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Constitutional Principle of Environmental Protection as a Directive in the Process of Establishing the Rural Development Programme

Konstytucyjna zasada ochrony środowiska jako dyrektywa w procesie stanowienia programu rozwoju obszarów wiejskich

SUMMARY

The environment is a value and subject of constitutional protection in Poland. Ensuring environmental protection is considered as a political principle in the national doctrine, and due to the editorial location of its source in Article 5 of the Constitution of the Republic of Poland, it is considered as one of the objectives of Polish statehood. In several places, the Basic Law refers to the issue of the environment, considering it an important value and entrusting its care not only to public authorities, but also to anyone who is subject to Polish state authority. Examining whether contemporary instruments of agricultural law, in particular those developed with the participation of Polish state authorities in the application of the mechanisms of the Common Agricultural Policy of the European Union, take into account constitutional directives derived from the principle of environmental protection and whether the effects of these activities are verified in the light of the constitutional model is an interesting academic question. The subject of detailed analysis in this study is the rural development programme (RDP) referred to in Article 6 of the Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005. The author demonstrates that the constitutional principle of environmental protection was respected by Polish public authorities in the process of creating an important and high-budget instrument for conducting development policy, which is the RDP for the years 2014–2020.

Keywords: Constitution of the Republic of Poland; environmental protection; agricultural law; rural development programme; EU Common Agricultural Policy

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Data: 03/11/2026 00:42:34

INTRODUCTION

The environment is undoubtedly a value and subject of constitutional protection in Poland. Ensuring environmental protection is considered in the national doctrine as a political principle, and due to the editorial location of its source as early as in Article 5 of the Constitution of the Republic of Poland[1], it is considered one of the objectives of Polish statehood[2]. In several places, the Basic Law refers to the issue of the environment, considering it an important value and entrusting its care not only to public authorities, but also to anyone who is subject to Polish state authority.

It is worth stressing at the outset that Chapter I of the Constitution of the Republic of Poland, entitled "The Republic" and considered to be the most important chapter, puts forward a political declaration which states that "[t]he Republic of Poland […] ensure protection of the natural environment pursuant to the principles of sustainable development" (Article 5). In turn, in Chapter II "The Freedoms, Rights and Obligations of Persons and Citizens", Article 68 (4) obliges public authorities to prevent negative health effects of environmental degradation. This decision of the legislator is a sign of recognition of the inseparable link between human health and life and environmental protection[3]. Further, in Article 74 of the Constitution, there is a specific catalogue of tasks of the Polish state, related to the issues of environmental protection, formulating a precept to pursue a policy ensuring environmental safety for the current and future generations, defining environmental protection as an obligation of public authorities, reserving for the benefit of everyone the right to information on the condition and protection of the environment and imposing on public authorities the obligation to support the activities of citizens aimed at the protection and improvement of the environment. Finally, Article 86 of the Constitution obligates everyone to look after the state of the environment and establishes the principle of liability for causing its deterioration.

The above-mentioned provisions of the Constitution of the Republic of Poland remain within the area of the limitation clauses, which are also included in the Basic Law. First of all, one has to point to the criterion of "sustainable development", which serves as the directive for the interpretation of the principles expressed in Article 5, excluding the possibility of absolutizing the principle of environmental protection and limiting it to prohibiting any interference with that environment. As P. Sarnecki observed, in the light of the principle of sustainable development:

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[1] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483 as amended). English translation of the Constitution at: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [access: 10.04.2020].

[2] P. Sarnecki, *Uwaga 11 do art. 5 Konstytucji RP*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, red. L. Garlicki, M. Zubik, t. 1, Warszawa 2016, pp. 235–236.

[3] B. Rakoczy, *Komentarz do Konstytucji Rzeczypospolitej Polskiej*, [in:] idem, *Prawo ochrony środowiska. Komentarz*, Warszawa 2013, commentary on Article 68.

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Data: 03/11/2026 00:42:34

Wherever there is supposed to be interference in the "environment", care should be taken not only to ensure that this interference is as minor (the least harmful) as possible, but that the social benefits achieved are at least proportional, socially adequate to the losses suffered[4].

An important limitation clause of a general nature is contained in Article 31 (3) of the Polish Constitution. According to it, the need to protect the environment may justify, in a democratic State, restrictions on the exercise of constitutional freedoms and rights, without affecting their substance. It is also worth noting at this point that the criterion of environmental protection does not appear in the detailed limitation clauses contained in Article 53 (5)[5] or in Article 61 (3) of the Polish Constitution[6].

It is emphasized in the literature[7] and jurisprudence of the Constitutional Tribunal[8] that the provisions of the Constitution creating and expressing the principle of environmental protection do not create subjective rights for individuals. However, as B. Rakoczy points out, the right to information on the state and protection of the environment deriving from Article 74 (3) is a subjective right which gives rise to an obligation on the part of public authorities to exercise that right[9]. It is also worth adding that although the Basic Law itself does not define the notion of "ecological safety", it has been concretised in the case law of the Constitutional Tribunal. In the judgement of 13 May 2009 (Kp 2/09), the Polish Constitutional Tribunal stated that it is "a state of the environment allowing for a safe stay and use of it".

Although in the light of the above-mentioned views of the doctrine and jurisprudence of the Constitutional Tribunal, among the subjective rights of individuals, the right to use the values of the uncontaminated natural environment has not been formed, in the grounds for the judgements of Polish common courts it is considered to be one of the personal interests of individuals. This is because legal actions in

[4] P. Sarnecki, *op. cit*., LEX/el.

[5] "Freedom to manifest one's religion may be restricted only by law and only if it is necessary to protect national security, public order, health, morals or the freedom and rights of others". Due to, i.a., the lack of the criterion of environmental protection in the cited limitation clause, the Constitutional Tribunal in the judgement of 10 December 2014 (K 52/13) found the statutory provisions prohibiting and penalising ritual slaughter of animals to be inconsistent with the Polish Constitution.

[6] "The right referred to in sections 1 and 2 [right to public information – P.L.] may be restricted only on grounds of the protection of the freedoms and rights of other persons and economic entities and the protection of public order, security or an important economic interest of the State as set out in the statutes".

[7] H. Machińska, *Konstytucyjne gwarancje ochrony środowiska w Polsce*, [in:] *Minikomentarz dla Maksiprofesora. Księga jubileuszowa profesora Leszka Garlickiego*, red. M. Zubik, Warszawa 2017, pp. 98–99.

[8] Judgement of the Constitutional Court of 6 June 2006, K 23/05.

[9] B. Rakoczy, *Ograniczenie praw i wolności jednostki ze względu na ochronę środowiska w Konstytucji Rzeczypospolitej Polskiej*, Toruń 2006, p. 221.

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Data: 03/11/2026 00:42:34

which citizens accentuate the unresolved problem of growing smog and passivity or ineptitude of public authorities in fighting it are becoming a common thing[10].

It should be added to this that the constitutional understanding of the concept of the environment is broader than the purely ecological context of this word. According to P. Sarnecki:

> […] "environmental protection" in terms of Article 5 means not only providing the population with unpolluted air, healthy drinking water or recreational areas, etc., but also protecting this particular landscape of the country, its terrain or river network, which individualises Poland and is also a factor of its identity, no less important than the language or culture (material and spiritual)[11].

In view of the above, examining whether contemporary instruments of agricultural law, in particular those developed with the participation of Polish state authorities in the application of the mechanisms of the Common Agricultural Policy of the European Union, take into account constitutional directives derived from the principle of environmental protection and whether the effects of these activities are verified in the light of the constitutional model becomes an interesting academic problem.

The subject of detailed analysis in this study is the rural development programme (RDP) referred to in Article 6 of the Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005[12] and in Articles 1 (1) and 3 of the Act of 20 February 2015 on Support for Rural Development with a Contribution from the European Agricultural Fund for Rural Development under the Rural Development Programme for the Years 2014–2020[13].

THE PRINCIPLE OF ENVIRONMENTAL PROTECTION AS A PROGRAMMATIC NORM IN AGRICULTURAL LAW

The effects of agricultural activity on the environment are the subject of research in many academic disciplines, including of course life and economic sciences. In recent years, the issue of climatic efficiency of farms related to greenhouse gas emissions has been recognized, among others, and the factors determining this

[10] See, e.g., judgement of the District Court for Warsaw-Centre in Warsaw of 24 January 2019, VI C 1043/18.

[11] P. Sarnecki, *op. cit*., LEX/el.

[12] OJ EU L 347/487, hereinafter: Regulation 1305/2013.

[13] Consolidated text Journal of Laws 2018, item 627 as amended.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 03/11/2026 00:42:34

efficiency have been identified[14]. No less important are issues relating to pollution caused by such human activities in nature, but also the public goods that farmers can provide by taking pro-environmental measures in agricultural production and other services in rural areas.

It is worth noting that environmental issues were consistently included by the doctrine among the principles of agricultural law reconstructed from legal norms. For example, A. Lichorowicz distinguished among them the principle of harmonising the regulation of the structure and production processes in agriculture with the requirements of environmental protection[15]. On the other hand, P. Czechowski included among the principles of agricultural law the principle of protection of land productivity within the framework of protection of natural resources in connection with spatial development of rural areas[16]. Both of the above-mentioned principles of agricultural law can be considered "anchored" in the programme norm derived from Article 5 of the Constitution of the Republic of Poland and other related constitutional regulations discussed above, which establish the principle of environmental protection. In this light, it follows from these principles that, in my view, public authorities are obligated to play an active role in order to guarantee that the agricultural production process and the directions of technical, agricultural and biological progress comply with environmental quality requirements, which, in a negative sense, should result in prohibiting agricultural production using methods which are excessively harmful to the environment in biological and spatial terms and, in a positive sense, prescribes a policy of ensuring that production reaches a level of production which guarantees security of food supply in sufficient quantity and of appropriate quality[17]. As underlined by the Constitutional Tribunal in its judgement of 6 June 2006 (K 23/05) "environmental protection is one of the elements of »environmental safety«, but the tasks of public authorities are broader – they include activities improving the current state of the environment and programming its further development".

As indicated above, from Article 5 of the Polish Constitution derives the programme norm, which obliges public authorities to take appropriate remedial and initiating actions in the field of environmental protection. The contemporary legislator quite often creates norms, the establishment of which is closely linked to the intention of achieving its general objectives. This type of regulation, which prescribes that the

[14] See, e.g., P. Gołasa, *Ekonomiczne dylematy związane z ochroną klimatu z uwzględnieniem rolnictwa*, Warszawa 2019, p. 6.

[15] A. Lichorowicz, *Pojęcie i przedmiot prawa rolnego. Miejsce prawa rolnego w polskim systemie prawa*, [in:] *Prawo rolne*, red. A. Stelmachowski, Warszawa 2009, pp. 30–31.

[16] P. Czechowski, *Zasady prawa rolnego – stabilizacja czy ewolucja*, „Studia Iuridica Agraria" 2011, t. 9, DOI: https://doi.org/10.15290/sia.2011.09.10, p. 113.

[17] P. Litwiniuk, *Umocowanie zasad prawa rolnego w Konstytucji RP*, „Studia Iuridica Agraria" 2013, t. 11, DOI: https://doi.org/10.15290/sia.2013.11.08, p. 123.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 03/11/2026 00:42:34

objectives of the norm-giver and not the addressee of the norm are referred to in the doctrine as programme norms[18]. Such norms, due to their structure, are optimisation principles (not rules)[19], which means that they can be implemented to a greater or lesser extent, taking into account current actual and legal possibilities[20].

J. Trzciński speaks similarly about the nature of programme norms:

> Programme norms are those that prescribe the attainment of a certain goal or seeking its achievement. This is about the goals of the legislator, the goals and tasks of the public authority and not about the law on the part of the citizen. A programme norm does not, therefore, indicate how to behave in order to achieve a certain objective, but rather what objective should be achieved. It often tells us what objective can be achieved because of the possibilities that public authorities have[21].

It is, therefore, considered that the provisions from which programming norms are derived are the basis for reconstructing the norms of conduct requiring action aimed at achieving the objectives set out in those provisions[22].

In such state of affairs, when analyzing the above-discussed provisions of the Constitution of the Republic of Poland and the EU provisions obliging the Member States to establish the RDP and determining their content in terms of options, it can be seen that the programme norms also affect the subject matter of Polish agricultural law regulation in the context of the environmental protection principle. For these reasons, I am in favour of a doctrinal separation of the "programmatic method of regulation" in the area of agricultural law, both in its European and national dimension, indicating that an important part of this regulation concerns the issue of environmental impact of agriculture[23]. The basic source of norms of this kind is the EU agricultural legislation and the programme document, which implements the assumptions of the Common Agricultural Policy in the national legal system – the rural development programme.

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[18] T. Gizbert-Studnicki, A. Grabowski, *Normy programowe w konstytucji*, [in:] *Charakter i struktura norm konstytucji*, red. J. Trzciński, Warszawa 1997, p. 96.

[19] Cf. P. Tuleja, *Normatywna treść praw jednostki w ustawach konstytucyjnych RP*, Warszawa 1997, pp. 60–87.

[20] T. Gizbert-Studnicki, A. Grabowski, *op. cit.*, p. 101. Moreover, these authors point out that "it is impossible to determine what behaviour is prescribed or prohibited by statements which form the core of programme standards without reference to elements that go beyond the legal text and, in particular, without reference to knowledge of causal relationships. […] Programme standards do not impose definitive obligations on their addressees. These standards only impose *prima facie* obligations" (*ibidem*), which boil down primarily to taking certain legislative or factual action.

[21] J. Trzciński, *Komentarz do art. 68*, [in:] K. Działocha, L. Garlicki, P. Sarnecki, W. Sokolewicz, J. Trzciński, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, t. 3, Warszawa 2003, p. 4.

[22] T. Gizbert-Studnicki, A. Grabowski, *op. cit.*, p. 106.

[23] For more on the programme method of regulation in agricultural law, see P. Litwiniuk, *Program Rozwoju Obszarów Wiejskich jako dokument programowy i źródło prawa rolnego*, Warszawa 2018, pp. 164–167.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 03/11/2026 00:42:34

RDP'S PRO-ENVIRONMENTAL OBJECTIVES

As the literature points out, the policy of rural development aims to meet the challenges faced by the inhabitants of rural areas and to use their potential, which assumes the pursuit of improvements of the environment and the rural areas[24]. The idea of "greening" the Common Agricultural Policy (CAP) in the current programming period 2014–2020 is one of the basic assumptions of the activity of the European Union in the agricultural sector. The provision of environmental public services by farmers in the course of their production activities and care for the preservation of the landscape was one of the key arguments for the involvement of EU budgetary resources in financing CAP instruments. It has been assumed that the second pillar of this policy will dedicate primarily resources to activities related to environmental and climate change, such as climate change mitigation and adaptation, preservation of biodiversity and resource efficiency and soil, water and land management[25]. Consequently, recital 5 of the Regulation 1305/2013 provides that "[t]he Union's priorities for rural development should be pursued in the framework of sustainable development and the Union's promotion of the aim of protecting and improving the environment, as set out in Article 11 TFEU […]", while recital 22 states that "[a]gri-environment-climate payments should continue to play a prominent role in supporting the sustainable development of rural areas and in responding to society's increasing demands for environmental services". It was also indicated that those payments should further encourage farmers and other land administrators to serve society as a whole by introducing or continuing to apply agricultural practices that contribute to climate change mitigation and adaptation compatible with the protection and improvement of the environment, the landscape and its features, natural resources and soil and genetic diversity. It also follows from this recital to Regulation 1305/2013 that Member States should be required to spend at least 30% of the total contribution from the European Agricultural Fund for Rural Development (EAFRD) on climate change mitigation and adaptation as well as environmental issues in each rural development programme. The Union legislator has decided that such expenditure should be made through agri-environment-climate payments and payments to organic farming and payments to areas facing natural or other specific constraints (LFAs), through forestry payments, Natura 2000 payments and support for environmental and climate investment projects.

It should be noted that Article 4 of the Regulation 1305/2013 sets out the objectives for EAFRD support for rural development (the so-called cross-cutting

[24] A. Niewiadomski, *Cele polityki rozwoju obszarów wiejskich*, [in:] *Prawo rolne*, red. P. Czechowski, Warszawa 2019, p. 566.

[25] P. Litwiniuk, A. Więcek, *Rozwój odnawialnych źródeł energii na obszarach wiejskich w perspektywie nowej Wspólnej Polityki Rolnej*, „Studia Iuridica" 2014, t. 58, p. 160.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 03/11/2026 00:42:34

objectives), including ensuring sustainable management of natural resources and climate action[26]. In contrast, the Union priorities for rural development highlighted in Article 5 of this legal act include, i.a., restoring, protecting and enhancing ecosystems related to agriculture and forestry[27] and promoting resource efficiency and the shift towards a low-carbon and climate-resilient economy in the agriculture, food and forestry sectors[28].

According to Article 6 (1) of the Regulation 1305/2013, the EAFRD shall act in the Member States through rural development programmes. Those programmes shall implement a strategy to meet the Union priorities for rural development through a set of measures as defined in Title III. Support from the EAFRD shall be sought for the achievement of the objectives of rural development pursued through Union priorities.

PROGRAMMING PROCESS

"Programming" within the meaning of European Union law means the process of organization, decision-making and allocation of financial resources in several stages, involving partners in accordance with Article 5 of the Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013[29] which aims at delivering, on a multiannual basis, joint action by the Union and the Member States to achieve the objectives of the Union strategy for smart, sustainable and inclusive growth[30]. Individual EU funds are implemented on the basis of programmes in which EU law includes operational programmes and, as

[26] See Article 4 (b) of the Regulation 1305/2013.

[27] See Article 5 (4) of the Regulation 1305/2013, which also sets out specific objectives for this priority, such as: restoring, preserving and enhancing biodiversity, including in Natura 2000 areas and in areas facing natural or other specific constraints, and high nature value farming, as well as the state of European landscapes; improving water management, including fertiliser and pesticide use; preventing soil erosion and improving soil management.

[28] See Article 5 (5) of the Regulation 1305/2013, where specific objectives for this priority are also set out, such as: increasing efficiency in water use by agriculture; increasing efficiency in energy use in agriculture and food processing; facilitating the supply and use of renewable sources of energy, of by-products, wastes and residues and of other non food raw material, for the purposes of the bio-economy; reducing greenhouse gas and ammonia emissions from agriculture; fostering carbon conservation and sequestration in agriculture and forestry.

[29] Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No. 1083/2006 (OJ L 347/320), hereinafter: Regulation 1303/2013.

[30] See Article 2 (5) of the Regulation 1303/2013.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 03/11/2026 00:42:34

regards the EAFRD, rural development programmes[31]. The obligation to prepare programmes follows from Article 26 of the Regulation 1303/2013. They are designed to pursue the objectives in accordance with the Partnership Agreement and development strategies[32] and should be consistent with the framework set out in the Partnership Agreement[33].

The task of the RDP is to support the process of satisfying predefined needs, which were diagnosed on the basis of SWOT analysis, carried out around the issue of EU priorities in the field of rural development, while the cross-cutting and specific objectives and priorities defined in the Programme must be consistent with Articles 4 and 5 of the Regulation 1305/2013[34]. Consequently, implementation of the RDP objectives serves at the same time to achieve the objectives of the "Europe 2020" Strategy.

It should be emphasized that the draft RDP is subject to prior evaluation in accordance with Article 55 of the Regulation 1303/2013 and Article 15 (6) of the Act of 6 December 2006 on the Principles of Development Policy[35]. In accordance with the latter provision, the institution preparing the development programme prepares, before its adoption or amendment, an evaluation report containing a prior evaluation of the programme implementation. The relevant document summarizing the results of the study entitled *Ocena ex-ante Programu Rozwoju Obszarów Wiejskich na lata 2014–2020* (*Ex-ante evaluation of the Rural Development Programme 2014–2020*) was prepared by the Ministry of Agriculture and Rural Development and approved on 12 May 2014[36].

According to Article 29 of the Regulation 1303/2013, the Commission shall, in particular, assess the consistency of the programmes with EU law and the Partnership Agreement and their effective contribution to the selected thematic objectives and the Union priorities. As stated in Article 29 (1), the second sentence, of the above-mentioned Regulation, "the assessment shall address, in particular, the adequacy of the programme strategy, the corresponding objectives, indicators, targets and the allocation of budgetary resources". The Commission shall make observations within three months of the date of submission of the programme and

[31] See Article 2 (6) of the Regulation 1303/2013.

[32] K. Kokocińska, *Prawny mechanizm prowadzenia polityki rozwoju w zdecentralizowanych strukturach władzy publicznej*, Poznań 2014, pp. 144–145.

[33] See Article 26 (1) of the Regulation 1303/2013.

[34] J. Stoksik, *Formy wspierania rozwoju gospodarstw rolnych w Programie Rozwoju Obszarów Wiejskich na lata 2014–2020*, „Studia Iuridica Agraria" 2015, t. 13, DOI: https://doi.org/10.15290/sia.2015.13.11, p. 179.

[35] Consolidated text Journal of Laws 2019, item 1295, hereinafter: Development Policy Principles Act.

[36] *Ocena ex-ante Programu Rozwoju Obszarów Wiejskich na lata 2014–2020. Raport końcowy*, www.gov.pl/attachment/3d70d1c9-d133-4232-a3f5-0ef4fda84354 [access: 10.02.2020].

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 03/11/2026 00:42:34

the Member State shall provide to the Commission all necessary additional information and, where appropriate, revise the proposed programme[37]. If the Commission's observations have been taken into account, the Commission should, within 6 months of the submission of the programme, adopt the programme in accordance with the fund-specific rules[38]. In accordance with Article 10 (2) of the Regulation 1305/2013 each rural development programme shall be approved by the Commission by means of an implementing act in the form of an implementing decision.

The procedure for establishing a rural development programme in Poland was defined by the provisions of the Development Policy Principles Act. Preparation of the draft RDP is the responsibility of the minister competent for rural development[39]. The legislator emphasized that the programmes – including the RDP – should take into account the arrangements made in the partnership agreement[40]. After being prepared by the minister competent for rural development – before being presented to the European Commission – the draft RDP is "adopted by the Council of Ministers […] by way of a resolution"[41]. Once adopted by the Commission, the RDP is forwarded "for information to the members of the Council of Ministers"[42]. As stipulated in Article 14kd of the Development Policy Principles Act, the RDP should be "made public" on the website of the Public Information Bulletin of the minister competent for rural development. In addition, a communication on the approval of the RDP by the Commission should be published in Monitor Polski, as well as the address of the website on which the programme has been placed.

The construction of the Polish RDP for 2014–2020 was determined primarily by the objectives of the "Europe 2020" Strategy, the priorities indicated in the above-mentioned EU regulations and the thematic objectives of the Common Strategic Framework. All actions are aligned with the three cross-cutting objectives of the "Europe 2020" Strategy on innovation, environment and climate change mitigation[43]. The programme was also recognized as the main tool for the implementation of the Polish "Strategy for sustainable development of the countryside, agriculture and fisheries" for the years 2012–2020[44].

As regards environmental and climate objectives in the Polish RDP for 2014–2020, a number of measures and sub-measures were selected for implementation,

[37] See Article 29 (3) of the Regulation 1303/2013.
[38] See Article 29 (4) of the Regulation 1303/2013.
[39] See Article 14g (4) of the Development Policy Principles Act.
[40] See Article 14h of the Development Policy Principles Act.
[41] See Article 14j (1) (1) of Development Policy Principles Act.
[42] See Article 14j (2) (2) of the Development Policy Principles Act.
[43] RDP 2014–2020, point 4.2.1.
[44] Resolution No. 163 of the Council of Ministers of 25 April 2012 on the adoption of the "Strategy for sustainable development of the countryside, agriculture and fisheries" for 2012–2020 (M.P. 2012, item 839).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 03/11/2026 00:42:34

aimed at achieving them. These include, in particular, the "Agri-environment-climate measure", the essence of which is to promote practices contributing to sustainable land management in order to protect soils, water and climate, as well as to safeguard valuable natural habitats and endangered bird species, landscape diversity and endangered genetic resources of crops and livestock. The measure fits in the implementation of strategic environmental objectives set out in the EU and national legal acts and programming documents, while taking into account the social and economic importance of agriculture in connection with the growing demand for raw materials and the impact of this sector of the economy on employment and territorial development in Poland[45]. Two sub-measures have been programmed under this measure: "Payments under agri-environment-climate commitments" and "Support for the conservation and sustainable use and development of genetic resources in agriculture".

"Organic farming" is another measure from the point of view of the RDP objectives and priorities. It supports farmers who make voluntary commitments to maintain or convert to organic farming practices and methods as defined in Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2092/91[46]. Organic farming, within the meaning of the RDP, means "a type of farming with sustainable crop and livestock production on the farm, based on raw materials of biological and mineral origin". The basic principle of organic farming is refraining from the use of agricultural, veterinary and food chemicals in the food production process for all types and stages of production, whether for plant breeding, animal husbandry or processing[47].

The third important measure of the RDP in the discussed context is "Payments for areas with natural or other specific restrictions", i.e. the so-called LFA payments. It provides an instrument of financial support for agricultural producers operating in mountain areas or other areas with natural constraints as well as other specific constraints such as difficult climatic or structural conditions. The reason for granting aid from public funds under this measure is the need to create financial incentives for agricultural use of land in difficult conditions and, as a result, to preserve the landscape values of rural areas, as well as to maintain and promote sustainable farming systems in LFAs[48]. The RDP for the years 2014–2020 assumes that such support has a positive impact on maintaining the vitality of rural areas and on the

[45] See RDP 2014–2020, point 8.2.10.2.

[46] OJ EU L 189/1 as amended.

[47] See RDP 2014–2020, point 8.2.11.2.

[48] Cf. B. Banaszak, *Dopłaty wyrównawcze dla obszarów o niekorzystnych warunkach gospodarowania (ONW) jako element realizacji zasady zrównoważonego rozwoju ustanowionej w art. 5 Konstytucji RP*, [in:] *Kwestia agrarna. Zagadnienia prawne i ekonomiczne*, red. P. Litwiniuk, Warszawa 2016, pp. 143–151.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 03/11/2026 00:42:34

preservation of biodiversity, as compensation for lower natural productivity of LFA areas, in accordance with the objectives of the Regulation 1305/2013, motivates for their fuller integration into the implementation of national and EU objectives of food security and sustainable development, both in the environmental and territorial dimension[49].

It should be added that pro-environmental elements were taken into account when constructing many other measures and sub-measures of the RDP for 2014–2020. This leads to the conclusion that the broadly understood principle of environmental protection was respected by Polish public authorities in the process of creating an important and high-budget (EUR 13.6 billion) instrument for conducting development policy, i.e. the RDP for the years 2014–2020. A separate issue is the question of the source of the model of the normative solutions adopted, which should be sought in the provisions of EU law rather than in the Polish Constitution.

CONCLUSIONS

Summing up the considerations, it can be concluded that the values which guided the Polish legislator in establishing the constitutional principle of environmental protection are respected in the process of creation of modern instruments of the Common Agricultural Policy by the state authorities, such as the rural development programme. Undoubtedly, the source of these inspirations should be sought primarily in the EU legislation that the environmental and climate protection sector has included in the catalogue of its key priorities. The European Union sees a need for greater justification of public expenditure on services to agricultural producers, to which the attribution of functions to payments in the environmental process effectively contributes.

The foregoing notwithstanding, one cannot lose sight of the fact that the state authorities of the Republic of Poland recognize, and rightly so, the primacy of the provisions of the Polish Constitution over EU law. In the light of Article 8 of the Constitution, its provisions are the highest law in the Republic of Poland, and respect for the principles and values that characterise the functioning of the European Union in no way leads to a denial of the primacy of the Polish Constitution[50]. The Constitutional Tribunal in its jurisprudence has taken the following position:

> […] the provisions (norms) of the Constitution as an overriding act and constituting an expression of the sovereign will of the nation may not lose their binding force or be changed by the mere

[49] See RDP 2014–2020, point 8.2.12.2.

[50] M. Jabłoński, S. Jarosz-Żukowska, *Wprowadzenie*, [in:] *Zasada pierwszeństwa prawa Unii Europejskiej w praktyce działania organów władzy publicznej RP*, red. M. Jabłoński, S. Jarosz-Żukowska, Wrocław 2015, p. 12.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 03/11/2026 00:42:34

fact of creating an irremovable contradiction between certain provisions (community acts and the Constitution). In such situation, the sovereign Polish constitutional legislator retains the right to decide for itself how to resolve this contradiction, including the advisability of a possible amendment to the Constitution itself[51].

At the same time, it should be emphasized that the Constitutional Tribunal created in its jurisprudence the obligation of the so-called pro-EU interpretation of national law[52]. It is worth noting that the obligation of the so-called "conforming interpretation" also derives directly from the principles of European Union law[53].

It follows from the above that the principle of environmental protection is a manifestation and clear proof of the community of values of the European Union and the Republic of Poland. An interpretation of this constitutional principle would be worthless and ineffective without reference to the EU legislation that makes the common intentions of the Member States, sealed by the Treaties, a reality. Thus, the Polish public authorities correctly adopted the RDP as one of the key tools for environmental protection, including landscape, in rural areas, combining the function of supporting agricultural production with the provision of environmental public services by farmers.

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[51] Judgement of the Constitutional Tribunal of 11 May 2005, K 18/04.

[52] Judgement of the Constitutional Tribunal of 12 January 2005, K 24/04.

[53] See, in more detail, A. Sołtys, *Obowiązek wykładni prawa krajowego zgodnie z prawem unijnym jako instrument zapewniania efektywności prawa Unii Europejskiej*, Warszawa 2015.

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Data: 03/11/2026 00:42:34

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STRESZCZENIE

Środowisko jest wartością i przedmiotem ochrony konstytucyjnej w Polsce. Zapewnienie ochrony środowiska uznaje się w krajowej doktrynie za zasadę ustrojową, a ze względu na redakcyjne usytuowanie jej źródła już w art. 5 Konstytucji RP uważane jest za jeden z celów państwowości polskiej. Ustawa zasadnicza w kilku miejscach odnosi się do kwestii środowiska, uznając je za istotną wartość, a troskę o nie powierza nie tylko władzom publicznym, lecz także każdemu, kto podlega polskiej władzy państwowej. Interesującym zagadnieniem naukowym jest zbadanie, czy współczesne instrumenty prawa rolnego, w szczególności kształtowane przy udziale polskich władz państwowych w ramach stosowania mechanizmów Wspólnej Polityki Rolnej Unii Europejskiej, uwzględniają konstytucyjne dyrektywy wywodzone z zasady ochrony środowiska oraz czy efekty tych działań poddają weryfikacji w świetle konstytucyjnego wzorca. Przedmiotem szczegółowej analizy w niniejszym opracowaniu jest program rozwoju obszarów wiejskich (PROW), o którym mowa w art. 6 rozporządzenia Parlamentu Europejskiego i Rady (UE) nr 1305/2013 z dnia 17 grudnia 2013 r. w sprawie wsparcia rozwoju obszarów wiejskich przez Europejski Fundusz Rolny na rzecz Rozwoju Obszarów Wiejskich (EFRROW) i uchylającego rozporządzenie Rady (WE) nr 1698/2005. Autor dowodzi, że konstytucyjna zasada ochrony środowiska została poszanowana przez polskie władze publiczne w procesie tworzenia ważnego i wysokobudżetowego instrumentu prowadzenia polityki rozwoju, jakim jest PROW na lata 2014–2020.

Słowa kluczowe: Konstytucja RP; ochrona środowiska; prawo rolne; program rozwoju obszarów wiejskich; Wspólna Polityka Rolna UE