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# The Right to a Clean Environment as a Personal Interest and the Possibility of Effective Enforcement of Judgements in this Area<sup>5</sup>

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## Abstract

The article discusses the matter of the right to a clean environment and clean air as a personal interest and the possibility of enforcing judgements issued in this area. The authors of the paper address the controversial issue of the classification of this right, analysing whether it can be considered a personal interest directly associated with a natural person. It is also important to identify the relevant entity representing the defendant in such cases, especially when the defendant is the Treasury. In order to pursue claims on the grounds of violations of the right to clean air, it is necessary to determine the guilt of a specific perpetrator. The paper discusses examples of Polish and European cases where rulings have been made on the matter of the right to a clean environment and clean air. These considerations become the grounds for determining what rulings can be made and whether they can be effectively enforced.

**Keywords:** clean environment, clean air, personal interest, claims, enforcement, Treasury.

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Year after year, the public is becoming more aware of the need to take care of the environment and protect nature, and there is an increased sense of protection of personal interests. The factors that have been crucial to the development of environmental awareness have been the advancement of science and technology, globalisation and interdependence, social activism, and NGOs, to name a few. In 2022, the Polish Ministry of Climate and Environment conducted a survey of the environmental awareness of the inhabitants of Poland. 91% of respondents found climate change either an important or very important issue. In addition, respondents named large emissions from factories as the most important cause of pollution in the country.<sup>6</sup> In response, a number of regulations have been introduced to improve the implementation of sustainable development and environmental protection measures.

All these factors have contributed to the rise of global environmental awareness in the 21<sup>st</sup> century. Thanks to the aforementioned advancements in science, people have become more aware that clean air is of great importance and affects the quality and length of their lives. The COVID-19 pandemic has surely drawn public attention on the issue of public health as well. This, in turn, has made us more aware of how important clean air is.

However, the question of how to classify the right to a clean environment and clean air remains a moot point. Can they be considered a personal interest directly related to a natural person? On the one hand, in Polish law, personal interests appertain to individuals, so to speak. On the other hand, the right to clean air is linked to environmental protection and the public interest. This means its form is more universal and collective, since it affects the general public rather than individuals.

## The concept of personal interests

The discussion should begin from an attempt to define the concept of personal interests. This is not an easy task, as there is no single legal definition of the term. However, what all definitions have in common is the fact, as defined by P. Mach-

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<sup>6</sup> <https://www.gov.pl/web/edukacja-ekologiczna/badania-swiadomosci-ekologicznej> (access: 8.08.2023).

nikowski, that personal interests are a category of values.<sup>7</sup> Moreover, they are individual and appertained to specific persons.<sup>8</sup>

The legislator codified the issue of protection of personal interests for the first time in the Act of 18 July 1950 – General Provisions of the Civil Law.<sup>9</sup> And the general normalisation of the protection of personal interests (Articles 23 and 24 of the Civil Code) was adopted by way of the Act of 23 April 1964 – the Civil Code.<sup>10</sup> Interpreting Article 23 of the Civil Code and analysing the judicial decisions issued so far, it can be concluded that personal interests can involve enabling an individual to develop their disposition, character. In addition, through this article, the legislator has granted protection of personal interests to natural persons.<sup>11</sup>

As pointed out by A. Szpunar, personal interests are non-material in nature and are inseparable from a person, their personality, as well as from values typical of the society to which the person belongs.<sup>12</sup> The concept of personal interests has dominated both the views of legal scholars, academics, and commentators and the judicial decisions since personal interests are, in fact, personal subjective rights and have attributes that define them. They are: absolute, non-property, and non-transferable rights.

Before we discuss the list of personal interests as defined by the legislator, it is necessary to mention the monist and pluralist concepts thereof in relation to the legal community. The former implied the existence of only one personal right. Its subject was the personhood of a human being, which was in line with the idea of subjective right.<sup>13</sup> The latter, in contrast, invoked the existence of a plurality of personal rights. It presumed that Polish law was not familiar with “a single, general law of personhood,” and that there were as many personal rights as there were people who had these rights protected. This is the concept that has found its supporters in the legal community, because it is far too general and imprecise to opt for the existence of a single personal interest.<sup>14</sup>

Moreover, over the years, two views have emerged on the interpretation of personal interests: a subjective approach and an objective approach. The forerunner

<sup>7</sup> P. Machnikowski, [in:] E. Gniewek, P. Machnikowski (eds.), *Kodeks Cywilny. Komentarz*, 8<sup>th</sup> edition, Warsaw 2017, p. 57.

<sup>8</sup> B. Janiszewska, [in:] J. Gudowski (ed.), *Kodeks Cywilny. Komentarz*, vol. 1, Warsaw 2021, p. 357.

<sup>9</sup> Journal of Laws of the Republic of Poland (JRLP) of 1950, no. 34, item 311.

<sup>10</sup> Civil Code, JRLP of 1964 no. 16, item 93, uniform text in the JLRP of 2023, item 326.

<sup>11</sup> Supreme Court's judgement of 10.06.1977, ref. II CR 187/77, Legalis.

<sup>12</sup> A. Szpunar, *Ochrona dóbr osobistych*, Warsaw 1979, p. 97.

<sup>13</sup> M. Pazdan, [in:] M. Safjan (ed.), *Prawo cywilne – część ogólna*, Warsaw 2012, publication 88, p. 1270.

<sup>14</sup> A. Wolter, *Prawo Cywilne – zarys części ogólnej*, Warsaw 1986, p. 180.

of the former was S. Grzybowski, who attributed the relationship between the values of feelings and the mental state of a person to personal interests.<sup>15</sup>

It is now believed that the meaning of a personal interest – as well as its violation – should be considered from an objective perspective,<sup>16</sup> and not taking into account the individual feelings of the person.<sup>17</sup> Deciding whether there has been a violation of personal interests therefore requires invoking the standards of conduct generally accepted in society.<sup>18</sup>

B. Gawlik advocated, in turn, for a different standpoint with regard to the protection of personal interests – one that appeared less popular. He offered a concept of institutional protection of personal interests, which emphasised the fact of relativisation, i.e. the adaptation of rules to specific facts and subjects. Indeed, the object of legal protection is not limited to the personal attributes that are explicitly defined in the law. According to B. Gawlik, it is impossible to distinguish “a zone of interest related to this personal interest that would be protected in principle against any violation, and this protection would not take only in exceptional situations, if some special conditions justifying its violation were fulfilled.”<sup>19</sup>

## The list of personal interests

The legislator has provided a list of personal interests in the aforementioned Article 23 of the Civil Code. This list is not exhaustive and serves only as an example,<sup>20</sup> so it is not possible to refer to a single index, so to speak, that lists and systematises personal interests.<sup>21</sup> In Article 23 of the Civil Code, the legislator has included such interests as health, freedom, dignity, freedom of conscience, name or pseudonym, image, privacy of correspondence, inviolability of home, and scientific, artistic, inventive or improvement achievements.

However, as time has gone by, with all the technological advances that have emerged, but especially with generational changes, a broader understanding of personal interests has begun to emerge. And although they are not listed in the

<sup>15</sup> S. Grzybowski, *Ochrona dóbr osobistych według przepisów ogólnych prawa cywilnego*, Warsaw 1957, p. 78.

<sup>16</sup> M. Pazdan, op. cit., marginal ref. no. 12, p. 1233.

<sup>17</sup> E. Gniewek, P. Machnikowski (eds.), op. cit., commentary to Article 23 section number 2, Legalis.

<sup>18</sup> Supreme Court’s judgement of 23.05.2022, ref. IV CKN 1076/00, Legalis.

<sup>19</sup> B. Gawlik, *Ochrona dóbr osobistych. Sens i nonsens tzw. praw podmiotowych osobistych*, ZNUJ 1985, 41, p. 137.

<sup>20</sup> E. Gniewek, P. Machnikowski (eds.), op. cit., commentary to Article 23 marginal ref. no. 5, Legalis.

<sup>21</sup> M. Pazdan, op. cit., publication 15, p. 1235.

Civil Code, legal scholars, academics, and commentators have begun to name new types of personal interests.<sup>22</sup>

In the judicial decisions issued, personal interests have taken the form of e.g.: marital status,<sup>23</sup> sexual integrity,<sup>24</sup> voice,<sup>25</sup> privacy meaning both issues of a person's physicality and their thoughts,<sup>26</sup> the cult of remembrance of deceased persons,<sup>27</sup> family ties,<sup>28</sup> national identity.<sup>29</sup> It is difficult to say unequivocally whether national identity refers to belonging to a single, designated nation. It is also not clear how to approach cases where a person has, for example, dual citizenship.<sup>30</sup>

## Personal interests whose existence raises doubt

Referring to the personal interests discussed earlier, divided into those that are listed literally in Article 23 of the Civil Code, as well as those that have only emerged over the years and have been classified as personal interests, it is important to mention interests that have caused a dispute in the judicial decisions of Polish courts. These include e.g. the relationship with the natural environment, understood as "the possibility to enjoy the qualities of the natural environment."<sup>31</sup>

According to the Constitution of the Republic of Poland, the right to be able to freely enjoy the natural qualities of nature constitutes a personal interest. In light of Article 74 of the Constitution of the Republic of Poland,<sup>32</sup> the protection of the natural environment is the duty of public authorities, and everyone has the right to information about the condition and protection of the environment. Public authorities implement policies to guarantee environmental security for present and future generations.

Protection of personal interests has also been sought in relation to the surrounding landscape. A claimant filed a lawsuit with a local district court, seeking an award of compensation from a company for the unlawful cutting of a tree from her property. Moreover, the claimant requested that the defendant company be

<sup>22</sup> K. Pietrzykowski (ed.), *Kodeks Cywilny. Komentarz do artykułów 1 – 449<sup>11</sup>*, Warsaw 2008, p. 149.

<sup>23</sup> Z. Radwański (ed.), *Prawo cywilne – część ogólna*, Warsaw 2017, p. 169.

<sup>24</sup> M. Romańska (ed.), *Dobra osobiste i ich ochrona*, Warsaw 2020, Chapter II, Legalis.

<sup>25</sup> J. Gudowski (ed.), *Kodeks Cywilny. Orzecznictwo, piśmiennictwo*, vol. 1, Warsaw 2021, p. 406.

<sup>26</sup> Supreme Court's judgement of 15.05.2005, ref. I CK 753/04, Legalis.

<sup>27</sup> A. Wolter, op. cit., p. 178.

<sup>28</sup> Supreme Court's judgement of 07.07.2017, ref. V CSK 609/16, Legalis.

<sup>29</sup> Administrative Court in Białystok's judgement of 30.09.2015, ref. I ACa 403/15, Legalis.

<sup>30</sup> M. Romańska (ed.), op. cit., Chapter II, Legalis.

<sup>31</sup> Ibidem.

<sup>32</sup> Constitution of the Republic of Poland of 02.04.1997, JLRP of 1997 no. 78.

required to make a written statement apologising to her because her personal interests had been violated. The district court came to the conclusion that the claim lacked merit. The court of appeals took the position that in the list of personal interests, as defined in Article 23 of the Civil Code, under the protection of civil law, did not include the right to property (cutting and theft of a tree), arguing that this was protected under other provisions. It is not possible to identify the claimant's personal interest that would be violated by the cutting of a tree found on her property. The unlawfulness of the action of cutting down a tree located on the claimant's property was not questioned. However, the claimant did not report the amount of damages related to the event, nor did she prove that her personal interests were violated in connection with the event.<sup>33</sup>

A decision that determined the admissibility of recognising environmental values as a personal interest was the Supreme Court's decision of 20 July 1984<sup>34</sup>, invoking the judgement of 10 July 1975<sup>35</sup>. In light of the above, a person's right to a biologically unpolluted environment and to experience the qualities of the landscape in an aesthetically pleasing manner is possible using the means set forth in Article 24 of the Civil Code. However, this can only occur if the violation of this right itself is at the same time a violation or threat to personal interests.<sup>36</sup>

A good example is the case of a Polish actress who sued the Treasury for not doing enough to combat smog. The court of first instance held that the claim deserved to be recognised.<sup>37</sup> However, the judgement was challenged by an appeal filed by the Treasury. The District Court in Warsaw dismissed the appeal.<sup>38</sup> In 2021, the court ruled that the Treasury was liable for poor air quality to the country's inhabitants. Moreover, the court found that poor air quality violated interests such as privacy, health, and freedom. Therefore, the country's inhabitants should be entitled to receive appropriate compensation.

Another example can be the case of a Polish activist who filed a lawsuit to receive 50,000 zlotys (approximately 12,000 euros) in compensation for the violation of his personal interests in the form of the right to clean air. The defendant was the Treasury (Minister of Environment and Minister of Energy). In the lawsuit, the Rybnik resident cited the fact that he did not have the possibility to breathe fresh air because the local PM10 levels – which affected air quality standards – were greatly

<sup>33</sup> Administrative Court in Katowice's judgement of 25.04.2018, ref. V ACa 937/16, Legalis.

<sup>34</sup> Supreme Court's decision of 20.07.1984, ref. II CR 5/84, Legalis.

<sup>35</sup> Supreme Court's judgement of 10.07.1975, ref. I CR 356/75, Legalis.

<sup>36</sup> M. Romańska (ed.), *op. cit.*, Chapter II, Legalis.

<sup>37</sup> Regional Court for Warszawa-Śródmieście in Warsaw's judgement of 24.01.2019, ref. VI C 1043/18, Legalis.

<sup>38</sup> Regional Court in Warsaw's judgement of 10.09.2021, ref. V Ca 1607/19, Legalis.

exceeded. These standards are defined in Article 13 of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.<sup>39</sup> Moreover, in 2018, the Ombudsman joined the case and acknowledged that the claimant was right. In addition, the Ombudsman stressed that the right to a clean environment is a personal interest. The District Court in Rybnik in the first instance dismissed the claim. The court acknowledged that indeed the air in the city was polluted, but the right to freedom of movement was not violated, suggesting that the claimant was free to move out of Rybnik. The claimant then appealed the judgement. Ultimately, the district court considering the case addressed the Supreme Court with a legal issue to be resolved. The issue involved the question of whether the right to live in a clean environment constitutes a personal interest. There was also a question of whether this interest is subject to legal protection under the Civil Code.

The Supreme Court argued that “the human right to an unpolluted biological environment and to the satisfaction of the aesthetic needs related to the beauty of the landscape can be protected by the means provided for in Article 24 of the Civil Code only if the violation of this right is at the same time a violation or threat to personal rights, the subject of which are personal interests within the meaning of Article 23 of the Civil Code.”<sup>40</sup> In addition, the Supreme Court stressed that the right to live in a clean environment that lets one breathe clean air is not understood as a personal interest. However, the resolution does not foreclose the possibility of pursuing claims on the grounds of violation of personal interests due to smog. A broader interpretation of the resolution makes it possible to conclude that the reason for bringing a lawsuit to protect personal interests in connection with deteriorating air quality is a real threat to health, life or privacy. In light of the above, these interests – according to the resolution of the Supreme Court – belong to the list of personal interests, and they may become the basis to pursue civil law claims if they are found to be violated<sup>41</sup>. However, this resolution did not determine the outcome of the case. The judgement issued by the district court examining the case in the second instance recognised the claim and the claimant received 30,000 zlotys of compensation (approximately 7,500 euros).<sup>42</sup>

Situations involving legal initiatives aimed at protecting clean air occur also in other EU Member States. The French Conseil d’État, the country’s highest administrative court, punished the French government in 2021 for failing to take

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<sup>39</sup> OJ EU L 152 of 11.06.2008.

<sup>40</sup> Supreme Court’s judgement of 10.07.1975, ref. I CR 356/75, Legalis.

<sup>41</sup> Supreme Court’s resolution of 28.05.2021, ref. III CZP 27/20, Legalis.

<sup>42</sup> Administrative Court in Gliwice’s judgement of 09.12.2021, ref. III Ca 1548/18, Legalis.

appropriate measures to prevent air pollution. According to some estimates, this lack of action causes about 40,000 premature deaths each year. The fine amounted to 10 million euros. In its reasoning for the ruling, the court pointed out that the actions of President Emmanuel Macron's government failed to improve the state of air quality. Moreover, the court argued that as long as air quality improvement targets were not met, it could impose further fines of 10 million euros on the government.<sup>43</sup>

In 2021, a court in the Netherlands issued a ground-breaking judgement. Dutch activists sued Shell – specifically Royal Dutch Shell plc (RDS). The case involved the issue of whether RDS had an obligation to reduce CO<sub>2</sub> emissions from the Shell group's total energy portfolio by the end of 2030 and relative to 2019 levels in all emission ranges (from 1 to 3). The activities were to be implemented through Shell group's corporate policy. The court argued that due to the fundamental interest in human rights, these rights may be of significant importance in the relationship between the claimants and the defendant. In light of the above, the court took into account human rights and the values derived from them. Moreover, the court took the position that since the enforcement of the reduction obligation should serve the public interest, it outweighed the business interests of the Shell group. The British-Dutch conglomerate was committed to reducing its carbon emissions by 45% by 2030 (relative to 2019).<sup>44</sup>

## What rulings may be made?

The 23 August 1996 amendment to the Civil Code<sup>45</sup> brought about a significant change to Article 448 of the Civil Code compared to the previous state of the law. The previous mechanism, under which the award of monetary compensation (and only to the Polish Red Cross<sup>46</sup>) was limited to cases of violation of personal interests enumerated in the act, was abolished. At present, courts have the option to award an appropriate amount in light of Article 448 of the Civil Code in cases of the violation of any legally protected personal interest. This is an important step toward strengthening the protection of personal interests.<sup>47</sup>

Currently, under Article 24 of the Civil Code, a person whose personal interests have been violated is entitled to non-material and material remedies. In addition,

<sup>43</sup> Conseil d'État, Decision no. 428409, 17.10.2022. Available from: <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-10-17/428409> (access: 5.07.2023).

<sup>44</sup> The Hague District Court, C/09/571932 2019/379, 13.11.2019.

<sup>45</sup> JLRP no. 114, item 542.

<sup>46</sup> R. Strugała, [in:] E. Gniewek, P. Machnikowski (eds.), *Kodeks Cywilny. Komentarz*, Warsaw 2019, p. 1011.

<sup>47</sup> M. Safjan, [in:] K. Pietrzykowski (ed.), *Kodeks Cywilny. Komentarz*, Warsaw 2015, p. 1522.



under Article 448 of the Civil Code, in a situation where the conduct of the violator is unlawful and culpable – and bears the hallmarks of wilful misconduct, the injured party has the right to take advantage of material measures.<sup>48</sup>

The subject entitled to pursue a non-material or material claim is only the person directly affected by the violation.<sup>49</sup> The entity obligated under Article 24 § 1 of the Civil Code, in turn, is the person who has committed the violation. According to P. Machnikowski, “liability for infringement of personal interests is a type of causal liability, borne by the person whose conduct is or may be the cause of damage to someone else’s personal interests.”<sup>50</sup> The main purpose of these claims is compensation, as well as “to satisfy the injured party.”<sup>51</sup>

As for cases involving compliance with the right to a clean environment, it needs to be mentioned that the claimant can not only demand monetary compensation (cases decided by Polish courts), but also request the violating party to refrain from and remove the consequences of the violation. A claim for cessation of an unlawful act is a protective measure against future violations of personal interests<sup>52</sup>. However, this claim occurs under Article 24 of the Civil Code, when the violation has already occurred, and there still exists a threat of further violations<sup>53</sup> (Shell case). It is important to stress the fact – in light of the Shell case – that the court not only obliged the company to cease and desist from the violation, but also obliged it to reduce its carbon emissions into the atmosphere.

Taking into account the above, a claimant whose personal interest in the form of the right to a clean environment has been violated may seek compensation, removal of the effects of the violation, and – consequently – enforcement of the compulsory resolutions issued through the initiation of enforcement.

## The pursuit of claims in light of violation of the right to a clean environment

First and foremost, in the context of the statements of the Supreme Court in its resolution of 21 May 2021<sup>54</sup>, regardless of the adoption of the concept of the right

<sup>48</sup> Administrative Court in Wrocław’s judgement of 24.07.2008, ref. I ACa 1150/06, Legalis.

<sup>49</sup> E. Gniewek, P. Machnikowski (eds.), op. cit., commentary to Article 24 marginal ref. no. 11, Legalis.

<sup>50</sup> Ibidem.

<sup>51</sup> J. Matys, *Model zadośćuczynienie pieniężnego z tytułu szkody niemajątkowej w kodeksie cywilny*, Warsaw 2010, p. 144.

<sup>52</sup> D. Dörre-Nowak, *Ochrona godności i innych dóbr osobistych pracownika*, Warsaw 2005, pp. 82–83.

<sup>53</sup> M. Gutowski (ed.), *Kodeks cywilny, Tom I. Komentarz do art. 1–352*, Warsaw 2021, commenatry to Article 24 marginal ref. no. 15, Legalis.

<sup>54</sup> III CZP 27.20, Legalis and numerous commentaries of legal scholars, academics, and commentators: B. Szyprowski, *Glosa do uchwały Sądu Najwyższego z dnia 28.05.2021 r.*, ref. III CZP 27/202, “Prokuratura

to a clean environment as a personal interest,<sup>55</sup> – or only the removal of the consequences associated therewith – in practice, the courts have repeatedly made comments regarding the claims asserted.<sup>56</sup> Claims can be asserted against environmental violators, while the question of from whom to seek compensation or damages will depend on the situation in a given case: whether e.g. air pollution is caused by our neighbours using improper materials to heat their home or a result of the negligence of the authorities or the Treasury.

It is important to identify the correct entity representing the defendant. When the Treasury is sued, in accordance with Article 67 §2 of the Code of Civil Procedure, the body of the state organisational unit whose activities gave rise to the claim or the body of the superior unit shall take action for the Treasury. To the extent specified by a separate act, the General Prosecutor's Office of the Republic of Poland engages in procedural action for the Treasury. The Supreme Court argued that if the asserted claim is related to the activities of the Treasury represented by various organisational units, it is not within the competence and duty of the courts to determine the extent of the liability of each of them. The court is only obligated to make sure that the Treasury is represented in the proceedings by that body of the Treasury or by those bodies of the Treasury whose activities have given rise to the asserted claim.<sup>57</sup> The criterion for the selection of a representative under Article 67 §2 of the Code of Civil Procedure is a substantive prerequisite expressed in the phrase concerning the activities of the state organisational unit that have given rise to the claim asserted. The cited formula proves too narrow due to the diversity and variety of state organisational units and their areas of activity. In reality, the Treasury appears in proceedings before the court as either an active or passive party to the litigation and as a participant in non-litigious proceedings. The relationship between the claim and the indicated *statio fisci* may arise not only from the latter's action including omission, but also from its competence. This concerns in particular liability for past events. The determination of the relevant *statio fisci* is also affected by circumstances related to effectiveness – i.e. the enforcement

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i Prawo” 2023, 7–8, p. 284 et seq.; A. Skorupka, *Prawo do życia w czystym środowisku. Glosa do uchwały Sądu Najwyższego z 28.05.2021 r.*, sygn. III CZP 27/20, PS 2022, 5, p. 112 et seq.; T. Nowakowski, OSP 2022 no. 5, item 40, p. 11; R. Szczepaniak, OSP 2022 no. 6, item 49, p. 11, M. Krystman, OSP 2022 no. 9, item 73, p. 38, K. Ciućkowska, OSP 2022 no. 11, item 94, p. 31; J. Trzewik, *Prawo do życia w czystym środowisku umożliwiającym oddychanie powietrzem atmosferycznym spełniającym standardy jakości jako dobro osobiste – glosa do zagadnienia prawnego zarejestrowanego w Sądzie Najwyższym*, sygn. III CZP 27/20, PUG 2021, 4, p. 57 et seq.

<sup>55</sup> See more: I. Wereśniak-Masri, *Prawo do czystego środowiska i prawo do czystego powietrza jako dobra osobiste*, MoP 2018, 17, p. 936 et seq.

<sup>56</sup> T. Nowakowski, *Kilka uwag w przedmiocie odpowiedzialności odszkodowawczej Skarbu Państwa za zły stan powietrza w kontekście ochrony dóbr osobistych*, “*Studia Prawa Prywatnego*” 2021, 3, pp. 36–37.

<sup>57</sup> Supreme Court's judgement of 29.07.1970, ref. II CR 301/70, OSNC 1971, no. 3, item 55.

of the judgement, since the funds that the Treasury – the debtor – must have at its disposal are ‘attached’ to the organisational units according to the budget classification, and are not their property in the civil law sense.<sup>58</sup> In accordance with Article 7a section 2 of the Act of 4 September 1997 on Departments of Government Administration, matters concerning especially the country’s energy policy and participation in shaping the energy policy of the European Union, energy markets, energy raw materials and fuels, energy efficiency, development and use of renewable energy sources and nuclear energy for socio-economic needs, energy security of the country – including security of supply of energy, energy raw materials and fuels, energy infrastructure – including the operation of energy systems taking into account the principles of rational economy and the needs of energy security of the country, initiating, coordinating, and supervising international cooperation in the field of energy, energy raw materials and fuels, and participation in the projects carried out by the bodies of the European Union fall within the competence of the relevant minister. If a lawsuit is filed against the Treasury, the competent authority will be the Minister of Climate and Environment.<sup>59</sup> Despite the fact that the cited resolution determined that the right to a clean environment is not a personal interest, failure to comply with the standards of permissible concentration levels of harmful substances in the air can lead to a threat or violation of health, which is a personal interest, which may give rise to a claim regulated by Article 448 of the Civil Code. On the other hand, the standard practice in judicial decisions is to acknowledge that a commune may not be sued in proceedings, as it is not obliged to protect the air.<sup>60</sup>

It is pointed out that non-governmental organisations do not have the entitlement to participate in the proceedings to the extent indicated in Article 61 §1 item 2 of the Code of Civil Procedure, as this will not be an environmental case. The judicial decisions of EU courts acknowledge the need to ensure the participation of NGOs in environmental cases. Article 9 section 3 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, in conjunction with Article 47 of the CCP, must be interpreted in a way that it precludes an environmental association, entitled to initiate legal proceedings under national law, from challenging before a national court an administrative decision granting or modifying EC type approval for vehicles that

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<sup>58</sup> Supreme Court’s judgement of 14.09.2006, ref. III CSK 59/06, LEX no. 445187.

<sup>59</sup> Regulation of the Prime Minister of 27 October 2021 on the detailed scope of activities of the Minister of Climate and Environment (JLRP of 2021, item 1949) and Regulation of the Prime Minister of 10 November 2020 on the transformation of the Ministry of Climate and Environment (JLRP of 2020, item 2005).

<sup>60</sup> Regional Court in Łódź’s judgement of 14.01.2021, ref. I C 1368/19, LEX no. 3169555.

may be contrary to Article 5 section 2 of Regulation 715/2007 on type approval of motor vehicles with respect to emissions generated by light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information.<sup>61</sup>

The grounds of the defendant Treasury's liability for violation of personal interests may be Article 448 of the Civil Code in conjunction with Article 417 of the Civil Code. In this context, the claim may be based on an assertion that public authorities are acting unlawfully by failing to take effective measures to bring air quality into compliance with the law, thereby violating Article 13 of Directive 2008/50/EC of the European Parliament and of the Council of 21.05.2008 on ambient air quality and cleaner air for Europe,<sup>62</sup> Articles 5 and 74 of the Polish Constitution in conjunction with Article 85 of the Environmental Protection Law,<sup>63</sup> and especially Articles 85-96a of the Environmental Protection Law. The Minister of Climate and Environment, as a government administration body, is responsible for taking relevant strategic, legislative, financial, and information and education measures. Quite importantly, EU courts have also been of the opinion that by adopting air quality protection programmes to put an end to exceedance of the limit values for PM10 concentration in ambient air, which are set for a time frame of ten or even fourteen years after the date on which the exceedance in question is discovered, a Member State is in breach of its obligations under Article 23 section 1 of Directive 2008/50 on ambient air quality and cleaner air for Europe.<sup>64</sup>

There is also an argument for the Treasury's liability for violations of personal interests under Article 448 in conjunction with Article 417 of the Civil Code.<sup>65</sup> According to Article 448 of the Civil Code, in the event of violation of a personal interest, the court may award the person whose personal interests have been violated an appropriate amount as monetary compensation for the harm suffered or, at the person's request, an appropriate amount to be donated to the social purpose of their choice, regardless of other measures required to eliminate the effects of the violation. In such circumstances, the provision of Article 445 § 3 applies. The

<sup>61</sup> CJEU judgement of 08.11.2022, C-873/19, *Deutsche Umwelthilfe Ev v. Bundesrepublik Deutschland*, LEX no. 3427968; CJEU judgement of 14.01.2021, C-826/18, *LB I IN. v. College van burgemeester en wethouders van de gemeente Echt-Susteren*, LEX no. 3106228.

<sup>62</sup> OJ EU L 152/1 of 11.06.2008.

<sup>63</sup> Act of 27 April 2001 – Environmental Protection Law (uniform text in the JLRP of 2020, item 1219 as amended)

<sup>64</sup> CJEU judgement of 22.02.2018, C-336/16, *European Commission v. Republic of Poland*, ZOTSiSPI 2018, no. 2, item I-94.

<sup>65</sup> In the Supreme Court judgement of 21.04.2010, ref. V CSK 352/09, *Legalis*, it was pointed out that “the grounds for liability for violation of personal interests are the provisions of Article 23, Article 24, and Article 448 of the Civil Code, and on the basis of these provisions, liability for violation of personal interests shall also be borne by the Treasury.”

provisions of Articles 417 and 417 1 of the Civil Code do not apply to the Treasury's liability for violations of personal interests in the form of dignity, reputation and inviolability of the dwelling, since liability for violations of these personal interests is regulated separately in Articles 23, 24, and 448 of the Civil Code.<sup>66</sup> The liability of the Treasury is objective. In order for it to take effect, it is sufficient to establish the unlawfulness of the Treasury's act or omission, without the need to prove guilt.<sup>67</sup>

Existing judicial decisions point to the possibility of violation of personal interests by omission, and the condition for the pursuit of such a claim is the threat of further violations.<sup>68</sup> As the Supreme Court argued, a claim for cessation of the violation of dignity is valid only if there is a reasonable threat of further violation thereof.<sup>69</sup> Article 24 of the Civil Code provides for two separate claims for the elimination of the consequences of the violation of personal interests: one is relevant when the violation has already occurred and its effects must be eliminated in a manner chosen by the claimant, adequate to the violation; the other is valid only when there is a reasonable fear of further violation of personal interests. The existence of the state of reasonable fear must be proven in the course of the proceedings, and it is the claimant's responsibility to present – the facts that will fulfil the factual basis of the action for such a claim already in the statement of claim filed with the court.<sup>70</sup> The court adjudicating a case for protection of personal interests may adjust the form and content of the statement requested by the party seeking protection. The court may shape the content of the statement by limiting its scope, making it more specific or eliminating certain wording, because in this way it gives the claimant's will, defined by the scope of the claim made, a juridically correct form. Still, such an adjustment cannot lead to a change in the claim or give it a completely different content than that specified in the statement of claim filed by the claimant.<sup>71</sup> Therefore, it is reasonable to recognise that the state is liable for the consequences of acting unlawfully by failing to comply with the applicable air quality standards, i.e. for the harm caused by the violation of personal interests. A number of different claims can thus be asserted. It is possible to seek redress

<sup>66</sup> Supreme Court's judgement of 21.04.2010, ref. V CSK 352/09.

<sup>67</sup> This position is well established in the views of legal scholars, academics, and commentators: G. K., *Komentarz do art. 417 k.c.; J. C., Kodeks cywilny. Komentarz*, 2<sup>nd</sup> edition LexisNexis 2014) and in the Supreme Court's judicial decisions – resolution by 7 judges of 18.10.2011, ref. III CZP 25/11.

<sup>68</sup> Supreme Court's judgement of 26.02.1965, ref. II CR 13/65, OSNCP 1965, no. 10, item 174; Supreme Court's judgement of 09.07.1971, ref. II CR 220/71, OSNCP 1972, no. 1, item 19; Supreme Court's judgement of 18.07.2014, ref. IV CSK 716/13, Supreme Court's bulletin of 2014, no. 10, item 10; Supreme Court's decision of 12.06.2015, ref. IV CSK 698/14, LEX no. 3526168.

<sup>69</sup> Supreme Court's judgement of 26.02.1965, ref. II CR 13/65, OSNC 1965, no. 10, item 174.

<sup>70</sup> Supreme Court's judgement of 28.03.2018, ref. IV CSK 317/17, LEX no. 2521617.

<sup>71</sup> Administrative Court in Warsaw's judgement of 05.02.2020, ref. I ACa 308/19, LEX no. 2937480.

and compensation for damage to health caused by the Republic of Poland's actions in the form of pollution resulting from inadequate management of smog prevention measures and insufficient care for the environment, leading to climate change and diseases, which constitutes an environmental crime.<sup>72</sup>

The Treasury's liability may arise from its unlawful acts of failure to take effective action to bring air quality into compliance with the law, since despite the implementation of the 2008 EU Directive into Polish law through amendments to the Act of 27 April 2001 – Environmental Protection Law and through the issuance of relevant regulations, including the Minister of the Environment's Regulation of 24 August 2012 on the levels of certain substances in the air, the lack of real action has not removed the state of non-compliance with the applicable legal provisions on the limit values (both daily and annual, as well as the number of permitted exceedances of daily values) and target levels of harmful substances in the air.<sup>73</sup>

In terms of the claims to be asserted, it is necessary to establish the guilt of the specific perpetrator of the violation of the standards of permissible concentrations of harmful substances in the air and prove the damage to one's health caused by the exceedance of the permissible concentrations of air pollutants. Evidentiary proceedings play an important role in the assertion of claims in this area. At the same time, the claimant must prove that the polluted air had a negative impact on their health, but also on their freedom<sup>74</sup> and led to illness or caused other negative effects, by demonstrating the existence of a cause-and-effect relationship. There is an argument for the usefulness of publicly available data on the results of air quality over the years in a given area on the website of the Chief Inspectorate for Environmental Protection – local acts of law (resolutions of provincial assemblies on the air protection programme, resolutions of city councils – “Low Emission Economy Plans”, or the Supreme Audit Office of the Republic of Poland's reports on the protection of air against pollution.<sup>75</sup> It is also emphasised that the reports of the Supreme Audit Office are official documents within the meaning of Article 244 of the Code of Civil Procedure, as they have been drawn up in the prescribed form by the supreme body of state control, whose powers and tasks are defined in the Constitution and the Act on the Supreme Audit Office of the Republic of

<sup>72</sup> II C 1978/21 – rationale of the District Court for the Capital City of Warsaw in Warsaw of 05.05.2022., [https://orzeczenia.ms.gov.pl/content/prawo\\$0020do\\$0020czystego\\$0020\\$015brodowiska/154505250001003\\_II\\_C\\_001978\\_2021\\_Uz\\_2022-06-01\\_001](https://orzeczenia.ms.gov.pl/content/prawo$0020do$0020czystego$0020$015brodowiska/154505250001003_II_C_001978_2021_Uz_2022-06-01_001) (access: 5.07.2023).

<sup>73</sup> Regional Court in Gliwice's judgement of 09.12.2021, ref. III Ca 1548/18, Legalis.

<sup>74</sup> For instance, the Regional Court for Warszawa-Śródmieście in Warsaw's judgement of 24.01.2019, ref. VI C 1043/18, LEX No. 2817690 stresses the right to protection of private life, the right to freedom, privacy, and respect for home.

<sup>75</sup> District Court in Łódź's judgement of 14.01.2021, ref. I C 1368/19, LEX no. 3169555.

Poland. The submitted reports have been created as a result of an audit carried out as part of the constitutional and statutory tasks of the Supreme Audit Office.<sup>76</sup>

It is also necessary to highlight that in proceedings before the European Court of Human Rights there are many judgements ordering various countries to pay compensation for the lack of sufficient environmental protection, such as in the case of *Kyrtatos v. Greece* (application no. 41666/98),<sup>77</sup> Here, however, the Court, examining a case concerning the destruction of marshes and the loss of the natural appeal of the area, emphasised that the Convention does not protect the general aspirations or needs of society as a whole.<sup>78</sup> In the case of *Giacomelli v. Italy* (application no. 59909/00), it was argued that the right to respect for home, guaranteed under Article 8 of the European Convention on Human Rights, includes protection not only against direct physical interference, but also against negative impacts caused by noise or odour (so-called indirect immissions), as well as other activities that impede the undisturbed use of property.<sup>79</sup> In *Hamer v. Belgium*<sup>80</sup> (Application no. 21861/03), the Court emphasised that the environment, while not *explicitly* protected by the Convention, is a value in itself, one remaining in the interest of both society and public authorities.

There can be no doubt that depending on the claim asserted and the decision made, coercive enforcement is also possible. In the case of monetary claims, enforcement of the ruling is not difficult. There is also the possibility of considering a request for a statement involving the removal of a threatening condition or an apology.<sup>81</sup> A creditor who has been authorised to perform an action at the expense of the debtor in court proceedings (Article 480 § 1 of the Civil Code) may – pursuant to the second sentence of Article 1049 § 1 of the Civil Code – demand that the court award them the amount necessary to perform this action.<sup>82</sup> The right granted by the norm of Article 480 § 3 of the Civil Code may be exercised by the creditor when the performance of the action under the authority of the court would no longer matter to them either due to the nature of the obligation or due to the impossibility of achieving the purpose for which the agreement has been concluded, or would expose the creditor to a significant loss – one that would be difficult to recover

<sup>76</sup> Regional Court in Warsaw's judgement of 10.09.2021, ref. V Ca 1607/19, LEX no. 3430235.

<sup>77</sup> ECHR judgement of 22.05.2003, *Kyrtatos v. Greece*, application no. 41666/98, <http://hudoc.echr.coe.int>.

<sup>78</sup> H. Machińska, *Europejska Konwencja Praw Człowieka jako instrument ochrony praw jednostki w związku z zanieczyszczeniem środowiska*, EPS 2014, 1, pp. 60–65.

<sup>79</sup> ECHR judgement of 26.03.2007, *Giacomelli v. Italia*, <https://hudoc.echr.coe.int/>; more extensively: D. Sześciło, *Glosa do wyroku ETPC z dnia 2.11.2006 r., 59909/00*, ST 2010, 3, pp. 80–83.

<sup>80</sup> ECHR judgement of 27.11.2007, *Hamer v. Belgium*, application no. 21861/03, <http://hudoc.echr.coe.int/>; D. Sześciło, *Wyrok ETPC z dnia 27.11.2007, 21861/03*, ST 2013, 11, pp. 84–87.

<sup>81</sup> More: K. Knoppek, *Naruszenie dóbr osobistych – egzekucja świadczeń niepieniężnych*, MoP 2007, 17, p. 795.

<sup>82</sup> Supreme Court's resolution of 17.02.2016, ref. III CZP 106/15, OSNC 2017, no. 2, item 13.

from the debtor.<sup>83</sup> In contrast, making a statement involving an apology may involve the enforcement of a non-substitutable act. In the event that the act consists in publishing the text of the apology in the press rather than being read or signed personally by the debtor, the provision to enforce such an act will be Article 1049 of the Code of Civil Procedure, rather than Article 1050 of the Code of Civil Procedure.<sup>84</sup> The Supreme Court decided in its resolution of 28.06.2006<sup>85</sup> that the obligation to remove the consequences of the violation of personal interests, which consists in the debtor making a statement of appropriate content in the form of an announcement, is subject to enforcement under Article 1049 of the Code of Civil Procedure. This meant that if the infringer did not publish an apology in the form (and content) specified in the judgement, the victim (creditor) could publish an apology at the expense of the infringer (debtor). It has been argued in the literature dealing with the matter that the position of acknowledging the application of Article 1049 of the Code of Civil Procedure to the enforcement of the act of making a statement in the appropriate content and form in connection with the established violation of personal interests should be considered right and correct.<sup>86</sup> According to Article 1050 § 1 of the Code of Civil Procedure, if the debtor is to perform an action that cannot be performed for them by another person and the performance of which depends solely on the debtor's will, the court in whose district the action is to be performed shall, at the request of the creditor, after hearing the parties, set a deadline for the debtor to perform the action in question and threaten them with a fine in case they fail to perform the action within the set deadline. In light of the new wording of Article 1050 § 4 of the Code of Civil Procedure, if, in cases involving the violation of personal interests, the debtor fails to make a statement of the required content and in the proper form – despite being given a deadline for it and being threatened with a fine, the court will impose a fine of up to fifteen thousand zlotys on the debtor and order that an corresponding to the content and form of the required statement be published in the Court and Commercial Gazette at the debtor's expense. The provisions of Article 1052 and 1053 shall not apply. The publication of the announcement referred to in the first sentence in the Court and Commercial Gazette results, to the extent covered by the announcement, in the expiration of the claim indicated in the enforcement order.<sup>87</sup> It is argued that

<sup>83</sup> Administrative Court in Szczecin's judgement of 09.11.2018, ref. I AGa 116/18, LEX no. 2668192.

<sup>84</sup> Administrative Court in Warsaw's judgement of 07.05.2013, ref. I ACa 1335/12, LEX no. 1322767.

<sup>85</sup> III CZP 23/06, OSNC 2007/1, item 11.

<sup>86</sup> M. Kierska, T. Marek, *Egzekucja sądowa roszczenia o usunięcie skutków naruszenia dóbr osobistych poprzez złożenie oświadczenia w odpowiedniej treści i formie*, PPE 2016, 2, pp. 25–41.

<sup>87</sup> More extensively on the change – also: G. Kamiński, *Nowelizacja art. 1050 k.p.c. jako przykład prywatyzacji prawa*, "Nowa Currenda" 2023, 3, p. 10 et seq.



the current amended regulation significantly reduces the level of protection of personal interests, and the publication of an apology in the Court and Commercial Gazette will generally not remove the effects of violations, and a fine of up to PLN 15,000 may not be sufficiently severe for many offenders.<sup>88</sup> It is emphasised that due to the fact that the ‘manager’ of the enforcement proceedings is the injured party, and the court, as a rule, is bound by their petition, the choice of the procedure of enforcement of the claim for the removal of the consequences of violation of personal interests should be left to the injured party.<sup>89</sup>

## Conclusion

It is not possible to recognise and categorise the right to clean air as a personal interest of a natural person. Personal interests are related to the most individual values – such as health, life, or personal freedom. However, the right to clean air – which is very important for people’s well-being in general – is a collective construct, so to speak. Moreover, clean air is related to environmental protection and requires a more holistic approach. This approach should take into account the whole society and long-term goals, not just individual interests. Therefore, as indicated in the Supreme Court’s resolution,<sup>90</sup> pollution of the environment (air, water, soil) can lead to a violation of personal interests that already exist under the Civil Code in the form of health, freedom, and privacy.

In the case of claims for violations of the standards for the concentration levels of harmful substances in the air, it is necessary to establish the fault of the specific person or institution liable for exceeding these levels. Moreover, it is important to prove that the violation has caused damage to the claimant’s health and negatively affected the claimant’s freedom. However, the choice of the procedure of enforcement of a claim for the elimination of the effects of violation of personal interests remains at the discretion of the injured party.

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<sup>88</sup> M. Dziurda, [in:] *Kodeks postępowania cywilnego. Praktyczny komentarz do nowelizacji z 2023 roku*, Warsaw 2023, Art. 1050.

<sup>89</sup> K. Szczechowicz, *Wybrane aspekty egzekucji czynności zastępowalnych*, PPE 2021, 7, pp. 50–69.

<sup>90</sup> Supreme Court’s resolution of 28.05.2021, ref. III CZP 27/20, Legalis.

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