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Climate Change Litigation: Receptiveness of Polish Constitutional Order

Litygacja dotycząca zmian klimatu. Otwartość polskiego porządku konstytucyjnego

ABSTRACT

The article examines the evolving role of climate change litigation (CCL) in addressing the global climate crisis, with particular emphasis on its relevance within the context of Polish constitutional norms. Climate change litigation is increasingly recognized as a strategic tool (SCCL – Strategic Climate Change Litigation) for driving systemic changes in environmental governance, as it uses legal frameworks to formulate climate responsibility. The study is divided into three sections. The first examines the global development and historical trajectory of climate change litigation, highlighting landmark rulings and the integration of human rights arguments related to so-called climate rights. The second explores the transnational significance of SCCL, emphasizing its influence on broader environmental governance frameworks. The third assesses the potential for the reception of (S)CCL mechanisms within the Polish constitutional order, analyzing relevant constitutional norms and the

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potential for judicial engagement in climate governance. Using an interdisciplinary, comparative legal approach, this study contributes to the ongoing discourse on environmental constitutionalism, the role of courts in global climate governance, and the intersection of national legal systems with international environmental standards. The authors provide insights into the theoretical, normative and practical implications of strategic climate litigation, particularly in the Polish context. The article aims to deepen understanding of its potential impact on the use of national constitutional frameworks.

Keywords: climate change litigation; strategic litigation; climate governance; constitution; Poland

INTRODUCTION

Climate emergency creates a need to invent and reinvent institutions capable of addressing the crisis. One highly illustrative and increasingly important tool in this regard is climate change litigation, growing in both case volume and jurisdictional reach. It reflects the new ways of articulating climate responsibility through legal argumentation, broader shifts in global environmental governance and the growing role of courts within it. The purpose of this article is to explore the development and significance of climate change litigation and assess the receptiveness of the Polish constitutional order to accommodate and support its strategic use. Accordingly, the first section analyzes the dynamic character of climate change litigation through the lenses of its historical development, landmark rulings worldwide, and the emerging characteristics such as the use of human rights arguments and internationalization. The second section explores its multi-layered, transnational significance which extends beyond individual disputes and reflects systemic changes in environmental governance. The third part evaluates the receptiveness of the Polish constitutional order to the rising climate change litigation phenomenon. This section begins with a synthetic characterization of these issues from the perspective of constitutional theory, followed by an analysis of relevant Polish constitutional norms.

Methodologically, the study is based on an interdisciplinary approach. It provides a systematic, literature-based conceptualization of climate litigation. The research draws on doctrinal (theoretical), dogmatical and comparative legal methods. The methodological choice for the article was to link two levels of inquiry: climate litigation as a sign of international, multi-level legal transformation, and the receptiveness of a specific national constitutional order to internalize this process. This enables a contribution to ongoing scholarly and jurisprudential discussions about environmental constitutionalism, strategic litigation, and judicial engagement in planetary governance.

CLIMATE CHANGE LITIGATION – DEFINITION AND DEVELOPMENT

It is hard to overstate how profoundly climate change is reshaping nearly every aspect of civilization. It is an existential threat that unravels the world as we know it, yet, at the same time, a powerful force driving institutional transformation. The urgency of the climate crisis demands responses that outpace traditional governance frameworks and embrace planetary scale and complexity of the issue. It both requires and generates legal innovations, emerging from the efforts of various stakeholders seeking mechanisms to accelerate and intensify climate action. One such mechanism is strategic climate change litigation, which has become an increasingly important tool in shaping regulatory responses to the crisis.

With the rising number and variety of climate-related lawsuits, extending geographical span, and the simultaneous growth in legal and interdisciplinary academic interest,[1] climate change litigation (or simply climate litigation) has emerged as a multifaceted phenomenon, marked by considerable diversity in how it is defined. This diversity and the difficulty in specifying what actually qualifies as climate litigation stem not only from the growing body of cases worldwide but also, in a meaningful way, from the intricate nature and vast consequences of climate change itself. One of the key challenges in this regard is determining the necessary degree of connection to climate change for a case to be classified as climate litigation. According to C. Hilson, "to count as climate change litigation, cases must be framed as such",[2] meaning that litigation must be deliberately structured as climate-related legal dispute, with climate change element intentionally incorporated in legal arguments.[3] Pioneers of climate litigation meta-analyses and cross-jurisdictional research, J. Peel and H.M. Osofsky highlight ambiguity of the notion of climate litigation, shaped by different perspectives on how to delineate its scope.[4] Should the term be limited to cases that explicitly engage with climate change policy or science? Or should it extend to cases where climate change is not explicitly cited in legal argumentation but serves as motivation, such as lawsuits based on broader environmental concerns, where emission reductions are not the primary legal argument? Furthermore, should it encompass cases with significant implications for climate governance, including, e.g., those addressing the financial and legal consequences of extreme weather events, even if they are not explicitly

[1] O. Setzer, L.C. Vanhala, *Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance*, "Wiley Interdisciplinary Reviews: Climate Change" 2019, vol. 10(3).

[2] C. Hilson, *Climate Change Litigation: A Social Movement Perspective*, Working Paper, University of Reading 2010, https://ssrn.com/abstract=1680362 (access: 20.8.2025), p. 2.

[3] *Ibidem*.

[4] J. Peel, H.M. Osofsky, *Climate Change Litigation*, "Annual Review of Law and Social Science" 2020, vol. 16.

framed in climate-related terms?[5] To conceptualize this spectrum, the authors use a concentric circles model. At the core, the narrowest definition includes cases explicitly about climate change, such as challenges to inadequate national climate policies or cases invoking human rights violations due to insufficient climate action.[6] Moving outward, broader interpretation includes litigations with climate change as relevant, yet a peripheral issue.[7]. Further along the continuum, the link between climate change and the legal arguments becomes less direct, but the litigation may still be motivated by climate concerns, albeit not raised as an issue, or – despite lacking specific climate change framing – have consequences for the mitigation and adaptation efforts.[8] While broader interpretations acknowledge the wider systemic impact of legal disputes on climate change governance, analytical clarity necessary to navigate the increasing number and diversity of cases to assess the actual regulatory impact of the phenomenon might be blurred.[9] On the other hand, definitions that are too narrow may overlook climate-related litigations in jurisdictions where explicit climate arguments are less common, particularly in the Global South,[10] hereby making different paths through which this phenomenon unfolds transnationally less visible.

As this spread remains a relatively recent and dynamic process with the potential to influence institutional responses to the climate crisis, the way climate litigation is defined carries not only academic significance but also possible practical implications for the nascent legal space. It affects the recognition of legal activism and the judiciary's role in climate policy. In this regard, climate litigation databases – most notably the Climate Change Litigation Databases (U.S. Climate Change Litigation database and Global Climate Change Litigation database) maintained by the Sabin Center for Climate Change Law – and the definitional criteria they apply are particularly meaningful.[11] Beyond documenting past rulings and ongoing disputes, these databases provide structured repositories that enhance the visibility of climate litigation as a legal avenue. They may inform future litigation strategies, and, in turn, contribute to the diffusion of climate litigation, as well as the evolution of climate law and policy on a global scale.[12] According to the widely referenced approach used by the Sabin Center for Climate Change Law, for a case to qualify as climate litigation, first, it must generally be brought before judicial

[5] *Ibidem*, pp. 23–24.
[6] *Ibidem*.
[7] *Ibidem*.
[8] *Ibidem*.
[9] *Ibidem*.
[10] J. Setzer, C. *Global Trends in Climate Change Litigation: 2024 Snapshot*, London 2024, p. 8.
[11] https://climatecasechart.com (access: 22.8.2025).
[12] M. Golnaraghi, J. Setzer, N. Brooke, W. Lawrence, L. Williams, *Climate Change Litigation – Insights into the Evolving Global Landscape*, Geneva 2021, p. 29.

bodies, although in some instances, matters before administrative or investigatory bodies may also be included. Second, climate change law, policy or science must explicitly constitute a material legal or factual issue in the case. Cases that make only passing references to climate change without substantively engaging with climate-relevant laws, policies or actions are excluded from the databases.[13] Sabin Centre's databases serve as a key reference point for understanding the global character of climate litigation in both quantitative and qualitative terms. In May 2025, the bases identified over 3,000 cases, 65% of which featured in the U.S. chart, across more than 55 jurisdictions, including also litigations brought before international courts and tribunals.[14]

This volume of cases has resulted from nearly 30 years of development, beginning in the 1980s, and is often characterized as evolving in three waves.[15] The first wave of climate litigation, spanning the late 1980s up to 2007, was largely limited to the U.S. and Australia. Early litigations were predominantly administrative cases brought against government agencies, often seeking stronger environmental regulations. *Massachusetts v Environmental Protection Agency* – a landmark 2007 decision in which the U.S. Supreme Court compelled the EPA to regulate greenhouse gas emissions, marked the culmination of this phase and laid the ground for subsequent legal actions on climate change.[16] The second wave, starting from 2007, saw a significant rise in climate litigation, both in number and geographical reach – expanding to European states, with cases brought also before the European Court of Justice. This wave was shaped by growing public awareness of both climate urgency in the context of Kyoto Protocol negotiations and the insufficient legislative responses, reinforcing climate litigation as a strategy perceived to offer potential for addressing regulatory shortcomings. This period also witnessed an increasing number of lawsuits targeting corporate actors, e.g. action taken by the community of Alaskan village Kivalina suing a group of energy companies for their contribution to climate change, that threatened the village's existence.[17] The third wave began in 2015, the year of the Paris Agreement. Climate litigation has significantly accelerated since then, with approximately 70% of all recorded cases filed thereafter.[18] Within this period, climate change has developed, reaching jurisdictions in Asia, Latin America and Africa, manifesting in a broader range and increasing pace of cases.[19]

[13] Climate Change Litigation Databases, https://climatecasechart.com/about (access: 22.8.2025).
[14] *Ibidem*.
[15] M. Golnaraghi, J. Setzer, N. Brooke, W. Lawrence, L. Williams, *op. cit.*, pp. 13–17.
[16] *Ibidem*, pp. 13–14, 17.
[17] *Ibidem*, p. 17.
[18] J. Setzer, C. Higham, *op. cit.*, p. 2.
[19] M. Golnaraghi, J. Setzer, N. Brooke, W. Lawrence, L. Williams, *op. cit.*, p. 13.

Landmark rulings have played a crucial role in shaping this evolving field, setting important precedents for future litigation. A key example is the *Urgenda Foundation v State of the Netherlands* case – first in which domestic court ordered a government to adopt more ambitious climate change mitigation measures by implementing stricter greenhouse gas emissions reductions, based on a legal duty of care and human rights obligations. Filed by the environmental NGO Urgenda, the case argued that the Dutch government's climate policy was inadequate and violated the European Convention on Human Rights (Articles 2 and 8), as well as Dutch constitutional and civil law. In a groundbreaking 2015 ruling, the District Court of The Hague held that the state had a duty to prevent foreseeable harm caused by climate change and ordered it to reduce emissions by at least 25% by 2020 compared to 1990 levels – exceeding the 17% reduction planned by the government.[20] The case, widely recognized as a milestone in climate litigation,[21] set a global precedent and reinforced the principle that states can be held legally accountable for failing to protect their citizens from climate change related damage.

Urgenda, along with another historical case – *Leghari v Federation of Pakistan*, concluded in 2015 by the Pakistani court that inadequate governmental policy on climate change mitigation and adaptation violated the plaintiff's right to life,[22] signify "rights turn" in climate litigation.[23] The growing reliance on human rights as a central legal strategy and line of argument has become one of the key trends in climate litigation latest developments. Another essential, interrelated tendency is growing internationalization of the process, with litigations being brought before international and regional judicial bodies.[24] International climate litigation can be interpreted as an instrument to complement both international negotiations and domestic litigation[25] with a potential to exert far-reaching influence on the latter.[26] The recent decisions of the European Court of Human Rights (ECtHR) are highly illustrative here, especially *KlimaSeniorinnen v Switzerland* litigation in which – for the first time – the Court found that a state's inadequate climate policy constituted a violation of its human rights obligations under the European Convention on Human Rights. This 2024 ruling

[20] Judgment of the District Court of The Hague of 24 June 2015, C/09/456689 / HA ZA 13-1396, ECLI:NL:RBDHA:2015:7196. Available at https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands (access: 22.8.2025).

[21] J. Peel, H.M. Osofsky, *A Rights Turn in Climate Change Litigation?*, "Transnational Environmental Law" 2018, vol. 7(1), p. 37.

[22] Order of the Lahore High Court of 4 September 2015, W.P. No. 25501/2015. Available at https://climatecasechart.com/non-us-case/ashgar-leghari-v-federation-of-pakistan (access: 22.8.2025).

[23] J. Peel, H.M. Osofsky, *A Rights Turn…*

[24] B. Mayer, H. van Asselt, *The Rise of International Climate Litigation*, "Review of European, Comparative & International Environmental Law" 2023, vol. 32(2), p. 176.

[25] *Ibidem*.

[26] M. Bönnemann, M.A. Tigre (eds.), *The Transformation of European Climate Litigation*, Berlin 2024, p. 20.

is assumed to be one of the most important judgments in the climate litigation history, and is expected to have significant implications at domestic, regional and global levels.[27] The current and anticipated impact extends to other climate cases before the ECtHR. As the judgment – along with two other climate rulings issued the same day, both declared inadmissible – clarifies the Court's approach to climate litigation, it will influence pending cases, e.g. facing similar admissibility challenges. At the same time, it is expected to give rise to a wave of new lawsuits that may build on the *KlimaSeniorinnen* precedent, and impact domestic courts in ongoing and future lawsuits against Council of Europe member states. The ECtHR decision is also likely to inform upcoming advisory opinions from the International Court of Justice and the Inter-American Court of Human Rights concerning states' responsibilities under conditions of climate emergency.[28]

THE SIGNIFICANCE OF CLIMATE LITIGATION

Momentum-building lawsuits manifest a fundamental aspect of climate litigation's significance, which extends far beyond individual legal disputes: its strategic dimension. Strategic climate litigation refers to cases where the litigants seek not only to win the individual dispute, but to pursue changes that extend beyond their own interests or the remedies sought, aiming to influence public debate on climate action, reshape social norms, alter climate policy or corporate behaviour patterns.[29] Such an approach, grounded in definitions by J. Setzer and C. Higham, as well as B. Batros and T. Khan, accommodates climate litigation's multilayered significance, which, for the purpose of this study, can be delineated into three dimensions.

Firstly, climate litigation generates direct legal outcomes through judicial rulings that mandate specific action (emission reduction, policy adjustments) or assign responsibilities to particular actors.

Secondly, the strategic impact of climate litigation goes "outside the courtroom" and beyond the material outcomes of particular cases, influencing general policy, regulatory agendas, future legal reasoning and public discourse on climate change. A. Kovács conceptualizes this impact by the term "legal cueing" defined as "transmission of a normative signal" across jurisdictions.[30] According to the

[27] *Ibidem*.

[28] *Ibidem*, p. 21.

[29] J. Setzer, C. Higham, *op. cit.*, p. 2; B. Batros, T. Khan, *Thinking Strategically about Climate Litigation*, [in:] *Litigating the Climate Emergency: How Human Rights, Courts and Legal Mobilization Can Bolster Climate Action*, ed. C. Rodríguez-Garavito, Cambridge 2022, p. 104.

[30] A. Kovács, K. Luckner, A. Sekuła, J. Kantorowicz, *Beyond Courts: Does Strategic Litigation Affect Climate Change Policy Support?*, "International Review of Law and Economics" 2024, vol. 79, p. 2.

Intergovernmental Panel on Climate Change, it is possible to assess with medium confidence that "in some cases climate litigation has influenced outcomes and ambitions of climate governance".[31] Seen that way, climate litigation – not necessarily only the cases that are successful in terms of a verdict[32] – aligns with a "larger process of process of change"[33] and contributes to framing climate change in terms of legal, political and financial risk. As it gains momentum, attracting growing scholarly and media attention, climate litigation produces new narratives about the responsibility of states and companies for mitigation, and about the role of law in advancing climate action. The "second-order impacts" represent climate litigation's cumulative capacity to generate longer-term (strategic) ripple effects in institutional practices (e.g. legislative reforms), public awareness and mobilisation, as it emerges as a regulatory tool, an advocacy technique and a form of climate activism. The second-order impacts also include a transnational spillover dynamic within the field of climate litigation itself, reflected in the increasing exchange of legal knowledge and practice across jurisdictions. This process involves climate litigants and the legal advocacy networks that support them, who both draw upon foreign precedents, litigation models and argumentation patterns, and actively disseminate these strategies through domestic legal systems. At the same time, courts engage in what may be framed, following N. Affolder and G.E.K. Dzah, as climate change transjudicialism[34] – a form of transnational judicial dialogue in which domestic courts and international tribunals operate in reciprocal engagement as they inspire, interpret, adapt and build upon each other's rulings in response to shared legal and scientific challenges.

In the context of transnational climate change jurisprudence development, a third, systemic (structural and functional) layer of climate litigation's significance comes into view. As courts worldwide become increasingly engaged in climate change decision making, it emerges as a phenomenon forming new legal imaginaries in environmental domain.[35] The evolving role of judiciary reflects how climate litigation operates both as a response to the pressing need to establish and enforce climate accountability within the broader challenges of environmental

[31] Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, 2022, https://www.ipcc.ch/report/ar6/wg3 (access: 20.8.2025).

[32] See G. Ganguly, J. Setzer, V. Heyvaert, *If at First You Don't Succeed: Suing Corporations for Climate Change*, "Oxford Journal of Legal Studies" 2018, vol. 38(4).

[33] B. Batros, T. Khan, *op. cit.*, p. 109.

[34] N. Affolder, G.E.K. Dzah, *The Transnational Exchange of Law through Climate Change Litigation*, [in:] *Research Handbook on Climate Change Litigation*, eds. F. Sindico, K. McKenzie, G.A. Medici-Colombo, L. Wegener, Cheltenham 2024.

[35] See L.J. Kotzé, B. Mayer, H. van Asselt, J. Setzer, F. Biermann, N. Celis, S. Adelman, B. Lewis, A. Kennedy, H. Arling, B. Peters, *Courts, Climate Litigation and the Evolution of Earth System Law*, "Global Policy" 2023, vol. 15(1).

governance and as a force accelerating its systemic change. Importantly, climate litigation epitomizes key tendencies of transformation within climate governance. Used by diverse litigants, e.g. NGOs, substate actors, social groups and individuals, as a channel of influence and a tool to foster more ambitious climate regulation and policy agenda, it illustrates increasingly multistakeholder character of the climate governance structures. Efforts undertaken by variety of actors to harness judicial mechanisms and authority in pursuit of improved climate policies and accountability measures have turned out to constitute distinct climate governance tool. Within this transformation, courts themselves emerge as climate governance actors fostering the increasingly polycentric character thereof.[36] Ultimately, the systemic-level significance of climate litigation resonates with the shift in legal thought and practices that align with planetary scale of climate risk and reorientation of climate governance according to the interdependence of earth system processes.[37]

RECEPTIVENESS OF POLISH CONSTITUTIONAL ORDER

According to the basic assumptions of contemporary constitutional theory, the constitution is the primary normative act that regulates, at least in a framework manner, all areas of social life. This means, among other things, that climate matters and climate litigation issues should fall within its scope of regulation.[38] It should be noted that due to the specific nature of the discussed issue, it is linked to constitutional matters related primarily to: the theoretical problem of protecting individual rights and the duties of the state in this regard, and the multicentric nature of the legal systems of states and the jurisdiction of international and domestic courts. These theoretical areas serve as model constitutional frameworks for analyzing the issue of strategic litigation.[39]

In relation to the first area, i.e., the theoretical issue of protecting individual rights, it should be pointed out that protection is now perceived as broad and multidimensional. Therefore, individual rights should be theoretically protected by both non-interfering (negative) and active (positive) actions, considering both their broad subjective and objective scope, and the need to guarantee individuals effective procedural remedies to restore their violated rights. In constitutional terms, individual rights include the fundamental freedom to exercise a given right

[36] *Ibidem*.

[37] *Ibidem*; L.J. Kotzé, *Neubauer et al. versus Germany: Planetary Climate Litigation for the Anthropocene?*, "German Law Journal" 2021, vol. 22(8).

[38] See M. Stefaniuk, *Environmental Awareness in Polish Society with Respect to Natural Resources and Their Protection (Overview of Survey Research)*, "Studia Iuridica Lublinensia" 2021, vol. 30(2).

[39] Cf. M. Stoczkiewicz, *Klimatyczne spory sądowe. Globalny fenomen w prawnej ochronie klimatu*, "Studia Prawnoustrojowe" 2024, no. 64.

("right-liberty"), as well as the legal ability to seek protection of this sphere from state authorities ("right-entitlement") and the competence to pursue protection in the case of violations, which updates the state's obligation to ensure or restore protection ("right-competence").[40] The duties of the relevant state organs involve a wide spectrum of protective actions, which can take both passive (negative) forms, such as refraining from action (Latin: non facere) or tolerating (pati), or active (positive) forms, such as the obligation to act (facere) or provide (dare). The vertical and horizontal dimensions of subjective rights mean that potential subjects violating these rights can be both public authorities (central or local) and other private entities.[41] Modern democratic constitutionalism also requires individuals to be able to seek justice not only before domestic authorities but also before international ones, with the fundamental role in protecting individual rights entrusted to independent courts. This assumption regarding the protection of rights in a constitutional state is closely connected to the second theoretical issue of the multicentric characteristic of legal orders and the jurisdiction of both national and international courts in the protection of individual rights. In particular, the protection of individual rights involves not only the constitutional norms of the state but also binding international norms, which in turn obliges the state to respect not only the protective standards set by domestic case law but also the international standards established by international courts.

Referring these general theoretical assumptions to the issue of climate litigation, it should be pointed out that, within the model theoretical assumptions regarding the constitutional state, its highest normative regulations (constitutional and international) should guarantee broad protection of "climate rights". These should normatively cover all factors influencing "climate" and consequently climate security, such as water circulation, air circulation and geological factors. It is therefore unquestionable that the scope of "climate rights" should include, in simplified terms, "the right to (clean, healthy) water",[42] "the right to (clean, healthy) air" and "the right to (clean, healthy) land".[43] Their protection should include both passive and active forms, relating to both vertical and horizontal relationships. These rights should be protected based on the principles of "right-liberties", "right-entitlements" and,

[40] M. Jabłoński, *Klasyfikacja wolności i praw jednostki w Konstytucji RP*, [in:] *Wolności i prawa jednostki w Konstytucji RP*, vol. 1: *Idee i zasady przewodnie konstytucyjnej regulacji wolności i praw jednostki w RP*, ed. M. Jabłoński, Warszawa 2010, pp. 95–96.

[41] See K. Mojska, W. Mojski, *Corporate Social Responsibility and Its Constitutional Context*, "Przegląd Prawa Konstytucyjnego" 2020, no. 6.

[42] See K. Mojska, W. Mojski, *Water Security in Poland: Conceptualization and General Constitutional Conditions*, "Przegląd Prawa Konstytucyjnego" 2019, no. 6.

[43] Cf. A. Averchenkova, C. Higham, T. Chan, I. Keuschnigg, *Impacts of Climate Framework Laws: Lessons from Germany, Ireland and New Zealand. Policy Report*, 14.3.2024, https://www.lse.ac.uk/granthaminstitute/publication/impacts-of-climate-framework-laws (access: 20.8.2025).

most importantly for climate litigation, "right-competences". In the latter sense, the state's obligation as the primary entity responsible for protecting "climate rights" involves ensuring individuals' ability to seek protection from relevant authorities, particularly by enabling access to judicial protection, including through international judicial mechanisms.[44]

These theoretical assumptions are reflected in the provisions of the current Polish Constitution.[45] Although it does not explicitly include separate regulations protecting "climate rights", particularly in the form of climate litigation, it is clear that subjective "climate rights" have a normative foundation in numerous provisions of the Polish Constitution and binding international law. The constitutional provisions that allow for the reconstruction of the normative category of "climate rights" include regulations concerning "citizens' security", "principles of sustainable development" (Article 5 of the Polish Constitution), "environmental protection" (Articles 5 and 74) and "ecological security" (Article 74), as well as "legal protection of life" (Article 38), "right to privacy" (Article 47) and "right to health protection" (Article 68). It is also important to consider the content of Article 1 of the Polish Constitution, which states that the Republic of Poland is the common good of all citizens, implying that the "climate" is a constitutional value subject to protection not only from an individual perspective but also from a societal (state) perspective. This interpretation is further supported by the preamble to the Polish Constitution, which emphasizes the obligation to "hand over to future generations everything that is valuable" and the "need for cooperation with all countries for the good of the Human Family". Thus, the drafters of the Polish Constitution also sought to ensure climate protection not only for the present but also for "future generations", while undertaking actions on an international scale. This interpretation calls for an appropriate constitutional perspective in understanding specific protective regulations.

It is also crucial to note that the constitutional perspective on climate protection is not an empty programmatic norm but mandates the realization of this goal, especially under the "principle of sustainable development". This means that a constitutional assessment of the degree to which public authorities are achieving this goal is possible, and due to the Polish Constitution's principle of separation of powers (Article 10), it applies to all branches of power, including political authorities (parliament, government, president) and the judiciary.[46] Given the need for mutual checks between these branches, it becomes necessary to guarantee

[44] See A. Kalisz, *Right to Court in Climate Matters in the Light of the Aarhus Convention and the Case Law of Polish Administrative Courts*, "Studia Iuridica Lublinensia" 2021, vol. 30(5).

[45] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 22.8.2025).

[46] Cf. E. Slautsky, *Climate Litigation, Separation of Powers and Federalism à la Belge: A Commentary of the Belgian Climate Case Cour d'appel de Bruxelles 30 November 2023, Klimaatzaak and*

judicial oversight over the actions or omissions of political authorities in the field of climate protection, which fully activates the constitutional basis for climate litigation in the discussed sense. The protection of the natural environment is one of the core values constitutionally protected, which is clearly affirmed by the Polish Constitutional Tribunal's rulings.[47] As such, it is the obligation of all state organs, including the judiciary, to take appropriate actions that prevent or significantly hinder the degradation of ecosystems (negative aspect of protection) as well as to counteract environmental threats, rationally manage its resources, and restore ecosystem elements when necessary (positive aspect of protection). From a judicial protection perspective, it is therefore constitutionally necessary to provide access to the full and broad range of strategic litigation mechanisms, which have their full constitutional grounding in the guarantees of the right to a fair trial (Article 45 of the Polish Constitution) and the right to judicial protection (Article 77 (2)).

Article 9 of the Polish Constitution also requires respect for binding international norms in this area, which clearly requires considering relevant regulations that indirectly address the protection of "climate rights", such as the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and the EU Charter of Fundamental Rights. These regulations must be considered by Polish authorities, including domestic courts and the Constitutional Tribunal,[48] which must take into account the case law of the ECtHR and the Court of Justice of the European Union (CJEU). Therefore, it is unquestionable that decisions like the European Court's ruling in KlimaSeniorinnen v Switzerland should be reflected in Polish judicial practice, based on the broad effect of this ruling under Article 46 of the European Convention. Poland's membership in the European Union also strengthens the normative foundation for climate litigation proceedings, as Polish courts should be treated as EU courts, justifying their reference to EU law and CJEU rulings.[49]

Constitutionally justified in this context is the admission of a broad range of entities (individuals and social organizations) to participate in judicial proceedings (civil, criminal and administrative) within the climate litigation mechanism, either as primary or additional participants in these proceedings – as plaintiffs, interve-

Others v the Belgian State, Wallonia, Flanders and the Brussels Region, "European Constitutional Law Review" 2024, vol. 20(3).

[47] For example, see judgment of the Constitutional Tribunal of 7 June 2001, K 20/00.

[48] Cf. J. Jahn, *Domestic Courts as Guarantors of International Climate Cooperation: Insights from the German Constitutional Court's Climate Decision*, "International Journal of Constitutional Law" 2023, vol. 21(3).

[49] For example, see K. Leśkiewicz, *Influence of the EU Climate and Energy Framework and Trade Policy on Implementation of Permanently Sustainable Forestry – Legal Aspects*, "Studia Iuridica Lublinensia" 2020, vol. 29(2); C. Eckes, *Strategic Climate Litigation Before National Courts: Can European Union Law Be Used as a Shield?*, "German Law Journal" 2024, vol. 25(6).

nors, subsidiary prosecutors or as *amici curiae*. The Polish Constitution also calls for an active stance by courts in protecting "climate rights" by drawing on both constitutional and international frameworks, not just domestic statutory bases. Courts should interpret relevant statutory regulations in light of constitutional and international standards, not the other way around. It is also necessary to call upon expert opinions in climate protection cases.[50] Poland's current practice clearly shows that this normative potential remains underutilized, but it can enable the issuance of climate-related rulings similar to the Dutch Urgenda case.[51] To achieve this, however, the direct application of constitutional norms by courts is necessary, particularly a change in the interpretative approach to climate-related programmatic norms, which should not be treated solely as vague future norms but as norms that allow the reconstruction of "climate rights" in the present.

CONCLUSIONS

The Polish Constitution of 1997 has significant potential for the protection of climate-related rights, including through climate litigation mechanisms. However, this potential is still underutilized. Changing this situation does not require formal legislative changes but rather the direct application of the standards set out in the Constitution and international law. Polish courts should play an active role in the protection of climate rights by interpreting national laws through the lens of constitutional and international legal frameworks and rulings from European courts. Poland's legal system is fully prepared for the practical and effective use of broad (local, regional, national and international) climate litigation, and the only requirement is a shift in how existing constitutional and international norms are applied. Polish judges need to be open and ready to adopt more flexible, purposive and inter-systemic interpretative approaches, especially given the urgency of climate issues. It is clear that, constitutionally, Polish courts can and should hold political authorities accountable for protecting constitutional climate rights, which is fully consistent with constitutional mandates and cannot rationally be regarded as an abuse of judicial power.[52]

[50] See C. Eckes, *Tackling the Climate Crisis with Counter-Majoritarian Instruments: Judges between Political Paralysis, Science, and International Law*, "European Papers" 2021, vol. 6(3).

[51] Cf. M.M. Bryk, *Rights-Based Climate Change Litigation in the Polish Courts: Key Challenges*, [in:] *Proceedings of the 2nd World Conference on Climate Change and Global Warming: Budapest, Hungary, 6.8.2022*, Budapest 2022, https://www.dpublication.com/wp-content/uploads/2022/04/600-3066.pdf (access: 20.8.2025).

[52] Cf. H. Colby, A.S. Ebbersmeyer, L.M. Heim, M. Kielland Røssaak, *Judging Climate Change: The Role of the Judiciary in the Fight Against Climate Change*, "Oslo Law Review" 2020, vol. 7(3).

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ABSTRAKT

W artykule analizie poddano ewoluującą rolę litygacji (postępowań sądowych) dotyczących zmian klimatu (CCL – climate change litigation) w przeciwdziałaniu globalnemu kryzysowi klimatycznemu, ze szczególnym uwzględnieniem ich znaczenia w kontekście polskich norm konstytucyjnych. Postępowania te są coraz częściej postrzegane jako strategiczne narzędzie (SCCL – *strategic climate change litigation*) umożliwiające wprowadzanie systemowych zmian w zakresie zarządzania środowiskiem, wykorzystując ramy prawne do formułowania odpowiedzialności klimatycznej. Badanie podzielone jest na trzy części. W pierwszej omówiono globalny rozwój oraz historyczną trajektorię postępowań sądowych dotyczących zmian klimatu, zwracając uwagę na przełomowe orzeczenia oraz integrację argumentów z zakresu praw człowieka odnoszących się do tzw. praw klimatycznych. W drugiej przeanalizowano ponadnarodowe znaczenie SCCL, podkreślając ich wpływ na szersze ramy zarządzania środowiskiem. W trzeciej oceniono potencjał przyjęcia mechanizmów (S)CCL w polskim porządku konstytucyjnym, analizując odpowiednie normy konstytucyjne oraz możliwości zaangażowania sądów w kwestie związane z polityką klimatyczną. Wykorzystując interdyscyplinarne, porównawcze podejście prawnicze, omówione badanie wnosi wkład do trwającej debaty na temat konstytucjonalizmu środowiskowego, roli sądów w globalnym systemie zarządzania klimatem oraz powiązań krajowych porządków prawnych z międzynarodowymi standardami ochrony środowiska. Autorzy poruszają wątki teoretycznych, normatywnych i praktycznych implikacji strategicznych postępowań klimatycznych, zwłaszcza w kontekście polskim. Celem artykułu jest w szczególności pogłębienie zrozumienia ich potencjalnego wpływu na wykorzystanie krajowych ram konstytucyjnych.

Słowa kluczowe: litygacja klimatyczna; litygacja strategiczna; zarządzanie klimatyczne; konstytucja; Polska

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