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Constitutional Basis of Polish Forest Law

Konstytucyjne podstawy polskiego prawa leśnego

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Abstract

The crucial aim of this study is to identify the constitutional basis of forest law. The Polish Constitution does not contain – as some of the basic laws of the EU Member States – regulations expressly concerning forests, their protection or their management. This does not mean, however, that there is a lack of normative basis relevant to forests and forest law in The Constitution. Such regulations emerge from these regulations of The Constitution which directly relate to the environment and its protection. This is due to the fact that forests are an integral part of the environment.

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Keywords:

Forest law; constitutional law; environment; environment protection; forest principles; sustainable development; ecological safety; forest management.

Streszczenie

Kluczowym celem opracowania jest wskazanie konstytucyjnych podstaw prawa leśnego. Konstytucja Rzeczypospolitej Polskiej nie zawiera – jak ma to miejsce w przypadku niektórych ustaw zasadniczych państw członkowskich UE – unormowań *expressis verbis* obejmujących lasy, ich ochronę czy gospodarkę leśną. Nie oznacza to jednak, że w Konstytucji RP brakuje normatywnych podstaw istotnych z punktu widzenia lasów i prawa leśnego. Takie regulacje znajdują oparcie w tych unormowaniach ustawy zasadniczej, które bezpośrednio odnoszą się do środowiska naturalnego i jego ochrony. Wynika to z faktu, że lasy stanowią integralny element środowiska.

Słowa kluczowe:

Prawo leśne; prawo konstytucyjne; środowisko; ochrona środowiska; zasady prawa leśnego; zrównoważony rozwój; bezpieczeństwo ekologiczne; gospodarka leśna.

Introduction

Starting point of these considerations is based on stating a truism: forests around the world, including, of course, Poland, play differentiated and, at the same time, fundamental functions. First of all, they provide natural resource (both timber and non-timber) products. In addition, forests also play important protective functions. It involves the protection of, for instance, human population, infrastructure and goods from different types of hazards and threats such as soil erosion, avalanches, torrents, contamination of waters or desertification. They also provide social values, primarily recreational and aesthetic. Moreover forests are of key importance, as habitats of flora and fauna, for the conservation of biodiversity¹.

¹ E. Führer, *Forest functions, ecosystem stability and management*, Forest Ecology and Management 2000, Vol. 132, No. 1, p. 30.

According to the latest *Report on the state of forests*², approximately a third of Polish territory is covered with forests. The basic legal act which sets out principles for the retention, protection and augmentation of forest resources, as well as for the management of forests and other elements of the environment in reference to the national economy, is the Act of 28 September 1991 on Forests³. Furthermore, legal provisions concerning forest and forest management are scattered in other acts and regulations. As an example, we can point out, first and foremost, the Farm and Woodland Conservation Act of 3 February 1995⁴, the Act of 6 July 2001 on Maintaining the National Character of the Country's Strategic Natural Resources⁵, the Act of 16 April 2015 on Nature Conservation⁶, or the Code of 20 May 1971 on Petty Offences⁷.

It should, however, be stressed that eminent representatives of the Polish doctrine and science of administrative law and environmental law rather agree that forest law – on grounds of the Polish legal order – is not an independent and autonomous branch of law. It is due to the fact that, as B. Rakoczy claims, although it is possible to indicate forest regulations entity and objective distinctiveness, it has not developed its own method of regulation⁸. This view is shared by W. Radecki, who claims that“ (...) the forestry legislation does not present any independent, distinct in theory of law branch of law, but undoubtedly using the concept of forest law is substantially justified and whether we consider it as a comprehensive branch of law, the field of law or as an area of law, it no longer has such a great significance”⁹. Perhaps one of the reasons causing difficulties in extracting the forestry law as an independent branch of law is lack of constitutional provisions referring to forests.

The primary purpose and aim of this article is to identify, indicate and analyze those of the regulations of The Constitution of the Republic

² Raport o stanie lasów 2014, Warszawa 2015, p. 9.

³ Journal of Laws of 2015 item 2100, with further amendments. Hereinafter referred to as ‘the Act on Forests’.

⁴ Journal of Laws of 2015 item 909, with further amendments.

⁵ Journal of Laws of 2001 No. 97, item 1051, with further amendments.

⁶ Journal of Laws of 2015 item 1651, with further amendments.

⁷ Journal of Laws of 2015 item 1094, with further amendments.

⁸ B. Rakoczy, *Wprowadzenie do prawa leśnego*, in: *Wybrane problemy prawa leśnego*, ed. B. Rakoczy, Warszawa 2011, p. 10-11.

⁹ W. Radecki, *Ustawa o lasach. Komentarz*, Warszawa 2012, p. 27.

of Poland which can be considered as normative grounds of forest law and forest regulations. However, as it has just been stated, the Polish constitution does not invoke to forests (or their management). Thus, the scope of this article includes an analysis of abovementioned constitutional norms, which – as far as the author of this research is concerned – may be perceived as the cornerstones and pillars of the Polish forest law.

The study is based on various research methods. They encompass legalistic method (descriptive analysis of norms and provisions), theoretical (views and opinions articulated in science and theory of law) as well as comparative method. In this case, the scope of the comparative analysis covers constitutional norms of selected EU countries directly encompassing and invoking to forests and/or forest management. The case law of the Polish Constitutional Court has been also taken into account.

Forests in the constitutions of the EU Member States

Provisions relating to forests have not been included in all the Member States' constitutions. However, within the norms of the constitutions of those of the EU States which have resolved to regulate the issue of forests in their basic laws, it is possible to identify three different types of approaches and ways of regulating this matter. This encompasses approaches in which the necessity of: protection, property rights or competences have been brought to the forefront.

The very first way of regulating forest issues is to emphasize the obligation of their protection. For example, The Fundamental Law of Hungary of 25 April 2011 lists forests – besides natural resources, farmland or reserves of water – as a common national heritage which protection, maintenance and conservation for future generations is the duty of the State and everyone (art. P). Also the provisions of The Constitution of Greece of 27 May 2008 emphasize conservation approach to forests. As the article 24, section 1 of this legal act underlines, protection of the environment and cultural heritage is the responsibility of the State and the right of everybody. Constitution obliges the State to apply specific preventive or repressive measures in order to protect the sustainability of the environment. Furthermore, it is worth noting that the Constitution of Greece – as the only European Basic Law – introduced in its provisions (in so called explanation statement which is an

integral part of the constitution), the definition of forests. According to this definition, the forest or forest ecosystem is an organic compilation of wild plants on wooden trunk in the area of ground which together with existing in the same territory flora and fauna form, through their interdependence and mutual influence, a separate bio communities (forest bio community), and separate environment (forest environment). Also The Constitution of the Republic of Croatia of 22 December 1990 declares that "the sea, seashore, islands, waters, air space, mineral resources, and other natural assets, as well as land, forests, flora and fauna, other components of the natural environment, real estate and items of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection" (art. 52).

Another way of regulating the issue of forests by domestic Legislator in constitutional provisions is by reserving property rights of the State to the forests. Such provisions have been imposed by Bulgarian National Assembly. Article 18, section 1 of The Constitution of the Republic of Bulgaria of 12 July 1991 grants Bulgarian State exclusive ownership rights over the resources, among which forests are pointed out. Similarly, The Constitution of the Republic of Lithuania of 25 October 1992 regulates the issue of forests with its article 47 which establishes the principle, according to which "the subsurface, as well as the internal waters, forests, parks, roads, and historical, archaeological, and cultural objects of State importance, shall belong by right of exclusive ownership to the Republic of Lithuania". Consequently, this means that foreign entities may acquire the ownership of forests according to a constitutional law.

The last of the highlighted groups of the constitutional provisions include regulations, which consider forest issues in terms of the competences. This refers in particular to federal states in which self-governing states have a considerable degree of sovereignty. For instance, The Austrian Federal Constitution of 1 October 1920 indicates forestry as one of matters (competences) in which The Federation has powers of legislation and execution (article 10, section 1, point 10). Also The Spanish Constitution of 1978 clearly indicates that the State shall have exclusive competence, without prejudice to powers of the Self-governing Communities, over basic legislation on woodlands and forestry (article 149, section 23). By contrast, Basic Law for the Federal Republic of Germany of 23 May 1949 does not regulate forests themselves, but states that concurrent legislative power

extends to the promotion of agricultural production and forestry (article 74, section 17), as well as it covers the law on protective measures in connection with the marketing of agricultural and forest seeds and seedlings (article 74, section 20).

Nevertheless, the fact is that – regardless of differences in ways of regulation – many of the constitutions of the EU Member States include standards directly encompassing forests, forestry and/or forest management. However, The Republic of Poland does not fit in this group of States and their legal orders.

Legal grounds of forests and forest law in The Constitution of the Republic of Poland

Although the Polish constitution does not expressly and directly refer to forests, it is possible to indicate several rules and regulations in its text which may be viewed as legal and axiological grounds crucial for regulation of forest law.

In the first place, it should be stated that rules on forests must derive from the constitutional regulations which relate to the environment and necessity of its protection¹⁰. It is due to the fact that forest ecosystems are – next to air, water, soil, landscape and so on – integral parts of (natural) environment. This view is particularly evident in the case law of the Polish Constitutional Court. As it has stressed in one of its ruling, "forests are especially valuable component of the environment. (...) As a component of the environment, forests are in fact much more than the subject of ownership and other property rights. They constitute the national value of great social importance"¹¹. It follows that constitutional regulations of the environment and its conservation indirectly encompass forests and legal aspects of their protection. A. Szmyt points out that normative nature

¹⁰ It should be noted that The Constitution does not use the notion of "natural environment" but "the environment". This is to avoid ambiguity of meaning of the second term. See: J. Boć, K. Nowacki, E. Samborska-Boć, *Ochrona środowiska*, Wrocław 2002, p. 47-48.

¹¹ Judgment of the Polish Constitutional Court of 15 May 2006, P 32/05 ZU OTK No. 5A/2006, item 56.

of these provisions of the Constitution allows them to be used also with regard to the matter of forests¹². It is in these constitutional provisions we should seek relevant regulations of forest protection and forest law. These remarks are fully and clearly reflected by the provisions of the Act on Forests. As it has been stated in article 1, it is an act that "(...) sets out principles for the retention, protection and augmentation of forest resources, as well as for the management of forests and other elements of the environment in reference to the national economy". This provision unequivocally defines forest ecosystems as parts of environment, which has been literally expressed by the Legislator by pointing out that "forests and other elements of the environment".

From this perspective article 5 of The Constitution plays a key and central role. It states that "The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development". This provision is important for two reasons. Firstly, it defines the basic functions and objectives of the State. Secondly, it emphasizes the primary importance of the concept of sustainable development which, moreover, does not refer only to environmental protection, but also at least to national heritage, freedoms and rights as well¹³. The notion of protection of the natural environment – used by the constitutional legislator – "(...) means not only providing citizens with pristine air, safe drinking water or recreational areas, etc., but also the protection of this particular landscape, topography and river network, individualizing Poland and constituting a factor of its identity, no less important than the language or culture (material and spiritual)"¹⁴. It is therefore obvious that the semantic scope of the notion of the environment includes forest ecosystems which are required to be used and managed in a sustainable way.

However, when it comes to sustainable development, two legitimate questions ought to be highlighted – the actual meaning of this concept, and

¹² A. Szmyt, *Projekt ustawy o zmianie Konstytucji RP w zakresie ochrony lasów państwowych*, Przegląd Sejmowy 2015, No. 3, p. 13.

¹³ J. Zimmermann, *Prawo administracyjne*, Warszawa 2013, p. 132.

¹⁴ P. Sarnecki, *Artykuł 5*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Cz. V*, ed. L. Garlicki, Warszawa 2007, p. 6.

its normative value. Stating that sustainable development is a very ambiguous concept and at the same time difficult to define, is stating a truism¹⁵. But in fact it is so indeed. Furthermore, no matter whether we agree that sustainable development has¹⁶ or has not a normative content (value)¹⁷, this principle should be regarded as a key concept for the reconstruction of the constitutional rules responsible for determining the relation of public authorities to the environment¹⁸. It encompasses both making and applying the law.

One relevant expression of the implementation of this principle is sustainable forest management which – according to article 6, section 1, point 1a of the Act on Forests – means activity seeking to shape the structure of forests and make use of them in a manner and at a rate ensuring the permanent protection of their biological diversity, a high level of productivity and regeneration potential, vitality and a capacity to serve – now and in the future – all the important protective, economic and social functions at local, national and global levels, without harm being done to other ecosystems. As it is indicated in the literature "the central issue of forest management defined in such a way is its multifunctional character based on long-term assumptions, which at the same time is, at least, harmless (neutral) to other ecological systems"¹⁹.

Sustainable forest management is a part of a wider concept – sustainable development. In another words, sustainable development is transferred to forest law by the concept of sustainable forest management²⁰. Therefore, all the activities of entities engaged in forest management (utilization, protection

¹⁵ Some researchers even claim that not only is sustainable development unclear concept, but it should not be defined. It is because it is supposed to be a general clause. B. Rakoczy, *Definicje i zasady ogólne*, in: J. Ciechanowicz-McLean, Z. Bukowski, B. Rakoczy, *Prawo ochrony środowiska. Komentarz*, Warszawa 2008, p. 48.

¹⁶ See for example: B. Rakoczy, *Ograniczenie praw i wolności jednostki ze względu na ochronę środowiska w Konstytucji Rzeczypospolitej Polskiej*, Toruń 2006, p. 157.

¹⁷ See for example: J. Sommer, *Podstawy traktatowe i konstytucyjne zintegrowanej ochrony prawnej środowiska*, in: ed. W. Radecki, *Podstawy teoretyczne zintegrowanej ochrony prawnej środowiska*, Wrocław 2012, p. 77.

¹⁸ A. Krzywoń, *Konstytucja RP a środowisko*, Państwo i Prawo 2012, No. 8, p. 6.

¹⁹ J. Chmielewski, *Sustainable Forest Management. Polish Solutions in a Legal Perspective*, Polish Yearbook of Environmental Law 2015, p. 52.

²⁰ Z. Bukowski, *Koncepcja zrównoważonego rozwoju w działalności administracji publicznej*, in: *Administracja publiczna – człowiek a ochrona środowiska. Zagadnienia społecznoprawne*, eds M. Górski, J. Bucińska, M. Niedziółka, R. Stec, D. Strus, Warszawa 2011, p. 101.

and management of forest ecosystems) should be guided by the principle of sustainable development. It is an obligation and rule established not only by the provisions of the Act on Forests, but, as it has been shown, by the principles emerging from article 5 of the Polish Constitution.

Protection of the natural environment, which also includes forests protection, justifies – according to article 31, section 3 of the Constitution – imposing limitations upon the exercise of constitutional freedoms and rights. Another thing is that such limitations may be imposed only if necessary, by statute. Moreover, they shall not violate the essence of freedoms and rights. In another words, the necessity of the conservation of forest ecosystems allows for interfering with the constitutional rights and freedoms such as, for instance, the ownership rights expressed in article 64 of the Constitution. Incidentally, since the protection of ownership rights and the protection of forests as an important element of the environment are both constitutional values, for that reason the constitutional principle of sustainable development requires harmonizing them. As it was indicated in one of the judgments of the Constitutional Court “the idea of sustainable development includes the necessity to take into account the different constitutional values and balance them in an appropriate way”²¹. Obligations imposed by the Legislator on the owners of forests which do not constitute Treasury property, should be perceived in this context. As J. Pakuła claims “one must agree with the statement, that forests constitute the national good of great social importance. Simplified Forest Management Plan or decision of the starosta /head of powiat/ (setting, in the case of fragmented forests with areas of up to 10 ha that do not constitute Treasury property, tasks of the forest management – J. Ch.), fulfill the conditions stipulated in article 31, paragraph 3 of the Constitution”²².

All of this means, that general constitutional principles and obligations for the protection of the environment are not limited to prohibitions or orders, but they reach much further and allow the Legislator to restrict constitutional rights and freedoms when it is necessary to fulfill

²¹ Judgment of the Polish Constitutional Court of 6 June 2006, K 23/05, Journal of Laws No. 106, item 720.

²² J. Pakuła, *Pojęcie i zasady gospodarki leśnej*, in: *Wybrane problemy prawa leśnego*, ed. B. Rakoczy, Warszawa 2010, p. 95.

the obligation to protect the environment²³. As a result, forest protection justifies the limitations of these civic values. However, mandatory requirement is that forest law and its regulations should always take into account the principle of proportionality permitting only those restrictions that are necessary for the implementation of the purposes listed in article 31, paragraph 3 of the Polish Constitution²⁴. It is, therefore, important and obligatory directive in the process of forest lawmaking.

One of the fundamental aims and tasks of public authorities is to combat epidemic illnesses and prevent the negative health consequences of degradation of the environment (article 68, paragraph 4 of the Polish Constitution). It is an evident program norm which should be taken into account by the State, its institutions (public administration bodies and courts) and authorities, as well as, of course, achieved in public policies. Concrete and tangible obligations resulting from this norm are based on undertaking actions which counteract or prevent negative impacts on the environment and improve its status (state)²⁵. Therefore, that this provision should not be examined and interpreted in isolation from all of the norms expressed in article 68 of the Polish Constitution, especially the very first paragraph of this regulation indicating that everyone shall have the right to have their health protected. It is a constitutional social right²⁶ which can be understood – in the context of article 68 of the Polish Constitution – also in this way, that the mandatory condition for its implementation and guarantee is preventing negative effects of environmental degradation. At the same time, minimum citizen rights are encoded and included in article 68²⁷. Thus, the protection of forest ecosystems, as integral parts of the environment, is legitimized by the obligatory need to protect citizens' health. Therefore, the principle of universal protection of forests, stipulated in article 8, point 1 of the Act on Forests, remains closely connected to this social right (the right to the protection of health). Of course, it is difficult to derive the principle of universal protection of forests from article 68 of the Polish

²³ Judgment of the Polish Constitutional Court of 15 May 2006, P 32/05 ZU OTK No. 5A/2006, item 56.

²⁴ See: Judgment of the Polish Constitutional Court of 27 May 2002, K 20/01, Journal of Laws No. 57, item 526.

²⁵ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2009, p. 377.

²⁶ B. Banaszak, *Prawo konstytucyjne*, Warszawa 2008, p. 240.

²⁷ See: J. Trzciński, *Artykuł 68*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Cz. III*, ed. L. Garlicki, Warszawa 2003, p. 7.

Constitution, but certainly, the protection of forests (preserving them from being degraded), can be seen in this context as the citizens' right emerging from the tasks and obligations imposed on the State powers and authorities by the constitutional lawmaker.

Apart from the obligations of public authorities in the field of environmental issues expressed in the above constitutional provision, there have been other tasks enumerated by the Polish constitutional legislator. They comprise obligations, such as: pursuing, by public authorities, policies ensuring the ecological safety of current and future generations (article 74, paragraph 1); protection of the environment (article 74, paragraph 2); informing about the quality of the environment and its protection (article 74, paragraph 3), and supporting citizens' activities aiming at protection and improvement of the quality of the environment (article 74, paragraph 1). The concept of ecological security has not been defined in the provisions of the Polish Constitution. At first, it may seem unclear and ambiguous. However, the Polish Constitutional Court has attempted, in one of its ruling, to clarify this notion. As it has stated, ecological safety "(...) should be understood as achieving such state of the environment, which allows people to safely stay in this environment and enables to participate and exercise this environment to ensure human development. Environmental protection is one of the elements of 'ecological safety', but the tasks of public authorities are wider – they also include actions to improve the current state of the environment and the programming of its further development"²⁸.

The jurisprudence indicates that the abovementioned definition of ecological safety consists of two key elements. First element is about obtaining such state of the environment which allows people to stay and be in it. The second element refers to allowing the use of the environment. Inasmuch important is the lack of legal norms comprising the individual's right to live in a conducive environment, or the right to use the environment²⁹. It means, that the State is supposed to conduct policy providing ecological safety. This policy is based on rational management of the environment, optimal management of natural resources, counteracting or preventing

²⁸ Judgment of the Polish Constitutional Court of 6 June 2006, K 23/05, Journal of Laws No. 106, item 720.

²⁹ B. Rakoczy, *Glosa do wyroku z 6 VI 2006, K 23/05*, Państwo i Prawo 2009, No. 4, p. 134-135.

negative impacts on the environment and restoring to favorable status³⁰. All of these conditions ensures the policy of ecological safety can and should be applied to forests. In addition, ecological safety understood as a desirable ecological status can be achieved only if all of the components of the ecosystem, including forest ecosystems, reach such status. Reaching ecological safety is about eliminating threats to the natural environment and it is identified with a number of ideas and concepts that will prevent the emergence of such threats³¹. The concept, which fits well in the idea of ecological safety, is sustainable forest management. It is because this kind of forest management is conducted while taking into account preservation of forests and their beneficial impact on the climate, air, water, soil, living conditions and human health, as well as balance in nature (article 7, section 1, point 2 of the Act on Forests). Moreover, in more general terms, sustainable forest management is based on integrating all kinds of functions of forests in order to assure the long term survival of forest ecosystems, their productivity and ecological functions as well. In this way sustainable forest management seems to be a tool or rather an element of ecological safety. At the same time the second pillar of environmental safety is, as it has been previously mentioned, the right to use the environment. This concept encompasses the right to use forests, specified and called by the Legislator as the access to forests (article 26 of the Act on Forests). In another words, principles under which forests are to be made accessible are directly linked to these constitutional regulations which oblige the State and its authorities (institutions) to provide ecological security – only state of ecological safety provides the right to use the environment.

The Polish Constitution does not impose mandatory requirements obliging to handle forests in a certain, preferred by the constitutional legislator, way. Notwithstanding, everyone – in compliance with article 86 of the Constitution – shall care for the quality of the environment and shall be held responsible for causing its degradation. Two aspects should be emphasized: subjective and objective scope of this regulation. First of all, constitutional legislator sets a specific behavior directive addressed

³⁰ P. Korzeniowski, *Bezpieczeństwo ekologiczne jako instytucja ochrony środowiska*, Łódź 2012, p. 174.

³¹ See: M. Cizek, *Bezpieczeństwo ekologiczne i zrównoważony rozwój w aspekcie Strategii Bezpieczeństwa Narodowego Rzeczypospolitej Polskiej*, *Studia Ecologiae et Bioethicae UKSW* 2012, No. 1, p. 30.

to everyone including natural and legal persons. The second issue is that the object of this mandatory behavior imposed by the quoted provision should be understood broadly: "(...) in the content of the duty of care for quality of the environment, there should be its negative aspect distinguished – the prohibition of the destruction or degradation of the elements of the environment, for example the pollution of waters, air, land. Caring for the environment has also a positive aspect – a duty to prevent damage to the environment, its rational management, restoration of natural elements to the appropriate status"³². Forests, undeniably, should be added to the abovementioned elements of the environment. Consequently, this means that everyone shall care for the quality of forest ecosystems. This issue is fully reflected in the provisions of the Act on Forests. For example, forest management is conducted by the owners of forests (regardless of who they are) in pursuit of precisely indicated principles, such as the universal protection of forests (article, 8 point 1) or the persistent maintenance of forests (article 8, point 2). Further responsibilities and duties emerge from these principles: for instance, owners of the forests are supposed to ensure the permanent maintenance of forests, as well as continuity of their use (article 13), which actually means – continuous existence of forests³³. Such (exemplary) activities fully fit in the scope of positive actions under the principle expressed in Article 86 of the Constitution, while the prohibition of the destruction and degradation of the environment (negative aspect of the duty of care for quality of the environment) completely corresponds with the universal protection of forests.

While perceiving the obligation to care for the environment as a civic duty, we may turn our attention to the very first article of the Polish Constitution which states that "The Republic of Poland shall be the common good of all its citizens". It is true, that the meaning of this normative constitutional provision is problematic and may seem very ambiguous, but what is clear is the fact that – as J. Trzciński claims – "(...) when we talk about the common good, we are talking about the State, about the individuals, and most of all about the relationship between these entities and that this relation is not reduced to the framework of freedoms, rights and duties of individuals

³² K. Działocha, *Artykuł 86*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Cz. III, ed. L. Garlicki, Warszawa 2003, p. 2.

³³ R. Poznański, *Trwałość lasu i regulacja a ochrona przyrody w lasach*, Studia i Materiały CEPL w Rogowie 2014, vol. 39, p. 55–58.

as well as the reasons and methods of their limitation³⁴. In this context taking care of the common good is expressed in respect for State institutions and fulfilling civic duties³⁵, which also includes duties and obligations, such as caring for the state and quality of forests. Therefore, it is also this constitutional rule which provides grounding for forest management and forest law.

Concluding remarks

The conducted analysis clearly shows that many constitutional legislators in the EU decided to include regulations on forests in their domestic constitutional regulations. In these situations forests have been regulated in three key areas and contexts: protection, property rights or competences.

When it comes to Poland, it ought to be indicated that forest law, which encompasses the principles of protection and (sustainable) forest management, is fairly nested in the Polish Constitution. Moreover, the analyzed provisions of the Constitution indicate that forest protection is primarily the responsibility of the State. Although constitutional provisions do not even once invoke directly to forests, undoubtedly, forest regulations can be derived from the regulations relating to the environment and its protection. As it is accurately pointed out in the doctrine of administrative law and environmental law, "(...) whenever the constitutional legislator talks about the environment, he is referring to the nature (natural environment) and it is quite evident, that forests are the element of the environment. Constitutional legislator does not deliberately express a preference for public or private ownership of any part of the environment, recognizes them as the common good as a whole, and taking care for it by the State is a duty so obvious that there is no need to write about it in the Basic Law"³⁶.

³⁴ J. Trzcíński, *Rzeczpospolita dobrem wspólnym wszystkich obywateli*, in: *Sądownictwo administracyjne gwarantem wolności i praw obywatelskich 1980–2005*, Warszawa 2005, p. 454.

³⁵ W. Brzozowski, *Konstytucyjna zasada dobra wspólnego*, Państwo i Prawo 2006, No. 11, p. 27.

³⁶ A. Habuda, *Prawne fundamenty zrównoważonej gospodarki leśnej i ochrony lasów. Fakty i postulaty*, in: *Zasada zrównoważonego rozwoju w wymiarze gospodarczym i ekonomicznym*, eds B. Rakoczy, K. Karpus, M. Szalewska, M. Walas, Toruń 2015, p. 318.

This means that constitutional regulations including the environment and environmental protection are, firstly, important interpretative guidance for the public administration bodies and administrative courts applying forestry legislation. It encompasses methods of interpreting forest provisions in accordance with constitutional rules and regulations concerning the environment. Secondly, these provisions should act as an important waypoint for institutions responsible for the process of lawmaking.

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