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Is right to clean environment subject to protection?

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- › **Introduction**
- › **Facts**
- › **Personal interests**
- › **Legal remedies**
- › **Decision**
- › **Comment**

Introduction

In a precedent-setting resolution of 28 May 2021 (III CZP 27/20), the Polish Supreme Court dealt with a case concerning liability for air pollution. After examining the case, the Court determined that the right to live in a clean environment, thus enabling people to breathe air that meets quality standards, does not in itself constitute a personal interest.

However, this position does not mean that the violation of air quality standards set out by the relevant legislation may not be the basis for pursuing claims by natural persons. The Court found that violations of these standards may lead to the infringement of or threat to other personal interests. Therefore, the way to combat air pollution and pursue claims on this account remains open.

Facts

In an action against the State Treasury – the minister of climate and minister of state assets – the claimant sought compensation of 50,000 złoty (approximately \$12,300) for the damage caused to them in connection with the fact that there had been severe violations of air quality standards that had systematically and for many years occurred

in their residence. The claimant argued that this had significantly interfered with their daily functioning and had infringed on their personal interests – namely, health, freedom and privacy.

In a 30 May 2018 judgment, the first-instance court dismissed the claim. The claimant filed an appeal against this judgment. The case was then joined by the ombudsman, that supported the claimant's position and requested that the contested judgment be amended by allowing the claim.

In the course of hearing the appeal, the second-instance court addressed the following legal question to the Supreme Court:

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 interest subject to protection under Article 23 of the Civil Code in conjunction with Article 24 of the Civil Code and Article 448 of the Civil Code?

Personal interests

The question was related to the nature of personal interests under Polish law. The Civil Code does not provide a separate definition of "personal interest", instead, it contains only an open catalogue.

Pursuant to article 23 of the Civil Code, human personal interests remain under the protection of civil law, regardless of the protection provided by other regulations. This open catalogue includes:

- health;
- freedom;
- honour;
- freedom of conscience;
- surname or alias;
- image;
- secrecy of correspondence;
- inviolability of the dwelling; and
- scientific, artistic, inventive and rationalisation creativity.

Under Polish law, there is no doubt that the notion of "personal interest" is dynamic, and the codex catalogue of personal interests is characterised by changeability. Thus, along with technological and civilisational development as well as changes in social, economic and political relations, the catalogue of personal interests has also changed and new personal interests could appear.

This entails serious consequences because subjective rights connected with personal interests have the nature of absolute rights, effective erga omnes. Consequently, the subject of personal interest protection determines the acceptable limits of behaviour of all other subjects in social relations. These subjects are obligated to refrain from actions that infringe the personal interests of others and actions that might cause such infringement.

Legal remedies

In the event of or threat of unlawful infringement of personal interests, the entitled party may pursue several monetary and non-monetary claim options. In particular, pursuant to articles 24 and 448 of the Civil Code, the affected party may demand:

- that the party responsible for the infringement desist from the action threatening the personal interest;
- that the party responsible for the infringement eliminate the effects of the infringement, including submission of a statement of appropriate content and form;
- monetary compensation or payment of an appropriate sum of money to a designated social purpose; or
- redress for property damage inflicted.

Each of these demands may be pursued through both in and out of court proceedings.

Decision

In answering the relevant question of law, the Supreme Court assumed that the right to live in a clean environment is not a personal interest. However, health, freedom and privacy are subject to protection as personal interests, the infringement of or threat to which may be caused by the violation of air quality standards set out in the relevant provisions of law.

As such, in the Court's view, the human environment does not have the features of personal interest – it is an interest common to mankind. However, non-compliance with air, water and soil quality standards (and, in some instances, even a single violation of such standards) infringes upon personal interests such as health, freedom and privacy by endangering or even violating such interests.

The violation of these standards may lead to interference with the aforementioned personal interests and the emergence of related civil law claims in favour of the individual. The Court also unequivocally indicated that it may not be ruled out that failure to observe the indicated standards could constitute interference with other personal interests protected by individual subjective rights.

An important issue, which was outside of the scope of the Court's statement, concerned the question of whether the attribution of liability for the infringement of personal interests to the perpetrator may be justified by:

- a specific act, the committing of which leads to air pollution (eg, by burning substandard fuel in a boiler station); or
- the failure to establish and enforce such norms of conduct, the observance of which would make it possible to protect the environment against degradation.

As the Court indicated, assessing these issues will be left to the court examining the appeal in this case.

Comment

It follows from the Court's resolution that when bringing an action regarding the clean environment, personal interest may not be invoked. However, depending on the specific case, the violation of air quality standards may infringe other personal interests.

The Court's position does not close the judicial route for persons seeking protection concerning air pollution. On the contrary, the Court confirmed that courts may examine such claims in the context of protecting personal interests, particularly such as health or freedom.

At the same time, the question is open as to the form of the violation that substantiates the granting of protection to the injured party. In particular, whether claims alleging the lack of an adequate policy

leading to improved air quality and the lack of implementation of effective measures to protect and improve air quality will be effective.

In the discussed resolution, the Court included many general conclusions concerning the protection of personal interests and the right to a clean environment. Therefore, this position may be expected to significantly influence the development of case law not only in similar cases against public entities, but also against entrepreneurs using the environment in the pursuit of their business activities.

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