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The Role of Civil Law in Environmental Protection in Poland: Liability, Damages, and Remedies[1]

Abstract

The study shows that classic private law claims, in light of the conventional judicial approach, are not particularly effective in cases involving environmental damage. There are numerous legal grounds for pursuing environmental claims, including those provided for in the Environmental Protection Law and the Civil Code, which often overlap. However, in practice, those seeking to pursue environment-related claims through civil law have often sought to rely on the concept of personal rights. One crucial reason for this trend is the individual nature of civil law claims and the perception of the environment as a common good, which results in evidentiary complexities that are difficult to overcome. The article examines the particular grounds of civil liability for environmental damage, their prerequisites, and the available legal remedies, including compensation and other forms of restoration of the previous state of the environment, as well as measures aimed at preventing future damage. The shortcomings of the current legal framework and attempts to identify alternative solutions for pursuing environmental claims through civil law are also examined.

Keywords: *Ex delicto* liability, compensation for environmental damage, personal rights, environmental protection, civil liability, environmental claims

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1. Overview of the regulation of civil liability for environmental damage in Polish law

When outlining the basic structure of civil law engagement in environmental protection in Poland, it is necessary to identify the actors between whom a civil law dispute concerning environmental protection may arise. This is crucial, since the role of civil law is limited to the regulation of relationships between parties possessing civil law personality (legal capacity), in which the individual interests of those parties are the subject of potential protection. Polish civil law does not provide a framework for treating the State (a public entity) as the owner and exclusive holder of a general right to the environment as a whole.[2] Rather, particular elements of the environment are treated either as common goods[3] (the so-called *res omnium communes,*[4] such as atmospheric air, the sea, and other flowing waters) or, in the case of things, as objects of ownership and other proprietory or contractual rights entitling their holders to possession, belonging to particular public or private entities.[5]

Private actions concerning environmental issues may arise between different actors, which may in turn require the application of different civil law provisions:

1. The State (or local government bodies) may seek private law protection against natural persons or legal entities (particularly business entities) that fail to comply with environmental regulations. In this case, private law serves only as a supplement for administrative and criminal law provisions,[6] which are often more effective in ensuring compliance with environmental requirements (hereinafter referred to as Situation 1).

2 | Skoczylas 2003, 61.
3 | See e.g. judgement of the Supreme Court of 5 October 2012 (IV CSK 244/12).
4 | Wolter, Ignatowicz & Stefaniuk 2001, 233.
5 | On the specific legal status of animals, to some extent similar to that of things, see Art.1 of the Act of 21 August 1997 on Animal Protection, Journal of Laws 2023, item 1580. With regard to wild animals, which are regarded as a national good and owned by the State Treasury, see Art. 2 of the Act of 13 October 1995 – Hunting Law, Journal of Laws 2025, item 539.
6 | See, in particular, the Act of 13 April 2007 on the Prevention of Environmental Damage and its Remediation Journal of Laws of 2020, item 2187, which imposes on entities using the environment [within the meaning of Art. 3(20) EPL, as defined below] duties to take preventive or remedial measures where they have caused environmental damage or created a direct threat thereof through activities posing a risk of such damage (even in the absence of fault) or through other activities affecting protected species or protected natural habitats (in the latter case, only where fault is established). Furthermore, the Act authorises environmental protection authorities to undertake such measures at the expense of the entity using the environment. See: Korzeniowski 2011, 91; Czech 2009, 21; Frączak 2013. These obligations also apply to the entity occupying the land (regardless of whether that person holds legal title to it), but only where the environmental damage or the direct threat thereof occurred with that person's knowledge or consent. See: Czech 2009, 78. The Act primarily provides administrative-law protection mechanisms. Civil law claims play only a limited role, mainly in situations where an entity using the environment has incurred the costs of preventive or remedial measures and seeks reimbursement from the perpetrator or the competent administrative authority.

2. A natural person, NGO, or other legal entity (e.g. a business entity) may seek private law protection against another natural person or business entity. In this case, it is necessary to demonstrate that the environmental impact caused by one entity produces consequences within the individual legal sphere of the entity seeking protection (hereinafter referred to as Situation 2).
3. A natural person, NGO, or other legal entity (e.g. a business entity) may seek private law protection against the State (or local government bodies) for inadequate environmental protection affecting that entity's legal position (hereinafter referred to as Situation 3).

Given the limited scope of the study, the discussion that follows focuses on Situations 2 and 3. These situations do not primarily concern the State (or the relevant administrative authorities) acting in fulfilment of its statutory duty to protect the environment.

In Polish law, the regulation of civil claims relating to environmental protection is highly fragmented, which undoubtedly complicates the application of the relevant provisions. Given the limitations imposed by the scope of this study, the analysis is confined to the basic regulations contained in the Environmental Protection Law[7] (hereinafter referred to as the EPL) and the Civil Code[8] (hereinafter referred to as the CC). Detailed provisions contained in specialised statutes (concerning, for example, water protection, land protection, nuclear damage, and similar matters), as well as those arising from international agreements, are not considered.

The Environmental Protection Law contains a number of private law provisions (Section I of Title VI, Arts. 322–328), as well as specific regulations located elsewhere in the Act, such as Art. 129, which governs claims arising from restrictions on the use of immovable property imposed for environmental protection purposes.

In the EPL, it is Art. 323 that is intended to provide protection for individuals, although, at the same time, it opens up – at least in theory – the possibility of using civil law regulations to protect the environment as a common good.[9] It states that a person ('everyone') who is directly threatened or harmed by an unlawful impact on the environment may demand that the entity responsible for the threat or violation restore the lawful state of affairs and take preventive measures (e.g. by installing equipment or facilities to prevent the threat or violation),[10] and, if this is impossible or excessively difficult, may demand the cessation of the activity

7 | Act of 27 April 2001 – Environmental Protection Law, Journal of Laws of 2025, item 647.
8 | Act of 23 April 1964 – Civil Code, Journal of Laws of 2025, item 1071.
9 | Skoczylas 2000, 260; Rakoczy 2013, Art. 322 no. 3.
10 | The claimant may also request the cessation of unlawful environmental impacts where there is a direct threat of damage occurring in the future. See: Rakoczy 2013, Art. 323 no. 3.

causing the threat or violation.[11] Contrary to the original intentions expressed in the draft bill, Art. 323 of the EPL does not provide for claims for monetary compensation for damage.[12] Legal standing is not linked to legal title to land;[13] therefore, anyone who is directly threatened or has suffered damage as a result of an unlawful environmental impact may be a plaintiff. This provision additionally states that if the threat or violation concerns the environment as a common good, the claim may be filed by the State, a local government unit, or an environmental organisation. Despite the general wording of the provision, for a civil claim to be successful it is necessary to specifically identify the responsible entity as the defendant.[14]

This regulation indicates how difficult it may be for an individual to effectively enforce an environmental claim. Negative changes to the environment do not translate directly into civil law damage, which must necessarily be associated with adverse consequences for the assets of a specific entity.[15] The extensive evidentiary burden that the claimant must satisfy effectively neutralises the practical usefulness of the claim under Art. 323 EPLThe claimant must prove:

a) the defendant's conduct constituting an environmental impact,
b) the unlawfulness of that conduct,
c) the damage that the claimant is facing or has suffered (although its amount does not need to be proved under the provision in question),[16]
d) the causal link between the defendant's conduct and the claimant's damage.[17]

Slightly less stringent requirements apply to claims brought by NGOs or public authorities, as these actors may bring a claim concerning harm to the environment (or a threat thereto) as a common good, which removes the need to demonstrate individual damage. Some authors argue that this regulation bears certain

11 | During court proceedings, or even before an action is brought, the court may grant injunctive relief in respect to a claim brought under Art. 323 EPL, determining the rights and obligations of the plaintiff and the defendant until the conclusion of the proceedings in a manner appropriate to the circumstances. See: Art. 755 § 1 in conjunction with Art. 730 § 1 and 2 of the Act of 17 November 1964 – Code of Civil Procedure, Journal of Laws 2024, item 1568; hereinafter referred to as the CCP. See also the decision of the District Court in Warsaw of 30 July 2021 (III C 1697/19), which granted injunctive relief by ordering the defendants to suspend and refrain from forestry activities, including tree felling.

12 | Lipiński 2001, Art. 323 no. 5; Rakoczy 2009, 215. This issue remains controversial in Polish legal literature. See e.g. Skoczylas 2003, 68. The opposing view allows monetary compensation to be sought under the regime of Art. 323 EPL. See: Gruszecki 2025, Art. 323 no. 4. With regard to the latter view, it may be objected that insufficient consideration has been given to Art. 322 EPL, which provides for the application of the provisions of the Civil Code to matters not regulated by the EPL. Resolving this issue is particularly crucial given that Art. 323 EPL does not treat fault as a prerequisite for liability.

13 | Skoczylas 2003, 67.

14 | Robakowska 2021, 117.

15 | Littwin 2021, 82–85.

16 | Poniatowski 2021, 70.

17 | Frączak 2013.

similarities to an *actio popularis*, because the claim may be brought by parties who have not themselves been affected.[18]

Since fault is not a necessary component of liability under Art. 323 of the EPL, several authors consider that this provision establishes strict liability.[19]

When considering Art. 323 EPL, it is also necessary to mention Art. 325 EPL. According to this provision, liability for damage caused by environmental impacts is not excluded by the fact that the activity causing the damage is carried out on the basis of and within the limits of an administrative decision.[20] This results in an interesting dichotomy whereby a final and lawful administrative decision does not necessarily remove the unlawfulness of the action carried out on its basis.[21]

Additionally, under Art. 326 EPL, the party that has repaired the environmental damage is entitled to claim reimbursement from the offender for the expenses incurred in this regard,[22] but the amount of the claim is limited to the reasonable costs of restoration. Depending on the legal ground relied upon by the plaintiff, the remedies may be subject to certain additional statutory limitations, the most fundamental of which concerns the concept of damage – it is a well-known rule that the plaintiff should not be enriched by compensation for damage.[23] Furthermore, under the regime of contractual liability (*ex contractu*), there is no possibility of seeking redress for non-pecuniary harm suffered by a party (physical or psychological injury).[24] It is controversial whether liability under the *ex delicto* regime may be limited by means of a contractual clause (pursuant to Art. 473 § 2 CC). Finally, Art. 323 EPL does not provide for a claim seeking payment of a sum of money as compensation for damage, being limited instead to certain restitutive or preventive[25] measures.

The EPL provisions do not exclude other grounds for liability for infringements of the legally protected interests of an individual entity,[26] which may therefore

18 | Jaworowicz-Rudolf 2014, 172; Gruszecki 2025, Art. 323 no. 6.
19 | Dmowska 2020, 30; Rakoczy 2009, 207.
20 | See the judgment of the Supreme Court of 2 April 2014 (IV CSK 404/13), concerning a case in which the reconstruction (raising) of a national road, carried out in accordance with a building permit, resulted in the removal of a natural protective barrier along the flight path of bees from a nearby apiary and, consequently, increased bee mortality and reduced the income of the apiary operator.
21 | See also Art. 22(2) point 2 of the 2007 Act on the Prevention of Environmental Damage and its Remediation, which exempts an entity using the environment from bearing the costs of preventive and remedial measures where the environmental damage or the direct threat thereof arose as a result of compliance with an order issued by a public administration authority, provided that the order did not result from emissions or events caused by that entity's own activities. On the relationship between Art. 325 EPL and the provisions of the Civil Code, see: Czech 2010, 9.
22 | See also Lewandowski 2011, 568. With regard to the costs incurred for preventive or remedial measures in response to environmental damage, see also Arts. 22 and 23 of the 2007 Act on the Prevention of Environmental Damage and its Remediation.
23 | See e.g. judgement of Supreme Court of 16 December 1999 (II CKN 643/98).
24 | Nesterowicz 2007, 22.
25 | Skoczylas 2003, 63; Robakowska 2021, 99.
26 | In context of Art. 323 EPL and Art. 222 § 2 CC see: Skoczylas 2003, 64.

choose the appropriate legal remedy (which will generally affect the scope of the prerequisites of the claim that must be proved). When it comes to the CC, there are many provisions that may be useful in environmental claims, depending on the particular situation and the actors involved. The principal provisions that should to be outlined are discussed below.

1. Art. 415 introduces the general rule that a person who, through his fault, causes damage to another, is obliged to compensate for it (Situations 1 and 2). This provision requires the claimant to prove the act that caused the damage, the defendant's fault (which is not presumed), the damage to the claimant's property, and an adequate causal link between the act and the damage. The claim is limited to compensation for the damage.
2. Arts. 417–417[2] focus on legislative failures or omissions and damage caused in the exercise of public authority (Situation 3). The most relevant in the context of environmental damage is Art. 417,[1] which regulates the liability of the State for legislative failures and omissions to enact legal regulations. According to this provision, if damage was caused by the enactment of a normative act, compensation may be sought only where it has been established in the relevant proceedings that the act is inconsistent with the Constitution, a ratified international agreement, or a statute. If, on the other hand, the damage was caused by a failure to issue a normative act whose issuance is required by law, the unlawfulness of that omission is determined by the court before which compensation is sought.

   The second part of this provision regulates failures connected with judgements or administrative decisions, as well as omissions to issue them.[27] It provides that where damage has been caused by a final judgement or final decision, compensation may be sought only after its unlawfulness has been established in the relevant proceedings. This also applies where a final judgement or decision was rendered on the basis of a normative act that is inconsistent with the Constitution, a ratified international agreement, or a statute. Alternatively, if the damage was caused by the omission to issue a judgement or decision, compensation may be sought after the unlawfulness of the omission has been established in the relevant proceedings, but only where there was a legal obligation to issue the judgement or decision.

   In theory, this regulation is intended to provide protection against mistakes and negligence on the part of the State in the course of legislation and the exercise of public authority, particularly in the field of environmental

27 | See, for example, Art. 15(1) point 1 of the Act of 2007 on the Prevention of Environmental Damage and its Remediation, under which the environmental protection authority may, by way of an administrative decision, impose on an entity using the environment or a landholder an obligation to undertake preventive or remedial measures.

protection.[28] In practice, however, a claim based on this provision would be extremely difficult to pursue successfully. The liability of the State is based on the condition of unlawfulness. This is intended as a concession to the injured party, who is not required to prove fault on the part of State representatives, since a finding of unlawfulness is sufficient. However, this solution does not significantly improve the effectiveness of these provisions in the field of environmental protection. The primary difficulty lies in demonstrating the existence of individual economic damage resulting from shortcomings in environmental protection on the part of the State. In cases involving legislative omissions, an additional challenge is proving that the State was under an obligation to regulate a particular issue in a specific manner. As regards liability for failure to issue decisions, a private entity may pursue claims relating to omissions affecting its individual sphere of rights, whereas these provisions provide only limited and often ineffective remedies in cases involving a general failure by the State to enforce environmental regulations, such as those concerning permissible levels of air pollutants. These difficulties have led private law actors to seek protection through the law of personal rights, a matter discussed in detail later in this article.

Although equity is, in principle, insufficient to justify liability for environmental damage, it may nevertheless become relevant to a limited extent under an express statutory provision.[29] Art. 417^2 provides for liability for personal injury caused by the lawful exercise of public authority where such liability is justified by considerations of equity.

3. Art. 435, as modified by Art. 324 EPL, regulates the liability of an entity operating an enterprise for damage caused by the operation of that enterprise (Situation 2). Under this provision, a company operating a plant powered by natural forces (steam, gas, electricity, liquid fuels, etc.)[30] or a high-risk facility is liable for personal injury or property damage caused to anyone by the operation of that facility, unless the damage resulted from force majeure or solely from the fault of the injured party or a third party for whom the company is not responsible.[31] The provision is universal in nature, but it also encompasses situations in which the operation of a plant causes environmental damage that, in turn, results in individual damage. This regime is based on strict liability, from which only force majeure or the exclusive

28 | The liability of the State under private law is also widely discussed in other jurisdictions. See e.g. Bergkamp 2001; Wilde 2012; Rudall 2024.
29 | Equity may, albeit exceptionally, limit or postpone the obligation to compensate for damage if the defendant successfully raises the plea of abuse of rights (Art. 5 CC). In relation to compensation for damage between natural persons, see also Art. 440 CC.
30 | Zelek 2018, 903.
31 | See: judgement of Court of Appeal in Warsaw from 13 March 2017 (VI ACa 1027/15).

fault of persons for whom the entrepreneur is not responsible may provide exoneration.[32]

Some authors argue that this model of liability is not fundamentally distinct from liability based on presumed fault.[33] However, fault is irrelevant under a strict liability regime. Instead, the defendant must prove the existence of at least one exonerating circumstance. In this sense, only a presumption of liability operates, shifting the burden of proof to the operator of the enterprise. Nevertheless, Art. 435 still requires the claimant to prove the negative economic consequences suffered and the causal link between the operation of the plant and the damage. Case law has established that unlawfulness is not a necessary condition for liability under this provision.[34] At the same time, it has been emphasised that strict liability should not be interpreted too broadly, as doing so could negatively affect the competitiveness of business activity in Poland.[35]

Art. 435 is complemented by Art. 439, which provides that a person facing imminent harm as a result of a failure to properly supervise the operation of an enterprise may demand that the responsible person take the measures necessary to avert the threatened danger.[36] Art. 439 establishes a preventive claim that is similar to, but distinct from, that provided for in Art. 323(1) EPL.[37]

4. Art. 144 prohibits the owner of property from engaging in activities that interfere with the use of neighboring properties beyond the average level of inconvenience. Under this provision, a landowner must, in exercising his rights, refrain from actions that interfere with the use of neighbouring properties beyond the average degree determined by the socio-economic purpose of the property and local conditions. This provision belongs to property law rather than the law of obligations and is therefore limited to relationships between actors holding legal title to property, as the claim is derived from that title. Activities giving rise to such claims may include environmental nuisances such as smoke, water pollution, or soil

32 | Strict liability without any grounds for exoneration is controversial in Polish law. However, some authors argue that it may arise in cases involving nuclear, mining, geological, or hunting damage. See: Jamiołowski 2018, 114.

33 | Andrzejczak 2013, 62. According to another view, Art. 435 CC establishes a presumption of an adequate causal link between the operation of the enterprise and the damage suffered. See: Lewaszkiewicz-Petrykowska 1967, 130. R. Strugała, in contrast, argues that Art. 435 CC gives rise to a legal presumption that, where damage has been caused by the operation of an enterprise, it should be assumed that the damage did not result from circumstances constituting grounds for exoneration from liability that fall outside the scope of the enterprise's operation. See: Strugała 2024, Art. 435 no. 13.

34 | Trzaskowski 2011, 127.

35 | Ibid., 130–131.

36 | Skoczylas 2011, 127–128.

37 | Jamiołowski 2018, 117.

contamination (Situation 2).[38] The basis of the claim is the excessive level of interference; neither unlawfulness (in the sense of violating applicable legal norms)[39] nor fault on the part of the emitter is required. The beneficiary may seek only the cessation of the interference, as the provision does not constitute an independent basis for compensation. If the interference also causes damage, compensation may be sought on a separate legal basis, for example under Art. 415 CC.[40]

Under property law, a claim for damages may also arise under Arts. 224 § 2 and 225 CC, which regulate the relationship between the owner (or other entitled individual to whom the provisions on the protection of ownership apply) and the possessor where the possessed item has deteriorated or been lost.[41]

5. Arts. 23 and 24, in conjunction with Art. 438, provide protection for personal rights such as e.g. health, privacy of correspondence, and inviolability of the home (Situations 2 and 3). The protection of personal rights encompasses a complex set of claims that may be exercised by the claimant.

   a) If an individual's personal right is threatened by the conduct of another person, the individual may demand that the conduct cease, unless it is lawful. Thus is a preventive claim based solely on unlawfulness; fault is not required.
   b) In the event of a violation of a personal right, the injured person may demand that the person responsible remove the consequences of the violation. As with the preventive claim, a restorative claim requires unlawfulness, which must be established by the claimant.
   c) Where the offender is at fault (in most cases), the injured party may also seek monetary compensation for non-material harm or payment of an appropriate sum for a specified social purpose.
   d) Where the offender is at fault (in most cases), the injured party may also seek compensation for material damage.

There is, however, controversy as to whether the rules governing the protection of personal rights are suitable for environmental claims. In particular, it remains disputed whether the right to non-degraded environment constitutes a personal right and, consequently, whether it can serve as the basis for the claims listed above.

38 | Rakoczy 2008, 75.

39 | This may lead to a situation in which even conduct that complies with the requirements of an administrative decision imposing regulatory restrictions is nevertheless found to exceed the average measure of interference within the meaning of Art.144 CC. See: Trzaskowski 2011, 126–127; Jamiołowski 2018, 116.

40 | Karwowska 2013, 177.

41 | See the judgement of the District Court in Toruń of 12 April 2018 (I C 2492/14), which upheld a claim for monetary compensation brought by an affected landowner against an unauthorised possessor who had caused contamination of the land.

In cases involving fault-based claims, intentional fault is not required; negligence, consisting of a failure to exercise due care, is sufficient. Where the claim is brought against a business entity, the required standard of care is higher because the professional nature of the defendant's activity is taken into account (Art. 355 CC). The existence of fault is sufficient, and its degree generally does not affect the extent of the defendant's liability. On the other hand, fault is not presumed under the legal grounds that may serve as the basis for environmental claims. In cases involving infringements of personal rights, unlawfulness is presumed (the defender must prove that his conduct was lawful in order to avoid liability), but fault must still be proved by the claimant.

If an obligation to compensate for damage arises under the CC, the injured party may choose between restoration of the previous state and monetary compensation. However, if restoration is impossible or would entail excessive difficulties or costs for the liable party, the injured party's claim is limited to monetary compensation (Art. 363 CC).

There are, however, limitations relating to causation under the CC. Pursuant to Art. 361 CC, the liable party is responsible only for the normal consequences of the act or omission from which the damage resulted. Compensation covers both the losses suffered by the injured party and the benefits that would have been obtained had the damage not occurred. Establishing such a causal link rests with the claimant. This may be particularly difficult where environmental harm does not clearly translate into individual financial loss.

When calculating compensation, emphasis is placed on its compensatory function, as compensation is intended to cover actual losses and lost benefits suffered by the injured party. Its punitive function is not recognised, and therefore punitive damages are not available. Parties may agree on a contractual penalty, which need not correspond exactly to the amount of the damage suffered. However, contractual liability plays only a limited role in the field of environmental damage.

Civil liability for environmental damage may be covered by insurance, thereby reducing the financial risks associated with environmental harm. Insurance plays a particularly critical role in relation to liability under Art. 435 CC, given its strict nature. The scope of coverage depend on the terms of the specific insurance contract. Liability towards third parties for environmental damage is generally covered under business liability insurance. However, standard business liability insurance policies frequently exclude environmental damage from their scope of coverage. Such risks usually require an additional extension clause.[42]

Extended coverage typically includes the costs of environmental clean-up, restoration of damage to third-party property and preventive or remedial measures aimed at preventing or mitigating environmental damage.[43] Even with extended

42 | Littwin 2021, 97.
43 | Ibid.

coverage, standard liability insurance focuses on losses suffered by third parties. It does not cover damage to the insured's own property, including damage to existing assets or lost profits resulting, for example, from a temporary interruption of production. Such losses require separate first-party insurance coverage.[44]

It should be emphasised that civil liability insurance generally covers only the civil law consequences of environmental damage. It does not protect the insured against administrative or criminal liability.[45]

The civil law nature of these claims allows them to be pursued both through civil proceedings before courts of general jurisdiction (Arts. 1 and 2 § 1 CCP)[46] and through alternative dispute resolution mechanisms, including mediation (Art. 183^1 CCP) and arbitration (Art. 1157 CCP). However, given the need for party consent and the evidentiary complexity of environmental damage cases, although such disputes are in principle suitable for mediation or arbitration, these mechanisms have so far played only a limited role. Nevertheless, Polish civil procedure provides a normative framework for their use, including in disputes involving public entities such as the State Treasury or local government units.

Polish law does not recognise a form of representative action available to an affected community environmental damage cases. However, individual members of such a community, provided that they have legal capacity, may bring claims in their own name.[47]

While civil law is capable of dealing adequately with cases in which environmental damage directly affects the claimant's economic interests or property (e.g. where water or soil pollution affects living conditions or reduces the value of real estate), private law principles make it much more difficult to address situations in which environmental harm has no obvious connection with the plaintiff's individual legal position. This difficulty is particularly evident where protection of the environment, or its components, as a common good is at stake. The fact that the environment as a common good cannot be regarded as belonging to any individuals[48] creates significant obstacles when individuals seek to protect it through private legal action.

44 | Ibid., 98–99.
45 | Littwin 2021, 100.
46 | Like other disputes between business entities, cases against entrepreneurs concerning the cessation of environmental damage, restoration of the previous state of the environment, compensation for environmental damage, or the prohibition or restriction of activities threatening the environment are classified as commercial cases. Consequently, they are examined by commercial courts in accordance with the provisions governing separate proceedings in commercial matters (Art. 458^2 § 1 pt. 4 CCP), which, due to their evidentiary framework, are intended to facilitate a more expedious resolution of disputes than ordinary proceedings. In all other respects, such cases are subject to the general rules of civil procedure.
47 | The Act of 17 December 2009 on the Pursuit of Claims in Group Proceedings, Journal of Laws 2024, item 1485, provides for the joint pursuit of claims of the same type in a single proceeding by a group of at least ten persons, including claims arising from tortious acts.
48 | Jaworowicz-Rudolf 2014, 174.

It is worth noting that in cases involving environmental claims where no direct individual economic loss can be linked to the environmental infringement, the EPL provisions on civil liability largely remain ineffective in practice. In such cases, claimants often seek protection under the CC provisions governing personal rights. The reason lies precisely in the challenges associated with translating environmental interests into legal instruments designed to safeguard the individual interests of natural or legal persons. This issue is discussed further in Section II.

The question of the relationship between different civil claims in situations where the facts fall within the scope of several legal provisions remains the subject of dissenting opinions. The potential for concurrent claims arises in a number of configurations. The first involves a concurrence between a claim governed by the EPL and a claim under the CC. Art. 322 EPL provides that liability for damage caused by environmental impacts is governed by the CC, unless the EPL provides otherwise.

Although the general principle appears clear, considerable uncertainty remains regarding its detailed application. In particular, it is disputed whether the provisions of the EPL that regulate the same factual situations as provisions of the CC exclude the application of the latter or merely supplement them, thereby giving claimants a choice between a claim under the EPL and a claim under the CC. This issue may arise, for example, where environmental damage gives rise to a claim under Art. 323 EPL, while at the same time constituting an interference with the use of neighbouring properties (giving rise to a claim under Art. 144 CC)[49] or resulting from the operation of an enterprise (giving rise to a claim under Art. 435 CC).

Seeking protection under Art. 323 EPL is not necessarily more advantageous for the claimant, if only because liability under the provision requires unlawfulness of conduct, whereas unlawfulness is not a necessary condition for claims under Arts. 144 or 435 CC. If the EPL provisions are regarded as *legis specialis* in relation to the CC regime, the fact that a given situation falls within the scope of an EPL provision would exclude the possibility of pursuing an alternative claim under the CC.[50] Such an approach would, in effect, limit the protective potential of civil law by excluding, in many cases, the possibility of relying on remedies available under the CC.

A far more favourable solution would be to adopt an interpretation according to which the EPL expands, rather than narrows, the claimant's options[51] by allowing a choice between different legal remedies.[52] However, this approach is not universally applicable. Certain EPL provisions clearly indicate their exclusive nature and therefore exclude concurrent claims. Art. 129 EPL should be viewed in this way.

49 | Karwowska 2013, 178–179.
50 | Littwin 2021, 95.
51 | Ibid., 94.
52 | Robakowska 2021, 105 and 113.

This provision governs claims available to the owner of property whose value or utility has been diminished as a result of an environmental decision or environmental regulations. Where restrictions on the use of real property makes it impossible, or significantly limitedto continue using the property in its previous manner or in accordance with its intended purpose, the owner may demand that all or the part of the property be purchased. Alternatively, the owner may seek compensation for the damage suffered, including any reduction in the value of the property.

The provision contains a special limitation requiring the claim to be brought within three years of the entry into force of the legislation or local act imposing the restriction of the use of the property. This period should be regarded as a preclusive time limit and is independent of the ordinary limitation period.[53] It would be inconsistent if, after the expiry of this claim, the property owner could seek protection under other provisions of civil law. Consequently, this particular situation should be treated as precluding cncurrent claims.[54]

It is also possible for concurrence to arise between claims regulated by the CC. One example is where the operation of an enterprise causes environmental impacts that interfere with the use of neighbouring properties, thereby giving rise to potential claims under both Arts. 435 and 144 CC.[55] Similarly, there may be a concurrence between a claim under Art. 144 CC and claims based on the protection of personal rights.[56] In such situations, unless there is a clear indication to the contrary, preference should be given to allowing the claimant to choose the most appropriate means of protection.

2. Attempts to pursue environmental claims through the law of personal rights

The overview of civil law remedies available to actors seeking environmental protection demonstrates that the possibilities for obtaining such protection through civil law are fundamentally limited where environmental harm does not translate directly and unequivocally into the economic sphere of an individual. The problem begins with the very definition of environmental damage.

Environmental damage is defined in Art. 3(11) of the Law of 13 April 2007 on the Prevention and Remediation of Environmental Damage as a negative, measurable change in the state or function of environmental elements, evaluated in relation to their initial state and caused directly or indirectly by the activity of the entity using the environment. However, this definition was adopted for the purposes of a

53 | Szalewska 2014, 246.
54 | Trzaskowski 2011, 128.
55 | Ibid., 128–132.
56 | Pietraszewski 2013, 377–378.

specific statute and is therefore not of universal application within the legal system. Moreover, the Act regulates administrative liability,[57] which implies that the definition of environmental damage contained therein is limited to that context. In the literature, environmental damage defined in this manner is referred to as *damage sensu stricto*.[58] By contrast, *damage sensu largo* encompasses any damage to environmental elements, including negative consequences arising from interactions between them.[59]

However, this distinction is somewhat misleading. Environmental changes and interactions occur constantly, making it necessary to identify a measurable criterion that distinguishes environmental damage from other environmental changes. The concept of damage inherently carries a negative connotation, which means that environmental damage can be identified only where changes in environmental elements are evaluated as detrimental.[60] Such an assessment is inevitably subjective, since different actors may evaluate the same environmental change differently.

Attempts to objectivise the concept of negative change usually involve reference to economic criteria, such as market value. In the environmental context, however, such criteria may prove unreliable.[61] Since market value always does not provide an adequate measure of environmental harm, certain provisions permit claims for restoration costs where specified conditions are met (e.g. Art. 326 ELP).[62] Nevertheless, environmental damage should be understood as extending beyond purely economic criteria. Environmental losses may occur without measurable financial consequences, and in some cases the previous environmental state cannot be restored, making recovery of restoration costs impossible.

From this perspective, environmental damage *sensu largo* should be understood as a change in environmental elements that leaves the environment in a worse condition than before, regardless of whether measurable economic consequences can be identified. Yet this condition alone is insufficient. A second requirement is the existence of a connection between the environmental change and human impact.[63]

Even when anthropocentric activity causes environmental change that leaves the environment in a worse state, thereby satisfying the criteria for environmental damage, civil liability may still not arise if the change does not result in consequences affecting the economic interests of a specific individual. At this point, it is useful to return to the party configurations discussed earlier in this article, as confusion may arise in the terminology employed.

57 | Littwin 2021, 83.
58 | Ibid.
59 | Ibid.
60 | Wałkowski 2019, 96.
61 | Ibid., 97.
62 | Ibid.
63 | Ibid., 98.

In Situation 1, the State (or local government bodies) may be entitled to claim reimbursement of expenses incurred in restoring the environment. Such claims concern the protection of the environment as a common good rather than the protection of an individual right belonging to the State. The existence of these claims may may create the misleading impression that an equivalent mechanism exists in Situations 2 and 3.

Admittedly, civil law recognises certain situations in which a person may recover expenses incurred in protecting another person's interests or property. One example is Art. 438 CC, under which a person who suffers property damage while preventing imminent harm to another person or averting a common danger may seek compensation from those who benefited from those actions, in an appropriate proportion. Such solutions, however, remain exceptions to the fundamental principle of private law that its rules are designed primarily to protect individual interests.

Consequently, in Situations 2 and 3, a person seeking protection under private law must demonstrate that environmental damage has affected his or her individual legal sphere, for example by causing damage in the civil law sense. Even where legislation strengthens the position of the claimant by imposing strict liability or dispensing with the requirement of unlawfulness, the fundamental private law question remains the same: what specific individual harm is to be remedied, or what specific individual interest is to be protected?[64]

Thus, a party seeking to establish civil liability must demonstrate not only the existence of the conditions for another party's liability under a particular legal basis (e.g. unlawfulness, fault, or exceeding the permissible degree of interference) but also the entire chain of events leading to that liability. This chain consists of an act or omission by the responsible party that produces environmental effects, which in turn generate adverse consequences in the economic sphere of the entitled party. In addition, it is necessary to demonstrate that each element of this chain falls within the scope of adequate causal link defined in Art. 361 CC. Consequently, an effective defence may in practice be limited to disputing the existence of the elements and conditions necessary to establish liability under a particular legal basis, and it will often prove impossible for the claimant to demonstrate their existence.

The difficulties associated with pursuing environmental claims under private law raise the question of whether civil law can provide protection where environmental changes do not have a direct financial dimension but nevertheless negatively affect an individual's life. Growing public awareness of the importance of a clean environment for individual health and well-being has increased pressure to identify civil law instruments that enable individuals to prevent actions or omissions that degrade the environment. These efforts have focused on the provisions governing the protection of personal rights and have generated a decades-long

64 | Ibid., 87.

debate over whether an individual possesses an individualized and legally protected right to live in a non-degraded environment.

It should be noted that such attempts face a structural problem relating to the function of civil law claims. From a systemic perspective, the protection of the environment as a common good (action in the public interest) is generally pursued through administrative proceedings conducted *ex officio*. In civil law, by contrast, the identification of an individual interest is a necessary element of protection.[65] If actions based on environmental degradation were permitted under the rules governing the protection of personal rights where the requirement to demonstrate a specific personal interest were substantially relaxed, the institution would effectively become a form of *actio popularis*.[66]

The Supreme Court addressed the issue of an individual's right to an unpolluted environment as early as 1975. It should be noted that this occurred under a different political system and under a Constitution that is no longer in force, although the relevant provisions of the CC concerning personal rights remained unchanged. At that time, the Court held that a person's right to an unpolluted biological environment and to derive aesthetic satisfaction from natural scenery could be protected by the means provided in Art. 24 CC only where the violation of that right simulatanously constituted a violation or threat to one of the personal rights recognised under Art. 23 CC.[67]

This statement is crucial to understanding the ongoing debate. The Court held that although a right to an unpolluted environment exists as a common right, it does not automatically become an individual right. Only where the violation of this common right simultaneously infringes or threatens an already recognized personal right do the provisions of the CC governing personal rights become applicable.

A different stance was adopted by the Supreme Court in 1984, again under the previous political system and a Constitution that is no longer in force. In a decision issued that year, the Supreme Court explicitly recognised an individual personal right to enjoy the benefits of an unpolluted environment and held that this right was protected under civil law.[68]

More recently, under the current constitutional framework, the so-called "smog cases" have emerged. Public figures brought claims against the State, arguing that the right to clean air ought to be recognised as a personal right protected under Arts. 23 and 24 of the Civil Code.[69] District courts in Warsaw found that the claimants' personal rights, understood as including the right to enjoy an unpolluted environment, had been infringed, together with other personal rights

65 | Karwowska 2013, 180.
66 | Korzeniowski 2012, 375.
67 | Łaźnia & Sitko 2023, 32; Radecka 2022, 111.
68 | Ibid.
69 | Szczepaniak 2020, 27–28; Doktór-Bindas 2020, 120–121.

such as health and privacy.[70] Interestingly, the courts accepted that the violation of the right to health occurred not through direct physical injury but through the impairment of health security, resulting in anxiety concerning health.[71] The courts further held that State authorities had acted unlawfully because Poland had failed to comply with the judgement of the CJEU of 22 February 2018 in Case C-336/16, in which the Court found that Poland had infringed Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe by persistently exceeding the permissible daily pollution limits.[72]

This line of litigation culminated in a 2021 ruling of the Supreme Court.[73] In that decision, the Supreme Court concluded that there was no justification for expanding the catalogue of personal rights and that the right to live in a clean and unpolluted environment does not, in itself, constitute a personal right. However, environmental degradation may affect recognised personal rights, such as health, and in such circumstances protection may be granted under the provisions governing personal rights.[74]

In practice, despite the change in the political system and the adoption of a new Constitution, the Supreme Court returned to the approach adopted in 1975. This means that the state of the environment does not automatically translate into an individual right; rather, it constitutes an intermediate factor that may, but does not necessarily, produce adverse consequences within the sphere of individual rights. In other words, the Court reaffirmed the traditional view that environmental damage does not automatically enter the domain of individual rights. This decision has generated extensive commentary in the legal literature and has been subject to sharply divergent assessments.[75]

3. Future of private law environmental claims in Poland

The analysis conducted in this study demonstrates that traditional private law claims, as interpreted through conventional judicial approaches, are not particularly effective in cases involving environmental damage. Despite the existence of numerous legal bases for environmental claims, including those provided by the EPL, individuals seeking civil remedies have in practice increasingly relied on the concept of personal rights.

70 | Szczepaniak 2020, 27.
71 | Szczepaniak 2020, 27.
72 | Ibid., 28
73 | Supreme Court ruling from 28 May 2021 (III CZP 27/20).
74 | Jastrzębski 2023, 11.
75 | Karpus 2024, 15–18; Trzciniecka 2024, 63–73; Trzewik 2022, 389–395; Trzewik 2021, 57–63; Szyprowski 2023, 284–294; Jastrzębski 2023, 9–23; Knap et al. 2024, 24–43; Strus-Wołos 2021, 488–490.

The individualised nature of civil law claims and the perception of the environment as a common good create significant evidentiary complexities for those seeking civil law protection against environmental harm. The separation between environmental damage and individual damage requires proof not only of environmental consequences but also of their impact on an individual's legal sphere and, furthermore, that such consequences constitute normal and adequate consequence within the meaning of the rules governing causation.

These obstacles become even more pronounced in cases involving long-term environmental damage, where both the harmful conduct and its consequences unfold over an extended period. In such cases, claimants face the difficult task of proving the prolonged conduct, its cumulative environment environmental effects, and the impact of those effects on their individual situation, while also demonstrating that the entire chain of events falls within the scope of an adequate causal relationship.

The evidentiary difficulties discussed above cannot be resolved merely by expanding liability based on presumed fault or by extending strict liability regimes, or even liability independent of unlawfulness. Such liability regimes may undoubtedly ease the claimant's evidentiary burden to some extent by eliminating the need to prove certain elements that are often difficult to establish. However, they do not address the fundamental problem of translating environmental events into consequences affecting an individual's legal sphere.

These considerations largely explain the limited practical significance of the EPL provisions on civil liability and the failure of that legislation to significantly strengthen the role of civil liability in environmental protection. For the same reason, where there is no obvious connection between environmental harm and an individual's legal position, claimants often attempt to rely on the provisions governing personal rights. Indeed, if an individual right to an unpolluted environment were recognised, a direct legal connection would exist between environmental degradation and the individual's protected legal sphere.

The Supreme Court's ruling, however, excludes this possibility. Under the approach adopted by the Court, even a breach by the State of its duty to protect the environment does not, in itself, amount to a violation of individual rights. It remains necessary to demonstrate a connection between pollution or other harmful environmental changes and an infringement of the private individual's legally protected sphere.[76]

In this context, a fundamental question arises as to whether civil law should be used as a tool for environmental protection at all.[77] The application of civil law

76 | Szyprowski 2023, 290; Hejbudzki 2019, 134.

77 | It appears that a similar approach has been adopted in Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, Official Journal of the EU, 5 July 2024, L series. Art. 29 of the Directive requires Member States to ensure that a company may be held liable for full compensation for damage caused to a natural or legal person where the company intentionally or

for environmental protection is a strategic choice that requires considerations of which legal instruments are best suited to protect particular interests. In order to make such a decision, it is necessary to balance the arguments for and against this approach.

If private law continues to be understood as an instrument for restoring appropriate relations between private law subjects, there is little basis for assigning it a broader environmental protection function. Under this view, the environmet (and its condition) is reduced to a medium through which one entity interferes with the individual sphere of rights of another entity, and such interference is evaluated using traditional civil law concepts, including material or non-material damage suffered by the entitled party, the conduct of the liable party, an adequate causal link, and, where applicable, fault. The rationale underlying this approach stems from the assumption that introducing civil liability for environmental damage independently of the individual rights of existing private law subjects would undermine the coherence of civil law and open a Pandora's box of questions regarding who should be liable, for what conduct, and to whom.

On the other hand, this approach may be contrasted with the view that civil law provides the most effective framework through which individuals can seek protection of common values against the State or against other entities that threaten those values. Individual actions may therefore have a mobilising effect, counteracting government inaction or the conduct of entities that undermine such common values. At the same time, the possibility of pursuing civil claims may indirectly contribute to the activation of civil society.

If a private right to an unpolluted environment is not recognised, it appears that the only way to enable effective individual action aimed at improving the environment through civil law, or at compelling the State to ensure strict compliance with environmental regulations through instruments available exclusively to public authorities, would be to grant legal personality to the environment itself. Otherwise, civil law is unlikely to play a significant role in environmental protection, and the effectiveness of civil claims will remain limited to situations in which environmental damage is, in some way, a by-product of a clear infringement of an individual's private interests, preferably of an economic nature.

The idea of granting legal personality to nature is not unknown in Poland.[78] To a limited extent, it has already been introduced into the Polish legal system, as national parks are recognised as state legal persons under Art. 8a of the Nature Conservation Act.[79] The allocation of legal personality to national parks was mainly intended to

negligently failed to comply with the obligations laid down in Arts. 10 and 11. These obligations generally include the duty to prevent potential adverse impacts and to bring actual impacts arising from the company's operations to an end, whether environmental or human-rights related. The implementation of the Directive into the Polish legal system is likely to affect the existing regulatory framework.

78 | Baran 2024.

79 | Act of 16 April 2004 on nature protection, Journal of Laws 2026, item 13.

simplify organisational matters and facilitate park administration.[80] Nevertheless, it leaves open the possibility of considering whether legal personality could be granted to nature itself. Comparative examples demonstrate that legal rights have already been granted either to particular elements of nature or to nature as a whole.[81]

In New Zealand, the Whanganui River has been granted legal personality,[82] and efforts are currently underway to recognise legal personality for cetaceans.[83] There are also numerous examples worldwide of rivers being granted legal personality.[84] In Ecuador, nature is recognised as a constitutional subject of rights, while Bolivian legislation likewise recognises nature as a subject of rights.[85] More generally, the idea of granting legal personality to nature dates back to the 1970s.[86]

The concept of granting legal personality to elements of nature has been criticised in Polish legal literature.[87] However, this criticism has focused primarily on proposals to grant legal personality to specific natural objects, such as the Oder River, rather than on the broader concept of recognising nature as a whole as a legal person.[88]

If the environment were recognised as a separate legal person, both material and non-material damage caused to that entity would become capable of protection through civil law claims. The difficulties associated with proving the impact of human activity or legislative and administrative omissions on the environment would nevertheless remain. However, a challenge that is almost insurmountable under the traditional private law framework, namely, the protection of a good of enormous value where it is extremely difficult to establish a sufficient connection with an individual's legal sphere, would be substantially resolved.

Private law traditionally identifies three functions of civil liability: preventive, restorative, and compensatory.[89] At present, the difficulty lies in the fact that environmental damage occurs within the environment itself, whereas these functions are designed to operate in relation to defined civil law subjects. This dilemma would disappear if the environment itself became such a subject.

At the same time, the principal advantage of granting legal personality to nature is also its greatest weakness. Forests are largely owned by a separate state legal entity (State Forests); most land and its natural components are privately owned; a significant proportion of inland waters, as well as all maritime waters, belong to the State; and underground resources are likewise publicly owned. Air,

80 | Habuda 2023, 84.
81 | Rotko 2025, 208–213.
82 | New Zealand Parliament 2017.
83 | Hutchins 2026.
84 | Bieluk 2020, 11–23.
85 | Berros 2015.
86 | Stone 1972, 450–501.
87 | Habuda 2023, 96.
88 | Kućka 2025, 334.
89 | Jamiołowski 2018, 115; Piekarska 2017, 82.

by contrast, is not treated as a separate legal object and is not owned by any person. Natural elements are therefore not only allocated among different owners but also fulfil numerous economic and social functions in addition to their ecological role, including forestry, agriculture, recreation, housing, and many others.

Granting legal personality to the environment would therefore require clarification of what constitutes the environment for the purposes of civil law, which elements would be covered by such legal personality, what rights this new legal person would possess, and how those rights would be reconciled with the rights of existing entities holding property rights over natural resources.

Another difficult issue would concern representation. It is a well-established principle of Polish civil law, currently expressed in Art. 38 CC, that a legal person acts through its organs. Determining who would be entitled to represent nature would therefore be essential. Allowing any individual to initiate proceedings on behalf of nature could create a a substantial risk of excessive litigation. Such concerns may partly explain the reluctance of the Supreme Court to recognise a right to a non-degraded environment as an individual personal right, although some commentators regard this risk as relatively limited.[90] For this reason, any system based on the legal personality of nature would likely require procedural limitations concerning representation.

Furthermore, if a judgement in an environmental case were compensatory rather than restorative in nature, it would be necessary to determine how the awarded sums should be used. Such funds should not benefit the claimant personally. Instead, mechanisms would need to be established to ensure that they are directed towards environmental protection or restoration. One possibility would be the creation of a dedicated fund, together with rules governing the use of monies obtained through such claims.

This topic undoubtedly requires further in-depth research. It is clear that, at present, the civil law route to environmental protection is seriously constrained, and in some cases effectively obstructed, by evidentiary limitations. As a result, judicial outcomes may appear difficult to reconcile with common-sense expectations, for example where a causal link between severe air pollution and harm suffered by an individual cannot be established to the required legal standard.[91] At the same time, caution is necessary when expanding the role of civil law in environmental protection. Environmental protection is one of the most important social challenges of our time, but it must be balanced against other important objectives, including economic development, economic competitiveness, security, or the development of housing infrastructure. Achieving an appropriate balance between these competing interests remains a complex task that requires careful calibration of the legal protection afforded to each of them.

90 | Hejbudzki 2019, 134.
91 | Doktór-Bindas 2020, 119.

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