

Tomasz Bojar-Fijałkowski¹

CLIMATE CHALLENGES FOR HEALTH AND THE ENVIRONMENT – ON THE NEED FOR CHANGES TO POLISH SPA LAW

Abstract: The text present environmental and health challenges of climate changes. It refers to Polish medical spas and law regulating them. It begins with environmental aspects of climate changes and is followed with its health aspects. The scale of health problems caused by the quality of the environmental elements is increasing. This condition has not been improved by the covid-19 pandemic or the ageing population. All this poses challenges for the health system. The next part of the text places medical spa treatments and characterizes Polish spa law. The last part presents areas of spa law which seek for urgent change. The whole is finished with conclusions and list of resources.

Keywords: climate change, environmental health, environmental law, medical spa treatment, spa law

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¹ Kazimierz Wielki University in Bydgoszcz, Faculty of Law and Economics, Department of Business and Financial Law, Bydgoszcz, Poland, ORCID: 0000-0001-6979-8207, email: tbojar@ukw.edu.pl

Introduction

The first decades of the new millennium indisputably confirmed the changes in the Earth's climate that science had predicted, but which humanity was unable or unwilling to counteract sufficiently. The observed global warming has real social consequences, including economic ones, but also health consequences for entire societies. The scale of health problems caused by the state of the environmental elements is increasing. This condition has not been improved by the covid-19 pandemic or the ageing population. All this poses challenges for the health system.

One form of treatment developed in Europe since the Roman Empire is spa treatment. In the face of climatic and demographic problems, its role in the health care system is not diminishing, and the demand for rehabilitation and natural-healing treatments is still growing steadily. It is therefore worth looking at the Polish law regulating spas and spa treatment. Is it effective? Does it and how does it take into account the climate and other environmental elements, especially noise and air quality, among the conditions for running a spa? What can and how can and what must necessarily be changed in this legislation?

An attempt to answer these questions requires the application of a dogmatic-legal analysis to the currently binding regulations and, in order to gain a fuller understanding, of a historical-legal method to earlier regulations. The research problems outlined in this way determine the layout of the work.

It begins with environmental aspects of climate changes and is followed with its health aspects. The next part places medical spa treatments and characterizes Polish spa law. The last part presents areas of spa law which seek for urgent change. The whole is finished with conclusions and a list of sources. The study is based on national and international literature on environmental law, health law and spa law. Legal status on 31.05.2023.

State of a problem: environmental aspects of climate changes

The issue of climate change has become the single most important issue in international, EU and national environmental law. The impact of climate change on all aspects of life on earth is already widely discussed. Indeed, we are seeing the multidimensional economic effects of climate change.

Legal climate protection has been necessitated by the severe consequences of global climate change: rising temperatures, rising sea and ocean levels, reduction and loss of arable land, changes in the distribution and volume of waste, species migrations and extinctions, increases in atmospheric concentrations of greenhouse gases and increased frequency of extreme weather events (Ciechanowicz-McLean, 2016). These changes are already very pronounced. If climate change were to occur evolutionarily, the legal system would be able to respond to these changes in the typical manner of gradually adapting the law to the changes taking place. Rakoczy (2022) points that climate change is occurring faster than the legal system is able to absorb it through normal mechanisms. A feature of environmental law, not found on such a scale in other areas of law, plays an

important role here. Namely, this law, in the broadest and most comprehensive manner, must refer and react to the reality surrounding humans. For it is the law that must adapt to nature, not the other way around.

Hence, the climate law should be understood as a set of rules of international law, EU law and national law aimed at counteracting anthropogenic climate change and responding to the effects of such change already occurring. A term "Law of climate", often used in Polish legal doctrine (Ciechanowicz-McLean, 2016), where "climate" is a noun, should be understood as rules aimed at something or someone, in this case the climate, to which certain rights are given. It should therefore be understood as rules concerning the climate and the various activities related to or conducted in relation to it, including its protection. As Bojar-Fijałkowski (2022a) notes that climate law, on the other hand, should be understood as all pro-climate regulations addressed to the various actors whose activities affect the climate, who interact with it in various ways. Understood in this way, climate law is the rules for various activities aimed at benefiting the climate, taking into account the climate as a value in economic activities or the everyday activities of an individual, this is "climate impact law". It would include regulations for energy, transport, construction, industry or trade. In my view, 'climate law' is the narrowest concept, containing norms aimed at protecting the state of the climate as defined at some specific point in time. Law of climate, being a part of climate law, must define the scope of actions allowed and not allowed against the climate. Understood in this way, the law of climate is contained in climate law, which is the broadest concept (Bojar-Fijałkowski, 2022b).

Legislators are taking action to adapt to climate change, that is, to anticipate the negative consequences of climate change and take appropriate action to prevent or at least minimise the damage caused by it. These measures are being taken at all levels of government, from international to regional to national, and within them from the central to the lowest level – in Poland the municipal level. Today, this is a dynamic sector of the innovative economy and the direction of socio-economic change, as the expected environmental effects are strongly correlated with the economic effects.

State of a problem: health aspects of climate changes

Public health, identified with the actions taken by public authorities to maintain and improve it, is the health of the community as opposed to the health of the individual. Indeed, it is a feature of public health to see health problems from a population perspective. Public health is also defined in terms of activities and is then defined as action aimed at solving the health problems of the population.

Firstly, public health problems are not of an individual nature, but occur in a certain number in a certain area and have an epidemiological dimension. Secondly, such phenomena are regarded as undesirable, requiring action to remove or at least reduce them through organised action. The organisation of such actions is the task of the state. Thirdly, health problems of the population will be the result of factors of various nature, including economic, social, demographic, cultural, ethical but mainly environmental.

Fourthly, these phenomena can also be assessed in terms of their importance when juxtaposed with other tasks of the state, the speed of its response, the comprehensiveness of its actions or omissions. This allows particularly clear comparisons between public health and other spheres of state activity, including environment's protection and management.

The evolution of public health to the new public health has been from strictly sanitary measures and the control of infectious diseases to also include social, cultural and economic issues and their relationship to health. Hence, the new public health model focuses not only on issues limited to environmental hygiene, municipal hygiene or food and nutrition safety, but also on the consideration of all other determinants of health, in their interrelationships. The theory of the new public health is concerned with the health-promoting development of the environment surrounding humans in the context of sustainability in the broadest sense. The idea is that sustainable development should also have a health-promoting element (Haines et al., 2012). Indeed, social and material inequalities create inequalities in access and health. The new public health is a synthesis of classical public health with contemporary achievements of other sciences such as clinical medicine, psychology and sociology, epidemiology and demography, economics, management and law. Hence, the new public health can be seen as an all encompassing discipline. In this context, the issue of the state of the environment comes to the fore.

Environmental health, on the other hand, includes those aspects of human health, including quality of life, that are determined by biological, chemical, physical, psychological and social environmental factors. It also encompasses the theoretical assumptions and practice for assessing, eliminating and preventing the presence in the environment of those factors that may adversely affect the health of present and future generations. Accordingly, the concept of environmental factors is understood broadly. Elements of the definition of health, defined as full physical, mental and social well-being and not merely the absence of disease or infirmity, can be found in this formulation, as well as elements of the definition of sustainable development. Today, most threats to the health of individuals come from inadequate levels of quality of environmental elements, and climate change brings additional threats in this regard.

State of a problem: medical spa treatments

Medical spa treatment, which has operated in Europe for centuries and was highly developed in the former communist bloc countries, is a continuation of in-patient or out-patient treatment to help the patient recover from an illness or accident. Until the 1990s in Poland, it only operated with public funding and on a large scale. Currently, it is available, with some limitations but still widely, as part of the publicly funded healthcare system. In parallel, the same facilities often offer commercial services.

Medical spa treatment makes use of the curative properties of natural healing resources, climate and microclimate. The treatment is also very often accompanied by physiotherapy treatments. A patient who undergoes spa treatment is referred by

a doctor under the public insurance scheme may make use free of charge of diagnostic tests, medicines and medical devices that are necessary for this treatment.

Medical spa treatment is provided in spas by spa treatment facilities and outside the spa in hospitals and sanatoriums in underground mine workings. In spas, spa treatment is carried out in spa treatment facilities. Medical spa treatment facilities are health care institutions operating in the area of the spas, in which medical entities carry out therapeutic activities in the type of outpatient or inpatient and round-the-clock health care services. Patients can be treated or rehabilitated there. The establishments make use of the unique natural conditions of the spa in which they operate.

The types of medical spa treatment facilities are: spa hospitals; spa sanatoriums; children's spa hospitals and children's spa sanatoriums; outpatient spa clinics; natural health treatment facilities; hospitals in developed underground mine workings sanatoriums in developed underground mine workings.

Such treatment is carried out with the use of medical spa treatment facilities located in the spa area, such as: spa pump rooms; graduation towers; parks; exercise paths; arranged sections of the seashore; therapeutic and rehabilitation spa pools; arranged underground mine workings. In addition to technical equipment that can be delivered to any location, spa treatment relies on the special properties of the environmental elements: water, mineral resources and climate. Hence, it is indisputable that the state of the environment, including the climate, is fundamental to the possibility of spa treatment.

According to the Polish Central Statistical Office, at the end of 2021, there were 258 medical spa treatment facilities in Poland, which welcomed 600,000 patients during the year. There are 47 municipalities with spa status in the country.

The demand for this type of medical services is growing due to an ageing population, the still felt effects of the recent covid-19 pandemic and the negative health effects of climate change and the quality of other elements of the environment (Paszowska, 2017). The deteriorating state of the environment correlates directly and positively with the demand for medical care. This is particularly evident in the area of air quality and long-term diseases caused by poor air quality in Poland.

Materials and methods: Polish spa law

Spa law *sensu largo* encompasses various legal norms influencing and shaping the operation of spas, spa facilities, procedures and processes for the provision of spa services, or patients' access to these services. The spa law defined in this way also includes, in addition to those already indicated, parts common to environmental law, including nature and climate protection, tax regulations as the spa commune has the right to charge an additional fee from tourists, public economic law, and in an important part regulations on access to medical services (Bojar-Fijałkowski, 2011).

Under the term “spa law”, strictly speaking, we should understand a set of norms of administrative law regulating the principles and directions of health resort treatment, supervision over this treatment, principles of granting and withdrawing from the areas, including municipalities, the status of a health resort or an area of health resort

protection together with the rights and obligations resulting from it. In the Polish legal system, the spa law is regulated by the Act of 28 July 2005 “on medical spa treatment, spa resorts and spa resort protection areas and spa communities” . This regulation replaced the Act of 1966, which designed a system of health resort treatment in a manner clearly different from current socio-economic doctrine. In contrast, the first Polish regulation of spas was the 1922 Act.

As assessed by Paczuski (2015), the 2005 Act is of high economic, social and environmental management significance, adequate to the goals and tasks of the idea of sustainable development, while respecting the constitutional principle of a balanced system, established in Article 5 of the Constitution of the Republic of Poland. Without questioning this view, it should and is worth considering to what extent its provisions are still relevant? To what extent, after almost two decades, are the procedures it provides for effective? Do the dynamic socio-economic changes which characterised Poland's development in the first two decades of the 21st century not require to be taken into account in the spa law? Certainly climate change needs to be taken into account in spa law.

Results and discussions – what to change in Polish medical spa law

The effectiveness of the spa law has also long been questioned by state control bodies. The Supreme Chamber of Control's 2016 report “Meeting the requirements set for medical spa” directly indicates that “Receiving and maintaining the status of a medical spa does not guarantee that spa resort have met and continue to meet environmental requirements and conditions regarding the therapeutic properties of the climate or the use of natural resources. None of the inspected localities met the requirements set for spas. Acceptable noise standards were exceeded in 10 of the 11 localities inspected, and a full range of climate surveys were not carried out in one. Air quality assessments did not reflect the actual level of air pollution. Despite the statutory obligation, the spa municipalities did not monitor the state of the environment in the resorts. In the opinion of the Supreme Chamber of Control, the lack of adequate care of the communes for the state of the environment may lead to the loss of the status of a health resort and, as a consequence, to the restriction of patients' access to health resort treatment”.

The Minister of Health's supervision of spa treatment was ineffective. The Minister unreliably verified the fulfilment of the requirements set for spas, and did not monitor the preservation of therapeutic and environmental conditions in the area. He also failed to monitor the implementation of the recommendations contained in the spa decisions regarding the fulfilment of the required environmental standards and the use of natural resources in spa treatment.

At the stage of applying for or maintaining the status of a health resort, 10 of the 11 surveyed localities did not meet the requirements in relation to the environment, due to exceeding the permissible noise standards. On the other hand, in one locality, no noise as well as electromagnetic fields tests were carried out at all. For 10 localities, the

authorised bodies found that the permissible noise levels were exceeded and included recommendations for monitoring.

In the climate studies of five localities, the authorised entities formulated comments on the sanitary condition of the air, due to exceedences of 24-hour concentrations of PM10. In addition, for 10 localities, the authorised entities included recommendations for monitoring the sanitary condition of the air.

No action was taken to confirm that the spas complied with the requirements of the environmental legislation. The Minister of Health did not monitor the preservation of the therapeutic and environmental conditions for granting and maintaining the status of a health resort, although he has such a statutory obligation. Moreover, he did not monitor the implementation of the recommendations contained in the spa decisions to take measures to meet the required environmental standards, nor did he monitor the use of natural resources in spa treatment. On the other hand, the spa municipalities did not take measures to verify the fulfilment of the requirements in terms of, inter alia, permissible standards of air pollution, noise intensity and emission of electromagnetic fields.

The Minister of Health did not exercise effective supervision over spa treatment, including unreliably verifying that spa resorts complied with the requirements set out for spas and confirming the possibility to carry out spa treatment in all spa resorts at that time, even though they did not comply with the requirement set out for spas in terms of permissible noise levels. The Minister also failed to monitor the use of mud and therapeutic waters in spa treatment and did not use his authority to request the relevant services and inspections to inspect compliance with environmental regulations.

The report points to cardinal negligence in the control of spas, such as the erroneous designation of protection zones or the lack of their designation by municipalities in general. Important from the point of view of the quality of the spa law is also its enforcement. With the demonstrated inaction of the authorised state authorities, the failure to use even the existing, albeit ineffective, instruments, the question of respect for the law in force arises. In this case, negligence in the application of the law may result in the health of the citizens benefiting from spa treatment.

The Watchdog civic network, an active NGO, asked spa municipalities in a survey how they cared for air quality two years after the Supreme Chamber of Control report. One municipality did not fulfil its obligation to respond. The 35 municipalities that responded to the survey had not carried out any air quality monitoring in the past three years. Nine authorities, out of 42, only mentioned in their response the air monitoring station of the Regional Inspectorate for Environmental Protection located in the municipality.

The most common reason for commissioning studies is the need for the municipality to submit a spa operation. Such comprehensive studies to scientific institutions have been commissioned by 10 municipalities in the last three years. Only four municipalities mentioned air quality inspections involving checking boiler houses or businesses that emit harmful substances. The lack of enforcement of this obligation is a serious omission by the government.

In terms of external inspections, half of the spa municipalities had none in the last three years. A further eight indicated inspections by the Regional Environmental Inspectorate. 10 municipalities reported that such inspections had been carried out in their area. In response to questions about the results of air quality improvement studies, 26 municipalities did not provide any data. 16 of them do not have any stations, do not carry out measurements and do not use stations belonging to other entities.

Watchdog's monitoring shows that revenues from the spa fee range from a fraction of a percent of the total municipal budget to around 4 per cent. Some municipalities collect quite substantial amounts from the spa fee, for example Świnoujście – over PLN 8 million, Krynica Zdrój – PLN 4 million, Sopot – almost PLN 3 million. The money from this, however, goes to various purposes. Only one municipality, Goczałkowice-Zdrój, declared that it financed the 2018 emission reduction programme from the spa fee. As the authors of the survey conclude, many municipalities will have to face smog if they want to keep their spa status. For the time being, the first steps have been taken to diagnose the problem of polluted air in spas at all. Many spa municipalities have air quality measurement stations installed by provincial environmental inspectorates.

Despite the passage of several years, the actual state of affairs has not improved. According to Golba (2018), the spa resort regulations contain a multitude of imprecise, even conflicting legal norms, which lead to serious problems in their application, particularly as regards: the required conditions for obtaining the status of a health resort; numerous planning and spatial development issues. Including the cumulatively formulated, albeit without standardisation, conditions for obtaining spa status. The legislator has prescribed their cumulative fulfilment, moreover obligatorily, without derogations.

Particularly indefinite and difficult to interpret are precisely the requirements for “climate with therapeutic properties”, “requirements in relation to the environment” set out in the implementing provisions of the Regulation of the Minister of Health on the scope of tests necessary to determine the therapeutic properties of natural medicinal raw materials and the therapeutic properties of the climate, the criteria for their assessment and the model certificate confirming these properties. This regulation indicates in Annex 3 the elements to be assessed when verifying the medicinal properties of the climate. These are: air temperature; sunshine; cloud cover; relative humidity; atmospheric pressure and water vapour pressure; winds – strength and direction; precipitation; atmospheric phenomena: fog, thunderstorms, foehn and halal winds, snow cover, gloom. Some of these are unpredictable and almost independent of human activity, not including the impact of humanity on global warming, such as sunshine, precipitation, fog, temperature fluctuations, air humidity, wind strength. However, there are also those indicated, on the basis of the "Environmental Protection Law" of 2001, limits on harmful substances in the air, permissible noise levels, electromagnetic field levels, which are mostly the result of human activity and are subject to control. What is worth emphasising is that the levels of substances in the air set out in the 2012 Regulation are technical standards applicable to every locality in the country, but failure to meet them does not have any legal or factual consequences.

The 2005 law talks about localities in this respect, when the "Environmental Protection Law" and regulations talk about air quality in the area. Thus, it is possible to have a situation when there are documents in circulation confirming good air quality in a spa locality and, at the same time, another confirming bad air quality in the zone to which the locality belongs. Gobla (2018) calls for the creation of separate measurement zones for spa communities, or even spa areas or other areas of natural and tourist value.

The requirement to comply with environmental requirements is undefined. It is probably a matter of complying with general environmental law standards, but these apply to everyone, not just spas. They should be stated precisely and with an indication of the technical level limits, e.g. for noise, which, if exceeded in the limited time periods indicated, would result in the loss of the spa status.

Conclusions

The above study allows to the following conclusions and "de lege ferenda" postulates:

1. Law of climate must define the scope of actions allowed and not allowed against the climate. Understood in this way, the law of climate is contained in climate law, which is the broadest concept. Climate law is the rules for various activities aimed at benefiting the climate, taking into account the climate as a value in economic activities or the everyday activities of an individual, this is "climate impact law". In such a view, the phrase 'climate protection law' for the entirety of climate-related regulations, which is standard in Polish law doctrine, is inappropriate.
2. Environmental health, a concept of public health, includes those aspects of human health, including quality of life, that are determined by biological, chemical, physical, psychological and social environmental factors. Currently, most threats to the health of individuals and societies come from inadequate levels of quality of environmental elements, and climate change brings additional threats in this regard.
3. Medical spa treatment makes use of the curative properties of natural healing resources, climate and microclimate. In addition to technical equipment that can be delivered to any location, spa treatment relies on the special properties of the environmental elements: water, mineral resources and climate. Hence, it is indisputable that the state of the environment, including the climate, is fundamental to the possibility of spa treatment. The need for spa treatment is increasing in an ageing population. It is also increasing when the poor state of the environment worsens the health of the population.
4. Spa law *sensu largo* encompasses various legal norms influencing and shaping the operation of spas, spa facilities, procedures and processes for the provision of spa services, or patients' access to these services. Under the term "spa law", strictly speaking, we should understand a set of norms of administrative law regulating the principles and directions of health resort treatment, supervision over this treatment, principles of granting and withdrawing from the areas, including

- municipalities, the status of a spa resort or an area of spa resort protection together with the rights and obligations resulting from it.
5. The effectiveness of the spa law has also long been questioned by state control bodies. Acceptable noise standards are often exceeded and a full range of climate surveys are not carried out. Air quality assessments do not reflect the actual level of air pollution. Despite the statutory obligation, the spa municipalities do not monitor the state of the environment in the resorts. The Minister of Health's supervision of Polish spas treatment is ineffective. The control also fails to monitor the use of mud and therapeutic waters in spa treatment and does not use its authority to request the relevant services and inspections to inspect compliance with environmental regulations.
 6. This can also have financial implications. Spa municipalities can and do charge additional fees to tourists staying there. These are directly linked to the therapeutic conditions of the resort. With the unmonitored state of the environment, with frequent exceedances of the permissible noise and air quality limits, the municipalities run the risk of being held legally liable and having to pay back the fees collected as improper. A tourist or a patient paying a fee expects access to an environment of proper quality and the therapeutic properties of its elements. Obviously, if he or she does not get what he or she was offered, can demand a return of the payment. The most popular Polish health resorts collect millions, sometimes undue, on this account.
 7. More control of the state of the environment in spa resorts by the government administration is needed. At the same time, the current structure of the Polish administration responsible for the environment, fragmented, with the division of competences into numerous institutions, contradicting the principle of comprehensiveness, definitely requires changes and reform. Effective control is not possible with the current structure of the government administration responsible for the environment. This is the primary problem, the ineffective implementation of this control is a secondary issue.

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