

Paulina LEDWOŃ*
The National Raw Materials Policy in Poland as an instrument of
implementation of the constitutional principle of ensuring the security of
citizens (Article 5 of the Constitution of the Republic of Poland)**

Abstract

The author focuses on presenting the nature of the legal relationship between the principle of sustainable development established in the Constitution of the Republic of Poland and the policies adopted by the Council of Ministers: The National Raw Materials Policy, The Energy Policy of Poland, and the National Environmental Policy – the development strategy in the area of environment and water management. The author analyzes the concept of ensuring security as one of the constitutional obligations of the state authorities in the Polish Constitution and derives from it the concept of raw material security of the state, implemented by establishing The National Raw Materials Policy in 2022, which is understood as a long-term public policy conducted at the national level, to ensure that manufacturing enterprises have access to the raw materials necessary for their operations at a price enabling them to maintain their competitiveness, while taking care of the natural and social environment at every stage of the raw material cycle and the current and long-term economic security of the state.

Keywords: raw materials policy, sustainable development, constitution, Poland, constitutional principles

1. Introduction

Article 5 of the Constitution of the Republic of Poland¹ introduces one of the key principles of the political system of the state, stating that “*the Republic of Poland shall safeguard the independence and inviolability of its territory, ensure the freedoms and rights of man and citizen as well as the security of citizens, protect the national heritage and ensure environmental protection, guided by the principle of sustainable development.*” Therefore, the Constitution is obligated to ensure the security of the state through its organs. This article discusses issues related to shaping the raw material security of the Polish state through the adoption of a coherent raw material policy at the central level, which is closely connected to the above-mentioned provision of the Constitution. The thesis put forward at the beginning of the

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¹ Constitution of the Republic of Poland, Journal of Laws 1997 No. 78, item 483.



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undertaken considerations is that the level of security of citizens within the meaning of Article 5 of the Constitution in an era of contemporary economic change and the needs of the modern economy are significantly influenced by the level of raw material security. In connection with the above, the adoption of a coherent raw material policy, which took place in Poland in 2022, significantly increased the security of the state, including the increasingly important raw material security, complementing the existing regulations and instruments of administrative law, thus implementing the basic program objectives facing the authorities of the Polish state, implementing the postulate of ensuring real security, and a coherent policy for the use of raw material resources. The legal area related to long-term strategic and economic planning is undoubtedly one that significantly affects the security of the modern state, including raw materials. Through various regulations, the legislature and public administration can significantly influence the economy.

2. The concept of security within the meaning of the Constitution of the Republic of Poland

The concept of security under Article 5 of the Constitution of the Republic of Poland should be understood broadly as a state that provides a sense of certainty, stability, and a guarantee of its protection. This is not only about political or military security but also about material, social, and ecological security. According to the widely accepted interpretation of this concept in Polish jurisprudence, the state should provide its citizens with freedom from real and potential dangers. Ensuring citizen security is a special dimension when threatened. The state, acting through its organs, is then obliged to take specific preventive measures of a protective nature towards its citizens. However, the objective referred to in Article 5 of the Constitution must be achieved when there is no direct threat to citizens. Then, the state is obliged to watch over the security of citizens and strengthen their sense of certainty and stability as elements of trust in the state and the protection guaranteed by it.² Similarly to environmental planning legal acts, which undoubtedly serve to implement the constitutional value of ecological security,³ it seems that it will be correct to say that the state's raw materials policy also serves to ensure the state's raw materials security, which can also be derived from the constitutional value of providing security to citizens.

In recent years, raw material security has increasingly emerged in political debates as well as economic and legal discussions. There is a clear need to develop long-term policies related to the abovementioned areas in the European Union countries. However, it is impossible to discuss instruments that ensure the security of raw materials in the state without explaining this term. It is also necessary to outline its importance to both the national economy and security of the European Union as a whole.⁴

The concept of citizens' security has traditionally been understood as the activity of public authorities counteracting threats to the public order, life, health, and property of citizens, and stopping and repelling all actions detrimental to these goods, both from

² Safjan & Bosek 2016.

³ Majchrzak 2023, 53.

⁴ Grzywacz 2022.

outside the state and from inside the country. Currently, they should be understood more broadly, including in the spheres of ecological and energy security. In this last aspect, it should be emphasized that in EU countries, the active attitude of the state in the field of energy security was opted for, and appropriate economic relations were subject to legal regulation. Among the norms concerning the economic system or, more broadly, the economy, the Constitution of the Republic of Poland does not contain any provisions directly related to the energy sphere. At the same time, however, it is commonly accepted that today's world is of great importance to the functioning of the economy of every country, and one of the constitutional tasks of the state resulting from the obligation to ensure the security of citizens is to ensure energy security.⁵ The resources of raw materials, which are important for the proper functioning of the modern economy, are decreasing. The time at which most important raw materials are produced exceeds the lifespan of many generations. In addition, the location of the Polish and the complicated geopolitical situation and painful historical experiences mean that despite their presence in the structures of many international organizations (European Union, United Nations) and military alliances (NATO), in the opinion of many analysts and historians, the foundations of our security are still fragile.⁶ Thus, every effort should be made to guarantee stable sources of raw materials from outside and the rational management of owned raw materials, preparing for many possible scenarios.

3. Raw materials policy of Poland

Raw materials policy is commonly understood as a long-term public policy conducted at the national level to ensure that manufacturing companies have access to the raw materials necessary for their operations at a price that allows them to maintain competitiveness while taking care of the natural and social environment at every stage of the raw material cycle and the current and long-term economic security of the state.⁷

The Council of Ministers is the body constitutionally responsible for ensuring state security in Poland, and it is this body that the laws grant the related executive, supervisory, and control powers. Poland adopted the state's raw material policy in 2022. Pursuant to Article 21f(4) of the Act of December 6th, 2006, on the principles of conducting development policy,⁸ based on the resolution of the Council of Ministers of March 1st, 2022, this long-awaited document was adopted. Until then, there was no coherent, comprehensive, and centralized raw materials policy, which was widely criticized, as there were voices that the lack of a coherent raw materials policy is conducive to chaos and irrational use of resources. This state of affairs also meant that often specific decisions regarding deposits of strategic importance for the country were actually made at the level of the commune – the smallest local government unit in Poland.⁹ The Polish Supreme

⁵ Banaszak 2012.

⁶ Zapalowski 2015, 317.

⁷ Hausner (ed.) et al. 2015, 121.

⁸ Act of 6 December 2006 on the principles of conducting development policy, Journal of Laws of 2021, item 1057.

⁹ Hausner et al. 2015, 5.

Audit Office¹⁰ in 2018 published information on the results of the audit “*Management of strategic fossil raw materials deposits*,” in which it indicated that Poland, although it is a country rich in energy resources, does not have a clearly defined raw material policy of the state. According to the verification carried out by the Supreme Audit Office, reliable work on this document began for good only in 2016. The current low level of development of deposits is a consequence of the long-term dispersion of competences and regulations and the lack of a list and plans for the use of mineral deposits of strategic importance for the economy, despite Poland being a major producer of copper and silver in the world.¹¹ Poland is also rich in metallic raw materials (zinc and lead), rare metals (rhenium), chemical raw materials (sulfur, rock salt, potassium salts, and phosphates), and energy resources (coal, methane, and natural gas). However, a significant proportion of these factors have not yet been identified. Elements of the policy covering the management of key raw materials have previously appeared in various government documents, but owing to the dispersion of competences, ministers responsible for the economy and environment have committed numerous omissions in this area. It was not until the Interministerial Team for the State Raw Materials Policy, established in 2016, that work began on the document ‘National Raw Materials Policy’. In 2016, The Minister of the Environment began to implement the activities indicated in the Strategy for Responsible Development concerning the development of a raw materials policy, and the Chief National Geologist prepared a draft raw material policy. According to the Supreme Audit Office, the ministers responsible for the economy and environment did not develop a list of mineral deposits of strategic importance for the economy. They have also not issued regulations on the list of hard coal and lignite deposits of strategic importance to the country's energy security. They did not recognize strategic domestic natural gas deposits and did not ensure their protection by including them in spatial development plans. The minister responsible for the economy did not prepare, although he was to do so in cooperation with the ministers competent for environmental, water management, construction, spatial, and housing management, a list of all strategic mineral deposits along with the range of their occurrence.¹² The audit conducted by the Supreme Audit Office concluded that the implementation of an integrated raw material policy was a pressing problem for the country's raw material security.

Regional consensus conferences were held throughout the country in 2018 with the status of a discussion forum on the draft State Raw Materials Policy, a strategic document for the entire economy. These meetings were attended by many interested parties representing both the government and parliament as well as local governments at various levels, State Treasury companies, and scientific units. At each conference, a number of postulates were submitted, which made the participants even more aware of the enormity of work to be done, taking into account the different groups of raw materials with different impacts on the economy, as well as the number of useful minerals

¹⁰ Supreme and independent state audit body in Poland.

¹¹ KGHM S.A. took first place in the list of ‘the largest silver mines in the world’ in the World Silver Survey 2022, and is also the sixth producer of electrolytic copper in the world, see KGHM is the largest silver mine in the world 2022.

¹² Management of strategic fossil resources 2018, 8–12.

from domestic deposits and imports. The development of the National Raw Materials Policy not only resolved the problem of raw materials, but also forced the analysis of raw material potential, determination of the areas of their industrial occurrence, development of a list of strategic deposits for the economy, and creation of an up-to-date map of raw materials of the country, which is the basis for spatial development planning, taking into account areas for future exploitation of raw materials. It also created tools for the effective protection of the interests of the state and society.¹³

The implementation of activities included in the State Raw Materials Policy aims to ensure permanent access to mineral deposits through the intensification of activities in the field of exploration, recognition, and documentation of mineral deposits (including the so-called anthropogenic deposits) carried out by both the State Geological Survey and the geological and mining industry, as well as entities implementing geothermal projects (including municipalities). The protection of mineral deposits and the cooperation of competent authorities to secure the supply chain of imported raw materials are also extremely important. Effective implementation of the activities specified in the State Raw Materials Policy should secure the resource base of mineral deposits for the production of raw materials, access to which is necessary to implement other strategic tasks of the state, such as energy security and stable economic development, based on relevant sectoral strategic documents or other programs.¹⁴

Defining the scope of the State Raw Materials Policy, it should be pointed out that as a strategic document, it defines the most important areas of action to ensure access to raw materials that are of the greatest importance for the national and EU economies. Therefore, it is extremely important to prepare a list of strategic and critical raw materials for the domestic economy, which, considering the list of critical raw materials of the EU, clarifies and specifies the main objective of the State Raw Materials Policy, defined as ensuring the security of raw materials in the field of these raw materials. In addition, based on the classification of the raw materials, minerals occurring in Poland were selected for extraction. Therefore, raw materials subject to the state's raw material policy are mineral resources from primary and secondary sources, as well as groundwater (thermal), which are minerals within the meaning of the provisions of the Geological and Mining Law. The analyses conducted thus far regarding the importance of individual raw mineral materials for the national economy have allowed the determination of two of their collections: strategic and critical raw materials.

Raw materials strategic for the Polish economy are divided into two subgroups: (a) Strategic raw materials are of fundamental importance for the proper functioning of the economy and satisfying the living needs of society – raw materials whose permanent supply must be ensured – both those whose national resource base is large and which, thanks to their use, are the basis for the operation of industry, as well as important scarce raw materials. (b) Strategic raw materials of fundamental importance for national security and innovative technologies: raw materials that are not sufficient (min. 90%) extracted from domestic sources or whose possibilities of permanent extraction from these sources are limited or threatened, and other raw materials not extracted at home (scarce)

¹³ Ciechanowska 2018, 958.

¹⁴ National Raw Materials Policy 2022, 14.

necessary for the defense of the country and national security and for the development of innovative technologies. Raw materials critical for the Polish economy – strategic raw materials whose possibilities of extraction from both primary and secondary sources are either high-risk or very difficult to extract them, and the possibilities of their substitution are low. These are, in particular, raw materials included in the list of raw materials critical for the EU, but also raw materials that, despite being present in large quantities, are impossible to extract, for example, owing to planning conditions, social protests, etc.

Based on the prepared list of strategic and critical raw materials¹⁵, the minerals present in Poland that can be used for production were determined. A list of the selected minerals is presented in Annex 2 of the National Raw Material Policy. Based on the selected group of minerals, a plan for documenting mineral deposits was developed, which will be implemented as part of the specific objective *“Prospecting, exploration, and documentation of mineral deposits”* and periodically verified and updated based on changing geopolitical, economic, legal, and environmental conditions.

The National Raw Materials Policy states that sustainable development, economic progress, and an increase in raw material security, both in Poland and the whole of Europe, are not possible without responsible and effective management of the Earth’s interior, including the mineral resources located there and the effective use of so-called anthropogenic deposits. To ensure this, it is necessary to develop a strategy paper that defines measures that will contribute to the rational management of mineral raw materials as an important factor for the development of the Polish and EU economies. The measures specified in the National Raw Materials Policy related to securing access to raw materials primarily refer to domestic resources, whereas imports should complement the demand for scarce raw materials. This approach reduces the risk of raw material supply by building independence based on resources. Detailed data on Poland’s resource base are published annually by the Polish Geological Survey (PGS).

The thematic structure of the National Raw Materials Policy in the introduction includes a description of the position of the policy in the legal system and the system of managing the country's development, the institutional framework, and the raw materials policy in the European Union. Next, we diagnose the geological conditions of the national resource base and trends in the domestic economy's demand for raw materials, the geological conditions of the national resource base, consumption assessment and forecast of demand for strategic and critical raw materials for the Polish economy, and the role of mineral resources in energy transformation. In the following section, we describe the objectives and methods of their implementation. The main objective is to ensure the raw material security of the country by guaranteeing access to the necessary raw materials (domestic and imported), both now and from a long-term perspective that considers the changing needs of future generations. Access to raw materials should secure the country's long-term economic needs resulting from the adopted priorities of economic development, thus ensuring a high living standard for citizens.

The specific objectives of the state’s raw materials policy are divided into eight main categories: (1) Ensuring access to raw materials from mineral deposits; (2) Exploration, appraisal, and documentation of mineral deposits; (3) Ensuring favorable

¹⁵ Included in Annex No. 1 to the National Raw Material Policy 2022.

legal conditions for current and future investors, as well as the development and modernization of the geological and mining industry; (4) Protection of mineral deposits; (5) International cooperation in securing access to raw materials; (6) Obtaining raw materials from anthropogenic deposits and supporting the development of a circular economy; (7) Ensuring the consistency of strategies implemented by companies of significant importance to the state economy and companies performing a public mission with the activities of the Chief National Geologist acting as the Government Plenipotentiary for Raw Materials Policy; (8) Dissemination of knowledge.

Subsequently, the basic measures envisaged for the implementation and monitoring of the achievement of these objectives and the financial framework were considered. Five annexes were attached to the state's raw materials policy: (1) List of strategic and critical raw materials for the Polish and EU economy; (2) List of minerals for obtaining raw materials in Poland; (3) Consumption assessment and forecasting of demand for strategic and critical raw materials for the Polish economy (metallic aluminum, antimony, bauxite and alumina, chromium, tin, zinc, silicon metal, magnesium, manganese, copper, molybdenum, nickel metal, lead, rare earth elements, platinum metals, silver, titanium, tungsten metal, gold, iron, ferroalloys, coking coal, natural gas, steam bituminous coal, lignite, gypsum and anhydrite, elemental sulfur, potassium salts, salt, and petroleum); (4) Schedule for the implementation of the State Raw Materials Policy; (5) Summary of current and forecasted demand for individual analyzed mineral resources.

4. Definition of raw materials

We do not currently have a uniform legal definition of the term 'mineral resource' in the Polish legal system.¹⁶ However, this concept is used or created *ad hoc* for the purposes of specific scientific or research articles, there are also proposals for a universal definition of the concept of mineral raw material, an example of such a definition will be the statement that "*a mineral raw material is a material / product obtained from the earth's crust (from minerals, rocks and mineral substances), as well as from secondary and waste sources using technological processes, thanks to which it obtains certain quality parameters and market value, although for the most part it is not intended for direct consumption*"¹⁷. Finally, one of the next exemplary definitions states that "*a mineral raw material can be any body of inorganic or organic origin, which in the eternal circulation of chemical elements receives in the accessible part of the outer crust of the Earth a composition and form technically suitable for practical use, i.e. mass use for the good and use of humanity. These are metals and their compounds as well as non-metallic bodies, including water.*"¹⁸ It would seem that we should look for a uniform definition of a mineral raw material in the act concerning geology and mining, i.e. the Geological and Mining Act¹⁹, However, this act does not contain a definition of the concept of raw material or mineral raw

¹⁶ Galos & Lewicka 2004, 5–25.

¹⁷ Ibid. 25.

¹⁸ Bohdanowicz 1952, 16.

¹⁹ Geological and mining law of 9 June 2011 (Journal of Laws, No. 163, item 981), i.e. of 7 April 2022 (Journal of Laws of 2022, item 1072).

material, although in art. 6(1)(19) of the act it defines the concept of mineral deposit, stating that a mineral deposit is *“a natural accumulation of minerals, rocks and other substances the extraction of which may bring economic benefits.”* On its basis, it is indicated that a mineral may be considered *“a mineral, rock or other solid, gaseous or liquid substance, economically useful, and present in the quantity and conditions enabling its acquisition, which brings measurable economic benefits; It can be obtained by mining methods (open-pit, underground, or special boreholes) and then it becomes a mineral raw material that can be marketed directly or after processing.”*²⁰

Article 5 of the Constitution closely intersects the issues of environmental protection and broadly understood security as indicated by the inclusion of these programmatic objectives in one article. These dependencies are also well illustrated by the arrangement and relationships between individual state policies in the implementation of the principle of sustainable development and the use of the environment. On February 14th, 2017, the Council of Ministers adopted a new medium-term national development strategy, the Strategy for Responsible Development, for the period up to 2020 (including the perspective up to 2030). This is a binding and key document defining the main development directions of the Polish state in the areas of medium- and long-term economic policies. The directions specified in the Strategy for Responsible Development form the basis for developing a strategy related to mineral resource management.²¹

The National Raw Materials Policy is a project under the Strategy for Responsible Development. The Strategy for Responsible Development for the period up to 2020 defines The National Raw Materials Policy as a project concerning the development of an efficient and effective management system for all types of minerals and mineral raw materials in the entire value chain and for their resources owned by Poland, as well as adequate – related – legal and institutional changes. As envisaged by the Strategy for Responsible Development, the National Raw Materials Policy supports the transition to a circular economy. The National Raw Materials Policy was directly related to the Energy Policy of Poland until 2040,²² adopted by the Council of Ministers, as well as the National Environmental Policy 2030, the development strategy in the area of environment and water management.²³ The Energy Policy of Poland until 2040, which is a strategy for the development of the fuel and energy sectors, is one of nine integrated sectoral strategies that set directions for the development of the energy sector. Poland’s energy policy defines its three elemental objectives: energy security, competitiveness, and energy efficiency, as well as the limited environmental impact of the energy industry. Poland’s energy policy to be implemented is based on three pillars—transition, a zero-emission energy system, and good air quality—which form the basis for eight specific objectives along with the measures to achieve them. The National Raw Materials Policy, whose

²⁰ Hausner et al. 2015, 10.

²¹ Resolution No. 8 of the Council of Ministers of 14 February 2017 on the adoption of the Strategy for Responsible Development for the period up to 2020 (including the perspective up to 2030) (Polish Monitor, item 260).

²² Annex to the notice of the Minister of Climate and Environment of 2 March 2021 (Polish Monitor, item 264).

²³ Resolution No. 67 of the Council of Ministers of 16 July 2019 on the adoption of the National Environmental Policy 2030 – development strategy in the area of environment and water management (Polish Monitor, item 794).

overriding objective is to ensure the raw material security of the state (inter alia, related to ensuring access to raw energy materials), is an additional coherent element that determines the achievement of the objectives laid down in Poland's energy policy.

The main objective of the National Raw Materials Policy is to *“ensure raw material security of the country by guaranteeing access to necessary raw materials (domestic and imported), both now and in the long term, which takes into account the changing needs of future generations. Access to raw materials should secure the country's long-term economic needs resulting from the adopted priorities of economic development, thus ensuring a high living standard for citizens. The achievement of the main objective should result from the achievement of the listed specific objectives as a consequence of the planned set of measures.”*

Article 5 of the Constitution of the Republic of Poland imposes an obligation on all entities exercising state power with the help of competencies granted directly to them by the Constitution and ordinary laws regarding the implementation of key program objectives. These include the care of the security of citizens. In addition, there are many other legal acts in the Polish legal system that provide elements of raw material security, such as the Act on Preserving the National Character of the Strategic Natural Resources of the Country. However, this short legal act (having only eight articles) focuses on the calculation of the country's strategic natural resources²⁴ and says that the natural resources (listed in [Article 1](#) of the Act) owned by the State Treasury are not subject to ownership transformations, subject to the provisions contained in special acts, and their management is carried out on the principles of sustainable development. This regulation, which includes, in principle, a prohibition on ownership transformations, constitutes a normative basis for the actual exclusion of these resources from privatization processes. In this sense, owing to the systemic nature of these solutions, it is a constitutional matter, but omitted from its applicable regulations. However, this solution has been criticized in the literature.²⁵ Another legal act ensuring the security of raw materials is the Act on Stocks of Crude Oil, Petroleum Products, and Natural Gas, and the Rules of Conduct in Situations of Threat to the Fuel Security of the State and Disturbances to the Oil Market. This Act specifies the principles of creating, maintaining, and financing stocks of crude oil, petroleum products, and natural gas; rules of conduct in situations of threat to the fuel security of the state and the gas security of the state; and fulfillment of international obligations regarding the supply of crude oil, petroleum products, and natural gas

²⁴ According to the Act, such resources are: (1) groundwater and surface water in natural watercourses and in the sources from which these watercourses originate, in canals, lakes, and reservoirs with a continuous flow within the meaning of the provisions of the Act of 20 July 2017 - Water Law; (2) the waters of Polish maritime areas together with the coastal range and their natural living and mineral resources, as well as natural resources of the bottom and interior of the earth located within the boundaries of these areas within the meaning of the Act of 21 March 1991 on maritime areas of the Republic of Poland and maritime administration; (3) state forests; (4) mineral deposits that do not constitute components of land property within the meaning of the Act of 4 February 1994 - Geological and Mining Law; (5) natural resources of national parks.

²⁵ Radecki 2009, 79.

markets.²⁶ Finally, the Act on Strategic Reserves can be mentioned here.²⁷ Strategic reserve may include raw materials, materials, critical infrastructure, and petroleum products. The accumulated stocks, as well as the procedures for their release in the event of disruptions in the continuity of supply necessary for the proper functioning of the economy, undoubtedly have an impact on the process and guarantees of ensuring the state's raw material security.

5. Article 5 of the Constitution of the Republic of Poland

In Article 5 of the Constitution, the basic objectives of the highest importance are included because of its leading place in the layout of the Constitution. It seems that in their generality they even surpass the wording of the introduction (preamble) to the constitution, which emphasize various aspects of its genesis rather than design the goals and tasks of the Polish statehood, although it is difficult to precisely separate these two trends, after all, goals for the future also result from a negatively assessed past.²⁸

Art. 5 of the Constitution is defined in terms of its legal nature as a provision of a programmatic nature, requiring all entities of public authority to be involved, using all their competences, in the pursuit of these objectives, an interpretation Polish confirmed by the Constitutional Tribunal, explaining that *"The analysis of constitutional provisions leads to the conclusion that the tasks of different bodies may overlap. Protecting the independence of the state and the indivisibility of its territory, as well as ensuring the security and inviolability of its borders, is a constitutional task of the President of the Republic of Poland, the Council of Ministers, and all other public authorities."*²⁹ The same applies to the principle of sustainable development indicated in this provision. It is addressed to both law enforcement and law-making bodies.³⁰

"Including constitutional provisions defining the general political and social goals of the state constructed by a given constitution is a common practice of both contemporary and historical constitutions. At the same time, the definition of these objectives justifies the Constitutions themselves. This is why we often find such formulations in constitutional introductions (preambles) that are not divided into articles."^{31,32} Similarly, the preamble to the 2011 Hungary Fundamental Law states, inter alia, that *"The common objective of citizens and the State is to ensure prosperity, security, order, justice and freedom."*³³ In like manner, Article 2 of the 1999 Swiss Constitution includes among the fundamental objectives of the Swiss Confederation *"the protection of the freedoms and rights of the nation, the safeguarding of the independence and security of the State, the promotion of the*

²⁶ Act on stocks of crude oil, petroleum products and natural gas and rules of conduct in situations of threat to the fuel security of the state and disturbances on the oil market of 16 February 2007 (Dz.U. No. 52, item 343).

²⁷ Act on strategic reserves of 17 December 2020 (Journal of Laws of 2021, item 255), i.e. of 11 January 2023 (Journal of Laws of 2023, item 294).

²⁸ Garlicki & Zubik 2016.

²⁹ Judgment of the Constitutional Court 2008.

³⁰ Rakoczy 2021, 126.

³¹ see the preface to the U.S. Constitution, the preface to the French Constitutional Charter of 1814, the introduction into separately numbered articles, to the Constitution of France of 1848.

³² Garlicki & Zubik (eds.) 2016

³³ The Fundamental Law of Hungary 2015, 39.

general welfare, sustainable development, internal cohesion, and cultural diversity of the country, the guarantee of equal opportunities for citizens and the commitment to the permanent preservation of natural living conditions and a peaceful and just international order.” The objectives of the state are also formulated in Article 5 of the Constitution of the Republic of Slovenia of 1992, indicating that *“the basic objectives of the state also include concern for the preservation of natural wealth and cultural heritage, as well as ensuring the harmonious development of Slovenia's civilization and culture.”*³⁴

6. Raw materials policy of the European Union

The policy on raw materials in the European Union is currently subject to extensive scrutiny, especially in the context of the need to increase its economic resilience, which has been highlighted by shortages following COVID-19 and the energy crisis following the Russian invasion of Ukraine. The European Union also undertakes a number of initiatives aimed at securing raw materials and key resources for citizens of member states. It is worth mentioning here that e.g. The European Union has a history of over 30 years of drinking water policy in order to protect EU citizens' health.³⁵

In November 2008, the European Commission adopted the Raw Materials Initiative, which established a strategy for access to mineral resources in the European Union (EU) based on three pillars aimed at ensuring: (1) stable supplies of raw materials from global markets; (2) sustainable supply of mineral raw materials within the EU; (3) efficient use of resources and supply of secondary raw materials as part of recycling.

This strategy applies to all raw mineral materials used in European industries, except raw materials from agricultural production and fuels. Securing sustainable access to raw materials is crucial for the competitiveness and growth of the European Union (EU) economy and for the objectives specified in Europe's 2020 strategy. The European Commission also developed another document tackling the challenges in commodity markets and raw materials (2011). It defines raw materials as critical to the EU and describes the EU's trade strategy for non-energy raw materials. This document also presents new opportunities for research and innovation, guidelines for implementing legislation within the Natura 2000 network, and directions for more efficient resource management (including recycling). Future directions for implementing the Raw Materials Initiative include ensuring stable raw material supplies from global markets, supporting supplies from internal EU sources, and supporting the efficient management of raw material resources. To implement the provisions of the Raw Materials Initiative, the European Innovation Partnership on Raw Materials (EIP RM) was established, bringing together representatives of industry, public administration, academia, and non-governmental organizations that provide the EC, EU countries, and private entities with information on implementing innovative approaches in the raw material supply chain. Its activities include, inter alia, research and development, policy recommendations, dissemination of the best practices, building a knowledge base and support for international cooperation. In addition, an expert Raw Materials Supply Group was established, consisting of representatives of EU countries, European Economic Area

³⁴ Safjan & Bosek 2016.

³⁵ Szóllós 2020, 403.

countries, candidate countries for the EU, and organizations representing stakeholders – industry, research, and civil society—that advise the EC and supervise the implementation of the initiative. Communication from the Commission to the European Parliament, Council of the European Economic and Social Committee, and Committee of the Regions on Critical Raw Materials on September 3rd, 2020.

On September 3rd, 2020, the Commission published a Communication from the Commission to the European Parliament, the Council of the European Economic and Social Committee, and the Committee of the Regions entitled ‘Critical Raw Materials Resilience: Charting a Path towards Greater Security and Sustainability.’³⁶

The role of critical raw materials has also been highlighted in the updated European Industrial Strategies. The COVID-19 crisis revealed dependencies on access to strategic resources from third countries and signalled the need to secure open strategic autonomy in Europe, including the adoption of a coherent regulatory framework and multinational investments to ensure a level playing field and a competitive single market. New updates to the strategy consider the need to diversify supply chains, increase the use of secondary raw materials, and transition to a circular economy. Sustainable access to resources is fundamental for industry and the green and digital transition of the EU economy.

On December 2nd, 2015, the EC adopted the CE Circular Economy Action Plan ‘Closing the loop – An EU action plan for the circular economy’ (COM/2015/0614 final). It summarizes existing work and determines priority areas regarding issues such as plastics, food waste, critical raw materials, demolition, and construction waste, as well as biomass and bio-based products. At the same time, the document stressed the importance of innovation in designated areas of activity. According to the report presented by the Commission on the Implementation of the Circular Economy Action Plan, work on waste that has already been initiated has been presented. These are legislative proposals on fertilizers, the launch of the innovation deals project, counteracting food waste, waste-to-energy communication, legislative proposals related to the subject of hazardous substances in electrical and electronic equipment, the circular economy financing platform, and others. On January 26th, 2017, the Commission published a report to the European Parliament, European Economic and Social Committee, and Committee of the Regions on the Implementation of the Circular Economy Action Plan (COM/2017/33 final). On March 11th, 2021, the EC published a new Circular Economy Action Plan for a cleaner and more competitive Europe (COM/2020/98 final). It envisages making economic growth independent of the use of resources and extending the scope of the circular economy to include economic operators, such as the creation of a highly efficient EU market for secondary raw materials.

Regulation of the European Parliament and of the Council (EU) 2017/821 of May 17th, 2017, laying down supply chain due diligence obligations for union importers of tin, tantalum, and tungsten, their ores, and gold originating from conflict-affected and

³⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘Critical Raw Materials Resilience: Charting a Path towards greater Security and Sustainability.’

high-risk areas entered into force on January 1st, 2021. The regulations aim to ensure that the income of entities importing minerals and metals such as tin, tantalum, tungsten, their ores, and gold in EU countries will not be a source of financing for conflicts and hostilities. The EU is also actively involved in the OECD initiative to promote the responsible extraction of minerals from conflict-affected areas. This has resulted in a government-supported multi-stakeholder process leading to the adoption of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.³⁷

On March 16, 2023, the Commission announced the Regulations of the European Parliament and Council, establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724, and (EU) 2019/1020. The reasons for and objectives of this proposal indicate that raw materials are found at the beginning of all industrial value chains. This regulation focuses on non-energy and non-agricultural raw materials that are important for the EU economy, the supplies of which are subject to high levels of supply risk. These critical raw materials are often indispensable inputs for a wide set of strategic sectors, including renewable energy, digital industry, space and defense sectors, and health sector. At the same time, their extraction and processing can have negative environmental and social impacts, depending on the methods and processes used. The EU relies almost exclusively on the imports of many critical raw materials. Suppliers of these imports are often highly concentrated in a small number of third countries during both extraction and processing stages.³⁸ This concentration exposes the EU to significant supply risk.³⁹

It should be noted that both the US States, Western Europe, Canada, and Australia have historically preferred to limit the state to the role of an impartial regulator, sometimes combined with the role of a silent shareholder (primarily in energy and fuel companies, but not mining companies in the area of metal and coal mining), with veto rights in special situations, but who does not interfere in the day-to-day management of mining companies and does not formulate regulations because of its ownership role. Central Europe had an intermediate situation. The ownership structure inherited from the centrally planned economy has been modified in a larger (Czech Republic) or smaller part (Poland) by admitting private capital to mining companies (e.g., in the Czech Republic and partly in Poland) and fuel and energy companies (Poland, the Czech Republic, and Hungary). However, this process advanced to varying degrees. Particularly, large state ownership occurs in Poland, where public capital controls copper, coal, and gas mining and dominates the private capital present in these sectors. China's emergence

³⁷ National Raw Materials Policy 2022, 10–12.

³⁸ For example, as we can learn from the published rationale for the new regulations, the EU sources 97% of its magnesium in China. Heavy rare earth elements, used in permanent magnets, are exclusively refined in China. 63% of the world's cobalt, used in batteries, is extracted in the Democratic Republic of Congo, while 60% is refined in China. This concentration exposes the EU to significant supply risks. There are precedents of countries leveraging their strong position as suppliers of CRMs against buyer countries, for instance through export restrictions.

³⁹ Critical Raw Materials: ensuring secure and sustainable supply chains for EU's green and digital future.

in the world market as a player that strongly promotes state capitalism has placed Western countries in an uncomfortable position. Western private companies involved in the extraction of raw materials operating on market principles have become subjects of both direct takeovers and strong competition for resources from state-backed Chinese companies. The conflict of values between the principles of liberal capitalism and China's actions causes concern in EU countries, no less than Russia's significant influence on energy resource prices in Europe. The result is to strengthen the rank in the public agenda in: – renewable energy sources (as independent of fuel imports from abroad), – cooperation with the USA, Canada, and Australia as democratic countries, and at the same time rich in raw materials, recycling of raw materials, promotion of circular economy and energy efficiency and investment in RDI (Research, Development, Innovation) in these areas; also carrying out other activities limiting the demand for imports, – abandoning regulated prices and replacing them with market mechanisms in the energy sector and implementing the TPA (third party access) principle on markets with a large share of natural monopolies, – removing infrastructural and regulatory barriers reducing the EU's bargaining power vis-à-vis its suppliers (non-democratic raw material states). There is also increasing discussion about the need to strengthen capital and trade ties (joint ventures) with state-owned companies belonging to resource-rich countries, even if they prefer the model of state capitalism. However, in the case of some of them (Russia), promoting this form of cooperation does not work because of their desire to expand their dominance at the expense of their neighbors.⁴⁰

7. Closing thoughts

As this article shows, the state's raw material policy in Poland is closely related to the security referred to in Article 5 of the Constitution. The objective of the raw materials policy cannot be reduced to the security of raw materials; however, it is an important reference for this policy. The security of raw materials is an element of the much broader security of citizens, as indicated in Article 5 of the Constitution, covering many dimensions of security, including energy security and the security of economic transactions. Economic security, on the other hand, is one of the dimensions of national security. The wide scope of the National Raw Materials Policy described in this article as well as the work undertaken in this area at the EU level allows us to state that this activity is highly desirable and is currently one of the most important actions of the state to implement the postulate of ensuring the security of citizens.

⁴⁰ Hausner 2015, 31–32.

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