment.

The first one may be inspired by the Court's judgments in cases concerning the financing of local government units, particularly those relating to the so-called income equalisation system for such units.<sup>117</sup> These judgments imply the obligation to interpret the principle of sustainable development (Art. 5 of the Constitution) to a broader material scope than environmental protection alone, and treat this principle as independent (autonomous), encompassing in its essence a 'mechanism for balancing various values'<sup>118</sup> not necessarily including the appropriate state of the environment. Therefore, starting from the concept of the 'established legal notions' and the meaning attributed to 'sustainable development' in international law, the content of this principle should be sought, firstly, in the principles of solidarity and social justice (intra-generational and intergenerational – cf. the Preamble and Art. 2 of the Constitution), thus directing its normative impact towards the good and well-being of both present and future generations. Secondly, the content of this principle should also be recognized as encompassing the requirements arising from the proportionality test (i.e. Art. 2 and Art. 31(3) of the Constitution, applied *mutatis mutandis*). Thirdly, it would contain the rules for balancing values focused on social or economic development, and other values that conflict with the previous ones, including a healthy environment, but also, for instance, national heritage, an adequate condition of public finances or state ownership – or alternatively, it would cover only the balancing of 'pro-development' values.

Another best practice should be to interpret Art. 68 of the Constitution in such a way that sections 2 to 5 thereof are regarded as a substantive complement to the subjective right to health protection enshrined in Art. 68(1). This is justified

117 | Judgements of the Constitutional Court of: 31 January 2013, case ref. K 14/11 (OTK ZU no 1/A/2013, item 7); 4 March 2014, case ref. K 13/11 (OTK ZU no 3/A/2014, item 28); 6 March 2019, case ref. K 18/17 (OTK ZU no A/2019, item 10).

118 | Cf. Judgements of the Constitutional Court: case ref. K 23/05; case ref. K 17/12.

on the grounds of systemic interpretation which recognises that we are dealing here with a single, editorially coherent provision. This would mean that Art. 68(4), in conjunction with Art. 64(1) of the Constitution, could constitute a source of an individual's subjective right to health protection.<sup>119</sup> This right would encompass a claim (including the constitutional complaint) requiring public authorities to prevent the consequences of environmental degradation – a claim that could be invoked in situations where a causal link between such degradation and adverse effects on human health can be established.

As regards the *de lege ferenda* proposals, it is worth considering amending Art. 74(4) of the Constitution in the direction of establishing a subjective right to public participation in environmental protection matters. Such a provision would replace the current wording, which has rather general and ambiguous normative meaning, even though attempts have been made to interpret it as a source of public entitlement related to participation in environmental proceedings.<sup>120</sup> The arguments in favour of recognising the above subjective right include: 1) the appropriateness of thus complementing the right to environmental information (Art. 74(3) of the Constitution), which in international legal frameworks is typically connected with public participation in decision-making (e.g. Principle 10 of the Rio's Declaration on Environment and Development);<sup>121</sup> 2) the guarantee of broadly understood participatory rights in the field of environmental protection is currently a distinctive standard of environmental protection in Europe;<sup>122</sup> 3) the establishment of such a right at the constitutional level would serve to strengthen the fulfilment of the obligation to care for the environment (cf. Art. 86 of the Constitution).

Another *de lege ferenda* proposal is related to the activities of the Commissioner for Citizen's Rights and the Commissioner for Children's Rights, aimed at interpreting or establishing a fundamental (human) right to a 'clean, healthy and sustainable environment'.<sup>123</sup> This initiative is further supported by the growing environmental challenges facing Poland and Europe, particularly in the context of climate change, air pollution (smog), water scarcity and contamination – as well as the imperative to safeguard the interests of future generations, given the necessity to address their needs already now, as well as the demographic trends and challenges associated with the development and growing use of artificial intelligence (AI), which may also carry serious environmental risks. Against this background, the establishment of a separate, independent state body – another 'Commissioner'

119 | Cf. Trzciński 2003, 2–7.

120 | Cf. Judgement of the Constitutional Court, case ref. SK 23/17.

121 | <http://bit.ly/40dyeoK> [10.07.2025].

122 | Nyka 2018, 281.

123 | Cf. the Intervention of the Commissioner for Children's Rights dated 17 April 2025, addressed to the Minister of Foreign Affairs, concerned a request to initiate the adoption of an additional protocol to the European Convention on Human Rights and Fundamental Freedoms, which would guarantee the "right to a clean, healthy and sustainable environment" (<http://bit.ly/4nNhdvO>) [11.07.2025]; Majchrzak 2022, 259–261.

(for the Environment and Future Generations Protection) seems worth considering – which could consolidate and give institutional shape to the initiatives thus far undertaken by the Commissioner for Citizen’ Rights and the Commissioner for Children’s Rights. Such a body could also intensify and strengthen the effectiveness of efforts to represent the interests of both present and future generations in ensuring adequate quality of the environment.<sup>124</sup>

124 | Cf. Bándi 2020, 8–11; Krajnyák 2022, 212–215; Krajnyák 2023, 9–18; Nyka 2016, 368–369.

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