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Environmental Law and the Property Guarantee

Polish report

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The Constitution of the Republic of Poland and the ownership / right to property

art. 21 of the Constitution

1. *The Republic of Poland shall protect ownership and the right of succession.*
2. *Expropriation may be allowed solely for public purposes and for just compensation*.

Article 31 section 3 of the Constitution

Any limitation upon the exercise of constitutional freedoms and rights may be imposed only be by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

art. 64 of the Constitution

1. *Everyone shall have the right is to ownership, other property rights and the right of succession.*
2. *Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.*
3. *The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.*

The Constitution and the environmental protection

Pursuant to the Constitution of the Republic of Poland, it

"shall the ensure the protection of the natural environment pursuant to the principles of sustainable development" (Article 5 of the Constitution).

This task is elaborated in further provisions of the Constitution that relate directly to the environment, in which the following were formulated[1]:

(a) a constitutional duty of public authorities to protect environment and to ensure the ecological security to the current generation as well as to the future ones;

(b) an everyone's duty of care of environment's quality as well as a principle of bearing responsibility for its degradation caused by themselves;

(c) a universal subjective right to access to information on the quality of the environment and on its protection, as well as

These legislative solutions together with the possibility to intervere into propriety right in favour of environment refer to "**the constitutional and system tradition that treats 'the environment' as an objective asset constituting a 'common good'** (...)". Its use and protection should be widely available, i.e. for everyone, provided that the sustainable development principle and the requirements of inter-generation environmental ethics the very principle determines are respected"[2].

[1] Cf. Articles 68 (4), 74, 86 and 31 (2) of the Constitution.

[2] A. Wasilewski, *'Dynamika zmian i kontynuacja we współczesnym prawie administracyjnym wyzwaniem dla doktryny prawa (na przykładzie prawa o ochronie środowiska)'* in: J. Supernat (ed.) '*Między tradycją a przyszłością w nauce prawa*

The realization of the provisions of the Republic of Poland' Constitution which relate to environment and its protection, is carried out by virtue of law of environmental protection's provisions in which not only does the legislator use the term "good", (which is, by the way, used in different contexts [e.g. "nationwide (all-Poland) good"] but in some cases he also expressly qualifies environment as "common good" although without giving that expression any further normative significance. Nevertheless, the common good within the meaning of environmental protection law may denote environment itself, its individual components and the processes taking place within it, while taking at the same time into account those elements that are subject to or may be subject to "an individual appropriation"[3] (for instance - lands, forests).

Expressing a concept of environment in terms of the common good constitutes a justification for creating determined rules governing the use of the goods in question as well as of effective legal instruments of their protection within the existing legal order. This comes into being *inter alia* by shaping the content of ownership rights within the framework of provisions of law of environmental protection.. **In the case of private ownership it constitutes a manifestation of the individual's contribution to protect the environment viewed as the common good and the realization of environmental protection and its elements regardless of who actually own them** (e.g. according to the Water Law Act "*All waters are protected, regardless of who owns them, as they constitute an integral part of the environment and provide habitats for animals and plants;* - according to the Act on Forests, the act shall apply it forests, irrespective of their forms of ownership).

> *In one of its judgments, the Polish Constitutional Tribunal expressed the view that an environmental protection promise contained in article 31 section 3 of the Constitution emphasized not only the admissibility, but also the need to establish restrictions to freedoms and rights for given the consideration of the protection of the environment. Requirements in the field of environmental protection have primarily an effect on shaping the freedom to conduct business activities, but they also justify interference in the sphere of ownership rights while maintaining proportionality of the interference and the essence of an ownership right. Environment constitutes a constitutional value of the particular importance – cf. the judgment of the Constitutional Tribunal of 15 May 2006, Reference number P 32/05, OTK ZU 2006/5A/56.*

1) *What are, according to your country's legal system, potential objects of "property" (real things, private law rights, public law rights, a business, a market share etc)? To what extent is it possible to obtain property / ownership on natural resources? Has private property been used in defence of environmental protection?*

Potential objects of "property"

In broad terms, the ownership is synonym of the term "property" defined as property and other property rights (Article 44 of the Polish Civil Code). In this sense "ownership" is a collective concept for all property rights, whose subject may be tangible objects which are things (lands), tangible objects which are not things (for instance - water, ores) or intangible goods (for instance a literary work).

In the literature of the subject, it is assumed that **the property rights** are[4]:

a) **proprietary rights** (ownership, perpetual usufruct [leasehold ownership], limited proprietary rights *[iura in re aliena]*)

   The subject of ownership as a proprietary right may only be things - tangible objects ("tangible parts of nature in its original or processed state, separated in a natural or in an artificial manner to such an extent that in legal transactions they may be regarded as autonomous goods"[5]).

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administracyjnego. Księga jubileuszowa dedykowana Profesorowi Janowi Bociowi' (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2009), at. 771.

[3] Zob. A. Wasilewski, Dynamika zmian…, s. 771.

[4] Cf. M. Bednarek, *A commentary to Article 44 of the Polish Civil Code,* LEX.

The right of ownership of things in the Polish legal system is regarded as "a subjective right having the widest content as well as – when in comparison with other rights – as the strongest right in relation to things". It involves a range of entitlements, which include in particular an ability to use the thing, to collect profits [beneficial use], to exploit the object of the ownership as well as freedom to dispose of the thing" (cf. the judgment of the Constitutional Tribunal of 7 November 2006, reference number SK 42/05).

b) other rights, including:

- the rights resulting from contractual relationships such as tenancy, pecuniary claims;
- intangible property rights (intellectual property rights or industrial property rights);
- property rights of an absolute character, whose subject there are tangible goods, which are not things (mining rights, water rights, a right to hunt and fish).

Property / ownership on natural resources

Having in mind the principal division of kinds of property ownership (public ownership and private ownership), the notion of "ownership": which in broad sense consists of the whole property rights, features of particular natural resources, as well as expressions existing in environmental law (like: public water, mining ownership, forests which constitute ownership of the State Treasury, "forests which constitute ownership of natural persons or of legal persons"; wild game animals owned by the State Treasury and others) **natural resources can be the object of right to property as a proprietary right or as another property right, both private or public**.

These natural resources, which because of their character (they are able to be separated in the technical sense) can be the object of private or public property rights (lands, forests).

Some natural resources, which due to their essence (they have not been separated) are not things, may **constitute component parts of a thing/object**. A component part of things may not be a separated subject of ownership and of other proprietary rights (*for instance trees and other plants, from the date of having been planted constitute component parts of the land; ores not covered by the mining ownership constitute component parts of a land and are subject of ownership of the owner of the very land).*

Some component parts of the environment because of their nature (like the atmosphere, climate) are exclusively the object of public law provisions regulating their use.

Special rules concern animals, waters and some ores (tangible objects which are not things).

Animals :

- according to the Act on Protection of Animals, an animal as a living being, capable of suffering – is not a thing; however in matters not covered by the Act, the provisions related to things shall be used accordingly to animals.
- according to the Hunting Law game animals as a free state, as the national *[all-Poland]* value shall be the property of the State Treasury. They may not be the object of private property.

Waters: according to the provisions of the Water Law related to right to ownership of waters:

- waters constitute the ownership of the State Treasury, of other legal persons or of natural persons.
- the waters of the territorial sea, internal maritime waters along with internal maritime waters of the Bay of Gdańsk *[Zatoka Gdańska],* inland surface flowing waters and groundwater constitute the ownership of the State Treasury.
  The waters constituting the ownership of the State Treasury or local government entities are public waters. Flowing public waters are not subject to civil law transactions, except in the cases specified in the law.

[5] Cf. M. Bednarek, *A commentary to Article 45 of the Polish Civil Code,* LEX.

- Standing (still) waters, and waters in ditches located within a land plot constitute ownership of the owner of the very real property;
- fish and other aquatic living creatures constitute water's profits, that the owner of the very water is entitled to collect.

Ores: according to the provisions of Section II of the Geological and Mining Act (*Mining ownership, mining usufruct, and other mining entitlements*):

- determined deposits of ores, listed in the Act (for example crude oil, natural gas, hard bituminous coal and lignite [brown coal], treatment waters, thermal waters) are, regardless of where they may be found, the subject of mining ownership. **The concept of mining ownership is a separate property right enjoyed solely by the State Treasury in separation from the ownership of a real property.** A mining ownership right is an inalienable right including the possibility of making use of the object of the mining property in exclusion of others, as well as of disposal of the right of mining ownership exclusively by establishing the mining usufruct.

Has private property been used in defence of environmental protection?

From a constitutional prospective, ownership is not of absolute nature and it may be subject to a "qualified" (expropriation) or "ordinary" (restriction) interference from the State.

The Constitution enables to use private property to protect the environment by:

- Expropriation (Article 21) - in case of expropriation the intervention is legitimate by public aim (purpose) and subjected compensation;

- limitation upon the exercise of constitutional freedoms and rights, e.g. property rights (Article 31 section 3 of the Constitution): which is legitimated by public interests indicated in this article (one of them is environmental protection), must stand the test of proportionality and shall not violate the essence of freedoms and rights.

Sometimes a dispute before the Constitutional Tribunal concerning the depth of public intervention into ownership and the possible violation of the essence of property right appears. It is important as such an intervention which violates the essence of property right qualify legal intervention as expropriation which needs a fair compensation.

> *The example can be the case in which the Constitutional Tribunal determined that: With respect to a right of ownership, a violation of its essence (core, heart) would occur if introduced restrictions regarded basic rights that make up the content of ownership, making it impossible in practice to exercise the very right. Restrictions may not lead to "degeneration of ownership ' or to imposing on the owner a burden which would unbearable.*
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> *According to the Constitutional Tribunal, a prohibition to carry out certain activities on the property at a distance of less than 50 meters from a flood bank, introduced in the Water Law Act, serves the questions of public safety, public health, protection of life and property of citizens as well as environmental protection and it is within the determined boundaries. It does not destroy the fundamental components of a right to ownership, such as the ability to use, to collect profits or to dispose of the ownership, since it does not prevent sale of real property or leasing out a plot of land adjacent to the flood bank. It does not preclude the use of the real property, nor even to build it up - subject to obtaining an authorization or if the built-up will be carried out at a distance greater than 50 meters from the flood bank.*

The boundaries to the content and to exercising a right to ownership have been defined in a large number of specific acts. They result from the norms of civil law being a part of private law (e.g. provisions of the Civil Code concerning the so-called "neighours' law" serving to protect the

rights and interests of the third parties[6]). Most of the limitations to the right of ownership has a public law nature and they stem from administrative law, including *inter alia* from:

- provisions of the Real Property Management Act - which enables expropriation of the property right due to the need to implement the public aims, including this aiming to protect the environment;

- provisions of the Spatial Planning and Land Development Act, in which the principle of a limited right to develop the land to which one has their legal title was expressed[7]. The adoption of a local plan, or the changes thereto may be qualified limitations in the use of a real property or a part thereof, for reasons connected with the protection of environment.

- as well as from the environmental regulations: provisions of the Environment Protection Law Act, the Nature Conservation Act, the Water Law Act , the Building Law Act, the Act on the Protection of Agricultural and Forest Land, the Act on the Protection of Monuments and Preservation of Monuments, among others. The provisions of these acts enable to use the private property to protect the environment, its components or other goods like monuments or public health.

Here are some examples of using private property for protection of the environment with or without compensation:

Limitation to results from local area development plan

According to the provision of art. 6 (1) and (2) of the Spatial Planning and Land Development Act: *The findings of the local area development plan shall develop, along with other provisions, a manner to perform a right of real property ownership (sec. 1). Everyone has the right, within the limits provided for the law, to develop the area to which they have a legal title in accordance with the conditions set out in a local area development plan or in a decision on building condition and site management land, if it does not violate the public interest as well as the third parties' interest protected by the law (...)" (sec. 2).*

A local area development plan, conditions for maintaining the balance of nature and the rational management of environmental resources are ensured, by:

- taking into account the needs for nature conservation, for protection of air, water, soil, earth, protection against noise, vibration and electromagnetic fields, environmental and landscape values and climatic conditions,

- providing a comprehensive solution to problems of building development of towns (cities) and villages, with a particular emphasis on water, waste water, waste management, transport systems and public transport as well as designing and shaping the greenery area.

COMPENSATION

Consequently, the effect of the adoption of a local area development plan, or the changes thereto may be qualified limitations in the use of a real property or a part thereof, for reasons connected with the protection of environment, which allows the owners to lay certain claims on the basis of Article 36 of the Spatial Planning and Land Development Act according to which:

If, in connection with the adoption of the local area development plan or with its alteration, use of the real property or a part thereof in the previous manner or in compliance with the previous purpose has become impossible or significantly reduced, an owner or a holder of perpetual usufruct [leasehold ownership] of the real property may demand from the commune

[6] According to article 140 of the Polish Civil *Code: Within the limits specified by statute and the principles of community coexistence the owner may, to the exclusion of other persons, use the thing in conformity with the social and economic purpose of his right, in particular he may collect profits and other proceeds from the thing. He may dispose of the thing within the same limits.*

[7] M. Kruś, Z. Leoński, M. Szewczyk, *Law on spatial development,* LEX, 2012.

damages [compensation] for actual damage [damnum emergens] incurred or that a real property or part thereof be bought out from him.

The realization of these claims may also occur through the exchange of real properties.

If the entitled person has not made use of the above-mentioned rights and he alienates the real property, **he may demand a compensation equal to a decrease in the real property's value** from the commune.

The owners cannot rely on this provision when limitations in the use of a real property introduce to spatial plan results from limitations results from others acts, e.g. environmental one; the last one should formulate the eventual claims.

Limitation to results from the Environmental Protection Law Act

One of the examples is designation of quiet areas in an agglomeration and of quiet areas in open country (art. 118 of the Environmental Protection Law Act, hereinafter referred to as 'EPL Act').

COMPENSATION

The EPL Act in its art. 129 and in subsequent ones introduces **the right to demand a buy-out of a real property** where, in relation to a limitation to manners of making use of the real property by designating such area, the use of the real property or a part thereof in the previous manner or in compliance with the previous purpose has become impossible or significantly reduced, or **a right to demand damages** *[compensation]* for the damage incurred in connection with limiting the manner to make use of the real property; the damage includes also the decrease in the real property's value.

Limitation to results from the Nature Conservation Act

The purpose of Nature Conservation Act which is, *inter alia,* to maintain ecological processes and stability of ecosystems, conservation of biodiversity, protection of landscape values, greenery in towns (cities) and villages as well as tree coverages and its implementation, comes into being by way of different legal instruments (including creation of protected areas).

Considerations of nature conservation may constitute a premise for expropriation of property (for example, in the case when an landowner does not agree with establishing a national park).

Creating a protected areas results in a range of restrictions on use of property within areas protected for nature conservation purposes, including the exclusion of a certain activity in a given area or of a necessity to adjust the current method of use so as to allow the completion of the above-mentioned nature conservation purposes.

COMPENSATION:

The Environmental Protection Law Act in art. 129 and its subsequent ones provide for the **right to demand a buy-out of a real property**, where, in relation to a limitation to manners of making use of the real property by designating protected areas, the use of the real property or a part thereof in the previous manner or in compliance with the previous purpose has become impossible or significantly reduced, or **a right to demand damages** *[compensation]* for the damage incurred in connection with limiting the manner to make use of the real property; the damage includes also the decrease in the real property's value.

The Nature Conservation Act in art. 36 provides for support measures in the form of support **programs or in the form of indemnity**:

"If an economic activity, activity in agriculture, forestry, hunting or fishing requires to be adjusted to the requirements of the protection of Natura 2000 sites (areas), where support programs on account of reduction of profitability are not being applied, a regional director of environmental protection may enter into an agreement with an owner or with a holder of the site, with the exception of administrators of the State Treasury's real properties, which contains a schedule of necessary actions, methods and lime limits for their implementation as well as the conditions and terms of settlement of amounts due for the action which have been

carried out, as well as the amount of indemnity for lost income resulting from the imposed limitations".

Another example of limiting the exercise of the ownership right in the Nature Conservation Act is:

- the rationing of removal of trees and shrubs from the area of the real property through authorizations,
- or a prohibition of erecting, close to sea, lakes and other bodies of water, rivers and canals, buildings which prevent or hinder people and wild animals to access water, with the exception of facilities for water tourism, water management, water management and fisheries as well as facilities connected with public security and defence of the country.

Limitation to results from the Water Law Act

The Act regulates water management in accordance with the principle of sustainable development, in particular the development and protection of water resources, water use and water resources' management.

The Water Law Act defines a water ownership right and duties of water owners and of other real property owners, which could result in restrictions on the use of a real property. The example can be:

- relative prohibitions concerning certain activities near flood banks to ensure the integrity and stability of the very flood banks (e.g. a prohibition of the cultivation of the soil or of executing building facilities at a distance of less than 50 meters from a base of a flood bank (no compensation).

- restrictions on making use of a real property in connection with the creation of forms of water protection (protection zones of water intakes or protected areas of inland water reservoirs), where orders, prohibitions and restrictions may be introduced which are intended to preserve the value, quality and usefulness of water to meet the needs of the populace;

COMPENSATION

Where in connection with the entry into force of a local enactment establishing protection zones of water intakes or protected areas of inland water reservoirs, making use of the real property or a part thereof in the previous manner or in compliance with the previous purpose has become impossible or significantly reduced, an owner **may demand damages *[compensation]* for the damage incurred or that a real property or a part thereof be bought out from him.**

If a protection zone has been established by way of an administrative decision, a competent authority shall determine the amount of damages *[compensation]* at the request of the injured party by way of a decision.

Limitation to results from the Act on Forests, the Act on the Protection of Agricultural and Forest Land

The Act on Forests applies to the forests, regardless of their form of ownership. The Act sets out the principles of forest management – the universal protection of forests; the continuous maintenance of forests; continuity and the sustainable use of all forest functions; ongoing augmentation of forest resources.

These principles as well as the principle of sustainable forest management, jointly with the provisions of Act on the Protection of Agricultural and Forest Land set limits on the use of forests and forest land, including, for example by limiting a possibility of allocating forest land for purposes other than agricultural or forestry ones or limiting the admissibility of changing a forest into an agricultural use.

See e.g. judgment of the Tribunal Court (P 32/05) in which the court determined that forests are "*something more than the subject of a right of ownership and of other proprietary rights. They represent a national [all-Poland] value of great public importance", which justifies inter alia the obligations imposed by the Act, burdening forest owners, which have been defined as "the rational use of the forest in a manner that permanently ensures the optimal realization of*

its functions by acquiring timber within the limits not exceeding of the production capacity of the forest".

Limitation to results from the Hunting Law

- the provisions of the Act shape the content of a right of ownership due to the need to protect game animals (wild game) and the management of their resources in accordance with the principles of ecology and the principles of rational agriculture management, forestry and fishing management.

An example of interference with the right of ownership are provisions of the Hunting Law, which **constitute a basis for the creation of hunting districts regardless of the ownership of land,** which they are composed of. In the hunting districts. The wildlife game hunting management (including the hunting and the shooting themselves) is carried out by administrators (managers) or tenants in such districts (hunters' associations).

COMPENSATION

The Act does not introduce indemnity for the mere introduction of hunting districts but it introduces a stricter discipline concerning liability of hunters' associations and of the State Treasury for hunting damages, that is for damages caused while carrying out the hunting, and the damages caused by some of the game animals to cultivation as well as to agricultural produce.

The Supreme Administrative Court has addressed the Constitutional Court with a legal question concerning the compatibility of the Hunting Law (within the scope in which it allows to create a hunting district covering a privately-owned real property against the wishes of the owner of the very real property owner) with the premises of a legal interference by the legislator into the right of ownership which related to the principle of proportionality and the prohibition of infringement of the essence of the ownership right as defined in Article 64 section 1 in conjunction with Article 31 section 3 of the Constitution (case is pending).

2) *How does your legal system construe expropriation (definition, preconditions, and legal effects) in particular in matters relating to the environment or of environmental friendly investments (like renewable energy infrastructure)?*

According to Article 21 of the Constitution:

1. The Republic of Poland shall protect ownership and the right of succession.

2. Expropriation may be allowed solely for public purposes and for just compensation

In the jurisprudence of the Constitutional Court it is emphasized that: the legislator has not formulated a legal definition of the term "expropriation" in any provision of the Polish Constitution. It is defined broadly as "any form of the state's interference in the ownership rights enjoyed by other entities"

The Real Property Management Act contains provisions relating to real properties' expropriation pursuant to which expropriation:

- consists in **deprivation or in limiting** rights to real properties;
- comes into being **solely to carry out a public purpose and it involves** fair *[just]* damages *[compensation];* the amount of damages *[compensation]* is determined in accordance with the conditions, destination and value of the expropriated real property;
    - public purposes justifying the expropriation are set out in Article 6 of the Act and they include those relating to the protection of the environment or of environmental friendly investments, e.g.:
        - construction and maintenance of equipment (appliances) for the transmission or distribution of electric energy (despite the many controversies, *only*

equipment for the transmission of electric energy, and not the construction of equipment for their manufacture is counted among the public purposes)[8]*;*

- construction and maintenance of facilities and devices serving environmental protection, of reservoirs and of other water facilities serving to provide water supply, regulation of water flows and protection against flooding, as well as the regulation and maintenance of waters and of water management facilities owned by the State Treasury or local government entities;

- protection of endangered species of animals or plants and natural habitats
- other public purposes set out in separate acts (for instance, the Nature Conservation Act allows expropriation in the absence of an owner's consent to the establishment of a national park or nature reserve).

- It may be carried out **only if public purposes cannot be achieved in any other manner** than by depriving or by limiting rights to real properties, and these rights cannot be acquired by way of an agreement;
- It is **carried out within the administrative proceedings** by means of the issue of a decision; the proceedings are preceded by negotiations concerning acquisition of rights by way of an agreement under which a replacement for the real property can be offered;
- It is **carried out for the benefit of the State Treasury or of a local government entity**, except that the limitation of the exercise of a right may also occur for the benefit of other entities pursuing a public purpose (for instance construction and maintenance of the so-called wayside equipment).

Expropriated property cannot be used for any other purpose than the one specified in the decision on expropriation, unless the owner fails to submit the application for the return of the very real property.

3) *Concerning regulatory restrictions to use property: does your legal system distinguish between allowable restrictions and allowable restrictions with compensation? What are the criteria of distinction between the two kinds (weight of public interest, proportionality, etc)? Are these criteria sector-specific enriched, such as in nature protection from intensive agriculture, prevention of pollution from industrial installations, removal of water extraction rights, prevention of climate gas emissions etc?*

Only in case of expropriation (qualified restriction) the compensation is a prerequisite of legal restriction. It results from the art. 21 of the Constitution.

In case of limitations to use the property right for the environment protection according to Article 31 section 3 of the Constitution (not related to expropriation) the legislator, by and large is free within the scope of shaping a right to claims having a compensatory (indemnity) nature consisting for example offering a replacement for a real property or in payment of damages *[compensation]* on account of a need to tolerate certain activities on their land, or on account of a reduction in the real property's value.

However, this does not justify shaping of the content and boundaries of these rights in an arbitrary manner[9]. **The legislator in this respect is bound by the principle of proportionality**[10], by **the principle of equality before the law** (Article 32 of the Constitution) as well as by **the principle of equal legal protection of ownership and of other property rights** (Article 64 section 2 of the Constitution) **and the need to preserve the balance of the values protected by the Constitution**[11]**.**

[8] Cf. e.g. the judgment of the Voivodship Administrative Court in Kraków of 30 June 2009, reference number: II SA/Kr 735.

[9]

[10] Which does not exclude private owners from participation in activities serving to protect the environment, but it does not allow a situation in which private owners bear the full costs of meeting the obligation of public authorities to protect the environment.

[11] See *inter alia* judgments of the Constitutional Tribunal of: 13 February 2001, reference number K 19/99, of 25 November 2003, reference number K 37/02.

As for example in case number P 49/11 Constitutional Tribunal examined the compliance of Article 126 of the Nature Conservation Act setting forth liability of the State Treasury for damages caused by protected fauna species with the constitutional principle of equality before the law. The Constitutional Tribunal stated that:

> *Although a subjective right whose content is providing damages [compensation] from the State Treasury's means for any damage caused by protected fauna species does not stem from the Constitution, however, when the legislator granted on the basis of statutory solutions such right to one entities, he must also respect the constitutional principles, including the principle of equality before the law (Article 32 section 1 of the Constitution) and the principle of equal legal protection of real properties and of other property rights (Article 64 section 2 of the Constitution).*
>
> According to the Tribunal, "*the inability to claim compensation from the means of the State Treasury for a damage caused by beavers on a land plot used for recreation, while such entitlements are granted in relation to damages caused in the agricultural farms, forestry undertakings and fishing undertakings, indicates that there has been a constitutionally unjustified interference of public authorities into the sphere of economic interests of an individual".*

In environmental provisions both the general ones (Environmental Protection Law Act) and sector specific ones there is no clear division between allowable restrictions and allowable restrictions with compensation (not related to expropriation) but one can distinguish:

- restriction of property rights for the protection of the environment with compensation (e.g. in case of designating protected areas the right to demand a buy-out of a real property or a right to demand damages; the State Treasury's liability for damages inflicted by wild animals).

- restriction of property rights caused by the economic activity of other parties with compensation (e.g. the right to demand a buy-out of a real property or to demand damages [compensation] in the case of limitation of the manner of making use of environment as a result of establishing a restricted area around an airport)

- restriction of property rights for the protection of the environment with compensation for the environment (e.g. the obligation to obtain a permit to remove trees and shrubs and to pay a fee for their removal).

Modes of pursuing claims are varied – it may be carried out solely on the basis of the provisions of the Civil Code, or it may have a mixed character: the injured party is entitled to a recourse to the civil law only after an administrative decision was taken.

4) What public interests are considered legitimate to impose obligations (active & passive; to do or not to do something) regarding the use of property in cases:

- *to prevent environmental damage;*
- *to prevent traditional damage;*
- *to limit activities/property due to the special protected area, like Natura 2000*
- *of public health/safety reasons.*

*to improve the appearance of the property (i.e. to remove own waste; or to renovate the building façade in the towns, or to isolate buildings for energy efficiency, etc.);*The duty to remove own waste results from environmental regulation so it rather aimed to protect the environment as public interest than to improve the appearance of the property. As to my knowledge, renovation of facades or isolation of buildings for the sake of energy efficiency are not treated as a duty of private owners

To what extent can private individual invoke these sorts of powers – eg actio popularis)?

In which above cases compensation is foreseen by law?

As it was mentioned, Article 21 of the Constitution indicated that "public purpose" justified expropriation..

In the case of a legal intervention into right of ownership (not relayed to expropriation) introduced according to the Article 31 section 3 of the Constitution the public interest consist in: the protection of its security or public order, the protection of the natural environment, health or public morals, or the freedoms and rights of other persons.

> *The use of a reference to "an important public interest" by the legislator does not mean a complete freedom to being able to determine the type of a protected interest, because while it is being determined, the constitutional regulations and the hierarchy of values resulting from the principle of rule of law in a democratic state must be taken into account. However, the values indicated in Article 31 section 3 of the Constitution surely belong to the category of „public interest" (see the judgment of the Constitutional Tribunal of 17 December 2003, reference number SK 15/02).*

The protection the natural environment as one of the public interest listed in Article 31 section 3 of the Constitution is further specified in statuses where as an object of protection there are elements of the environment like: water, animals, nature, agricultural and forest land, wild game or forest, a special protected area. So, th list of public interests, mentioned in this question and related to prevent an environmental damage or a traditional damage to limit activities/property due to the special protected area [site], like a Natura 2000 site or to public health/safety reasons, can be considered legitimate reasons to impose restrictions of property use

In environmental regulation **other public interests than these may be recognised,** e.g.

- the provisions of the Water Law Act concerning flood-control protection impose obligations (active or passive) regarding the use of property for protection of the environment, health, life and property of people

- the provisions of the Water Law Act impose an obligation to the owner of a real property adjacent to the waters covered by the universal use to provide access to water in a manner that allows for such use; (for protection of universal right to use public waters)

Spatial order is also considered as important public interests legitimate to impose obligations regarding the use of property. Spatial order is understood as such a development of space, which fits together into a harmonious whole, and takes into account in ordered relations all circumstances and functional socio-economic, environmental, cultural and compositional and aesthetical requirements[12]. So it can be used in cases to prevent environment and traditional damages, as well as to preserve public health or rights to property of other persons.

Historical and cultural heritage and a constitutional freedom to make use of cultural assets (art. 73 of the Constitution) also justify imposing restrictions in right to property. Due to the Act on the Protection of Monuments and Preservation of Monuments one of the legal form of protection of monuments of conservation character is creation of a cultural park. The purpose of creating a cultural park is to protect a cultural landscape and to preserve the landscape areas, distinctive from a landscape point of view and which have real properties with historic designation characteristic of the local building and settlement tradition. Such an aim is accomplished by way of limitations which the area is subjected to. They relate to conducting investment activity, conducting business activity, making use of the property, placing signs, advertisements, or disposal of waste. Protection is achieved by a right to demand a buy-out of a real property or to demand damages. The preservation of monuments is also treated as a public aim justifying expropriation of a real property.

To what extent can private individual invoke these sorts of powers – eg actio popularis)?

[12] See: Article 2 (1) of the Spatial Planning and Land Development Act.

A private individual may not invoke a power to impose obligations regarding the use of others' property in favour of public interest but he can do it in favour of his individual right; although the protection is set directly towards the protection of an individual's right, one cannot disregard the fact that at the same time it can also indirectly serve the protection of the environment. This happens especially in a situation where the fulfillment of the protected right of an individual interest - at least coinciding with the common interest - takes place in a manner that in the same time it constitutes a specific real benefit to environment, *inter alia* such as a restoration of a state compliant with law and the desisting from violations.

There is no actio populrais in Polish law. Social organizations, including ecological associations have been granted a capacity to file complaints before the civil courts and the administrative courts, where they act as an environment's spokesperson. They are equipped in legal instrument to enforce the environmental law before administrative and civil courts.

In which above cases compensation is foreseen by law?

See examples in point 2.

5) *Is there a category of (possibly: gradual) dissolution of vested rights without requirement of compensation (example of stepping out of nuclear power)? Can for instance the economic (financial) difficulties of public finances be a reason for dissolution of compensation or vested rights (for instance, lowering or even abandoning wasted financial rights) like subsidizing green electricity)?*

The example can be a regulation concerning emission permits, aimed first and foremost at preventing pollution and restricting the direct or indirect anthropogenic discharge of substances or energy to the air, water, soil and the ground.

According to the Environmental Protection Act, the emission permit can be withdrawn or restricted without damages *[compensation]* when regulations concerning environmental protection have changed to the extent that the issuance pursuant the conditions specified in the permit make it impossible.

6) *How can a property holder defend his interests (through the ordinary courts/constitutional court)? What principles will the courts use when checking the compatibility with the property guarantee?*

The general rules on access to courts apply.

A property holder **can defend his interests before civil courts** (for instance in contentious cases concerning damages *[compensation]* in connection with the limitation of the use of a real property) or administrative courts (for instance anyone whose legal interest or an entitlement have been infringed upon by a resolution of a communal council concerning a local area development plan, may – following an unsuccessful call to remove the infringement – appeal against the resolution to the administrative court).

The Polish law provides for the possibility of filiing **a complaint to the Constitutional Tribunal** which constitutes the means of protecting the rights and freedoms. According to art. 79 of the Constitution:

> *In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution.*

A constitutional complaint may only be brought against general acts, underlying individual solutions. The acts concerning the exercise of law, as well as the inaction of public authorities are excluded from the scope of the application. A consequence of taking the complaint into consideration by the Constitutional Tribunal is that a given provision loses its binding force. A civil law consequence is the creation of a claim for redress of a damage inflicted by the issue of a normative act on the basis of Article 417[1] § 1 of the Civil Code.

A property holder can also defend his interests using his right to apply to the Commissioner for Citizens' Rights (art. 80 of the Constitution[13]).

An extra-constitutional means of pursuing the individual's rights is, however, a possibility to submit a complaint to the European Court of Human Rights after the exhaustion of domestic remedies.

7) *Is secondary legal protection (i.e. the right to compensation) dependent on the exhaustion of primary legal protection (i.e. a motion to annul the action)?*

It depends on a type of case. For instance in case of harm done by action of an organ of public authority contrary to law - yes.

According to Article 77 of the Constitution: *Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law.*

This right dependent on the exhaustion of primary legal protection. A redress of a damage is in fact possible after finding, within the appropriate proceedings, non-compliance of the action of public authority (for example of a decision, of a final and unappealable normative court judgment) with law.

If the damage was caused by the issue of a normative act, its redress may be sought after the determining the non-compliance of the very act with the Constitution, a ratified international agreement or a statute. In the case of an omission, it is possible to redress the damage after finding, in the appropriate proceedings, that a lack of issuing a judgment or a decision or a legislative act has been incompliant with law.

8) *Can one be responsible for the environmental damage only (solely) due to the fact of ownership of the property (i.e. for instance, the owner of the land where the waste is illegally deposited by the third (unknown) person)?*

According to the Act on the Prevention and Remediation of Environmental Damage (2007) a holder of a real property shall be jointly and severally liable with the perpetrator for taking preventive and remedial actions, if a direct threat or damage to environment have been caused by his consent or even by his knowledge (unless after obtaining knowledge of a direct threat of damage to environment files an appropriate notification).

According to the Waste Act (2012), a holder of the waste shall be obliged to immediately remove waste from places not intended for its storage or warehousing. The holder of waste is the waste producer or entity that is in their possession. It is presumed that a holder of a real property is the holder of waste on the real property. So, if the waste producer can not be determined, the owner of the land is obliged to remove the waste.

9) *Does the state permit (like IPPC permit, operation permit etc.) exclude the holder from the liability towards third persons (in case of damage caused by undertakings)?*

No. The general rules of the Civil Code, which concern traditional damage, are developed and modified in environmental regulations (e.g., the EPL, the GMO Act, the Nuclear Law Act), which

[13] *In accordance with principles specified by statute, everyone shall have the right to apply to the Commissioner for Citizens' Rights for assistance in protection of his freedoms or rights infringed by organs of public authority.*

refer to situations in which damage occurs (not only traditional, but also environmental ones) due to defined environmental impacts, even the legal ones. According to Article 325 of the Environmental Protection Law Act:

> *The liability for the damage caused by the impact on the environment shall not be precluded by the circumstance that the activity which has been the reason for damages is carried out on the basis of a decision and within its boundaries.*

This provision apply to torts liability according to fault based and risk-based liability.

10) *Are there cases (courts or administrative) that take into account Art. 8 of the ECHR (Right to private life) or Art. 1 of the first protocol of the ECHR? (For instance, where state intervention to limit the property without the compensation would be objected based on above article)?*

Courts take into account provisions of the ECHR and the jurisprudence of the ECHR for supplementing and enforcing their own line of reasoning.

The Constitutional Tribunal in its judgment of 20 April 2011 (reference number Kp 7/09) invoked Article 1 of the Protocol No. 1 of the ECHR, which guaranteed every natural and legal person peaceful and undisturbed use of their property, while at the same time confirming a right of the State to issue provisions that were necessary to control whether making use of the ownership was coming into being in accordance with the general interest.

The Constitutional Tribunal also referred to Article 1 of the Protocol in its judgment of 8 October 2007 (reference number K 20/07), as well as in the judgment of 16 October 2012 (reference number K 4/10).

> The first of the above-mentioned cases, it examined the extent to which the State may require an owner (an investor) to incur costs related to the implementation of the obligation burdening the State – "to safeguard the national heritage". The Tribunal found in it that an individual's obligation (imposed by way of the Law on the Protection of Monuments) that intended to pursue construction works at a stationary monument or afforestations in an area where there archaeological sites, archaeological research coverages and their documentation (necessary in order to protect these monuments), does not fulfill the requirement of proportionality. The challenged provision, in fact, led to shifting the entire burden of financing archaeological research and documentation on individuals, without having guaranteed any assistance from the State and the complete lack of compensatory mechanisms whatsoever.
>
> In the second case, the Tribunal examined the issues of "fair [just] damages *[compensation]"* The concept of fair damages refers to the need to balance the public interest (here - the construction of roads) and the private one, to maintain the appropriate balance in terms of limitations, which owners suffer. In order to determine the meaning of the term "fair damages " one should "also take into consideration the context of consequences of having determined the damages [compensation] for the State budget (...) .
>
> From this point of view, that in some case fully equivalent damages *[compensation]* may not be considered to be the "fair" damages, while damages *[compensation]* not fully equivalent [compensation]" may be considered to be the "fair" damages. The Court also noted that from the case law of the ECHR in comparison with Article 1 of the Protocol No. 1 of the ECHR there stems that the payment of damages *[compensation]* in an amount lower than the market value of the expropriated property may be justified by the general social needs, while at the same time preserving the principle of proportionality was needed.

Administrative courts in environmental matters rarely rely on the right to respect the private and family life, present in the Convention. R. Hauser explains the fact by that our national legislator has concluded in numerous pieces of legislation, including the Constitution, the same principles, common to democratic states with rule of law. He invoked the judgment of the Supreme Administrative Court [NSA] of 17 March 2009 , in which the Court specifically stated that "between

the constitutional regulation of ownership rights and its protection and the provisions of the Convention there exists a far-reaching identity of content, which means that in the case of the constitutionality of measures limiting a constitutional right of ownership, one may somehow presume their consistency with the provisions of the ECHR". However, the author argues that, even in the case of identity of the national principles and that of the Convention, indicate in each case before administrative courts that a national principle which was the basis issuing judgment, had its own conventional counterpart[14].

11) How does your national legal system deal with situations where indirect or direct expropriation may be caused by EU legal acts or their implementation?

Similarly to any other expropriation.

12) Are there cases where national courts have referred questions to the ECJ concerning property issues in environmental law?

Not to my knowledge

Two cases:

1) A factory, situated near a town, has been operating for decades. People are slowly realizing that statistically the inhabitants in the city and in the vicinity do not live average age and the cancer is more frequently present among them, also the frequent cause of the deaths. They have no direct proofs that the factory could be responsible, although it is rather clear that the soil around the factory is poisoned and that the heavy metals found in the vegetable could be linked to the factory. However, credible proofs are missing.

What could be the obligation of the state? Could the inhabitants rely on the public remedies procedure?

<u>At a public law level</u>

The State is obliged to enforce the requirements specified in law concerning the use of environment. In the event of a breach, **administrative responsibility** within the scope of the environmental protection law comes into being as well as an opportunity - essentially in the case of the breach of law - of using administrative sanctions (for instance - a decision to suspend activities, revocation of a permit or a license, financial sanctions or further steps) and **perhaps criminal responsibility** (for example, the criminal liability of people who pollute surface of land with a substance in such quantities or in such a form that it may endanger human life or health or cause a significant decrease in the quality of water or of the land surface).

Within the scope of the administrative responsibility, the following could be applied:

1) the Environmental Protection Act (the EPL Act) or the Act on the Prevention and Remediation of Environmental Damage

Article 362 of the EPL Act

[14] R. Hauser, *Konflikt środowiskowy przed organami i sądami administracyjnymi w kontekście art. 8 Europejskiej Konwencji Praw Człowieka.*

If an entity using environment exerts a negative impact on the environment, an environmental protection authority may, by way of a decision, impose an obligation to: 1) reduce the impact on the environment as well as risks it presents thereto; 2) restore the environment to the proper state (condition).

The provision also involves all (including the legal ones) conditions of the negative impact on the environment[15], with the exception (since 2007) of a risk or of damages to environmental habitats / species or to waters or to surface of land, caused by the activity capable of creating the risk of damages to the environment. The latter are covered by the Act on the Prevention and Remediation of Environmental Damage (which is an implementation of the Directive 2004/35/EC to the Polish legal order).

Thus, in the present state of facts (the soil around the factory is poisoned) **the Act on the Prevention and Remediation of Environmental Damage** may apply as well as the obligation of the perpetrator contained therein to undertake appropriate preventive or remedial actions, guaranteed by an obligation of public authorities to issue a decision requiring them to undertake it in the case of a failure to act by the perpetrator .

2) Alternatively Article 364 of the EPL Act, which also embraces the legitimate conditions of the negative impact on the environment:

If an activity carried out by an entity using environment (....) causes deterioration of the environment in large size or threatens the lives or health of people, a voivodship environmental protection inspector shall issue a decision to suspend the activity in which it is necessary to prevent the deterioration of the state of environment.

If the state wants to revoke the operation permit, could the factory claim any sort of property guarantee

1) In the case of environmental permits (permits to introduce substances or energy into the environment), it is possible to withdraw such a permit or to limited, *inter alia,* on the basis of Articles 195-196 of the EPL Act:

- with compensation when reasons of environmental protection or the use of the permit (license) creates a risk to human life or health.
- without compensation in the event of its infringement or of an infringement of the law or when environmental regulations have changed to the extent that the issue on the conditions specified in the permit is no longer possible;

2) in the case of the IPPC permit it is also possible to withdraw or amend it without compensation when, following the analysis of the very permit (at least once every 5 years or in the event of changes in BAT) a necessity to change the content of an integrated permit has been asserted (Article 216 -217 in conjunction with Article 195 of the EPL Act).

Legal protection at a private level

1) A preventive claim or a restitution claim constructed on the basis of Article 323 EPL Act, which is separate from a negatory action arising from neighbourly relationships (Article 144 in conjunction with Article 222 § 2 of the Polish Civil Code) but can be used in case of ***unlawful impact on the environment***. Pursuant to Article 323 of the EPL [16]:

[15] Cf. A. Lipiński (in:) *Ustawa - Prawo ochrony środowiska. Komentarz [Environmental Protection Law Act. Commentary]*, J. Jendrośka (ed.), Wrocław 2001, at 867.

[16] See also art. 439 CC: "One who, as a result of another person's behavior, especially in the case of the lack of adequate supervision over the operation of the managed by him enterprise or plant or over the condition of his building or other installation, is endangered by a direct damage may demand that the person should undertake measures necessary to ward off the imminent danger, and, if necessary, to provide proper security".

Everyone who through unlawful impact on the environment is exposed to injury [damage] or upon whom the injury was inflicted may demand from the liable subject for this danger or violation restitution of the lawful state and undertaking preventive measures, especially through installing installations or equipment safeguarding against the danger or violation; in the case where it is impossible or excessively difficult, he may demand that the activity causing the danger or violation be discontinued (Sec. 1). *If the danger or violation concerns the environment as a public good, the State Treasury, territorial self-governing unit as well as an ecological organization can file the above mentioned claims* (Sec.2).

2) Liability for damages on account of torts [delicts] (strict liability) of persons who run an enterprise or an establishment powered by the forces of nature or an establishment of an increased risk or of a great risk on their own account (Article 435 § 1 of the Polish Civil Code).
Establishment of liability for damages on account of torts (the strict liability) depends on the fulfillment of its conditions. There must be, therefore, **an event** (*an event causing the damage does not have to be a one-off one; it may be a period of activity of the establishment leading to a damage)*, **which is also a cause of the damage** (to persons or to property), **as well as an adequate causal link between the event and the damage**. (*credible proofs are missing* - it is rather a matter of expert witness' evidence and determining whether the activities of the plant in a given area for a specified period of time remains in the adequate causal associations with contamination of land or diseases the injured suffer from).

   This type of liability arises without regard to fault, as well as regardless of whether the damage occurred in the conditions of unlawful behaviour or not[17].

   In order to pursue claims using this mode, there is no need of a prior withdrawal of a permit. Neither is the liability for torts excluded by the fact that an establishment operated in accordance with the issued permit (Article 325 of the EPL Act explicitly provides for such a conclusion).

2) How this case would be solved in your legal system: a waste disposal site is located not far away from a place with app. 150 individual houses. Inhabitants assert that they smell bad odour and they would like to sell their property, but, of course, there are no potential buyers. Their property is worth less. The waste disposal site is equipped with the necessary permits.

Are the inhabitants in the surrounding entitled to compensation (perhaps to annual revenue)? Do they have to annul the operation permit first?

1) Around the landfill, an area of a limited use should be established. Its establishment may result in limitations concerning destination and manners of use of land the covered that very area. Then the owners of real properties located within the area of a limited use may file a claim **for a buy-out of a real property or a part thereof or for damages *[compensation]* for the damage suffered**, which was linked to a limitation of use of the real property, whereas the damage also includes a reduction in the value of a real property (Articles 135-136 in conjunction with Article 129 of the EPL Act).
2) The case provided above contains the question concerning "compensation", therefore a claim designed in particular on the basis of the provision of Article 435 § 1 of the Polish Civil Code[18]

[17] Such is an opinion of *inter alia* M. Safjan [in:] *Kodeks cywilny, tom I, Komentarz do artykułów 1-449[1] [The Civil Code, part I, Commentary to articles 1-449[1]]* K. Pietrzykowski (ed.), Wyd. C.H. Beck, W-wa 2008, at 1373.
[18] An operator who runs, on his own account, an enterprise or a plant that is operated by forces of nature (steam, gas, electricity, liquid fuels, etc.) is responsible for damage to a person or property that has been caused to anyone by the operation of the enterprise or plant, unless the damage was caused by force majeure, or exclusively through the fault of the injured party or a third party, for whom the operator does not take responsibility (art. 453 CC).

(in conjunction with Article 324 of the EPL Act[19]), constituting the basis of liability for damages for torts (a strict liability [a risk-related one]) could come into play. The occurrence of such liability depends on the fulfillment of its premises presented above (event – damage - adequate causal link between them).

3) With respect to *annual revenue* within the Polish system, the damages *[compensation]* do not have a sanction-related nature and may not result in damages being awarded in an amount greater than the damage which actually occurred (such a conclusion stems from Articles 361 and 363 of the Civil Code). Damages *[compensation]* should only be due within the limits of an adequate causal link.

Abbreviation

1. *What are, according to your country's legal system, potential objects of "property" (real things, private law rights, public law rights, a business, a market share etc)?*

In this sense "ownership" is a collective concept for all property rights, whose subject may be tangible objects which are things (lands), tangible objects which are not things (for instance - water, ores) or intangible goods (for instance a literary work).

2. *Is it possible to obtain property / ownership on natural resources? Has private property been used in defence of environmental protection?*

Natural resources can be the object of right to property as a proprietary right or as another property right, both private or public but in limits provide by law

3. *Has private property been used in defence of environmental protection?*

Yes. From a constitutional prospective, ownership is not of absolute nature and it may be subject to a "qualified" (expropriation) or "ordinary" (restriction) interference from the State. The boundaries to the content and to exercising a right to ownership have been defined in a large number of specific acts. They result from the norms of civil law. Most of the limitations to the right of ownership has a public law nature and they stem from administrative law

4. *How does your legal system construe expropriation (definition, preconditions, and legal effects) in particular in matters relating to the environment or of environmental friendly investments (like renewable energy infrastructure)?*

Expropriation may be allowed solely for public purposes and for just compensation; it may be carried out only if public purposes cannot be achieved in any other manner than by depriving or by limiting rights to real properties, and these rights cannot be acquired by way of an agreement; it is carried out within the administrative proceedings by means of the issue of a decision; the proceedings are preceded by negotiations concerning acquisition of rights by way of an agreement under which a replacement for the real property can be offered; Expropriated property cannot be used for any other purpose than the one specified in the decision on expropriation, unless the owner fails to submit the application for the return of the very real property.

5. *Concerning regulatory restrictions to use property: does your legal system distinguish between allowable restrictions and allowable restrictions with compensation? What are the criteria of distinction between the two kinds (weight of public interest, proportionality, etc)? Are these criteria sector-specific enriched, such as in nature protection from intensive*

[19] This provision broaden the scope of strict based liability provided in art. 435 of Civil Code (as above) – it could also be used when the damage was caused also by so called 'establishment' of a higher or high risk, regardless of whether they are set in motion by natural forces.

agriculture, prevention of pollution from industrial installations, removal of water extraction rights, prevention of climate gas emissions etc?

Only in case of expropriation (qualified restriction) the compensation is a prerequisite of legal restriction. It results from the art. 21 of the Constitution.

In case of limitations to use the property right for the environment protection according to Article 31 section 3 of the Constitution (not related to expropriation) the legislator decide and is bound by the principle of proportionality[20], by the principle of equality before the law (Article 32 of the Constitution) as well as by the principle of equal legal protection of ownership and of other property rights (Article 64 section 2 of the Constitution) and the need to preserve the balance of the values protected by the Constitution[21].

6. *What public interests are considered legitimate to impose obligations (active & passive; to do or not to do something) regarding the use of property in cases:*

- *to prevent environmental damage;*
- *to prevent traditional damage;*
- *• to limit activities/property due to the special protected area, like Natura 2000*
- *of public health/safety reasons.*

The protection of the environment, health, life and property of people, the protection of universal right to use public waters, spatial order, the protection of historical and cultural heritage and a constitutional freedom to make use of cultural assets, among others.

to improve the appearance of the property (i.e. to remove own waste; or to renovate the building façade in the towns, or to isolate buildings for energy efficiency, etc.);
The duty to remove own waste results from environmental regulation so it rather aimed to protect the environment as public interest than to improve the appearance of the property. As to my knowledge, renovation of facades or isolation of buildings for the sake of energy efficiency are not treated as a duty of private owners

To what extent can private individual invoke these sorts of powers – eg actio popularis)?

A private individual may not invoke a power to impose obligations regarding the use of others' property in favour of public interest but he can do it in favour of his individual right;

There is no actio popularis in Polish law

In which above cases compensation is foreseen by law? – *see pont 5*

7. *Is there a category of (possibly: gradual) dissolution of vested rights without requirement of compensation (example of stepping out of nuclear power)?*

The emission permit can be withdrawn or restricted without or without damages *[compensation]*

Can for instance the economic (financial) difficulties of public finances be a reason for dissolution of compensation or vested rights (for instance, lowering or even abandoning wasted financial rights) like subsidizing green electricity)?

I do not know about such case.

[20] Which does not exclude private owners from participation in activities serving to protect the environment, but it does not allow a situation in which private owners bear the full costs of meeting the obligation of public authorities to protect the environment.

[21] See *inter alia* judgments of the Constitutional Tribunal of: 13 February 2001, reference number K 19/99, of 25 November 2003, reference number K 37/02.

8. *How can a property holder defend his interests (through the ordinary courts/constitutional court)? What principles will the courts use when checking the compatibility with the property guarantee?*

The general rules on access to courts (civil or administrative) apply.

The Polish law provides for the possibility of filiing a complaint to the Constitutional Tribunal which constitutes the means of protecting the rights and freedoms.

9. *Is secondary legal protection (i.e. the right to compensation) dependent on the exhaustion of primary legal protection (i.e. a motion to annul the action)?*

It depends on a type of case.

10. *Can one be responsible for the environmental damage only (solely) due to the fact of ownership of the property (i.e. for instance, the owner of the land where the waste is illegally deposited by the third (unknown) person)?*

Yes, according to Act on the Prevention and Remediation of Environmental Damage (2007) a the owner of the land is jointly and severally liable with the perpetrator for taking preventive and remedial actions, if a direct threat or damage to environment have been caused by his consent or even by his knowledge (unless after obtaining knowledge of a direct threat of damage to environment files an appropriate notification).

According to the Waste Act (2012), the owner of land shall be obliged to immediately remove waste from places not intended for its storage or warehousing as it is presumed that he is a holder of waste if the waste producer can not be determined.

11. *Does the state permit (like IPPC permit, operation permit etc.) exclude the holder from the liability towards third persons (in case of damage caused by undertakings)?*

No. The liability for the damage caused by the impact on the environment shall not be precluded by the circumstance that the activity which has been the reason for damages is carried out on the basis of a decision and within its boundaries. This provision apply to torts liability according to fault based and risk-based liability.

12. *Are there cases (courts or administrative) that take into account Art. 8 of the ECHR (Right to private life) or Art. 1 of the first protocol of the ECHR? (For instance, where state intervention to limit the property without the compensation would be objected based on above article)?*

Yes Courts take into account provisions of the ECHR and the jurisprudence of the ECHR for supplementing and enforcing their own line of reasoning.

13) *How does your national legal system deal with situations where indirect or direct expropriation may be caused by EU legal acts or their implementation?*

Similarly to any other expropriation.

14) *Are there cases where national courts have referred questions to the ECJ concerning property issues in environmental law?*

Not to my knowledge