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The Right to a Healthy Environment as a Public Subjective Right in the Fashion Industry – Between State Obligations and Corporate Environmental Responsibility

Keywords: *healthy environment, public subjective law, fashion sector, corporate environmental responsibility*

1. Introduction

The fashion sector is currently one of the areas of the economy with a particularly intense impact on the environment. The scale of clothing production and consumption, the shortening of product lifecycles, the use of chemicals, water consumption, greenhouse gas emissions, the problem of microplastics, and the growing mass of textile waste mean that environmental protection in this industry is no longer solely a matter of economic policy or corporate social responsibility. It is becoming a constitutional and administrative legal issue. The fashion sector therefore provides a useful research field for answering the question of whether the right to a healthy environment can be reconstructed as a public subjective right based on applicable national, EU, and international law.

The research problem therefore boils down to determining whether an individual can invoke such a right against public authorities in matters concerning the fashion sector's impact on the environment, and if so, what its scope is, and what role corporate responsibility plays in this construct. The article's thesis is based on the assumption that the right to a healthy environment does not exist in the Polish legal system as a single, expressly recognized fundamental right. However, it can be reconstructed as a complex public subjective right, primarily procedural and protective, addressed to the state. The obligations of fashion companies do not constitute an independent source of this right, but rather serve as an instrument for its implementation by the legislature and administration¹.

¹ A. Habuda, *The Right to the Environment in the Republic of Poland*, „Studia Prawnoustrojowe” 2019/44, pp. 107–121.

The adopted method is dogmatic and analytical in nature. The starting point is an analysis of the Constitution of the Republic of Poland², European Union law, and selected acts of international law, supplemented by the case law of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU).

2. The right to a healthy environment as a category of public subjective right

In administrative law doctrine, a public subjective right is generally defined as the legal situation of an individual in which they can effectively demand from a public authority a specific action, omission, or respect for a legally protected sphere of freedom. This construction does not require that each right be explicitly named by the legislator. It is permissible to reconstruct it from a set of norms, provided that they designate a sufficiently specific addressee, the content of the public authority's obligation, and the individual's legitimate interest in enforcing that obligation³.

In environmental law, doubts arise as to whether environmental protection norms are solely programmatic in nature or also safeguarding. However, international and European law are witnessing a shift toward strengthening the subjective dimension of environmental protection. UN General Assembly Resolution 76/300 reaffirmed the human right to a clean, healthy, and sustainable environment. While this act does not, in itself, create a directly applicable claim in national law, it does reinforce the tendency for pro-constitutional and pro-convention interpretation⁴.

European Union law does not establish an autonomous, classic fundamental right to a healthy environment. Article 37 of the Charter of Fundamental Rights of the EU establishes the principle of a high level of environmental protection and the improvement of its quality⁵. The Aarhus Convention is also of significant importance. Its essence is not reduced to a mere axiological declaration, but to equipping society with specific informational,

² The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483, as amended.

³ See: W. Jakimowicz, *Publiczne prawa podmiotowe*, Kraków 2002; A. Wróbel, *Prawo podmiotowe publiczne* [in:] *System prawa administracyjnego*, t. 1, *Instytucje prawa administracyjnego*, ed. R. Hauser, Z. Niewiadomski, A. Wróbel, Warsaw 2015, pp. 325–400.

⁴ D. Kuźniar, *Prawo do zdrowego środowiska jako konstytucyjnie gwarantowane prawo podmiotowe*, „Przegląd Prawa Konstytucyjnego” 2021/3(61), pp. 201–216; J. Węgrzyn, *Konstytucyjne prawo do informacji o ochronie środowiska na tle standardów międzynarodowych*, „Przegląd Prawa Konstytucyjnego” 2011/3, pp. 207–231; J.H. Knox, *Introduction to Symposium on UN Recognition of the Human Right to a Healthy Environment*, „AJIL Unbound” 2023/117, pp. 162–166. United Nations General Assembly Resolution 76/300, The human right to a clean, healthy and sustainable environment, adopted on 28 July 2022, UN Doc. A/RES/76/300.

⁵ M.T.R. Magalhães, *The Improvement of Article 37 of the EU Charter of Fundamental Rights – A Choice Between an Empty Shell and a Test Tube?* [in:] *Procedural Environmental Rights. Principle X in Theory and Practice*, ed. J. Jendroska, M. Bar, Cambridge–Antwerp–Portland 2018, pp. 97–118. Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, pp. 391–407.

participatory, and procedural rights. Article 1 of the Convention links the protection of the rights of every individual with the obligation to ensure access to information, public participation in decision-making, and access to justice in environmental matters. Article 9(3) requires the establishment of procedures enabling the challenging of acts and omissions by both public authorities and private individuals that violate environmental law. From this perspective, it is clear that the subjective dimension of the right to the environment is primarily a public law one: the individual demands that the state create and implement effective protection mechanisms⁶.

At the convention level, the direction set by the ECtHR is significant. In the Grand Chamber judgment in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the Court held that insufficient state action to address climate change may lead to a violation of Article 8 of the ECHR, i.e., the sphere of private and family life, and to a violation of the right of access to a court under Article 6(1) ECHR. At the same time, more recent case law demonstrates the limits of this construction. In its decision in *Fliegenschnee and Others v. Austria*, the Court emphasized that Article 8 ECHR does not guarantee the right to a specific, concrete regulatory measure adopted by a given body⁷.

3. Constitutional foundations for the reconstruction of the right to a healthy environment in Poland

The Polish Constitution does not contain a provision explicitly using the phrase “right to a healthy environment”⁸. However, this does not mean that there is a lack of normative foundations for its reconstruction. Of fundamental importance are Article 5, Article 68 § 4, Article 74 § 1–4, and Article 86 of the Constitution of the Republic of Poland. Article 5 imposes on the Republic of Poland the obligation to ensure environmental protection, guided by the principle of sustainable development. Article 68 § 4 obliges public authorities to combat epidemic diseases and prevent the negative health effects of environmental degradation. Article 74 § 1, states that public authorities shall pursue policies ensuring ecological safety for current and future generations, while § 3 and 4 grant everyone the right to information on the state and protection of the environment and the obligation of authorities to support citizens’

⁶ Á. Ryall, *The Aarhus Convention: Standards for Access to Justice in Environmental Matters* [in:] *Environmental Rights. The Development of Standards*, red. P.J. Turner, D.L. Shelton, J. Razzaque, O. McIntyre, J.R. May, Cambridge 2019, pp. 116–146. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus on 25 June 1998, 2161 UNTS 447.

⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature in Rome on 4 November 1950, ETS No. 005; ECtHR [GC], *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, application no. 53600/20, judgment of 9 April 2024; M. Wewerinke-Singh, *Climate Protection Obligations under the European Convention on Human Rights: The KlimaSeniorinnen Judgment*, „European Constitutional Law Review” 2025, vol. 21, issue 2, pp. 356–374; ECtHR, *Fliegenschnee and Others v. Austria*, application no. 40054/23, decision of 18 November 2025.

⁸ A. Krzywoń, *Konstytucja RP a środowisko*, „Państwo i Prawo” 2012/8, pp. 3–17.

actions to protect and improve the state of the environment⁹. Article 86, in turn, establishes a universal obligation to care for the environment and responsibility for its deterioration¹⁰. In light of these provisions, one cannot limit oneself to the thesis that constitutional norms relating to the environment are solely systemic or programmatic in nature¹¹.

First, there is the defensive element, which prohibits the arbitrary shaping of policies and administrative decisions in a way that leads to excessive deterioration of environmental quality and endangers health and living conditions. Second, there is the procedural element, encompassing the right to information, participation in environmental procedures, and effective judicial review. Third, there is the positive element, namely the obligation of public authorities to create a rational regulatory, supervisory, and enforcement system appropriate to the identified threats¹². Understood in this way, the right to a healthy environment is not absolute.

4. State Responsibilities

The state implements the right to a healthy environment primarily through legislation and administration. In the fashion sector, this means adopting instruments that encompass the entire life cycle of a textile product: design, production, information, distribution, consumption, reuse, and waste management¹³.

At the EU level, the EU Strategy for Sustainable and Circular Textiles from 2022 is of fundamental importance. It assumes that by 2030, textile products placed on the market should be more durable, easier to repair and recycle, and the sector should move away from the fast fashion model. The strategy is not a directly applicable act, but it sets the interpretative direction for secondary law and the actions of the Member States¹⁴. Of significant importance is Regulation (EU) 2024/1781¹⁵, which establishes a framework

⁹ B. Rakoczy, *Ograniczenie praw i wolności jednostki ze względu na ochronę środowiska w Konstytucji Rzeczypospolitej Polskiej*, Toruń 2006, pp. 117, 120, 274–275, 290–292.

¹⁰ Z. Bukowski, *Konstytucyjne podstawy obowiązków państwa w zakresie ochrony środowiska*, „Prawo i Środowisko” 2002/4, pp. 63–73.

¹¹ M. Czekałowska, *Problem konstytucyjnych norm programowych dotyczących ochrony środowiska na tle wybranych regulacji ustawowych*, „Acta Iuris Stetinensis” 2015/11, pp. 109–124.

¹² J. Trzewik, *Publiczne prawa podmiotowe jednostki w systemie prawa ochrony środowiska*, Lublin 2016, pp. 160 et seq.

¹³ I. Przybojewska, *Greenwashing w kontekście unormowań prawnych*, „Prawne Problemy Górnictwa i Ochrony Środowiska” 2022/1, pp. 1–26.

¹⁴ M.K. Brewer, *Slow Fashion in a Fast Fashion World: Promoting Sustainability and Responsibility*, „Laws” 2019/8(4), art. 24; S. Monseau, K. Sorsa, H. Salokangas, *Cleaner Clothes: The EU Textile Strategy and Sustainability in the Textile Supply Chain*, „Georgia Journal of International & Comparative Law” 2024/52(2), pp. 409 et seq. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Strategy for Sustainable and Circular Textiles, COM(2022) 141 final, 30 March 2022.

¹⁵ Regulation (EU) 2024/1781 of the European Parliament and of the Council of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products, amending

for ecodesign requirements for sustainable products. Individuals do not directly claim the “right to a healthy environment” from businesses, as defined by the Constitution. Instead, they can expect the state to impose obligations on businesses that will mitigate environmental risks and ensure effective oversight of their compliance. While the primary obligation remains with public authorities, this obligation is also implemented through the establishment of norms directly binding on private entities.

5. Environmental responsibility of fashion companies

The environmental responsibility of businesses in the fashion sector cannot be equated with an individual’s public subjective right, but neither can it be relegated to the level of solely voluntary self-regulation¹⁶. In the realities of contemporary EU law, this responsibility is becoming increasingly normative¹⁷. This should not lead to the conclusion that the constitutional standard of environmental protection has been exhausted by the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD)¹⁸. On the contrary, the more selective the scope of these directives becomes, the more important sectoral instruments for products, waste, chemicals, consumers, and regulatory bodies become. It is accurate to claim that the state has an obligation to shape entrepreneurs’ obligations so that the environmental risks generated by the fashion sector are effectively mitigated. Individuals, on the other hand, may demand that public authorities provide access to environmental information¹⁹. What is more, protection must not lead to the blurring of competence boundaries or the substitution of the legislator by the court²⁰.

Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and repealing Directive 2009/125/EC, OJ L, 2024/1781, 28.6.2024.

¹⁶ T. Szabados, *Multilevel hardening in progress – Transition from soft towards hard regulation of CSR in the EU*, „Maastricht Journal of European and Comparative Law” 2021, vol. 28, no. 1, pp. 83–101.

¹⁷ E. Dobos, A. Éltető, *Regulation of the fashion supply chains and the sustainability–growth balance*, „Sustainability Accounting, Management and Policy Journal” 2023, vol. 14, no. 1, pp. 101–129; A. Oleksyn-Wajda, M. Szymborska, *Wpływ rzetelnej i porównywalnej informacji na realizację zasady zrównoważonego rozwoju. Wybrane zagadnienia prawne*, „Veritas Iuris” 2023, vol. 6, no. 1, pp. 5–17.

¹⁸ R. Kamiński, *Dyrektywa Parlamentu Europejskiego i Rady 2464/2022 w odniesieniu do sprawozdawczości na temat zrównoważonego rozwoju przedsiębiorstw i rozporządzenia Komisji Europejskiej dotyczące „taksonomii” – założenia i cele*, „Studia Prawa Publicznego” 2023/4(44), pp. 71–87. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 as regards corporate sustainability reporting, OJ L 322, 16.12.2022, p. 15–80; Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence, OJ L, 2024/1760, 5.7.2024.

¹⁹ J. Trzewik, *Uwagi na temat charakteru prawnego instytucji dostępu do informacji o środowisku*, „Roczniki Nauk Prawnych” 2013/23(1), pp. 131–153.

²⁰ M. Baran, *Dostęp do wymiaru sprawiedliwości w obszarze ochrony środowiska w państwach członkowskich*, „Europejski Przegląd Sądowy” 2020/11, pp. 15–33.

6. Conclusions

The analysis leads to four conclusions. First, the right to a healthy environment can be reconstructed as a public subjective right in the Polish legal system, even though it is not explicitly named in the Constitution. It is based on Article 5, Article 68(4), Article 74(1)–(4), and Article 86 of the Constitution of the Republic of Poland, read in light of the Aarhus Convention, Article 37 of the Charter of Fundamental Rights of the EU, and the contemporary case law of the ECtHR.

Secondly, this right is primarily vertical in nature. Its primary addressees are public authorities, who are obligated to create, apply, and enforce the law in a manner that ensures environmental protection essential to health, quality of life, and ecological safety.

Third, environmental responsibility for fashion companies is not an alternative to state obligations, but rather a form of implementation. A state constitutionally obligated to protect the environment should utilize product, information, waste, and supervisory obligations, as well as due diligence and reporting instruments where reasonable and proportionate.

Fourth, the fashion sector demonstrates particularly clearly that, *de lege lata*, it is necessary to treat the right to a healthy environment as an operational standard, not merely an axiological declaration. *De lege ferenda*, it would be justified to further strengthen the statutory basis for seeking protection in environmental matters related to textiles, including through the development of extended producer responsibility, more effective disclosure obligations, better control of product destruction practices, broader use of green public procurement, and more comprehensive access to justice in cases involving regulatory and supervisory failures.

Abstrakt

Prawo do zdrowego środowiska jako publiczne prawo podmiotowe w sektorze mody – między obowiązkami państwa a odpowiedzialnością środowiskową przedsiębiorstw

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Artykuł analizuje, czy prawo do zdrowego środowiska może być uznane za publiczne prawo podmiotowe w sektorze mody. Przyjmuje się, że jest to przede wszystkim prawo wobec państwa, realizowane poprzez obowiązki regulacyjne, informacyjne oraz ochronne organów władzy publicznej. Odpowiedzialność środowiskowa przedsiębiorstw stanowi natomiast konsekwencję oraz instrument tych obowiązków.

Słowa kluczowe: zdrowe środowisko; publiczne prawo podmiotowe, sektor mody, odpowiedzialność środowiskowa przedsiębiorstw

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