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ESSENTIAL BARRIERS IN FORMULATING THE SUBJECTIVE RIGHT OF AN INDIVIDUAL TO THE ENVIRONMENT

ZASADNICZE BARIERY FORMUŁOWANIA PRAWA JEDNOSTKI DO ŚRODOWISKA

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ABSTRACT

In recent years, the issue of legal situation of individuals within their relationship with the environment takes on particular importance. Expression of this trend is for instance the gradual extension of the *acquis* that provides for certain symptoms of rights of individuals, the implementation of which is essential for achieving the objec-

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tives of environmental protection. It is therefore reasonable to attempt to construct a wider, uniform right of an individual to the environment, taking into account the rights resulting from the basic branches of law, at the level of international law as well as in legal systems of each country. Hence the identification of legal and extralegal factors that explain the admissibility of formulating the right of an individual to the environment, as well as basic characteristics of the barriers along with the indication of some threats to this process, are the subject of this study.

Keywords
Environmental law; individual right to environment; public and private subjective rights.

STRESZCZENIE

Na przestrzeni ostatnich lat znaczenia nabiera problematyka sytuacji prawnej jednostki w jej relacjach ze środowiskiem. Wyrazem tej tendencji jest chociażby stopniowe poszerzanie dorobku legislacyjnego przewidującego pewne uprawnienia podmiotowe jednostki, których realizacja ma istotne znaczenie dla osiągania celów stawianych ochronie środowiska. Na tym tle uzasadnioną jest próba konstruowania szerszego, jednolitego prawa jednostki do środowiska, uwzględniającego uprawnienia wynikające z podstawowych gałęzi prawa, tak na płaszczyźnie przepisów prawa międzynarodowego, jak i w systemach prawnych poszczególnych państw. Celem niniejszego opracowania jest wskazanie prawnych i pozaprawnych czynników uzasadniających dopuszczalność formułowania prawa jednostki do środowiska, jak również charakterystyka podstawowych barier utrudniających ten proces.

Słowa kluczowe
Prawo ochrony środowiska; prawo jednostki do środowiska; publiczne i prywatne prawa podmiotowe.

1. INTRODUCTION

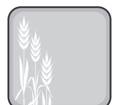
The question of determining the legal situation of an individual in environmental law, especially with regard to the formulation of their asserted rights and freedoms, has gained increasing legal recognition in recent years. At the current stage of global development, the need to describe the legal position of an individual in relation to the outside world, or at least to pass regulations governing those relations referred to as the right to the environment, has become indisputable, and the only thing that remains to be resolved is the manner and scope of this regulation[1]. Therefore, it is reasonable to attempt to conceptualize and justify the idea of the right to the environment in the domestic legal order, relying, to the necessary extent, on the legacy of both international and the EU environmental law.

Importantly, the development of the concept of an individual's right to the environment is the offshoot the mutual influence of various legal and non-legal factors. Hence their characteristics along with the indication of some of the threats to the process of formulating an individual's right to the environmental are the subject of this study.

2. FACTORS DETERMINING THE EMERGENCE OF THE RIGHT OF AN INDIVIDUAL TO THE ENVIRONMENT

Environmental factors exert major influence on the development of the concept of the right to the environment. The successive degradation of the natural environment and the upsetting of the natural balance of particular ecosystems have caused – by posing an immediate hazard of irreversible life- and health-threatening changes – an increase in eco-awareness and

[1] C. Pogodziński, *Pojęcie poszkodowanego w sprawach z zakresu ochrony środowiska w orzecznictwie ETPCZ*, „Europejski Przegląd Sądowy" 2011, no. 5, p. 28.



have stimulated a gradual shift in the global community's approach to environmental issues. Being a natural setting of human existence, the environment provides the conditions of living and development, and the inability to ensure the adequate quality of the environment is actually tantamount to the decline of the human species[2]. The effectiveness of environmental protection is subject to regular assessment, in particular with regard to the current level of environmental safety. The underlying criterion of this assessment is the proper condition of the environment that guarantees a corresponding standard of human life, often referred to as the right to live in an environment that fosters a life of dignity and well-being[3]. Bearing that in mind, the question of the human right to the environment grows in importance. Due to the ever increasing degradation of the environment, some of the most fundamental human rights may actually prove unenforceable, especially the subjective rights, such as the right to life[4].

An important factor motivating the formulation of an individual's right to the environment is also an evident lack of any effective legal instruments aimed to protect the environment. As reiterated firmly in the doctrine, the concept of the right to the environment is a simple outcome of the flaws and imperfections of environmental law as such[5], the direct effect of which is a reduced possibility of supporting action taken by public authorities with a view to protecting the environment for an individual devoid of an explicitly stated right to the environment.

Also, the principle of anthropocentrism in the contemporary legislation has a discernible impact on the idea of the

[2] A. Cobzaru, *Principiul integrä,rii cerinå¢elor ecologice ãžn toate politicile europene*, „Romanian Journal of Environmental Law" 2012, no. 10, p. 45.

[3] L. Gardjan-Kawa, *Administracyjne instrumenty realizacji prawa do środowiska w Polsce*, in: *Jednostka wobec działań administracji publicznej. Międzynarodowa Konferencja Naukowa, Olszanica, 21–23 maja 2001 r.*, ed. E. Ura, Rzeszów 2001, p. 125–126.

[4] A. Redelbach, *Natura praw człowieka. Strasburskie standardy ich ochrony,* Toruń 2001, p. 164–165.

[5] K. Drzewicki, *Koncepcja prawa do środowiska jako prawa człowieka*, „Państwo i Prawo" 1985, no. 10, p. 52.

right to the environment. All laws are, in principle, laid down to prioritize the human being and guarantee their need to satisfy their basic needs. People create law and guard its proper implementation. Still, it is noteworthy that in individual legal acts, including those in the environmental legal domain, the legislator, when referring to the context of the model and optimal condition of the environment, has frequent recourse to such "narrowing" terms as "adequate," "sufficient," or "healthy." This is to confirm the real connection between the environment and the human being, at the same time justifying the admissibility of perceiving the latter as an object of some heterogeneous rights. It seems that, while environmental protection and legal instruments intended for its protection are established to safeguard the person's good, it entails a person's right to that same environment, either through its exploitation to satisfy business needs, or through the use of its resources regarded as a natural place of human existence[6].

The right of an individual to the environment is also referred to by certain basic ethical and social principles, sometimes termed "a new environmental ethics"[7]. The human-environment relations are reflected upon not only in the social teaching of the Catholic Church, but also in other philosophical theories exploring the notion of the meaning and essence of life. Predominantly, they point out the central position of the human being as a subject that deserves certain rights in relation to the environment in which he or she dwells[8].

In this context, the process of global harmonization and assimilation of ideas is clearly noticeable. The acknowledgement of existence of similar conditions in different social or national groups makes them gain in importance; this is true even of com-

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[6] K. Dziadosz, *Racjonalność ekologiczna jako kryterium słusznego prawa*, in: *Prawa człowieka w państwie ekologicznym*, ed. R. Sobański, Warszawa 1998, p. 134.

[7] J. Menkes, *Od Sztokholmu poprzez Rio do…*, „Zeszyty Naukowe Wyższej Szkoły Handlu i Prawa Seria Prawo Miscellanea Jurydyczne" 2001, no. 5, p. 169.

[8] For more on the human-environment relations in the teaching of the Roman Catholic Church see J. Życiński, *Ułaskawianie natury*, Kraków 1992.

munities of a different level of development or agreed goals and objectives of individual[9]. Consequently, there are newer and more profound justifications emerging of the rights vested in an individual and mostly referred to the laws of nature. Therefore, since the fundamental attributes of human rights are the basic assumptions stemming from natural law, so, analogically, the justification of the right of an individual to the environment can be traced back to the elementary moral standard demanding environmental protection[10].

Finally, it should be underlined that the effort of formulation of the right to the environment is justified in the reality of today's world. Today's environmental standards often restrain the free use of the natural resources for industrialization, economic development, and other important social interests. Thus, sometimes the interest of environmental protection, or the right of individuals to environmental protection, may be seen as contrary to the broadly understood economic interest of the state[11]. The global community is thus forced into making some important choices, especially with regard to basic directions, method and scope of development, both externally, i.e. to maintain the pace of socio-economic growth, and internally, i.e. to allow for the need to ensure adequate conditions for the proper functioning and spiritual development of a person. The conclusion is that the right to the environment, to the extent in which it offers the opportunity to use environmental resources and helps maintain the quality of the environment translating into a decent life of every human being, is embedded in and justified by the concept of sustainable development[12].

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[9] J. Zakrzewska, M. Sobolewski, *O prawach obywatelskich*, „Kultura i Społeczeństwo" 1967, no. 4, p. 159.

[10] W. Radecki, *Obywatelskie prawo do środowiska w konstytucji PRL,* Jelenia Góra 1984, p. 60.

[11] A. Mancewicz, *Ochrona środowiska naturalnego prawem człowieka? Prawo do czystego środowiska w świetle orzecznictwa Europejskiego Trybunału Praw Człowieka Cz. 1*, „In Gremio" 2007, no. 9, p. 19.

[12] J. Trzewik, *Koncepcja teoretyczna prawa do środowiska w ujęciu publicznoprawnym*, in: *Dziesięć lat polskich doświadczeń w Unii Europejskiej. Problemy prawnoadministracyjne,* ed. J. Sługocki, Wrocław 2014, p. 527ff.

A rational management of environmental resources, wisely taking into account their limited size, especially if they are non-renewable[13], is an elementary component of the idea of sustainable development yielding measurable ecological effects. What follows, one of the most important assumptions behind the concept of sustainable development whose primary aim is to align the socio-economic development and the necessary environmental protection measures[14], is not so much the exclusion of the possibility to use individual natural resources but the guarantee of using them in a rational manner, that is, without exceeding the limit of the regeneration rate and the nature's ability to assimilate substances[15]. Within this very framework, there is a confluence of, previously seen as particular, both contemporary and future interests, as well as individual and public interests, serving – through healthcare, life protection and life quality of every person and the entire human species – the pursuit of the shared interest: environmental protection[16]. It naturally follows that the superior interest of every society is to take care of the environment, and "the conflict of interest" can be resolved by the implementation of the concept of sustainable development[17]. One of the key elements of the concept of sustainable development is also to ensure the quality of human life in all its dimensions, both material and non-material or

[13] B. Pozzo, *Le Politiche Energetiche Comuniatrie. Un'analisi degli incentivi allo sviluppo delle fonti rinnovabili*, Mediolan 2009, p. 11; A. Checchi, *La politica energetica dell'Unione europea. Contributi di Istituti di ricerca specializzati*, „Senato della Repubblica" 109(2009), p. 3ff.

[14] S.A. Roosa, *Sustainable Development Handbook*, The Fairmont Press Inc. 2008, p. 44.

[15] H. Juros, *Ochrona środowiska naturalnego a redefinicja państwa*, in: *Prawa człowieka w państwie ekologicznym*, ed. R. Sobański, Warszawa 1998, p. 72–73.

[16] K. Równy, *Rio +20 dla wdrażania zrównoważonego rozwoju a prawo ochrony środowiska i jego nauka w Polsce*, in: *Międzynarodowe prawo ochrony środowiska XXI wieku*, ed. Z. Galicki, A. Gubrynowicz, Warszawa 2013, p. 89.

[17] A. Jaworowicz-Rudolf, *Prawo do środowiska należytej jakości jako urzeczywistnienie koncepcji zrównoważonego rozwoju*, in: *Zrównoważony rozwój na poziomie lokalnym i regionalny. Teoria i praktyka*, eds. M. Burchard-Dziubińska, A. Rzeńca, Łódź 2010, p. 65.

spiritual[18], let alone the subjective or objective level[19]. The quality of life and sustainable development are intrinsically linked, since the high quality of life, directly determined by the quality of the environment, is the overarching objective of sustainable development[20]. It should be emphasized that failure to include the quality of life in the concept of sustainable development and the reduction of the quality of life to the mere material well-being is one of the key research challenges in exploring the concept of sustainable development[21]. Therefore, it seems reasonable to reason that, since the possibility of exploiting the environment and the pursuit of the highest quality of life have been ranked as materially significant components of sustainable development, the recognition of the right to the environment actually determines the feasibility of implementation of the objectives of sustainable development[22].

3. THE MAIN OBSTACLES TO THE PROCESS OF CONSTRUCTING THE RIGHT OF AN INDIVIDUAL TO THE ENVIRONMENT

Multidimensionality of the environmental problem affecting contemporary communities and directly bearing on the vital interests of individuals and societies causes the right to the environment to incorporate the attributes of an individual and collective right, and thus held by every person individually[23].

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[18] T. Borys, *Wskaźniki ekorozwoju,* ed. T. Borys, Białystok 1999, p. 32.

[19] A. Papuziński, *Filozoficzne aspekty zrównoważonego rozwoju – wprowadzenie*, „Problemy Ekorozwoju" 2006, no. 2, p. 29.

[20] M. Kusterka-Jefmańska, *Wysoka jakość życia jako cel nadrzędny lokalnych strategii zrównoważonego rozwoju*, „Zarządzanie Publiczne" 2010, no. 4, p. 116.

[21] B. Piontek, *Koncepcja rozwoju zrównoważonego i trwałego Polski*, Warszawa 2002, p. 27.

[22] A. Jaworowicz-Rudolf, op. cit., p. 78.

[23] J. Sommer, *Prawo jednostki do środowiska – aspekty prawne i polityczne*, Warszawa 1990, p. 174.

On the one hand, it is intended to serve the protection of certain shared value or good – the environment – whose conservation, in accordance with the principle of sustainable development, is in the public interest[24]; on the other hand, it is designed to ensure the proper condition of the environment directly affecting health, life quality and the degree of personal development of individuals. "For the environment has an objective value shared by all people and, at the same time, affects every human individually"[25]. Therefore, it appears that the accomplishment of these objectives is only possible through the use of a single legal instrument made available to an individual: the right to the environment.

The difficulty in formulating the concept of the uniform individual's right to the environment are also inseparable from the very concept of the environment. For it is of extremely complex nature – both theoretically and practically – and seems to escape any unequivocal and permanent definition[26]. Consequently, this has a significant impact on the theoretical structure of an individual's right to the environment with its formulation being impaired with various contaminations. From the viewpoint of the potential structure of the right of an individual to the environment, its doctrinal development might resemble a broad set of particular environmental rights (like the right

[24] J. Boć, *Z refleksji nad dobrem wspólnym*, in: *Nowe problemy badawcze w teorii prawa administracyjnego*, eds. J. Boć, A. Chajbowicz, Wrocław 2009, p. 153.

[25] W. J. Katner, *Zagadnienia cywilistyczne ustawy o ochronie i kształtowaniu środowiska*, in: *Studia z prawa cywilnego. Księga pamiątkowa dla uczczenia 50-lecia pracy naukowej prof. dr hab. Adama Szpunara*, ed. A. Rembieliński, Warszawa–Łódź 1983, p. 340–341.

[26] A. Postiglione, *Human Rights and the Environment*, „The International Journal of Human Rights" 2010, no. 4, p. 527.

to clean water, air, soil, or noise-free environment)[27] as well as their strict synthesis[28].

The noticeable multi-faceted nature of the notion of environment, which determines the complexity of the theoretical structure of an individual's right to the environment, has additional impact on the possibility of formulating many other forms of this right. Therefore, particularly looking at the legal and philosophical aspects of the issue, the concept of the right to the environment may include, in particular, the material and anthropocentric right to the environment, material and ecocentric environmental law (the laws governing the environment separately from human activities)[29] or only procedural rights[30], significantly more effective than the substantive rights in achieving environmental objectives[31].

In addition to the terminology issues and the potential structural diversity of the right to the environment, the process of formulating the right of an individual to the environment is also exposed to other factors, especially the assumptions highlighted in the doctrine of international law that need to be taken

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[27] In E. Albińska's opinion, every person has a general right to: food and drugs of adequate quality and not endangering health, use clean air free from exhaust and other contaminants, use clean water of rivers, lakes, seas, the right to silence and to limited medical interventions over the life time. E. Albińska, *Człowiek w środowisku przyrodniczym i społecznym*, Lublin 2005, p. 274–275.

[28] So in K. Drzewicki, *Trzecia generacja praw człowieka*, „Sprawy Międzynarodowe" 1983, no. 10, p. 91.

[29] D. Shelton, *Human Rights, Environmental Rights and the Right to Environment*, „Stanford Journal of International Law" 2001, no. 28, p. 103, 105. Noteworthy is also the recently and very popular issue of ecocentric laws, rested on the idea of the inherent value of nature and not only on its usefulness to the society. For more, see Ch. Miller, *Environmental Rights. Critical Perspectives*, London 2002; J. G. Laitos, *The Right of Nonuse*, Oxford 2012.

[30] L. E. Rodriguez-Rivera, *The Human Right to Environment and the Peaceful use of Nuclear Energy*, „Denver Journal of International Law and Policy" 2006, no. 1, p. 183.

[31] M. Fitzmaurice, J. Marshall, *The Human Right to a Clean Environment – Phantom or Reality? The European Court of Human Rights and English Courts Perspective on Balancing Rights in Environmental Cases*, „Nordic Journal of International Law" 2007, no. 76, p. 106.

into account when designing the right to the environment and setting its basic standards[32]. In this context, it has been indicated that this right – in the absence of any universal legal standards for a "healthy" environment – cannot be interpreted as a right to ideal environment[33]. Meanwhile, some authors often ask a rhetorical question about the real possibility of determining, in an objective manner, the level of the environment falling to an individual, thus challenging the real significance of so formulated a right. At the same time, they underscore the impossibility of actually defining an ideal or appropriate environment in the abstract terms, suggesting that the evolution and interpretation of the right to the environment, as was the case with many other human rights, be left to case-law and bodies involved in the protection of human rights[34]. This approach seems to be acceptable as both national and international courts and tribunals can be regarded as the most appropriate bodies to articulate the historically shaped material environmental standards comprising the setting of human life within a society in a given territory. Yet, while they could determine certain basic quality standards as part of their case-law expressed in abstract or general terms, such as a healthy and supportive environment, they would have to, in every case, seek a balance between individual competing interests and manage conflicts between the different visions and values realized by individual communities[35]. Yet, it would inevitably bring up further questions about who is actually responsible for the shaping of state's environmental policy: the legislature or judicature.

In view of the shortage of clear solutions from the Polish legislator, the opinion rejecting the possibility of formulating the individual right to the adequate quality of the environment

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[32] P. M. Pevato, *A Right to Environment in International Law: Current Status and Future Outlook*, „Review of European Community and International Environmental Law" 1995, no. 8, p. 312.

[33] For more, see M. M. Kenig-Witkowska, *Międzynarodowe prawo środowiska*, Warszawa 2011, p. 47.

[34] A. Kiss, D. Shelton, *International Environmental Law*, Martinus Nijhoff 2000, p. 174–178.

[35] L. E. Rodriguez-Rivera, op. cit., p. 184.

should be upheld. However, taking into account the possible configurations of the legal and real circumstances conditioning the situation of an individual in terms of the protection of its legally safeguarded interest related to environmental protection, the framing of the right to the environment should cover the right to use its resources and the right to protect such an environment (or the demand to protect it) as the right to live in an environment that will ensure a decent standard of human existence and will enable the exercise of the right to use the environment within the limits determined by the ordinary legislator[36].

Speaking of the main difficulties surfacing in the process of formulating the right of an individual to the environment, the structural doubts concerning this right must not be ignored. The doctrine highlights an approach that the formulation of any right or law on the environment without recognizing it as secondary to the freedom to use the environment is ungrounded. The rationale for this view is that people exist in the environment without having to meet any additional conditions and, by extension, independently of the will of the state[37]. The acknowledgement of a purely libertarian nature of this right is largely validated; still, it is questionable in the context of the specific regulatory plain of the system of environmental law. For the perception of freedom in legal terms is, originally, rested on legally indifferent conduct[38], yet its acceptance in the protection of the environment seems to be quite risky. Freedom in the legal sense (ordinary legal freedom) entails a choice of legitimate conduct, which, in the case of hypothetical willingness to refrain from

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[36] J. Stelmasiak, *Interes indywidualny a interes publiczny w ochronie środowiska w obszarze specjalnym o charakterze ekologicznym,* Rzeszów 2013, p. 95; J. Jendrośka, *Sytuacja obywatela na tle administracyjnoprawnej regulacji spraw z zakresu środowiska naturalnego*, in: *Prawo człowieka do środowiska naturalnego,* ed. J. Sommer, Wrocław 1987, p. 82.

[37] B. Rakoczy, *Ograniczenie praw i wolności jednostki ze względu na ochronę środowiska w Konstytucji Rzeczypospolitej Polskiej,* Toruń 2006, p. 213; K. Klenowska, *Prawo do korzystania ze środowiska należytej jakości w prawie polskim*, in: *Aktualne problemy prawa ochrony środowiska,* ed. G. Dobrowolski, Kroczyce 2008, p. 81–83.

[38] K. Wojtyczek, *Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP,* Kraków 1999, p. 24–25.

the use of the environment (like breathing or drinking), seems impossible in principle. In this context, it seems problematic to adopt an excessively narrow subjective approach to the potential legal structure of an individual's right to the environment; no less challenging is the choice of the right term to reflect the collective sphere of entitlements and freedoms in the use of the environment. Therefore, bearing in mind that law and freedom cannot be mutually exclusive and recognizing some essential elements of negative content rights (freedom rights) in the right of an individual to the environment, the individual's right to the environment should be seen as rooted in inherent natural law and stemming from the dignity of a person, and only indirectly finds its confirmation in positive law. Such an approach is not at all revolutionary, and it allows the justification of an extremely broad and relatively free scope of every person's ability to use the environment[39].

A non-uniform approach to the potential theoretical structure of the right of an individual to the environment against the backdrop of comparative law – allows, however, a preliminary though imperfect division of domestic legal systems into three categories, the division criterion being the status and manner of perception of the right to the environment in the relevant domestic regulations. Consequently, there are countries that recognize the relationship between an individual and the environment as an entitlement; countries that grant it only a political value; and countries that discern only its ethical context. It should be noted, however, that in the case of countries that recognize the legal significance of the right to the environment, the form and shape of an individual's right each time depend

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[39] The foundation of all rights and freedoms is the constitutionally protected human dignity, which, besides visible axiological connotations, can simultaneously help determine the subjective scope of the entitled, excluding any beings other that people (such as the plant and animal world). This position is also adopted by: B. Iwańska, *Koncepcja „skargi zbiorowej" w prawie ochrony środowiska,* Warszawa 2013, p. 69–70; J. Ciechanowicz-McLean, *Prawo i polityka ochrony środowiska*, Warszawa 2009, p. 24; J. Potrzeszcz, *Idea prawa w orzecznictwie polskiego Trybunału Konstytucyjnego*, Lublin 2007, p. 123ff.

on the model of the domestic legal system. Some of them explicitly guarantee a substantive right protected under the existing administrative or judicial procedures. Others lay down only procedural rights and ensure access to the administrative or judicial procedures based exclusively on the protection of real interests[40].

4. CONCLUSION

The observations contained above reveal an extremely complex nature of the potential right of an individual to the environment[41]; it is subject to creative interpretation against the background of the individual subjective rights resulting from the legal acts making up the entire legal system of the state[42]. By fitting into the theoretical concept of the uniform individual's right to the environment, subjective rights may stem not only from the constitutional environmental regulation or statutory grounds of environmental law, but also from other standards under both administrative and civil law[43].

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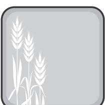
[40] M. Lombardo, *The Charter of Fundamental Rights and the Environmental Policy Integration Principle*, in: *The EU Charter of Fundamental Rights. From Declaration to Binding Instrument*, ed. G. Di Federico, Springer 2011, p. 220–221.

[41] Similarly in K. Dziadosz, *Prawo do środowiska a prawo do życia i inne prawa człowieka*, in: *Prawo do życia a jakość życia w wielokulturowej Europie. Materiały V Międzynarodowej Konferencji Praw Człowieka w Olsztynie, 30–31 maja 2005 r.*, t. 1, eds. B. Sitek, G. Dammacco, M. Sitek, J. J. Szczerbowski, Olsztyn–Bari 2007, p. 570; J. Sommer, *Prawo do środowiska w Konstytucji Polskiej Rzeczpospolitej Ludowej*, in: *Prawo człowieka do środowiska naturalnego*, ed. J. Sommer, Wrocław–Warszawa–Kraków–Gdańsk–Łódź 1987, p. 55; G. Handl, *Human Rights and Protection of the Environment*, in: *Economic, Social and Cultural Right*, eds. A. Eide, C. Krause, A. Rosas, Kluwer Law International 2001, p. 133.

[42] H. Steiger, B. Demel, H.-G. Fey, P. Malanczuk, *The Fundamental Right to a Decent Environment*, in: *Trends in Environmental Policy and Law*, ed. M. Bothe. Gland 1980, p. 15–19.

[43] In a given state of things, they can be even interpreted out of the provisions permitting an individual to participate in administrative procedures or out of neighbour law. W. Radecki, op. cit., p. 82.



Consequently, the legal nature of the right to the environment as a set of heterogeneous rights must therefore be considered in many dimensions simultaneously. The validity of this concept is supported by the fact that the legislation usually adapts to the subject of the regulated matter[44]. A similar condition seems to occur in the case of the legal protection of the environment. Since the environment should be approached in two dimensions: as the whole setting of the human life and as its various components, then parallel to the uniform right to the environment, equal importance should be attached to the subjective rights to its individual elements. So structured a right to the environment is, practically speaking, a theoretical synthesis of various rights and freedoms embedded in the existing legal order.

In view of the above, it must be assumed that the potential theoretical concept of the right to the environment must take account of, on the one hand, the right to use the environment (including for economic purposes, as a public subjective right) and the right to use the values of the environment (as a collective category of civil subjective rights), and, on the other, it should refer to the right to environmental protection (as a possibility to demand from public authorities any appropriate measures to ensure the implementation of the obligation under public law to protect the environment) and the opportunity to ensure this protection in individual cases provided by other legal entities under civil law[45].

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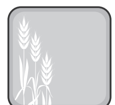
[44] W. Osuchowski, *Zarys rzymskiego prawa prywatnego*, Warszawa 1962, p. 19.

[45] This is a logical consequence of the recognition of the existence of a civil subjective right to use the values of the environment guaranteed by the provisions concerning the protection of this right. For more, see J. Trzewik, *Przemiany prawa ochrony środowiska a prawo do środowiska*, in: *Dekada harmonizacji w prawie ochrony środowiska,* eds. M. Rudnicki, A. Haładyj, K. Sobieraj, Lublin 2011, p. 149ff.



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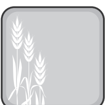

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