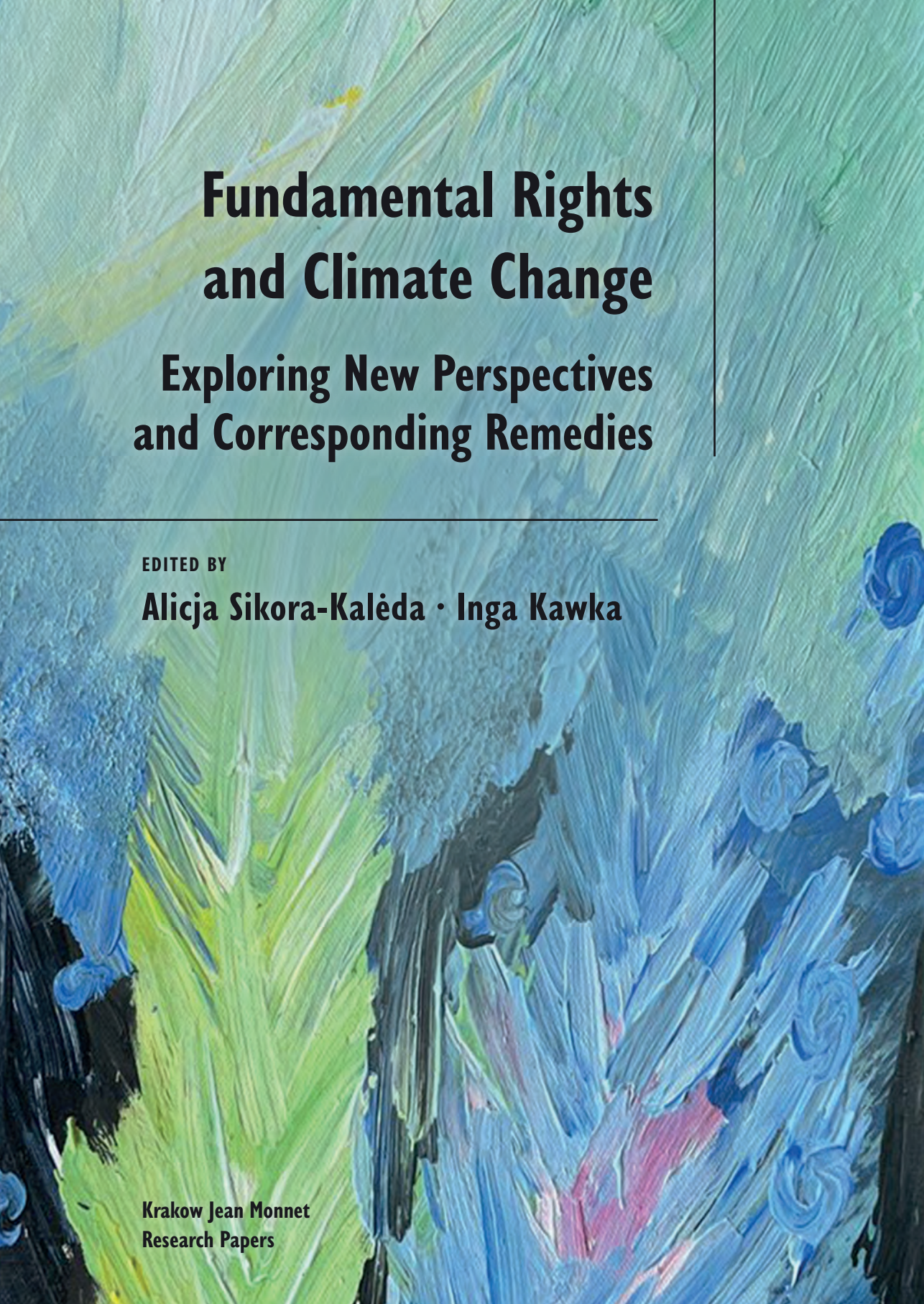

Fundamental Rights and Climate Change

Exploring New Perspectives and Corresponding Remedies

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Alicja Sikora-Kalėda · Inga Kawka

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Introduction

The environment is where we all meet;
where we all have a mutual interest;
it is the one thing all of us share.

Lady Bird Johnson

The monograph outlines the growing importance of fundamental rights in the European Union, particularly in the context of environmental protection and the fight against climate change. These rights have become a cornerstone in shaping policies that address ecological challenges while balancing economic and social aspects. The European Green Deal (EUGD), a landmark initiative, embodies the EU's commitment to transitioning into a climate-neutral, modern economy by 2050. This ambitious goal requires comprehensive legislative action and coherence in implementing policies across various sectors, ensuring that all measures align with and uphold fundamental rights as enshrined in the EU legal framework.

This monograph is the culmination of scholarly work inspired by discussions from the conference titled 'Fundamental Rights and Climate Change in EU Law and Beyond – Mapping Fundamental Rights, Nature's Rights, and Corresponding Legal Remedies,' organized in September 2023 as part of the Jean Monnet Module project, 'Sustainability and Climate Change in EU Law.' This academic event, hosted by the Chair of European Law at the Jagiellonian University, brought together experts from diverse fields to discuss and exchange perspectives on sustainability and the legal frameworks within the EU. The insights shared during the conference laid the foundation for the analyses presented in this book, highlighting the complex interplay between fundamental rights, environmental challenges, and legislative coherence.

The chapters of this book reflect a collective scholarly effort to explore diverse aspects of fundamental rights and their intersections with environmental law within the EU framework. The opening chapter, authored by Alicja Sikora-Kalėda investigates the limits of human rights as instruments to advocate for global climate action. It examines how climate litigation impacts human rights and evaluates the potential evolution of environmental rights in EU law. Ilona Przybojewska contributes with an analysis of how poor environmental conditions can lead to state liability, referencing a notable 2021 Polish Supreme Court resolution. Her work probes the extent to which environmental issues can be recognized as affecting personal rights and the broader implications of this recognition.

This monograph aims to serve as a comprehensive resource for legal practitioners, scholars, and policymakers, encouraging further dialogue on the integration of environmental and human rights within the EU legal system.

Alicja Sikora-Kalėda
Inga Kawka

Fundamental Rights and Climate Change – Exploring New Perspectives and Corresponding Remedies
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Martyna Krystman-Rydlewicz[1]

Between the Legal Qualification of Climate Claims and the Law Applicable to Their Resolution from the Perspective of Polish Law

Abstract: The legal community is increasingly seeking legal frameworks to support successful climate claims. However, the results are mixed, as the law often lacks adequate tools for effective climate action. Consequently, this chapter aims to explore whether it is legally feasible to file successful climate claims against private actors under Polish law, and if so, how to determine the applicable law for resolving such claims. Consequently, the analysis is focused on the relationship between climate change on one hand, and legal solutions, including personality rights, and tortious liability, on the other. Concurrently the multitude of legal bases for eventual claims triggers the difficulties in choosing the applicable law for the settlement of transnational climate disputes, i.e. whether their resolution should be based on the rules developed within national law or the relevant EU regulations, especially Rome II.

Keywords: personality rights, climate change, tortious liability, private sector accountability

Introduction

Saying that climate change is one of the biggest crises of 21st century is like saying nothing at all. The mentioned statement is in fact just a truism, one of the buzzwords of the public debate. However, the problem of an anthropogenic climate change still has a legal meaning and significance.

[1] Mgr Martyna Krystman-Rydlewicz, Doctoral School of Social Sciences of Adam Mickiewicz University in Poznan in the field of legal sciences, Faculty of Law and Administration of Adam Mickiewicz University in Poznan, https://orcid.org/0000-0003-0509-0204.

Law shall be responsive and as such shall provide adequate tools to adapt, mitigate and fight the adverse effects of climate change. Both international and domestic law regimes – if well-functioning and well-established – shall provide certain scope of stability on the one hand and mechanisms to safeguard the rights of individuals and society as a whole on the other, especially in times of uncertainty and rapid changes, including the completely new social, legal and economic conditions caused by climate change.[2] These dependencies have been recognized by the public, whose environmental and legal awareness is consistently growing. The manifestation of said thesis is simple fact, that the legal community is increasingly looking for legal reasoning allowing the filing of successful climate claims. The results are mixed though, for the law does not provide adequate tools for effective climate action.

As for that, the main objective of this chapter is to examine the relationship between climate change and legal solutions, including human rights, personality rights,[3] and tortious liability. In other words the main concern of following deliberations is to analyze whether there exist legal remedies to hold private entities reliable for their adverse actions towards environment and climate.

In light of the above, the starting point for further considerations will be to answer the question of what climate change, including in particular legally relevant climate change, actually is. This will allow further analysis regarding the relationship between the Polish legal system and the phenomenon of a climate change. The above will mainly consist of verifying whether the legal system is reactive, i.e. whether it guarantees appropriate legal tools for making climate-oriented claims. The whole

[2] J. McDonald, *The Role of Law in Adapting to Climate Change*, "WIREs Climate Change" 2011, vol. 2, no. 2, p. 283.

[3] Personality rights are the legal construct known in Polish civil law. Although its elaboration will take place within the framework of further considerations, so already at this stage it should be pointed out that according to Art. 23 of Polish Civil Code: "The personal interests of a human being, in particular health, freedom, dignity, freedom of conscience, surname or pseudonym, image, secrecy of correspondence, inviolability of home, and scientific, artistic, inventor's and rationalizing activity, shall be protected by civil law independent of protection envisaged in other provisions". Art. 24 of Polish Civil Code statutes the protection of these values, indicating that: "§ 1. The person whose personal interests are threatened by another person's activity may demand the omission of that action unless it is not illegal. In case of an infringement he may demand that the person who committed the infringement perform acts necessary to remove its effects and in particular to make a statement of an appropriate contents and in an appropriate form. On the terms provided for in this Code he may also demand pecuniary compensation or an appropriate sum of money paid to a specified community purpose. § 2. If, as a result of an infringement of a personal interest, a damage to property has occurred, the injured person may demand that it be redressed in accordance with general principles. § 3. The above provisions shall not prevail over the rights envisaged by other provisions, in particular by the copyright law and the law on inventions".

of the deliberations outlined will allow to discuss the issues of the law applicable to the recognition of transboundary climate claims, what will be done with special attention to the institution of personality rights, assuming that it is possible to grant protection to one's right to a safe climate using this legal institution.

1. Defining anthropogenic climate change and climate change that is legally relevant

The subsequent analysis should be grounded in the well-structured conceptual grid. Therefore, the process of climate change can be described as: "*a change in the state of the climate that can be identified (…) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer.*"[4] Importantly, understanding the legal implications of climate change requires acknowledging that not every form of climate change will be a legally relevant phenomenon.[5] This highlights the complexity of the issue, encompassing both natural and anthropogenic (human-induced) climate change.

Climate change may be anthropogenic when it is caused by human activity, as opposed to changes in climate that may have resulted as part of Earth's natural processes. "Anthropogenic" shall be therefore understood as: "*resulting from or produced by human activities*."[6] Said distinction found its expression in the wording of the United Nations Framework Convention on Climate Change,[7] which in Article 2.2. clearly states that climate change means: "*a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods*".

Given the legal focus of this paper, it seems relevant to state that only human interference in natural climate variability may hold potential legal implications. Those may vary between the measures of adaptive, mitigative and preventative means of reaction to the adverse effects of climate change. As indicated in the introductory phase, this article focuses primarily on those legal consequences of climate change

[4] The Core Writing Team, H. Lee, J. Romero (eds), *Climate Change 2023: Synthesis Report*, Geneva 2023, pp. 121-122, https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf (12.03.2024).

[5] J. Ciechanowicz-McLean, *Kompensacja szkód wyrządzonych w środowisku na przykładzie zmian klimatu*, "Gdańskie Studia Prawnicze" 2011, vol. 26, p. 96.

[6] The Core Writing Team, H. Lee, J. Romero (eds), *Climate Change 2023*…, p. 121.

[7] United Nations Framework Convention on Climate Change, New York 9 May 1992 (Dz.U. 1996, nr 53, poz. 238).

that manifest in the derivation of legal liability of private sector actors for their harmful climate acts and omissions. But is in fact any climate change really legally relevant?

To answer said questions effectively, it is crucial to focus on a specific legal system and the solutions already established within it. Therefore, further analysis will concentrate on the Polish legislation and its potential tools for formulating climate claims.

2. Climate change and the Polish legislation

2.1. A subjective right to a climate – the perspective of public law regime and personality rights

Within the Polish legal framework, pursuing climate change lawsuits against private entities presents a certain set of challenges, whereby the central hurdle lies in identifying a suitable legal basis for such claims.

Firstly, it is important to note that Polish legislators have not yet enacted any binding legislation specifically addressing the issue of climate change and its harmful effects. The first attempt to address climate change through legislation came last year with a draft climate protection bill prepared by lawyers from the ClientEarth foundation.[8] The mentioned document straightforwardly states that every human being has a right to live in a safe climate.[9] While currently existing only as a draft proposal, this measure, if enacted in the future, could trigger research conducted by legal scholars into whether it establishes a subjective right to a safe climate and if so, whether it is a subjective right in the public or private law sense, and finally whether this right is enforceable.

The potential legal inquiries surrounding this proposed legislation seamlessly connect to the central axis of legal debates on climate and the environment as legally protected values, which revolve around the question of whether these values constitute universal or individual rights. It is worth noting that under Polish law it is rather commonly agreed that the environment – and consequently the climate, are com-

[8] ClientEarth, *Projekt ustawy o ochronie klimatu*, 13 April 2023, https://www.clientearth.pl/media/g3wp0hau/2023-04-17-projekt-ustawy-o-ochronie-klimatu-1.pdf (06.03.2024).

[9] Article 3 of the draft proposition: "Everyone has the right to live in an environment free from acts or omissions unlawfully causing or contributing to the negative effects of climate change or threatening to causing or contributing to the negative effects of climate change, and to live in an environment free from the effects of such acts or omissions (the right to live in a safe climate climate)"; *ibidem*, p. 3.

munity rights,[10] and more importantly – rights which execution is almost impossible for the individual.

The logical starting point for further analysis should be the provisions of the Constitution of the Republic of Poland,[11] given its status as the fundamental legal document. According to Article 74.1 of the Constitution: "*public authorities are pursuing policies that ensure environmental security for today's and future generations*". Consequently, the Polish Constitution does not guarantee the general, subjective right of an individual to live in a healthy or clean environment as well as a safe climate.[12] The Polish Constitution's omission reflects the drafters' intent to avoid providing in its provisions an unenforceable clause with ambiguous legal consequences,[13] and at the same time stems from the Polish legislature's decision to conceptualize the Constitution as primarily a normative, rather than programmatic.[14]

A previously binding act from 1952 in its Article 71 straightforwardly stated that: "*citizens of the Republic of Poland have the right to enjoy the value of the environment and the obligation to protect it*". The above indicates that, in contrast to the current document, the 1952 Polish Constitution recognized a public subjective right to the environment for individuals. The absence of one's explicit right to the environment shall be viewed as a significant gap in the constitutional framework for environmental protection.[15] However, it is crucial to indicate that there are also different views among

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[10] See: M. Górski, *Commentary to the Article 74 of the Constitution of the Republic of Poland* [in:] *Konstytucja RP*, vol. 1: *Komentarz. Art. 1-86*, M. Safjan, L. Bosek (eds), Warszawa 2016; J. Trzewik, *Publiczne prawa podmiotowe jednostki w systemie prawa ochrony środowiska*, Warszawa 2016; B. Rakoczy, *Ciężar dowodu w polskim prawie ochrony środowiska*, Warszawa 2010; J. Marszałek, *Prawo do czystego środowiska jako wartość konstytucyjna. Wyrok irlandzkiego Sądu Najwyższego z dnia 31 lipca 2020 r., w sprawie Friends of the Irish Environment v. The Government Ireland (Appeal No. 205/19)*, "Gdańskie Studia Prawnicze" 2021, vol. 3, p. 156; M. Bartoszewicz, *Commentary to the Article 74 of the Constitution of the Republic of Poland* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, M. Haczkowska (ed.), Warszawa 2014; Judgment of the Supreme Administrative Court of 26.05.2015, II OSK 2595/13, LEX No. 1780503.

[11] Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. 1997, nr 78, poz. 483 z późn. zm.).

[12] K. Doktór-Bindas, *Prawo do czystego powietrza*, "Przegląd Konstytucyjny" 2020, vol. 4, p. 122; D. Kuźniar, *Prawo do zdrowego środowiska jako konstytucyjnie gwarantowane prawo podmiotowe*, "Przegląd Prawa Konstytucyjnego" 2021, vol. 3, no. 61, p. 207; Judgment of the Constitutional Court of 13.05.2009, Kp 2/09, OTK-A 2009/5, item 66.

[13] L. Garlicki, M. Derlatka, *Commentary to the Article 74 of the Constitution of the Republic of Poland* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 3, M. Zubik (ed.), Warszawa 2016.

[14] W. Radecki, *Koncepcja publicznych praw podmiotowych do korzystania z walorów turystycznych* [in:] *Ochrona walorów turystycznych w prawie polskim*, Warszawa 2011.

[15] See: A. Habuda, *The Right to the Environment in the Republic of Poland*, "Studia Prawnoustrojowe" 2019, vol. 44, pp. 108-109; R. Paczuski, *Zagadnienie prawa człowieka i obywatela do korzystania*

which M. Hejbudzki states, that it is possible to derive said right from Article 74.2 of Constitution, Article 4 of Polish Environmental Protection Law,[16] and norms of public international law.[17] An analogous position is taken by A. Haładyj, indicating that the Constitution of the Republic of Poland establishes: "*a civil right to the environment, the content of which can be derived from Articles 5, 68(4), 74 and 86. And the subjective right expressed in Article 74(4) is a guarantee of its realization*."[18]

The Polish Supreme Court Resolution of 28th May 2021 (hereinafter the "Resolution") further strengthens this perspective,[19] as while rejecting the characterization of a clean environment as a personality right, the judicial panel recognized it as a public subjective right. Therefore, the Resolution naturally becomes the starting point for further considerations centered around the possibility of qualifying an individual's right to a safe climate as a personality right.

The concept of personality rights is one that is not sufficiently sharp and, in the opinion of the representatives of the doctrine, cannot be precisely defined.[20] Consequently, the concept of personality rights has not been accorded a uniform definition by either civil law scholarship or judicial pronouncements. *A fortiori*, this term lacks a statutory definition promulgated by the legislature. Having due regard to the primary theme of this chapter and the exigency of preserving intellectual rigor within the presented argumentation, it is deemed expedient to confine to the proposition that personality rights constitute: "*the values recognized by the legal system (…) including the physical and psychological integrity of the human being, his individuality and dignity and position in society, which is the premise of the self-realization of the human person*."[21] The civil law protection accorded to personality rights finds its foundation

z walorów środowiska oraz obowiązku jego ochrony w Konstytucji Rzeczypospolitej Polskiej z 1997 r. [in:] *Księga jubileuszowa Profesora Stanisława Jędrzejewskiego*, H. Nowicki, W. Szwajdler (eds), Toruń 2009, pp. 374-375 and 381; R. Paczuski, *Ochrona środowiska. Zarys wykładu*, Bydgoszcz 2008, pp. 119-120.

16 Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska (Dz.U. 2024, poz. 54).

17 M. Hejbudzki, *Normatywne podstawy wprowadzenia do polskiego porządku prawnego koncepcji prawa podmiotowego do życia w czystym środowisku*, "Studia Prawnoustrojowe" 2019, vol. 43, p. 131.

18 A. Haładyj, *Konstytucyjne prawo do korzystania z wartości środowiska*, "Prawo i Środowisko" 2002, vol. 2, pp. 42-43.

19 Resolution of the Supreme Court of 28.05.2021, III CZP 27/20, OSNC 2021, no. 11.

20 W. Czachórski, *Dobra osobiste i ich ochrona* [in:] *Problemy kodyfikacji prawa cywilnego (studia i rozprawy). Księga pamiątkowa ku czci profesora Zbigniewa Radwańskiego*, S. Sołtysiński (ed.), Poznań 1990, p. 13.

21 Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, Warszawa 2019, p. 162. See: S. Grzybowski, *Ochrona dóbr osobistych według przepisów ogólnych prawa cywilnego*, Warszawa 1957, p. 19; J. Panowicz-Lipska, *Majątkowa ochrona dóbr osobistych*, Warszawa 1975, p. 29; A. Szpunar, *Ochrona dóbr osobistych*, Warszawa 1979, p. 106; A. Cisek, *Dobra osobiste i ich niemajątkowa ochrona w Kodeksie*

in the private law construct of subjective rights,[22] which should be understood as a "*certain legal situation determined for subjects by the applicable norms and protecting the legally recognized interests of these subjects. This situation consists of free – in normative terms – psychophysical or conventional behavior of the entitled subject, with which are always coupled the obligations of another subject or other subjects, whereby the as a rule (…) the right holder is also entitled to demand that the state body having coercion to bring about the realization of the obligations coupled with the subjective right obligations.*"[23] By extension, these rights are presumed to be classified as non-material and absolute subjective rights.[24] Furthermore, given their intimate association with the person, they are additionally considered to be non-transferable and non-hereditary.[25]

Knowing the nature of personality rights in the Polish legal system allows to pursue with the analysis of the above mentioned Resolution and – as a consequence – the possibility to grant the individual's right to climate and environment the qualification of a personality right. In order to maintain terminological uniformity, the following will refer to the "right to a safe climate"[26] and the "right to a clean environment."[27]

As already mentioned the Polish Supreme Court rejected the characterization of a clean environment as a personality right by indicating that the right to live in a clean environment, enabling one to breathe atmospheric air that meets the air quality standards: "*is not a personality right (…) personality rights are health, freedom, privacy, the violation of which may be caused by the violation of air quality standards set forth in generally applicable laws. Violation of these standards can therefore lead to interference with personality rights, which are primarily health, freedom, privacy, and the emergence of related civil law claims in favor of the individual. At the same time, it cannot be ruled out that failure to comply with the indicated standards may also constitute interference with other personality rights, protected by individual subjective rights.*"[28]

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cywilnym, Wrocław 1989, p. 39; Judgment of the Supreme Court of June 10, 1977, ref. no. II CR 187/77, LEX no. 7947; Resolution of the Supreme Court of October 22, 2010, ref. no. III CZP 76/10, LEX no. 604152; Judgment of the Supreme Court of May 6, 2010, ref. no. II CSK 640/09, LEX no. 598758.

22 M. Pazdan, *Dobra osobiste i ich ochrona* [in:] *System Prawa Prywatnego*, vol. 1: *Prawo cywilne – część ogólna*, M. Safjan (ed.), Warszawa 2012. Nb. 86; Z. Radwański, A. Olejniczak, *Prawo cywilne…*, p. 176; A. Szpunar, *Ochrona…*, p. 96.

23 Z. Radwański, A. Olejniczak, *Prawo cywilne…*, p. 89.

24 M. Pazdan, *Dobra osobiste…*, Nb. 86; A. Szpunar, *Ochrona…*, pp. 96-97.

25 *Ibidem.*

26 Further see: M. Stoczkiewicz, *Prawo ochrony klimatu w kontekście praw człowieka*, Warszawa 2021, p. 381ff.

27 However the adjectives may differ starting from "clean", through "healthy", "sustainable" past "proper".

28 Resolution of the Supreme Court of 28.05.2021…, item 72.

Without delving into detailed considerations[29] although recognizing one's right to safe climate or environment might pose theoretical and practical difficulties, it is not entirely implausible to conceptualize such a right and subject it to a definition along the lines of values that are proclaimed as personality rights. The indicated view is evident in both legal scholarship and case law, with divergent views appearing in the latter.[30] The legal doctrine proposes that the individual's right to the environment should be interpreted as a subjective right to the value of the environment,[31] or a subjective right to live in an unpolluted environment of adequate quality.[32] Building on those findings regarding the right to a clean environment, it is possible to define one's right to safe climate, understood as a personality right, as a right to live in a unpolluted climate in which variability does not exceed human's adaptive capacity, thereby translating into his dignity, health and comfort. However it is worth stipulating, that the difficulties in this area are significant, and among those are the potentially unlimited circle of individuals entitled to bring up a protective claim and the inability to individualize[33] or objectify[34] said right, not to mention the hurdles with causation.

2.2. Tortious liability

Although the assumption that there is a possibility to distinguish a separate and fully independent personality right to a safe climate is a central concept of further

[29] See: M. Krystman, *Prawo do oddychania czystym powietrzem jako dobro osobiste. Glosa do uchwały Sądu Najwyższego – Izba Cywilna z dnia 28 maja 2021 r., III CZP 27/20*, "Orzecznictwo Sądów Polskich" 2022, vol. 9, p. 73; J. Trzewik, *Prawo do życia w czystym środowisku umożliwiającym oddychanie powietrzem atmosferycznym spełniającym standardy jakości jako dobro osobiste – glosa do zagadnienia prawnego zarejestrowanego w Sądzie Najwyższym, III CZP 27/20*, "Przegląd Ustawodawstwa Gospodarczego" 2021, vol. 74, no. 4, pp. 57-62; R. Szczepaniak, *Odpowiedzialność odszkodowawcza władz publicznych za skutki zanieczyszczonego powietrza. Glosa do uchwały SN z dnia 28 maja 2021 r., III CZP 27/20*, "Orzecznictwo Sądów Polskich" 2022, vol. 6, p. 49; A. Skorupka, *Prawo do życia w czystym środowisku. Glosa do uchwały SN z dnia 28 maja 2021 r., III CZP 27/20*, "Przegląd Sądowy" 2022, vol. 5, pp. 112-120; B. Szyprowski, *Glosa do uchwały Sądu Najwyższego z dnia 28 maja 2021 r., sygn. III CZP 27/20*, "Prokuratura i Prawo" 2023, vols 7-8, pp. 284-295.

[30] J. Turek, *Środki ochrony prawa do osobistego korzystania z wartości środowiska naturalnego – ujęcie cywilnoprawne*, "Iustitia" 2012, vol. 2, p. 68ff.; Judgment of the Court of Appeals in Warsaw of 10.06.2014, VI ACa 1446/13, LEX No. 1540954.

[31] S. Włodyka, *Cywilnoprawna ochrona środowiska człowieka w Polsce. Tendencje i perspektywy rozwoju*, "Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace Prawnicze" 1982, vol. 108, p. 152. See: W. Radecki, *Pozycja organizacji społecznych w postępowaniu o ochronę środowiska*, "Palestra" 1985, vol. 29, no. 5, p. 26.

[32] I. Wereśniak-Masri, *Prawo do czystego środowiska i prawo do czystego powietrza jako dobro osobiste*, "Monitor Prawniczy" 2018, vol. 17, p. 943.

[33] T. Grzeszak, *Dobro osobiste jako dobro zindywidualizowane*, "Przegląd Sądowy" 2018, vol. 4, p. 26.

[34] T. Nowakowski, *Przekroczenie norm jakości powietrza a ochrona dóbr osobistych. Glosa do uchwały SN z dnia 28 maja 2021 r., III CZP 27/20*, "Orzecznictwo Sądów Polskich" 2022, vol. 5, p. 15.

deliberations, it's vital to at least superficially examine additional legal frameworks for addressing the harmful impacts of climate change.

In the Resolution of the Supreme Court, the adjudication panel also stated, that: "*the environment will retain the character of a common good (…) even if living in an environment with air, soil and water that conforms to the standards established by science, conducive to the preservation of health and man's realization of his freedom (…) is explicitly recognized as a human right*."[35] The growing body of climate litigation cases employing human rights arguments necessitates a thorough evaluation of their efficacy within the confines of national legal frameworks. In particular, this evaluation should focus on the applicability of these arguments to establish private sector liability under tort law.

While analyzing the right to a safe climate through the lens of human rights law, it's important to note that as a rule *no* existing human rights treaties, including the European Convention on Human Rights (hereinafter the "ECHR"),[36] explicitly guarantee a right to a safe climate or a clean environment. However, in climate change cases before the European Court of Human Rights (hereinafter the "ECtHR"), especially those seeking compensation, judicial bodies often reference the right to life and the right to respect for life[37] as well as private and family life.[38] In this context, it is worth mentioning the only successful case to date, initiated by the association Verein Klimaseniorinne,[39] which accused Switzerland of specific negligence in the area of mitigating the negative effects of climate change. By admitting the complaint, the ECtHR indicated that while the ECHR does not recognize an

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[35] Resolution of the Supreme Court of 28.05.2021…

[36] The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, as subsequently amended by Protocols Nos. 3, 5, and 8, and supplemented by Protocol No. 2. (Dz.U. 1993, nr 61, poz. 284 z późn. zm.); further also as: ECHR.

[37] According to Article 2 of ECHR: "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection".

[38] According to Article 8 of ECHR: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

[39] European Court of Human Rights, *Case of Verein Klimaseniorinnen Schweiz and Others v. Switzerland (Application no. 53600/20)*, https://hudoc.echr.coe.int/eng?i=001-233206 (29.09.2024).

individual's right to an environment or climate, climate change is currently one of the most significant threats to the environment and human life. Consequently, the Court ruled that the insufficient measures taken by the Swiss government in relation to the climate crisis have led to a violation of the applicants' right to respect for private and family life. This ruling may potentially lead not only to the explicit and institutionalized introduction of human rights into the climate change debate but also to the shaping of normative foundations for effectively deriving state responsibility for harmful climate actions and omissions.

The tendency to invoke human rights agenda to the climate change litigation extends to domestic lawsuits against private actors concerning their liability for contributing to harmful climate change. This reasoning is exemplified in the landmark Shell case,[40] where plaintiffs demanded the Dutch court oblige Shell to cut down its greenhouse gases emissions to the atmosphere. The Dutch Supreme Court stated that whilst Articles 2 and 8 of the ECHR are applicable only in the relations between the individuals and the state, they can still be viewed as a model for interpreting the concept of an unwritten duty of care. The court also held that it cannot be assumed sufficient for private parties to monitor developments and actions taken by states in this regard, given that they bear individual responsibility. What is more, on the basis of the Book 6 of Section 162 of the Dutch Civil Code,[41] the Court ruled that Shell is obliged: "*to limit or cause to be limited the aggregate annual volume of all CO2 emissions into the atmosphere (…) due to the business operations and sold energy-carrying products of the Shell group to such an extent that this volume will have reduced by at least net 45% at end 2030, relative to 2019 levels*".

In light of the Shell case, a crucial question arises: can the legal approach adopted by the Dutch Supreme Court be successfully applied in other domestic legal systems? In the Polish legal framework, the legal provision most similar to the solution used by the Dutch Supreme Court appears to be Article 415 of the Polish Civil Code,[42] which states that: "*whoever by his fault caused a damage to another person shall be obliged to redress it*".

The doctrine has not yet determined whether the cited provision of the Polish Civil Code establishes a legally binding norm prohibiting harm to others (*neminem laedere*).

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[40] Judgment of the Hague Distcit Court from 26th May 2021, case number C/09/571932 / HA ZA 19-379, *Milieudefensie et al. v. Royal Dutch Shell plc.*, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210526_8918_judgment-1.pdf (12.03.2024).

[41] Dutch Civil Code (Burgerlijk Wetboek), 1992, Book 6: The Law of Obligations, http://www.dutchcivillaw.com/civilcodebook066.htm (12.05.2024).

[42] Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny (Dz.U. 2023, poz. 1610 z późn. zm.).

The rule contained in Article 415 of the Civil Code can be presented as a principle according to which the goods of civil law subjects are protected against their violation under the tort regime.[43] Although the predominant view is questioning its operation in terms in which it follows from it a general normative prohibition of harming others,[44] different positions can be found. According to S. Sołtysinski, on the basis of Article 415 of the Civil Code, which has the character of a sanctioned and sanctioning norm,[45] there is an opportunity to determine both the obliged and entitled parties. According to this author, consequently, it should be considered that this provision shapes a civil law relationship similar to the construction of personality rights.[46]

Thus, does Article 415 of the Polish Civil Code provide a legal basis for successful climate-oriented claims? Despite the lack of definitive conclusions, relying on the said provision for climate lawsuits presents significant challenges. As a rule, an action in Polish tort law may be brought by a person who has suffered direct damage as a result of the unlawful and culpable action of a specific entity. Importantly, there must be an adequate causal link between the violator's behavior and the damage. Transferring the above to the reality of climate change, it remains crucial to indicate that establishing a causal link between a specific action and the resulting climate damage is a major hurdle, especially when considering the adequate level of causation required. Additionally, complexities arise regarding liability for indirect damage, liability for omissions, and defining "unlawfulness" solely as a violation of social norms. Taking into consideration the character of climate change as a global phenomenon which adverse effects affect individuals functioning under varied jurisdictions it remains unclear whether it is possible to address certain implications of anthropogenic climate change to specific countries, not to mention the specific private law companies. In relation to this issue it crucial to mention the issue of establishing legal liability of multinational companies operating in many different countries, which applies additional obstacles, i.e. the question of standing.

The legal implications of characterizing harmful climate interference as a form of environmental damage warrant further exploration. Similar to the challenges discussed regarding Article 415, uncertainties remain concerning the Polish Environ-

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43 Z. Banaszczyk, *Commentary on Article 415 of the Civil Code* [in:] *Kodeks cywilny*, vol. 1: *Komentarz. Art. 1-449[10]*, K. Pietrzykowski (ed.), Warszawa 2020, Nb. 25.

44 *Ibidem.*

45 Z. Ziembiński, *O metodzie analizowania stosunku prawnego*, "Państwo i Prawo" 1968, vol. 2, p. 206.

46 S. Sołtysiński, *Licencje na korzystanie z cudzych rozwiązań technicznych*, Warszawa 1970, pp. 170-175.

mental Protection Law, which establishes liability for environmental damage,[47] but its applicability to "climate damage" – a concept inherently less tangible and dispersed – also raises significant, similar to the abovementioned, questions.

According to Article 3 p. 39 of Polish Environmental Protection Law term "environment" means: "*all natural elements, including those transformed by human activity, particularly land, minerals, water, air, landscape, climate and other elements of biological diversity, as well as the interaction between these elements*". The wording chosen by the Polish lawmaker enables making an assumption that "climate" is a part of the environment of a broader sense.[48] As a consequence it enables the attempt to conceptualize the difficulties of applying the provisions of Polish Environmental Protection Law establishing liability for environmental damage to so-called "climate damage".

Along with the Article 322 of Polish Environmental Protection Law: "*The provisions of the Civil Code will apply to liability for damage caused by environmental impacts unless the Law provides otherwise*". With respect to that, as a principle, the general rules of the liability for environmental damage will remain the same as indicated while analyzing the Polish tort regime. Article 323 of Polish Environmental Protection Law establishes more specific criteria concerning construing claims regarding environmental damage. As a rule: "*anyone who is directly threatened or harmed by an unlawful environmental impact may demand that the person responsible for the threat or breach restore the situation to a lawful state and take preventive measures, particularly by installing installations or equipment to safeguard against the threat or breach; where this is impossible or extremely difficult, he/she may also demand the cessation of the activity causing the threat or breach*" (Article 323 (1) of Polish Environmental Protection Law). If, on the other hand, the threat or breach concerns the environment as a common good, a claim referred above may be brought by the State Treasury, a local government unit or an environmental organization (Article 323 (2) of Polish Environmental Law).

Mindful of the above provisions and the fact that climate damage is less tangible and dispersed, it remains crucial to indicate the potential hurdles in addressing the climate change through Polish Environmental Protection Act. Among those the most important is statutory impediment arising from the wording of Article 323 (1) of said bill, which states that an individual may make a claim regarding environmental damage if he is "*directly threatened or harmed by an unlawful environmental impact*". The legal doctrine commonly states that the direct threat of damage shall be seen

[47] Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska (Dz. U. z 2024 r. poz. 54). See articles 322-328.

[48] M. Bar et al., *Commentary to the Article 3 of Polish Environmental Law* [in:] *Prawo ochrony środowiska. Komentarz*, M. Górski, M. Pchałek, W. Radecki (eds), Warszawa 2019, Nb. 152.

as a highly probable occurrence of damage in a given case, which does not require it to happen in a short period of time.[49] Applying said criteria to anthropogenic climate change may be at least a challenging, if not impossible legal task. Firstly, climate change is characterized by significant scientific uncertainty, making it challenging to precisely predict the specific and tangible manifestations of its adverse effects, such as heat waves, floods, or prolonged droughts in particular regions. Secondly, the harmful effects of climate change may become noticeable in the perspective of years i.e. in the distant future. As a consequence it may not be seen as a "direct threat" to the interests of individuals. Finally, it is hard to determine the contribution of certain private actors to the intensified anthropogenic climate change, as it remains the global phenomenon triggered by not only private but also public entities. As a consequence construing a legally successful claim against private actors basing on said provision becomes challenging, as it faces not only the hurdles indicated within the tortious liability analysis, but also specific for Polish Environmental Protection Act.

Having said that, it is justified to state that protection of individual's widely understood environmental interests is not sufficient. Those inadequacies cannot be addressed by the wording of Article 323 (2) of Polish Environmental Law granting the possibility to make a lawsuit concerning the "environment as a common good" as the provision does not provide the standing for the individual. However said provision is being successfully used by environmental organizations like ClientEarth Prawnicy dla Ziemi,[50] the activism of said organizations will not properly protect the environmental interests of the individual.

3. The legal basis of the claim and the law applicable to the transboundary climate lawsuits resolution

Having established the potential legal bases for private sector liability in connection with harms induced by the climate change, the following analysis focuses on the interplay between these legal bases i.e. personality rights regime, tortious liability, liability for environmental damage, and private international law. A subsequent, detailed examination will elucidate how private international law principles govern specific legal issues,

[49] M. Bar, *Commentary to the Article 323 of Polish Environmental Law* [in:] *Prawo ochrony środowiska. Komentarz*, M. Górski, M. Pchałek, W. Radecki (eds), Warszawa 2019, Nb. 5.

[50] See for example: ClientEarth, *ClientEarth pozywa Elektrownię Bełchatów za przyczynianie się do kryzysu klimatycznego*, 26 September 2019, https://www.clientearth.pl/najnowsze-dzialania/artykuly/clientearth-pozywa-elektrownie-belchatow-za-przyczynianie-sie-do-kryzysu-klimatycznego/ (25.09.2024).

such as claims related to personality rights. However, a comprehensive discussion regarding the interaction of private international law with the broader range of legal bases outlined earlier is necessary. Ultimately, the above discussion will demonstrate that the selection of the applicable legal framework hinges on the preliminary determination of the most fitting legal basis for a particular transboundary climate change lawsuit.

While leaning to the concept of tortious liability *in genere*, Article 4 of Rome II Regulation[51] applies, according to which the applicable law is, as a rule, the law of the country in which the damage occurs. However, if the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than those mentioned above the law of that other country shall apply. It is visible that said provision contains of three different conflict norms, where the first one expresses the general rule, and the other two introduce exceptions to said rule.[52] Minding the above it is possible to state that Rome II assumes that the location of damage, understood as the place of direct infringement of the injured party's legal good, is decisive while considering the applicable law, since it is there that the event determining the emergence of liability is realized, while the place where the injured party suffered consequential damage resulting from the original damage, which arose in another country remains irrelevant.[53] In other words: "*in order to identify the law applicable to a non-contractual obligation arising from a tort or delict, Article 4(1) of that regulation adopts the law of the country in which the 'damage' occurs, irrespective of the country in which the event giving rise to the damage occurred, and irrespective of the country or countries in which the 'indirect consequences' of that event occur. The damage which must be taken into account in order to determine the place where the damage occurred is the direct damage*."[54] In its jurisprudence, the European Court of Justice (hereinafter the "CJEU") indicates that: "*where it is possible to identify the*

[51] Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the Law Applicable to Non-Contractual Obligations ("Rome II") (Dz.U. UE. L. 2007, nr 199, p. 40).

[52] P. Fik, *Commentary to the Article 4 of Rome II* [in:] *Prawo właściwe dla zobowiązań pozaumownych. Rozporządzenie (WE) nr 864/2007 (Rzym II). Komentarz*, P. Fik, P. Staszczyk (eds), Warszawa 2014.

[53] M. Świerczyński, *Commentary to the Article 4 of Rome II* [in:] *Prawo prywatne międzynarodowe. Komentarz*, M. Pazdan (ed.), Warszawa 2018, Nb. 6.

[54] Judgment of CJEU from 10 December 2015, case no. C-350/14, *Florin Lazar, représenté légalement par Luigi Erculeo v. Allianz SpA*, ECLI:EU:C:2015:802, t. 23; https://curia.europa.eu/juris/document/document.jsf?text=&docid=172887&pageIndex=0&doclang=pl&mode=lst&dir=&occ=first&part=1&cid=3126508 (29.09.2024).

occurrence of direct damage, the place where the direct damage occurred is the relevant connecting factor for the determination of the applicable law, regardless of the indirect consequences of the harmful event."[55]

If climate damage were to be given the qualification of an environmental damage, the provision for determining the law applicable would become Article 7 of Rome II, according to which it: "*shall be the law determined pursuant to Article 4(1), unless the person seeking compensation for damage chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred*".

Referring to the issue raised in both Article 4 and 7 of the Rome II Regulation, the concept of "the place where the harmful event occurred" should be pointed out that, based on CJEU case law, in principle it includes that: "*where the place of the happening of the event which may give rise to liablity in tort, delict or quasi-delict and the place where that event results in damage are not identical, the expression 'place where the harmful event occurred' (…) must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it*."[56] Thus, the construction of the cited provision indicates that the idea behind the law applicable for environmental liability is to give the injured party the opportunity to decide whether the law of the place where the damage occurred (*lex loci damni*) or the law of the country where the event causing the damage occurred (*lex loci delicti commissi*) will be applicable.[57] As a consequence, contrary to Article 4 (1) of Rome II Regulation which

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[55] Judgment of CJEU from 10 March 2022, case no. C498/20, *ZK as successor to JM, liquidator in the bankruptcy of BMA Nederland BV v. BMA Braunschweigische Maschinenbauanstalt AG & Stichting Belangbehartiging Crediteuren BMA Nederland*, ECLI:EU:C:2022:173, t. 58, https://curia.europa.eu/juris/document/document.jsf?text=&docid=255424&pageIndex=0&doclang=PL&mode=req&dir=&occ=first&part=1 (29.09.2024).

[56] Judgment of CJEU from 30 November 1976, case no. 21-76, *Handelskwekerij G. J. Bier BV v Mines de potasse d'Alsace SA.*, Document 61976CJ002, t. 24, https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:61976CJ0021 (29.09.2024); See: Judgment of CJEU from 16 July 2009, case no. C189/08, *Zuid-Chemie BV v. Philippo's Mineralenfabriek NV/SA.*, ECLI:EU:C:2009:475, t. 23, https://curia.europa.eu/juris/document/document.jsf;jsessionid=B33B521677B9F8F2001393B035BD7C1D?text=&docid=72472&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2284215 (29.09.2024); Judgment of CJEU from 29 July 2019, case no. C451/18, *Tibor-Trans Fuvarozó és Kereskedelmi Kft. v. DAF Trucks NV*, ECLI:EU:C:2019:635, t. 25, https://curia.europa.eu/juris/document/document.jsf?text=&docid=216540&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2285790 (29.09.2024); Judgment of CJEU from 5 February 2004, case no. C-18/02, *Danmarks Rederiforening, acting on behalf of DFDS Torline A/S v. LO Landsorganisationen i Sverige, acting on behalf of SEKO Sjöfolk Facket för Service och Kommunikation*, ECLI:EU:C:2004:74, t. 40-41, https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:62002CJ0018 (29.09.2024).

[57] P. Fik, *Commentary to the Article 7 of Rome II* [in:] *Prawo właściwe dla zobowiązań pozaumownych. Rozporządzenie (WE) nr 864/2007 (Rzym II). Komentarz*, P. Fik, P. Staszczyk (eds),

clearly states that "*the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred*", Article 7 of this regulation gives the injured party the option to choose between two equal bases for determining the applicable law. It remains crucial to stipulate that said term: "*cannot be construed so extensively as to encompass every place where the adverse consequences of an event, which has already caused damage actually occurring elsewhere, can be felt. Consequently, that concept cannot be construed as including the place where the victim claims to have suffered financial damage following initial damage arising and suffered by him in another State*,"[58] as it demands the: "*existence of a particularly close connecting factor*."[59]

Finally, if one would like to bring up a protective claim using the institution of personality rights, pursuant to Article 1.2. g of Rome II national law would be applicable, that is law indicated by Article 16 of the Polish Private International Law,[60] which unfortunately poses further interpretational difficulties, that will become the subject of further considerations.

4. Transboundary protection of personality rights and the individual's right to a safe climate

The territorial dimension of the protection of personality rights extends beyond national borders, which makes it possible to indicate a category of situations containing a foreign element, in which there is a factual or legal connection with other states or even areas not subject to any state authority.[61] It then becomes necessary to determine the law, which is the basis for the substantive decision, which takes place on the basis of the conflict rules of private international law.[62]

Warszawa 2014. See: A. Wowerka, *Prawo właściwe dla odpowiedzialności za szkody w środowisku naturalnym w świetle rozporządzenia Rzym II*, "Gdańskie Studia Prawnicze" 2023, vol. 4, no. 61, pp. 308-322.

[58] Judgment of CJEU from 9 July 2020, case no C343/19, *Verein für Konsumenteninformation v. Volkswagen AG*, ECLI:EU:C:2020:534, t. 26, https://curia.europa.eu/juris/document/document.jsf?text=&docid=228372&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2288587 (29.09.2024).

[59] Judgment of CJEU from 1 October 2002, case no C-167/00, *Verein für Konsumenteninformation and Karl Heinz Henkel*, ECLI:EU:C:2002:555, t. 46, https://curia.europa.eu/juris/document/document.jsf?text=&docid=47727&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2294808 (29.09.2024).

[60] Ustawa z dnia 4 lutego 2011 r. – Prawo prywatne międzynarodowe (Dz.U. 2023, poz. 503).

[61] N. Rycko, *Prawo właściwe dla zobowiązań wynikających z naruszenia dóbr osobistych. Uwagi* de lege ferenda, "Forum Prawnicze" 2017, vol. 3, p. 26.

[62] *Ibidem.*

Given the potential classification of the right to a safe climate as a personality right, and building on the previous deliberations, it is crucial to reiterate that the Rome II Regulation in its Article 1 (2g) explicitly excludes the domain of personality rights from its purview. The above arose as it became clear that the opposing views on this subject were too strongly held to allow a reasonable compromise.[63] The said exclusion has raised concerns among legal scholars, particularly regarding the principle of a comprehensive codification,[64] as it remains rather well established that: "*the main purpose of uniform choice-of-law rules is to reduce uncertainty as to the law governing international legal relationships*."[65] While the absence of said rules referring to personality rights does not preclude national legislators from extending the convention rules to non-convention situations,[66] the Polish legal system has opted for a different approach, explicitly addressing the protection of personality rights in Article 16 of the Private International Law.

According to the wording of Article 16 (1) of the Private International Law: "*an individual's personality rights are governed by his native law*". The law so indicated determines whether there is a given personality rights, the catalogue of those, their content and characteristics.[67]

In turn, Article 16 (2) of cited regulation states that: "*an individual whose personality rights is threatened with infringement or has been infringed may claim protection under the law of the state on whose territory the event causing the threatened infringement or infringement occurred, or the law of the state on whose territory the consequences of the infringement occurred*". The provision simultaneously uses two conjunctions – the place of the event and the place of the effect. The concept of the place of the event means the country in whose territory the violator of the personality right acted or omitted to act.[68] The link of "the state in whose territory the consequences of this violation occurred", due to the essence of personality rights, can be associated primarily with the place of habitual residence of the person whose personal rights were threatened or violated.[69]

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63 S.C. Symeonides, *Choice of Law in Torts Arising from Infringement of Personality Rights*, "International Business Law Journal" 2022, vol. 6, p. 8.

64 M. Pilich, *Prawo właściwe dla dóbr osobistych i ich ochrony*, "Kwartalnik Prawa Prywatnego" 2012, vol. 21, no. 3, pp. 603-604.

65 T.M. de Boer, *The Purpose of Uniform Choice-of Law Rules: The Rome II Regulation*, "Netherlands International Law Review" 2009, vol. 56, no. 3, p. 330.

66 P. Mostowik, E. Figura-Góralczyk, *Commentary to Article 16 of the Private International Law* [in:] *Prawo prywatne międzynarodowe. Komentarz*, M. Pazdan (ed.), Warszawa 2018, Nb. 23.

67 M. Wałachowska, *Kolizyjnoprawne aspekty naruszenia dóbr osobistych* [in:] *Dobra osobiste w XXI wieku. Nowe wartości, zasady, technologie*, J. Balcarczyk (ed.), Warszawa 2012, pp. 255-256.

68 P. Mostowik, E. Figura-Góralczyk, *Commentary…*, Nb. 59.

69 M. Pilich, *Commentary to Article 16 of the Private International Law* [in:] *Prawo prywatne międzynarodowe. Komentarz*, J. Poczobut (ed.), Warszawa 2017.

It is noteworthy that the legal interpretation of the phrase "an individual (…) may demand protection" remains a subject of ongoing debate within legal scholarship.[70] According to some representatives of the Polish legal doctrine, Article 16 (2) of said regulation is a manifestation of conflict-legal autonomy of the will, allowing the injured party to choose one of two alternative connecting factors for the protection of personality rights.[71] A different position was taken however according to which this formulation is not an example of a conflict-of-law choice of law, since the freedom to decide on the legal basis of the claim does not have to take the form of a separate behavior in the nature of a choice of applicable law.[72] Likewise, other authors claim that this provision is an example of an alternative designation of several laws.[73]

Having discussed the nature of both sections of Article 16 of the Private International Law, it is possible to verify their relation and mutual links. Indeed, the scope of Article 16 (1) of the Private International Law includes the determination of what legal values constitute the constitutive element of subjectivity, identity and status of a person in society,[74] while paragraph 2 of the provision in question indicates the statute for the protection of personality rights.[75] On the other hand, scholars point out that according to the native law of an individual, the circle of his personality rights and the corresponding subjective rights should be determined, while Article 16 (2) of the Private International Law determines the law applicable to the protection of aid values.[76] Likewise, authors claim that the content and nature of personality right is determined by the personal statute,[77] while tortious status includes all the elements of an obligatory relationship, the source of which is the violation of personality rights.[78]

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70 P. Mostowik, E. Figura-Góralczyk, *Commentary…*, Nb. 66.

71 M. Pilich, *Commentary…*

72 M. Pazdan, *Kolizyjnoprawny wybór prawa a inne przejawy autonomii woli w prawie prywatnym międzynarodowym* [in:] *Spory o własność intelektualną. Księga jubileuszowa dedykowana Profesorom Januszowi Barcie i Ryszardowi Markiewiczowi*, A. Matlak, S. Stanisławska-Kloc (eds), Warszawa 2013, p. 787; quoted in: J. Balcarczyk, *Uwagi ogólne na tle normy art. 16 ust. 2 ustawy z dnia 4 lutego 2011 r. – Prawo prywatne międzynarodowe* [in:] *Prawo właściwe dla dobrego imienia osoby fizycznej i jego ochrony*, Warszawa 2014.

73 A. Mączyński, *Jednoczesne wskazanie kilku praw w polskiej kodyfikacji prawa prywatnego międzynarodowego* [in:] *Experientia docet. Księga jubileuszowa ofiarowana Pani Profesor Elżbiecie Traple*, P. Kostański, P. Podrecki, T. Targosz (eds), Warszawa 2017.

74 M. Pilich, *Commentary…*

75 *Ibidem.*

76 M. Pazdan, *Kolizyjnoprawny wybór prawa…*, p. 786; quoted in: P. Mostowik, E. Figura-Góralczyk, *Commentary…*, Nb. 35.

77 M. Wałachowska, *Kolizyjnoprawne aspekty…*, p. 256.

78 *Ibidem*, p. 270.

The above interpretation needs to be agreed with, and consequently it should be assumed that the Polish legislator has singled out a conflict of laws norm that subjects personality rights to *legi patriae*, along with a separate provision for their protection, based on a separate link.[79] The legitimacy of the application of this procedure can be evaluated differently whereby the separation of these concepts is particularly justified, especially when analyzing a specific factual situation under Polish law.[80] A different position is taken, according to whom this solution raises certain doubts, manifested, inter alia, in the circumstance that in order to establish the violation of personality rights, it is necessary to first determine its content, and the type and intensity of protection measures against the background of the applicable law may depend on the extent of the violation.[81] Hence, in the opinion of the authors, from a conflict of laws perspective, an approach would seem appropriate, according to which, in principle, one statute covers the issue of the existence and catalog of personality rights and the subject of the means of their protection.[82]

Consequently, it is apparent that the current wording of Article 16 of the Private International Law raises a multitude of practical problems in its proper application. Independent of the doubts about the grounds for singling out the personality rights in the form of the right to a safe climate, or the relatively small number of cross-border claims concerning personality rights as such, it seems reasonable to point out *de lege ferenda* postulates, especially those concerning Article 16.1 of the Private International Law. In particular, the need to refer to the native law of a person injured by a violation of his personality rights should be considered questionable, as certain fundamental goods are guaranteed to everyone not because of the individuals' status as a citizen of a state that declares these values to be legally significant, but solely because the individual in question is a human being.[83] In view of the above, one must agree that the better solution is the one found in German law, where, on the occasion of the reform of private international law in 1999, it was decided to adopt the principle of uniformity of the tort statute, which resolves not only the scope and means of protection of the right of personality, but also the granting of certain rights to the individual and their content.[84]

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79 J. Balcarczyk, *Uwagi ogólne…*; N. Rycko, *Prawo właściwe dla ochrony dóbr osobistych w wiążących Polskę dwustronnych umowach międzynarodowych*, "Zeszyty Prawnicze" 2018, vol. 18, no. 4, p. 70.

80 J. Balcarczyk, *Uwagi ogólne…*

81 P. Mostowik, E. Figura-Góralczyk, *Commentary…*, Nb. 75.

82 *Ibidem.*

83 M. Pilich, *Prawo właściwe…*, p. 617.

84 *Ibidem*, p. 619.

Conclusion

Summarizing, it still remains unclear whether climate change can be qualified as a fact with a real legal significance, a fact which allows the individual to bring a protective claim broadly understood as a climate action claim. There are many, maybe even too many, problems and difficulties regarding this matter. The nature of the individual's right to climate remains a core issue. This is because the issue significantly resonates with the possibility of recognizing the value in question as a personality right. In the context of tort liability, on the other hand, the issue of adequate causation or adequate definition of the category of climate damage *per se* remains a fundamental problem. What remains crucial is the fact that the above determines not only the basis for, but more importantly, the possibility of pursuing cross-border climate lawsuits against private sector entities.

Current analysis within the thematic scope of this chapter (domestic law, Rome II Regulation, or non-binding instruments) indicates a prevalent reliance on soft law. However, a discernible trend towards a potential shift in this paradigm is emerging, potentially necessitating legislative interventions at both the Polish and European Union levels.

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For many years legal thought and practice focused on the general concept of environmental rights as a legal tool meant to enforce the human right to a healthy and sustainable environment. Whilst there is an undeniable link between human rights and climate change, as illustrated notably by the global phenomenon of the climate change litigation, this monograph focuses on the growing role of potential, sectoral fundamental rights and tailored remedies available in the EU legal order in absence of a substantive fundamental right to a healthy environment in EU law. Against the background of the European Green Deal and its ambitious climate-neutrality goal by 2050, the book echoes the sustainability-based approach and its limits.

Contributors analyse two interrelated perspectives. On the one hand, authors explore the procedural dimension by discussing the climate litigation and the limits of the concept of human environmental rights, state liability for loss and damage caused to individuals as a result of breaches of EU law, national remedies available in case of bad condition of the environment as well as the limits of the public interest litigation and challenges related to climate claims against private actors in national law. On the other hand, contributors discuss substantive aspects from a global perspective of food insecurity, soil monitoring and resilience as well as digitalisation, green skills and climate-induced migration. With insights from leading experts, this work highlights the evolving tensions and expectations within the EU legal framework.

Essential for legal practitioners, policymakers, academics, and students of law and administration, this book offers a comprehensive exploration of the intersection between sustainability, climate action, and the protection of fundamental rights in EU law.

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