

The Polish Climate Case

Legal Briefing

ClientEarth is a global environmental law charity of lawyers and law and policy experts working in the public interest. From offices in Europe, Asia and the USA, ClientEarth staff shape, implement and enforce the law, to build a future for the planet in which people and nature thrive together.

ClientEarth is supporting five Polish citizens (the **claimants**) to bring legal action against their national government based on the impacts of climate change on their lives and livelihoods.

The claimants are already experiencing the effects of droughts, wildfires, flooding and crop failures on their lives and property due to changing climate and weather patterns and these impacts will worsen with further global warming.

The five separate lawsuits are being filed in Polish District Courts but make similar claims and seek a common remedy. The claimants are supported by environmental law charity ClientEarth and leading Polish law firm Gessel.

Although the claims have much in common with other national level climate cases, such as *Urgenda Foundation v State of the Netherlands*, the cases are novel legally because the claimants are asking the court to order that Polish civil law includes a legally enforceable right to a healthy environment encompassing a right to live in safe and stable climatic conditions. The claimants argue that their personal and human rights are being violated by the Polish Government's lack of action, and that it must reduce emissions in line with the temperature goal of the Paris Agreement.

Poland is Europe's climate laggard

The Polish Government is notable internationally for its outdated stance on climate action. Poland still produces 70% of its electricity from coal, the most climate-damaging fossil fuel worldwide, and subsidises it heavily – PLN 8bn (€1.75bn) from the public purse is set to go to fossil fuels in 2021. The

country is home to one of the world's biggest coal power plants, Bełchatów, which emits approximately as much carbon dioxide each year as Slovakia.

The Polish Government foresees coal mining continuing until 2049, 20 years after the date scientists have said is the absolute deadline for coal-burning in Europe, if the Paris Agreement goals are to be achieved. Its reliance on fossil fuels is a sticking point in EU policymaking – and it has recently positioned itself in opposition to an EU court decision demanding a halt to the operation of the Turów mine.

Climate change has been systematically under-considered – or omitted as a factor – in Poland's policymaking, and in its dealings with the EU institutions. Polish politicians were instrumental in securing a place for climate-destructive gas in the EU's 'Just Transition' fund, and – potentially – in the Sustainable Finance Taxonomy. The Polish state also presented blocks to a united emissions reduction target across the EU, reluctantly agreeing to one in December 2020.

The Polish Government's track record on renewable energy incentives is notoriously poor. As well as heavily subsidising coal on an ongoing basis, policies like the 'Distance Act', restricting where wind turbines could be placed, hobbled renewable energy expansion in the country for a long period.

ClientEarth has been active on climate and energy in Poland for several years, and successfully challenged coal plants including Polnoc and Ostrołęka C. A legal action against mega-emitter Bełchatów was launched in 2019.

Legal argument and procedure

The primary legal basis for the cases is the alleged violations by the Polish Government of number of Polish personal rights (or "personal goods") protected by the Polish Civil Code. These rights include the rights to life, to health and to property, and are distinct from human rights. However, many of the personal rights overlap with well-established human rights, like the rights to life and to respect for private and family life, protected by the European Convention of Human Rights (ECHR) and international human rights treaties. The case also alleges that Poland has violated Articles 2 and 8 of the ECHR through its climate inaction.

The formal defendant is the State Treasury represented by the Minister for Climate and Environment, Minister for State Assets, Minister for Development, Labour and Technology, Minister for Infrastructure, Minister for Agriculture and Rural Development, Minister for Funds and Regional Policy.

ClientEarth Prawnicy dla Ziemi, a Polish Foundation, is able to represent the claimants under a provision of Polish civil law that allows individuals to delegate legal action to an NGO for the purposes of environmental protection.

The cases on behalf of Monika Stasiak, Małgorzata Górská and Piotr Nowakowski were filed the week of 7 June, with the other two Piotr Romanowski, Maya Ozbayoglu to follow imminently.

Expert scientific evidence was provided by Climate Analytics and the Polish think tank InStrat.

Each case will be heard by a separate District Court, who may appoint an independent expert to advise the Court.

The remedies sought are based on a 'fair share' analysis for Poland conducted by Climate Analytics. That study found that in order to make an equitable contribution to meeting the 1.5 degree goal of the Paris Agreement, the Polish State must:

- reduce national greenhouse gas emissions by 61% by 2030 (below 1990 levels); and
- reach net zero emissions by 2043.

Who are the claimants?

Małgorzata Górską, ecotourism business owner, Podlaskie Voivodeship

Małgorzata has been living near the border of the Biebrza National Park for 15 years. Together with her husband, she runs an ecotourism business on their farm. They were the first tourist facility in the Podlaskie Voivodeship to be awarded the Polish Ecotourism Certificate.

But increasingly heavy rainfall is threatening her home and livelihood. The rain now creates a temporary river knee-deep and several metres wide. This started happening around eight years ago and is becoming more frequent – last year it happened twice in one summer, waterlogging the terrace of some of the tourist dwellings, flooding her basement and polluting her water supply. As well as these dangerous flash floods, drought conditions in the region are on the rise, increasing the risk of wildfires in the nearby Bierbrza Valley peatlands.

Piotr Romanowski, plant nursery owner and farmer, Warmia

Piotr Romanowski lives in a region which was once lush, fertile and dotted with ponds. On his farm, he runs a nursery selling shrubs and trees. Now, water levels in the region are down. Last year, he lost stock because his land dried out. The increasingly unstable and unpredictable climate is affecting neighbouring farms too – adapting crops to climate change can be difficult and uncertain. Piotr worries about his sons and the difficult future they face.

Piotr Nowakowski, grandfather, Greater Poland

Piotr Nowakowski lives in a forest in the Greater Poland region. Stronger storms and forest fires are an ever-increasing threat to him and his home. The same drier conditions making forest fires more frequent mean he has had to dig a deeper well for water. Piotr says the Polish Government is failing him, his children and grandchildren, so he is taking them to court.

Maya Ozbayoglu, youth climate activist, Kuyavian-Pomeranian Voivodeship

Maya doesn't know what her future holds. She often wonders if there is any point in studying. She believes the Polish Government is condemning her and other young people to an unstable and frightening future with more fires, floods, unstable weather, rising food prices and a wave of refugees fleeing the climate crisis. She began attending climate protests when she was 15 – she believes the lack of decisive government action is a threat to health and life.

Monika Stasiak, mother, Łódź Voivodeship

Over the past years, Monika has been suffering with her community through intensive droughts and reduced water levels in the Pilica River. Low river levels have meant local ferries were unable to run, and neighbouring farms have suffered crop failures from increasing drought. The continued degradation of

the local environment has meant Monika and her husband have had to abandon their plans for a tourism business. The river, a kayaking hotspot, is no longer consistently deep enough for the boats. Monika fears the future her son will grow up in. She worries that if we don't stop climate change, people will be forced to struggle for survival as water and food availability become an issue.

Please do not hesitate to get in touch with any questions or comments.

Sophie Marjanac

Janusz Buszkowski

Climate Accountability Lead Lawyer, Fossil Fuel Infrastructure

smarjanac@clientearth.org ibuszkowski@clientearth.org

www.clientearth.org www.clientearth.org

Beijing Berlin Brussels London Los Angeles Luxembourg Madrid Warsaw

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.

Classification: **Confidential**