
Article

The Sustainable Development Concept in the Polish Legal Space from a Legal-Dogmatic Perspective

Maria Magdalena Kenig-Witkowska *

Faculty of Law and Administration, University of Warsaw, 00-950 Warszawa, Poland

* Corresponding author. E-mail: m.kenig_witkowska@wpia.uw.edu.pl (M.M.K.-W.)

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ABSTRACT: The sustainable development concept is of crucial importance for the socioeconomic development processes, not only at the international community level, but also—or, perhaps, particularly—at the national or even local levels. The aim of the article is to demonstrate, from a legal-dogmatic perspective, the place, role and significance of the sustainable development concept in the Polish legal space. This perspective applies to both the state policy intended to formulate a strategy which provides a basis for law-making processes and to find normative solutions making it possible to reconcile legally protected values which sometimes compete with one another, with account taken of the needs of future generations. The sustainable development concept has been very broadly followed in Poland not only in the legal doctrine, but also in the doctrine of economic and social sciences. This term has turned out to be such an effective political catchword that it has been commonly abused and, therefore, it has lost a good deal of its social importance; this makes it substantially more difficult to apply a normative approach to the issues related to the implementation of the concept in legislative practice. In the Polish legal space, the sustainable development concept has become the leading theme of many documents and legal acts, particularly those concerned with environmental protection, but also, although to a much more modest extent, those addressing the issues of socioeconomic development.

Keywords: Sustainable development; Brundtland Report; Notions and definitions; Polish Constitution; Legal character of principle of sustainable development; Polish policy and law on sustainable development



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1. Introduction

The sustainable development concept, which was presented in 1987 in the Report of the World Commission on Environment and Development (WCED), “Our Common Future” (the so-called Brundtland Report), became a pivotal point in the approach of the international community to the issues related to the environment and socioeconomic development [1]. The Brundtland Report was the first—in legal terms, too—mature proposal of an integrated approach to the issues of socioeconomic development from a perspective taking into account the requirements of the protection and preservation of the environment. It provided the basis for distinguishing four key elements of the sustainable development concept: (1) the need to take into account the needs of present and future generations; (2) the acceptance of limits on the meeting of these needs, among others, limits on natural resource exploitation; (3) the adoption of the principle of inter- and intragenerational equity; (4) an integrated approach to the issues of the environment and development.

The concept laid down in the Brundtland Report was soon expressed in different types of documents and acts of international law, including the most often cited 1992 Rio Declaration and Agenda 21 [2]. The importance of the sustainable development concept in the socioeconomic development processes was confirmed and strengthened in the document of the 2022 Johannesburg Summit, which provided that the economic development, the social development and environmental protection were three interdependent and mutually supportive pillars of the sustainable development concept [3]. These documents clearly showed its integrative character, consisting in the obligation of states to take into account the requirements of the preservation and protection of the environment in the determination of national development policies and law-making.

The wording of the elements of the sustainable development concept in the Brundtland Report and the Rio Declaration only apparently seems to be sufficiently clear to enable the normative representation of the principle of international law in this field and the determination of its application standards to be introduced into the national regimes [4]. In this context, the use of the term “sustainable development concept” seems to be more justified; primarily in light of its clear character of general guidance for law-making [5]. This character of the concept is also indicated by the case-law of international courts, from the already classical judgment of the International Court of Justice on the Gabčíkovo-Nagymaros project, through the Iron Rhine Arbitration, to the judgment on the Pulp Mills [6]. These judgments do not define the legal character of sustainable development and when they determine the context of the application of the term “sustainable development” the judgments refer to the principles of environmental protection which are well established in common law, such as the principle of prevention, the principle of international cooperation or the procedural principle of the obligation to carry out an environmental impact assessment.

To a large extent, the sustainable development concept still remains at the stage of looking for and formulating legal standards with a universal character for it. These processes were invigorated by the adoption of the 2030 Agenda which set out 17 so-called Sustainable Development Goals for the international community [7]. In the current state of this search, the elements of the legal standards of the sustainable development concept can be seen to emerge in practice, for the space of both international and national law, in the form of the standard of inter- and intragenerational equity understood in terms of the eco-capacity of the human environment and the standard of an integrated approach to the issues of development and environment.

As an EU Member State Poland has its obligations to implement the sustainable development concept under the policies and law of the European Union. In the political and legal system of the European Union, sustainable development has the character of a systemic objective to be achieved, which has been laid down among the Treaty-based general objectives of the European Union with regard to Europe and Earth. The term “sustainable development” is also included in the Preamble to the Charter of Fundamental Rights and in the provision of Article 37, which assigns it to the category of principles [8].

Despite this specification and the wording of the provision of Article 37 the Charter of Fundamental Rights, the notion of sustainable development in EU law still remains at the level of the general understanding of this term. The formulation of the objective, which is the action to ensure the sustainable development of Europe, in Article 3 TEU indicates support for the sustainable development of Europe in the context of the integration processes and principles concerning the EU values listed in Article 2 Treaty on European Union. These values provide the axiological basis for European integration based on economic growth, market economy, a high level of protection and improvement of the quality of the environment (Article 3 of the Treaty on European Union) [9].

Although the EU Treaties do not contain a definition of the notion of sustainable development, still for operational purposes in achieving the objective of sustainable development the notional category derived from the provisions of Article 3 TEU and Article 11 TFEU (the integration clause) can be used. Indeed, Article 11 provides that the requirements of environmental protection must be taken into account when all the Union's policies and activities are defined and implemented, in particular with a view to promoting sustainable development. The importance of the integration clause was strengthened by the provision of Article 7 TFEU, which imposes on the Union the obligation to ensure consistency between particular EU policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of power. Similar terms are used in the EU secondary law, such as e.g. the Birds Directive [10], the Habitats Directive [11], the Ecodesign Directive [12], the Directive establishing a framework for community action in the field of marine environmental policy [13], the Directive on the promotion of the use of energy from renewable sources [14], or Regulation (EC) No 2493/2000 on measures to promote the full integration of the environmental dimension in the development process of developing countries [15].

In the scope of European Union law, attempts have been made to define the objective of sustainable development. One of the proposed versions is the definition laid down in Regulation 2493/2000/EC, which provides that this term means “the improvement of the standard of living and welfare of the relevant populations within the limits of the capacity of the ecosystems by maintaining natural assets and their biological diversity for the benefit of present and future generations”. To a limited extent, guidance from the Eurostat can help define sustainable development. In 2002, it published a study containing 63 economic, social, environmental and institutional indicators of the implementation of the sustainable development concept [16]. The sustainable development concept, which in EU practice takes the form of a prescriptive norm for all EU policies, imposes the obligation to take into account, in addition to the environmental protection requirements, the principles of social equity and cohesion, the business cycle and the requirements under the international commitments of the EU in this matter. Thus, this concept reflects one of the systemic EU principles, i.e.,

the principle of integration. Therefore, the EU development objectives should be perceived from such a perspective which ensures that the needs of present and future generations can be met at the same time. Such an approach should be an element of EU policy based on the requirement for a continuous assessment of the effects of investment projects on the environment in terms of the provisions of the Strategic Environmental Assessment Directive 2001/42/EC [17]. It can, therefore, be said that in order to achieve the objective of sustainable development the Union and its Member States already have in place a formed principle which can be applied in the operational stage of the functioning of the sustainable development concept.

The article consists of six sections. Section 1 is the introduction to the subject. Section 2 addresses the issues related to definitions and content of sustainable development in the Polish legal space. Section 3 presents an overview of the emergence and evolution of the sustainable development concept in Polish policy context, while Section 4 analyses the issues related to the character of the constitutional principle of sustainable development. Section 5 contains a review of the adaptation of the sustainable development concept in Polish law. The present considerations are completed with several final conclusions which demonstrate that the sustainable development concept is understood in different ways in both the process of establishing national policies, and the practice of law-making process in this scope (Section 6).

2. Definitions and Content within the Polish Policy and Legal Framework

It should be emphasised that no sufficiently general definition of the term “sustainable development” has been formulated so far to enable its elements to be used in defining each pillar of the concept, particularly in terms of legal, economic and social sciences. On this occasion, it is also important to note the fact that the term “sustainable development” is translated into the Polish language as “zrównoważony rozwój”, which corresponds to “balanced development” in the English language. Without going into semantic differences (which are substantial) between the meanings of the terms “sustainable” and “balanced”, it should be noted that the Polish version of the Treaty of Lisbon as the authentic text of the Treaty uses the term “trwały rozwój” (“sustainable development”) to denote sustainable development, while, in contrast, the Polish version of the text of the Charter of Fundamental Rights uses the term “zrównoważony rozwój” (“balanced development”) [18].

In addressing the notion of sustainable development functioning in the Polish legal space, it is well-advised to start by quoting its statutory definition laid down in the Environmental Protection Law Act, which became a point of departure for a discussion of the legal doctrine on this issue [19]. When introducing the provision of Article 3(50) of this Act, the Polish legislator defined sustainable development as the socioeconomic development which integrates political, economic and social actions, while preserving the natural equilibrium and the sustainability of basic natural resources, with the aim of guaranteeing the ability of individual communities or citizens, of both the present and future generations, to satisfy their basic needs. In its particular elements, this quite an extensive definition refers to the sustainable development concept laid down in the Brundtland Report and the Rio Declaration.

As part of the discussion of the Polish legal doctrine, one may come across the view that this term should not be defined at all, since it is to a greater extent a political idea rather than a concept enabling the building of a sustainable economic policy [20] (p. 26) and, moreover, it is an extralegal notion of an economic character, primarily having a programming value for establishing a state policy [21] (pp. 7 ff). It is interesting to point out that when writing about sustainable development most Polish authors note that although this notion is hardly clear and it is difficult to establish legal standards for its implementation, still it clearly provides for the integration of policy, economy and social actions with the environmental requirements [22] (pp. 193 ff). The demands formulated by the doctrine of environmental law for the gradual limitation of the use of the natural resources of the environment and the finding of substitutes for them with a view to meeting the need to safeguard the existence of future generations also refer to such an understanding of this concept [23] (pp. 32 ff). In light of this, emphasis is placed on the importance of the sustainable development concept for the implementation of conscious organisational and management actions to ensure the correct state of the environment for many generations [24].

In the legal doctrine, the practical importance of the wording of the definition of sustainable development is generally assessed to be slight [25] (p. 136), and the same applies to the definition of sustainable development laid down in the Environmental Protection Law Act [26] (p. 37), where this definition essentially applies to the system of environmental protection law. Therefore, the margin of discretion in using this term under the whole national legislation should be limited to the correct interpretation of the systemic principle laid down in Article 5 of the Constitution of the Republic of Poland. From this perspective, there is no doubt that in order for the development of

future generations to be sustainable, it must take into account the requirements of its three basic pillars; specifically, the environmental, economic and social ones.

In the context of considerations on the definition of the sustainable development concept, it is important to bear in mind the fact that the definition in question as laid down in the Environmental Protection Act Law has a prescriptive character for the system of environmental law. This means that it is binding for all the state authorities in this matter. It should, therefore, be considered in the process of making and applying the law, including in the course of the judicial interpretation of the provisions of the law, as this is of vital importance for the determination of the above-mentioned margin of the understanding of the sustainable development concept as laid down in the Constitution of the Republic of Poland. In Poland, this interpretation is mainly made by the administrative courts, since it is to them that individual challenges related to the issue of environmental decisions and challenges related to spatial planning, primarily against resolutions on local land use plans, are submitted in the context of a breach of environmental requirements [27] (pp. 114 ff). A review of selected examples of court judgements quite clearly shows the following elements of the judicial interpretation of the sustainable development concept; specifically: (1) sustainable development is a principle of law; it also plays the role of a directive for the interpretation of law, especially when doubts arise as to the scope of obligations, their types and the manner of their fulfilment; and it is used to resolve conflicts between competing values [28]; (2) it is first of all the legislator who is obliged to consider the sustainable development principle in the law-making process and the authorities which apply the law should bear this principle in mind; (3) the sustainable development concept involves, among others, the requirement for the intervention in the environment to cause as little damage as possible and for the social benefits to be proportional and socially adequate to the damage done [29]; (4) the standards of the principle of sustainable development include not only nature conservation and the management of the spatial order, but also the care for social and civilisational development, entailing the need to build the infrastructure necessary to meet the civilisational needs of citizens and individual communities. In light of this, the idea of sustainable development involves the need to consider different constitutional values and to correctly balance them [30]; (5) the principle of primacy of environmental protection over other requirements has not been established in the Polish legal system, while the framework for considering the issue of environmental protection has been set out by the constitutional principle of sustainable development as laid down in Article 5 of the Constitution of the Republic of Poland [31]; (6) the principle of sustainable development and environmental protection are essential elements of the national socioeconomic and spatial development policies. The tasks related to the fulfilment of this principle and the principles of environmental protection are taken into account in normative acts, as well as in the activities of state authorities, organisational units and nongovernmental organisations [32]. It can thus be seen that the cited case-law provides a broad perspective for understanding the sustainable development concept in the Polish legal space, referring to a wider perspective of environmental requirements in relation to the economic and social requirements arising from the sustainable development concept. If one were to briefly comment on the sustainable development concept from the perspective of the judicial practice of Polish courts, in applying in their judgements the provisions of the Constitution and laws, Polish judges understand the sustainable development concept in the context of the constitutional systemic principle of sustainable development concerning the requirements set for its implementation in the documents of international law providing for the balancing of the requirements of the three pillars in the process of socioeconomic development.

3. An Overview of the Emergence of the Sustainable Development Concept in the Polish Policy Context

Due to the so-called Brundtland Report, the sustainable development concept was followed both in the Polish legal doctrine and in the politicians' actions still before the dissemination of the documents of the so-called Earth Summit which was held in Rio de Janeiro in 1992 [33] (pp. 79–86). It was adopted in the political documents of the Polish authorities and political institutions in the period of the transformation of the political and legal system in Poland in 1998. Its outline could already be discerned in the work of the so-called Roundtable which prepared the above-mentioned transformation; specifically, at the Commission of Environmental Protection and Natural Resources. The arrangements made then concerned environmentally friendly economic activities, legal regulations, international cooperation and the establishment of the public system of environmental protection. The problems which were considered to require urgent action included forest degradation, water and soil pollution, and food contamination [34] (pp. 135 ff).

For the first time the Polish Parliament (Sejm) expressed its position on the sustainable development concept by adopting on 19 May 1991 its resolution on the national environmental policy which directly referred to this concept [35]. The Sejm took the position that the environmental policy should lead to the formulation of the assumptions of

socioeconomic policy in line with the assumptions of eco-development, i.e., sustainable development, applying these terms interchangeably.

In 1995, the Sejm of the Republic of Poland adopted its resolution which directly concerned the national policy, clearly referring to the perspective of sustainable development [36]. In that document, the Sejm recognised the sustainable development concept as the basis for the functioning of civilisation and the goal which Poland was committed to achieving. Consequently, the Sejm expressed its position on the improvement of the legal and economic systems in Poland so that in the process of supporting environmental policy these systems would foster the sustainable development of the whole economy. The Sejm recommended that the Government of the Republic of Poland should improve its interdisciplinary and multilateral actions in economic and foreign policies so as to make the sustainable development concept consistent with its assumptions laid down in the above-mentioned documents of the Earth Summit. Thus, the Sejm indicated a wider perspective for the sustainable development concept than the environmental one only, the implementation of which should involve all the central state authorities rather than only those dealing with the environment. It also emphasised the significance and importance of the education of the public to promote the sustainable development concept. It also took note, with approval, of the establishment of the Commission on Sustainable Development, in line with the recommendations of the documents of the 1992 Earth Summit, regarding this fact as an important factor supporting the actions by citizens, the Sejm and the Government to implement the sustainable development concept in Poland.

The Sejm addressed the sustainable development concept again in its resolution of 2 March 1999 on the presentation of the sustainable development strategy by the Council of Ministers [37]. In that resolution, it pointed out the existence of new threats to the environment, also discerning their global perspective and indicating Poland's commitments in this matter under international agreements and those related to Poland's preparations for its membership in the European Union. The Sejm saw the need to modify the national environmental policy and to link it more strongly to the social and economic development. It conferred to the sustainable development concept the rank of the development model where the satisfaction of current social needs and the needs of future generations would be treated equally. It also expressed its expectation that the Government of the Republic of Poland, which had been requested to prepare a sustainable development strategy until 2025, would be guided in preparing this strategy by the care for the preservation of the natural and cultural environments, while keeping these actions in harmony with the civilisational and economic advancement of all the social groups.

The sustainable development concept was also included in the resolution on the 2nd National Environmental Policy adopted in 2001 by the Sejm and a year before by the Government [38]. Already in the introduction of the document, it was pointed out that the Republic of Poland ensured environmental protection, following the principle of sustainable development. It can be said that by including the sustainable development concept within the framework of the National Environmental Policy its environmental perspective was mainly emphasised, although it should be pointed out that, as it also noted, the assumption of this concept was the equal treatment of the environmental, social and economic factors in decision-making, meaning an integrated approach to the issues of environmental protection in the implementation of other national policies.

In 2000, the Polish Government adopted a strategic document entitled The Strategy for Poland's Sustainable Development until 2025, which set out the conditions for the implementation of the sustainable development concept in Poland [39]. In accordance with the assumptions made in that document, the Strategy provided for a stage of mutual balancing of phenomena unfolding in the three pillars of development included in the sustainable development processes, i.e., the social, economic and environmental pillars. A review of that document shows general political guidelines for the law-making process; such as the recognition of the environment as a protected value; the recognition of the principle of inter- and intragenerational equity; a call for respecting the principle of public participation in decision-making on the environment; the recognition of the principle of comprehensiveness providing for a comprehensive approach to ecosystems; the application of the polluter pays principle and the precautionary principle. For operational reasons, it is important to stress the fact that not only documents of the central level, but also those of local governments at different levels referred to the Sustainable Development Strategy [40] (pp. 677 ff).

The sustainable development concept was also reflected in many strategies and programmes for sectoral policies of importance from the perspective of Poland's socioeconomic development, such as e.g., the Climate Policy of Poland until 2040 [41]; the Energy Policy of Poland until 2040 setting out the basic directions of energy policy, taking into account the principle of sustainable development [42]; the Strategy for Changing Production and Consumption Patterns to Those Contributing to the Implementation of Balanced and Sustainable Development [43]; the Transport

Policy of Poland setting out the main directions of transport development in accordance with the principle of sustainable development [44].

In Poland, strategies, programmes, projects and similar forms of political action plans for sustainable development are implemented with account taken of the principles underlying the 2030 Agenda for Sustainable Development [45]. Consequently, it should be noted that Poland acceded to the Voluntary National Review (VNR), to submit for the first time in 2018 to the United Nations its report on the implementation of the 2030 Agenda and the 17 Sustainable Development Goals [46]. The main part of the Report was a diagnosis of progress in the implementation of the Sustainable Development Goals in the period from 2018 to 2022, which could be assessed as a moderately positive one. It should be noted that the Report was prepared with consideration given to the perspective of the three key dimensions of the SD principle, i.e., the economic, social and environmental ones. As indicated by its content, the aspect of mutual linkages among the particular goals was paid more attention. In Poland, most linkages were identified in the areas of the implementation of Sustainable Development Goals 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16 and 17 [47].

4. Legal Character of the Constitutional Principle of Sustainable Development

In the Polish legal order, Article 5 of the Constitution of the Republic of Poland is the systemic basis which confers the rank of a principle to sustainable development [48]. This Article provides 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 principle of sustainable development”. The Constitution also refers to the principle of sustainable development in its Article 74 in the context of environmental security as well as the principle of intergenerational equity and environmental protection. It should be added that the provision of Article 5 is part of Chapter I of the Constitution of the Republic of Poland entitled “The Republic”, which includes the most important systemic norms.

The content of the provision of Article 5 of the Constitution still continues to provoke discussions in the doctrine on the legal character of the principle of sustainable development cited there. The issue in those discussions is whether its situation and the context of the whole provision of Article 5 imposes its treatment as a systemic principle or whether it is only a political guideline of state policy [49]. The conferment of the rank of a systemic principle to it implies the obligation on the state authorities to be guided by it in the fulfilment of the functions of the state as set out in the provision of Article 5. It follows from its content that in its normative dimension this principle can be considered a norm imposing on all the state authorities the obligation to take actions to achieve sustainable development. This means that the public authorities should follow the constitutional guideline of achieving sustainable development by way of balancing the constitutional social, economic and environmental values. Thus, the legislator intentionally conferred the character of a systemic principle to the provision of Article 5.

An analysis of the provision of Article 5 of the Constitution of the Republic of Poland can also raise a question as to whether the principle of sustainable development should be applied to all the actions of the state listed in it. There is no doubt that the limitation of its application to the context of environmental protection narrows and constraints its content and scope of application. Its direct linkage to the protection and preservation of the environment is justified in its integrative dimension resulting from the need to balance the above-mentioned three pillars when it is referred to the economic and social dimensions or when one of these two dimensions is referred in practice, directly or indirectly, to the requirements resulting from the protection and preservation of the environment. It should also be pointed out that from the perspective of Article 5 of the Constitution the commitment to sustainable development is a constitutional goal of the state and an obligation of the public authorities. From this perspective, sustainable development is a systemic principle which imposes on the public authority, to the greatest extent possible, the obligation to implement the goals of sustainable development, taking into account the current situation and the actual social and legal capabilities [50] (pp. 2 ff).

The emphasised environmental focus, which can be discerned not only in the views of the doctrine, but also in the national legislation, seems to mainly result from an ecocentric approach of the doctrine to the issues of the protection and preservation of the environment. Such an approach does not stand up to a criticism using the argument that the sustainable development concept makes it necessary to take action for the socioeconomic and civilisational development which requires the construction of relevant infrastructure accommodating the civilisational needs of individuals and communities. At this point, it is important to recall the case-law of Polish courts cited above,

including the judgement of the Constitutional Tribunal of the Republic of Poland which treated the principle of sustainable development more broadly than in the context of environmental protection or the spatial order.

In accordance with the principle of the direct application of the Constitution, the principle of sustainable development laid down in Article 5 has a normative character and is binding for both the legislator and the administrative authorities which have law-making competences, although the views of the doctrine are not uniform in this respect. The principle in question involves a clearly articulated order which demands specific behaviour consisting in the protection of the values listed in the provision of Article 5 and which is addressed to the Republic of Poland represented by its authorities. It should also be borne in mind that the provision of Article 5 applies directly, pursuant to Article 8(2) of the Constitution, unless the legislator provides otherwise and the legislator has not done so. The principle situated in this way performs the law-making and interpretative functions, as well as the function of eliminating the collision among different legally protected values. It should be emphasised that the sustainable development formulated in this way does not generate any subjective right, although, as some representatives of the doctrine believe, it produces a reflective objective right, consisting in the imposition on the state authorities of the obligation to ensure appropriate living conditions for the present citizens, while maintaining development prospects for future generations [51].

Although the Constitution of the Republic of Poland does not define the notion of sustainable development, it is possible on the basis of an analysis of the entire content of its provisions to formulate the general meaning of the term “sustainable development”, which indicates the balancing of the requirements of the environment and the needs of social and economic development which result from the civilisational aspirations of present generations and should take into account the needs of future generations. On this occasion, it is interesting to recall the guidance arising from the 2003 judgement of the Constitutional Tribunal where the Tribunal expressed its view that constitutional notions had an autonomous character and did not represent a mechanical transposition of the normative constructions existing under ordinary legislation. The reference to statutory notions is not an error per se, but its auxiliary character should be recognised [52]. Hence, the normative value of the definition laid down in the above-mentioned Environmental Protection Law Act is limited to the system of environmental law.

5. Sustainable Development in Polish Law

The assumptions presented above (Section 2) for the EU policy and law on the implementation of the sustainable development concept by measures to harmonise law within the EU have been implemented in the Polish legal order, in accordance with the rules governing the EU legal system. In this matter, the legal doctrine attributes essential importance to the Environmental Protection Law Act of 27 April 2001, which is generally considered the basic act of broadly conceived environmental law. However, it should be borne in mind that the Act uses the notion of sustainable development for the purposes of the interpretation of its provisions. In this context it is also necessary to recall the provision of Article 3(50) of the Environmental Protection Law Act as cited above, which provides that sustainable development is such socioeconomic development which integrates political, economic and social actions, while preserving the natural equilibrium and the sustainability of basic natural processes, with the aim of guaranteeing the ability of individual communities or citizens, of both present and future generations, to satisfy their basic needs. It is also important to note that in its Article 3(13) the Act refers to the context of the sustainable development concept when defining the statutory notion of environmental protection.

The substantive scope of the principle of sustainable development laid down in the Environmental Protection Law Act includes policies, strategies, plans or programmes relating in particular to industry, energy, transport, telecommunications, water management, waste management, spatial planning, forestry, agriculture, fisheries, tourism and land use which should take into account the principles of environmental protection and sustainable development (Article 8). Article 71(1) of this Act, concerning the issues of environmental protection in the scope of spatial planning and the implementation of projects, also refers to the principle of sustainable development. It provides that the principles of sustainable development and environmental protection provide the basis for drawing up and updating the national spatial development concept, the provincial development strategies, the provincial land-use plans, the municipal studies on factors and directions of land use and local land-use plans. The case-law also refers to such a role of the provisions of the Act [53]. A reference to the principle of sustainable development can also be found in the provisions of Article 80 concerning advertisements or another type of promotion of a product or service, which provides that such activities should not be in contradiction with the principles of environmental protection and sustainable development.

The provisions of the Act governing the role and scope of duties of the State Council for Environmental Protection and Water Management also refer to the principle of sustainable development, providing that the scope of duties of the Council includes the submission of proposals and motions concerning the creation of the conditions for sustainable development and the protection and preservation of the environment. The provisions of Article 400a (2), (32) and (42) should also be mentioned. It concerns the financing of nature conservation from the resources of the National and Provincial Funds for Environmental Protection and Water Management and specifies the principles guiding environmental education in the context of tasks resulting from the principle of sustainable development for environmental protection and water management.

The provisions of the Water Law Act of 20 July 2017 [54], which governs the management of waters, also refer to the principle of sustainable development. The Act regulates, in particular, the issues of the development and protection of water resources, the use of waters and the management of water resources. The principle of sustainable development is also referred to in Articles 5 and 187 concerning the guidelines for design, construction and maintenance of water facilities. Another legal act which refers to the principle of sustainable development is the Act of 27 March 2003 on the Spatial Planning and Development [55]. The Act sets out the principles of the shaping of the national spatial policy, adopting the spatial order and sustainable development as the basis for these activities (Article 1). The importance of the Act lies in that its provisions refer not only to the issues related to environmental protection and spatial management, but also to economic and social activities, filling out the framework of the constitutional principle of sustainable development and the designata of the notion of sustainable development as laid down in the in Article 3(50) of the Environmental Protection Law Act. The adoption of the assumption that Poland's spatial development concept should define the conditions, objectives and directions of sustainable development, makes the Act one of the most important legal acts providing the legal basis for the operational dimension of the principle of sustainable development.

The Act of 20 April 2004 on the National Development Plan also refers to the sustainable development concept, providing in its Article 2 (17) that the regional development will be supported by a set of actions taken by the Council of Ministers to promote the sustainable and balanced development of provinces [56]. These actions should be based on the uniform rules for the access of provinces to national and EU public resources. The national energy policy is also prepared in accordance with the principle of sustainable development, as provided for by Article 15 of the Energy Law Act [57]. Another legal act which deals with the operational dimension of the principle of sustainable development is the Act of 5 June 1998 on the Provincial Self-Government [58], which provides in its Article 11(2)(5) that the rational use of natural resources and the management of the natural environment in accordance with the principle of sustainable development are the subject matter of the policy of the provincial self-government. It is astonishing to see no similar phrase in the Act on the County Self-Government of 5 June 1998 [59] and the Act on the Municipal Self-Government of 8 March 1990 [60] although these two Acts also deal with self-government policy.

At the end of this review of legislation, it is important to mention the Forest Act too [61] Although the provisions of the Act do not explicitly mention the principle of sustainable development, still they introduce the term “sustained and sustainable forest management”, which means an activity intended to shape the structure of forests, to maintain and enlarge them, in a manner and at a pace ensuring the permanent preservation of their biological riches, high productivity, regeneration potential, vitality and capacity to fulfil, at present and in the future, all the important protective, economic and social functions at the local, national and global levels, with no detriment to other ecosystems. This provision clearly refers to the context of the EU sustainable development concept as laid down in the Treaty on European Union, also indirectly referring to such elements of the sustainable development concept as intra- and intergenerational equity.

It follows from this legal-dogmatic analysis of the provisions of Polish law—which had to be brief—that the notion of sustainable development appears in legal acts, usually without expanding its content and with a clear verbal reference to the principle of sustainable development, while its demonstrated wider context relates to the perspective of balanced development rather than sustainable development. It should also be noted that, in addition to a reference to the principle of sustainable development, some of the regulations introduce the term “sustainable use” (“zrównoważone użytkowanie”), e.g., in the 2004 Nature Conservation Act, e.g., with respect to the issues related to the use of biodiversity (Article 2(4) [62]), or in the Forest Act with respect to sustained and sustainable forest management.

It can also be noted that certain Acts, e.g., the Act of 27 March 2003 on the Spatial Planning and Development, refer to the definition of sustainable development laid down in the Environmental Protection Law Act. It follows from the review of Polish legislation that the definition in the Environmental Protection Law Act has a systemic character and is binding in the scope of other Acts on environmental protection. Moreover, it should be pointed out that, under

the influence of EU legal acts harmonising environmental law, in addition to the notion of “sustainable development”, the notion of “balanced development” also appears in amendments to Polish legal acts.

The sustainable development concept appears in Polish law primarily in legal acts on the environmental pillar of the principle laid down in Article 5 of the Polish Constitution and seldom in legal acts concerning e.g., the performance of economic activity [63], or the social assistance from the state [64]. It can be said that the sustainable development concept present in Polish legal acts is a directive targeting the implementation of the sustainable development concept, mainly from the perspective of its environmental dimension. This confirms the thesis that in Poland the sustainable development concept still continues to be identified to a large extent with the notion of eco-development. In contrast, references to the requirements set by the implementation of other pillars are not strongly voiced either in political documents or the provisions of law. Such an approach of the legislator seems to cause a number of consequences, especially when the implementation of the sustainable development concept is considered from the perspective of the Sustainable Development Goals listed in the UN 2030 Agenda 2030. These consequences include the need for environmental regulations to incorporate the issues related to investment, construction and production activities on which, in consequence, restrictions and limitations affecting the socioeconomic development of the country, i.e., the two other pillars of the sustainable development concept, need to be imposed. It should be borne in mind that these limitations are justified by the principle of intergenerational equity, under which sustainable development meets the aspirations of present generations without thwarting the ambitions of future generations to meet their aspirations.

6. Several Final Conclusions

The principle of sustainable development is a systemic principle of the legal system of a prescriptive character as laid down in the Constitution of the Republic of Poland.

As an EU Member State, Poland is obliged to implement the systemic objectives of the European Union, including sustainable development, which is a systemic strategic objective of the European Union.

In the legal acts shaping the state policy, the sustainable development concept is sometimes called the principle of taking into account the requirements of environmental protection in the process of socioeconomic development. Therefore, in Poland the objectives of sustainable development are mainly implemented following the principles of environmental protection law.

It should be borne in mind that this concept goes beyond the area of normative provisions defined as environmental protection law. The Polish legislator should discern more clearly than to date the absence of a specific margin of discretion in the application of this term under the national legislation in the process of the correct interpretation of the systemic principle inscribed in the Polish Constitution. Indeed, under the provisions of the Constitution the principle of sustainable development has a definitely wider normative dimension.

From the perspective of the systemic character of the principle of sustainable development, as a result of its situation in political documents and legal acts concerning the sphere of economic and social life, the state policy should actually be based on the constitutional construction of the principle of sustainable development, comprising the need to take into account different constitutional values and to appropriately balance them, as evidenced by the conclusions from the findings of the VNR Report on the implementation of the 17 Sustainable Development Goals by Poland.

The constitutional principle of sustainable development functioning in the Polish legal space is binding for all the state authorities which interpret the provisions of procedural and substantive law, including the judicial authorities. It should be noted that the court judgements in the context of this principle confirm its three-pillar dimension. It also follows from these judgements that the principles of environmental law have no primacy over other principles of substantive law.

It should be also emphasised that neither a normative basis for the limitation of civil liberties and rights, nor a basis for individual claims against the state can be found in the content of the principle of sustainable development as derived from the provisions of Polish law.

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Informed Consent Statement

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