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Holding Central Public Authorities Accountable for Air Pollution in Poland

Abstract: In view of growing public awareness of the health consequences of exposure to smog, revisions of EU directives regulating air quality management, and granting EU citizens the right of access to justice in matters concerning air quality, the aim of this article is to examine whether the central public authorities in Poland have so far been held to account for substandard air quality. The article focuses on a review of the results of audits conducted by the Supreme Audit Office on various aspects of public authorities' activities in the area of air protection policy and an analysis of the first smog lawsuit in Poland. Answers to the research questions: (1) how have Polish citizens held public authorities to account for their obligation to protect air quality? and (2) what results have Polish citizens had in court cases concerning breathing in air that did not comply with legally permitted standards? lead to the conclusion that citizens do seek compensation (and even damages) from the State Treasury over the violation of their personal rights (especially the right to health) as a result of exposure to excessive concentrations of air pollutants which is a consequence of unlawful neglect by public authorities. An attempt to answer the research questions was made using the method of legal analysis.

Key words: air pollution, smog, public authorities' accountability, air protection policy, right of access to court in environmental matters

Introduction

Poland consider poor air quality to be one of the country's key environmental challenges. Since 2018, when the National Fund for Environmental Protection and Water Management launched its Clean Air priority program and introduced quality requirements for solid fuels burned in households, the public has considered air pollution to be the most serious environmental problem. This was confirmed by 62% of respondents in a survey commissioned by the Ministry of the Environment, who considered issues such as waste, climate change, and water pollution to be less important (47%, 39%, and 36% of responses, respectively; respondents were asked to identify the three most important issues) (Szatanowska, Kotlewska et al., 2018, p. 23). In the latest survey edition, conducted in 2024, 57% of respondents considered air pollution to be the environmental issue posing the biggest number of problems to be solved (43% indicated noise and water pollution as challenges, while only 18% indicated climate change) (Badanie..., 2024, p. 27).

Placing air pollution risks at the top of the environmental challenges' ranking is determined by a plethora of factors. Among the most important is how frequently individual environmental risks are reported in the media. Smog has become a leading environmental issue in media discourse, as confirmed by the Media Monitoring Institute. Between

August 2018 and July 2019, the largest number of publications with environmental content (385,000) were recorded under the heading “smog” (Jędrzejewska, Jodłowski et al., 2019, pp. 34–35). A 2012 study commissioned by the European Commission found that only 32% of Poles felt very well-informed or somewhat well-informed about air pollution, compared to 59% in 2022. In the latest edition of the survey, only the Finns considered themselves better informed (70% of respondents) (*Flash...*, 2013, p. 10; *Special...*, 2022, p. 20). Poles are also aware of health issues related to air pollution: 93% and 92% of survey participants in 2022 assessed that cardiovascular and respiratory diseases, respectively, constitute a “serious problem” in Poland (*Special...*, 2022, pp. 25, 29). In the context of growing awareness of the risks, the contribution of non-governmental organizations that demand decisive corrective action from public authorities in the fight for clean air is noteworthy. For example, in 2012, Krakowski Alarm Smogowy (Krakow Smog Alert) was established. Then, in 2015, Krakowski, Dolnośląski, and Podhalański Alarm Smogowy (Krakow, Lower Silesia, and Podhale Smog Alerts) merged to form Polski Alarm Smogowy (Polish Smog Alert), which currently consists of over 50 local groups and organizations involved in clean air activities. Another factor facilitating the growing environmental awareness in the area of air quality in Poland involves the adoption of legislation and the accompanying public debates and social campaigns. All of this leads citizens to reflect on the accountability of public authorities and to become more interested in holding them accountable in court.

Revision of directives regulating air protection policy

The issue of public authorities’ responsibility for ensuring compliance with air quality standards is extremely topical in light of the revisions of two EU directives on air quality management, 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, and Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, and polycyclic aromatic hydrocarbons in ambient air. The proposed amendments to these directives primarily address the significant health and economic costs associated with exposure to air pollution in the European Union. Pollutants negatively impact the respiratory, circulatory, nervous, and reproductive systems and lead to an increased incidence of numerous diseases (e.g., cancer) or exacerbate existing conditions (e.g., asthma or chronic obstructive pulmonary disease) (Mazurek, 2018, pp. 36–37; Jędrak, Konduracka et al., 2017, pp. 25–91). Air pollution remains the leading environmental cause of premature death in the EU. In 2022, the European Environment Agency estimated that premature deaths due to diseases attributed to exposure to air pollution affected 239,000 Europeans in connection with fine particulate matter ($PM_{2.5}$) pollution, 70,000 as a result of exposure to ground-level ozone (O_3), and 48,000 due to the negative health effects of nitrogen dioxide (NO_2) (European Environment Agency, 2024).

Another determinant of the legislative activity to tighten air quality standards in the European Union was the September 2021 publication of updated, more stringent World Health Organization guidelines on the concentration levels of six pollutants. These

guidelines take into account the current state of knowledge on the adverse health effects of exposure to selected substances (World Health Organization, 2021). The tightening of air quality standards is also intended to contribute to the European Union's target under the European Green Deal. The EU Action Plan: "Towards Zero Pollution for Air, Water and Soil" states that by 2050, these pollutants will reach levels that are no longer harmful to human health and natural ecosystems. The European Commission has set interim targets for 2030, including reducing premature deaths caused by PM_{2.5} air pollution by at least 55% compared to 2005 levels (Communication..., 2021, p. 3).

Directive 2024/2881 of the European Parliament and of the Council of 23 October 2024 on ambient air quality and cleaner air for Europe (recast) (Ambient Air Quality Directive 2024, AAQD 2024) combines the two directives mentioned above and establishes new, lower permissible pollution levels for member states to implement by 2030¹ and also explicitly holds public authorities accountable for air pollution. Article 27 grants EU citizens the right to access justice in matters relating to air quality. According to Article 28, member states must ensure that citizens have the right to claim compensation when the provisions of air protection plans,² short-term action plans,³ and air quality action plans⁴ are violated intentionally or through negligence and citizens suffer health damage

¹ This provides the possibility for the application of the new standards to be postponed until 2035 or 2040 in special circumstances (as provided for in Article 18 of the Directive), which in the EU could mean up to 327,600 additional premature deaths (including nearly 85,000 in Poland) in the event of a maximum delay in meeting the new PM_{2.5} pollution level. Data based on: E. Malmqvist, Z. J. Andersen, J. Spadaro, M. Nieuwenhuijsen, K. Katsouyanni, B. Forsberg, F. Forastiere, B. Hoffmann (2024), *Urgent Call to Ensure Clean Air For All in Europe, Fight Health Inequalities and Oppose Delays in Action*, "International Journal of Public Health", vol. 69.

² Pursuant to AAQD 2024, air protection plans will be developed for areas where pollution levels exceed set limits and target values after the deadline. Currently, Poland has air protection programs (Pl.: *program ochrony powietrza* – POP), which were established by Article 91 of the April 27, 2001 Environmental Protection Law. Regional authorities develop these programs for zones where at least one limit or target value for substances subject to air quality assessment has been exceeded. They then submit draft resolutions on the prepared programs to relevant municipal heads, mayors, city presidents, and county administrators for review. In the final stage, regional assemblies adopt the programs through a resolution. Additionally, "if permissible or target levels of substances in the air are exceeded over a significant area of the country and measures applied by local government authorities do not reduce air pollution emissions, the minister responsible for climate may develop a national air protection program" (Article 91c).

³ In accordance with AAQD 2024, short-term action plans provide for emergency measures, such as traffic restrictions, to reduce the immediate risk to human health in areas where alert thresholds are exceeded. These plans were introduced to the Polish legal system through Article 92 of the April 27, 2001 Environmental Protection Law which stipulates that "[i]n the event of a risk of exceeding the alert level, the permissible or target levels of substances in the air, in a given zone, the regional board of management shall, within 12 months of receiving information about this risk from the Chief Inspector of Environmental Protection, develop and submit a draft resolution on a short-term action plan for opinion to the relevant municipal heads, mayors, or city presidents and county administrators." The regional assembly then determines a short-term action plan by way of a resolution.

⁴ Air quality action plans were introduced in the AAQD 2024 and will be established by member states if pollution levels exceed any limit or target value that should be achieved by January 1, 2030, in an air quality assessment zone or territorial unit between January 1, 2026, and December 31, 2029. These action plans must be established as soon as possible, but no later than two years after the calendar year in which the excessive level was recorded.

as a result. In light of these provisions, this article aims to examine whether Poland's central public authorities have so far been held accountable for failing to meet air quality standards. The research objective is to answer the following two research questions: (1) how have Polish citizens held public authorities to account for their obligation to protect air quality? and (2) what results have Polish citizens had in court cases concerning breathing in air that did not comply with legally permitted standards? To answer these questions the method of legal analysis was applied.

The effectiveness of public entities' actions to protect the air from pollution, as assessed by the Supreme Audit Office

The obligation of public authorities to protect and improve air quality is stipulated in the 1997 Constitution of the Republic of Poland. Article 5 states: "The Republic of Poland [...] shall ensure environmental protection guided by the principle of sustainable development." Article 74(1) states: "Public authorities shall pursue a policy ensuring ecological safety for present and future generations" and section 2 stipulates: "Environmental protection is the duty of public authorities" (*Konstytucja...*). Further on, Article 68(4) obligates public authorities to "prevent the negative health effects of environmental degradation" (*ibid.*). The Polish system of air pollution control is complex and requires cooperation between many administrative entities, from the central and regional governments to local government units at all levels.

The effectiveness of public entities' actions to protect the air from pollution is assessed in audit reports by the Supreme Audit Office (NIK). The first report was published in 1994, and the most recent report in 2024. The latter focused on air quality in health resorts. According to the July 28, 2005 Act on health resort treatment, health resorts, health resort protection areas and health resort municipalities (Article 34(1)), five criteria need to be fulfilled for health resort status to be granted, including having a climate with proven therapeutic properties and meeting specific environmental requirements. The Minister of Health's rules also require taking air pollution into account when assessing the therapeutic properties of the climate. One of the environmental requirements set in the April 27, 2001 Environmental Protection Law is to ensure the best possible air quality, which should remain at a level not exceeding set values. The entities inspected by the Supreme Audit Office included the Ministry of Health and six health resort municipalities: Busko-Zdrój, Ciechocinek, Cieplice (Jelenia Góra), Goczałkowice-Zdrój, Inowrocław, Kudowa-Zdrój, Polanica-Zdrój, Rabka-Zdrój, Swoszowice (Kraków), Szczawnica, and Szczawno-Zdrój, and the only two entities authorized to issue climate certificates (Najwyższa Izba Kontroli, 2024, pp. 7–8). The activities conducted by all the above entities from 2018 to 2023 were negatively assessed because "they did not ensure optimal and safe conditions for health resort treatment due to their belittling the poor air quality problem [none of the municipalities met the air quality requirements for PM₁₀, PM_{2,5}, and benzo(a)pyrene – AS-B] at the stage of confirming their health resort status, and the insufficient scale of the corrective measures taken by the municipalities to reduce low emissions from 2018 to 2022" (*ibid.*, p. 9). The solutions adopted by the

municipalities were considered incomplete and “in some units, it was found that they did not meet the requirements of applicable air protection programs or implemented them unreliably” (ibid., p. 38).

In 2022, the Supreme Audit Office presented the results of its audit of the nationwide Clean Air program⁵ from March 16, 2018, to November 10, 2021. The main objective was to determine whether or not the conditions for granting subsidies and how the program was administered and implemented by the relevant entities led to achieving the intended results. Public authorities audited included the Ministry of Climate and Environment (which functioned as the Ministry of the Environment and the Ministry of Climate over the review period), the National Fund for Environmental Protection and Water Management (NFOŚiGW), eight regional funds, and 24 municipal offices. According to the Supreme Audit Office, the minister responsible for the environment, together with the NFOŚiGW, failed to properly and effectively develop and implement the program. Not only did the changes introduced to improve the program fail to produce the expected results but they led to a lack of transparency in formal procedures. The activities of the regional funds and municipal offices were deemed insufficient. For example, it was demonstrated that the allocation of human resources was disproportionate to the needs, resulting in delays in processing grant applications and payment requests. The Supreme Audit Office also noted the lack of a widespread, continuous information campaign (Najwyższa Izba Kontroli, 2022, pp. 7, 11–12). The lapses identified resulted in the conclusion that achieving the set objectives while maintaining the current pace of thermal modernization and replacement of inefficient heat sources would be impossible. According to the report, “after three years of implementing the program, the total amount of contracts concluded with beneficiaries accounted for only 4.1% of the PPCP budget [Clean Air Priority Program – AS-B], and the total amount of co-financing disbursed was only 1.9%. [...] This means that the deadline for accepting applications, which expires by the end of 2027, is unlikely to be met” (ibid. p. 11).

Given the subject matter of this article, the results of two earlier audits also deserve to be mentioned. The 2018 report assesses the actions taken by public authorities to improve air quality in five regions (Dolnośląskie, Małopolskie, Mazurskie, Łódzkie, and Śląskie) from January 1, 2014, to June 30, 2017. The audit intended to verify whether or not (1) the government administration bodies (the Ministry of the Environment, the Ministry of Energy, and the Ministry of Development and Finance) had taken “appropriate and effective measures to improve air quality”; (2) the regional local government authorities (five marshal’s offices) had “planned adequate measures to achieve the required air quality and properly monitored the degree of implementation and effectiveness of the corrective measures taken”; and (3) the municipal local government units (thirteen city

⁵ The Clean Air Priority Program has a budget of PLN 103 billion and consists of regional environmental protection and water management funds providing subsidies for investments carried out by individuals. These investments aim to replace non-ecological heat sources and increase energy efficiency in 3 million buildings and 3.03 million residential premises. The program was launched in September 2018 and is scheduled to end on December 31, 2029. Agreements for co-financing, the amount of which depends on the beneficiary’s income, will be signed until December 31, 2027. For more information, see: A. Sakson-Boulet, W. Trempała, *Polityka ochrony powietrza a bezpieczeństwo ekologiczne państwa*, Poznań 2024, pp. 58–66.

and municipal offices) “actively worked to reduce emissions” (Najwyższa Izba Kontroli, 2018, p. 10). Excessive levels of B(a)P, PM₁₀, and PM_{2,5} were reported throughout the country between 2014 and 2017 while “[p]ublic entities [at every level – national, regional, and local – AS-B] did not take adequate measures to address the scale of the problem or to protect the air effectively (ibid., p. 12).

In 2017, the Supreme Audit Office presented an assessment of measures to reduce low emissions from domestic and municipal boilers during the 2013/2014, 2014/2015, and 2015/2016 heating seasons. The measures under investigation were taken by the following public administration bodies: the Katowice Regional Inspectorate for Environmental Protection, responsible for monitoring compliance with environmental protection regulations and examining and assessing the state of the environment; the Katowice Regional Fund for Environmental Protection and Water Management, which finances environmental protection; and nine municipal/city offices in the Silesian region (Żywiec, Rybnik, Wodzisław Śląski, Częstochowa, Tychy, Sosnowiec, Bielsko-Biała, Cieszyn, and Janów) as well as their municipal guards (with the exception of Janów, which does not have one). They were all assessed as ineffective, mainly due to the insufficient pace and scale of the measures taken by the municipal/city offices and their guards. Regarding the financing of activities, some municipalities were found to have used public funds to finance projects that did not significantly reduce air pollution. This was particularly the case with the installation of solar panels (Najwyższa Izba Kontroli, 2017, pp. 9, 11). The report did not make any critical remarks only as concerned the functioning of the Katowice Regional Inspectorate for Environmental Protection. It also emphasized the need for systemic solutions on a national scale (restrictions on solid fuel boilers and the quality of solid fuels used in the municipal and residential sectors were introduced after the audit was completed, in 2017 and 2018).

Holding central public authorities accountable for polluted air in Poland – an analysis of the first smog lawsuit

A smog lawsuit refers to a situation when a person argues that their personal rights have been violated due to poor air quality (Żołciak, Jóźwiak, Baca-Pogorzelska, 2018, p. C11). The first smog lawsuit was filed in 2015 against the State Treasury – the Minister of the Environment and the Minister of Energy – by Oliwer Palarz, a resident of Rybnik, a town located in the Śląskie Region. He claimed PLN 50,000 in compensation from the town of Rybnik, for exceeding air quality standards in terms of concentrations of PM₁₀, PM_{2,5}, sulfur dioxide, carbon monoxide, benzo(a)pyrene, and ozone, which he believed resulted in the following:

- violation of his personal right to health. He indicated medical conditions such as respiratory and throat irritation, as well as conjunctivitis;
- violation of the inviolability of his home. He experienced restrictions on using his home for its intended purpose, including the inability to ventilate his home in the fall and winter;
- restriction of freedom of movement due to public authorities’ recommendations to stay home which made him unable to go for walks or play sports;

- violation of his right to live in a clean environment (*Wyrok Sądu Rejonowego w Rybniku..., 2018*).

In justifying his claim, the plaintiff pointed out that he experienced psychological discomfort and had serious concerns about the impact of pollution on his health. He claimed that the State Treasury is accountable under 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, and that public authorities are obligated under the Constitution of the Republic of Poland to protect and improve air quality. He “[s]tated that public authorities are committing an unlawful neglect by failing to take effective action to bring air quality to the level required by law, thereby violating Article 13 of the Directive and Articles 5 and 74 of the Constitution in conjunction with Art. 85 of Environmental Protection Law (*Wyrok Sądu Rejonowego w Rybniku..., 2018*).

In its judgment of May 30, 2018, the Rybnik District Court dismissed the claim, ruling that:

- monetary compensation for the violation of personal right to health is only due in the event of bodily injury or health disturbance (physical or mental) and not in the event of a threat to this right. The court found that Oliwer Palarz did not prove that he suffered bodily injury or health impairment or that such conditions were a result of exposure to smog;
- since it is “common knowledge” that Rybnik has some of the worst air quality in Poland during the winter, and since Mr. Palarz and his family live in Rybnik “of their own free will,” they “can change their place of residence at any time.” Therefore, there is no restriction on the freedom to use the apartment or to move around;
- the court also found that the right to live in a clean and unpolluted environment is not a personal right. It was deemed unjustified to “fragment existing personal rights and create new personal rights from a single right; the violation of the right to live in clean and unpolluted air [...] may affect the personal right to health” (*Wyrok Sądu Rejonowego w Rybniku..., 2018*).

Oliwer Palarz appealed the judgment, and Adam Bodnar, the Human Rights Commissioner at the time, joined the proceedings on the plaintiff’s side. In his pleading, Bodnar stated that the personal rights indicated in the statement of claim had been violated. Bodnar considered the District Court’s position that the right to an unpolluted environment is not a personal right to be erroneous (Rzecznik Praw Obywatelskich Adam Bodnar, 2018). The appeal was held in the Regional Court in Gliwice. Due to other Polish courts awarding compensation from the State Treasury for exposure to smog, on January 24, 2020, the Regional Court requested the Supreme Court to rule on the following legal issue: “Does the right to live in a clean environment that allows one to breathe air of a quality that meets the standards specified in generally applicable law in places where a person stays long-term, particularly their place of residence, constitute a personal right protected under Art. 23 of the Civil Code in conjunction with Art. 24 and Art. 448 of the Civil Code?” (Jędrzejczyk, 2020). On May 28, 2021, the Supreme Court’s Civil Chamber sat in session and ruled that the right to live in a clean environment is not a personal right. However, the court emphasized that this does not preclude citizens from pursuing claims for possible effects of noncompliance with air quality standards. It is permissible to invoke violations of personal rights, such

as the rights to health, freedom, and privacy, as a result of exposure to excessive concentrations of pollutants. Item two of the court's resolution states: "Health, freedom, and privacy are subject to protection as personal rights (Art. 23 of the Civil Code in conjunction with Art. 24 and Art. 448 of the Civil Code), the violation of (or threat to) which may result from a violation of the air quality standards specified in the provisions of law" (*Uchwała Sądu Najwyższego..., 2021*).

On December 9, 2021, the Regional Court in Gliwice ruled that the appeal merited partial consideration. The court awarded Oliwer Palarz PLN 30,000 in compensation and pointed out the erroneous assessment of the District Court which had deemed the claimant's allegations of a violation of his personal rights unproven. The Appeals Court also ruled that, up till 2015, the central authorities (the Ministry of Climate and Environment at the time of the appeal) had not taken real action to reduce air pollution. For example, the Minister of the Environment did not announce the National Air Protection Program until September 9, 2015, shortly before the lawsuit was filed on October 13, 2015. The regulation on requirements for solid fuel boilers was not issued until August 1, 2017. According to the Regional Court, the violation of air quality standards (which resulted also from the unlawful neglect by the defendant – the State Treasury) resulted in the following:

- violation of a personal right to health ("in its findings of fact, [the District Court in Rybnik – AS-B] categorically, in detail, and extensively pointed to the negative impact of air pollution in R. on the health and daily functioning of the claimant"). The ruling explained that a health impairment is manifested not only in bodily injury but also in the induction of health disorders, meaning a disturbance in the body's functioning without damage to its organs (e.g., irritation of the throat, mucous membranes, and conjunctiva). Claims for compensation are justified in cases of both permanent and temporary disturbance of bodily functioning;
- violation of the right to freedom of movement. The Appeals Court did not agree with the previous court's position that "if the claimant is bothered by air pollution, he can change his place of residence." The court also stated that an inability to decide how to spend one's free time or move freely constitutes a violation of personal right to freedom;
- violation of personal right to the inviolability of the home that "should be understood broadly as an unlawful intrusion into a specific mental and emotional state which is provided by a sense of secure and undisturbed use of one's own home." This may result from nuisance pollution from outside (*Wyrok Sądu Okręgowego w Gliwicach..., 2021*).

However, the case of Oliwer Palarz was not closed in December 2021 because, in September 2022, Prosecutor General Zbigniew Ziobro filed a cassation appeal with the Supreme Court against the ruling of Gliwice Regional Court. In his appeal against the judgment, Ziobro argued that the claim was groundless (or at least lacked proof) due to the lack of detailed findings and the failure to demonstrate a real violation of personal rights of an individual. According to the prosecutor general, the judgment was based on a general statement about air pollution standards in Poland and Rybnik being exceeded. The court did not determine whether excessive concentrations of air pollutants were recorded in Oliwer Palarz's place of residence. Ziobro argued that the claimant did not

prove that his personal rights had been violated and that he pursued claims related to health concerns, which are not personal rights. Prosecutor general emphasized in his complaint that the circumstances related to the deterioration of plaintiff's well-being were not confirmed by medical documents (Prokuratura Krajowa, 2022). In November 2022, the Human Rights Commissioner, Marcin Wiącek, requested that the extraordinary complaint of the prosecutor general be dismissed due to a structural defect or, alternatively, that it be dismissed in its entirety on the grounds that the allegations raised in it were unfounded (Rzecznik Praw Obywatelskich Marcin Wiącek, 2022). Ultimately, the Supreme Court rejected the extraordinary complaint in its January 21, 2025, judgment (*Wyrok Sądu Najwyższego..., 2025*).

Oliwer Palarz's efforts to hold public authorities accountable for not taking effective measures to improve air quality encouraged other citizens to file lawsuits against public authorities for violating personal rights. For example, Grażyna Wolszczak-Sikora sued the Ministry of the Environment (*Wyrok Sądu Rejonowego dla Warszawy-Śródmieścia..., 2019* oraz *Wyrak Sądu Okręgowego w Warszawie..., 2021*). Based on available court rulings and media reports, lawsuits directed against municipal authorities have so far been deemed unfounded. The courts indicate that claims may be brought against the Ministry of the Environment or regional authorities. In the 2021 judgment of the Łódź-Śródmieście District Court, it was stated that "under the applicable legal regulations, the entities responsible for setting the main directions of environmental protection in the field of clean air are the State Treasury, represented by the Minister of Climate, and the administrations of individual regions. These entities are obligated to monitor air quality in the country and its zones, as well as respond to any exceedances of permissible concentrations of substances in the air. Therefore, any legal claims should be directed against these entities and not the Municipality of Ł." (*Wyrok Sądu Rejonowego dla Łodzi-Śródmieścia..., 2021*).

In November 2024, the ClientEarth Prawnicy dla Ziemi Foundation filed one of the latest smog lawsuits against the central government on behalf of two people suffering from respiratory diseases. The plaintiffs are a 55-year-old resident of Rybnik who has been suffering from asthma and other respiratory diseases for over twenty years and regularly takes medication and a 5-year-old boy from the Toruń area with asthma, represented by his mother. They want to prove that their health has deteriorated as a result of the government's neglect in implementing measures to improve air quality. Both plaintiffs experience asthma exacerbations during the winter. They are seeking compensation for the loss of their health and are the first to demand damages for medical expenses, which amount to PLN 200,000 and PLN 100,000, respectively (ClientEarth Prawnicy dla Ziemi, 2024).

Conclusion

The above considerations lead to the conclusion that public authorities at all levels are not taking adequate and effective measures to combat smog. This is evidenced by numerous reports from the Supreme Audit Office. Therefore, some of these authorities have already been found accountable for air quality that is not compliant with standards

in Poland. Addressing the research questions posed in the introduction: (1) how have Polish citizens held public authorities to account for their obligation to protect air quality? and (2) what results have Polish citizens had in court cases concerning breathing in air that did not comply with legally permitted standards? makes it possible to refine the general conclusion by noting the following.

- (1) Since 2015, Polish citizens have attempted to hold public authorities accountable in court for substandard air quality, referring to violations of personal rights, including the right to health, the right to an inviolable home, the right to freedom (including the freedom to move about), and the right to live in a clean environment. In 2024, the ClientEarth Prawnicy dla Ziemi Foundation filed the first lawsuit demanding damages for medical expenses incurred, as well as compensation on behalf of two people suffering from asthma. The court will have to examine the link between air pollution and disease. This is precisely what the revision of the EU directives discussed above provides for, ensuring access to justice in cases of compensation for damage to health resulting from exposure to excessive air pollutant concentrations.
- (2) Due to differing court interpretations on acknowledging the right to live in an unpolluted environment, the Regional Court in Gliwice asked the Supreme Court to rule on the matter. According to the Supreme Court's resolution, the right to live in a clean environment is not a personal right. However, claims for the possible effects of non-compliance with air quality standards are admissible if exposure to nonstandard concentrations of pollutants has led to a violation of personal rights, such as the rights to health, freedom, and privacy. Lawsuits filed against the central administration, most often the Ministry of Environment/Climate/Climate and Environment, depending on the current name, for violating personal rights in connection with smog are considered justified. This is because the central administration, as well as the authorities of individual regions, are considered the entities responsible for ensuring that the air meets EU standards.

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Odpowiedzialność władz centralnych za zanieczyszczone powietrze w Polsce

Streszczenie

W obliczu rosnącej świadomości społecznej na temat zdrowotnych konsekwencji ekspozycji na smog oraz rewizji unijnych dyrektyw regulujących zarządzanie jakością powietrza, przyznającej obywatelom Unii Europejskiej prawo dostępu do wymiaru sprawiedliwości w sprawach dotyczących jakości powietrza, za cel artykułu obrano zbadanie czy centralne władze publiczne ponosili dotychczas w Polsce odpowiedzialność za niezgodny z normami stan powietrza. Artykuł koncentruje się na przeglądzie wyników kontroli Najwyższej Izby Kontroli poświęconych różnym aspektom działań władz publicznych w ramach polityki ochrony powietrza oraz na analizie pierwszego w Polsce pozwu smogowego. Odpowiedzi na postawione pytania badawcze: (1) w jaki sposób polscy obywatele rozliczali dotychczas władze publiczne z obowiązku ochrony jakości powietrza? oraz (2) z jakim rezultatem Polacy występowali przed Sądem w sprawach dotyczących oddychania powietrzem niespełniającym norm dozwolonych przez prawo? prowadzą do wniosku, że obywatele występują do Sądów o zadośćuczynienie (rzadko o odszkodowanie) od Skarbu Państwa w związku z naruszeniem dóbr osobistych (zwłaszcza zdrowia) w wyniku ekspozycji na pozanormatywne stężenia zanieczyszczeń powietrza, będących konsekwencją bezprawnego zaniechania władz publicznych. Próbę odpowiedzi na wskazane pytania podjęto przy wykorzystaniu metody analizy prawnej.

Słowa kluczowe: zanieczyszczenie powietrza, smog, odpowiedzialność władz publicznych, polityka ochrony powietrza, prawo dostępu do sądu w sprawach środowiskowych

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