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GROUP PROCEEDINGS IN POLAND AFTER 15 YEARS

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CURRENT STATE AND PROSPECTS FOR DEVELOPMENT

INTRODUCTION

Class actions celebrate their 15th anniversary in Poland this year.

On the 19th July 2025, it will be exactly 15 years since the Act of the 17th December 2009 on Pursuing Claims in Group Proceedings came into force.

This is a good moment to reflect on how this legal mechanism operates in practice. What works? What doesn't? And why?

In this brochure we are going to summarize these 15 years, presenting the most interesting group cases, but first we will shortly discuss group proceedings, because, although it has been functioning for a dozen years, once might still observe a scarce knowledge about how it works and what it serves.

CLASS ACTION LEGAL FRAMEWORK

Class actions in Poland are regulated by the Act of 17th December 2009 on Pursuing Claims in Group Proceedings (hereinafter: the Class Actions Act), which came into force on 19th July 2010.

Over the past 15 years, the Act of December 17, 2009 has not remained unchanged – it has been amended four times:

- IN 2017
  by the Act of 7th April 2017, amending certain acts to facilitate the pursuit of claims (Journal of Laws of 2017, item 933) – which came into force on 1st June 2017, hereinafterreferred to as the 2017 AMENDMENT
- IN 2019
  by the Act of 4th July 2019, amending the Civil Procedure Code and certain other acts (Journal of Laws of 2019, item 1469) – which came into force on 9th November 2019, hereinafter referred to as the 2019 AMENDMENT
- IN 2022
  by the Act of 1st December 2022, amending the Act on the Handling of Complaints by Financial Market Entities and on the Financial Ombudsman, as well as certain other acts (Journal of Laws of 2022, item 2640) – which came into force on 16th March 2023, and granted the Financial Ombudsman the authority to act as a group representative
- IN 2024
  by the Act of 24th July 2024, amending the Act on Pursuing Claims in Class Actions and certain other acts (Journal of Laws of 2024, item 1237) – in force since 29th August 2024 – which introduced a new subtype of class action proceedings (representative actions). This amendment resulted from the need to implement Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers (the so-called Representative Actions Directive, RAD) into the Polish legal system, hereinafter referred to as the 2024 AMENDMENT

WHAT IS A CLASS ACTION? A BRIEF SUMMARY AND GENERAL OVERVIEW

- Class action proceedings are a type of court procedure designed to jointly examine multiple claims (at least 10); the exception here are cases concerning the declaration of the use of practices that infringe upon the collective interests of consumers.
- The procedure is based on an opt-in model; exception – cases concerning the declaration of the use of practices infringing the collective interests of consumers, which refer to the actio popularis model.
- Special standing to sue – based on the principle of representation / the concept of an authorized entity.
- Phased structure of the proceedings.
- Class actions fall under the jurisdiction of regional courts (Article 3(1) of the Class Actions Act).
- Panel of judges – consists of three judges (Article 3(2) of the Class Actions Act).
- Mandatory representation by a legal professional - an attorney or a lega counsel (Article 4(4) of the Class Actions Act)
- Permissibility of stipulating a success fee - Article 5 of the Class Actions Act.

> *"The agreement governing the attorney's remuneration may specify that the fee is based on the amount awarded to the claimant, but may not exceed 20% of that amount."*

- Permissibility of third-party funding of the authorized entity (third-party funding – TPF or litigation finance) - Article 10AA of the Class Actions Act.

PREMISES OF ADMISSIBILITY OF CLASS ACTION PROCEEDINGS IN POLISH COURTS

The case must belong to a specific category of civil matters (Article 1(2) of the Class Actions Act).

Homogeneity requirement – The claims pursued must be "claims of the same type" (Article 1(1) of the Class Actions Act).

Common factual basis requirement – the claims must be "based on the same or a similar factual basis" (Article 1(1) of the Class Actions Act).

In case of the "representative actions", the claims must also be based on the same legal basis.

Numerosity requirement – at least 10 individuals, a requirement waived under Article 1(2d) of the Class Actions Act in cases concerning the declaration of the use of practices infringing the collective interests of consumers.

Claim standardization requirement – applies only to monetary claims (Article 2 of the Class Actions Act) and, as of 29th August 2024, also to non-consumer claims.

CLASS ACTIONS IN POLAND EVIDENTIARY SPECIFICS

Article 16(1) of the Class Actions Act

Making it plausible / proving that a member belongs to a group.

Article 16(2) of the Class Actions Act

Obliging the group member to submit additional evidence and explanations within the prescribed period.

Article 20a(1) of the Class Actions Act in conjunction with Article 322 of the Code of Civil Procedure

Awarding an appropriate sum – liberalized requirements for application

Article 16a of the Class Actions Act

Disclosure – evidentiary disclosure

STANDING TO SUE IN CLASS ACTION PROCEEDINGS

- Traditional class action model – representation mechanism.
- The plaintiff is the group representative.
- The group representative may be:
  - one of the group members,
  - a district consumer ombudsman,
  - the Financial Ombudsman.
- New subtype of class action proceedings in cases involving practices infringing the collective interests of consumers – authorized entity.
  - Authorized entity: a consumer organization entered in the register maintained by the President of the Office of Competition and Consumer Protection (UOKiK) or the Financial Ombudsman.
  - https://uokik.gov.pl/bip/rejestr-podmiotow-upowaznionych-do-wytaczania-powodztw-grupowych
  - https://representative-actions-collaboration.ec.europa.eu/cross-border-qualified-entities
    [As of 22nd July 2025 – 70 entities]

PARTIES TO THE CLASS ACTION PROCEEDINGS

Plaintiff – representative / authorized entity.

Defendant – any party / in the case of the two new types of proceedings: a trader engaging in practices infringing the collective interests of consumers

Group members.

Fund / third-party financing the proceedings.

President of the Office of Competition and Consumer Protection

CLASS ACTION PROCEEDINGS – COURSE OF THE PROCESS

pre-litigation stage of class action proceedings

phase I of class action proceedings – the so-called certification phase
assessment of the admissibility of hearing the case as a class action

phase II of class action proceedings
formation of the group

phase III of class action proceedings
exploratory proceedings on the merits

phase IV of class action proceedings
executive proceedings

CLASS ACTION PROCEEDINGS IN POLISH COURTS NUMBER OF CASES

According to statistical data from the Ministry of Justice, a total of 371 class action lawsuits in civil and commercial matters were filed with Polish courts between 1st July 2010 and the end of 2024.

While this is not a small number, when compared to the overall volume of court proceedings initiated annually (ranging from 4.7 million to 6.8 million between 2011 and 2024) it appears insufficient. Class action proceedings are a legal tool with the potential to ease the burden on courts by consolidating mass claims into a single case.

It's important to keep in mind that a class action requires at least 10 individuals to pursue their claims. This means that each class action corresponds to a minimum of 10 individual cases – and in many instances, the number of group members is much higher.

For example, one case against Millennium Bank involves over 5,000 group members, while a case against mBank includes more than 1,200 group members.

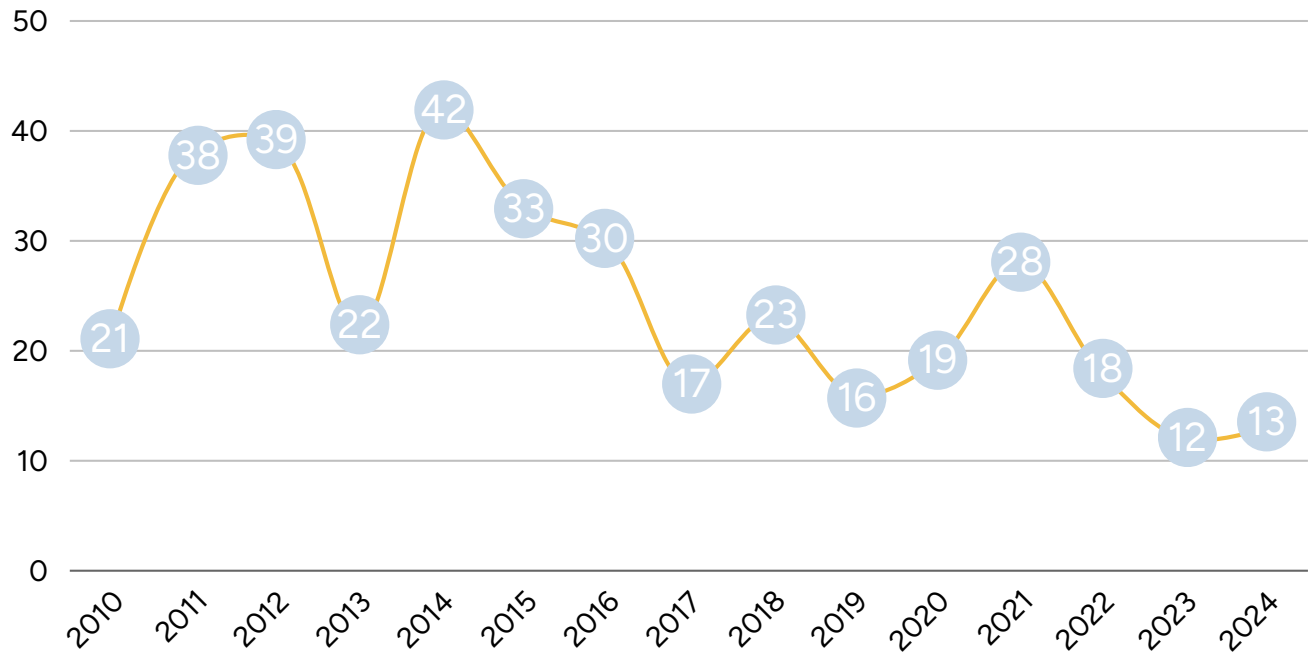
LIST OF CLASS ACTION PROCEEDINGS

Currently, the register of class action proceedings maintained by the Minister of Justice lists 45 class action cases. The register was established in 2017 and includes cases in which a public notice of the initiation of class action proceedings has been ordered.

There are approximately 70 class action proceedings currently pending.

In 2023, at least 12 new class action lawsuits were filed with Polish courts. Of these, one was returned and one was dismissed.

In 2024, 13 new class action lawsuits were filed with Polish courts, three of which were dismissed.



Number of class action lawsuits in civil and commercial matters by year (based on https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/) and information obtained from individual regional courts).

CLASS ACTIONS IN POLISH COURTS
WHAT KINDS OF CASES HAVE BEEN ADJUDICATED OVER THE LAST 15 YEARS?

Below is our subjective ranking of the most interesting class action cases from the past 15 years.

CLASS ACTION FILED BY A GROUP OF CLOSE RELATIVES OF THE VICTIMS OF THE KATOWICE INTERNATIONAL FAIR DISASTER

WHAT DID THE CASES CONCERN?

There were two class action cases brought by close relatives of the victims of the Katowice International Fair hall disaster.

Both cases concerned the establishment of the State Treasury's liability (represented by stationes fisci) for the consequences of the collapse of Exhibition Hall No. 1 at the Katowice International Fair in January 2006 – the deadliest building disaster in Polish history.

During a pigeon exhibition, the roof of the hall collapsed, resulting in the deaths of 65 people and injuries to 170 others. A subsequent criminal investigation revealed that the structural design had been created by a person who lacked the required qualifications (another designer merely signed the plans). Additional errors occurred during the detailed design stage, including a reduction in the number of support columns, which significantly weakened the roof's load-bearing capacity. Moreover, the roof was not regularly cleared of snow, and after 2002, when it first showed signs of cracking under snow pressure, only superficial repairs were made, with no follow-up inspections and no decision to take the hall out of service.

WHAT WAS THE COURSE OF PHASE I AND PHASE II OF THE PROCEEDINGS?

THE FIRST CASE

Although the building catastrophe that formed its background was cited in the course of legislative work on the Polish Class Action Act as an example of an event in which many people were injured and who should be able to collectively pursue claims under collective mechanisms, the case did not pass the certification stage - it ended with a final dismissal of the lawsuit due to the reliance of the asserted claims on the personal property liability regime; in its framework, the Supreme Court explained in the Supreme Court's decision of 21st March 2012, I CSK 66/12, that:

1. *The concept of a "claim for the protection of personal rights" has been the subject of Supreme Court case law and academic discussion for many years, and there is no doubt that it encompasses both non-pecuniary and pecuniary claims.*
2. *For this reason, the proposal to interpret this concept differently under the Act on Pursuing Claims in Group Proceedings cannot be regarded as requiring further clarification by the Supreme Court.*

THE SECOND CASE

The case obtained certification after completing the full instance path and thanks to the "intervention" of the Supreme Court in its decision of 28th January 2015 (I CSK 533/14), which overturned the decision of the Court of Appeal in Warsaw, 1st Civil Division, of 27th February 2014 (I ACz 251/14), and amended the ruling of the Regional Court in Warsaw, 2nd Civil Division, dated of 3rd September 2013 (II C 88/13), by dismissing the defendant's motion to reject the claim.

This decision of the Supreme Court was a landmark moment in the development of class actions in Poland. The Supreme Court commented on the nature of the group proceedings themselves and the purposes they serve for the first time. Most notably, it clarified the essence of the specific declaratory claim used in class actions, holding that it should be understood autonomously, independent of its counterpart in individual litigation.

The group composition in the second case was established in 2016, by a decision of the Regional Court of 20th June 2016 (II C 172/15), and a decision of the Court of Appeal in Warsaw, 1st Civil Division, of 28th September 2016 (I ACz 1663/16).

WHAT WAS THE SUBSTANTIVE RESOLUTION OF THE CASES?

In the second case, the proceedings were conducted in their entirety before the courts of the first and the second instance, and ultimately concluded with a settlement after favorable judgment for the group issued by the court of the second instance.

NOTABLE EXCERPTS FROM THE RULINGS

Decision of the Supreme Court, Civil Chamber, of 28th January 2015, case no. I CSK 533/14:

1. *The admissibility of a class proceedings under the Article 1(2), if the action is limited to a claim for declaration of the defendant's liability (Article 2(3)), is determined by the legal qualification of the claim that the class members intend to pursue in subsequent litigation using the prejudgment obtained in the class proceeding. If such a claim falls within the scope of the law as defined in Article 1(2), class proceedings for the determination of the defendant's liability are permissible. The existence of an interest in bringing a class action on the part of the members of the class may be determined by the Court on the basis of the future monetary claims indicated therein. For this purpose, the court may request for the specification of the individual claims that the class members intend to assert based on the prejudgment obtained in the class proceedings.*

2. *The concept of establishing liability under Article 2(3) of the Law should be interpreted autonomously, taking into account the objectives and functions of the class proceedings. In particular, the determination of liability in group proceedings is not equivalent to the recognition of a claim as justified in principle, as is the case with a judgment on the merits (Article 318 of the Code of Civil Procedure).*

3. *The issuance of a determination judgment in a class proceeding concerning a large group of people is aimed only at establishing the defendant's liability for a specific event - it is not, however, also aimed at establishing the injury suffered by each individual member of the group. Thus, the subject matter of the group proceedings in the demand for determination is only the circumstances common to all members of the group, and not the individual circumstances pertaining to individual members, which will be examined only in later individual trials. In such cases, it is sufficient to establish a likelihood that damage has occurred, although the court may also, in class action proceedings, make a definitive finding on this issue if it is possible and appropriate to do so.*

4. *It is permissible in class action proceedings to seek a declaration of the defendant's liability in a case concerning monetary claims arising from a tort constituting a single event (Article 2(3) in conjunction with Article 1(1) and (2)), even when the existence and extent of damage depend on individual factual circumstances relating to specific group members. Facts concerning the amount or enforceability of specific individual claims should not be taken into account when assessing, under Article 1(1) of the Class Actions Act, the uniformity or sameness of the factual basis of the claims.*

5. *Failure by one of the group members to submit the statement of accession to the group, as required under Article 12, does not render the entire class proceeding inadmissible due to failure to meet the homogeneity requirement. The court should take this circumstance into account when issuing the decision on the composition of the group (Article 17(1)) and exclude that individual from the group membership.*

6. *Even if a given event may also lead to a violation of personal rights, a claim for damages for pecuniary loss resulting from that event is not a tort claim for the protection of personal rights within the meaning of Article 1(2) of the Class Actions Act.*

CLASS ACTION CASES AGAINST THE MBANK

THE FIRST CASE

WHAT ISSUE DID THE CASE CONCERN?

The first case brought by the so-called "Taken in by mBank" group concerned a claim for determination seeking to establish that the defendant, mBank Spółka Akcyjna, headquartered in Warsaw, bears liability for damages towards the group members due to improper performance of credit agreements concluded with them.

Specifically, between 1st January 2009 and 28th February 2010, the bank charged higher interest amounts based on a variable interest rate clause than it would have charged if it had properly performed its obligations. The case did not concern the invalidity of the loan agreements. The group was represented by the Municipal Consumer Ombudsman in Warsaw.

WHAT WAS THE COURSE OF PHASE I AND PHASE II OF THE PROCEEDINGS?

The case obtained certification relatively quickly and efficiently, by virtue of the decision of the Regional Court in Łódź, 2nd Civil Division, of 6th May 2011 (II C 1693/10). An appeal against the decision on conducting the case as a class action was dismissed by the Court of Appeal in Łódź, 1st Civil Division, in its decision of 28th September 2011 (I ACz 836/11). The case also moved smoothly through Phase II of the class action proceedings concerning the establishment of the group composition in 2012. Ultimately, 1,247 individuals were admitted as group members.

WHAT WAS THE FINAL OUTCOME ON THE MERITS OF THE CASE?

The third phase of the proceeding lasted long enough/ quite a long time and was significantly more complex than first and second phase.

On July 3, 2013, the court of first instance already issued a judgment, largely upholding the group's claims. mBank filed an appeal, which was dismissed in 2014. The case then proceeded to the Supreme Court, which, in response to mBank's cassation complaint, overturned the second-instance judgment and remanded the case for reconsideration (2015). In its judgment of 14th May 2015 (II CSK 768/14), the Supreme Court issued a favorable interpretation regarding the requirements for class action proceedings, but was less favorable to the group on the issue of abusive clauses in consumer contracts.

Ultimately, the first-instance judgment from 2013 became final after mBank withdrew its appeal, and the Court of Appeal in Łódź discontinued the appellate proceedings by decision of 15th July 2020.

NOTABLE EXCERPTS FROM THE RULINGS

Judgment of the Supreme Court, Civil Chamber, of 14th May 2015, case no. II CSK 768/14:

The Court correctly held that class action proceedings involving a claim for the "declaration of liability" of the defendant constitute a special and autonomous type of proceeding, which cannot be equated structurally with proceedings concluded by a preliminary judgment under Article 318 of the Code of Civil Procedure, nor with declaratory proceedings under Article 189 of the Code of Civil Procedure. Therefore, the use of legal arguments in the cassation complaint based on elements of those other types of proceedings cannot be considered persuasive. The autonomous nature of class action proceedings is determined primarily by the separate legal regime that governs them, as well as their purpose and legal functions. Such proceedings are intended to conclude with a judgment that serves as a specific type of precedent (prejudykat) for resolving future disputes involving the group members—either in individual court proceedings or through the conclusion of appropriate settlements between the claimants and the defendant (see also Section I of the explanatory memorandum to the draft of the Act on Pursuing Claims in Group Proceedings – Parliamentary Paper No. 1829/VI).

The concept of the autonomous nature of class action proceedings was adopted in the Supreme Court's decision of 28th January 2015 (I CSK 533/14, unpublished), in which the Court stated, among other things, that in a proceeding aimed at determining the defendant's liability, only the facts common to all group members are the subject of examination - not the individual circumstances concerning specific members, which are to be examined later in individual proceedings. The ruling issued in such proceedings applies to all group members (Article 21(3) of the Class Actions Act) and is intended to establish the defendant's liability in connection with a specific legal event, confirming the existence of a specific legal basis for such liability (e.g., tort, non-performance or improper performance of a contract, unjust enrichment, etc.). However, this does not involve determining all elements required to establish liability, as would be the case in a merits trial ending with a preliminary judgment - such as establishing all prerequisites for tort or contractual liability. In other words, determining liability under Article 2(3) of the Class Actions Act means a significant limitation of the court's scope of review compared to the assessment of all elements of liability in individual court proceedings. In other words, establishing contractual liability under this provision requires the court to at least determine that non-performance or improper performance of a contractual obligation occurred as a result of the defendant's breach of a specific duty arising from the legal relationship between the defendant and the group members.

[...]

THE SECOND CASE

In the second case against mBank, the Municipal Consumer Ombudsman (Małgorzata Rother) acted as the group representative for 1,724 borrowers (initially 388), seeking a declaration of the invalidity of credit agreements, or alternatively, only the invalidity of the indexation clauses in mortgage agreements indexed to the Swiss franc (CHF) exchange rate.

The lawsuit filed by this second group of mBank clients in April 2016 obtained positive and final certification in less than a year. The court of first-instance issued a decision to hear the case as a class action in December 2016, and by March of the following year, the court of appeal dismissed the complaint against that decision.

The composition of the group evolved over the course of the proceedings, as some individuals chose to settle individually with the bank rather than wait for a final judgment.

This class action encountered difficulties during the merits stage, going through the appellate process three times. The court of appeal twice overturned the first-instance judgments and remanded the case for reconsideration. Initially, in October 2018, the Regional Court in Łódź dismissed the claim in its entirety, judgment of 19th October 2018, no. I C 519/16. Following an appeal by the group representative, the Court of Appeal in Łódź overturned the judgment and sent the case back for retrial, judgment of 9th March 2020, no. I ACa 80/19. The second judgment of the Regional Court in Łódź, 1st Civil Division, issued on 9th February 2022, no. I C 1219/20, was also overturned. Finality was only achieved with the third ruling, delivered on 6th November 2024 I C 711/24, in which the court discontinued the proceedings for some group members (due to settlements or other procedural reasons) and, for the remaining members, declared the invalidity of more than 1,000 loan agreements in a single judgment.

NOTABLE EXCERPTS FROM THE RULINGS

Judgment of the Regional Court in Łódź, 1st Civil Division, dated 6th November 2024, case no. I C 711/24Pr:

1. *The Court concluded that the only permissible resolution regarding the claims of the remaining group members was to discontinue the proceedings in that part, pursuant to Article 355 of the Code of Civil Procedure in conjunction with Article 24(1) of the Class Actions Act, on the grounds that issuing a judgment had become unnecessary (for individuals who had settled with the defendant) or inadmissible (for individuals who had already obtained final judgments in separate proceedings). In the Court's view, it was not permissible to issue a ruling removing individuals from lists no. 2 and 3 from the group, because Article 17(3) of the Class Actions Act is formulated unequivocally and does not allow for changes to the composition of the group once it has been finally determined.*

Judgment of the Court of Appeal in Łódź, 1st Civil Division, of 29th January 2024, case no. I ACa 694/22:

1. *The wording of Article 15zzs[1](1)(4) of the Act on Combating COVID-19, as well as its purpose, does not suggest that its scope of application should be limited solely to proceedings fully governed by the Code of Civil Procedure. Such an interpretation would exclude proceedings that merely refer to the direct or corresponding application of the provisions of the Code of Civil Procedure.*

2. *In conclusion, it should be acknowledged that Article 15zzs[1](1)(4) of the Act on Combating COVID-19 also applied to class action proceedings regulated by the Class Action Act.*

ENVIRONMENTAL CLASS ACTIONS – GROUPS OF INDIVIDUALS AFFECTED BY FLOODING IN SANDOMIERZ AND PŁOCK

THE SANDOMIERZ FLOOD VICTIMS CASE

WHAT ISSUE DID THE CASE CONCERN?

A class action lawsuit filed by a group of flood victims from Sandomierz and the surrounding area against the State Treasury, the Świętokrzyskie Voivodeship, the Sandomierz County, and the Municipality of Sandomierz – one of the first class action proceedings in Poland.

The original claim sought compensation for the group members; however, in 2012, the claim was amended to limit the demand for payment and instead seek a declaration of liability on the part of the defendants.

The final subject of the proceedings was the determination of the joint and several liability for damages of the Defendants, arising from the commission of a complex tort involving the unlawful exercise of public authority – manifested through neglect in fulfilling flood protection obligations. As a result of multiple failures on the part of the Defendants, water overflowed the crown of the right-bank levee along the Vistula River in the Koćmierzów district, and the levee broke during the 2010 flood, triggering a chain of subsequent consequences. The Defendants' negligence included both deficiencies in the construction and maintenance of the levee (which was too low), and the improper upkeep of the floodplain and riverbed, where for many years no measures were taken to reduce flood risk.

WHAT WAS THE COURSE OF PHASE I AND PHASE II OF THE PROCEEDINGS?

The certification phase had to overcome certain challenges. Initially, in 2011, the Regional Court in Kraków ruled to hear the case as a class action. However, the Court of Appeal in Kraków overturned the decision in the contested part and remanded the case for reconsideration.

The certification issues stemmed from the fact that the case involved claims for damages, which – under the regulations in force before 2017 – were required to be standardized to a uniform amount within subgroups of at least two people.

According to the appellate court, standardization of claims should not only consist of equalizing the amounts, but also be based on common factual circumstances. In 2017, the law was amended, and since then, standardization no longer has to be based on shared circumstances of the claims.

As a result of the court's position, the plaintiff amended the claim – changing it from a demand for compensation payments to group members into a claim for a declaration of the defendants' liability for damages.

After the amendment of the claim, the case successfully passed the certification stage.

In 2013, the group composition was finally determined, comprising 27 entities (both individuals and legal persons). After the group was officially established, two members passed away, so the final ruling on the merits concerned 25 group members.

The death of group members after the final determination of group composition raised a precedent-setting legal issue. The courts agreed with the claimant's position that in such situations, the deceased member is excluded from the group, and their heirs cannot join in their place.

While substantive succession (inheritance of claims) is permitted, procedural succession is not, because a group member is not a party to the proceedings in the procedural sense.

WHAT WAS THE FINAL OUTCOME ON THE MERITS OF THE CASE?

The case ended with a final judgment establishing liability!

In its judgment of 19th October 2017, the Regional Court in Kraków ruled that the defendants – the State Treasury (represented by the Director of the Regional Water Management Authority in Kraków) and the Świętokrzyskie Voivodeship – bear joint and several liability for damages suffered by the group members. This liability resulted from a complex tort committed by the defendants through the unlawful exercise of public authority in the field of flood protection, specifically due to the improper performance of flood control duties in the Sandomierz County area of the Świętokrzyskie Voivodeship. This misconduct led to the overflow of water across the crown of the levee along the Vistula River in the Koćmierzów district (Sandomierz Municipality), located on plot no. 1407, precinct 5, Sandomierz right bank, and its breach due to erosion on 19th May 2010, along with the resulting consequences.

The defendants' appeals were dismissed by the Court of Appeal in Kraków in its judgment of 7th September 2020 I ACa 954/18.

After the first-instance judgment was issued, a new Water Law Act was adopted, with provisions entering into force on 1st January 2018. This reform led to the establishment of the Polish Waters National Water Management Authority and organizational changes regarding entities responsible for flood protection. As a result, in the appellate proceedings, the defendant's designation was updated, and the case was ultimately concluded with a final judgment establishing the liability for damages of the State Treasury – represented by The State Water holding Polish Waters – and the Świętokrzyskie Voivodeship.

During the appellate procedure, the court of second instance referred legal questions of significant doubt to the Supreme Court, which provided guidance in a resolution of 27th February 2020 (case no. III CZP 57/19).

The defendants filed appeal against sentence against the judgment of the Court of Appeal in Krakow, but in December 2021, the Supreme Court refused to admit the complaints for review.

Following the final conclusion of the class action proceedings, settlement negotiations were held regarding the payment of specific damages to the flood victims. These discussions resulted in the execution of 21 individual settlements, totaling nearly 17 million PLN.

NOTABLE EXCERPTS FROM THE RULINGS

Decision of the Court of Appeal in Kraków, 1st Civil Division, of 7th December 2011, case no. I ACz 1235/11:

It should be emphasized that such standardization cannot consist solely in assigning a uniform amount to all claims, based exclusively only on the same or similar factual basis reffered to in Article 1(1) of the Act, as accepted by the District Court, which fully endorsed the podition of the group representative, who applied this standaridization within subgroups.

It is also essential that the standardization be based on common circumstances of the case, as provided in the final clause of Article 2(1) of the Act, which are applicable in this case to the members of the subgroups.

Decision of the Court of Appeal in Kraków, 1st Civil Division, of 17th September 2012, case no. I ACz 1324/12:

The amendment to the claim made by the plaintiff consisted of submitting a new demand without changing the factual basis of the asserted claim.

There is no doubt that the new claim (for a declaratory judgment) was submitted in place of the previous one (for payment).

Given this, the District Court's determination that the claim for payment remained to be adjudicated was unfounded, as the plaintiff clearly stated that the amendment of the claim did not constitute either an implied or express withdrawal of the lawsuit or a waiver of the asserted claim.

It is also beyond doubt that, by making this statement, the plaintiff did not intend to create a situation where two procedural claims – one for payment and the other for a declaratory judgment – would be subject to adjudication in parallel. All of the plaintiff's statements in this regard aimed to replace the original claim for payment with a claim for a declaratory judgment. Therefore, the court's request for the plaintiff to indicate the circumstances referred to in Article 2(1) and Article 6(1)(2) of the Act on Pursuing Claims in Group Proceedings, as well as the dismissal of the payment claim, was groundless.

Decisions of the Court of Appeal in Kraków, 1st Civil Division, of 6th September 2017, case no. I ACz 1231/17:

Consequently, it must be accepted that while there are no obstacles to the direct application of Article 174 of the Code of Civil Procedure (CCP) to the defendant, the application of this provision to the plaintiff must take into account the specific nature of the plaintiff's legal status. The scope of this provision's application will therefore differ with respect to the group representative and to a group member. Hence, there was no basis for the legislator to exclude the application of Article 174 CCP in group proceedings. At the same time, the scope and procedural effect of this provision depend on which participant in the proceedings it concerns.

As a result, the "appropriate" application of Article 174 § 1 point 1 CCP to a group member - who is not formally a party to the proceedings - must take into account the objectives and specific features of the Group Proceedings Act. These lead to the conclusion that this provision does not apply to a group member - in such a case, procedural succession and substitution of a deceased group member by their legal successor is inadmissible. In this situation, the deceased member must be excluded from the proceedings, which may then continue with a reduced group composition, provided - though not the case in these proceedings - that the number of group members does not fall below the statutory minimum of ten persons (Article 1(1) of the Group Proceedings Act).

In the light of the above, the only appropriate procedural decision was for the court to issue an order amending the composition of the group, which is not precluded by either the provisions of the Act on Pursuing Claims in Group Proceedings (Article 17) or the CCP (Article 359).

Resolution of the Supreme Court of 27th February 2020, case no. III CZP 57/19:

"1. Whether the regional self-governing community - the province is liable for damages for the unlawful action (omission) of the provincial marshal carried out in the exercise of public authority under the tasks of government administration, as defined in Article 75(1) of the Act of 18th July 2001. Water Law (i.e., the former Water Law, according to the wording resulting from OJ 2001 No. 115 item 1229, as amended by OJ 2004. No. 116 item 1206); in the event of a positive answer to the question indicated in item 1:

Did the State Water Management Company Wody Polskie in Warsaw enter the process on the basis of Article 534 (5) (3) of the Act of 20th July 2017. Water Law (i.e., the new Water Law Dz.U. 2017.1566), by operation of law as of 1st January 2018, in place of the province previously involved in the case?"

adopted the resolution:

The province is liable for damages for unlawful acts or omissions of the provincial marshal carried out in the exercise of public authority within the framework of tasks delegated from the scope of government administration referred to in Article 75 (1) of the Law of 18th July 2001 - Water Law (consolidated text: Journal of Laws of 2017, item 1121, as amended);

In a civil lawsuit for compensation for unlawful acts or omissions in the performance of public tasks, as referred to in Article 75(1) of the Act of 18th July 2001 - Water Law (unified text: Journal of Laws of 2017, item 1121, as amended), initiated before the entry into force of the Law of 20th July 2017 - Water Law (Journal of Laws of 2018, item 2268, as amended), the State Management Company Wody Polskie in Warsaw does not step in the place of the respondent province, pursuant to the Article 534 (5) (3) of that Act.

THE PŁOCK FLOOD VICTIMS CASE

WHAT ISSUE DID THE CASE CONCERN?

The case was initiated in 2012 and concerned the determination of the joint and several liability for damages of the defendant public administration entities toward the group members, arising from a tort consisting of the unlawful exercise of public authority by the defendants in the area of flood protection within their respective jurisdictions (Iłów-Dobrzyków Valley).

WHAT WAS THE COURSE OF PHASE I AND PHASE II OF THE PROCEEDINGS?

The certification phase proceeded efficiently – the first instance court decided to hear the case as a class action in its decision of 15th March 2013, case no. I C 863/12, and the complaints against it were dismissed by the decision of the Court of Appeal in Łódź, 1st Civil Division, on 3rd December 2013, case no. I ACz 781/13.

The group composition was established quickly – by the decision of the Regional Court in Płock, 1st Civil Division, of 13rd November 2014, case no. I C 863/12 – which was not appealed.

WHAT WAS THE FINAL OUTCOME ON THE MERITS OF THE CASE?

This case also ended favorably for the group – with a final and binding finding of liability!
The Regional Court in Płock issued a judgment of 23rd April 2018 (case no. I C 863/12), which was upheld by the Court of Appeal in Łódź of 14th April 2021 (case nos. I ACa 1099/18 and I ACz 1451/18). Subsequently, the Supreme Court dismissed the appeal against sentence filed by the defendants in its judgments of 12th April 2023 (case nos. II CSKP 28/23 and II CSKP 1948/22).

NOTABLE EXCERPTS FROM THE RULINGS

Judgment of the Supreme Court of 12th April 2023, Case No. II CSKP 28/23:

The legal assessment must therefore take into account the nature of the defendant's duties: protection against flood, which fundamentally does not constitute acts of ownership, as its purpose is to serve the public interest by preventing floods and mitigating their potential consequences, such as threats to human life, health, and property. This assessment is not altered by the fact that such actions concern land and structures owned by the State Treasury. On the contrary, it should rather be assumed that the mandatory ownership by public-law entities – primarily the State Treasury (Articles 10(1) and 72(2) of the Water Law Act) – of facilities significant from the perspective of flood protection serves the efficient performance of public duties.

Therefore, the defendant is not liable for damages resulting from the improper performance of flood protection tasks because it owns certain property, but rather – it owns them because it was entrusted with carrying out specific actions within this scope. In the case law concerning flood protection tasks carried out by voivodeships, it is widely recognized that damage caused by improper performance of such tasks is subject to compensation under the regime set forth in Article 417 § 1 of the Civil Code (see Supreme Court judgments of 27th May 2015, II CSK 480/14; 27th April 2017, II CSK 401/16; and the Supreme Court resolution of 27th February 2020, III CZP 57/19).

Judgment of the Supreme Court of 12th April 2023, case no. II CSKP 1948/22:

The allegations concerning the violation of Article 361 § 1 of the Civil Code in conjunction with Article 75(1), Article 64(1), Articles 80 and 81 of the Water Law Act, as well as the alleged violation of Article 441 § 1 of the Civil Code, were also unfounded. The essence of the State Treasury's argument was the assumption that, since the damage caused by the flood occurred only because the Mazowieckie Voivodeship also acted unlawfully, the State Treasury should not be held liable for the resulting damage. Under the first allegation, the supposed lack of liability stemmed from the assertion that – due to the conduct of the co-defendant Voivodeship – the causal link between the harmful event and the damage was broken. The second allegation suggested that this reasoning undermined the Court of Appeal's conclusion regarding the joint and several liability of the two defendants.

For clarity, it should be noted that the Court of Appeal did not find that the damage resulted solely from the conduct or inaction of one of the defendants. On the contrary, it emphasized that the flood embankment failure and the resulting damage suffered by the claimants (members of the group) occurred due to the combined actions and omissions of both the State Treasury and the Mazowieckie Voivodeship. The nature and course of the incident made it impossible to isolate the effects of the respective failures in flood protection planning and coordination, riverbed works, and the maintenance of flood embankments.

Since it was the combined negligence of both defendants that led to the damage, this is a case of joint liability within the meaning of Article 441 § 1 of the Civil Code. Both defendants acted unlawfully, and the consequences of their conduct (omissions) cannot be separated. Therefore, both are jointly and severally liable for the damage. It is possible that neither act of negligence on its own would have caused the damage (although this was not established), but the court assessed the proven facts, which included findings about the concurrent omissions that directly led to the harm. Under current law – unlike under the former Obligations Code (Article 137 § 1 in fine) – it is not permissible in tort cases to prove who and to what extent contributed to the damage. This issue is now governed by internal settlement between jointly liable parties, as provided in Article 441 § 2 of the Civil Code.

THE CASE RELATED TO THE DIESELGATE SCANDAL

WHAT ISSUE DID THE CASE CONCERN?

A class action was initiated by a group of consumers affected by the so-called Dieselgate scandal – that is, the practice, revealed in September 2015, of installing software in vehicles produced by the Volkswagen Group that allowed manipulation of exhaust emission test results. The Polish proceedings did not bring together all injured parties, as a significant number chose to pursue claims before German courts.

The lawsuit was brought to seek compensation for the damage suffered by group members in connection with the defendant's sale of vehicles to the group members:

1. defective vehicles (which had been granted type-approval certificates as a result of unlawful actions) and
2. inconsistent both with the technical specifications available to group members at the time of purchase and with the applicable emission standards.

WHAT WAS THE COURSE OF PHASE I AND PHASE II OF THE PROCEEDINGS?

The certification of this case was a proverbial "uphill battle," but this was not due to the unfavorable attitude of the Polish courts but due to the way the claim was structured. Initially, with respect to the tort-based claim, courts of both instances found that Polish courts lacked jurisdiction (stating that the mere fact that a vehicle was registered in Poland did not justify Polish jurisdiction). It was only the Supreme Court – referring to the CJEU's rulings – that took a different position in its decision of 12th May 2022, case no. II CSKP 1506/22.

WHAT WAS THE FINAL OUTCOME ON THE MERITS OF THE CASE?

The case is still pending.

NOTABLE EXCERPTS FROM THE RULINGS

When examining the cassation complaint against the second-instance court's decision on certification, the Supreme Court, in its ruling of 12th May 2022 (case no. II CSKP 1506/22), referred to the judgment of the Court of Justice of the European Union of 9th July 2020 (case C-343/19), issued in the preliminary ruling procedure in the case of Verein für Konsumenteninformation versus Volkswagen AG – and held that, for the purpose of establishing jurisdiction of a Member State, the decisive factor is the place where the damage actually occurred.

Decision of the Supreme Court of 12th May 2022, case no. II CSKP 1506/22:

The Article 7(2) of the Regulation [Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12th December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – editor's note] should be interpreted as meaning that, where vehicles were unlawfully equipped by their manufacturer in one Member State with software that manipulates emissions data, and were subsequently purchased from a third party in another Member State, the place where the damage materialized is located in the latter Member State.

Decision of the Court of Appeal in Warsaw, 1st Civil Division, of 15th December 2022, case no. I ACz 689/22:

1. *In class action proceedings, the party in the procedural sense is the group representative, who conducts the proceedings in their own name, rather than the individual group members. Adopting a different concept would conflict with a rational interpretation, particularly with Article 4(1) and (3) of the Act on Pursuing Claims in Group Proceedings.*
2. *At the stage of examining the admissibility of hearing a case in group proceedings, the legislature introduced the requirement of homogeneity of claims among group members. Homogeneity of claims exists when the group members submit requests for legal protection to the group representative in the same form.*

CASE AGAINST MILLENNIUM BANK – THE MOST NUMEROUS GROUP

WHAT ISSUE DID THE CASE CONCERN?

The case brought by a group of borrowers – represented by the Municipal Consumer Ombudsman in Olsztyn – against Millennium Bank S.A. concerned mortgage loan agreements indexed to the Swiss franc exchange rate.

In a statement of claim dated 13th June 2014, the group sought a declaratory judgment establishing the Bank's liability towards the group members for unjust enrichment. This claim was based on the use of unfair contractual terms by the Bank in the credit agreements (specifically, the ineffectiveness as to the group members of unlawful provisions that allowed the Bank to index the loan amount and repayment installments to the Swiss franc according to the Bank's own foreign exchange rate table, as included in the foreign currency-indexed mortgage loan agreements signed by the group members).

WHAT WAS THE COURSE OF PHASE I AND PHASE II OF THE PROCEEDINGS?

Initially, by an order dated 28th May 2015, the Regional Court in Warsaw dismissed the statement of claim on the grounds that the claims of the group members did not meet the requirement of having "the same or a similar factual basis." However, after reviewing the Plaintiff's interlocutory appeal – which was handled relatively quickly, already in September 2015 – the Court of Appeal in Warsaw modified the appealed order by refusing to dismiss the statement of claim. On 12th August 2016, the Regional Court in Warsaw issued a decision to proceed with the case as a group proceeding. This decision was subsequently overturned by the Court of Appeal, and the case was remanded for reconsideration. On March 15, 2017, the first instance court issued a decision to proceed under group litigation rules again which was appealed by the Bank once again. This time, the court of second instance dismissed the appeal – and, in September 2017, after more than two years, the certification phase was legally concluded.

In 2019, the composition of the group was legally established, ultimately including 5,358 group members – making it the largest group to date in Polish class action proceedings.

WHAT WAS THE FINAL OUTCOME ON THE MERITS OF THE CASE?

By a judgment of the 24th May 2022, the Regional Court in Warsaw dismissed the claim. The judgment was appealed, and the case is now pending under case number I ACa 599/23.
During the poceedings before the court of the second instance, the Financial Ombudsman joined the proceedings on the side of the plaintiffs to protect the interests of clients of the financial market entity.
The last hearing took place in June 2024, and the group is currently awaiting the decision.

NOTABLE EXCERPTS FROM THE RULINGS

Decision of the Warsaw Court of Appeal, 1st Civil Division, of 21st September 2015, case no. I ACz 1648/15:

Even in cases where the relief sought involves awarding uniform amounts to members of the group (or subgroup), when assessing whether the claims are based on the same factual basis, it is not required that all factual circumstances justifying the claims of each group member – such as the extent of damage – be identical (see also Decision of the Warsaw Court of Appeal of 6th February 2015, case no. I ACz 43/15). Therefore, the applicability of group proceedings cannot be limited only to situations where group members pursue identical claims based on exactly the same facts. It is considered sufficient that the key factual circumstances, which may determine the defendant's liability in principle, are the same for all group members (cf. Decision of the Łódź Court of Appeal of 30th April 2014, case no. I ACa 1209/13).

Decision of the Warsaw Court of Appeal, 1st Civil Division, of 28th September 2017, case no. I ACz 1254/17:

It should be emphasized that from the perspective of the ruling referred to in Article 10(1) of the Act on Pursuing Claims in Group Proceedings, the key issue is whether group proceedings can be conducted in the case at hand. The aim is to eliminate the need for multiple individual lawsuits. Matters concerning the determination of the group composition and subsequently the merits of the claims do not constitute prerequisites for the admissibility of group proceedings.
The determination of the group's composition is carried out based on a broader body of evidence collected on the initiative of the parties. Only on this basis will the Regional Court assess whether the factual pattern presented as the basis of the claim applies to individual group members. Persons who do not meet these criteria should be excluded from the group composition, subject to separate appellate review (Article 17(2) of the Act on Pursuing Claims in Group Proceedings).

CASE OF ENTREPRENEURS VS. CHOMIKUJ WEBSITE

WHAT ISSUE DID THE CASE CONCERN?

The case against the Chomikuj.pl website was brought by a group of book publishers, represented by Wolters Kluwer sp. z o.o., against a Cyprus-based company that operated the Chomikuj.pl file-sharing portal. The portal provided its users with IT infrastructure for file exchange and charged fees for downloading files. Users whose files were particularly popular received rewards from the platform.

In the statement of claim filed on 16th November 2012, the group demanded that the defendant cease infringing their copyright. They requested that the defendant discontinue the use of the file-sharing system and implement preventive measures when receiving credible information that a specific work was being distributed unlawfully.

In 2020, the plaintiffs amended the lawsuit by introducing three new claims. The court ruled that, despite the exceptional nature of group proceedings, such a modification of the claim is permissible not only in the first stage (which was undisputed), but also later, in the so-called third stage, provided it is allowed under general procedural rules, i.e., pursuant to Article 193 of the Polish Code of Civil Procedure.

WHAT WAS THE COURSE OF PHASE I AND PHASE II OF THE PROCEEDINGS?

The case went through the certification stage twice – first between 2012 and 2016 with regard to the original claims, and then again between 2020 and 2021 concerning the three newly introduced claims.

The initial certification involved decisions issued by both instances, as well as the ruling of the Supreme Court dated 18th September 2015 case no. I CSK 672/14. In that ruling, the Supreme Court clarified a number of important issues related to the nature and legal effects of declarations of group membership.

Following the aforementioned Supreme Court decision, the Warsaw Court of Appeal dismissed the interlocutory appeal against the first-instance court's certification order, successfully concluding Phase I.

The second certification, in turn, proceeded quickly. The Regional Court in Warsaw, 20th Commercial Division, recognizing the admissibility of the claim modification, decided to examine the case as a class action with respect to the new claims (decision of the Regional Court in Warsaw, 20th Commercial Division, of 27th April 2021, case no. XX GC 1004/12).
The defendant appealed this decision, but the Court of Appeal in Warsaw dismissed the appeal (decision of the Court of Appeal in Warsaw, 7th Commercial and Intellectual Property Division, of 22nd September 2021, case no. VII AGz 362/21). The group composition (12 entities) was also established quickly – by the decision of the Regional Court in Warsaw, 20th Commercial Division, dated 26th January 2018, case no. XX GC 1004/12. This decision was not appealed.

WHAT WAS THE FINAL OUTCOME ON THE MERITS OF THE CASE?

The case is still pending and is currently at the appellate stage.

In the first instance, by a judgment of the Regional Court in Warsaw, 20th Commercial Division, of 4th April 2023 (case no. XX GC 1004/12), the court dismissed the claim. The dismissal was based on the fact that since 2016 the defendant was no longer the owner of the website in question (and thus the court could no longer order the defendant to implement a file control system). As for the demand to issue a public statement, the court found the claim time-barred, since those claims were only pursued starting in 2019.

NOTABLE EXCERPTS FROM THE RULINGS

At the stage of the first certification, the Supreme Court clarified that if group members in a class action are not part of the so-called initiating group – on whose behalf the group representative files the claim with a motion to proceed in group litigation – but instead join the class action only after the court issues a decision to hear the case as a group proceeding and orders a public announcement of its commencement, then the legal relationship pending between each such group member and the defendant arises at the moment the plaintiff submits to the court the declarations and the list of persons who have joined the group:

Decision of the Supreme Court of 18th September 2015, case no. I CSK 672/14:

Interested parties may express their willingness to participate in group proceedings in two ways.

First – they may become part of the so-called initiating group, on whose behalf the group representative files a statement of claim together with a request for the case to be heard in group proceedings. The number of members in this group, the nature of the claims pursued by its members, the factual circumstances and evidence supporting those claims, as well as – in the case of monetary claims – their uniformity, are all relevant to the court's assessment of the admissibility of the group proceedings (Article 1(1) in conjunction with Article 2(1) and Article 10(1) of the Act on Pursuing Claims in Group Proceedings).

Second – interested individuals may join the group proceedings after the court, pursuant to Article 10(1), issues a decision to examine the case in group proceedings and orders a public announcement of the initiation of such proceedings (Article 11 of the Act on Pursuing Claims in Group Proceedings).

This mechanism of participation in the group reflects the two-stage structure of group proceedings, consisting of the initial stage regarding the admissibility of group proceedings, concluded with the court's decision to examine the case in group proceedings (Article 10(1) of the Act), and the "proper" group proceedings stage, which includes the final determination of the group's composition (Article 17 of the Act) and substantive adjudication on the merits of the claim.

In each of the situations described above, a group member is required to submit a written declaration of joining the group; however, the procedural significance of these declarations differs.

[...]

The procedural effects of the declaration of joining the group, as referred to in Article 12, occur at a different point in time than the effects of filing the group action itself. Upon submission by the plaintiff to the court of the declarations and the list of individuals who have joined the group, a pending legal relationship (lis pendens) is established between these individuals and the defendant with respect to the claims covered by the group proceedings (Article 13(1) in conjunction with Article 12, second sentence, of the Act on Pursuing Claims in Group Proceedings). Moreover, at that moment, the statute of limitations for the claims of individuals joining the group is interrupted (Article 123 § 1(1) of the Civil Code). At the stage of the second certification, in its decision of 27th April 2021 (Case No. XX GC 1004/12), the Regional Court in Warsaw, 20th Commercial Division, clarified that an amendment of the statement of claim in group proceedings is permissible.

Decision of the Regional Court in Warsaw, 20th Commercial Division, of 27th April 2021, Case No. XX GC 1004/12:

The provision of Article 24(1) of the Act on Pursuing Claims in Group Proceedings has never excluded, despite several amendments to the Act, the application of Article 193 of the Polish Code of Civil Procedure. Given the significance of this provision, the exclusion of the neighboring provisions – i.e., Articles 194–196 of the Code of Civil Procedure – and the lack of changes in this respect during subsequent amendments should be regarded as a deliberate decision of the legislature. The specific nature of group proceedings also does not definitively preclude the application of this provision. Therefore, it must be assumed that, as a rule, modification of the statement of claim in group proceedings is permissible.

Judgment of 4th April 2023 the Regional Court in Warsaw, acting as the court of first instance, dismissed the claim – partly due to the defendant losing the status of a service provider (i.e., no longer being the owner of the website), and in the remaining part due to the statute of limitations on the claims.

Judgment of the District Court of Warsaw, XX Commercial Division of 4th April 2023, XX GC 1004/12:

The loss of the defendant's status as a provider of electronic services resulted in the loss of the defendant's standing for the first two claims. The plaintiff sought to order the defendant to implement a file filtering system and to order the removal of certain files from the service. Such a demand can only be directed against the entity that is the service provider at the time of adjudication. This is because it is clear that only such an entity can carry out the orders described above. Granting the claim against the defendant would result in the inability of the defendant to execute the judgment. Consequently, the demand of the lawsuit with regard to the first two claims was subject to dismissal due to the lack of standing of the defendant.

The last of the claims, i.e. ordering the publication of an appropriate statement, the plaintiff based its claim on Article 79(2) of the Act on Copyright and Related Rights. [....] With regard to the claim to compel the defendant to publish the statement, the statute of limitations was largely justified. The plaintiff's claims were related to the defendant's infringement of property copyright. They thus constituted claims of a tort nature. Since the Copyright and Related Rights Act does not contain a provision regulating the statute of limitations, the provisions of the Civil Code will apply. Pursuant to Article 117 § 1 and 2 of the Civil Code, subject to exceptions provided for in the law, property claims are subject to a statute of limitations [...] The plaintiff alleged liability on the part of the defendant for infringement of its author's property rights. Each of these violations constituted a separate tort. Accordingly, a separate statute of limitations ran for each of these acts.

The plaintiff filed a claim to order the defendant to publish a statement in a letter dated 23rd September 2019. Given the nature of the acts alleged against the defendant, it had to be assumed that the plaintiff had knowledge of the damage and the person obligated to repair it from the moment the tort was committed. Accordingly, it had to be assumed that the publication claim was time-barred with respect to torts committed by the defendant before 1st January 2016. Since the defendant ceased to be a service provider on 1st July 2016, only torts committed by the defendant between 1st January 2016 and 30th June 2016 could therefore be assessed.
This is because claims for torts committed before 1st January 2016 were time-barred, while the defendant could not have committed any tort after 30th June 2016, since it ceased to provide electronic services.

THE LAWSUIT AGAINST SMOG

WHAT ISSUE DID THE CASE CONCERN?

The case of a group of people aggrieved by the failure to maintain clean air standards against the State Treasury - the Minister of Climate and Environment and the State Treasury - the Minister of State Assets. The case is pending with the participation of the District Prosecutor in Warsaw.

The representative of the group has filed a lawsuit to establish the State Treasury's liability for damages, including harm to members of the group in connection with exceedances in Poland of the limit values for PM 10 dust concentrations (which occurred in the period from 11th June 2011 to 1st September 2019) and exceedances of the limit values for PM 2.5 dust concentrations, which occurred in the period from 1st January 2015 to 1st September 2019.

WHAT WAS THE COURSE OF PHASE I AND PHASE II OF THE PROCEEDINGS?

In 2022, the court declared that the proceedings in the present case were admissible and ordered that the announcement be made about the initiation of the proceedings.

By decision of the 11th July 2023. The District Court of Warsaw determined the composition of the group. After reviewing the respondent's complaint, the Warsaw Court of Appeal reversed the order on determining the composition of the group, indicating that the group representative's letter containing the list of group members had not been delivered by the court to the respondent.

WHAT WAS THE FINAL OUTCOME ON THE MERITS OF THE CASE?

No final judgment has been issued in the case yet.

NOTABLE EXCERPTS FROM THE RULINGS

Decision of the Court of Appeal in Warsaw, 5th Civil Division, of 15th May 2024, Case No. V ACz 1095/23:

Regardless of when the declaration of joining the group was made, the court is obliged to serve the list of these persons on the defendant. This is because the legislator clearly stated in Article 12 in fine of the Act on Pursuing Claims in Group Proceedings, that it is the court's duty to serve the defendant with the list of persons who have joined the class. The defendant's possession of the list of persons who are part of the group allows him to respond to it. This is because he has an explicitly granted right to challenge the participation of certain persons in the group (Article 15), which is carried out by filing objections. Thus, only a complete list of group members allows the defendant to exercise its right to file objections to the membership of certain persons in the group. Therefore, it is the court's duty to serve the defendant with the list of class members as soon as it is received from the plaintiff (cf. M. Sieradzka in Pursuing Claims in Group Proceedings, Commentary on Article 12, Lex).

[...]

Given these features of the appealed order stabilizing the composition of the group and determining the subjective and material scope of the proceedings, but issued in the present case as a result of defects in the delivery of the list of persons joining the group to the defendant, it should be annulled in its entirety, and not only with respect to the persons who filed statements of joining the group in the course of the case.

GROUP CASES RELATED TO THE AMBER GOLD AFFAIR

WHAT WERE THE CASES ABOUT AND HOW DID THEY END?

There were as many as six group cases in connection with the so-called Amber Gold scandal.

[THE FIRST CASE]

The first (from 2012) was directed against **Amber Gold sp. z o.o. itself**. The plaintiff demanded payment - the return to the class members of the sums of money paid into deposits held by Amber Gold. However, after 10 years, the case ended with the discontinuance of the proceedings due to the liquidation bankruptcy of Amber Gold sp. z o.o.

[THE SECOND CASE]

Another **case for payment** (also from 2012) was pending against former board members of Amber Gold Ltd. - and was validly terminated with the dismissal of the lawsuit at the certification stage in 2015.

In 2014 and 2015, three class action cases were initiated against the Treasury/Treasury acting through stationes fisci.

[THE THIRD CASE]

The first of these was a case **for payment** as compensation for damage caused to the group members as a result of the tort of failure by the State Treasury - the District Prosecutor of Gdańsk - Wrzeszcz in Gdańsk, the District Prosecutor in Gdańsk and the Prosecutor General to present charges to the members of the management board of Amber Gold sp. z o.o. The case ended in the first instance with a partial acceptance of the claim - by the judgement of the District Court in Warsaw 25th Civil Division of 1st July 2022, XXV C 1614/16.

[THE FOURTH CASE]

The second case (against the same defendants) is also a case **for payment** as compensation for damages due to omissions in the conduct of criminal proceedings. The case is pending, in Phase III of the class action.

[THE FIFTH CASE]

The third case was a case **to establish the liability** of the State Treasury for the damage suffered by the members of the group (loss of funds entrusted to Amber Gold) due to the unlawful acts or omissions of the defendants, which enabled Amber Gold sp. z o.o. to conduct business in an unlawful manner. The case was quickly (later that same year, 2014) legally concluded at the certification stage.

[THE SIXTH CASE]

The most recent class action case (from 2014) was a case against BGŻ bank **for payment** as compensation for damages in connection with the plaintiffs' claims that BGŻ bank, while maintaining the account of Amber Gold sp. z o.o. and accepting customers' money for the purchase of precious metals, failed to fulfill its denunciation obligations regarding the company and, despite having knowledge of Amber Gold's illegal activities – continued cooperation with it, which led to damage on the part of the class members. The case was validly concluded by a judgment of the District Court in Warsaw 25th Civil Division of 31st July 2019, XXV C 250/18, in which the court dismissed the claim.

NOTABLE EXCERPTS FROM THE RULINGS

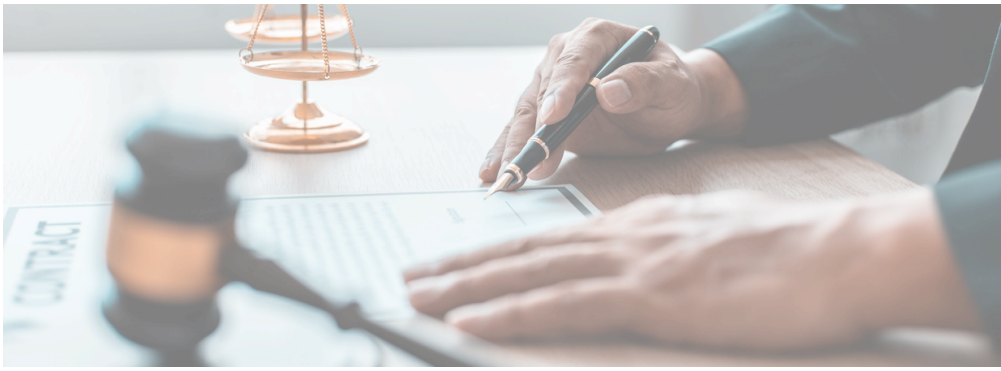
In Case No. 3 against the State Treasury represented by prosecutors, the court of first instance partially upheld the claim, assuming that if the defendants had properly conducted the preliminary investigation necessary to bring charges - and if they had brought those charges, Amber Gold sp. z o.o. would have ceased operations, and some of the group members would not have suffered damages.

Judgment of the Regional Court in Warsaw, 25th Civil Division, of 1st July 2022, case no. XXV C 1614/16, partially upholding the claim in Case No. 3:

According to the opinion of the forensic financial expert in terms of time, the Company was unable to handle the redemption of customer deposits from March 2010 at the earliest, without accepting deposits from new customers. Any demand for redemptions above 83.9% of the deposit balance would have rendered the Company insolvent. Thus, it can be assumed, with a probability bordering on certainty, that the Company, if the prosecutor's office had reacted correctly, would have actually ceased its operations by the end of February 2011 at the latest. Thus, the unlawful omission of the prosecution units led to the creation of property damage to the group members who made payments to the Company in the period from 1st March 2011 to 16th August 2012.
The considerations carried out above lead to the conclusion that it is only in this temporal scope that there is an adequate causal link between the damage to the members of the group (non-recovery of the invested capital) and the omission of law enforcement agencies.

If the prosecutor's office had acted in accordance with the criminal procedure, with a high degree of probability the Company would have actually terminated its activities in February/March 2011, and not in August 2012.

Thus, group members could not invest their money in investment products offered by the Company. The cut-off date from which the liability of the defendant in the context of these proceedings should have been assumed is 1st March 2011. All claims of individual members of the group involving payments to the Company made after this date should therefore be considered justified in principle. It should be emphasized at this point that the mere fact that the company (...), in terms of time, could have lost liquidity leading to the cessation of business operations as early as March 2010 (the aforementioned expert opinion) does not in any way mean that the defendant's tort liability to the plaintiff is already in place from that date. In fact, as previously indicated, the defendant can be held liable for damages at the earliest after the expiration of the duration of the properly conducted preliminary investigation necessary to bring charges, which, as shown by the actual activities carried out, amounted to 391 days. The court found no basis for assuming that the period of these 391 days was affected by delay.



On the other hand, in Case No. 6 against Bank BGŻ - the Regional Court of Warsaw dismissed the class action because it did not see any disclosure obligations on the part of the defendant bank:

Judgment of the Regional Court of Warsaw, 25th Civil Division, of 31st July 2019. XXV C 250/18 dismissing the claim in Case No. 6:

In fact, with regard to the Bank and the group members, it is not possible to speak of "the existence of a long-standing cooperation justifying the formation of a relationship of trust and thus the creation of informational and advisory duties on the part of the Bank." The plaintiff did not prove that any of the group members consulted with the defendant Bank prior to entering into an agreement with (...), in particular as to the assessment of the risks involved in the purchase of products offered by (...).

Given the lack of such cooperation between the Bank and group members, there is no basis whatsoever for bringing charges against the Bank - with reference to the deontological norms contained in the Code of Ethics - based on its alleged failure to inform group members about the nature of the (...) business and the risks associated with investing through it.

POST-COVID CASES

WHAT ISSUE DID THE CASE CONCERN?

In 2021, five class actions were initiated on behalf of entrepreneurs against the State Treasury in connection with the introduction of regulations restricting the freedom of doing business due to the COVID-19 pandemic and the restrictions in place at the time. In each case, the plaintiffs - the class representatives - are seeking a determination of the defendant's liability for damages.

The case of a group of entrepreneurs from the RECREATIONAL, ENTERTAINMENT AND SPORTS against the State Treasury represented by the Prime Minister, the Minister of Health, the Minister of Internal Affairs and Administration and the Minister of Education.

The case of a group of entrepreneurs from the GASTRONOMIC INDUSTRY against the State Treasury - the Prime Minister, the Minister of Health and the Minister of Internal Affairs and Administration.

The case of a group of entrepreneurs from the FITNESS INDUSTRY against the State Treasury - the Prime Minister and the Minister of Health.

Case of a group of entrepreneurs - OWNERS OF CLUBS AND DISCOS against the State Treasury - represented by the Council of Ministers represented by the Prime Minister, the Minister of Health and the Minister of Internal Affairs and Administration.

The case of a group of entrepreneurs from the TOURIST INDUSTRY against the State Treasury - the Council of Ministers, the Minister of Health, the Minister of Internal Affairs and Administration.

WHAT WAS THE COURSE OF PHASE I AND PHASE II OF THE PROCEEDINGS?

RECREATIONAL, ENTERTAINMENT AND SPORTS – the case passed Phase I (2022) and Phase II (20 entrepreneurs were included in the group).

GASTRONOMIC INDUSTRY – the case successfully passed certification (2024), the order to determine the composition of the group has not yet been issued. The lawsuit identified 279 class members.

FITNESS INDUSTRY – the case is still at the initial stage of the proceedings; a decision on the admissibility of the class action has not yet been issued. The lawsuit identifies 33 group members.

OWNERS OF CLUBS AND DISCOS – the law passed Phase I (2022) and Phase II (28 entrepreneurs were included in the group's composition).

TOURISM INDUSTRY – the case went through Phase I (2022) and Phase II (69 entrepreneurs were included).

WHAT WAS THE FINAL OUTCOME ON THE MERITS OF THE CASE?

RECREATION, ENTERTAINMENT AND SPORTS – on 11st February 2025, the Regional Court of Warsaw issued a judgment establishing the liability of the State Treasury to pay compensation to the members of the group as compensation for damages, including the losses they suffered and the benefits they could have achieved if the damage had not been caused to them, caused by unlawful action in the exercise of public authority involving the issuance of the normative acts indicated in the judgment.

GASTRONOMIC INDUSTRY – proceedings remain pending at the phase II stage.

FITNESS INDUSTRY – proceedings remain pending at the phase I stage.

OWNERS OF CLUBS AND DISCOS – proceedings remain pending in phase III; a hearing has been scheduled for October 2025.

TOURISM INDUSTRY – the proceedings remain pending in Phase III; no hearing date has been set.

NOTABLE EXCERPTS FROM THE RULINGS

Judgment of the Regional Court of Warsaw, 25th Civil Division, dated 11th February 2025, XXV C 1641/21:

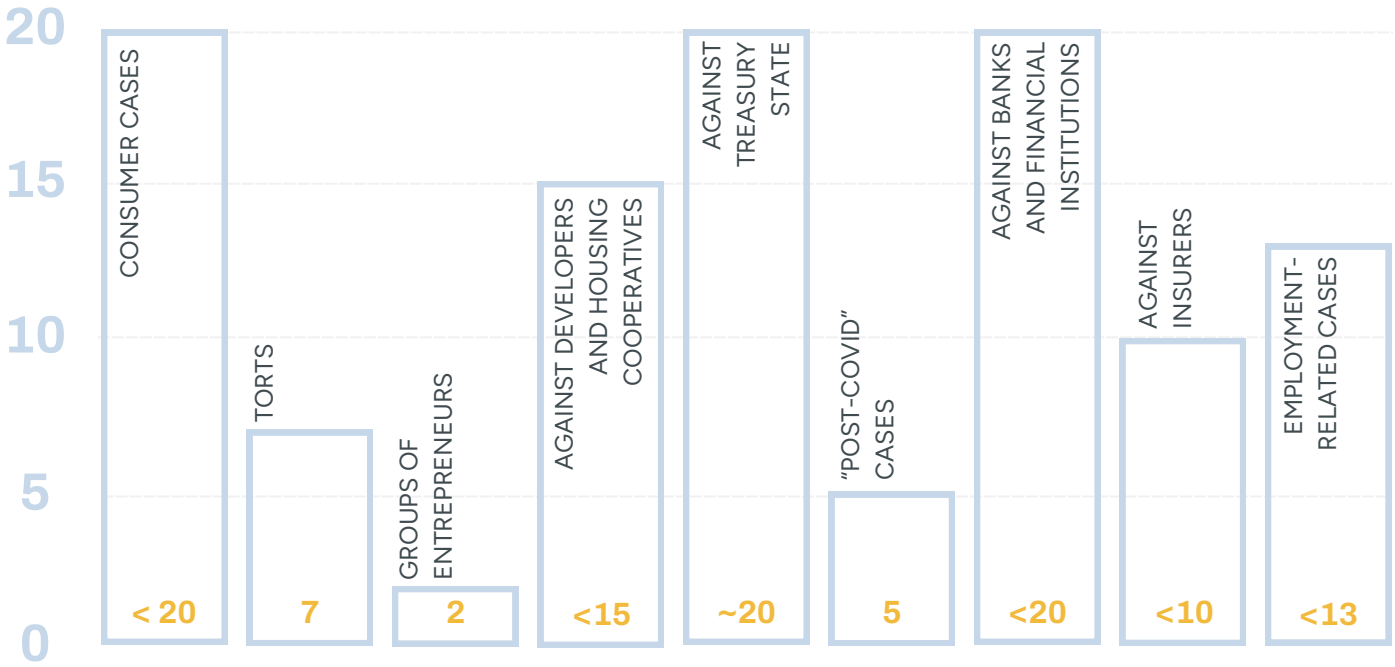
The unlawfulness of the actions of state authorities is not justified by Article 38 of the Constitution of the Republic of Poland, which provides everyone with legal protection of life, nor by Article 68(4) of the Constitution, which imposes an obligation on public authorities to combat epidemic diseases and prevent the negative health consequences of environmental degradation. Indeed, the implementation of the above duties must be carried out on the basis of the law and within the limits of the law. The Council of Ministers had adequate legal tools that it could use in a situation of particular danger such as a pandemic (...) 19, if ordinary constitutional measures were insufficient, a were insufficient, as evidenced by the Law of 2nd March 2020 on (...)19, passed in haste without a full legislative process, amending, among other things, the Law on Infectious Diseases, and introduce a state of disaster (Articles 228 and 232 of the Constitution). The manner in which the authorities acted in such a situation was regulated by the Act of April 18, 2002 on the State of Natural Disaster (Journal of Laws of 2025, item 112), allowing far-reaching interference in the rights and freedoms of the individual on the basis of the law and within the limits of the law.

GROUP PROCEEDINGS IN COURTS – WHAT CASES HAVE BEEN RECOGNIZED BY POLISH COURTS OVER THE LAST 15 YEARS

The subject categories of group proceedings are changing in line with general trends.

For example, in 2013/2014, many cases against insurers involved so-called policy-deposits and against banks involved low deposit insurance; there were numerous cases against developers.

Today, class actions against banks are mainly the Swiss franc cases; 4 business group cases against the State Treasury emerged after COVID-19 bans on certain types of business.



CONSUMER MATTERS

- cases of tourists against travel agencies,
- cases of users of Internet portals,
- cases of consumers of goods or services, e.g. educational or media consumers,
- case of consumers against Volkswagen (dieselgate affair),
- cases of investors,
- case against Amber Gold and members of its board.

TORT MATTERS

- two cases of a group of relatives of victims of the notorious construction disaster of the Katowice International Fair hall,
- cases of flood victims affected by omissions in flood protection (from the area of Plock and Sandomierz, and from Kędzierzyn-Koźle and Piaseczno).

MATTERS OF ENTREPRENEURS' GROUP

Examples:

- proceedings of insurance brokers aggrieved by violations of the Law on Combating Unfair Competition,
- case against a file-sharing website to stop infringement of property copyrights.

MATTERS AGAINST DEVELOPERS / COOPERATIVES HOUSING ASSOCIATIONS

They included:

- defects in real estates,
- delays in the implementation of investments,
- prices valorization (invalidity of the clause),
- replenishment of housing contributions (invalidity),
- defaults involving such as the construction of a parking lot.

MATTERS AGAINST INSURERS

- cases for payment of compensation,
- cases for reimbursement of collected liquidation fees (prohibited provisions); concerning so-called policy-deposits.

MATTERS AGAINST THE STATE TREASURY

Diversified by topic:

- shareholder cases of State Treasury companies,
- cases between local government units and the State Treasury,
- a case to determine the invalidity of the transfer of funds from the Open Pension Funds,
- cases of public sector employees for compensation for lack of salary indexation,
- hospital infections,
- flood cases,
- cases related to the "Amber Gold affair",
- among the more recent: a case against the State Treasury represented by the Minister of Climate and Environment and the Minister of State Assets (as stationes fisci) - to determine liability for exceeding air quality standards, i.e. PM 10 and PM 2.5 concentrations.

"POST-COVID" MATTERS

A new subcategory of cases against the State Treasury are the so-called "pocovid cases," i.e. cases related to temporary bans on business activities involving the provision of certain types of services, imposed in connection with the COVID-19 pandemic:

- case of a group of entrepreneurs in the tourism industry,
- case of representatives of the catering industry,
- case of representatives of the fitness industry,
- case of owners of clubs and discos,
- case of entrepreneurs in the recreation, entertainment and sports industry.

The plaintiffs demand that the State Treasury's liability be established for damages suffered during the period of the bans.

MATTERS AGAINST BANKS AND FINANCIAL INSTITUTIONS

IN 2014-2015 – cases of compensation for improper performance of loan agreements, or reimbursement of insurance premiums related to insurance of the so-called low down payment.

AFTER 2014 – Swiss franc cases; the first major group case of this kind initiated in December 2010 was the Group's case against mBank (1,247 group members), and the next (concerning a CHF-indexed loan) was the case against Millennium Bank S.A. initiated in June 2014. (5,358 group members).

A FEW WORDS ABOUT 2 TYPES OF PROCEEDINGS

Since the 2024 amendment, Polish group proceedings can be divided into two subcategories:

1. classic group proceedings initiated by group representatives;
2. representative group proceedings initiated by authorized entities.

The second subcategory of group proceedings was introduced as part of the implementation of the so-called representative actions directive.

Only consumer claims may be asserted in representative class actions.

This proceeding includes cases for the determination of practices that violate the general interests of consumers and cases for claims related to the application of such practices.

Representative proceedings may be initiated only by authorized entities - entities entered in the register kept by the President of the Office of Competition and Consumer Protection or in the register kept by the European Commission.

SUMMARY

What worked well and what didn't? What the upcoming prospects are?

- In our opinion, the law itself - the Act on Pursuing Claims in Group Proceedings - has worked.
- The low time efficiency of group proceedings is due not to the shape of the the Act on Pursuing Claims in Group Proceedings provisions themselves (especially after the 2017 Amendments), but to the same systemic reasons that cause the lengthiness of court proceedings in general.
- Group proceedings run more smoothly in smaller courts, where they are heard more quickly than, for example, particularly occupied Warsaw District Court.
- Should group cases be recognized by specialized courts? **Yes.**
- Low interest in group proceedings? What is the reason of that - lack of knowledge?
- The role of attorneys.
- A new type of “representative” group proceedings is an opportunity for a new opening, as long as authorized entities act.

OUR CLASS ACTION PRACTICE TEAM OFFERS COMPREHENSIVE ASSISTANCE IN:

- Preparing class action lawsuits and effectively asserting your rights in court.
- Developing a defense strategy in class actions and managing the risks associated with the new regulations.
- Conducting relevant trainings on class action issues, including those dedicated to consumer organizations or entrepreneurs providing services to consumers.
- Providing advice to consumer organizations on how to prepare for the role of the so-called “authorized entity,” drafting the necessary documents and explaining what to do.
- Auditing the compliance of the entrepreneur's activities with consumer protection regulations (in cooperation with the compliance department).

WE INVITE YOU TO CONTACT US

If you are facing a group litigation challenge, our team of experienced lawyers is ready to help you.
Contact us and together we will develop the best strategy to protect your interests or resolve your legal issues.

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