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Repairing Damage Caused by Restricting the Use of Property in Connection with Nature Protection: Selected Issues

Naprawienie szkody spowodowanej ograniczeniem korzystania z nieruchomości w związku z ochroną przyrody – wybrane zagadnienia

SUMMARY

Establishing legal forms of nature conservation entails a restriction on the right of ownership and other property rights. For this reason, the legislature introduced in the Act of 27 April 2001 on Environmental Protection Law solutions allowing for the purchase of real estate or payment of damages. The provisions of the Environmental Protection Law set out an administrative-judicial procedure of claiming for remedying a damage caused by the legal operation of the public administration related to the protection of environmental resources. This procedure is based on the fact that a claim, essentially of a civil nature (a claim for remedying a damage caused by restricting the use of property) is pursued in two stages – the first in an administrative proceeding in which the administrative authority issues a decision and in the second, where the case is decided by a general court. The first stage is obligatory, in the sense that in the event of a dispute for compensation, the aggrieved party must apply to the administrative body for compensation. The second is initiated as a result of the action of the party dissatisfied with the compensation awarded by the administrative body.

Keywords: property use; compensation; administrative proceeding; court proceeding

Undoubtedly, the establishment of legal forms of nature conservation is related to the restriction of the right of ownership and other rights in rem. For this reason, the legislature introduced in the Act of 27 April 2001 on Environmental Protection Law[1] a solution to claim the buyout of immovable property or to pay compensation.

[1] Consolidated text Journal of Laws 2018, item 799 as amended, hereinafter: EPL.

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The Environmental Protection Law provides for claims due to restrictions on the use of the immovable property for those whose property rights have been thereby restricted; these persons include the owner of the property, perpetual user or holder of a limited right in rem[2]. Pursuant to Article 129 (1) EPL, the person entitled may claim the buyout of real estate or part thereof, if as a consequence of the restriction on the use of the property for environmental protection considerations its use has become impossible or materially limited. In accordance with Article 129 (2) EPL the entitled may claim for compensation for the damage suffered, including a reduction in the value of the property, due to the restriction on the use of the property for environmental protection reasons.

The following are obliged to pay the compensation or purchase the property: 1) the competent local government unit, if the restriction on the use of the property was due to the enactment of an act of local law; 2) the State Treasury represented by the voivodeship governor, if the above restriction occurred following the adoption of an ordinance of the Council of Ministers, the competent minister or voivodeship governor. According to Article 133 EPL, the determination of the amount of compensation and the price of the property buyout is to be effected after obtaining the opinion of an appraiser under the principles and procedure provided for in the Act of 21 August 1997 on Real Estate Management[3].

Article 131 (1) EPL provides that in the event of a restriction on the use of immovable property referred to in Article 131 (1) EPL, at the request of the aggrieved party, the competent county head (starost) shall determine the amount of compensation by decision. The decision may not be appealed against. A party dissatisfied with the compensation awarded may, within 30 days of service of the decision, bring an action before the ordinary court (Article 131 (2) EPL). The party has the right to bring the case before court within three months of the date on which the aggrieved party notified the request if the competent authority fails to issue the decision (Article 131 (2) EPL). Bringing the case does not suspend the implementation of the decision referred to in section 1 (Article 131 (3) EPL).

The liability for damages referred to in Article 129 EPL has been designed as a statutory obligation to compensate the owner of the property (or perpetual user, or holder of a limited right in rem) for damages resulting from the introduction of regulations that restrict the use of the property. This is the liability for the consequences of restricting the use of the property for environmental reasons, resulting from an act of local law or secondary legislation (ordinance). The conditions for the liability is the entry into force of the act of local law or an ordinance restricting the use of the property, the damage suffered by the property owner and the causal

[2] For more, see E. Janeczko, *Niektóre cywilnoprawne problemy ochrony środowiska*, „Rejent" 2002, nr 11, p. 61 ff.

[3] Journal of Laws 2018, item 121 as amended.

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link between the restriction imposed and the damage suffered. It is assumed in the prevailing case-law that the compensation does not boil down to merely compensating for the actual loss, as the principle of full liability for the restriction on the use of the property for environmental protection reasons applies[4].

The introduction of legal forms of nature protection provided for in the Act of 16 April 2004 on Nature Conservation[5] will result in limiting the right to use the property[6]. The above-mentioned legal forms of nature conservation include national parks, nature reserves, landscape parks, protected landscape areas, Natura 2000 areas, natural monuments, documentation stands, ecological grounds and natural and landscape complexes. Nature conservation is part of the environmental protection activities. In accordance with Article 2 ANC, nature conservation consists in the preservation, sustainable use and restoration of resources, formations and components of nature. Its objective is: to sustain ecological processes and stability of ecosystems; to preserve biodiversity; to preserve geological and palaeontological heritage; to ensure continuity of existence of plant, animal and fungi species; to protect landscape assets, green areas in towns and villages and tree plantings; to maintain or restore natural habitats and other resources, formations and components of nature back to their proper condition; and to shape appropriate human attitudes towards nature through education, information and promotion in the field of nature conservation. Generally, nature conservation consists in identification of fragments of space that are valuable due to the existing plant and animal species and their biocenotic systems and landscape assets, as covered by additional legal requirements, most often in the form of specific prohibitions to secure the survival of such objects of protection[7].

The use of real estate traditionally comprises the exercise of the following rights: possession of property, use of property, collection of benefits and other income, making factual dispositions and disposing of property[8]. Damage is defined as an impairment to the aggrieved party's property, which occurred against his will, consisting in the difference between the condition of such property resulting from a harmful event and the condition that would have existed had this event not occurred[9]. This corresponds to the notion of loss within the meaning of Article 361

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[4] Judgement of the Supreme Court of 25 February 2009, II CSK 546/08, LEX No. 503415.

[5] Consolidated text Journal of Laws 2018, item 142 as amended, hereinafter: ANC.

[6] W. Radecki, *Ograniczenie własności ze względu na potrzeby szczególnej ochrony przyrody*, [in:] *Ochrona środowiska a prawo własności*, red. J. Sommer, Warszawa 2000, p. 29 ff.

[7] P. Otawski, *Obszary ochrony przyrody a system planowania przestrzennego w Polsce*, [in:] *Planowanie przestrzenne – szanse i zagrożenia społeczno-środowiskowe*, red. S. Kozłowski, P. Legutko-Kobus, Lublin 2007, p. 130.

[8] J. Ignatowicz, K. Stefaniuk, *Prawo rzeczowe*, Warszawa 2004, p. 62; A. Stelmachowski, [in:] *System Prawa Prywatnego*, t. 3: *Prawo rzeczowe*, red. T. Dybowski, Warszawa 2003, p. 221.

[9] M. Kaliński, *Szkoda na mieniu i jej naprawienie*, Warszawa 2008, p. 175.

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§ 2 of the Civil Code[10], whereby the loss is, among other things, the reduction in assets, and the deterioration of real estate leads to a reduction in one of the assets making up the property[11]. The prevailing scholarly opinion is that the damage to the real estate owner should be understood broadly[12]. The very establishment of a legal form of nature conservation is already a restriction, because it causes a reduction in the value of real estate, resulting from the limitations provided for in the content of the act on its establishment. As a result of the entry into force of this act, the ownership rights are narrowed. From that date, the owner must tolerate the prohibitions in force in a given area, which, of course, also affects the reduction in the property value[13]. The restriction of the ownership right as a consequence of the introduction of a legal form of nature protection is a factor contributing to the damage suffered by the property owner, but does not cover the whole of this damage. An even more important factor here is the very fact of establishing legal forms of nature conservation. As perceived by prospective buyers, the very act of local law on the establishment of a legal form of nature conservation results in the reduction in the value of real estate[14]. In the minds of the local real estate market participants there is a conviction that the area covered by this act is "contaminated" with a negative factor (the established system of prohibitions), causing a decrease in the value of real estate located in this area[15].

As pointed out above, the provisions of the Environmental Protection Law provided for an administrative judicial procedure for the implementation of the claim for compensation for damage caused by legal action of the public administration related to the protection of environmental resources. This procedure is based on the fact that a claim, essentially of a civil nature (a claim for remedying a damage caused by restricting the use of property) is pursued in two stages – the first in an administrative proceeding in which the administrative authority issues a decision and in the second, where the case is decided by a general court. The first stage is obligatory, in the sense that in the event of a dispute for compensation, the aggrieved party must apply to the administrative body for compensation. The second is initiated as a result of the action of the party dissatisfied with the compensation

[10] Act of 23 April 1964 – Civil Code (consolidated text Journal of Laws 2018, item 1025 as amended).

[11] Grounds for the resolution of the Supreme Court of 21 March 2003, III CZP 6/03, LEX No. 76151.

[12] B. Rakoczy, *Glosa do wyroku SN z 25 lutego 2009 r., II CSK 546/08*, „Przegląd Prawa Ochrony Środowiska" 2010, nr 2, p. 165.

[13] A similar opinion on the area of limited use has been given by the Supreme Court in the decision of 24 February 2010, III CZP 129/09, LEX No. 578138.

[14] Cf. judgement of the Supreme Court of 6 May 2010, II CSK 602/10, unpublished; judgement of the Supreme Court of 25 May 2012, I CSK 509/11, OSNC 2013, No. 2, item 26; judgement of the Supreme Court of 21 August 2013, II CSK 578/12, OSNC 2014, No. 4, item 47.

[15] Judgement of the Supreme Court of 24 November 2016, II CSK 113/16, LEX No. 2177083.

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awarded by the administrative body or within three months of the date on which the aggrieved party notified the request if the competent authority fails to issue the decision. As a rule, proceedings before an administrative body competent to issue a decision on determination of compensation are pending in accordance with the provisions of the Code of Administrative Procedure[16], since this act, as follows from Article 1 (1) thereof, regulates proceedings before public administration bodies in individual cases decided on by administrative decisions within the jurisdiction of these bodies[17]. The provisions of the Code of Administrative Procedure in this proceeding are not applicable only to the extent resulting from the fact that, pursuant to Article 131 (1) and (2) EPL, the decision is not subject to appeal and the party dissatisfied with the awarded compensation may bring an action before a common court within due time. The rules on appeals and the recourse to the administrative court are therefore not applicable. However, Article 28 CAP, which regulates who is a party to the administrative proceeding, is applicable. According to this provision, a party is any person whose legal interest or obligation is covered by the proceedings or who demands the action of an authority due to one's legal interest or obligation. Taking into account the content of Article 28 CAP and the fact that the proceedings conducted pursuant to Article 131 (1) EPL, in which an administrative decision on the determination of compensation is issued, is the first and obligatory stage of pursuing a claim for compensation for damage, there is no doubt that the parties to the proceedings are entities involved in dispute as to compensation for the damage, i.e. the aggrieved party and the entity obliged to compensate for damage pointed out in Article 134 EPL[18]. The Supreme Court has also pointed out that there are no grounds to assume that the provisions concerning the annulment of the decision are not applicable[19].

Claims for compensation may be submitted within a period of three years from the date of entry into force of the ordinance or an act of local law restricting the use of the real estate. The time limit is final. Its ineffective expiry results in a definitive expiry of the right (entitlement) that had to be exercised within that period. Moreover, in contrast to the statute of limitations, final time limits are not subject, as a rule, be suspended, deferred or interrupted, and their passage is

[16] Act of 14 June 1960 – Code of Administrative Procedure (consolidated text Journal of Laws 2017, item 1257 as amended), hereinafter: CAP.

[17] For more, see K. Gruszecki, *Pojęcie sprawy administracyjnej w polskim postępowaniu administracyjnym*, „Samorząd Terytorialny" 2005, nr 11, p. 40 ff.; W. Dawidowicz, *Postępowanie w sprawach administracyjnych a postępowanie przed sądem cywilnym*, „Państwo i Prawo" 1990, z. 8, p. 42.

[18] Judgement of the Supreme Court of 3 November 2015, II OSK 513/14, LEX No. 1990844.

[19] *Ibidem*. A different view: J. Kremis, *Odpowiedzialność Skarbu Państwa za decyzje administracyjne według kodeksu cywilnego i kodeksu postępowania administracyjnego*, „Acta Universitatis Wratislaviensis. Prawo" 1986, nr 884, pp. 160–166.

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taken into account *ex officio* and not by way of a plea. This preclusion is therefore characterized by considerable legal rigorism[20]. By 14 March 2019, this is until the date of entry into force of the Act of 22 February 2019 amending the Act on Environmental Protection Law[21] the above time limit was two years. Some scholars put forward the opinion that the term of two years is too short. During this period, the actual inconvenience in the use of real estate may not yet be disclosed[22]. M. Pchałek has pointed out that "setting the time limit at such a level and failing to make it conditional upon the circumstance of being aware of a particular restriction is a solution which prevents individuals from actually pursuing their rights"[23]. In its judgement of 7 March 2018[24], the Constitutional Tribunal decided that Article 129 (4) EPL in the previous wording is incompatible with Article 64 (1) in conjunction with Article 31 (3) of the Constitution of the Republic of Poland[25]. The question remains as to whether the extension of the limit by only one year solves the above-mentioned doubts.

The second stage is judicial proceeding initiated by the bringing of a statement of claim. There is a dispute among scholars concerning the relationship between administrative and judicial proceedings. According to one of the views, judicial proceedings are a specific instance procedure, while another argues that bringing an action before a general court re-initiates the dispute in respect of compensation[26]. The case-law now has currently resolved this controversy by stating that judicial proceeding is not a continuation of the administrative procedure in which the decision on compensation was taken[27]. It is conducted *ex novo* and, therefore, the judgement issued in that case does not undermine the administrative decision and thus, in this case, the interference of the ordinary judiciary in the sphere reserved for the public administration does not take place[28].

The question arises in this case whether the prohibition of *reformationis in peius* applies to judicial proceedings. It is of particular importance for the claim-

[20] A. Paczkowska, *Charakter prawny terminu dochodzenia roszczeń odszkodowawczych w związku z ustanowieniem sfery ograniczonego użytkowania*, „Przegląd Prawa Handlowego" 2015, nr 11, pp. 36–38.

[21] Journal of Laws 2019, item 452.

[22] W. Skarżyńska, [in:] *Ustawa – Prawo ochrony środowiska. Komentarz*, red. J. Jendrośka, Wrocław 2001, p. 448.

[23] M. Pchałek, [in:] *Prawo ochrony środowiska. Komentarz*, Warszawa 2014, p. 404.

[24] K 2/17, OTK-A 2018, No. 13.

[25] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483 as amended). Official English translation: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [access: 10.04.2019].

[26] For more, see J. Parchomiuk, [in:] *System Prawa Administracyjnego*, t. 12: *Odpowiedzialność odszkodowawcza w administracji*, red. E. Bagińska, J. Parchomiuk, Warszawa 2010, p. 525.

[27] Judgement of the Supreme Court of 11 December 2002, I CKN 1385/00, LEX No. 78317.

[28] Judgement of the Supreme Court of 11 October 2012, III CZP 49/12, LEX No. 1224795.

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ant, whether, as a result of a judgement of a court, he can obtain a resolution less favourable than in an administrative decision.

Some scholars of administrative law argue that bringing the lawsuit does not constitute an appeal and is not within the notion of an administrative course of instance; a general court does not review administrative decisions[29]. A general court is empowered to review administrative decisions only where this is clearly provided for in a statutory provision.

> As a consequence, where a case is brought before the court, the administrative decision loses its procedural existence and does not have any substantive influence on the court's decision and the court is not bound by the findings of the administrative authority. Therefore, the court may issue a judgement either more favourable or less favourable to the party in comparison with the administrative decision[30].

This position may raise doubts in the light of Article 131 (3) EPL, according to which legal action does not suspend the execution of the administrative decision. The party who is awarded compensation in the administrative decision but dissatisfied with its amount will not apply for compensation in the amount set out in the decision, but the claim will concern the difference. Since the party obtained a decision that was favourable in part, which is enforceable regardless of the case being brought before a common court, it would be completely unreasonable to claim the same again in the course of a civil-law trial. This also has an important fiscal aspect. The value of the object of the dispute based on which the lawsuit court fee is to be calculated will be the difference between the compensation claimed and the amount determined in the decision.

There are no rational grounds requiring the injured party to bring an action for the entire amount of compensation, including that covered by the administrative decision. The adoption of this solution, in addition to the fiscal aspect mentioned above, removes a number of practical problems regarding the mutual relationship of administrative decision and court judgement. If the court negatively assessed the legitimacy of compensation as a whole or deemed the party entitled to compensation lower than in the administrative decision, the problem of the effects of the judgement on the administrative decision would arise. To withdraw an administrative decision from legal transactions, a legal basis is required in an explicit legal provision. This leads to a situation where a final administrative decision, although not repealed, does not apply; this kind of situation undermines the principle of permanence of administrative decisions[31]. According to J. Parchomiuk, if the com-

[29] M. Stahl, *Zbieg drogi postępowania administracyjnego i sądowego*, „Studia Prawniczo-Ekonomiczne" 1979, t. 21, p. 43.

[30] J. Parchomiuk, *op. cit.*, p. 526 and the literature cited therein.

[31] J. Boć, *Decyzja administracyjna i droga w dochodzeniu niektórych roszczeń wobec państwa*, „Acta Universitatis Wratislaviensis. Prawo" 1969, nr 10, p. 28.

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pensation is increased, the court should decide on the entirety of compensation, and not only to supplement its amount in relation to the administrative decision[32]. This would lead to a situation that there were two enforceable titles in legal transactions, partly covering the same amount of compensation. However, this view ignores the content of Article 321 § 1 of the Code of Civil Procedure[33], according to which the court may not adjudicate on a matter not covered by the claim or award above the amount of claim. Under the current legislation, if a party dissatisfied with the amount of compensation specified in an administrative decision requests the court to award a higher amount (but only a surplus), then the court will not be entitled to decide on the amount covered by the administrative decision. In view of the above, there is no problem in the legal existence of two enforceable titles for the same amount: judicial and administrative titles. In addition, one should have in mind the content of Article 131 (3) EPL, according to which legal action does not suspend the execution of the starost's decision on determining the amount of compensation. A party dissatisfied with the amount of compensation will already have an administrative enforceable title at hand in the civil proceedings. He undoubtedly will initiate enforcement proceedings with it. Considering the type of entities obliged to pay (and therefore their solvency), the enforcement proceedings should be short and efficient. Thus, the common court of law, at the closing of the hearing, may face a situation in which the claim is already enforced. In this case, the claim stated in the lawsuit may not be accepted at all since the service is already performed during the trial. Therefore, the solution proposed additionally releases the common court from determining each time at what stage the administrative enforcement is, as partial or complete enforcement of the claim would be essential for the legitimacy of claim sought.

In the situation under consideration, it is not precluded that the court hearing the case will conclude that the amount of compensation to be awarded should not be higher or even that it should not be awarded at all. Even then, however, the judgement dismissing the action will only concern the amount covered by the claim and will not affect the legal existence (and enforceability) of the administrative decision. That solution seems to be reasonable, as the party requesting before the court for additional compensation should not be afraid that, as a result of the judgement, may be deprived of compensation at all as a result of the judicial decision.

The repeal of the obligation to pay compensation resulting from an administrative decision is within the interest of the entity obliged to pay it. A party dissatisfied with the compensation granted is a party dissatisfied with the administrative decision, and thus both the aggrieved entity and the obliged entity obliged to pay it.

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[32] J. Parchomiuk, *op. cit.*, p. 532.

[33] Act of 17 October 1964 – Code of Civil Procedure (consolidated text Journal of Laws 2018, item 155 as amended), hereinafter: CCP.

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The case-law stipulates that both parties to the previous administrative procedure should be provided with the possibility to continue the proceedings in terms of guaranteeing the protection of their rights. From the very nature of pre-litigation procedure it is apparent that, in the event of a decision unfavourable for the entitled entity, the entity has the right to pursue a lawsuit for the performance of the service while where bring a lawsuit to "negate" the existence of entitlement. It should be noted that the lawsuit for performance includes a request for the confirmation of existence a legal relationship or a right that forms the basis of the obligation to perform, so the difference between the claim for performance and the claim for the examination of the existence of entitlement is only quantitative, not qualitative. If bringing a lawsuit is admissible with regard to an action for performance, it is also admissible for the claim for the examination of existence of entitlement[34]. The administrative authority may, therefore, apply for the examination to find that there is no obligation to pay compensation resulting from a final administrative decision or that the obligation exists to a lesser extent than that resulting from the decision.

Bringing an action for payment filed by the party dissatisfied with the compensation granted, and an action for examination of the existence of entitlement by the entity obliged to pay are also conceivable. Both cases can be conducted independently of each other. The lodging of one of them does not cause the status of suit pending which is the ground for rejecting the action under Article 199 § 1 (2) CCP. Generally, the bringing of a lawsuit for payment renders inadmissible the other party's action to find that there is no obligation to pay (Article 192 (1) CCP). In the case under consideration, the subject matter of the claim will differ. The claim of the party dissatisfied with the amount of the compensation granted will concern the payment of the amount higher than the compensation granted, while the claim of the entity obliged to pay will "counter" the compensation specified in the administrative decision. The finding that the compensation payable should be granted in a higher amount than determined in the administrative decision will mean the acceptance, in whole or in part, of the demand for payment, which would result in the rejection of the lawsuit for examination of the existence of entitlement. On the other hand, the consequence of bringing the action for examination of the existence of entitlement will be the rejection of the payment claim.

Such a substantive link between the claims under consideration means that if the first claim is brought, the second may take the form of a counterclaim. Pursuant to Article 204 (1) CCP, an action to pursue a counterclaim is admissible if the counterclaim is related to the claim of the plaintiff or can be set off; an action to pursue a counterclaim may be brought either in response to the action to pursue a claim or separately, but not later than at the first hearing, or as an opposition to a default judgement. This solution is rather theoretical due to the short time limit

[34] Resolution of the Supreme Court of 11 October 2012, III CZP 49/12, LEX No. 1224795.

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set out in the law for both parties. If both lawsuits are brought independently, Article 219 CCP will apply, which states that the court may order the consolidation of several separate cases pending before it in order to hear them together, or also to resolve them, if they are connected with each other or could be covered by a single statement of claims. This solution is all the more reasonable in view of the close link between the two lawsuits, as indicated above, if one of them is upheld, the other will have to be rejected.

Also, the question of the relation between the rule contained in Article 131 EPL and the provisions of the Code of Civil Procedure on the procedure to secure claims (Article 730 ff. CCP) arises. Bringing a legal action does not suspend the implementation of the decision on awarding the compensation. It seems that the purpose of this provision is to prevent the blocking of administrative enforcement of the administrative decision to establish the compensation on the grounds that a civil action for payment has been brought, in which the question of the legitimacy of awarding the compensation will be re-examined. In my opinion, the purpose of this provision is also to enable the party dissatisfied with the compensation set out in the administrative decision to pursue a claim that only covers a higher amount of compensation (the surplus).

A different assessment must be made when it is the party liable for payment who brings an action to find that there is no obligation to pay compensation resulting from a final administrative decision or that the obligation exists to a lesser extent than that resulting from the decision. Pursuant to Article 730^1 CCP, any party or participant to the proceedings may demand to secure the claim if that party makes the claim and the legal interest in the provision of security plausible (§ 1); the legal interest in the provision of security exists if the failure to secure the claim makes it impossible or seriously hinders the enforcement of the decision taken by the court in the case or otherwise makes it impossible or seriously hinders the achievement of the purpose of the proceedings in the case (§ 2). Undoubtedly, the plaintiff will have a legal interest in securing the claim. This is so, because if the claim is enforced a special situation will occur, as the common court at the time of concluding the hearing will not be able to determine that the obligation does not exist due to the causes listed in the reasons for the statement of claim, but will be forced to determine that the obligation does not exist, because the obligation has been performed[35]. The enforcement of the claim during the trial will therefore considerably complicate the plaintiff's procedural situation.

[35] This is a situation similar to a claim for depriving an enforceable title of enforceability in a civil process. An anti-enforcement suit aimed at depriving an enforceable title of enforceability or restricting it may only be effectively brought in only on the condition that there is a potential possibility of enforcement of the enforceable title in whole or in a particular part thereof. The debtor loses the possibility of bringing an opposition action upon enforcement of the performance covered by the

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enforceable title in whole or in part in respect of the performance already enforced. Therefore, such action is inadmissible in the part in which the enforceability of the enforceable title has expired as a result of its fulfilment. Cf. decision of the Supreme Court of 30 May 2014, II CSK 679/13, LEX No. 1475081.

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STRESZCZENIE

Ustanowienie prawnych form ochrony przyrody wiąże się z ograniczeniem prawa własności i innych praw rzeczowych. Z tej przyczyny ustawodawca wprowadził w ustawie z dnia 27 kwietnia 2001 r. – Prawo ochrony środowiska rozwiązania umożliwiające domaganie się wykupu nieruchomości lub zapłaty odszkodowania. Przepisy ustawy Prawo ochrony środowiska przewidziały administracyjnosądowy tryb realizacji roszczenia o naprawienie szkody wywołanej legalnym działaniem administracji, związanym z ochroną zasobów środowiska. Tryb ten polega na tym, że roszczenie co do zasady o charakterze cywilnym (roszczenie o naprawienie szkody spowodowanej ograniczeniem sposobu korzystania z nieruchomości) jest dochodzone w dwóch etapach: 1) w postępowaniu administracyjnym, w którym organ administracji wydaje decyzję, oraz 2) w postępowaniu, w którym orzeka sąd powszechny. Pierwszy etap jest obowiązkowy w tym sensie, że w razie sporu o odszkodowanie poszkodowany musi wystąpić do organu administracji o ustalenie odszkodowania. Drugi natomiast jest inicjowany na skutek powództwa strony niezadowolonej z przyznanego przez organ administracji odszkodowania.

Słowa kluczowe: korzystanie z nieruchomości; odszkodowanie; postępowanie administracyjne; postępowanie sądowe