

Rights-based climate change litigation in the polish courts: key challenges

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Abstract.

This article provides an overview of the Polish climate change law/policy. Additionally, it identifies the main challenges related to rights-based climate change litigation in the Polish courts. Although the claims have much in common with other national level climate cases, such as *Urgenda Foundation v State of the Netherlands*, the cases are novel legally because the claimants are asking the court to order that Polish civil law includes a legally enforceable right to a healthy environment encompassing a right to live in safe and stable climatic conditions. The claimants argue that their personal and human rights are being violated by the Polish Government's lack of action, and that it must reduce emissions in line with the temperature goal of the Paris Agreement. The analysis indicates that due to the lack of direct inclusion of the right to a healthy environment in Polish legislation, it is also difficult to enforce the authorities to actively protect this right. Polish law lacks regulations that would directly enable citizens to demand from the authorities to introduce general environmental protection measures and consequently impose sanctions on the authorities for inaction in this respect. In the light of the scrutiny, it is unlikely that the claims made by the plaintiffs in the context of reducing greenhouse gas emissions will be met. Nevertheless, it is possible that the court will find a violation of human rights by state action.

Keywords: climate change law, strategic litigation, human rights, Poland

1. Introduction

The first international legal climate treaty that refers to human rights is the Paris Agreement (2015). It recognizes climate change as a shared problem of humanity (Sushyk, Shompol, 2019). The preamble of this act indicates that “parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children”. The implementation of the Paris Agreement and the link between climate change and human rights¹ has risen across Europe as a rights-based litigation on climate change.

¹ Also see: Resolution 48/13 adopted by the Human Rights Council on 8 October 2021. The human right to a clean, healthy and sustainable environment stating that “a lean, healthy environment in proper balance is a human right”; Resolution 48/14 adopted by the Human Rights Council on 8 October 2021.

Moreover, it has been recognized that the impacts of negative human rights may also result from EU Member States' implementation of specific GHG reduction activities (Woerdman, Roggenkamp, Holwerda, 2021). Over 80% of rights-based climate cases are aimed at pressuring governments to do more to mitigate climate change, for example, through challenging emission reduction plans (Rodríguez-Garavito, 2021). Such actions against governments are referred to as "strategic litigation." The concept of the strategic litigation involves selecting and bringing a case to the courtroom with the goal of creating broader changes in society. These actions seek to lead to wider changes in the public climate policy and focus on governments' actions or omissions that have allegedly led to an increase in green-house gas emissions or an insufficient decrease in emissions, or a failure to adopt to climate change (Pouikli, 2022). Recent judgments emanate from the different EU Member States such as the Netherlands², France³, Ireland⁴, Belgium⁵, Spain, Germany⁶, and Italy⁷. Claimants citing human rights as a basis for requiring States to reduce emissions argue that reducing emissions to the lowest possible level amounts to a standard of due diligence in fulfilling human rights obligations in connection to climate change (Yoshida, Setzer, 2020). "Climate change" means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is, in addition to natural climate variability, observed over comparable time periods. Edwin Woerdman describes a distinction between mitigation law and adaptation law showing that "the former focuses on the reduction of greenhouse gas emissions to limit global warming, while the latter is concerned with society's adaptation to the effects of global warming. Mitigation law therefore addresses the causes of climate change, for example by pricing carbon emissions and requiring a greater share of renewable energy. Climate change adaptation law fights the effects of climate change, for example by building more flood defenses" (Woerdman et al., 2021, p.2).

This article aims to identify the main challenges related to rights-based climate change litigation in the Polish courts. The first part of the article characterizes the Polish legal order

Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change

² Urgenda v de Staat der Nederlanden (App. No. 19/00135), Supreme Court of the Netherlands, the judgment of 20 December 2019.

³ Commune de Grande-Synthe v. France, Climate Case Chart 2021: http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190123_Not-Yet-Available_press-release-1.pdf.

⁴ High Court of Ireland, Friends of the Irish Environment v. Ireland, para. 64, available at: http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190919_2017-No.-793-JR_judgment-2.pdf.

⁵ VZW Klimaatzaak v. Kingdom of Belgium,

⁶ Bundesverfassungsgericht (Constitutional Court) in Neubauer et al. v. Germany

⁷ For more see: Kleoniki Pouikli, (2022). Editorial: a short history of the climate change litigation boom across Europe.

and policy in relation to climate change law. The second part analyzes common grounds of pending cases brought to the district courts, in which the plaintiffs demand that the government take decisive measures to protect the climate, including achieving climate neutrality by 2043 and reducing greenhouse gas emissions by at least 60 percent by 2030. The third part will demonstrate the key challenges of rights-based climate change litigation in the Polish courts.

2. Climate change litigation in Poland

The Republic of Poland (Poland) is one of the European's largest and most populous country. Bordering Germany on the west, Russia on the north, Lithuania, Belarus, and Ukraine in the east, and the Czech Republic and Slovakia on the south, it occupies a geographically and politically important part of Europe.

Poland is, among others, a member of the EU, UN, NATO, OSCE, WTO, OECD and the Council of Europe. Poland ratified the European Convention on Human Rights in 1993. Furthermore, it is a party of the United Nations Framework Convention on Climate Change (1992), Kyoto Protocol (1997) and Paris Agreement (2015). Poland signed the United Nations Framework Convention on Climate Change in 1992 and ratified it in 1994. The Kyoto Protocol was signed by Poland in 1998 and ratified in 2002. "At that time, Poland played the role of an opponent of more vigorous moves in intra-EU debates on climate policy" (Karski,2012, p.239).

Poland's membership in international organizations as well as the adoption of international and regional agreements on climate change law, has resulted in the globalization of law which plays a significant role in the proliferation of climate protection instruments in the Polish legal system (Karski,2012). What is more, the bottom-up approach of the Paris Agreement makes the applicability and material meaning of the climate targets of the Paris Agreement dependent on national legislation (Saiger,2020).

2.1 Climate change law and policy

The supreme legal act in Poland is the Constitution (1997). In its content, it does not refer directly to climate change. However, three articles can be identified as indirectly linked to the subject under discussion. Firstly, Article 5 of the Constitution stipulates that the state, guided by the principle of sustainable development, shall ensure environmental protection. This clause can be interpreted as an indicator for comprehensive regulation of climate change issues (Karski, 2012) at the level of ordinary legal acts and their secondary legislation. Secondly, Article 74 of the Constitution states that public authorities shall pursue policies ensuring ecological security for present and future generations, and environmental protection is a duty of public authorities. Finally, on the basis of undoubted link between climate change and the impact on human life, it is important to point to Article 68 of the Constitution, which provides for the obligation to protect human life and health.

At the statutory level, climate change law in Polish legislation concerns issues related to environmental, economic, administrative and financial law. Consequently, nowadays, it is not possible to claim that climate change law has acquired the status of a separate branch of

normative law. There is no single legal act that exhaustively covers all aspects of this issue in the meaning of regulations that reach the goal of preventing anthropological climate change (Adamczuk-Retecka, 2018). However, there is no doubts law of climate change derives primarily from the environmental law.

In the contemporary system of Polish domestic law, environmental issues are addressed at the statutory level in at least a dozen, if not several dozen acts, one of which (the Environmental Protection Law, 2001) was, and partly still is, of a slightly different nature than the others, first of all due to its content (Korzeniowski, 2015). A certain set of regulations, which were assumed to be common for the whole environmental protection issues regulated by law, was introduced to this Act. These are, first of all, the definitions of basic terms, provisions in the nature of general principles, provisions setting out the objectives of protection of the environment and its particular components, provisions that construct specific protective obligations, or provisions that set out the principles of liability for failure to implement them or for causing environmental damage. The Act was conceived as a starting point and a basis for the whole set of regulations on environmental protection, which should be constructed and applied in a manner enabling them to achieve objectives common to all of them. Due to the fact that at the time of its creation it was conceived as a basic formula for transposing into domestic law the requirements of the Community law in force at that time (Korzeniowski, 2015).

As mentioned above, climate change law can be divided into adoption law and mitigation law. The former consists of a number of regulations that have been functioning in Poland for a long time, but they are not interrelated enough to be classified as a single field of law. It refers mainly to regulations contained in the agricultural law, natural disasters prevention law or water law. As an example, the regulations concerning water management included in The Act of 18 July 2001 Water Law can be pointed out. The law regulates water management in accordance with the principle of sustainable development, in particular, shaping and protecting water resources, using water and managing water resources. Of particular importance for the protection of the land and water environment is the guideline contained in paragraph 4, Article 1 of the Act. Karski (2012, p.240) points out that “water management shall be carried out in such a way as to prevent, acting in accordance with the public interest, the avoidable deterioration of the ecological functions of water and the deterioration of terrestrial and wetland ecosystems which are directly dependent on groundwater.”

Within mitigation climate change law, a distinction can be made between regulations on reducing greenhouse gas emissions, which can be called the law of emission reductions, and regulations on the absorption of greenhouse gases, which is called the law of absorption. Polish climate protection law can be classified by distinguishing horizontal and sectoral instruments. Horizontal instruments cover all areas of activity which to some extent affect the environment. They were placed in the environmental law (Boć, Nowacki, 2006). On the other hand, Sectoral instruments are appropriate only for activity in a selected area. In Poland, instruments placed in the energy law play a dominant role. In the Polish legal system, the law on emission reduction overlaps with the law on air protection (Karski, 2012).

Air protection issues are comprehensively regulated in Articles 85-96a of the Environmental Protection Act described above. These provisions are related to the systemic regulation of air

quality protection as well as comprehensive regulation in emissions reduction law contained in the Act on the Protection of air from Pollution (1996). Moreover, the content of the act implies the obligation to protect against emissions, which consists in preventing or limiting the introduction of substances or energy into the environment. It creates the instrument of a “permit to emit gases or dust into the air,” which is intended to implement the principle of protecting the air against pollution (Ciechanowicz-McLean, 2016). In this context by “air” is means only the air in the troposphere, excluding air inside buildings and workplaces. The latter issues are regulated by a separate legal act, i.e. the Act on Substances that Deplete the Ozone Layer and Certain Fluorinated Greenhouse Gases (2015).

Emissions management occupies a prominent place in mitigation law. Its framework is set out in the Act of 17 July 2009 on the system for managing emissions of greenhouse gases and other substances. This law is “the first of a package of three laws on climate and air protection. It laid the foundations for a system that includes projectives on general issues, the management of international emission units, the EU Emissions Trading Scheme and a national trading scheme that covers So₂ and No_x”(Karski, 2012, p.241). System of the trading on the GHG is regulated in The Act on the System of Trading in Greenhouse Gas Emission Allowances.

These regulations are inextricably linked to Poland's climate change policy. As a signatory to the Kyoto Protocol since 2002, Poland had two legally binding GHG reduction commitments. Namely the first one under the Protocol to reduce emissions by 6% between 2008 and 2012 compared to the base year 1998 and the second one to reduce them by 20% between 2013 and 2020 as an EU Member State (Skoczkowski, Bielecki, Węglarz, Włodarczak, Gutowski, 2018). Despite successes in meeting these targets, according to European Environment Agency (EEA), Poland remains one of the most energy-intensive EU economies in terms of efficiency (Asadnabizadeh, 2019) which is due to the fact that Poland's energy security is based almost entirely on coal. In 2018, more than 80 percent of the country's electricity was generated in coal-fired power plants (Asadnabizadeh, 2019). Paris Agreement is of a key importance to current policy and action. Poland signed the Paris Agreement On 22 April 2016 in New York and, as planned, it deposited all documents related to its ratification on 7 October 2016. National Energy and Climate Plan for 2021-2030 document⁸ of Poland's climate policy should be pointed out In the context of the subject under discussion.

The document was drafted on the basis of national development strategies approved at the government level (e.g., Strategy for sustainable development of transport until 2030, State Environmental Policy 2030, Strategy for sustainable development of rural areas, agriculture and fisheries 2030) and taking into account the draft Energy Policy of Poland until 2040 which consists of reduction of GHG (greenhouse gas) emissions by approximately 30% (compared to 1990). The National Energy and Climate Plan 2021-2030 sets the following climate and energy targets for 2030: 7% reduction of GHG emissions in non-ETS sectors compared to 2005 levels, and a 21-23% share of RES in gross final energy consumption (the 23% target will be achievable if Poland is granted additional EU funding, including for a just transition), taking

⁸ For more see: Krajowy Plan na rzecz energii i klimatu. Available at:<https://www.gov.pl/web/klimat/krajowy-plan-na-rzecz-energii-i-klimatu> (accessed: 30.03.2022).

into account, inter alia 14% share of RES in transport, an annual increase in the share of RES in heating and cooling by 1.1 percentage points on average per year, increase in energy efficiency by 23% compared to PRIMES2007 forecasts, reduction to 56-60% share of coal in electricity production. The NAPE consists of three parts - strategic and two analytical annexes.

2.2 Rights-based climate change litigation

In Poland, lawsuits related to climate protection began to be filed only several years ago. They were filed by foundations related to environmental protection, which did not sue the state but rather companies or large corporations. For example, in 2018, the ClientEarth foundation filed a lawsuit against the company Enea, which planned to expand a coal-fired power plant in Ostrołęka. The plaintiff stated that the implementation of a large and environmentally disadvantageous investment was unprofitable and unjustified due to the regulatory and legal environment aimed at climate protection. The foundation won the case - in June 2020, the investment was withdrawn and the partially built installations were dismantled. In another case a district court in Łódź agreed that it was necessary to fight the climate crisis and proposed a settlement.

In 2021 the five separate lawsuits⁹ are being filed in Polish District Courts based on the strategic and rights-based climate change grounds. All cases make similar claims and seek a common remedy. The claimants are supported by environmental law charity ClientEarth¹⁰.

ClientEarth, on behalf of a private plaintiff, brought an action against the Polish government alleging human rights violations for their failure to protect the citizen from the worsening effects of climate change. The cases name the State Treasury as the defendant, represented by Minister for Climate and Environment, Minister for State Assets, Minister for Development, Labor and Technology, Minister for Infrastructure, Minister for Agriculture and Rural Development, and the Minister for Funds and Regional Policy. The plaintiff asks the court to determine the defendant's liability resulting from the public authorities' allowing the emission of greenhouse gases (GHG) from the territory of Poland in excess of the "fair share." The plaintiff alleges that it resulted in violations of the right to enjoy the value of the natural environment, including the right to live in stable and safe climatic conditions, health, respect for the place of residence, the right to privacy and respect for family life.

⁹ ClientEarth v Poland (on behalf of M.O.). Available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/clientearth-v-poland-on-behalf-of-mo/>; ClientEarth v Poland (on behalf of P.R.). Available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/clientearth-v-poland-on-behalf-of-pr/>; ClientEarth v Poland (on behalf of P.N.). Available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/clientearth-v-poland-on-behalf-of-pn/>; ClientEarth v Poland (on behalf of M.S.). Available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/clientearth-v-poland-on-behalf-of-ms/>; ClientEarth v Poland (on behalf of M.G.). Available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/clientearth-v-poland-acting-on-behalf-of-mg/>.

¹⁰ For more see: <https://www.clientearth.org/media/ilnjfico/clientearth-legal-briefing-on-polish-climate-case.pdf>

The claim was brought by ClientEarth pursuant to Article 61 § 1(2) of the Polish Code of Civil Procedure on behalf of the plaintiff, who, as they claim, was wronged by the actions of public authorities resulting in the infringement or threat to their personal rights. The alleged conduct of the State authorities, for which the State Treasury bears responsibility, consists of a series of acts and omissions which have the effect of allowing excessive GHG emissions from the territory of the State, contributing to the deepening of the global warming effect leading to irreversible and dangerous climate change which directly affects the plaintiff. As the plaintiff claims, she is already suffering from the effects of climate change, which have a clear impact on her life at her place of residence. These include, in particular, heavy rainfall, prolonged droughts and extreme weather phenomena such as thunderstorms, fires and gusty winds, which spread fire and cause sandstorms. All of them are damaging to human health. The plaintiff claims that these events are unprecedented in relation to previous decades, when similar phenomena were characterized by much lower frequency, scale, and intensity.

The plaintiff alleges that the actions of public authorities leading to excessive GHG emissions are unlawful, which is the premise of Article 24 of the Polish Civil Code. Furthermore, they result in a threat to fundamental human rights, guaranteed inter alia by the Convention for the Protection of Human Rights and Fundamental Freedoms. Member States are obliged to respect these rights not only by refraining from violating them, but also by taking measures to ensure that they are respected (the so-called positive state obligations). However, adverse climate change caused by high emissions significantly interferes with individuals' ability to exercise such fundamental rights as the right to life (Article 2 ECHR) and the right to respect for private and family life and home (Article 8 ECHR). The plaintiff alleges that active contribution to the exacerbation of the dangerous phenomenon of global warming is also in breach of numerous constitutional norms, including the obligation to prevent the negative effects of environmental degradation on health (Article 68(4) in conjunction with Article 68(1) of the Polish Constitution) and to protect the environment and ensure ecological safety for contemporary and future generations (Article 74(1) and (2) of the Polish Constitution). This action is also contrary to the principles of social co-existence, including the rule prohibiting causing harm to another.

The plaintiff seeks remedies based on a “fair share” analysis for Poland. The analysis presented by the plaintiff found that in order to make an equitable contribution to meet the 1.5oC goal of the Paris Agreement, the Polish State should: (i) reduce national GHG emissions by 61% by 2030 (below 1990 levels); (ii) reach net zero emissions by 2043; and (iii) not exceed between 2020 and 2043 the carbon budget attributable to Poland of 4.1 Gt CO₂eq¹¹.

2.3 Key challenges

here are some challenges In terms of national jurisdictions that are similar to those found in environmental law cases - such as barriers to access to justice or legal culture to deal with

¹¹ <http://climatecasechart.com/climate-change-litigation/non-us-case/clientearth-v-poland-on-behalf-of-mo/>

climate change awareness (Pouikli, 2022). Four key challenges that plaintiffs will face can be identified in the cases described above.

First, the Constitution itself lacks a provision that would explicitly state that “everyone has the right to a clean environment.” In January 24, 2020 the District Court asked the Supreme Court the question: “Does the right to live in a clean environment, enabling one to breathe atmospheric air that meets the quality standards set out in generally applicable laws in places where a person stays for a longer period of time, in particular in the place of residence, constitute a personal good subject to protection under Article 23 in conjunction with Article 24 and Article 448 of the Civil Code?” The Supreme Court (Case No. III CZP 27/20) answered that the right to live in a clean environment, enabling one to breathe air that meets quality standards, is not a personal good subject to protection under the Civil Code. At the same time Court also stressed that the effects of environmental pollution may be combated by invoking such goods as the right to health, liberty or privacy¹².

Due to the lack of direct inclusion of the right to a healthy environment in the Polish legislation, it is also difficult to enforce the authorities to actively protect this right. Polish law lacks regulations that would directly allow citizens to demand the authorities to introduce general environmental protection measures (e.g., local spatial development plans or air protection programs) and, consequently, impose sanctions on the authorities for their inactivity in this respect. This challenge is linked with the question of justiciability. Some human rights-based climate cases brought in the US have broken down over this issue. In *Julian et al. v. the United States of America* (2020), a case involving a rights-based challenge to the US government's inaction on climate change, the US Ninth Circuit Court of Appeals refused to order the government to formulate a comprehensive program to combat climate change on the grounds that doing so would require “a series of complex policy decisions that, for better or worse, must be entrusted to the wisdom of the legislature and the executive”. On the other hand, it is possible that the civil claims may be supported in these cases by international law standards that Poland is in breach of. A failure to comply with Article 13(1) of the CAFO Directive, i.e. the Directive of 21 May 2008 on ambient air quality and cleaner air for Europe constitute an example of such breach. The Directive requires member states to ensure that specific levels of substances in the air (sulphur dioxide, particulate matter PM10, lead and carbon monoxide) are not exceeded. By judgment of 22 February 2018.C-336/16, the CJEU found Poland in breach of Article 13.1. Setzer and Byrnes (2020, p.19) states that “the judgment confirms that the passivity of public authorities in protecting the environment is unlawful.”

¹² The District Court, which had raised the question before the Supreme Court (9 December 2021), granted the claim. While presenting oral reasons for the decision, the court indicated that in 2012-2015 (the period covered by the lawsuit) the negligence of the State Treasury, which resulted in the tragic air quality in Rybnik, led to violation of the plaintiff's personal rights. He mentioned in this context: health, freedom, inviolability of dwelling. According to the court, the plaintiff proved that as a result of the infringement of his personal goods, he suffered harm of considerable proportions. This results, inter alia, from the fact that he is actively working to protect air quality and is undertaking numerous pro-ecological activities (<https://bip.brpo.gov.pl/pl/content/rpo-proces-obywatel-smog-skarb-panstwa-wygrana>)

Another key challenge is climate attribution - i.e., a reliable evidence to establish a strong causal link between historical and future greenhouse gas emissions, rising surface temperatures and the subsequent severe weather events – which could help litigants to establish greater causality in those cases (Setzer, Byrnes, 2020). In the case of climate litigation, in order to establish a causal link between a factor affecting the energy balance of the climate system (such as increased CO₂ concentrations) and an observable parameter such as global average surface temperature, it is first necessary to detect a statistically significant change in that parameter beyond its natural variability, and then to prove that the factor had a causal effect on these parameters (Weller, Nasse, J.-M., Nasse, L, 2021). Given that scientific finding cannot always be translated and applied to concrete cases, the exercise of aligning scientific research methods with evidentiary requirements in legal settings remains a challenge for both for scientists and lawyers (Pouikli, 2020). In this context, it also remains a challenge to determine how the science of climate attribution affects the legal admissibility of evidence based on climate models. Although evidence must be legally admissible in order to be considered at trial, it must be reliable in order for the court to reach a legally correct conclusion. Because parties to a trial have an incentive to present evidence favorable to their case, the admissibility requirements and the reliability of the evidence presented are intertwined¹³.

Causality was raised by the Dutch government in the Urgenda case as part of its argument that Articles 2 and 8 ECHR do not impose an obligation on the state to protect against the risk of climate change. In that case the court relied on the UNFCCC, stating that although the problem is global, each state has a duty to do its part, a standard that parties to the UNFCCC, including the Netherlands, have acknowledged. This standard was based on the emerging view that, in light of climate change and human rights obligations, governing states must contribute their “fair share” to global mitigation as well as principle of “do no harm,” which places an obligation on states to prevent actions within their jurisdiction that cause transboundary environmental harm (Setzer, Byrnes, 2020). In the Polish cases discussed above, the plaintiffs also invoked the “fair share” principal analysis for Poland. Perhaps the court will apply a similar interpretation here as well.

The reactive nature of climate change law means that it is difficult to establish the human rights impact of climate change when it can potentially take a significant period of time after the environmental violation for its impacts to become manifest. Claims of human rights violations are normally established immediately after actual harm has occurred, whereas in environmental law the precautionary principle accommodates potential future (Yoshida, Setzer, 2020). In the cases above the plaintiffs’ claims they are already suffering from the effects of climate change, which have an impact on their place of residence.

¹³ For more information about climate attribution see: Pfrommer, T., Goeschl, T., Proelss, A. et al. Establishing causation in climate litigation: admissibility and reliability. *Climatic Change* 152, 67–84 (2019). <https://doi.org/10.1007/s10584-018-2362-4>

3. Conclusion

In the light of the analysis presented above, it should be pointed out that the law on climate change does not constitute a separate branch of normative law in the Polish legal system, but rather manifests the features of an interdisciplinary issue, which derives its foundations from environmental law and international agreements. Mitigation of climate change takes place primarily through emissions management, and the law of emissions reduction overlaps with the law on air protection.

Poland remains one of the most material- and energy-intensive EU economies in terms of efficiency, which is due to the fact that Poland's energy security is based predominantly on coal. The Paris Agreement has a key influence on the current climate policy of the country. The National Energy and Climate Plan for 2021-2030 sets climate and energy targets, which include 7% reduction of GHG emissions in non-ETS sectors from 2005 levels and 21-23% share of RES in gross final energy consumption. Whereas the energy policy until 2040 assumes a reduction of GHG (greenhouse gas) emissions by approximately 30% (compared to 1990).

As a result of Polish climate policy, 5 separate lawsuits were filed in 2021 in the Polish district courts, in which the plaintiffs seek to establish the state's liability resulting from the public authorities allowing more than a "fair share" of greenhouse gas (GHG) emissions from Polish territory. The plaintiffs allege that it has led to a violation of the right to the enjoyment of environmental values, including the right to live in stable and safe climatic conditions, health, respect for the place of residence, the right to privacy and respect for family life.

Rights-based climate change litigation in Polish court will face challenges that are similar to those encountered in environmental law cases in general - like barriers to access to justice or the legal culture to deal with these issues. In addition, Polish legislation lacks a provision that explicitly states that "everyone has the right to a clean environment". Due to the lack of direct inclusion of the right to a healthy environment in Polish legislation, it is also difficult to enforce the authorities to actively protect this right. Polish law lacks regulations that would directly enable citizens to demand that the authorities introduce general environmental protection measures and consequently impose sanctions on the authorities for inaction in this respect. Another key challenge is the attribution of climate responsibility to the state, and the precautionary principle applied in environmental law, which takes into account potential future damage, rather than, as in the case of human rights violations, claims being brought immediately after actual damage has occurred.

An analysis of the state of Polish climate change law and policy in the context of strategic challenges and rights-based climate change litigation indicates that it is unlikely that the claims made by the plaintiffs in the context of reducing greenhouse gas emissions will be met. Nevertheless, it is possible for the court to find a violation of human rights by state action.

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