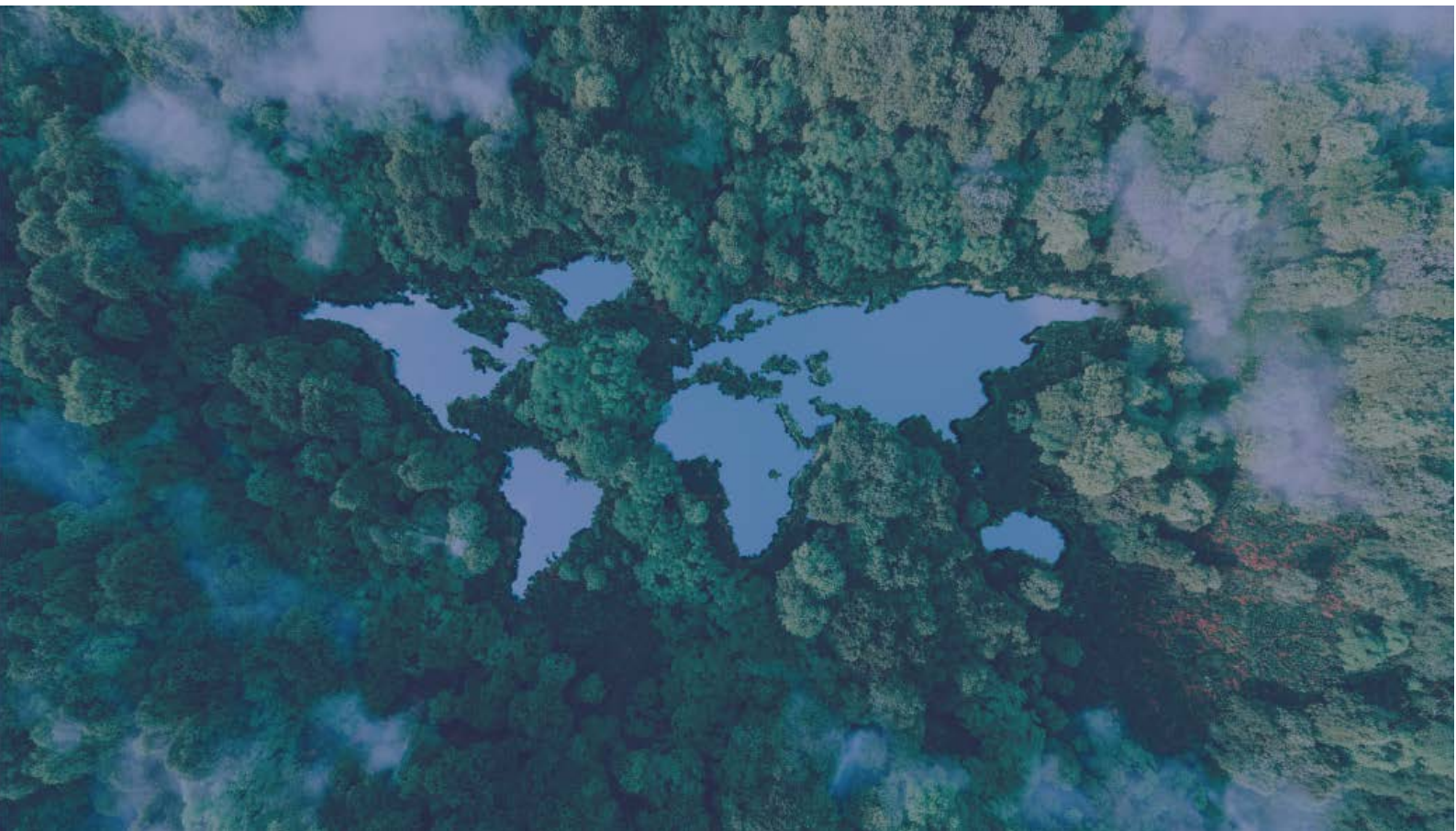




**British Institute of  
International and  
Comparative Law**

# Global Perspectives on Corporate Climate Legal Tactics: Poland National Report

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**British Institute of  
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# Executive Summary

The issue of climate is not specifically addressed by any act of Polish environmental law. The Polish Environmental Protection Law Act is using a capacious definition of 'environment' that reflects the essential nature of the ecosystem and encompasses the climate but fails to take account of the phenomenon of climate change. In 2023, the environmental organisation ClientEarth 'Prawnicy dla Ziemi' presented a draft of the Act on the Protection of Climate that is supposed to close this loophole in the Polish legal system.

By the same token, only towards the end of the first decade of the XXI century did Polish scholars begin to employ the expression 'economic environmental law'.<sup>1</sup> Most concepts encompassed by economic environmental law directly pertain to the influence of business entities on climate,<sup>2</sup> business activities, economic mechanisms of climate protection (including trade emissions),<sup>3</sup> and energy sector. Law can only govern human behaviour; therefore, according to scholars it will be crucial to identify first which causes of climate change are the consequence of human behaviour.<sup>4</sup>

The term 'corporate climate change litigation' is still rarely used in Polish legal research and doctrine. However, in recent years two proceedings, *Greenpeace v. PGE* and *ClientEarth v. PGE*, were introduced before Polish courts against a corporate defendant to abate its emissions. Other legal claims based on different causes of action and relating directly or indirectly to climate change have also been initiated against corporations in Poland. Along with proceedings focused on the State's responsibility for inaction to mitigate the climate crisis, climate change litigation is notably gaining strength in Poland.

Polish law provides various causes of action that might serve as a basis for corporate climate lawsuits. The Environmental Protection Law Act contains provisions pertaining to compensation claims for damage arising from the impact on the environment or injunctive relief to avert a possible harm to it. Other proceedings against corporations in climate change lawsuits have been based on corporate law and initiated by shareholders to annul a planned coal-fired power plant; tort law invoked by consumers for the damage they sustained from the installation of an illegal software in their

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<sup>1</sup> J Ciechanowicz-McLean, T Bojar-Fijałkowski (eds), *Gospodarcze prawo środowiska*, Wydawnictwo UG 2009.

<sup>2</sup> E Zębek, "Obowiązki i działania przedsiębiorców w zakresie ochrony powietrza na tle obowiązujących regulacji prawnych" in J Ciechanowicz-McLean, T Bojar-Fijałkowski (eds), *Gospodarcze prawo środowiska*, Wydawnictwo UG 2009, pp. 260–270.

<sup>3</sup> T S Kierciel, "Zezwolenie na udział we wspólnotowym systemie handlu uprawnieniami do emisji" in J Ciechanowicz-McLean, T Bojar—Fijałkowski (eds), *Prawo ochrony środowiska jako warunek prowadzenia działalności gospodarczej*, Wydawnictwo UG 2009, pp. 108–112.

<sup>4</sup> B Rakoczy, "Elastyczność zasady zrównoważonego rozwoju w kontekście adaptacji do zmian klimatu", 3(51) *Gdańskie Studia Prawnicze* (2021), p. 28.

vehicles; and proceedings against corporations and businesses from various sectors for greenwashing. Polish legal doctrine and legal experts do not exclude that other causes of action in Polish law may be invoked in the future by plaintiffs.

The issue of climate change does not seem to present a substantial challenge for civil courts in terms of jurisdiction and justiciability. The potential procedural and evidentiary hurdles in corporate climate proceedings are especially visible in tort law and pertain to similar issues litigants face in other jurisdictions (i.e. causation and scientific expert evidence).

The remedy sought in corporate climate lawsuits tends to be injunctive relief. Due to their expertise and available financial resources, environmental organisations remain important actors in these proceedings.

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# 1. Causes of Action

Climate change claims in Poland has been based mainly on the Environmental Protection Law Act, Polish Civil Code, consumers' protection provisions, and legal instruments regulating corporate activities.

The issues of climate change were also addressed in administrative proceedings, especially in cases of permits for investments or when local zoning plans are modified. Moreover, litigants can use certain non-litigation/pre-trial measures such as the service of an ombudsman. Lengthy administrative proceedings can have a discouraging effect on investors to pursue their projects.<sup>5</sup> However, it is also highlighted in the legal doctrine that the liability based solely on the administrative law will not be sufficient to protect the environment (it does not allow for a broad protection, the administrative fines are lower than those that may be requested based on liability for torts, the unlawfulness of the act is construed restrictively, and there are more restrictions for environmental organisations' standing). Consequently, both types of liabilities should continue to coexist, with a possibility to resort to criminal law, also in case of corporations, for the most serious environmental damage. Criminal law provisions aimed at protecting the environment are included in the Polish Penal Code and 35 other statutes.<sup>6</sup> Moreover, the concept of environmental criminal law exists in legal doctrine that construes it as a means of criminal law protecting the environmental interests and covering not only crimes and offences for harming the environment, but also administrative fines imposed for violating administrative law of environmental protection.<sup>7</sup> However, there is no uniform mechanism of criminal liability for violating environmental norms,<sup>8</sup> and the existing standards are not always effective, proportionate or dissuasive. Against this background and with regards to climate change, Polish legal doctrine highlights that today it would be extremely difficult, if not impossible, to prosecute the emitters of GHG because criminal law would still require proving the causal link between specific emissions, their harmful effects on climate and the damage resulting from climate change.<sup>9</sup>

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<sup>5</sup> In 2010, Polenergia SA obtained a positive decision on environmental conditions allowing for the construction of a power plant in Pomerania and the management board of the company even started the procedure of selecting the contractor for construction of the plant. After the permit was challenged, the administrative procedure took 9 years and ended with a final judicial ruling annulling the decision to build the plant.

<sup>6</sup> K Łakomy, "Ochrona środowiska naturalnego i klimatu w polskim prawie karnym" in D Dajnowicz-Piesiecka, E Jurgielewicz-Delegacz, E W Pływaczewski (eds), *Prawo karne i kryminologia wobec kryzysów XXI wieku*, Wolters Kluwer Polska 2022, p. 272.

<sup>7</sup> However, the term still has not been comprehensively developed in Polish legal doctrine as it is the case in Germany with the concept of *Umweltstrafrecht* or in France with *droit pénal de l'environnement*.

<sup>8</sup> W Radecki, "Regulacje penalne w systemie prawa ochrony środowiska" in P Korzeniowski (ed), *Zagadnienia systemowe prawa ochrony środowiska*, Wydawnictwo Uniwersytetu Łódzkiego 2015, pp. 81–99.

<sup>9</sup> K Łakomy, "Ochrona środowiska naturalnego i klimatu w polskim prawie karnym" in D Dajnowicz-Piesiecka, E Jurgielewicz-Delegacz, E W Pływaczewski (eds), *Prawo karne i kryminologia wobec kryzysów XXI wieku*, Wolters Kluwer Polska 2022, pp. 274-275.

## A. Climate Change Law/Environmental Law Statutory Provisions

The main act of the environmental law in Poland, namely the Environmental Protection Law Act (EPLA), provides a legal framework for commercial activities and their impact on the environment. In Article 3 it characterises the environment in terms of natural elements, including the climate. However, the climate is not defined in Polish or in European law. Therefore, some scholars directly refer to the definition provided in the IPCC works.<sup>10</sup> For civil liability in relation to the protection of the environment, the EPLA refers to the general mechanisms included in the Polish Civil Code.<sup>11</sup> Therefore, the civil liability for damage to the environment is governed by the provisions of this code, aside from the exception introduced directly in the Act (therefore, the liability for the damages to the environment can stem from the protection of in rem rights or provisions pertaining to torts e.g., pursuant to Article 129 of the EPLA, compensation can be granted for restrictions on the use of real estate, including those caused by nuisances in the form of excessive noise and others, which are directly related to the entry into force of the limited use area plan pursuant to the Article 129 of the said Act).<sup>12</sup> It is, however, sometimes argued that the civil liability regime may be unsuitable for environmental damage issues. Civil proceedings are often lingering, ineffective, and inefficient, and require plaintiffs' complaints.<sup>13</sup>

In the separate climate change cases against corporations brought before Polish courts, the plaintiff, firstly ClientEarth<sup>14</sup>, and then Greenpeace<sup>15</sup>, invoked Article 323 of the EPLA, which provides that anyone who is directly threatened with damage by an unlawful impact on the environment, or has suffered such damage, may demand that the entity responsible for the threat or infringement restore lawfulness and take preventive measures, such as installing devices protecting against a threat or breach. If this is impossible or excessively difficult, the plaintiff may demand the cessation of the

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<sup>10</sup> M Górski, "Art. 3" in M Górski et al. (eds), *Prawo ochrony środowiska. Komentarz*, 3<sup>rd</sup> edition, C.H. Beck 2019, p. 86.

<sup>11</sup> Article 322 EPLA provides that the provisions of the Civil Code shall apply to liability for damage caused by the impact on the environment, unless the Act provides otherwise.

<sup>12</sup> K Gruszecki, *Prawo ochrony środowiska. Komentarz*, 6<sup>th</sup> edition, Wolters Kluwer 2022, p. 1115; See also Judgment of the Court of Appeal in Cracow, 6 October 2020, I Aca 37/19, Lex number 3121270.

<sup>13</sup> B Rakoczy, "Szkoda w środowisku a szkoda wyrządzona oddziaływaniem na środowisko" in B Rakoczy, M Pchątek, *Wybrane problemy prawa ochrony środowiska*, Oficyna 2010, p. 336.

<sup>14</sup> The mandatory mediation stage in the proceedings between ClientEarth and PGE GiEK ended without any settlement, therefore, the case proceeded to the merits. However, the last information thereon was issued on 9 August 2021, available at <<https://www.clientearth.pl/najnowsze-dzialania/artykuly/zakonczyly-sie-negocjacje-pomiedzy-fundacja-clientearth-prawnicy-dla-ziemi-a-pge-giek/>>, last accessed on 29 August 2023.

<sup>15</sup> Greenpeace v. PGE GiEK, available at <[https://climate-laws.org/geographies/poland/litigation\\_cases/greenpeace-poland-v-pge-giek](https://climate-laws.org/geographies/poland/litigation_cases/greenpeace-poland-v-pge-giek)>, last accessed on 3 March 2023; See also K Guzek, "Greenpeace and Polish Energy Group will meet in court", 17 May 2022, available at <<https://www.greenpeace.org/poland/aktualnosci/31728/greenpeace-and-polish-energy-group-will-meet-in-court/>>, last accessed on 1<sup>st</sup> March 2023.



activity causing the threat or infringement. Paragraph 2 of the said provision provides standing for, inter alia, environmental organisations.

The invoked provision, namely Article 323 EPLA, does not introduce a separate liability basis for the mechanisms included in the Civil Code; it merely adapts the civil liability mechanism to a specific requirement of environmental protection.<sup>16</sup> However, some scholars contend that Article 323 constitutes a separate mechanism of liability applicable uniquely in cases of damage resulting from an unlawful human impact on the environment.<sup>17</sup> The plaintiffs must prove that three conditions exist: an unlawful impact on the environment, a damage or a threat thereof, and the causal link between the damage and the unlawful impact.<sup>18</sup> Scholars are disputing the exact meaning of the unlawfulness of human impact on the environment. They unanimously agree that this will exist in cases where the activity that resulted in damage to the environment was conducted without a proper administrative decision or in its violation. However, in cases where the activity is conducted in accordance with law, some scholars contend that the requirement of unlawfulness will not be fulfilled.<sup>19</sup> Others point to Article 325 of the EPLA, which states that the liability for damage caused by the impact on the environment is not excluded by the fact that the activity causing the damage was conducted on the basis of the decision and within its limits. Therefore, they assert that the unlawfulness provided in the EPLA should be understood from the point of view of civil law, namely as including the violation of rules of social conduct<sup>20</sup> as well as rules of safety.<sup>21</sup> Moreover, part of the legal doctrine contends that Article 325 only applies to the liability for damage and is therefore limited to the strict liability.<sup>22</sup> Even though the courts have traditionally adopted a cautious approach to types of provisions such as Article 325 of the EPLA,<sup>23</sup> in the case of environmental protection it is now a well-established principle that the liability will not be excluded if the entity's activity is in compliance with the administrative decision.

Scholars note that the damage arising from an impact on the environment as provided in the EPLA is not defined in the Act. Consequently, the issues surrounding its interpretation pertain not only to the question of the 'impact on the environment' but

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<sup>16</sup> K Gruszecki, "Art. 323" in K Gruszecki, *Prawo ochrony środowiska. Komentarz*, 6<sup>th</sup> edition, Wolters Kluwer 2022.

<sup>17</sup> As per Article 322 EPLA, in cases of damages resulting from human impact on the environment, the provisions on civil liability from the Polish Civil Code will apply.

<sup>18</sup> M Bar, "Art. 323" in M. Górski et al. (eds.), *Prawo ochrony środowiska*, C.H. Beck 2014, p. 859.

<sup>19</sup> A Lipiński in J Jendroška (ed), *Ustawa – Prawo ochrony środowiska. Komentarz*, Wrocław 2001, pp. 811-812.

<sup>20</sup> The act would be then unlawful if it violates the measures of average usage established for instance by local usage, see W Radecki, *Odpowiedzialność prawna w ochronie środowiska*, Warsaw 2002, p. 104.

<sup>21</sup> M Bar, "Art. 323" in M Górski et al. (eds.), *Prawo ochrony środowiska*, C.H. Beck 2014, p. 859.

<sup>22</sup> See J Boć, K Nowacki, E Samborska-Boć, *Ochrona środowiska*, Wrocław 2004, pp. 377-78.

<sup>23</sup> Judgment of the Court of Appeal in Gdansk, 5 May 1995, I ACr 175/95, Judgment of the Supreme Court of 29 July 1971, III CRN 184/71, LEX n° 4752, Judgment of the Supreme Court of 11 January 1990, I CR 1377/89, OSNC 1991/2-3.

also damage in light of the environment being construed as a common good.<sup>24</sup> Accordingly, scholars propose that the said expression should be interpreted broadly and that the protected interest is of a public rather than private nature.<sup>25</sup> It is also contended that such construction of the environmental damage transforms civil liability as fulfilling both a preventive and a compensatory function, the former being traditionally associated with administrative law.<sup>26</sup> With regard to the damage arising from an impact on the environment, the legal system does not define the personal or material scope of application nor the scope of persons that can be held liable for causing such harm. According to scholars, lack of specific provision regarding the latter should be construed as providing that this type of harm can be caused by anyone.<sup>27</sup>

Several scholars assert that the provision can form a basis for claims to be brought by anyone threatened with damage by an unlawful impact on the environment or who has suffered such damage.<sup>28</sup> Some authors further contend that the provision can also be invoked by persons or groups who can prove a threat of a harm or a violation of their personal right(s) as per Article 24 § 1 of the Civil Code without suffering a personal injury or damage to their property. Even though the Polish legal system does not provide for the *actio popularis*, Article 322 of the EPLA comes closely to one of its functions, namely bringing the action in the interest of protection of the public common good.<sup>29</sup>

It is unclear what can be the extent of plaintiffs' requests based on Article 323 of the EPLA. The article itself provides that the court may order restoration of the environment to its lawful state by the liable entity. Most of the doctrine points to the exact wording of the provision to argue that restoring the environment to a lawful state may include covering damage greater than the entity in fact caused (e.g., in the case of pollution of an already polluted river).<sup>30</sup> Conversely, some scholars point out that the entity responsible for causing the damage cannot be obliged to cover a greater damage than it caused, and further purport that the scope of liability for damages should be limited

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<sup>24</sup> B Iwańska, *Koncepcja skargi zbiorowej w prawie ochrony środowiska*, Wolters Kluwer, Warsaw 2012, p. 598; E K Czech, *Szkoda w obszarze środowiska i wina jako determinanty odpowiedzialności administracyjnej za tę szkodę*, Białystok 2008, p. 165; A Lipiński in J Jendrośka (ed), *Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska. Komentarz*, p. 811.

<sup>25</sup> B Rakoczy in J Ciechanowicz-McLean, Z Bukowski, B Rakoczy (eds), *Prawo ochrony środowiska*, Warsaw 2008, p. 514; M Bar, *Prawo ochrony środowiska. Komentarz*, C.H. Beck 2019, pp. 1117-18; E K Czech, *Szkoda w obszarze środowiska i wina jako determinanty odpowiedzialności administracyjnej za tę szkodę*, Białystok 2008, p. 132.

<sup>26</sup> B Iwańska, *Koncepcja „skargi zbiorowej” w prawie ochrony środowiska*, Lex 2013.

<sup>27</sup> B Rakoczy, „Szkoda w środowisku a szkoda wyrządzona oddziaływaniem na środowisko” in B Rakoczy, M Pchalek, *Wybrane problemy prawa ochrony środowiska*, Oficyna 2010, p. 333.

<sup>28</sup> K Gruszecki, „Art. 323” in K Gruszecki, *Prawo ochrony środowiska. Komentarz*, 6<sup>th</sup> edition, Wolters Kluwer 2022.

<sup>29</sup> P Mazur, „Formy zbiorowe ochrony prawa osobistego do środowiska”, *5 Państwo i Prawo* 2006, p. 102.

<sup>30</sup> B Rakoczy, „Pojęcie sprawy gospodarczej z zakresu ochrony środowiska”, *4 Przegląd Sądowy* 2003, p. 84; See also K Gruszecki, „Art. 323” in *Prawo ochrony środowiska. Komentarz*, 6<sup>th</sup> edition, Wolters Kluwer 2022; M Bar, „Art. 323” in M. Górski et al. (eds.), *Prawo ochrony środowiska*, C.H. Beck 2014, p. 860.

to re-establishing the situation to that which existed before the damage.<sup>31</sup> The court can also order that the liable entity undertakes measures preventing the damage (in the case of the threat thereof)<sup>32</sup> or if these are impossible or too difficult, they can request cessation of the unlawful activity.

It should also be noted that claims formulated on the basis of Article 323 of the EPLA may be justified not only in the event of a threat but also when such a threat appears. What is important from the perspective of climate change litigation is that the threat of harm must be highly probable, even if it is not expected to manifest in the nearest future.<sup>33</sup> From this point of view, it is essential to enumerate the measures by which the environment can be restored to a legal state, including the request for monetary compensation, if the restoration is no more possible.<sup>34</sup> Consequently, in climate proceedings against the energy company PGE GiEK the environmental organisations request that the company cuts greenhouse gas emissions arising from burning coal by 2030 at the latest.

With respect to liability for damage to the environment, it is important to determine the entity obliged to restore the environment to a lawful state. Other than plaintiffs who can act against anyone who caused the unlawful impact on the environment, i.e., natural person, corporation, entity without a legal status, the doctrine also assumes that it is not only the entity directly carrying out the harmful activity that is responsible for the damage but also the entity that benefitted from the said activity, even though it is not directly connected with the unlawful impact on the environment.<sup>35</sup>

The liability incurred on the basis of the commented provision is assumed to be risk-based and will be imposed without regard to the defendant's negligence or intent to cause harm.<sup>36</sup>

Article 322 of the EPLA in conjunction with the Civil Code provisions on civil liability grants both compensatory and preventive remedies. A victim of harm can recover its loss either by requiring monetary compensation or restoration to the original condition, notwithstanding whether the liability in question is strict or negligent. In a case there is

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<sup>31</sup> W Radecki, *Komentarze do ustawy - Prawo ochrony środowiska: środki finansowo-prawne tytuł V ustawy - Prawo ochrony środowiska*, Wrocław 2005, p. 29.

<sup>32</sup> E.g., installation of the security systems, as order based on the previous version of the act by the Judgment of the Supreme Court of 25 April 1985, IV CR 122/85.

<sup>33</sup> M Bar, "Art. 323" in M Górski et al. (eds.), *Prawo ochrony środowiska*, C.H. Beck 2014, p. 860.

<sup>34</sup> Pro: K Gruszecki, "Art. 323" in *Prawo ochrony środowiska. Komentarz*, 6<sup>th</sup> edition, Wolters Kluwer 2022.

<sup>35</sup> W J Katner, M Pyziak-Szafnicka, "Odpowiedzialność cywilnoprawna w ustawie o ochronie środowiska (uwagi de lege ferenda)", *Ochrona Środowiska. Prawo i Polityka* 1996/3.

<sup>36</sup> M Bar, „Glosa do wyroku SO w Białymstoku z 8.11.2005 r., II Ca 621/05”, *PiŚ* 2006/3, p. 116; B Rakoczy, „Skarb Państwa i jednostki samorządu terytorialnego jako powodowie w sprawach z zakresu ochrony środowiska”, *22 Gdańskie Studia Prawnicze* 2009, p. 207.

merely a threat of a harm, based on provisions of the Polish Civil Code the plaintiffs can ask the court for an injunction imposed on tortfeasors to avert an eventual harm.<sup>37</sup>

## B. Human Rights Law

Poland is one of few European countries that gives the environment a prime perch in its Constitution. Enacted in 1997, the Constitution refers directly to the environment in a broad sense. It also includes the principle of sustainable development, which requires the industry and business sectors to maintain the balance between the growth and the protection of the environment. The constitutional provisions are detailed in statutes, which form the main part of legal environmental regulations and cover all elements of the environment (i.e. climate). The constitutional provisions on the duty of public authorities to ensure the environmental protection serve as guiding principles for all public authorities, including courts, and command that laws should be interpreted as aiming to protect the environment and no legal provision should be construed as allowing the violation of environmental values.<sup>38</sup>

In Poland, claimants invoking the violation of human rights included in the Constitution will address their relationship with the state and not with other legal persons (such as corporations). Between private parties, Articles 23 and 24 of the Polish Civil Code may be invoked. These provisions pertain to the protection of personal rights (interests), such as health, freedom, dignity, against any legal person that infringes them. They were invoked in the latest climate lawsuits, albeit introduced separately against the State Treasury by Polish citizens, and in air pollution claims, which may also be relevant for climate litigation.<sup>39</sup> In the aforementioned climate lawsuits, the plaintiffs are relying on state obligations stemming from the Polish Constitution, international law, and the European Convention on Human Rights.<sup>40</sup> However, scholars point out that civil courts are reluctant to recognise other basic rights (constitutional and conventional) as part of the catalogue of personal rights stemming from Article 23 of the Polish Civil Code.<sup>41</sup>

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<sup>37</sup> Article 439 provides: "Whoever is threatened by a direct damage resulting from the behaviour of another person (...) may demand that person to undertake measures indispensable for averting the imminent danger (...)"

<sup>38</sup> M Dąbrowski, "Art. 74" in M Dąbrowski, A Jackiewicz (eds), *Komentarz do Konstytucji RP. Art. 74, 86*, Difin 2023, p. 55.

<sup>39</sup> In cases pertaining to air pollution and the State of Treasury liability for the poor air quality, at least two courts ruled in favor of plaintiffs deciding that the violation of their personal rights should be compensated.

<sup>40</sup> B Rogala, "Pozew przeciwko państwu za zmiany klimatu? „Wprawiliśmy proces w ruch” [interview]", 10 February 2023, available at < <https://300gospodarka.pl/wywiady/pozew-przeciwko-panstwu-za-zmiany-klimatu-wprawilismy-proces-w-ruch-wywiad>>, last accessed on 10 March 2023; Referring to the previous version of the EPLA J J Skoczylas, "Odpowiedzialność cywilna za naruszenie obowiązku ochrony środowiska", 33/11-12 *Paestra* 1989, pp. 68-9.

<sup>41</sup> E Bagińska, „Bezpośrednie stosowanie konstytucji jako mechanizm oddziaływania norm konstytucyjnych na sferę stosunków cywilnoprawnych” in A Gajda, K Grajewski, A Rytel-Warzocho, P Uziębło, M M Wiszowaty (eds), *Konstytucjonalizm polski*, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2020, p. 99.

Even Polish legal doctrine is divided as to inferring from this provision a right to the environment as a personal interest.<sup>42</sup>

Courts as well are reluctant to broadly interpret Articles 23 & 24. The Supreme Court stated that the protection by civil law of personal rights should be construed as being of exceptional character and therefore courts should proceed cautiously and with restraint in order not to unnecessarily broaden the list of personal rights.<sup>43</sup> Following this line of reasoning, in a resolution to the preliminary question from the lower court, the Supreme Court decided in 2021 that a right to clean air does not *per se* constitute a personal right.<sup>44</sup> The Supreme Court pointed out that the environment does not have characteristics of a legal personal interest, as it is a good common to the whole humanity. However, the adjudicating panel made a reservation that the violation of legally established air quality standards may lead to unlawful interference within the sphere of commonly recognised personal rights such as health, freedom, or privacy.<sup>45</sup> The scholars emphasise that this part of the Court's opinion is particularly vague and inaccurate.<sup>46</sup> Specifically, the Court did not clarify how the personal interest in the form of health would be infringed by exceedance of air quality standards, why such situation would amount to protection of Article 448 of the Polish Civil Code, and if, alternatively, Article 445 § 1 of the code could also be applicable (compensations for the infringement of personal rights). Finally, it is difficult to understand from the resolution if the sole infringement of health in the meaning of mental health can constitute a basis for a compensatory claim. On the other hand, the scholars agree with the Court's opinion that environmental pollution (similarly to a climate crisis) is happening on a mass scale and the civil law classic mechanism of protection of individual rights (in the form of protection of individual interest or civil liability) is not adapted to such mass phenomenon and the role of civil law is not to give a right to bring a claim to anyone.<sup>47</sup> Other authors agree that the State's liability for an insufficient fight against smog could

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<sup>42</sup> M Stoczkiewicz, *Prawo ochrony klimatu w kontekście praw człowieka*, Wolters Kluwer 2021, p. 362.

<sup>43</sup> Resolution of the Supreme Court of 19 November 2010, III CZP 79/10, OSNC 2011, n° 4, par. 41; Judgment of the Supreme Court of 5 April 2013, III CSK 198/12, OSNC 2013, n° 12, par. 141.

<sup>44</sup> Resolution of the Supreme Court of 28 May 2021, III CZP 27/20. Consequently, the Provincial Court reversed the judgment of the District Court, taking into account the claim for PLN 30,000 in damages. The court indicated that the omissions of the State Treasury, which resulted in the very poor air quality in the city of Rybnik, led to the infringement of the plaintiff's personal rights, such as health, freedom, and inviolability of the home. According to the court, the plaintiff successfully proved that as a result of the infringement of his personal rights, it suffered a significant harm. The General Prosecutor appealed against this judgment with an extraordinary complaint (file no. III WSNc 1/22).

<sup>45</sup> Following the resolution of the Supreme Court, the Regional Court in Gliwice found that the State Treasury is liable for its inaction in ensuring good air quality in Rybnik which led to a violation of plaintiff's personal rights (III Ca 1548/18).

<sup>46</sup> K Ciućkowska, „Smog a dobra osobiste. Głosa do uchwały Sądu Najwyższego – Izba Cywilna z dnia 28 maja 2021 r., III CZP 27/20, OSP, 2022/11/94.

<sup>47</sup> K Ciućkowska, „Smog a dobra osobiste. Głosa do uchwały Sądu Najwyższego – Izba Cywilna z dnia 28 maja 2021 r., III CZP 27/20, *Orzecznictwo Sądów Polskich*, 2022/11/94; see also R Szczepanik, „Smog a odpowiedzialność odszkodowawcza władz publicznych”, *2/66 Zeszyty Prawnicze Biura Analiz Sejmowych Kancelarii Sejmu*, 2020, p. 26-48.

not be derived even from Articles 2 and/or 8 of the ECHR, as the European Court of Human Rights, while admitting that states can be held liable for infringement of environmental protection standards, concluded that their liability is of limited extent.<sup>48</sup> Part of legal doctrine asserts that the state liability for air pollution is difficult to reconcile with the mass character of smog, other public values such as safe economic development<sup>49</sup>, and some systemic and axiological reasons<sup>50</sup> e.g., that the final cost of monetary redress for such claims would be borne by the whole society. It must be noted that the decision of the German Federal Constitutional Tribunal from 2021 relating to the obligation for the public authorities to provide the inter-generational justice in the framework of environmental policy is viewed as of fundamental importance for implementing EU common goals by all Member States i.e. including Poland.<sup>51</sup> Moreover, the currently developing public perception of the climate crisis may help Polish courts to recognise in the future a right to live in a clean environment as a personal right.<sup>52</sup>

Personal rights from Articles 23 & 24 of the Polish Civil Code are not the same concept as human rights included in the Polish Constitution and international conventions, which should be read in conjunction with other provisions specifically addressing environmental issues (e.g., Articles 74 and 68 of the Polish Constitution). Additionally, obligations for corporations with regard to the environment may stem from international instruments, such as the ones issued by the OECD<sup>53</sup>, the UN, or as per the Paris Agreement<sup>54</sup> and, therefore, serve as an interpretation guidance for the general principle of the social coexistence included in the provision of the Polish Civil Code.<sup>55</sup> Moreover, the obligations for corporations regarding the environment and human rights have been assessed by the Committee on the Rights of the Child<sup>56</sup> and

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<sup>48</sup> T Nowakowski, "Przekroczenie norm jakości powietrza a ochrona dóbr osobistych. Glosa do uchwały SN z dnia 28 maja 2021 r., III CZP 27/20", 5/40 *Orzecznictwo Sądów Polskich*, 2022.

<sup>49</sup> M Olczyk, "Bezprawność zachowania sprawy jako przesłanka odpowiedzialności za naruszenie dóbr osobistych" in M Romańska (ed), *Sądowe Komentarze Tematyczne. Dobra osobiste i ich ochrona*, C.H. Beck 2020, pp. 223-236.

<sup>50</sup> R Szczepanik "Smog a odpowiedzialność odszkodowawcza władz publicznych", 2/66 *Zeszyty Prawnicze Biura Analiz Sejmowych Kancelarii Sejmu 2020*, p. 36, who calculated that if each plaintiff received PLN 5'000 in compensation from the State Treasury, the total cost for the state budget could be as high as PLN 60 billion (in comparison, total spending for health sector amounts to PLN 95 billion).

<sup>51</sup> O Hałub-Kowalczyk, "Ochrona przyszłych pokoleń w procesie dążenia do neutralności klimatycznej w orzecznictwie Federalnego Trybunału Konstytucyjnego w Niemczech", 5(63) *Przegląd Prawa Konstytucyjnego* 2021, p. 280.

<sup>52</sup> M Krystman, "Prawo do oddychania czystym powietrzem jako dobro osobiste. Glosa do uchwały Sądu Najwyższego – Izba Cywilna z dnia 28 maja 2021 r., III CZP 27/2", *Orzecznictwo Sądów Polskich*, 2022/9/73.

<sup>53</sup> Due Diligence Guidance for Responsible Business Conduct.

<sup>54</sup> In the case of *Greenpeace v. PGE*, the environmental organisation expressly mentioned those instruments, including the Guiding Principles on Business and Human Rights.

<sup>55</sup> Article 5 of the Polish Civil Code provides that no one can exercise its legal right in a way that would contradict its socio-economic purpose or the principles of community life.

<sup>56</sup> General Comment No. 16 adopted in 2013.

the Committee on Economic, Social and Cultural Rights<sup>57</sup>. However, the standard of conduct in relation to corporate human rights due diligence has not been sufficiently detailed yet.<sup>58</sup> Against this backdrop, scholars underline the difficulty that courts may encounter in defining objective criteria for assessing corporate human rights due diligence, and with relation to the Guiding Principles on Business and Human Rights, the difficulties for courts to link those obligations to liability under existing tort law provisions in their national laws.<sup>59</sup>

On the European level, it is argued that the introduction of mandatory human rights and environmental due diligence obligations for business will have important implications for regulations at the national level.<sup>60</sup> Some states, including Poland, would have to legislate to implement new rules and adapt the existing legislation; however, legal doctrine criticises the draft Directive presented in 2022<sup>61</sup> for not drawing lessons from the shortcomings of the current regulatory policy on responsible business conduct.<sup>62</sup>

## C. Tort Law

The damage in civil liability covers all impairments to the person's body or property caused by the tortious conduct. In relation to the EPLA's provisions, such damage must result from a human tortious conduct that impacts the environment, e.g., water, air, and soil pollution, and damage to property or health (respiratory system diseases, hearing impairment, etc.) resulting thereof.<sup>63</sup> In general, the liability in cases concerning the environment will be a strict liability (see Article 323 of the EPLA, *supra*, and, *infra*, Art. 435 of the Polish Civil Code).<sup>64</sup>

The main standards of liability for torts included in the Polish Civil Code are liability for fault and strict liability. The special provisions on liability for torts will determine which of these standards will be applicable in a specific case (however, in matters relating to

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<sup>57</sup> General Comment No. 24 adopted in 2017.

<sup>58</sup> I Jędrzejowska-Schiffauer, "Business Responsibility for Human Rights Impact under the UN Guiding Principles: at Odds with European Union Law?", 4 *European Law Review* (2021), p. 485.

<sup>59</sup> I Jędrzejowska-Schiffauer, "Business Responsibility for Human Rights Impact under the UN Guiding Principles: at Odds with European Union Law?", 4 *European Law Review* (2021), p. 483.

<sup>60</sup> I Jędrzejowska-Schiffauer, Ł Szoszkiewicz, J Wilde-Ramsing, K Booth, P Barraud de Lagerie, B Faracik, "Towards EU-wide Mandatory Human Rights and Environmental Due Diligence for Business: A Breakthrough in Europe and Beyond", accepted for publication.

<sup>61</sup> Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM(2022) 71 final.

<sup>62</sup> I Jędrzejowska-Schiffauer, Ł Szoszkiewicz, J Wilde-Ramsing, K Booth, P Barraud de Lagerie, B Faracik, "Towards EU-wide Mandatory Human Rights and Environmental Due Diligence for Business: A Breakthrough in Europe and Beyond", accepted for publication.

<sup>63</sup> W Radecki, *Odpowiedzialność prawna w ochronie środowiska*, Warsaw 2002, p. 90.

<sup>64</sup> See however comments to Article 323 of the EPLA.

the environmental protection, including the climate, the strict liability based on risk is more common<sup>65</sup>, see the developments *infra* on Article 435 of the Polish Civil Code).

The liability for fault is governed mainly by Article 415 of the Polish Civil Code, which requires the fulfilment of three conditions: an event to which the legal system binds liability on a specific basis (1), the occurrence of damage (2), and an adequate causal link between the tortious act and the damage (3).<sup>66</sup> The liable person should only compensate the normal effects of the act or omission from which the damage resulted.<sup>67</sup> The burden of proof is on the plaintiff. Based on this provision, a class-action was filed against Volkswagen Poland for material damage as a result of company tortious activity known as Dieselgate and defective product resulting thereof. Moreover, in cases of climate litigation, it was argued that the research report concluding that Exxon was aware of contemporary climate science, but publicly continued to cast doubt upon it, could amount to fulfil the fault requirement under Article 415 of the Polish Civil Code.<sup>68</sup>

Strict liability will be most commonly invoked in the environmental claims, however the liability for fault may also find application, especially in cases where Article 435 of the Polish Civil Code or Article 324 of the EPLA cannot be relied upon (i.e., in case of liability of entities other than those set in motion by natural forces or creating a risk of a serious industrial incident or in cases where the activity in question is not related to running an enterprise or business on one's own account).<sup>69</sup>

The most important provision of the Civil Code referred to by the EPLA in terms of risk-based liability is Article 435, which imposes a strict liability on persons running on their own account an enterprise or a business set in motion by natural forces that causes damage by its functioning.<sup>70</sup>

The provision does not define what is meant by an entity set in motion by natural forces and scholars admit that this wording can now be construed as anachronous given that nearly all businesses are relying on electricity or other common sources of energy. The jurisprudence recognises that the enterprises or establishments referred to in Article 435

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<sup>65</sup> M Bar, "Art. 322" in M Górski *et al.* (eds), *Prawo ochrony środowiska. Komentarz*, 3<sup>rd</sup> edition, C.H. Beck 2019, p. 856.

<sup>66</sup> W Dubis, "Art. 415" in E. Gniewek, P. Machnikowski (eds.), *Kodeks cywilny. Komentarz*, 9<sup>th</sup> edition, C.H. Beck 2019, p. 880; I Długoszewska-Kruk, "Art. 415" in M Załucki (ed.), *Kodeks cywilny. Komentarz*, 2<sup>nd</sup> edition, C.H. Beck 2020, p. 947.

<sup>67</sup> Article 361 of the Polish Civil Code.

<sup>68</sup> B Rogala, "Pozew przeciwko państwu za zmiany klimatu? „Wprawiliśmy proces w ruch” [interview]", 10 February 2023, available at < <https://300gospodarka.pl/wywiady/pozew-przeciwko-panstwu-za-zmiany-klimatu-wprawilismy-proces-w-ruch-wywiad>>, last accessed on 25 March 2023.

<sup>69</sup> M Bar, "Art. 322" in M Górski *et al.* (eds), *Prawo ochrony środowiska. Komentarz*, 3<sup>rd</sup> edition, C.H. Beck 2019, p. 857.

<sup>70</sup> Article 435 of the Civil Code: "A person who runs on his own account an enterprise or a business set in motion by natural forces (steam, gas, electricity, liquid fuels, etc.) shall be liable for the damage caused to a person or a property by the functioning of the enterprise or establishment unless the damage was due to *force majeure* or solely to a fault of the person who suffered the damage or a third party for whom he is not responsible."



of the Civil Code are characterised by the fact that their existence and function in given conditions, times, and places depend on the use of forces of nature and that without these, the aforesaid units would not achieve the purpose for which they were created.<sup>71</sup> Consequently, Article 435 of the Polish Civil Code should be interpreted as being applicable to businesses and enterprises that base their core activity on the employment of natural force.<sup>72</sup> The necessity of fulfilling a threefold condition stem from case law: the degree of risk posed by the machinery employed in the business or enterprise, the degree of complexity when transforming the energy into work, and the general level of technology.<sup>73</sup> According to Supreme Court case law, Article 435 will be applicable to power plants,<sup>74</sup> coal mines, mining facilities and mining plants,<sup>75</sup> industrial plant emitting toxic substances,<sup>76</sup> energy transmission companies,<sup>77</sup> and construction companies.<sup>78</sup> Moreover, as per the EPLA, Article 435 also applies to damages caused by businesses with an increased or high operating risk<sup>79</sup> and by reference to Article 328 of the said act to businesses which by their activities create risk of a serious industrial incident.<sup>80</sup> It is understood that excluded from the scope of the provision would be entities that do not clearly rely on employment of natural forces in their daily activities, such as law firms, real estate offices, shops and internet portals, IT companies, cinemas, theatres, architectural offices, consulting and advisory companies, banks, insurers, universities, certain types of agricultural enterprises along with landfills.<sup>81</sup> Consequently, taking into account the generally liberal approach of the courts in recognising a given activity as subject to more stringent liability requirements, the provision provides for easier way to investigate damage caused as a result of dangerous activity and therefore may be also applicable in climate lawsuits.<sup>82</sup> The strict liability of Article 435 will also

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<sup>71</sup> D Wałkowski, I Zielińska-Barłóek, "Rozdział 1. Specyfika prawa ochrony środowiska w transakcjach" in D Wałkowski, I Zielińska-Barłóek (eds), *Prawo ochrony środowiska w transakcjach fuzji i przejęć oraz nabycia nieruchomości*, LexisNexis 2014, pp. 28-29; Judgment of the Supreme Court of 18 September 2002, III CKN 1334/00, lexis.pl, 7540332.

<sup>72</sup> I Długoszewska-Kruk, "Art. 435" in M Załucki (ed), *Kodeks cywilny. Komentarz*, 2<sup>nd</sup> edition, C.H. Beck 2020, p. 973; W Dubis, "Art. 435" in E Gniewek, P Machnikowski (eds), *Kodeks cywilny. Komentarz*, 9<sup>th</sup> edition, C.H. Beck 2019, p. 953.

<sup>73</sup> Judgment of the Supreme Court from 12 July 1977, IV CR216/77, OSNCP 1978, N°4, par. 73.

<sup>74</sup> Judgment of the Administrative Court in Warsaw of 15 January 2014, VI Aca 676/13.

<sup>75</sup> Judgments of the Supreme Court: of 10 May 1962, 3 CR 941/61, OSNCP 1963, N° 10, pos. 226, of 20 September 1984, IV CR 337/84, OSNCP 1985, N°5-6, pos. 77, of 28 February 2007, V CK 11/06.

<sup>76</sup> Resolution of the Supreme Court of 7 April 1970, III CZP 17/70, OSPiKA 1971, N° 9, pos. 169.

<sup>77</sup> Judgment of the Supreme Court of 9 May 2008, III CSK 360/07.

<sup>78</sup> Judgment of the Supreme Court of 29 January 2008, I PK 258/07.

<sup>79</sup> Article 324 EPLA.

<sup>80</sup> Article 248 EPLA.

<sup>81</sup> M Bar, "Art. 323" in M Górski et al. (eds), *Prawo ochrony środowiska*, C.H. Beck, Warsaw 2014, p. 856; L Jantowski, "Art. 435" in M Balwicka-Szczyrba, A Sylwestrzak (eds), *Kodeks cywilny. Komentarz*, Wolters Kluwer 2022, par. 8.

<sup>82</sup> D Wałkowski, I Zielińska-Barłóek, "Rozdział 1. Specyfika prawa ochrony środowiska w transakcjach" in D Wałkowski, I Zielińska-Barłóek (eds), *Prawo ochrony środowiska w transakcjach fuzji i przejęć oraz nabycia nieruchomości*, LexisNexis, Warsaw 2014, p. 28.

apply even if the entity's activity was conducted in accordance with the law.<sup>83</sup> Therefore, an industrial plant can be held liable for the damage it causes by emitting toxic agents, even if the concentration of these does not exceed standards set forth in environmental protection acts.<sup>84</sup>

The conditions for applying Article 435 are the following: the functioning of the entity set in motion by natural forces, the damage (which in line with Article 322 of the EPLA can include damage to the environment), and the causal link between the damage and the entity's activity. The tortious activity must be a factual cause of harm for the liability to be imposed. The standard for factual causation is referred to as the 'but-for' test or a *sine qua non* test.<sup>85</sup> The existence of other causes of harm does not affect whether the specified activity was a necessary condition for the said harm to occur; when the damage is caused by two different businesses based on risk-liability, their liability is joint and several as per Article 441 of the Polish Civil Code.<sup>86</sup> In a toxic-tort case, the Supreme Court decided that the business emitting toxic substances should be held liable for the plaintiff's harm, notwithstanding the fact that it was one among several enterprises emitting toxic agents in the region.<sup>87</sup> Such causation exists not only when the harm is a direct consequence of the activity resulting from the employment of natural forces (and is within the scope of the risk created as a result of this) but also when the harm is solely a consequence of the entity's activity as a whole, and not necessarily in relation to its employment of natural forces in this particular case.<sup>88</sup>

Most scholars contend that the burden of proving all three conditions relies on the plaintiff as per Article 6<sup>89</sup> of the Polish Civil Code.<sup>90</sup> However, part of scholars argue that Article 435 of the Polish Civil Code provides for presumption of adequate causal

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<sup>83</sup> R Morek, "Art. 435" in K Osajda et al. (eds), *Kodeks cywilny. Komentarz*, Vol. IIIa, C.H. Beck, Warsaw 2017, p. 728; M Safjan, "Art. 435" in K Pietrzykowski (ed), *Komentarz*, Warsaw 2015, p. 1458.

<sup>84</sup> Resolution of the Supreme Court of 7 April 1970, III CZP 17/70, OSPiKA 1971, N° 9, par. 169.

<sup>85</sup> R Morek, "Art. 435" in K Osajda et al. (eds), *Kodeks cywilny. Komentarz*, Vol. IIIa, C.H. Beck 2017; I Długoszewska-Kruk, "Art. 435" in M Załucki (ed), *Kodeks cywilny. Komentarz*, 2<sup>nd</sup> edition, C.H. Beck 2020, p. 974; M Safjan, "Art. 435" in K Pietrzykowski (ed), *Komentarz*, 2015 p. 1458.

<sup>86</sup> W Dubis, "Art. 435" in E Gniewek, P Machnikowski (eds), *Kodeks cywilny. Komentarz*, 9<sup>th</sup> edition, C.H. Beck 2019, p. 958.

<sup>87</sup> Judgment of the Supreme Court of 6 October 1976, IV CR 380/76, OSNCP 1977, N°5-6, par. 93; M Bar points out that this decision allows for joint and several liability of all emitters if the toxic agents they emit can cause the plaintiffs' disease, see M Bar, "Art. 322" in M Górski et al. (eds), *Prawo ochrony środowiska*, C.H. Beck 2014, p. 857.

<sup>88</sup> E.g., an employee whose disease was created by the occupational risk created in the employer's business which is set in motion by the force of nature can rely on Article 435 of the Civil Code as a basis for its lawsuit against the employer.

<sup>89</sup> Article 6 Civil Code provides the following: The burden of proof relating to a fact shall rest on the person who attributes legal effects to that fact.

<sup>90</sup> W Dubis, "Art. 435" in E Gniewek, P Machnikowski (eds), *Kodeks cywilny. Komentarz*, 9<sup>th</sup> edition, C.H. Beck 2019, p. 954; I Długoszewska-Kruk, "Art. 435" in M Załucki (ed), *Kodeks cywilny. Komentarz*, 2<sup>nd</sup> edition, C.H. Beck 2020, p. 974; M Safjan, "Art. 435" in K Pietrzykowski (ed), *Komentarz*, Warsaw 2004, p. 1078; G Bieniek, J Gudowski in J Gudowski (ed), *Komentarz KC*, vol. 3, Part. 1, Wolters Kluwer Polska 2013, p. 622; Judgments of the Supreme Court of 3 June 1977, IV CR 185/77, Legalis and of 12 March 2009, V CSK 352/08, Legalis.

nexus, which will only be reversed if the defendant proves the existence of one of the premises denying strict liability altogether.<sup>91</sup> Importantly, in a toxic-tort case decided in 1976 by the Supreme Court, the causal link between the plaintiffs' disease and the activity of the entity set in motion by natural forces was considered already satisfied when the plaintiff established that it was exposed to the toxic agents emitted by the defendant which ordinarily may cause the type of disease they experienced.<sup>92</sup>

Some scholars argue that Article 435 provides for the widest possibilities in terms of compensation for harm to the environment as it allows a claim to be brought even in cases such as air pollution, as the plaintiff does not have to prove the unlawfulness of the defendant's tortious conduct.<sup>93</sup>

The strict liability of Article 435 of the Civil Code can be denied in the case of *force majeure*<sup>94</sup>, exclusive fault of the plaintiff, or a third party for whom the person who runs the entity set in motion by natural forces is not responsible. Therefore, the liability will not be denied in cases of contributory negligence.<sup>95</sup>

Some scholars contend that the civil liability mechanisms from the Civil Code have not been newly interpreted to accommodate damage to the environment, also in terms of climate crisis, and therefore the civil law will be applicable generally when harm to the environment has already been inflicted.<sup>96</sup> The classic regime of civil liability was not conceived to prevent environmental damage and even when it provides for preventive mechanisms, they do not suit environmental cases well (for instance, in cases of protection of personal rights with the condition of unlawfulness, or from a practical standpoint). As an example, there may be issues with determining the causal link between the action of a business and the damage to the environment, or the issue of proper determination of the amount of damage caused.<sup>97</sup>

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<sup>91</sup> B Lewaszkiwicz-Petrykowska, *Odpowiedzialność cywilna prowadzącego na własny rachunek przedsiębiorstwo wprowadzające w ruch za pomocą sił przyrody*, Wydawnictwo prawnicze, Warsaw 1967, p. 130, A Śmieja, *System Prawa Prywatnego*, vol. 6, C.H. Beck 2014, p. 590; R Morek, "Art. 435" in K Osajda et al. (eds), *Kodeks cywilny. Komentarz*, Vol. IIIa, C.H. Beck 2017, p. 727.

<sup>92</sup> Judgment of the Supreme Court of 6 October 1976, IV CR 380/76, OSNCP 1977, N° 5-6, par. 93.

<sup>93</sup> A Jaworowicz-Rudolf, "Odpowiedzialność prawna w ochronie środowiska" in M Górski (ed), *Prawo ochrony środowiska*, 4<sup>th</sup> edition, Wolters Kluwer 2021, p. 229.

<sup>94</sup> The case law provides that the *force majeure* requirement will be satisfied for an extraordinary event that is outside parties' control and external to them such as flood, war, some acts of public authorities (Judgment of the Supreme Court of 9 April 1952, C962/51, OSNCK 1954, N° 1, par. 2; R Morek, "Art. 435" in K Osajda et al. (eds), *Kodeks cywilny. Komentarz*, Vol. IIIa, C.H. Beck 2017, p. 730.

<sup>95</sup> R Morek, "Art. 435" in K Osajda et al. (eds), *Kodeks cywilny. Komentarz*, Vol. IIIa, C.H. Beck 2017, p. 730; W Dubis, "Art. 435" in E Gniewek, P Machnikowski (eds), *Kodeks cywilny. Komentarz*, 9<sup>th</sup> edition, C.H. Beck 2019, pp. 956-57; I Długoszewska-Kruk, "Art. 435" in M Załucki (ed), *Kodeks cywilny. Komentarz*, 2<sup>nd</sup> edition, C.H. Beck 2020, p. 975.

<sup>96</sup> A Jaworowicz-Rudolf, "Odpowiedzialność prawna w ochronie środowiska" in M Górski (ed), *Prawo ochrony środowiska*, 4<sup>th</sup> edition, Wolters Kluwer 2021, p. 228.

<sup>97</sup> J Trzewik, *Publiczne prawa podmiotowe jednostki w systemie prawa ochrony środowiska*, LEX 2016, chapter: „Środowisko jako przedmiot regulacji prawnej”, who asserts nonetheless that civil liability regime may efficiently replace or complement the state in fulfilling its protective obligations pertaining to the environment.

### i. Public and private nuisance

The protection against private nuisance or trespass arises from Articles 144 and 222 § 2 of the Polish Civil Code which protect property and other property rights. The nuisance is unlawful if it exceeds the limits set out in Article 144. Nuisance should be generally understood as the impact on neighbouring real estate, interfering with its use. It includes material (i.e. in form of particles of matter such as dust or gases) or immaterial (in form of forces such as noises, vibrations) nuisance.<sup>98</sup> In accordance with the established case law, the fact that nuisance does not infringe legal disturbance standards, does not preclude the possibility of recognizing it as unlawful provided these disturbances will exceed the average level.<sup>99</sup> The test used by courts to determine what constitutes the average level of nuisance is the socio-economic purpose of the given property, while assessment of the average level of nuisance that must be tolerated pertains to the objective conditions of living in a given area and not to the plaintiffs' subjective feelings.<sup>100</sup> Pursuant to Article 222 § 2 as per Article 144 of the Polish Civil Code, the plaintiff may bring a civil action for an injunction against the defendant to not only eliminate the ongoing nuisance but also to bring the nuisance to the average level or abate any activity that could in the future cause a nuisance.<sup>101</sup> However, if a permit has been granted for the activity by the local authority, this will act as a dismissal for the action, as the court will generally recognise that all interests prior to issuing the authorisation were taken into account by the administrative authority.<sup>102</sup> Both provisions serve primarily to protect property rights, and only indirectly they can exercise a function of environmental protection (e.g., in case when nuisance takes form of toxic emissions, their abatement will be beneficial also for the environment).<sup>103</sup>

Finally, Article 222 of the Civil Code gives the plaintiff the right to claim restitution of their lawful position and abstention from legal infringements against the person that infringes their ownership (*actio negatoria*). The claim can be introduced either by the owner or the tenant.

As mentioned *supra*, the EPLA also provides for the separate basis for compensation claims in case of restrictions on the use of real estate, including those caused by nuisances in the form of excessive noise and others, which are directly related to the entry into force of the limited use area plan. The claims are brought against persons or entities (thus, also corporations) whose activity was the basis for the introduction of the

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<sup>98</sup> M Sługocka, *Ochrona powietrza*, Wolters Kluwer 2020, p. 46.

<sup>99</sup> R Mikosz, *Wprowadzenie do prawa środowiska*, Wydawnictwo Uniwersytetu Śląskiego 2021, p. 255; Judgment of the Supreme Court of 10 July 2023, I CKN 497/01, Lex n. 121698.

<sup>100</sup> Judgment of the Supreme Court of 22 November 1985, II CR 149/85, OSNC 1986/10, par. 162; Judgment of the Supreme Court of 28 December 1979, III CRN 249/79, OSNC 1980/7-8, par. 144.

<sup>101</sup> Judgment of the Supreme Court of 3 June 1983, III CRN 100/83, OSNC 1984/1, par. 10; see also Judgment of the Supreme Court of 14 May 2002, V CKN 1021/00, LEX n° 55512.

<sup>102</sup> Judgment of the Supreme Court of 18 June 1998, II CKU 6/98.

<sup>103</sup> Judgment of the Supreme Court of 14 January 2021, IV CZ 80/20, LEX n° 3106150.

limited use area plan.<sup>104</sup> The liability stemming from Article 129 of the EPLA is a strict liability. However, the Supreme Court construes this provision narrowly, as covering only the damage resulting from the restrictions on the use of real estate resulting from the detailed provisions of the resolution on the limited use area plan.<sup>105</sup>

An action pertaining to public nuisance will be covered by Article 323 of the EPLA (see developments *supra*).

## ii. Negligent failure to mitigate or adapt to climate change

See developments on Article 323 EPLA (*supra*) and indication on lawsuits, ClientEarth v PGE and Greenpeace v. PGE, filed against an energy company to abate its emissions.

## iii. Negligent or strict liability for failure to warn

Failure to warn is most commonly recognized by Polish scholars as part of the liability for dangerous (defective) product.<sup>106</sup> If the damage could have been avoided, had the consumer received proper information on how to use the product that manufacturer was aware of, it is understood that the latter should be held liable for this omission.<sup>107</sup> However, it is contentious in the doctrine when and which information should be transmitted by the manufacturer. It is also argued that the causal link requirement between the omission and the damage, which in case of failure to warn is assessed on the retrospective basis, may represent a substantial hurdle for courts.<sup>108</sup>

Apart from product liability considerations, negligent failure to warn was recognized by Polish courts in medical cases. It appears from those decisions that medical personnel is obliged to inform a patient that their disease is contagious and can create a risk of infection for others.<sup>109</sup> Legal protection applies not only to the patient themselves but also to their closest relatives. In one case, the Court of Appeal even considered that in this context failure to warn can constitute a tort which can give right to sue for compensation (provided the fulfilment of its other conditions).<sup>110</sup> At least one scholar challenged this opinion pointing out that failure to warn in medical context should amount to infringement of patient rights as in that case the compensation does not

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<sup>104</sup> See Article 136 § 2 of the EPLA.

<sup>105</sup> Judgment of the Supreme Court of 20 April 2021, II CSKP 5/21, LEX nr 3219791; resolutions of the Supreme Court of 7 and 29 April 2022, III CZP 80/22 (LEX nr 3330209) and III CZP 81/22 (LEX nr 3340113) respectively.

<sup>106</sup> M Jagielska, *Odpowiedzialność za produkt*, Oficyna 2009, "Związek przyczynowy".

<sup>107</sup> M Jagielska, *Odpowiedzialność za produkt*, Oficyna 2009, "Związek przyczynowy"; P Tereszkiwicz, *Obowiązki informacyjne w umowach o usługi finansowe*, Lex 2015, "Ochrona informacyjna klienta ubezpieczeniowego".

<sup>108</sup> P Tereszkiwicz, *Obowiązki informacyjne w umowach o usługi finansowe*, Lex 2015, "Zagadnienia percepcji ryzyka produktu", albeit quoting as an example only American case law.

<sup>109</sup> Court of Appeal in Warsaw, VI Aca 651/14, 10 March 2015; M Nesterowicz, "Glosa do wyroku s. apel. z dnia 10 marca 2015 r., VI Aca 651/14" in M Nesterowicz, *Prawo medyczne. Komentarze i glosy do orzeczeń sądowych*, WK 2017.

<sup>110</sup> Court of Appeal in Poznań, Aca 221/02, 2 May 2002.

require to prove the existence of damage (which is one of the requirements of civil liability for torts).<sup>111</sup>

However, to date no case was adjudicated based on this principle with regards to the environment.

#### **iv. Trespass**

The Polish Civil Code does not include a tort of trespass. In relation to greenhouse gas emissions, a claim alleging an intentional invasion to another's exclusive right to possession of property would have to be based either on Articles 144 and 222 § 2 of the Polish Civil Code, in case of interference with the enjoyment of one's property, or on a general mechanism of civil liability, in case of a damage. Article 222 allows additionally for an abatement claim. In case of environmental pollution, a claimant in Poland could also act based on Article 323 of the EPLA which provides that in case of the threat of the environmental damage the pollutant may be required to cease the activity that may cause the damage.

In the event of a trespass to land that causes stress, inconvenience or anxiety, a claimant may receive a compensation for the harms already suffered as per Article 415 of the Polish Civil Code or based on infringement of personal rights.

#### **v. Impairment of public trust resources**

It seems that within Polish legal culture, this cause of action could be considered as either targeting exclusively state authorities on the basis of civil liability regime applicable to them, or, if emphasis should be made on the public aspect of the resources, Article 323 of the EPLA could be invoked (see developments *supra* on Article 323).

As per Article 417 of the Polish Civil Code, the state authorities face strict liability for their unlawful acts or omissions in exercising public authority. The plaintiff must prove the omission (or act) of the public authority, the damage, and the causation between the two. In this context, it is worth mentioning the judgment of the Court of Justice of the European Union that found in 2018 that Poland has infringed EU law on ambient air quality.<sup>112</sup> According to part of the legal doctrine, this decision would allow to rely on Article 417 in claiming damages for the infringement of personal rights (however, see developments *supra* on human rights and the opinion of the Supreme Court that a right to clean air does not constitute a personal right).

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<sup>111</sup> M Nesterowicz, *Prawo medyczne. Komentarze i glosy do orzeczeń sądowych*, WK 2017.

<sup>112</sup> *Commission v. Poland*, Case C-336/16, 22 February 2018.

## vi. Fraudulent misrepresentation

In contract law, fraudulent misrepresentation would render the contract voidable.<sup>113</sup>

In terms of fraudulent commercial and market practices by companies, Polish law provides several causes of action that may be used also in corporate climate change proceedings. Among them, one of the most important in the realm of climate change corporate proceedings is Article 328 of the EPLA that specifically gives standing to ecological organisations to ask a civil court to halt advertisements and campaigns when they promote a model of consumption that contradicts principles of environmental protection and sustainable growth (as per Article 80 of the EPLA). The plaintiff must demonstrate that the advertising promotes a model of consumption that not only affects the natural environment, but also destroys it, degrades it or leads to its imbalance.<sup>114</sup> Scholars are in dispute as to who should be the defendant in cases concerning broadcasted advertisements (the broadcaster of the advertisement or the entity that placed the advertisement).<sup>115</sup>

In 2018, the Frank Bold Foundation sued the owner of a car repair workshop requesting it to stop advertising and otherwise promoting the service consisting in removing and disabling particulate filters DPF, FAP in vehicles.<sup>116</sup> The claim was based on Article 328 of the EPLA. The court ruled in favour of the Foundation. It confirmed the expert's opinion presented during the proceedings that the lack of a particulate filter in the vehicle significantly increases the amount of harmful substances emitted into the atmosphere, which are unhealthy for both the vehicle user and the entire environment. The court emphasised that the defendant did not inform potential customers that the service of disabling or removing particulate filters is provided only in cars participating in rallies as vehicles where the filters have been removed are not authorised to be driven on public roads.

In areas of fraudulent misrepresentation in relation to greenwashing, the Act on Combatting Unfair Market Practices, which transposes Directive 2005/29/EC into Polish law, and voluntary codes of conduct may also find application. In 2021, the environmental organisation ClientEarth relied on the provisions of the said Act, to introduce a lawsuit against a company which in a misleading way used a name referencing to ecology for its products. The case involved one of the leading companies on the Polish market selling "eco-pea coal" type of coal for heating individual

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<sup>113</sup> Through the application of provisions on defective consent, Art. 82 and onwards of the Polish Civil Code.

<sup>114</sup> Court of Appeal in Warsaw, VI ACa 666/09, LEX n° 1112665, 12 January 2010.

<sup>115</sup> B Rakoczy in J Ciechanowicz-McLean, Z Bukowski, B Rakoczy (eds), *Prawo ochrony środowiska. Komentarz*, Warsaw 2007, p. 522; K Gruszecki, *Prawo ochrony środowiska. Komentarz*, 6<sup>th</sup> edition, Warsaw 2022, p. 1128; M Bar, "Art. 328" in M Górski et al. (eds), *Prawo ochrony środowiska. Komentarz*, 3<sup>rd</sup> edition, C.H. Beck 2019, p. 870.

<sup>116</sup> Provincial Court in Jelenia Góra, I C 959/18, 12 March 2020, unpublished.

households. The foundation filed for injunction against the company to abandon the name containing the prefix "eco" and to stop its promotional activities that may suggest that burning coal can be environmentally friendly.

Pursuant to the Code of Ethics in Advertising<sup>117</sup>, an advertisement containing ecological information cannot violate public trust in properly implemented actions taken in the field of environmental protection (Article 33). The Code also states that general phrases, such as 'environmentally friendly' or 'environmentally safe', cannot be misleading. The Code was just recently amended to include new provisions on greenwashing, also in cases where the general presentation of the advertisement e.g., colours, may create the impression of environmental benefits of a given product.<sup>118</sup> For instance, the Advertising Ethics Committee ruled that the advertisement of a MINI brand car, in which a stamp with the inscription 'climate neutral' was placed above the image of an electric car, violates the provisions of the Code as a rational consumer will understand that a MINI car is climate-neutral and not the campaign itself.<sup>119</sup> By the same token, the advertisements of the BNP Paribas Group, declaring the goal of 'emission neutrality', was deemed as too imprecise and therefore misleading for an average consumer.<sup>120</sup>

Finally, in December 2020, the Association of Associations of the Advertising Council launched the Green Project initiative in order to combat greenwashing.

#### vii. Civil conspiracy

Civil conspiracy is not a cause of action recognised in Polish law.

A functional equivalent to a claim for civil conspiracy, albeit only to some extent, would be a claim based on fraud, consumer protection laws or competition/antitrust laws (the latter regulations being applicable only in cases of abuse of company's dominant position or agreements distorting competition on the relevant market, therefore hardly applicable in private corporate climate change proceedings). A company that undertook actions intended to mislead the public with regard to the science of global warming in order to delay public awareness of climate change and its effects could be facing liability as per the Act on Combating Unfair Market Practices. The Act defines as unfair a commercial practice that, among others, is misleading or aggressive or distorts the consumer's economic behaviour with regard to the offered product.<sup>121</sup> Along with criminal liability, the Act provides that a person affected by an unfair commercial

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<sup>117</sup> The Code of Ethics in Advertising is a set of principles of ethics and good market practices, in particular standards of business ethics and ethical standards in marketing communications. The Code does not constitute a compulsory legal regulation.

<sup>118</sup> "Kodeks Etyki Reklamy rozszerzony o nowe zapisy dotyczące reklamy środowiskowej", available at: <<https://radareklamy.pl/green-project-new/>>, last accessed on 22 March 2023.

<sup>119</sup> Resolution No. ZO/009/22u of 2 February 2022 of the adjudicating panel in case KER/219/21.

<sup>120</sup> Resolution No. ZO/082/21u of 16 June 2021 of the adjudicating panel in case KER/054/21.

<sup>121</sup> Arts. 4 and 5 of the Act on Combating Unfair Market Practices of 2007.



practice can bring legal action against a company using it, including by filing a compensation claim based on the general mechanism of liability<sup>122</sup> i.e., Art. 415 of the Polish Civil Code, in case of a tort, or contractual law, if parties have concluded a contract.

#### viii. Product liability

Product liability was introduced fairly recently in the Polish Civil Code<sup>123</sup>, as a result of implementation of the EU law. At its core is the liability of the manufacturers for any harm caused by a defective/unsafe product. The product refers to every moveable property even if incorporated into another product, including electricity. The product is defective when it does not provide the safety a person is entitled to expect. When assessing what is generally to be expected in relation to a product, the courts will take into account the manner in which the product has been marketed, the time and circumstances when it was put into circulation, and any information and instructions presented to the consumers with or in relation to the product. The producer will only be held liable for material damage if the damaged good was for the consumer's personal use.<sup>124</sup> Pursuant to Article 449<sup>3</sup> of the Civil Code, pertaining to the defences available to producers, scholars have discussed whether the burden of proving that the product caused the harm because it was defective, even though the defect did not exist in the product at the time it was put into circulation, should rely on the plaintiff.<sup>125</sup> They contend that such proof will be difficult or impossible to assert. However, the doctrine does not unanimously admit that in such cases a presumption could be created in favour of the plaintiff, and some authors argue that courts can mitigate the risk of alleging such proof by relying on mechanisms of factual presumptions and *prima facie* proof.<sup>126</sup>

#### ix. Insurance liability

The liability insurance for losses arising from potential contaminated losses is still not widespread in Poland,<sup>127</sup> even though main insurance companies include it in their offer.<sup>128</sup> In the literature, it is understood that the sources of ecological risks can include the use of the environment, interfering with it, the impact of natural forces, and the

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<sup>122</sup> Art. 12 of the Act on Combating Unfair Market Practices of 2007.

<sup>123</sup> A Lipiński, *Prawne podstawy ochrony środowiska*, 5<sup>th</sup> edition, Oficyna 2010.

<sup>124</sup> Article 449<sup>2</sup> of the Civil Code.

<sup>125</sup> T Bielska-Sobkiewicz, "Art. 449<sup>3</sup>" in J Gudowski (ed), *Kodeks cywilny. Komentarz*, 2<sup>nd</sup> edition, Wolters Kluwer 2018, pp.1139-40.

<sup>126</sup> C [u]ławska in G Bieniek (ed), *Komentarz do kodeksu cywilnego*, vol. I, Lexis Nexis 2011, p. 722.

<sup>127</sup> M Rutkowska, A Sulich, J Pakulska, "Ubezpieczenia środowiskowe w Polsce i wybranych krajach UE", 3 ZN *WSH Zarządzanie* 2017, p. 88; G Sordyl, M Płonka, "Ubezpieczenie ekologiczne jako metoda finansowania ryzyk w górnictwie", *Wiadomości Ubezpieczeniowe* 1/2010, p. 103.

<sup>128</sup> See e.g. ERGO Hestia, EKO Hestia, available at <<https://www.ergohestia.pl/dla-firmy/oc/eko-hestia/>>, last accessed on 5 March 2023; AIG, Environmental Insurance, available at <<https://www.aig.pl/content/dam/aig/emea/poland/documents/brochures/przewodnik-ubezpieczenia-srodowiskowych-brochure.pdf>>, last accessed on 5 March 2023.

consequences of legal and administrative decisions. The ecological damage can pertain to direct damage to the environment, harm to the person or the property, damage to the environment as a common good and damage to natural resources used by an individual.<sup>129</sup> However, the insurance coverage will most frequently concern the financial protection of certain types of costs in relation to the environment that the company may be obliged to bear, including possible costs of environmental litigation. One research from 2004 indicated that the sector that resorts most frequently to environmental insurance is the industrial sector, particularly the production and supply of electricity, gas and water.<sup>130</sup> Mining and quarrying also exhibited a significant reliance on insurance for environmental damage.<sup>131</sup> There is no general duty to be insured under the Polish law; therefore, some changes in this area may come from the European law rather than internal legislative reform. There is no known case law of corporations suing insurers for refusing to cover environmental or climate change lawsuits. There is also no indication that insurance carriers consider any Polish region as risky area in relation to climate change consequences.

#### x. Unjust enrichment

Pursuant to Article 405 of the Polish Civil Code, unjust enrichment occurs when one person has gained a material benefit at the expense of another without legal grounds. The restitution of benefits should take place in kind and only when the restitution in kind is impossible it can take the form of restitution in value. According to courts and the doctrine, unjust enrichment is determined by four conditions which must be fulfilled cumulatively<sup>132</sup>: the enrichment of one person or entity, an impoverishment of another person or entity, a connection between the enrichment and the impoverishment, and the absence of legal grounds for the enrichment.<sup>133</sup> In comparison with civil liability in tort, the plaintiff does not have to prove when the damage occurred, its amount, or the causal link between the damage and the acts of the enriched and their fault or negligence. Regarding the statute of limitations, the opinion that prevails in the doctrine is to apply the time limits pursuant to Article 118 of the Polish Civil Code i.e., six years for claims not arising from conducting a business activity, and three years for the claims related to such activity. To the best of our knowledge, there is no debate among Polish

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<sup>129</sup> D Maśniak, *Ubezpieczenia ekologiczne*, Kantor 2003, p. 119.

<sup>130</sup> G Sordyl, M Płonka, "Ubezpieczenie ekologiczne jako metoda finansowania ryzyk w górnictwie", *Wiadomości Ubezpieczeniowe* 1/2010, p. 100.

<sup>131</sup> *Idem*.

<sup>132</sup> P Horosz, "Art. 405" in M Załucki (ed), *Kodeks cywilny. Komentarz*, 2nd edition, C.H. Beck 2020, p. 920, who also points out that some scholars join the first and second of the premises in one condition; see also W Dubis, "Art. 405" in E Gniewek, P Machnikowski (eds.), *Kodeks cywilny. Komentarz*, 9<sup>th</sup> edition, C.H. Beck 2019, p. 842.

<sup>133</sup> The Court of Appeal in Łódź, 17 June 2015, I Aca 1781/14, Legalis; K Pietrzykowski in K Pietrzykowski (ed), *Komentarz KC*, vol. 1, 2018, p. 1372; P Horosz, "Art. 405" in M Załucki (ed.), *Kodeks cywilny. Komentarz*, 2<sup>nd</sup> edition, C.H. Beck, Warsaw 2020, p. 920; K Mularski in M Gutowski, *Komentarz KC*, vol. 1, C.H. Beck 2016, p. 1528.

scholars on unjust enrichment as a possible cause of action in climate change litigation, nor any decision by Polish courts on unjust enrichment claim in environmental litigation.

## D. Company and Financial Laws

In Poland, the legal literature and practice on company and financial laws applicable to companies in the realm of climate change liability is still scarce. On the national level, specific projects are attempting to develop solutions on business due diligence in the field of human rights.<sup>134</sup> Moreover, some research conducted on regional level and European level, albeit not directly including Polish jurisdiction, is deemed to be applicable to Polish companies as well. This is the case of the report<sup>135</sup> on sustainable reporting guidelines, including climate change goals, prepared for the Czech Stock Exchange and Czech companies, which due to its international and European character, could be relied upon by Polish companies as well.<sup>136</sup> The report refers to the EU Commission proposal, issued on 23 February 2022, for EU rules for mandatory corporate sustainable due diligence (Sustainability Due Diligence Directive). It emphasises that if the Directive is adopted, the victims of harm which could have been prevented or mitigated might have a right to bring a civil liability claim before the national courts.<sup>137</sup> In that context, the due diligence directive may build on the existing corporate liability regimes and standard of care.<sup>138</sup>

With regard to national laws, some litigants resorted to legal instruments from the Code of Commercial Companies to build climate cases against corporations. In 2018 ClientEarth, acting as a minority shareholder, requested the annulment by a court of the resolution adopted at the general meeting of Enea's shareholders pertaining to the planned coal-fired power plant Ostrołęka C. The case was reported as the first lawsuit

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<sup>134</sup> Narodowe Centrum Nauki, *Należyta staranność przedsiębiorstw w zakresie praw człowieka - studium implementacji w prawie krajowym*, available at < [https://projekty.ncn.gov.pl/index.php?projekt\\_id=519696](https://projekty.ncn.gov.pl/index.php?projekt_id=519696)>, last accessed on 22 March 2023.

<sup>135</sup> Deloitte and Frank Bold Advisory, *Sustainability Reporting Guidelines Promoting better corporate practices in response to growing market expectations by enhancing environmental, social and governance (ESG) reporting in the Czech Republic*, available at < <https://www.pse.cz/en/sustainable-investing>>, last accessed on 22 March 2023.

<sup>136</sup> Frank Bold, „Pierwszy kompleksowy przewodnik po raportowaniu ESG według nowych europejskich standardów. Frank Bold współautorem wytycznych”, 8 March 2023, available at < <https://blog.frankbold.pl/pierwszy-kompleksowy-przewodnik-po-raportowaniu-esg-wedlug-nowych-europejskich-standardow-frank-bold-wspolautorem-wytycznych/>>, last accessed on 22 March 2023.

<sup>137</sup> Deloitte and Frank Bold Advisory, *Sustainability Reporting Guidelines Promoting better corporate practices in response to growing market expectations by enhancing environmental, social and governance (ESG) reporting in the Czech Republic*, p. 24.

<sup>138</sup> I Jędrzejowska-Schiffauer, P Schiffauer, “Human Rights Due Diligence As Part Of Corporate Risk Management: Insights From The EU Policy Debate”, XXIII (2) *European Research Studies Journal*, 2020, p. 981, who also point out that ‘[i]n the European legal tradition a well-established principle of tort law allows for ascribing blameworthiness and thus also liability to a defendant who infringed on his obligation of the legal standard of care (due diligence).’

of this kind in the world.<sup>139</sup> ClientEarth challenged the resolution on the grounds, among others, that: (i) it was an impermissible instruction to the management board of the company and therefore legally invalid and (ii) would harm the economic interests of the company and should therefore be annulled. The Court found in favour of ClientEarth on the first ground – i.e., the resolution consenting to the construction of the plant was legally invalid. This made it unnecessary to proceed to determine whether it would harm the economic interests of the company based on climate-related financial risks.<sup>140</sup> Finally, in 2020, Enea suspended the financing for this investment.<sup>141</sup>

Further to the court's decision, in 2021 the Supreme Audit Office reported improper risk management by Enea for the investment in power plant Ostrołęka C and recommended a legal action against its former board members. On 28 December 2023, the management of Enea filed a lawsuit against the company's former directors and its insurers for lack of due diligence over a decision on investing in a coal power plant investment Ostrołęka C.<sup>142</sup> Enea is seeking PLN 650 million in damages.<sup>143</sup>

## E. Consumer Protection Laws

The protection of consumers is guaranteed by Article 76 of the Polish Constitution. However, provisions pertaining to consumers' rights are included in several legal acts such as the Act on Competition and Consumer Protection, the Act on Consumer's Rights (applicable to contracts concluded with consumers), and acts in the field of banking, financial, housing, energy, and commercial laws. In accordance with the Act on Competition and Consumer Protection, the main agency responsible for the implementation of consumer policy is the President of the Office of Competition and Consumer Protection (hereinafter: the OCCP), who has a right to initiate administrative proceedings regarding violation of collective consumer interests and impose fines on entrepreneurs for practices infringing collective consumer interests. Greenwashing may

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<sup>139</sup> "Pierwszy pozew klimatyczny. Enea pozwana przez Fundację ClientEarth za Ostrołękę", 28 October 2018, available at < <https://www.parkiet.com/energetyka/art20344121-pierwszy-pozew-klimatyczny-enea-pozwana-przez-fundacje-clientearth-za-ostroleke>>, last accessed on 31 March 2023.

<sup>140</sup> ClientEarth, "Major court win shows power of corporate law to fight climate change", 1<sup>st</sup> August 2019, available at < <https://www.clientearth.org/latest/latest-updates/news/major-court-win-shows-power-of-corporate-law-to-fight-climate-change/>>, last accessed on 3 April 2023.

<sup>141</sup> "Zwycięstwo klimatyczne: Energa i Enea zawieszają finansowanie elektrowni Ostrołęka C", 14 February 2020, available at < <https://www.clientearth.pl/najnowsze-dzialania/artykuly/zwyciestwo-klimatyczne-energa-i-enea-zawieszaja-finansowanie-elektrowni-ostroleka-c/>>.

<sup>142</sup> Interview with Enea's CEO in Rzeczpospolita, 5 January 2024, available at < <https://energia.rp.pl/elektroenergetyka/art39659291-kulisy-roszczen-enei-wobec-bylych-decydentow-wywiad-z-prezesem>>, last accessed on 11 February 2024.

<sup>143</sup> "Polish energy giant suing former directors and insurers for lack of due diligence over a coal power plant investment", 2 February 2024, available at < <https://investesg.eu/2024/02/02/polish-energy-giant-suing-former-directors-and-insurers-for-lack-of-due-diligence-over-a-coal-power-plant-investment/>>, last accessed on 11 February 2024.

be such a practice and, therefore, subject to up to 10% of the company's turnover achieved in the financial year preceding the year of imposing the fine.<sup>144</sup> So far, the Office has imposed only one fine for greenwashing. In 2020, it fined for over PLN 120 million Volkswagen Group Polska for misleading consumers as to the level of exhaust emissions of their cars and providing its network of distributors with guidelines aimed at rejecting complaints pertaining to these levels.<sup>145</sup> The President of the OCCP also hears entrepreneurs' appeals against the decisions of inspectors of the Trade Inspection. As a result of these appeals, several greenwashing decisions were issued. However, the fines in these proceedings were symbolic.

## F. Fraud Laws

Fraud can be subject to both criminal<sup>146</sup> and tort liability. As per liability for tort, the plaintiff would have to prove the existence of standard liability elements i.e., damage, fault, and the causal link between the wrongful act and the damage. If parties are bound by a contract, a fraud committed by one of them in order to conclude a contract would render it voidable in accordance with provisions of the Polish Civil Code pertaining to defective consent. A consumer who concluded an unfair agreement or was subject to a fraudulent practice may have a cause of action based on consumer laws.

## G. Contractual Obligations

Contractual liability is governed by Article 471 of the Polish Civil Code which provides that the debtor shall be obliged to redress the damage resulting from the non-performance or improper performance of the obligation.<sup>147</sup> The conditions for the contractual liability are: the act (e.g., a non-performance), damage and the causal link between the two. The fault is presumed.<sup>148</sup> Some part of the doctrine argues that the provision applies only to material damage.<sup>149</sup> Other scholars maintain that it also covers damage to non-material interests, and therefore it can be invoked in cases of

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<sup>144</sup> Article 106(1) of the Act on Competition and Consumer Protection.

<sup>145</sup> Decision of the President of the OCCP, no. DOZIK-2/2020.

<sup>146</sup> Art. 286 of the Polish Criminal Code.

<sup>147</sup> The Polish Civil Code does not contain a specific provision applicable only to contractual liability. Therefore, theoretically at least, Article 471 could be invoked also in case of liability for torts. T Szanciło contends that in practice this provision is relied upon mainly in cases of contractual liability (T Szanciło, "Art. 471" in M Załucki (ed), *Kodeks cywilny. Komentarz*, 2<sup>nd</sup> edition, C.H. Beck 2020, p. 1038.

<sup>148</sup> T Szanciło, "Art. 471" in M Załucki (ed), *Kodeks cywilny. Komentarz*, 2<sup>nd</sup> edition, C.H. Beck 2020, p. 1043.

<sup>149</sup> K Zagrobelny, "Art. 471" in E Gniewek, P Machnikowski (eds), *Komentarz KC*, C.H. Beck 2017, par. 11; W Borysiak, "Art. 471" in K Osajda (ed), *Komentarz KC*, Legalis 2018, par. 59-60 (with references to the literature and case law); Court of Appeal in Szczecin, I Aca 254/16, 23 June 2016.

some special contracts e.g., for medical services or tourist services in case of ruined holidays. There is no pending lawsuit based on provision on contractual obligations.

## H. Planning and Permitting Laws

In case of planning and permitting laws, the legal action will be governed by administrative law and directed to challenge decision issued by authorities. In many cases of business activities, the operating companies must receive the environmental approval for their investment.<sup>150</sup> Citizens and environmental organisations have a right to participate in administrative proceedings and challenge the decisions resulting thereof based on the provisions of the Polish Act on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment and Act - Law on Proceedings before Administrative Courts. They may also apply to the Polish Ombudsman – the Commissioner for Human Rights who can inquire authorities about the specific case or join legal proceedings and present their arguments and opinion on the claim. Finally, as per Article 325 of the EPLA, the civil liability for the damage to the environment is not excluded in case of activities that were conducted based on the administrative decision and within its limits (see developments *supra* on Article 325). The provision refers to the damage that was caused to the environment; therefore, the civil liability resulting thereof will be of compensatory nature.<sup>151</sup>

In the long legal saga of Turów mine<sup>152</sup>, run by PGE - a state-owned energy firm, several environmental organisations and one German municipality challenged two environmental decisions issued by the climate ministry of Poland to extend the license for lignite mining, first until 2026 and then until 2044. Claimants argued that mine's operations harmfully impact climate, the environment, and national water resources.<sup>153</sup> In July 2023, the Polish Supreme Administrative Court has overturned the decision by a lower court granting an interim measure of suspending the enforceability of the environmental approval. On 31 August 2023 the lower court, which must still decide whether the environmental decision was issued in accordance with the law, suspended the proceedings in the case.

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<sup>150</sup> Article 71ff of the Act on information on the environment and its protection, public participation in environmental protection and environmental impact assessments.

<sup>151</sup> B Rakoczy, "Art. 325" in Z Bukowski, E K Czech, K Karpus, B Rakoczy (eds), *Prawo ochrony środowiska. Komentarz*, 1<sup>st</sup> edition, Lexis Nexis 2013, p. 326.

<sup>152</sup> Czech Republic v. Poland, available at: <<http://climatecasechart.com/non-us-case/czech-republic-v-poland-mine-de-turow/>>, last accessed on 22 March 2023.

<sup>153</sup> J Wojączyk, "Ekolodzy zaskarżyli przedłużenie koncesji dla kopalni Turów", *Interia*, 28 February 2023, available at <<https://zielona.interia.pl/polityka-klimatyczna/polska/news-ekolodzy-zaskarza-przedluzenie-koncesji-dla-kopalni-turow,nld,6625788>>, last accessed on 19 March 2023.

In 2015, environmental organisations, local residents, and landowners challenged the decision issued by local authorities in Tczew granting a construction permit for building the biggest power plant in Poland. The power station was supposed to be composed of two units of 800 MW each, planned for commissioning in 2020. The plaintiffs contended that local authorities disregarded the investment's harmful impact on the environment and had not followed public consultation procedures. After a long legal battle, in 2019 the Supreme Administrative Court issued a final decision in this case effectively blocking the project

## 2. Procedures and Evidence

### A. Actors Involved

#### i. Plaintiffs

Climate cases can be brought by individuals, NGOs, and groups of litigants. Any natural and legal person with full capacity for acts in law can sue and be sued in civil law proceedings as per Article 64 of the Polish Code of Civil Procedure. In cases pertaining to environmental protection, non-governmental organisations may also, within the scope of their statutory duties, bring an action on behalf of a natural person or initiate the proceedings independently when the lawsuit is based on the Environmental Protection Law Act. Environmental organisations can also participate in administrative proceedings in public interest lawsuits.<sup>154</sup>

Cases based on the Code of Commercial Companies were brought by shareholders.

Both corporate climate cases based on the EPLA were initiated by environmental organisations (Greenpeace and ClientEarth).

#### ii. Defendants

To date, civil law claims have been brought against companies from the energy sector (Enea, PGE) and automotive industry (Volkswagen). Power plant projects were challenged in administrative proceedings (where defendants are state/local authorities). Various other companies (including financial institutions) were sued for their greenwashing practices. The State Treasury and local authorities were also sued based on the civil law for their inaction in taking measures preventing air pollution, their responsibility for climate change and violation of personal rights resulting thereof. It is not excluded that companies from other sectors will be defendants in climate proceedings.

#### iii. Third-party intervenors

Pursuant to Articles 8 and 61 & 62 of the Polish Code of Civil Procedure, the ecological organisation in environmental claims should be able: to bring a lawsuit in its own capacity, but only in situations provided for in the EPLA; to bring a lawsuit on behalf of an individual, but only in the frame of its statutory goals and with the written

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<sup>154</sup> M Adamczak-Retecka, *Odpowiedzialność odszkodowawcza za szkody klimatyczne z perspektywy prawa Unii Europejskiej*, Gdańsk 2017, p. 200. However, in 2021 administrative courts ruled that individuals and NGO's do not have a right to file a complaint against the air protection plan prepared by local authorities. The plaintiffs are challenging this decision before the European Court of Human Rights for the violation of their right to a fair trial and an adequate remedy.



authorisation of that person; join an individual for the claim already brought, but only in the frame of its statutory goals and with the written authorisation of that person.<sup>155</sup> Notwithstanding the fact that the intervention of the environmental organisations based on the Polish Code of Civil Procedure is similar to participation of a secondary intervenor, they are not in fact secondary intervenors nor are considered as third-party autonomous intervenors.<sup>156</sup> Alternatively, and as per Article 63 of the Code of Civil Procedure, the environmental organisation can submit to a court an opinion relevant to the case, not only on its own motion but also at the initiative of the court (the legal doctrine is not unanimous on the latter point).<sup>157</sup> Scholars argue that this provision may be important in practice, as proceedings relating to the protection of one's own interest and of public interest are of a different nature.<sup>158</sup>

Article 323 § 2 of the EPLA gives right to act before courts against persons or entities that have damaged the environment or created a risk thereof to the State Treasury, local authorities, and to environmental protection organisations (ecological organisations). The right derived from Article 323 § 2 of the EPLA is close to *actio popularis* as it pursues the goal of protecting the environment in the form of a common good;<sup>159</sup> however, the Environmental Protection Law Act does not give the right to any citizen to bring such claim. Only persons that suffered or may suffer the damage as a result of the unlawful harm to the environment have a right to sue.<sup>160</sup> For the ecological organisation to be able to bring a lawsuit based on the EPLA, it must substantiate a harm to the environment understood as a common good.

## B. How the courts address issues of:

### i. Standing

The existence or absence of standing to bring proceedings is determined by the substantive law related to the specific situation that is the subject of the dispute between the parties.<sup>161</sup> A party has legal standing when, on the basis of the provisions of substantive law, it is entitled to act in a specific civil lawsuit as a plaintiff or defendant, i.e. when the legal relationship binding the parties to the trial results in both the claimant's right to submit a specific request, as well as the defendant's obligation to fulfil

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<sup>155</sup> B Iwańska, *Koncepcja „skargi zbiorowej” w prawie ochrony środowiska*, Lex 2013, p. 615-16.

Art.

<sup>157</sup> B Iwańska, *Koncepcja „skargi zbiorowej” w prawie ochrony środowiska*, Lex 2013, p. 617; M Sychowicz in K Piasecki, *Kodeks postępowania cywilnego*, p. 284; contra P Telenga, “Komentarz aktualizowany do Art. 63 Kodeksu postępowania cywilnego” in A Jakubecki (ed), *Komentarz aktualizowany do ustawy z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego*, Lex 2011.

<sup>158</sup> K Gruszecki, „Art. 323” in K Gruszecki, *Prawo ochrony środowiska. Komentarz*, wyd. VI, WKP 2022.

<sup>159</sup> K Gruszecki, „Art. 323” in K Gruszecki, *Prawo ochrony środowiska. Komentarz*, wyd. VI, WKP 2022.

<sup>160</sup> B Rakoczy, „Art. 323”, p. 594.

<sup>161</sup> Provincial Court in Białystok, 29 July 2016, II Ca 464/16.

the claim. The court assesses the existence of standing at the time of adjudicating the merits of the case. However, it is unclear in the doctrine if the lack of legal standing - active or passive - must lead to the dismissal or the rejection of the claim. The legal standing of non-governmental organisations has been limited in terms of subject and personal matter of the claim. Pursuant to the interpretation of Article 61 § 1-2 of the Polish Code of Civil Procedure, a non-governmental organisation may pursue the rights of natural persons only in civil proceedings. In turn, the subject-matter restriction relates to the catalogue of claims included in Article 61 § 1 of the Polish Code of Civil Procedure for which the NGOs have standing. These include cases on alimonies, pertaining to the environmental protection, consumer protection, protection of industrial property rights, and protection of equality and non-discrimination through unjustified direct or indirect differentiation of citizens' rights and obligations. The environmental protection claim will also be admitted in actions brought for infringement of personal rights affected by activities that threaten or destroys environment, based on the provisions of the Civil Code or the EPLA.<sup>162</sup>

The matters listed in Article 61 of the Polish Code of Civil Procedure should be also included in the statutory tasks of the organisation. In addition, a non-governmental organisation – pursuant to Article 61 § 3 of the Polish Code of Civil Procedure – with the consent of a member expressed in writing, may bring an action on its behalf or join it in pending proceedings for claims arising from its business activity. The non-governmental organisation does not act merely as a representative of a legal person, but its position in the case is similar to a secondary intervenor.<sup>163</sup>

It follows from the above that the condition for obtaining legal standing by an NGO in all these cases is to receive permission to bring a lawsuit or join the proceedings. Failing to do so will not amount to a formal defect that can be removed under Article 130 of the Polish Code of Civil Procedure, but rather to the lack of legal standing.<sup>164</sup> According to well-established doctrine, when a non-governmental organisation brings the claim or participates in the proceedings pursuant to Article 61 of the Polish Code of Civil Procedure, the court verifies whether the aforesaid organisation conducts a business activity, whether the subject of the dispute concerns one of the cases indicated in Article

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<sup>162</sup> Court of Appeal in Poznań, 20 December 2021, IACz 403/21, available at <[http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20211220\\_15778\\_decision.pdf](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20211220_15778_decision.pdf)>.

<sup>163</sup> A Partyk, "Art. 61" in O M Piaskowska (ed), *Kodeks postępowania cywilnego. Postępowanie procesowe. Komentarz*, Wolters Kluwer 2020, p. 228.

<sup>164</sup> See e.g., J Jagieła, "Zgoda osoby fizycznej na wszczęcie postępowania i przystąpienie do niej przez organizację pozarządową", *Przegląd Sądowy*, 2015/2, p. 14; E Rudkowska-Ząbczyk, "Komentarz do Art. 61 k.p.c." in E Marszałkowska-Krześ (ed), *Kodeks postępowania cywilnego. Komentarz*, Legalis 2020, n. 11; contra M Kaczyński, M Sorysz, "Komentarz do Art. 61 k.p.c." in A Góra-Błaszczkowska (ed), *Kodeks postępowania cywilnego. Komentarz. Art. 1-424*<sup>12</sup>, vol. I A, n. 4; A Kościółek, "Udział organizacji pozarządowych w postępowaniu cywilnym w świetle nowelizacji KPC z 16.9.2011 r.", *Monitor Prawniczy* 2012/21, p. 1135.

61 § 1 and 3 of the Polish Code of Civil Procedure, and whether it is included in its statutory tasks.<sup>165</sup>

## ii. Justiciability

Polish legal provisions on justiciability do not include considerations similar to the political question doctrine existing in the United States of America.

Article 199 of the Polish Code of Civil Procedure provides only that the court shall reject the claim if the action is inadmissible i.e., if the case does not concern rights and obligations resulting from the civil law.<sup>166</sup> The concept of civil rights and obligations is understood in Polish legal doctrine as a legal protection claim falling in the scope of a personal, family or material relationship existing between entities regarded as equal-rights partners.<sup>167</sup> Environmental claims based on the provisions of the Civil Code are considered as matters of civil law. As to the climate change claims, at least one court, albeit indirectly, confirmed that they should also be regarded as justiciable before civil courts. The case concerned a citizen suing the State Treasury for the violation of personal right in relation to state's inaction to mitigate climate change. Although the lawsuit was dismissed, the court did not reject it, as it would be the case if the claim was inadmissible.<sup>168</sup> Similar cases against the State Treasury introduced before civil courts for air pollution were not questioned by civil courts as falling outside their jurisdiction,<sup>169</sup> nor were cases on the basis of Article 323 of the EPLA.<sup>170</sup>

## iii. Jurisdiction

Jurisdiction in cases concerning cross-border matters will be governed in Poland by the Brussels Ibis Regulation. For some issues, Polish courts may struggle with the correct interpretation of the Regulation which can be exemplified by the class action filled by Polish consumers against Volkswagen for its role in Dieselskandal. In this case, both the Provincial and the Court of Appeal in Warsaw dismissed the lawsuit for lack of jurisdiction.<sup>171</sup> The courts ruled that Polish car owners should file their lawsuit either in

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<sup>165</sup> M Maciejewska-Szałas, "Organizacje pozarządowe i formy ich uczestnictwa w postępowaniu cywilnym", *Gdańskie Studia Prawnicze* 2017/2, p. 128; J Jagieła, "Udział organizacji pozarządowych w postępowaniu cywilnym dla ochrony praw obywateli", *Zeszyty Naukowe Instytutu Administracji, Akademia im. J. Długosza w Częstochowie*, 2014/1(9), p. 40–41; F Manikowski, „Legitymacja procesowa w przypadku dochodzenia roszczeń przez pacjenta”, *Prawo w działaniu*, 48/2021, p. 175.

<sup>166</sup> T Szanciło, "Art. 199" in T Szanciło (ed), *Kodeks postępowania cywilnego. Komentarz*, vol. I, 2<sup>nd</sup> edition, C.H. Beck 2023, p. 873.

<sup>167</sup> P Feliga, "Art. 1" in T Szanciło (ed), *Kodeks postępowania cywilnego. Komentarz*, vol. I, 2<sup>nd</sup> edition, C.H. Beck 2023, p. 7.

<sup>168</sup> B Rogala, "Pozew przeciwko państwu za zmiany klimatu? „Wprawiliśmy proces w ruch” [interview]", 10 February 2023, available at < <https://300gospodarka.pl/wywiady/pozew-przeciwko-panstwu-za-zmiany-klimatu-wprawilismy-proces-w-ruch-wywiad>>, last accessed on 25 March 2023.

<sup>169</sup> See e.g., District Court of Łódź, I C 1386/19, 14 January 2021, District Court in Warsaw VI C 1043/18, 24 January 2019.

<sup>170</sup> See e.g., Provincial Court in Poznań, XVIII C 939/17, 28 September 2019.

<sup>171</sup> Provincial Court in Warsaw, 27 November 2017, confirmed by the Court of Appeal in Warsaw, 13 May 2019.

Germany, the place of incorporation of the company, or in the country where the vehicle was produced (e.g., Mexico). The law firm representing the class filed a cassation appeal within the Supreme Court which followed the decision issued by the CJEU and confirmed the Polish jurisdiction.<sup>172</sup>

#### iv. Group litigation / class actions

The Act on the Assertion of Claims in Group Proceedings allows for group proceedings to be brought in Poland on an 'opt-in' basis. Pursuant to Article 1 of the Act, it applies to civil court proceedings in cases where claims are pursued by at least ten claimants and are based on the same factual basis. Pursuant to Article 1.2 of the Act, the claims that can be brought as group proceedings must concern product liability, tort, liability for non-performance or improper performance of contractual obligations, and unjust enrichment. In the case of consumer protection claims, proceedings may also concern other matters such as seeking injunctive relief.

In 2019, a group called 'I sue smog' was constituted in order to bring a lawsuit against the State Treasury's liability for damage and harm suffered by members of the group and resulting from the omissions of the State Treasury in abating air pollution.<sup>173</sup> The purpose of this class action was to determine that the State Treasury was liable for the damage and harm suffered by members of the group, arising or likely to arise in the future, and resulting from a tort caused by inaction of the state authorities. The claim had already been brought before the Provincial Court in Warsaw by the group's representative, Mrs. Katarzyna Ankudowicz. However, the possibility of joining the proceedings was open until 22 June 2022.

In 2016, Polish consumers filed a class action against Volkswagen demanding compensation for manipulating emissions test in their vehicles.<sup>174</sup>

#### v. Apportionment of liability

In case of multiplicity of causes leading to damage, the Polish doctrine distinguishes between concurrent (alternative) and cumulative causality (albeit mainly for a divisible damage). Regarding the concurrent/alternative causes in Polish law i.e., when the damage arose from several causes however each separate tortious act is sufficient in and of itself to produce the damaging result, pursuant to Article 441 of the Polish Civil Code joint and several liability is assumed in that case. With regards to cumulative causes i.e., when there is more than one cause of the damage, with tortious activities

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<sup>172</sup> Judgment of the Supreme Court of 12 May 2022, II CSKP 1506/22, available at <<http://www.sn.pl/sites/orzecznictwo/orzeczenia3/ii%20cskp%201506-22.pdf>>.

<sup>173</sup> "Pozywam smog", <<https://pozywamsmog.eu/czlonkowstwo-w-grupie/>>, last accessed on 23 March 2023.

<sup>174</sup> "Consumers vs. Volkswagen (the so-called Dieselgate)", available at <[https://classaction.pl/en/historia\\_postepowan/consumers-vs-volkswagen-the-so-called-dieselgate/](https://classaction.pl/en/historia_postepowan/consumers-vs-volkswagen-the-so-called-dieselgate/)>, last accessed on 29 August 2023.

combined having an effect on the loss, different scenarios arise. When one of the cumulative causes is a tortious act and the other is an accidental event for which no one is responsible, Polish scholars offer alternative solutions: from no liability to partial liability to full liability.<sup>175</sup> Accordingly, in case of concurrent causes when the second even is of accidental nature, the position of the Polish law is inconclusive, and the Polish doctrine is divided on the subject. One part of the doctrine argues that the concurrent accidental cause absolves from any liability, another contends that the liability cannot in any case be absolved.

It is worth noting, that in the context of toxic tort, the Supreme Court<sup>176</sup> ruled that for establishing the liability of the company or plant based on Article 435 of the Polish Civil Code it is irrelevant that the damage could only be caused by the accumulation of harmful substances emitted by various industrial plants (so not only by defendant). Every plant that operates in an industrialized area can and should take into account that each additional source of toxic agent worsens the health conditions in this area and, as a result of the aggregation of various pollutants, can lead to specific damages, even when emissions from only one specific plant did not exceed the permissible concentrations of harmful pollutants, specified in the relevant regulations. Consequently, the defendant was liable to compensate plaintiffs' entire damage even though it was not the only plant to emit pollutants in the area. However, it is emphasised that in case of climate change litigation, the causation issue is linked to the contribution of a single corporation to climate change-related injuries and such contribution may be too remote to cause the damage. Therefore, the *sine qua non* test will not be fulfilled as per the causation requirements of Polish law.

#### vi. Costs

Poland is following the rule that unsuccessful litigants must pay the court costs and reimburse any necessary costs of the proceedings to the successful party. Usually, the party who failed to prove the legitimacy of its claim will be considered as unsuccessful.<sup>177</sup> Thus, either a claimant whose claim was rejected or dismissed or a defendant whose defence was deemed unconvincing, may be considered as an unsuccessful party. According to Article 108 of the Act on Court Costs in Civil Matters, exemption from court costs does not release from indemnifying the successful party for the costs of the proceedings. The proceedings costs that must be reimbursed should be necessary and related to the claim. Necessary costs of proceedings conducted by a party in person or by an attorney other than an advocate will include court costs

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<sup>175</sup> K Krupa-Lipińska, *Związek przyczynowy jako przesłanka odpowiedzialności z tytułu czynów niedozwolonych*, WKP 2020, chapter: „Przyczynowość konkurencyjna”.

<sup>176</sup> Judgment of the Supreme Court of 7 October 1976, IV CR 380/76.

<sup>177</sup> D Rystała, “Art. 98” in T Szancilo (ed), *Kodeks postępowania cywilnego. Komentarz*, vol. I, ed. 2<sup>nd</sup>, C.H. Beck 2023, pp. 450-451.

(travelling expenses and the equivalent of lost earnings as a result of the party's appearance in the court). Necessary costs of proceedings of a party represented by an advocate compromise the advocate's fee (with a limitation cap), their out-of-pocket expenses, court costs and costs of the party's personal appearance in the court. Typically, proceeding costs will also include the expert witness' fee, which may be substantial in some cases e.g., climate proceedings. There is no uniform case law on including the costs of private expertise (i.e., ordered at party's own initiative) in proceedings costs that must be reimbursed.<sup>178</sup> According to recent amendments, the unsuccessful party shall also pay the interests on the awarded amount of the proceeding costs.

In particularly justified cases, the court may order the unsuccessful plaintiff to pay only some costs or order not to charge it with any costs at all. The particularly justified cases are not defined by law. According to the case law, the provision covers cases of the precedential nature,<sup>179</sup> which may be relevant for climate change claims against corporations. The court rules on the matter on its own motion.

Certain categories of participants are not obliged to incur court costs. This includes non-governmental organisations bringing legal action on behalf of individuals e.g., in environmental protection cases (thus, also including the climate).

There is no regulation of third-party funding in Poland. In the absence of any constraints on a dispute-related financing to a party or a law firm, when occurring in practice such financing does not have to be disclosed to the court or the other party. However, third-party funding is not yet widespread in civil litigation in Poland.

A claim based on Article 323 of the EPLA is subject to a fixed court fee. However, a compensation claim will increase the court fees for the claimant as they are related to the value of the claim (as per the Act on Court Fees in Civil Cases, the higher the value of the claim, the greater the costs). Therefore, plaintiffs may view it as an obstacle in climate change proceedings to introduce claims seeking damages.

Proceedings costs can be a substantial hurdle for commencing a climate lawsuit in Poland. Climate cases will generally require specialised knowledge from experts. Assuming that courts will continue to consider that the attribution science requires evidentiary proof, this complex scientific issue would have to be submitted through expert's opinion, preferably presented by team of experts or a specialised research centre, which will further increase costs of the proceedings for claimants.

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<sup>178</sup> D Rystała, "Art. 98" in T Szancitko (ed), *Kodeks postępowania cywilnego. Komentarz*, vol. I, 2<sup>nd</sup> edition, C.H. Beck 2023, pp. 455-456.

<sup>179</sup> Supreme Court, 29 August 1973, I PR 188/73, PUG 1973/12, p. 413. See also M Manowska, "Art. 102" in M Manowska et al. (eds), *Kodeks postępowania cywilnego. Komentarz*, vol. I, 4<sup>th</sup> edition, Wolters Kluwer 2021, p. 361.

In many climate cases in Poland, the environmental organisations either have initiated the claim or have been assisting plaintiffs in their lawsuits (the two corporate climate proceedings were started by ClientEarth and Greenpeace). Without their involvement, individual litigants would often not be able to pay for attorneys' and expert witnesses' fees, or even court costs. Environmental organisations are also able to share their expertise on litigating issues and help raise public awareness of climate change as a critical legal issue.

## vii. Disclosure

Article 3<sup>180</sup> of the Polish Code of Civil Procedure, included in the "General Provisions" Section, establishes that the principle of truth governs civil proceedings. Consequently, the parties and participants to the proceedings should not abuse their rights, so that their procedural actions are performed honestly, reliably and truthfully.<sup>181</sup> The obligation to present evidence and facts supporting allegations rests with the parties and the court does not have to take evidence *ex officio* in order to clarify the circumstances of the case.<sup>182</sup> The request for information, which could be assimilated with the English notion of procedural disclosure, governed by Article 479<sup>112 et seq</sup> of the Code of Civil Procedure, is applicable only in proceedings in matters pertaining to intellectual property.<sup>183</sup> However, this disclosure regime merely encompasses certain specific information held by one party in the litigation process and must be requested by the other party who has to prove circumstances indicating an infringement of its right. A type of disclosure claim is also available as per Article 327 of the EPLA in proceedings pertaining to the environmental protection, where a party bringing a claim may request that the court orders that disclosure be provided by the other party to the proceedings. The costs of such disclosure are borne by the defendant (Art. 327 par. 2 of the EPLA).

## C. Most effective Arguments and Defences, and courts' responses

A high number of cases adjudicated by Polish courts pertain to air pollution. Indeed, in some regions, air pollution is a concern that has been recognised for decades (especially in strongly industrialised areas). For instance, already in 1976 the Supreme Court ruled (and this case law is still applicable) that on the basis of strict liability for

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<sup>180</sup> Article 3 provides the following: "The parties to and participants in proceedings are obliged to take procedural actions in accordance with good practice, to provide explanations as to the circumstances of a case truthfully and without concealing anything, and to tender evidence."

<sup>181</sup> T Ereciński, "Art. 3" in T Ereciński, *Kodeks postępowania cywilnego. Komentarz*, vol. I Postępowanie rozpoznawcze (art. 1-124), 6<sup>th</sup> edition, Wolters Kluwer 2023.

<sup>182</sup> K Flaga-Gieruszyńska, A Zieliński, *Kodeks postępowania cywilnego. Komentarz*, 10<sup>th</sup> edition, C.H. Beck 2019, p. 43.

<sup>183</sup> The newly introduced provisions transpose into national law the EU Directive 2004/48/EC on the enforcement of intellectual property rights.

risk activity, the plaintiffs do not carry the burden of proving that among various types of environmental pollutants harmful to health emitted by various industrial plants – including by the defendant’s company – the cause of the damage is pollution emitted by the defendant company.<sup>184</sup> The ruling effectively provided for *prima facie* evidence, as it would be extremely burdensome for plaintiffs to present a proof that specific toxic agents emitted by a specific industrial plant caused their disease.

The most recent cases were directed against the State Treasury for the extremely bad quality of air in Poland. The plaintiffs sustained various harms as a result of smog and air quality standards which are not respected in many regions of Poland. Moreover, two of the main Polish cities are among those with the most polluted air in the world. In relation to liability for the infringement of a personal right, especially when plaintiffs sustained a harm to their health, at least one court ruled that in order to satisfy the burden of proof, the plaintiffs should prove the causal link between the deterioration of their health and the polluted air. The court pointed out that such proof could be based on medical treatment of diseases linked to the smog.<sup>185</sup> In a more recent case, the Warsaw court ruled in favour of a plaintiff suing authorities for the infringement of its personal rights due to the distress caused by poor quality air.<sup>186</sup> In its ruling, the court relied on the opinion that Poland ineffectively implemented Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe in its national legislation, and the report of the Supreme Audit Office. However, and more importantly, the court stated that poor air quality in Poland is a well-known circumstance which pursuant to Article 228 of the Polish Civil Code does not require proof. Finally, the court confirmed that the causal link between breathing polluted air that does not comply with EU standards and the negative impact it has on health cannot be doubted. The court emphasised that, given the degree of economic development of the modern world, it is extremely important to care for the condition and quality of the environment as this has a direct impact on the lives and health of people.

The State Treasury as defendant raised, and is continuing to raise, the political question doctrine, which states that issues of climate change mitigation and adaptation are of a political nature and should be dealt with by executive and legislative government branches.<sup>187</sup> The courts decided to adjudicate the cases dismissing even implicitly this line of defence.<sup>188</sup>

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<sup>184</sup> Judgment of the Supreme Court of 7 October 1976, IV CR 380/76.

<sup>185</sup> District Court in Rybnik, II C 1259/15, 30 May 2018.

<sup>186</sup> District Court in Warsaw, VI C 1043/18, 24 January 2019.

<sup>187</sup> B Rogala, „Pozew przeciwko państwu za zmiany klimatu? „Wprawiliśmy proces w ruch” [interview]”, 10 February 2023, available at < <https://300gospodarka.pl/wywiady/pozew-przeciwko-panstwu-za-zmiany-klimatu-wprawilismy-proces-w-ruch-wywiad>>, last accessed on 25 March 2023.

<sup>188</sup> See e.g., decisions of: District Court in Łódź, I C 1386/19, 14 January 2021; District Court in Warsaw, VI C 1043/18, 24 January 2019; District Court in Rybnik, II C 1259/15, 30 May 2018.



In the case *Greenpeace v. PGE*<sup>189</sup>, the company, in its reply to the plaintiff's motion introducing the claim, raised various arguments denying the anthropogenic character of climate change.<sup>190</sup> For instance, it stated that the impact of human activity on the course of the so-called greenhouse effect is negligible; that no convincing scientific evidence exists as to the human release of carbon dioxide, methane, or other greenhouse gases causing global warming; and that substantial scientific evidence supports the argument that the increase in atmospheric carbon dioxide will have beneficial effects on the environment. During the later stage of the court proceedings, the company did not proceed further with this line of defence, simply stating that in any case its share in the total amount of greenhouse gas emissions is so insignificant that the remedy sought will be ineffective. However, after the first hearing, which took place on May 18 in the Provincial Court in Łódź, PGE prepared a press release in which it accused the NGO of 'an attack on Poland's energy sovereignty' in relation to the current geopolitical situation in Ukraine and resulting problems with the supply of energy resources. The company argued that Greenpeace's lawsuit can be interpreted as acting to the detriment of the Polish economy and Polish citizens, as well as national energy sovereignty, undermining the stability of the economy of the entire European Union.<sup>191</sup> Moreover, it could be taking legal steps against Greenpeace, including both civil (protection of personal rights) and criminal (defamation) causes of action.<sup>192</sup>

## D. Sources of evidence

Although the Polish Civil Code contains several provisions reversing the burden of proof, the basic standard applicable in the field of civil liability for torts is that the onus rests on plaintiff who must prove, at least, the damage (or the threat thereof) and the link of causation between it and the defendant's conduct or omission. In some instances, the unlawfulness of act is presumed (as in case of Articles 23 and 24 of the Polish Civil Code – protecting personal rights) or the proof of fault is not necessary. Most notably, the latter is a rule for the responsibility for risk (governed, in case of corporate civil liability for torts by Article 435 of the Polish Civil Code) which is a civil liability mechanism applicable in the frame of the protection of environment (and human harms resulting thereof). Additionally, it may be noted that Polish judiciary allow for *prima*

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<sup>189</sup> *Greenpeace v. PGE GiEK*, available at <[https://climate-laws.org/geographies/poland/litigation\\_cases/greenpeace-poland-v-pge-giek](https://climate-laws.org/geographies/poland/litigation_cases/greenpeace-poland-v-pge-giek)>, last accessed on 3 March 2023.

<sup>190</sup> „Briefing dotyczący odpowiedzi PGE GiEK na pozew Greenpeace” available at: <<https://www.greenpeace.org/static/planet4-poland-stateless/2020/09/1fa4b69c-briefing-dotycz%C4%85cy-odpowiedzi-pge-giek-na-pozew-greenpeace.pdf>>, last accessed on 26 February 2023.

<sup>191</sup> PGE press releases of 18 May 2022, available at: < <https://www.gkpgge.pl/grupa-pge/dla-mediow/komunikaty-prasowe/inne/nie-pozwolimy-na-ustrate-polskiej-suwerennosci-energetycznej>> and < <https://www.gkpgge.pl/grupa-pge/dla-mediow/komunikaty-prasowe/inne/bezprecedensowy-atak-greenpeace-na-suwerennosc-energetyczna-polski>>, last accessed on 23 March 2023.

<sup>192</sup> PGE press release of 21 January 2022, available at < <https://www.gkpgge.pl/grupa-pge/dla-mediow/komunikaty-prasowe/inne/oswiadczenie>>, last accessed on 23 March 2023.

*facie* evidence in cases where proving the causal link is particularly difficult or factually impossible for the plaintiff (which can be often the case of pollution and its effects on health, especially mental health). Although the *prima facie* evidence is allowed in order to prove the existence of a causal link, the plaintiff still has to prove the premise of damage and the potential cause of the damage. Therefore, when admitting the *prima facie* evidence, the burden of proof is not automatically transferred to the other party in its entirety. However, the practice of the courts is not homogenous and courts seem reluctant to lightly admit the shifting of the burden of proof even in cases where the statute introduces it, instead interpreting the legal provision as providing for *prima facie* evidence.

In the case law pertaining to various types of pollution causing human harm the claims for compensation were based on all types of civil liability (not only liability for risk). In recent years courts have seen the proliferation of cases relating to smog and air pollution. They were introduced rarely against companies, plaintiffs suing mostly public authorities (who can be held responsible for their acts or omissions on the basis of civil liability regime and Article 417 of the Polish Civil Code).

Finally, it should be noted that the commentators of the EPLA and scholars writing more generally on the burden of proof in the environmental law do not contend that the legislator should introduce the reverse burden of proof. The doctrine underlines that in case of civil liability for risk in the frame of EPLA, Article 435 of the Polish Civil Code already establishes a strict liability. Moreover, courts can allow indirect evidence to ease the situation of plaintiff or rule that the sole threat of damage is sufficient to trigger the liability. Moreover, Article 327 of the EPLA specifies that anyone bringing a claim may request the court to provide information necessary to determine the scope of liability of defendants. The claim pertaining to information provided must be filed along with a specific cause of action; consequently, it cannot be brought independently.<sup>193</sup> The conditions for applying Article 327 are a claim for the damage to the environment and information in the possession of the defendant that is necessary to assess the claim.

Pursuant to Article 327 par. 2 of the EPLA, in the case of claim dismissal or rejection, the defendant bears the costs in relation to the production of information. *A contrario*, scholars conclude that in the case of a successful claim, the costs would be borne by the defendant.<sup>194</sup>

It can be noted that in environmental cases, which would be relevant in climate litigation, courts never resorted to the reverse burden of proof, sometimes however allowing the *prima facie* evidence (especially in cases of environmental pollution

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<sup>193</sup> K Gruszecki, "Art. 327" in K Gruszecki, *Prawo ochrony środowiska. Komentarz*, 6<sup>th</sup> edition, Wolters Kluwer 2022.

<sup>194</sup> K Gruszecki, "Art. 327" in K Gruszecki, *Prawo ochrony środowiska. Komentarz*, 6<sup>th</sup> edition, Wolters Kluwer 2022.

causing nonphysical health issues). In doing so they relied on reports pertaining to the level of air pollution in Poland issued for instance by Polish Supreme Audit Office.<sup>195</sup> In one case concerning radioactive pollution, the court relied on the United Nations Scientific Committee on the Effects of Atomic Radiation's guidelines on diseases that could be caused by ionizing radiation, as well as the research of the Polish Institute of Oncology.<sup>196</sup>

In reference to climate litigation, although in case *ClientEarth v. PGE*, the court confirmed that the climate crisis is a fact and needs to be mitigated and the climate itself is a common good for which everyone is responsible, including coal companies,<sup>197</sup> there is no indication that courts in general would accept the attribution science as undisputed. Hence, to present their case, the plaintiffs would have to rely on experts' opinions or research centres' reports to present the scientific knowledge on the matter.

## E. Limitation Periods

No provision in the Polish law provides for a specific limitation period relating to climate change claims. Hence, the limitation periods will depend on the cause of action.

In the case of civil liability, the provisions of the environmental protection law do not provide for significant differences in terms of limitation periods. In most common claims arising from torts, the provision of Article 442<sup>1</sup> of the Civil Code will apply.<sup>198</sup> However, this provision covers only material harms, as a non-material injury resulting from the infringement of personal rights is not time-barred.<sup>199</sup> Consequently, in climate cases requesting compensation of a damage, the limitation period will be of three years since the claimant became aware of the damage and the person who caused it and in any case cannot be longer than 10 years from the day the event causing the damage occurred. In case of the event giving rise to the damage that extends in time, the limitation period will start to run on the day that the damaging conduct ceased.<sup>200</sup>

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<sup>195</sup> District Court in Warsaw, VI C 1043/18, 24 January 2019.

<sup>196</sup> Court of Appeal in Warsaw, I ACa 1261/12, 4 April 2013.

<sup>197</sup> ClientEarth, "Przełom w historii walki o ochronę klimatu w Polsce: sprawa ClientEarth vs Elektrownia Bełchatów przechodzi do dalszego etapu", 22 September 2020, available at: < <https://www.clientearth.pl/najnowsze-dzialania/artykuly/przelom-w-historii-walki-o-ochrone-klimatu-w-polsce-sprawa-clientearth-vs-elektrownia-belchatow-przechodzi-do-dalszego-etapu/>>, last accessed on 29 August 2023.

<sup>198</sup> Article 442<sup>1</sup> of the Polish Civil Code provides the following: "The claim for redress of the damage caused by a tort shall expire after the lapse of three years from the day on which the person who suffered the damage learned about it and about the person liable to redress it. However, in any case, the claim shall expire after the lapse of ten years from the day on which the event that caused the damage occurred."

<sup>199</sup> W Dubis, "Art. 442<sup>1</sup>" in E Gniewek, P Machnikowski (eds.), *Kodeks cywilny. Komentarz*, 9<sup>th</sup> edition, C.H. Beck 2019, p. 972; Judgment of the Supreme Court of 6 June 2018, I Aca 159/17.

<sup>200</sup> M Balwicka-Szczyrba, "Art. 442<sup>1</sup>" in M Balwicka-Szczyrba, A Sylwestrzak (eds), *Kodeks cywilny. Komentarz*, Wolters Kluwer 2022, p. 800.

In relation to multiple aspects of environmental protection, due to the nature of the violation of law, liability is either not 'barred by limitation', or the period during which the entity may be held liable for its actions or omissions is extremely long.<sup>201</sup> However, this exception does not apply to Article 323 of the EPLA or to the civil liability for torts.

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<sup>201</sup> D Wałkowski, I Zielińska-Barłópek, "Rozdział 1. Specyfika prawa ochrony środowiska w transakcjach" in D Wałkowski, I Zielińska-Barłópek (eds), *Prawo ochrony środowiska w transakcjach fuzji i przejęć oraz nabycia nieruchomości*, LexisNexis 2014, pp. 33-34.

## 3. Remedies

The remedies sought in Poland in climate litigation (i.e., not only against corporations but also against the State Treasury) are both pecuniary and injunctive reliefs. The main remedies available in tort law (in conjunction with the EPLA provisions) are compensation damages and injunctions. Claims based on company and financial laws will seek to obtain court's decision on company's resolutions or injunction to complete company's annual reporting. In administrative proceedings, remedies available to claimants through judicial control include declaratory and injunctive reliefs.

### A. Pecuniary Remedies

The Polish Civil Code, pursuant to the EPLA reference, provides for the following remedies, which can also be sought in corporate climate litigation: compensatory damages (Articles 435 and 415 of the Polish Civil Code) and reparation of the harm, which can also take the form of a financial compensation, but only if restoration of the previous condition is impossible or would result in the person being obliged to incur excessive difficulties or costs (Articles 415 or 435 in conjunction with Article 363 of the Polish Civil Code). Remedies sought pursuant to the EPLA in conjunction with the provisions of the Civil Code can include monetary compensation; however, under Article 323 of the EPLA, this remedy can be sought only in cases where restoring the environment to its previous condition is no longer possible or through repayment of the sum spent on reparation of the damage by a third party (in the latter case, the damages can only cover the reasonable costs actually borne by the claimant).<sup>202</sup>

Pecuniary remedies can also be sought based on Article 144 in conjunction with Articles 415 ff of the Polish Civil Code. The fact that the legal person who committed the tortious act undertook all measures to prevent the nuisance, does not exempt it from liability to compensate the resulting damage.<sup>203</sup>

To date, no claim has been introduced before courts seeking pecuniary compensation from corporations for the harms resulting from climate change. In climate proceedings against the State Treasury, Polish citizens based their claims on a violation of their personal rights, the remedies sought included pecuniary remedies in the form of symbolic compensation.<sup>204</sup>

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<sup>202</sup> J Ciechanowicz-McLean, *Prawo ochrony i zarządzania środowiskiem*, 2<sup>nd</sup> edition, Difin 2019, p. 124.

<sup>203</sup> A Machnikowska, "Art. 144" in M Załucki (ed), *Kodeks cywilny. Komentarz*, 3<sup>rd</sup> edition, Wolters Kluwer 2023, p. 375.

<sup>204</sup> M Danielewicz, "'Bezczynność rządu odbija się na moim zdrowiu'. Piotr pozwał skarb państwa za brak troski o klimat", 18 March 2023, *Gazeta Wyborcza*, available at <<https://poznan.wyborcza.pl/poznan/7,36001,29568889,w-swoim-domu-nie-czuje-sie-juz-bezpieczny-to-przez-zmiany-klimatu.html>>, last accessed on 3 April 2023; „W Piotrkowie Trybunalskim ruszył precedensowy proces ws.

## B. Non-Pecuniary Remedies

The Polish Civil Code, in conjunction with the provisions of the EPLA, provides for the following non-pecuniary remedies, which can also be applicable in cases pertaining to climate protection: action for abatement of a nuisance as per Article 222 § 2 in conjunction with Article 144 of the Polish Civil Code, with the complementary action of abating the threat of the harm and security request, if necessary (Article 439 of the Polish Civil Code); request for abatement of the threat to personal interest, and in case of violation thereof the payment of damages for an indicated caritative purpose (Article 24 in conjunction with Article 448 of the Polish Civil Code); and preventive injunctions based on Article 323 of the EPLA which allows, in case of the threat of the environmental damage, to cease the activity that may cause the damage, and if the damage was already caused, to repair it and cease any further activities harmful to the environment. In terms of climate litigation, Article 323 could be used to ask an injunction ordering a corporation to take positive restorative steps.

In corporate climate lawsuits against energy corporations introduced in Poland, first ClientEarth, then Greenpeace, both acting as plaintiffs in separate proceedings, are requesting that the company, PGE GiEK (owner of, inter alia, power plants and coal pits Bełchatów, the biggest carbon polluter in Europe,<sup>205</sup> and Turów – recognised as the second most polluting industrial facility in Poland and 7th in the entire European Union)<sup>206</sup> cuts greenhouse gas emissions arising from burning coal by 2030 at the latest. In the case *Greenpeace v. PGE*, the company did not agree to the voluntary preparation of a decarbonization strategy for its power plants.

In five different suits introduced by citizens against the State Treasury,<sup>207</sup> plaintiffs are seeking a ruling from the court compelling the government to take decisive action to protect the climate by committing itself to achieving climate neutrality by 2043, not exceeding its emissions budget allocated for 2020-2043, and reducing greenhouse gas emissions by at least 60 percent by 2030 (compared with the 1990 level). The plaintiffs

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zmian klimatu”, 9 February 2023, *Rzeczpospolita*, available at <<https://www.rp.pl/dobra-osobiste/art37928461-w-piotrkowie-trybunalskim-ruszy-l-precedensowy-proces-ws-zmian-klimatu>>, last accessed on 5 April 2023.

<sup>205</sup> Statista, “Biggest polluters in the European Union in 2021”, available at <<https://www.statista.com/statistics/1130785/biggest-polluters-european-union/>>, last accessed on 20 March 2023.

<sup>206</sup> Lauri Myllyvirta, “Air quality, toxic and health impacts of the Turow power plant”, available at <[https://energyandcleanair.org/wp/wp-content/uploads/2020/03/Air-quality-toxic-and-health-impacts-of-the-Turow-power-plant\\_publication.pdf](https://energyandcleanair.org/wp/wp-content/uploads/2020/03/Air-quality-toxic-and-health-impacts-of-the-Turow-power-plant_publication.pdf)>, last accessed on 22 March 2023.

<sup>207</sup> B Rogala, “5 osób złożyło pierwsze pozwy obywatelskie w Polsce w sprawie zmian klimatu”, 10 June 2021, available at <<https://300gospodarka.pl/300klimat/obywatele-client-earth-pozew-zmiany-klimatu-polska>>, last accessed on 22 March 2023, the defendant is the State Treasury, which in this case is represented by the ministers responsible for environmental protection policy, state energy policy, transport, national energy investments and sustainable development. As a rule, the State Treasury is the entity responsible for the actions of the state authority in Polish civil law proceedings.

are also seeking to determine the liability of the State Treasury for the harmful effects of climate change suffered by them,<sup>208</sup> as well as pecuniary compensation.

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<sup>208</sup> B Rogala, "5 osób złożyło pierwsze pozwy obywatelskie w Polsce w sprawie zmian klimatu", 10 June 2021, available at <<https://300gospodarka.pl/300klimat/obywatele-client-earth-pozew-zmiany-klimatu-polska>>, last accessed on 22 March 2023.

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