



## Disputes amid energy-climate transition in Poland

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#### **Introduction**

Poland is currently in the process of an energy transition. The overall share of conventional coal-based energy is declining in favour of new technologies, especially those including renewable energy. Investments in nuclear power are planned. Polish industry is striving towards decarbonisation. Billions of zlotys will be allocated toward national energy and the climate transformation in the coming years.

Like any transition, the energy-climate transition in Poland is not without risks and threats relating to legal proceedings. These risks relate to both investment processes (eg, disputes between entrepreneurs and on the investor-state line) and court proceedings initiated by citizens, who are becoming increasingly aware of the need to implement changes in climate policy.

This article presents two cases that have appeared in Polish courts on environmental grounds.

#### ***Greenpeace Poland v PGE GiEK***

On 18 May 2022, the first hearing of the climate lawsuit brought by the Greenpeace Polska Foundation against PGE Górnictwo i Energetyka Konwencjonalna S A (PG GiEK) took place in the Łódź Regional Court.

PGE GiEK was part of the PGE Capital Group, Poland's largest electricity capital group in terms of revenue and profit generated. PGE GiEK owned the Bełchatów and Turów coal power plants and open pits.

In this lawsuit, Greenpeace activists demanded the complete closure of all of the company's coal-fired power plants by 2030.

The basis for the lawsuit filed was article 323 of the National Environmental Protection Law, which states that:

*anyone who is directly threatened with or harmed by an unlawful impact on the environment may demand that the entity responsible for the threat or infringement restore the lawful state and take preventive measures, in particular by installing installations or equipment to prevent the threat or infringement; if this is impossible or excessively difficult, he or she may demand that the activity causing the threat or infringement cease.*

The lawsuit against PGE GiEK was one of the first of its kind in Poland.

PGE GiEK indicated that the lawsuit strikes at Poland's energy security, especially in the context of the Russian war against Ukraine. Indeed, PGE GiEK's power plants cover about 36% of the country's electricity demand, so their closure by 2030 would completely destabilise the Polish energy system, leading to interruptions in energy supply and further increases in energy prices.

This case shows the problems of the Polish energy and climate transformation process. At present, on the one hand, there is the apparent inadequate pace of implementation of the climate transformation goals in previous years and the associated shortcomings, but, on the other, the environmental organisations set virtually unrealistic demands.

It should be emphasised that there is a plan for the closure of the Bełchatów power station, but it provides a different rate of shutdown of the individual units than that demanded by Greenpeace.

During the hearing on 18 May 2022, both parties were said to have confirmed (according to media reports) that they wanted to conclude a settlement, even though the mediations conducted earlier had been unsuccessful.

How this litigation will end remains to be seen. So far, there are no other rulings by Polish courts that directly refer to ordering energy companies to take specific actions to, for example, reduce carbon dioxide emissions into the environment.

### **Fighting smog**

On the other hand, on the grounds of other facts and based on other legal acts, judgments of common courts in cases relating to the environment have already been rendered – namely, cases involving actions by individuals against the state Treasury for compensation for smog. There have been well-known cases in Poland of courts awarding such compensation.

For example, on 9 December 2021, the Gliwice Regional Court awarded 30,000 Polish zlotys as compensation to an individual.<sup>(1)</sup> In the proceedings in question, the plaintiff argued in support of his claim that the air in his city failed to meet quality standards each winter (ie, from October to April) in terms of the concentrations of:

- particulate matter (PM) 10;
- PM 2.5;
- sulphur dioxide;
- carbon monoxide;
- benzo(a)pyran; and
- ozone.

The plaintiff further pointed out that the monitoring station had recorded multiple cases in which the acceptable air pollution standards had been exceeded. He stated that this situation violated his personal interests in the form of the right to:

- live in a clean environment;
- health;
- freedom of movement (motion); and
- respect for his private and family life and inviolability of his dwelling.

He invoked the recommendations of the public authorities to stay indoors during periods when exceedances of the permissible standards had been at their highest. The plaintiff argued that the State Treasury's

liability arose from its unlawful failure to take effective measures to restore air quality's compliance with the law.

In the course of the second-instance proceedings before the Gliwice Regional Court, the Court asked the Supreme Court the following question of law:

*Does the right to live in a clean environment enabling breathing in atmospheric air that meets the quality standards set out in generally applicable laws, in places where a person resides for a longer period of time, in particular at his or her 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?*

The Supreme Court answered that the right to live in a clean environment is not a personal interest. However, it pointed out, at the same time, that health, freedom and privacy are subject to protection as personal goods<sup>(2)</sup> and their violation (or threat) may be caused by violation of the air quality standards set out in the law. Thus, the violation of air quality standards may lead to interference with personal interests (ie, health, freedom and privacy) and the emergence of related civil law claims in favour of an individual.

This view was shared by the Gliwice Regional Court, which awarded damages to the plaintiff. The Court indicated that the plaintiff's personal interest in the form of health had been infringed as a result of the violation of air quality standards set forth in the law. Indeed, the plaintiff had suffered health problems as a result of the air pollution. There was also an infringement of:

- the inviolability of the dwelling, as a result of excessive emission of pollutants from outside; and
- the possibility to decide how to spend leisure time and move freely, in view of announcements recommending restrictions on staying outdoors.

The Court pointed out that the State Treasury (the defendant) had committed an unlawful omission by failing to take appropriate action in air protection programmes. Consequently, it awarded compensation in favour of the plaintiff.

It should be pointed out that the public prosecutor general recently challenged the Gliwice Regional Court's judgment by way of an extraordinary complaint. The case was registered by the Supreme Court<sup>(3)</sup> and is currently in progress.

### **Comment**

Since the energy transformation process in Poland must gain momentum and, in light of both existing and new legal regulations – including those relating to non-financial reporting while also considering environmental and sustainability issues – the exposure of companies to the risk of litigation is likely to increase.

Greenwashing cases may also arise. The president of the Office of Competition and Consumer Protection (UOKiK) is already conducting eight investigations against companies referring to ecology. These proceedings aim to determine whether entrepreneurs – in connection with marketing activities that refer to ecology, sustainable development or environmental protection – have committed a breach providing the basis of the initiation of proceedings for practices infringing on collective consumer interests. As the UOKiK points out, communication concerning environmental aspects should be precise, as consumers increasingly take such information into account when making decisions regarding purchases.

Undoubtedly, therefore, the energy transition is accompanied by a risk of climate and environmental disputes, to which entrepreneurs are also exposed. In order to mount an effective defence, it will be important to combine competencies relating to both litigation and knowledge of energy and climate policies, on both a national and international level.

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### **Endnotes**

(1) Case number III Ca 1548/18.

(2) Article 23 of the Civil Code in connection with article 24 and 448.

(3) Case number II NSNc 247/23.