Precautionary Principle in Environmental Law

Summary

It is well known that prevention is better than repairing effects (better safe than sorry). The above sentence can be easily applied to many aspects of life, including environmental protection. It is better to protect it from damage than to repair the effects of negative impact on it. For years, the decision to take preventive measures depended on the existence of scientific evidence confirming the occurrence of environmental damage if they were not applied. Unfortunately, waiting for incontrovertible scientific evidence often caused significant delays in taking preventive actions, which often led to irreversible changes in the environment. Sometimes repairing damages can be very expensive and time consuming. Preventive measures taken early are cheaper and limit the extent of damage to public health, the environment and the economy.

In 1992, during the "Earth Summit" in Rio de Janeiro, a Declaration on the Environment and Development was adopted. Principle 15 of the Declaration defines caution: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”. A cautious approach also implies access to public information, which should be able to comment and have impact on issues affecting both them and future generations. The precautionary principle should be applied inherent in the principle of sustainable development and the related aspect of intergenerational justice. Taking action can not be analyzed only in the short term, because some interventions in the environment can be long-term, often irreversible and depriving future generations of many possibilities and alternatives.

The precautionary principle in Polish literature has so far been treated fragmentary when addressing other topics. In Poland, no scientific monograph has been published on the subject, which would cover the history of the formation of the principle and the current legal status related to it. The lack of a comprehensive analysis of the precautionary principle in environmental law has prompted me to address this topic. To look at the assumptions of the

principle itself, its formation and its significance in environmental law in connection with commercial, economic, criminal and human rights law.

The main problem of the dissertation is the analysis of the precautionary principle, which is one of the basic principles of environmental policy and law in the European Union and international environmental law. The paper attempts to examine the validity of the following research hypotheses. It was assumed that:

- the assumptions of the precautionary principle create conditions for the application of the furthest-reaching legal protection among other principles of environmental protection against the risk of depletion and / or loss of some part of natural heritage, biodiversity and public health without stopping development based on the principles of equivalence and intergenerational justice. It means that:

- the precautionary principle allows you to take the most effective political decisions for the sake of public health and environmental protection. As a result, we find that

- this principle is the most effective tool in legal protection of the environment and preservation of biodiversity for present and future generations.

In order to confirm the validity of the above theses, an attempt was made to find answers to several - it seems - very important research questions for this topic, namely: What is the precautionary principle? How did the precautionary approach develop in terms of environmental protection and the precautionary principle itself? What is the difference between the principle of prevention and the precautionary principle? What role do scientific evidence play in applying these principles? What role does the precautionary principle play in international legislation and policy? In what direction are the laws evolving in the context of applying this principle? What are the legal consequences of applying the precautionary principle or giving up its assumptions? Do the courts and tribunals refer to the precautionary principle in their decisions? To what liability can an offender breaking the rules based on the precautionary principle be held? What is the role of society in applying the precautionary principle in environmental law? Is the application of this principle the right way of protection? What activities can make its assumptions most effectively implemented? Has this principle been correctly implemented in Polish environmental legislation? In what direction

should legislation on environmental protection go? Obtaining the answers to the above auxiliary questions will not only allow a deeper understanding of the subject of this work, but will also help in verifying the truthfulness of the research theses presented in the work.

The work consists of an introduction, six chapters and a summary. The first part of the work presents extra-legal and historical justifications for using the precautionary approach in the field of environmental protection. This is the part in which eco-philosophical concepts justifying its existence are presented and concepts such as nature and the environment are defined. The second chapter shows the development of the precautionary approach in environmental protection, as well as the evolutionary transition from the principle of prevention to the precautionary principle. The precautionary principle was presented as compared to other principles of environmental protection. The third chapter presents the results of international meetings and conferences, thanks to which models of cooperation for environmental protection were developed and numerous declarations and conventions were adopted, in which the concept of precaution or the precautionary principle itself appeared. Then, selected acts of community law were analyzed in terms of the presence of the precautionary principle in regulations, directives and decisions of European Union bodies. The fourth chapter is entirely devoted to the case law of the International Court of Justice, the European Court of Justice and national courts. The fifth chapter analyzes Polish legal acts in terms of references to the precautionary principle and the precautionary approach. Chapter six is a case study in the field of nature and environment protection in which the precautionary principle has been or should have been applied. In this part of the work, special attention is paid to issues related to various policies in the field of environmental protection and ecological security, and therefore to the reality of the need to apply it, and not to use it only for theoretical discourses. The analysis of legal provisions and the conclusions drawn from the case study of effective and ineffective attempts to take preventive measures in accordance with the precautionary principle, enabled the formulation of *de lege lata* conclusions and de *lege ferenda* postulates, implementation of which would protect the environment to a greater extent.

The dissertation mainly uses the historical-legal method, the dogmatic-legal method, the comparative method, content analysis and case study. The historical-legal method was used to present the stages of shaping legislation in the field of environmental protection, and above all the evolutionary transition from the principle of prevention to the precautionary principle, both on the international and national scene. The dogmatic and legal method was used to

analyze applicable legal provisions and literature on the subject. By using the comparative method, the regulations were compared in terms of the approach and application of the precautionary principle in environmental protection in selected countries of the European legal order and in the United States. The content analysis was used to thoroughly study legal literature, scientific journals in the field of law, biology and environmental protection, as well as in the analysis of legal acts and sources in force in Poland as well as in other legal systems and sources of historical nature. The doctoral dissertation analyzed the regulations in force in the United States and the European Union (particular attention was paid to legal solutions applied in Germany, the Netherlands, Italy, Austria, the Czech Republic, France and Poland). The dissertation presents a case study of the application and non-application of the precautionary principle (despite the occurrence of premises for taking protective measures in accordance with the precautionary approach), as well as the effects of the decisions taken.