

REPORT ON POLAND

Climate Change in Legislation

1. How (if all) has climate change and issues related to it been incorporated into legislation in your jurisdiction?

- *Do they feature in the constitution; legislation; delegate acts?*

Polish Constitution covers widely the topic of environmental protection and therefore climate changes. A founding principle of Poland is sustainable development principle. It is included in art. 5 of Polish Constitution. Main function of the state resulting from this article is environmental protection. Environmental protection including climate change gives a possibility according to art. 31 § 3 Polish Constitution to limit the use of constitutional rights and freedoms. These limits can be introduced only in the legal act and when they are necessary in democratic state among other to achieve the goal of environmental protection and protection of human health.

According to art. 68 § 4 Polish Constitution public authorities are obliged to combat contagious diseases.

Following art. 74 Polish Constitution public authorities conduct policy ensuring ecological security to the current and future generations. Environmental protection according to Polish Constitution is the duty of public authorities but every citizen is obliged to take care of environment and bears responsibility for causing deterioration. Rules of this responsibility regulates legal act (art. 86 Polish Constitution).

According to Polish Constitution public authorities support citizen actions to protect and improve environmental protection.

Many legal acts touch upon climate change.

For example: Act on trading of privileges to emit greenhouse gases system from 2015, act on monitoring and controlling the quality of fuel from 2006, act on renewable energy sources from 2015, act from 2016 about ratification of United Nations Framework Convention on Climate Change, Paris 2015.

The local authorities can pass laws and take a plan and program of adaptation to climate change. These regulations must be compliant with constitution and legal act.

- *Which levels of government have been involved in these legislative processes?*

In this process involved are all levels of government including regional government.

- *What have been the catalysts for these legislative developments (i.e. EU law, international law, political agitation etc.)?*

These catalysts are EU law (Act on trading of privileges to emit greenhouse gases system from 2015, act on monitoring and controlling the quality of fuel from 2006, act on renewable energy sources from 2015), international law (United Nations Framework Convention on Climate Change, Paris 2015) but very important is awareness of the society.

2. How do the structures of government affect legislation related to climate change?

- *Is one or several institutions assigned to act on climate change within your legal system? To what extent do these overlap and diverge?*

Several institutions are assigned to act on climate change in my country. The first is parliament, the second is Ministry of Environmental Protection and local authorities. Their actions overlap because activities of institutions lower in rank must be compliant with activities of institutions higher in rank.

- *Is the separation of legislative, executive and judicial powers in initiating and implementing climate policy clear in your jurisdiction?*

In Poland the separation of legislative, executive and judicial powers in initiating and implementing climate policy is very clear. Other institution deals with legislative, other with executive and other with judicial powers.

- *Is climate change legislation affected by the legal powers of different levels of government in your jurisdiction?*

Yes, because regional government passes programs and plans concerning climate change. It may influence actions of institutions higher in rank and vice versa.

Climate Change Litigation

3. Can climate change laws in your jurisdiction serve as basis for judicial action?

- *Is this basis, or the lack of such basis, seen as legally novel or not?*

Only climate change laws cannot be a basis for judicial action. But sources which lead to climate change may be a basis for judicial action. Court takes into consideration the influence of these actions on climate change.

- *What role does European Union law play in this regard?*

The European Union Law plays a key role. For example Act on trading of privileges to emit greenhouse gases system from 2015 constitutes implementations of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance).

4. Has climate change, and related issues, given to court cases in your jurisdictions?

- *If so, what type of cases (i.e. are they related to specific pieces of legislation or to something else)?*

The type of cases is different. Very often touch upon air pollution.

- *How frequently do climate change claims come to court by comparison with other environmental law cases in your court?*

Climate change claims come to court rarely by comparison with other environmental law case in my court. But now these cases appear more often. Most of the cases concerns air pollution and administrative fines connected with it.

- *What types of legal issues are raised in these cases (i.e. matters of private law, constitutional law, administrative law, international law etc.)?*

Most often types of legal issues concern administrative law. The biggest number is related to private law especially civil law.

- *Does the type of legal issue affect, if at all, which court hears the case?*

Yes. Type of legal issue determinates which court hears the case. For example matters of private law are heard in common court (civil court or penal court). Administrative cases are heard in administrative court which is independent from common court.

- *Do rights-based claims feature in these cases?*

It depends. When application is written by barrister rights-based claims are featured in such cases. When the applicant writes it on their own then rarely show rights – based claims.

- *How central is the issue of climate change when it is raised in these cases?*

In general this issue is additional problem. It is rarely central. It depends on types of legal issues. When this type concerns administrative issue climate change is the main problems more often than in other cases. In civil cases climate change very often is additional problem. In these cases the main problem is air pollution and disturbance of neighbour relations.

5. How easily reasonable are the legal questions raised in these different cases?

- *Do these cases involve the application of conventional legal concepts? If so, how straightforward is the application of these concepts to climate change?*

In my practice I have never met with cases involving the application of conventional legal concepts. These concepts only indirectly touch upon climate change.

- *Do these cases involve the application of new legal doctrines? If so, from where have these doctrines been derived?*

Yes. Sometimes applicants show a new legal doctrines based on constitution or the main rules environmental protection. For example based on rule “the polluter pays” and law everybody to live in clear environment.

- *How do concepts of causation affect climate change actions in your jurisdiction?*

Court very often takes into consideration these claims and these new concepts influence on jurisdiction. The most important role plays rule “the polluter pays”.

- *Has your court issued any preliminary ruling concerning climate change laws, or to relates issues to the EU court? If not, why not?*

My court has not issued any preliminary ruling concerning climate change laws because this rulings touch upon indirectly climate change not directly.

6. How straightforward is the resolution of factual issues in cases on climate change?

- *Is there disagreement among the parties over the factual issues? If so, what types of disagreements are there?*

The first disagreement concerns the existence of a given circumstance. Very often parties disagree whether this action took place or not. Sometimes the most important is to establish if a given action had a negative influence on the environment. One party claims that this action did not have a negative impact on environment or its scope was very small and did not matter.

- *Do the factual issues require reference to specialist evidence? If so, how is that evidence submitted to the court?*

In administrative court specialist evidence has a small importance because special articles give solution how to establish this actions. But civil law very often requires specialist evidence. Party must prove their claims. But court can conduct this evidence in officio or for party's request. Always this evidence court conduct using specialized from a list of experts witnesses.

- *How do the rules evidence affect climate change actions in your jurisdictions?*

The rules evidence in cases about climate change is the same as in other cases. Therefore their influence is the same as in other cases.

- *How do the factual issues affect the resolution of legal questions in these cases?*

The factual issues play the most important role in these cases. They are the basis of the resolution. If they are proven then the court accepts them and based on legal norm which corresponds to this factual state gives a resolution. Sometimes this fact is the bases to conduct evidence from expert witnesses. Because court must assess whether relation exists between this fact and its effect on climate change.

Climate Change and Access to Justice

7. Who are the parties bringing climate changes actions?

- *What role do individuals play in bringing actions relating to climate change?*

The role of individuals in bringing actions relating to climate change depends on the type of process. In administrative court this role is smaller than civil court. Because in administrative court the main role plays administrative body especially environmental protection body. But in civil court initiative belongs to individuals. A private person can bring to court lawsuit about climate change. In general this lawsuit does not concern directly climate change but leads indirectly to this matter.

- *What role do NGOs play in bringing climate actions?*

According to Polish law (art. 31 § 1 pt. 1 the Code of Administrative Proceedings) NGOs can bring climate change actions to administrative court and it can take part in this process also when this process is initiated by another person. NGOs has normal rights like other parties. NGOs can lodge an appeal or and another type of appeal relevant to these cases.

In civil court NGOs can be a normal party too. NGOs can file a lawsuit relating to climate change but this NGOs must be a legal person.

- *What role does industry play in bringing actions relating to climate change laws?*

Industry very often is respondent in this process. Sometimes, its concerns especially administrative court industry brings this access because defends itself against imposed administrative fines.

- *Does industry make claims under different or the same set of laws as NGOs?*

Yes. In general industry and NGOs have the same set of laws.

8. How do legal rules in relation to bringing of action affect the ability to bring these cases?

- *How do domestic rules on standing affect climate change litigation?*

Domestic rules on standing have the same effect on climate change litigation as on other cases.

- *How do costs rules affect climate change actions?*

Costs rules related to climate change actions is the same like another actions. The party must pay court fee. This court fee is different and depends on type of claims. When you demand an amount of money you pay entry relative. Very often parties pay entry constant. This role applies in administrative and civil court. Party has right to demand exemption from court cost because party has right to access to court. This institution gives to it.

- *Are there any other impediments to parties bringing climate change claims?*

No. In Polish law system these impediments do not exist.

Climate Change and Remedies

9. What is the range of remedies available to national courts in climate change cases?

- *What is the breadth of the court's discretion in choosing a suitable remedy?*

This breadth of the court's discretion in choosing a suitable remedy is limited by a legal act. Court can use only remedy included in legal act and relevant of this factual state. They may be for example fees or prohibition to conduct action which deteriorates the state of environment.

- *What is the availability and level of financial penalties?*

Financial penalties are the most frequent remedy. Their height is different and depends on type of relevant action. For example they can be imposed as 10 times the height of normal fee. It concerns cases when entrepreneur is obliged to pay fee from pollution introduced to the air. In case of overstepping the norm is obliged to pay 10 times the height of normal fee.

In case of offense regarding preparation and implementation of air protection program the subject must pay fee in height of from 2 500 EUR to 125.000 EUR. In Polish law the height of penalties is different but penalties are very high.

- *What types of injunctive relief are available?*

In Polish law types of injunctive relief are different. The most popular is cessation of action. The civil law has more possibilities and it is possible to accept such remedies that are most relevant to the situation.

10. What types of issues are raised about remedies in climate change cases?

- *How straightforward is the application of remedies in these cases?*

The application of remedies in the cases does not cause problems. In administrative cases legal act includes types of remedies which can be used.

- *Does the relationship between private law and public law affect remedies in climate change-related claims?*

The influence of the relationship between private law and public law is different. Often these remedies are imposed independently from each other.