

# THE ENERGY POVERTY IN POLAND AND POLISH COMMUNES

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## KEYWORDS

energy poverty, indicators of energy poverty, energy safety, right to energy, commune's tasks, energy crisis, commune, energy law

## ABSTRACT

This study attempts to analyse and provide details about the phenomenon of energy poverty in Poland and Polish, especially by characterizing the issue from a factual and legal point of view. Therefore, it focuses both on the meaning of energy poverty existing in research and its reflection in the legal system by linking it with the concepts of energy safety and the right to energy and power resources. The suitability of the normative separation of the phenomenon of energy poverty shows its interrelation with the public interest, which makes it the responsibility of administrative authorities, especially the self-government in communes, to counteract the issue. It also determines a new role of communes and extends the scope of tools introduced to rectify the situation of residents suffering from energy poverty. At the same time, it also burdens communes with new responsibilities (i.e., providing financial support to residents and balancing the need to combat energy poverty with other values and obligations, such as environmental protection). It also aggravates the existing multi-faceted nature of energy poverty and its effects.

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## I. INTRODUCTION

It is undeniable that energy poverty is an actual situation and a severe problem in contemporary reality. In short, it occurs when a household is unable to secure a socially and materially required level of energy services in the home<sup>1</sup> at a reasonable price,<sup>2</sup> but it is by no means that clear. It is a multi-dimensional phenomenon existing in many countries that can be seen and analysed from various perspectives. It is a consequence of diverse factors, which are equally its cause and effect. Therefore, it can be perceived as a social problem. Still, at the same time, it is an economic, legal, and health care issue and a threat to the values important to the public interest, such as environmental protection and, primarily, citizens' life, health, and security.

The above statements are strongly connected with the perception of energy poverty as the obstructed access and problems with the effective use of broadly defined energy (i.e., electricity, gas, heating, or water, and it is also using polluted or dirty fuel substances).<sup>3</sup> Such a situation can be caused, among others factors, by a lack of adequate energy sources or infrastructure and inefficient buildings and appliances, but also by such fundamental reasons as poverty and the level of education in society or a global situation and an energy supply crisis. This variety of manifestations and causes of energy poverty gives rise to a situation that cannot be limited only to the condition of directly affected individuals, who run the risk of ill health, excess winter deaths, respiratory problems, psychological ill health, and long social exclusion,<sup>4</sup> but it has an impact on national and even international issues. It cannot be forgotten that the occurrence of the energy poverty phenomenon indicates that a state fails to ensure its citizens energy security and that such a failure can overload state structures, especially in the sphere of health and welfare, not to mention the state budget. Furthermore, it carries far-reaching implications for the environmental and climate protection, which brings the problem, not only for a given state, but to the global level by creating a real risk.

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<sup>1</sup> Stefan Bouzarovski, 'Energy Poverty in the European Union: Landscapes of Vulnerability' (2014) 3 Wiley Interdisciplinary Reviews: Energy and Environment 276–289.

<sup>2</sup> Opinion of the European Economic and Social Committee on 'Energy poverty in the context of liberalisation and the economic crisis' (exploratory opinion) 2011/C 44/09, C 44/53.

<sup>3</sup> Asghar Akbari, Vahid Vahidinasab, Hamidreza Arasteh, and Ehsan Kazemi-Robati, 'Rural and Residential Microgrids: Concepts, Status Quo, Model, and Application' in Sanjeevikumar Padmanaban, C. Sharmela, P. Sivaraman, and Jens Bo Holm-Nielsen (eds), *Residential Microgrids and Rural Electrifications* (Academic Press 2022) 131–161.

<sup>4</sup> Laura Oliveras, Andrés Peralta, Laia Palència, Mercè Gotsens, María José López, Lucia Artazcoz, Carme Borrell, and Marc Mari-Dell'Olmo, 'Energy Poverty and Health: Trends in the European Union before and during the Economic Crisis, 2007–2016' (2021) 67 Health & Place 2; see also Maciej Lis, Katarzyna Sałach, Konstancja Świącicka, *Rozmaitość przyczyn i przejawów ubóstwa energetycznego* [*Diversity of Grounds and Effects of Energy Poverty*] (Instytut Badań Strukturalnych 2016) 5.

Interestingly, the described problem exists not only in developing<sup>5</sup> but also in developed countries, though in the latter case, the scope of the phenomenon was traditionally and for a long time limited to the UK and the Republic of Ireland,<sup>6</sup> where it was the subject of numerous scientific studies. Nowadays, thanks to long-term research, it is possible to state that energy poverty is a worldwide problem, present also in the countries of the European Union (EU). Although the scope of energy poverty within the EU is hard to estimate due to the varying definitions used in the individual member states' legal systems,<sup>7</sup> it is possible to generate some statistics. The scope of that issue is shown in reports of the EU. They indicate that, in 2016, almost 50 million persons in the EU were affected by energy poverty,<sup>8</sup> whereas in 2020, about 36 million persons could not keep their homes adequately warm.<sup>9</sup>

This shows that the creation of law and policy that protects citizens from energy poverty now and in the future should focus on ways of combating and preventing it to avoid its hard-to-remove and long-lasting effects. Consequently, alongside the necessary amendments to the law, changes should be introduced not only on the international or national level but especially locally, which will make it possible to adjust them to the prevailing conditions and especially to the needs of the residents of a commune. Such an approach makes municipalities the central element in that sphere and a link between all levels of regulations. Moreover, it is the next step in building an energy democracy, a concept in which the renewable energy transition is paired with democratization of the production and management of energy resources, which is conducted by, among others, decentralization of energy systems<sup>10</sup> and the municipalization of energy companies and democratization of their governance structures<sup>11</sup>. As it is seen, energy decentralization could be a useful tool for activating local communities and

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<sup>5</sup> Morgan Bazilian, Smita Nakhoda, and Thijs Van de Graaf, 'Energy Governance and Poverty' (2014) 1 *Energy Research & Social Science* 217–225.

<sup>6</sup> Stefan Bouzarovski, *Energy Poverty: (Dis)Assembling Europe's Infrastructural Divide* (Springer Nature 2018) 2.

<sup>7</sup> EUROSTAT, *Manual for Statistics on Energy Consumption in Households* (Luxembourg 2013) 173.

<sup>8</sup> Harriet Thomson, and Stefan Bouzarovski, 'Addressing Energy Poverty in the European Union: State of Play and Action' <[https://energy-poverty.ec.europa.eu/system/files/2022-04/paneureport2018\\_updated2019.pdf](https://energy-poverty.ec.europa.eu/system/files/2022-04/paneureport2018_updated2019.pdf)> accessed 22 March 2023.

<sup>9</sup> Agnieszka Widuto, 'Energy poverty in the EU' (European Parliamentary Research Service 2022) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733583/EPRS\\_BRI\(2022\)733583\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733583/EPRS_BRI(2022)733583_EN.pdf)> accessed 22 March 2023.

<sup>10</sup> Jennie C. Stephens, 'Energy Democracy: Redistributing Power to the People through Renewable Transformation' (2019) 2 *Environment: Science and Policy for Sustainable Development* 4–13.

<sup>11</sup> Charleen Fei, and Ian Rinehart, *Taking Back the Grid: Municipalization Efforts in Hamburg, Germany and Boulder, Colorado* (Heinrich Böll Stiftung 2014) 3–9.

deconcentrating the decision processes<sup>12</sup>. It is even indicated that ‘A recent mapping of the usage of the term “energy democracy” outlines the concept as both an analytical and decision-making tool, operationalized along three dimensions: popular sovereignty, participatory governance, and civic ownership’<sup>13</sup>.

The present paper seeks to show the vital role of municipalities in combating the problem of energy poverty. First of all, this paper attempts to identify what types of issues connected with energy crisis are faced by communes, how they cope with them, taking into consideration the unique role and impact of the central and EU authorities on the actions of municipalities. As a result, it is possible to point at this stage to the main fields of analysis that can provide answers to the following questions:

- (a) How is the phenomenon of energy poverty seen and defined in the Polish legal system?
- (b) Is counteracting energy poverty a task for communes?
- (c) How do communes counteract energy poverty and what problems do they face during this process?

## II. THE FACTUAL DIMENSION OF ENERGY POVERTY IN POLAND

Because of the lack of a universal definition of energy poverty, it is also challenging to measure. It is understood and formulated differently in various science fields; consequently, there is no unified system of indicators enabling its analysis in the same way in every country. What is more, in the doctrine and research, there is a distinction between energy poverty and fuel poverty<sup>14</sup>; energy poverty is defined differently in developing and developed countries. In developing countries, energy poverty is normally understood as a lack of access to energy

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<sup>12</sup> Johanna Bozuwa, ‘Taking Back Power: Public Power as a Vehicle Towards Energy Democracy’ (TheNextSystem.org, 2017) <<https://thenextsystem.org/learn/stories/taking-back-power-public-power-vehicle-towards-energy-democracy>> accessed 27 February 2023; see also Kacper Szulecki and Dariusz Szwed, ‘Społeczne aspekty OZE: którędy do energetycznej demokracji?’ [‘Social Aspects of Renewable Energy Sources: Where to Energy Democracy?’] in Krzysztof Książkowski, Kamila Pronińska, and Alina Sulowska (eds), *Odnawialne źródła energii w Polsce: Wybrane problemy bezpieczeństwa, polityki i administracji* [The Renewable Energy Sources in Poland. Selected Problems of Safety, Policy and Administration] (Elipsa 2013) 185–211.

<sup>13</sup> Jennie C. Stephens, Matthew J. Burke, Brock Gibian, Elie Jordi, and Richard Watts, ‘Operationalizing Energy Democracy: Challenges and Opportunities in Vermont’s Renewable Energy Transformation’ (2018) 3 *Frontiers in Communication* 2; see also Kacper Szulecki, ‘Conceptualizing Energy Democracy’ (2017) 1 *Environmental Politics* 21–41.

<sup>14</sup> Stefan Bouzarovski, and Saska Petrova, ‘A Global Perspective on Domestic Energy Deprivation: Overcoming the Energy Poverty–Fuel Poverty Binary’ (2015) 10 *Energy Research & Social Science* 31–40.

services,<sup>15</sup> whereas in developed countries, it is understood in terms of energy expenses and incomes<sup>16</sup>.

Energy poverty exists on Polish ground particularly in the second meaning, as the financial aspect of the problem prevails over the general issue of access to energy services. It should be clarified that no general methodology for studying energy poverty has so far been developed in Poland to help identify persons suffering from it and to implement appropriate tools to solve the problem<sup>17</sup>. This point of view also results from a sharp rise in prices caused by the growing importance of energy and its use. It is hard to dispute the fact that a price increase comes along with an increasing level of consumption. Accordingly, it has been noticed that ‘Over the last several decades, the influence of the increase in energy prices exerted on the Polish society was stronger than in the case of other EU countries. In comparison with prices of other indispensable, basic goods; the energy prices in Poland are among the highest in Europe’<sup>18</sup>. This situation is believed to be related to a long-term global trend associated with commodity prices that significantly burden household budgets; a considerably lower level of income in Poland as compared to the prices of energy resources and high heating costs resulting from the climate and the quality of buildings<sup>19</sup>. Although there are no universal indexes for measurements in Poland, the measurements of energy poverty used in the existing studies are based on five indicators:

- (a) two objective indicators: ‘low income, high costs’ and ‘high actual cost’;
- (b) three subjective indicators: ‘home not warm enough’, ‘housing faults’, and ‘bills difficulties’<sup>20</sup>.

A study based on the above five indicators showed that in Poland in 2017, almost 10 per cent of households (1.33 million out of 13.57 million) suffered from multi-dimensional energy poverty. It is 8.8 per cent of the population (3.35

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<sup>15</sup> Maciej M. Sokołowski, ‘When Black Meets Green: A Review of the Four Pillars of India’s Energy Policy’ (2019) 130 *Energy Policy* 60–68.

<sup>16</sup> Stefan Buzar, ‘The “Hidden” Geographies of Energy Poverty in Post-socialism: Between Institutions and Households’ 2007 2 *Geoforum* 224–240.

<sup>17</sup> ‘Raport z analizy problemu ubóstwa energetycznego w gminach województwa małopolskiego of 2022’ [‘Notes from Analysis of Energy Poverty in Lesser Poland’s Communes 2022’] 3 <file:///C:/Users/admin/Downloads/Raport-z-analizy-ubostwa-energetycznego-we-wszystkich-gminach-województwa-002.pdf> accessed 22 March 2023.

<sup>18</sup> Katarzyna Świerszcz, and Bogdan Ćwik, ‘Geothermal Energy as a Part of Non-military Defence Strategy in the Context of the Prevention of Energy Poverty of Local Communities’ (2017) 18 *Przedsiębiorczość i Zarządzanie* 136.

<sup>19</sup> *Ibid.* 136.

<sup>20</sup> Jakub Sokołowski, Piotr Lewandowski, Aneta Kielczewska, and Stefan Bouzarovski, ‘A Multidimensional Index to Measure Energy Poverty: The Polish Case’ (2020) 15 *Energy Sources, Part B: Economics, Planning, and Policy* 92.

million persons out of 38 million). By comparison, 25 per cent of households in Poland suffer from energy poverty in one dimension, while two in three households are not affected by any dimension of energy poverty<sup>21</sup>. Residents of buildings built before 1946 were the most affected; households in rural areas and households that were dependent on retirement and disability pensions were at the highest risk of multi-dimensional energy poverty<sup>22</sup>. The study stressed that ‘Although the vast majority of these households have incomes that are low relative to the incomes of the general population in Poland, only half of energy-poor households are income poor’<sup>23</sup>.

By comparison, those numbers do not change much over time. In 2013, energy-related expenses were at the level of 11 per cent of all expenses of a household, which means that they were 50 per cent greater than the average expenses in the other EU member states.<sup>24</sup> That resulted in 17.1 per cent of the population (6.44 million people) suffering from it. In 2014, 4.2 million people (approximately 11.5 per cent of all households) lived in underheated rooms. Similarly, energy poverty affected mainly poor Polish citizens living in post-war tenement houses equipped with inefficient heating systems (old coal furnaces), poor people living in old, detached houses with little or no thermal insulation, multi-generational families of farmers or labourers living in large houses, and the elderly living alone in large houses in the countryside<sup>25</sup>. That is why energy poverty in Poland is normally combined with low-income, one-person households, dwelling characteristics, and the ‘demographic challenges of an ageing population’<sup>26</sup>. In 2016, it was 12.2 per cent of the population, which amounts to 4.6 million residents and 1.3 million households<sup>27</sup>.

Interestingly, the level of energy poverty varies across the country. Five out of the sixteen voivodeships in Poland, being at the same time the largest regions (i.e., Masovia, Greater Poland, Silesia, Lesser Poland, and Lower Poland) have an energy poverty rate at the level of 49 per cent of all energy-poor households (52 per cent of all households)<sup>28</sup>. The rate is visibly highest in the northern and

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<sup>21</sup> Ibid. 97.

<sup>22</sup> Ibid. 92, 108.

<sup>23</sup> Ibid. 108.

<sup>24</sup> Świerszcz and Ćwik (n 18) 136.

<sup>25</sup> Maciej Lis, Agata Miazga, Katarzyna Sałach, Aleksander Szpor, and Konstancja Święcicka, *Policy Brief–Ubóstwo energetyczne w Polsce–Diagnoza i rekomendacje* [Policy Brief: Energy Poverty in Poland: Diagnosis and Recommendations] (Instytut Badań Strukturalnych 2016) 18.

<sup>26</sup> Radosław Mędrzycki, and Mariusz Szyrski, ‘Energy Poverty as a European Union and Polish Legal Issue’ (2018) 2 Białostockie Studia Prawnicze 132.

<sup>27</sup> Rafał Boguszewski, and Tomasz Herudziński, *Ubóstwo energetyczne w Polsce* [Energy Poverty in Poland] (Pracownia Badań Społecznych SGGW 2018) 11.

<sup>28</sup> Sokołowski, et al. (n 20) 106.

western regions of Poland (9–12 per cent of households) and is lowest in the eastern part of the country (8–10 per cent of households)<sup>29</sup>. The difference between the eastern and western parts of the country is seen as a consequence of the newer architecture in the eastern part. Buildings in the eastern regions are, on average, newer, and the index of a household ‘not being warm enough’, is lower in the eastern regions than in the central or western regions<sup>30</sup>.

This also leads to differences in energy levels of households in particular communes. The phenomenon affects many households in some communes, while in others it is hardly reported. A general study shows that in rural areas and small towns, household incomes are, on average, lower than in cities, while the share of households depending on farming or welfare transfers and the share of households occupying detached houses are higher. Consequently, homes in rural areas constitute a larger part of energy-poor households, given that 44 per cent of energy-poor households are in rural areas, compared to 33 per cent of all households<sup>31</sup>. The collected data showed that out of all households in Lesser Poland, 13 per cent are affected by energy poverty<sup>32</sup>.

The impossibility of presenting individual data for communes is caused by the fact that most studies show results for voivodeships, and those conducted in communes demonstrate low participation of authorities and residents in such studies, which might result from the low awareness of the subject<sup>33</sup>. Furthermore, analysis and research on the problem in communes now proceed on an individual basis in voivodeships (for example, the aforementioned ‘Raport z analizy problem ubóstwa energetycznego w gminach województwa małopolskiego’ of 2022<sup>34</sup>) and are not part of a campaign in the whole country, which would help to describe the problem by using identical indexes for measuring.

The reason for that is hard to understand, given the need to create tools combating energy poverty on the central and local state levels and the important role local authorities play in that process. The aid provided by communes to persons affected by energy poverty is more efficient than that given by central authorities. In particular, it is the effect of undertaking actions needed on a smaller scale that enables providing aid and services in forms and regularity adapted to

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<sup>29</sup> Ibid. 106.

<sup>30</sup> Lilia Karpinska, Sławomir Śmiech, João Pedro Gouveia, and Pedro Palma, ‘Mapping Regional Vulnerability to Energy Poverty in Poland’ (2021) 13 Sustainability 8–12.

<sup>31</sup> Sokołowski, et al. (n 20) 106.

<sup>32</sup> Notes (n 17) 3.

<sup>33</sup> Dominik Owczarek, and Agata Miazga, *Ubóstwo energetyczne w Polsce–Definicja i charakterystyka społeczna grupy* [Energy Poverty in Poland: Definition and Social Characteristics of the Group] (Fundacja Instytut na rzecz Ekorozwoju 2015) 15.

<sup>34</sup> Notes (no 17) 3.

local conditions. For this reason, it is necessary to estimate the number of households suffering from energy poverty on a commune level to plan and develop an adequate policy and financial plans<sup>35</sup>. Moreover, the effective law and directions of policy make communes responsible today for a huge part of the aid provided to energy-poor households and the preventive actions limiting its existence in the future.

### III. ENERGY POVERTY AS A LEGAL MATTER

It can be seen that legal regulations frequently combine the phenomenon of energy poverty with energy safety, the right to energy and, generally understood, poverty. That way of perceiving this issue significantly impacts the shape of regulations and introduced legal tools counteracting energy poverty.

Nowadays, energy is crucial for a minimum subsistence and the use of other goods needed for everyday life<sup>36</sup>. It has meaning not only for individuals but also for the whole country, understood as the administration and other state structures. This makes it a value protected by the public interest as the centre of energy safety, which can be treated as part of the economic or financial safety of the country. Pursuant to Art. 3 point 16 of the Energy Law Act of 10 April 1997 (Journal of Laws of 2021, pos. 716), energy safety is understood as ‘the economic state that would enable recipients to cover long-term demand for fuels and energy both in a technically and economically justified manner, while maintaining the environmental protection requirement’. It is based on four fundamental issues: safety of energy supply, operational security of energy infrastructure, balancing energy supply with its demand, and secure energy supply risk<sup>37</sup>. As a result, it can be ensured not only for individuals, but also for self-government units and energy companies<sup>38</sup>.

Although it is legally defined, energy safety is still a controversial concept due to its ambiguity and the lack of a universal legal meaning that describes its complex nature<sup>39</sup>. Consequently, it is defined in various ways, depending on the

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<sup>35</sup> Iwona Figaszewska, ‘Ubóstwo energetyczne–co to jest?’ [‘Energy poverty: what is it?’] (2009) 5 Biuletyn Urzędu Regulacji Energetyki 19.

<sup>36</sup> Marcin Marszałek, ‘Prawo do energii’ [‘The Right to Energy’] (2017) 11 Państwo i Prawo 70.

<sup>37</sup> Mariusz Szyrski, *Energetyka lokalna. Studium administracyjnoprawne* [Local Energetics: Administrative Law Study] (Wolters Kluwer 2019).

<sup>38</sup> Włodzimierz Bojarski, ‘Bezpieczeństwo energetyczne’ [‘Energy Safety’] (2004) 3 Wokół Energetyki.

<sup>39</sup> Izabela Maria Jankowska, ‘Bezpieczeństwo energetyczne w polityce bezpieczeństwa państwa’ [‘Energy Safety in the State Energy Policy’] (2015) 11 Studia Lubuskie 153; Zuzanna Dziedzic, ‘Państwowe monopole czy w pełni liberalny rynek energii–co bardziej sprzyja bezpieczeństwu energetycznemu?’

rank and purpose of an act in which it is regulated<sup>40</sup>. Regardless of the interpretative problems it brings, it seems to be the source of a new category of rights of entities, which is called the right to energy.

The right to energy is based on the above-mentioned meaning of energy safety. Nevertheless, a literature review shows that it is perceived in a wider range. It is frequently connected with dignity and is perceived as support for the exercise of other rights guaranteed for entities<sup>41</sup>. For this reason, energy is now seen as a good that should be provided by the state, although it is not explicitly expressed in the legal system. Therefore, the right to energy is present in legal reality, and it is based on the concept of energy safety. It can be defined as the right to energy supply at every time, in an adequate amount, of adequate quality, and for a reasonable price<sup>42</sup>. In that context, this right is a guarantee of public safety<sup>43</sup> and energy safety as well.

In view of the above, energy poverty could be defined as a state in which energy recipients encounter various obstacles in access to and the enjoyment of energy safety. Seen in this way, it is also a phenomenon undermining residents' rights, which makes combating it an action within the public interest and the responsibility of the state and its authorities. On the other hand, that approach can be named only 'a causal definition' of the issue that cannot explain its real meaning, especially the grounds and consequences. This can be solved by describing that phenomenon by means of the existing legal framework, particularly on poverty.

Energy poverty is frequently seen in research and legal regulations as part of a broader category of poverty, which hugely impacts the creation of means to counteract it. The above-mentioned financial aspect of the issue justifies it. As a result, social assistance is typically perceived as an adequate tool against energy

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['National Monopolies or Fully Liberal Energy Market: What Is More Effective for Energy Safety?'] (2011) 2 Przegląd Strategiczny 353.

<sup>40</sup> Filip Elżanowski, 'Komentarz do art. 3 ustawy Prawo energetyczne' [„Commentary to Art. 3 of The Energy Law Act’] in Mariusz Swora and Zdzisław Muras (eds), *Prawo energetyczne. Komentarz [Commentary to the Energy Law Act]* (Wolters Kluwer 2010) 233.

<sup>41</sup> Judgment of the Constitutional Tribunal of 25 July 2006, P 24/05, OTK-A 2006, no. 7, pos. 87, 4.04.2001, K 11/00, OTK 2001, no. 3, pos. 54; Marek Chmaj, 'Źródło wolności i praw człowieka' [‘The Source of Human Freedoms and Rights] in Marek Chmaj (ed), *Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej [Human Freedoms and Rights in the Polish Constitution]* (Wolters Kluwer 2016) 32–48.

<sup>42</sup> José Goldemberg, *World Energy Assessment: Energy and the Challenge of Sustainability* (United Nations Development Programme 2000) 113.

<sup>43</sup> Judgment of the Constitutional Tribunal of 25 July 2006, P 24/05. See more: Marcin Marszałek *Swoboda działalności gospodarczej wytwórcy-sprzedawcy energii elektrycznej [The Freedom of Business Activity of Electricity Producer-Supplier]* (C. H. Beck 2015) 79–80, 89, 94.

poverty, which makes it possible to dedicate aid according to ‘the autonomous area of local [state] regulations’<sup>44</sup>.

Although these three concepts make it possible to define energy poverty, it was absent from both international and domestic legal acts for a long time. The situation has changed due to progressive climate, environmental changes, and an ever-increasing real risk of an energy crisis.

For Polish domestic law, the most important role in this matter is played by EU regulations, which are the starting point for the creation and development of state legal acts and approaches. Nowadays, the term ‘energy poverty’ is incorporated into many EU documents, including the EU’s ‘Third Energy Package’. The obligations for member states arising from them can be named as an obligation to form an integrated approach to the energy issue, especially energy poverty, as part of their social policies. This is to be understood as the improvement of social policies and housing energy efficiency achieved, thanks to multi-level governance.

It was stated in the 2010 Opinion of the European Economic and Social Committee on ‘Energy poverty in the context of liberalization and the economic crisis’ that ‘combating energy poverty is a new social priority that needs to be tackled at all tiers of government and the EU should provide common guidelines to ensure that all Member States adopt the same approach to eradicating this phenomenon’<sup>45</sup>. The 2013 Opinion ‘For coordinated European measures to prevent and combat energy poverty’<sup>46</sup> pointed to a link between energy poverty and energy security. It reads that ‘European energy security and solidarity commitment would drive forward a truly European policy for combating energy poverty and encouraging solidarity based on the recognition of a universal right of access to energy, which the EESC considers to be an essential common good, so that everyone can lead a decent life’.

Later, it was stressed in the 2019 Opinion of The Committee of Regions ‘Multilevel governance and cross-sectoral cooperation to fight energy poverty’ that since energy poverty is already a well-known problem and is now being increasingly recognized in the EU’s legislative framework with explicit obligations on Member States, nobody will be able to claim in the future that they were unaware of the issue: policies and specific measures are needed; notes, however, that the precise definition of the different aspects

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<sup>44</sup> See more: Iwona Sierpowska, *Pomoc społeczna jako administracja świadcząca. Studium administracyjnoprawne* [Social Assistance As a Providing Administration: Administrative and Legal Study] (Wolters Kluwer 2012).

<sup>45</sup> Opinion of the European Economic and Social Committee on ‘Energy poverty in the context of liberalization and the economic crisis’ (exploratory opinion), 2011/C 44/09, C 44/53.

<sup>46</sup> Opinion of the European Economic and Social Committee ‘For coordinated European measures to prevent and combat energy poverty’ (own-initiative opinion), 2013/C 341/05, C 341/21.

and effects of energy poverty as well as the necessary indicators to measure them need to be developed with full attention to the diversity of regional and local circumstances in order to ensure that policy measures can be targeted and implemented effectively.<sup>47</sup>

Then, in the 2022 Opinion of The Committee of Regions ‘Towards a socially fair implementation of the Green Deal’<sup>48</sup>, the Committee pointed to the need for creating an EU legal definition of energy poverty. It also highlighted that climate and energy policies cannot affect vulnerable households, and it emphasized the importance of measures relating, for instance, to energy efficiency, renewable energy sources, and community-led projects in combating energy poverty.

In Directive 2009/72/EC, which is one of the most important acts regulating the matter of energy in the EU, it is precisely stated that ‘energy poverty is a growing problem in the Community and Member States which are affected and which have not yet done so should therefore develop national action plans or other appropriate frameworks to tackle energy poverty, aiming at decreasing the number of people suffering such situation.’ Existing Directive 2019/944 creates the rules for member states to collect information and measure energy poverty and it also states that

Where Member States are affected by energy poverty and have not developed national action plans or other appropriate frameworks to tackle energy poverty, they should do so, with the aim of decreasing the number of energy poor customers. Low income, high expenditure on energy, and poor energy efficiency of homes are relevant factors in establishing criteria for the measurement of energy poverty. In any event, Member States should ensure the necessary supply for vulnerable and energy poor customers. In doing so, an integrated approach, such as in the framework of energy and social policy, could be used and measures could include social policies or energy efficiency improvements for housing. This Directive should enhance national policies in favour of vulnerable and energy poor customers.

In its further regulations, the Directive creates the grounds for protection of final recipients, especially vulnerable consumers, and the criteria for measuring energy poverty based on low income, high expenditure of disposable income on energy, and poor energy efficiency.

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<sup>47</sup> Opinion of the European Committee of the Regions on ‘Multilevel governance and cross-sectoral cooperation to fight energy poverty’ ENVE-VI/038.

<sup>48</sup> Opinion of the European Committee of the Regions on ‘Towards a socially fair implementation of the Green Deal’ ENVE-VII/022.

Regulating the issue of energy poverty in directives and opinions results in the lack of a universal and identical definition of this concept in every member state. A major benefit of that solution is the possibility to adapt it to local conditions. Its drawback is that in each case it can be measured using different measurements and described with diverse indicators. This situation is further complicated by the fact that there is no limit to the creation of indicators and even to diversifying them in the internal legal system due to the aid scheme that can be provided, which is the case with the Polish regulations.

Because of the impact of EU law on the domestic legal system and the general global situation, it is possible to observe changes in the approach to the energy crisis and energy poverty in Polish regulations. It started in 2013 with the introduction, according to the Union provisions, of a definition of ‘the vulnerable customer’ into Art. 3 points 13 c) and 13 d) of the Energy Law Act, who is identified using social and living criteria<sup>49</sup> as a recipient of a household allowance. Besides the legal regulations, the worldwide fossil fuels crisis unfolding in 2021 and 2022, which manifested itself in the costs of gas, coal, and electric energy, led to the introduction of a definition of ‘energy poverty’ into the Polish Energy Law Act<sup>50</sup>.

According to Art. 5gb of the Energy Law Act, energy poverty is described as a situation in which a household conducted by one or more persons in a dwelling or a detached house, not used for business purposes, is not able to provide for itself a sufficient level of heating, cooling, and electricity for devices. This definition requires that a household meets the following three criteria: low income, high expenditures on energy, and, pursuant to Art. 5gb, occupying a dwelling or a building of low energy efficiency. The European Commission Recommendation of 14 October 2020 (UE) 2020/1563 lays down that the criteria for energy poverty qualifying for the programs reducing that phenomenon be defined in each strategy.

At first glance, the definition is mainly based on the financial aspect of energy poverty, as can be seen in the three criteria mentioned above. Second, it describes only the situation of consumers suffering from poverty, leaving the problems of other individuals, self-government units, or entrepreneurs outside its scope. Although it responds to the EU way of understanding that issue, it is also controversial, especially when it shapes the ways of preventing and combating energy poverty. Consequently, it makes them a social aid, which makes the general and systematic approach to the issue problematic. And through this, it moves the actions against energy poverty from central to local authorities.

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<sup>49</sup> Judgment of Supreme Administrative Court of 2 June 2022, III OSK 5152/21, LEX no. 3353286.

<sup>50</sup> Sokołowski, et al. (no 20) 9.

#### **IV. COMBATING ENERGY POVERTY IN COMMUNES**

The policy against legal poverty is pursued in Poland in a multi-governance manner by state and local authorities. Generally, state authorities create law and project its directions, while local authorities perform actions and carry them out in relation to residents. The government administration is responsible for providing long-term energy safety, and it sets the direction for regulations, while communes take actions foreseen in their development strategies<sup>51</sup>. The local energy policy is a complex operation requiring a continuous comparison between and selection of values, seeking a compromise when they are in conflict, and knowledge of the limits of communes' possibilities and of the scope of their tasks and competence. Furthermore, they must pursue it even when the law does not meet reality. Electric energy and the natural gas supply market is rather a national issue, while heat supply is local<sup>52</sup>. Consequently, this leads to the simultaneous multi-level governance of that issue by local and state authorities. Although almost all tools needed for energy management are in the hands of communes, the government administration cooperates with local authorities and can monitor their actions. Combating energy poverty according to the rules of sustainability, decentralization, and subsidiarity is carried out adequately to the local conditions. This breaks down the distinction between proper and commissioned tasks. Due to the multi-governance model of energy policy, tasks performed by communes can also be commissioned to them by the government, which is also engaged in counteracting energy poverty.

Neither The Local Government Law nor The Law Energy Act literally makes counteracting energy poverty a commune task. This does not mean that it is not; it would be against the idea of all the amendments to law introduced so far to deal with that issue. It only needs to be interpreted from the values and then regulations and other tasks assigned to communes. It seems the most natural to derive it from local energy safety and communes' mandatory responsibility to ensure it. Energy poverty goes against it and is also at odds with the right to energy. Therefore, it is an obstacle to the expected state of energy safety, which is certainly needed for the state economy and a strategic position but is also a condition for human well-being.

It cannot be denied that energy supply is a basic collective need. Supplying energy provided for in Art. 7 point 3 and 3a of the Local Government Law Regulations is a commune's proper task. It contains primarily duties to act to build and sustain community energy self-sufficiency by developing local power-

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<sup>51</sup> The Energy Policy of Poland until 2025 is encapsulated in Assumptions: A Document Adopted by the Council of Ministers on 4 January 2005, p. 13.

<sup>52</sup> The Supreme Audit Office on the findings of a review: Local Energy Safety KGP.430.011.2019 2022 5.

generating potential<sup>53</sup>, especially supporting and setting up energy companies<sup>54</sup> and using renewable energy sources<sup>55</sup>. This impacts the ideas on a definition of the local energy industry, which, as it is suggested in the literature, is the production of energy on a local level, mainly involving renewable sources in order to achieve energy independence and self-sufficiency<sup>56</sup>. Communes achieve it mainly by participating in the economic cycle as an entrepreneur providing energy transmission and distribution<sup>57</sup>, as a recipient who contracts with other energy companies, and as a business regulator responsible for ensuring conditions for effective actions by energy businesses.

When taking part in the market, a commune is also a recipient of energy, which puts it in the role of counterparty to a contract with an energy company rather than a rule setter. This can both enlarge the scope of energy poverty or help to combat it. Energy poverty can be effectively combated by means of energy clusters, which were introduced into the Polish legal system in 2016 with the amended Act on renewable energy sources<sup>58</sup>. An energy cluster is a civil law contract of a group of stakeholders concluded to accomplish a specific economic objective in the energy context, which can connect, among others, companies, local government units, and individuals to build complex logistic chains that could support the power delivery process<sup>59</sup>. A cluster leads to synergy through cooperation<sup>60</sup>, and with the exploitation of economies of scale, it is possible to obtain better prices and access to energy, helping to reduce the number of individuals suffering from the financial causes of energy poverty.

As a regulator, communes take an active part in the suitable organization of energy services provided by separate entities to protect services of public interest

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<sup>53</sup> Halina Rechul, 'Bezpieczeństwo energetyczne gminy' ['Commune Energy Safety'] (2007) 10 *Samorząd Terytorialny* 67.

<sup>54</sup> Łukasz Rozmysłowski, 'Granica zadania własnego gminy w zakresie zaopatrzenia w ciepło, energię elektryczną i paliwa gazowe' ['The Limit of Communes' Proper Task in Supplying Heat, Electricity, and Fuels] (2017) 10 *Samorząd Terytorialny* 62–63.

<sup>55</sup> Karolina Chról, and Mariusz Szyrski, 'Próba modelowania zadań publicznych jednostek samorządu terytorialnego w zakresie wspierania rozwoju odnawialnych źródeł energii (OZE)' ['An Attempt to Model Self-government Tasks in the Scope of Supporting Renewable Energy Sources Development] (2021) 7–8 *Samorząd Terytorialny* 147–161.

<sup>56</sup> Szyrski (no 37).

<sup>57</sup> Sławomir Dudzik, *Działalność gospodarcza samorządu terytorialnego. Problematyka prawna* [The Self-government Business Activity: Legal Aspects] (Zakamycze 1998) 99.

<sup>58</sup> Act of 20 February 2015 r. on renewable Energy sources (uniform text Journal of Laws of 2022, pos. 1378, as amended).

<sup>59</sup> Klastry energii [Energy Clusters] <<https://trendywnenergetyce.pl/en/energy-clusters>> accessed 25 March 2023.

<sup>60</sup> Michael E. Porter, 'Location, Competition, and Economic Development: Local Clusters in a Global Economy' (2000) 14 *Economic Development Quarterly* 15–34.

from total commercialization<sup>61</sup>. The basic form of regulation is planning an energy policy and actions against energy poverty in its territory. This is neatly captured in a document titled *Strategia Bezpieczeństwo Energetyczne i Środowisko – perspektywa do 2020 r.*,<sup>62</sup> which points out that local safety based on hierarchic planning from a state to a local level guarantees national, regional, and local energy safety. Commune planning is understood as a way to regional development and the activation of local communities<sup>63</sup>. According to Art. 18 (1) points 1 and 4 of the Energy Law Act, a commune's proper task within energy supply is to plan and organize the provision of energy to its residents, rationalize energy consumption, and promote solutions reducing it. The requirement to comply with other regulations in the course of planning, including the spatial plan, points to the need for cohesion between a commune's actions. Forecasting and combating energy poverty must be then compatible with a commune's budget and also with its spatial planning. In particular, space management, which sets economic development priorities<sup>64</sup>, plays a major role in a local energy policy and combating energy insufficiency. It is sometimes also necessary to include renewable energy sources in a local energy policy. Art. 3 of the Act of 20 May 2016 on investments in wind power plants<sup>65</sup> provides that they can be built only when foreseen in local spatial plans<sup>66</sup>. Thus energy planning helps rationalize and make actions in that field more predictable.

Communes' proper tasks in the field of combating energy poverty are closer to prevention and have a rather indirect impact on persons suffering from it. Those actions are mainly focused on the elimination of the causes of energy poverty, produce effects on a general level, and are addressed to the whole community. Tasks commissioned to communes by the government administration play a different role. Their analysis proves that they are part of the state social

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<sup>61</sup> Eugeniusz Wojciechowski, *Samorząd terytorialny w warunkach gospodarki rynkowej* [Self-government in Conditions of Market Economy] (Wydawnictwo Naukowe PWN 1997) 110 et seq.

<sup>62</sup> *Strategia Bezpieczeństwo Energetyczne i Środowisko – perspektywa do 2020 r.* [Energy Security and Environment Strategy: Perspective to 2020] (Ministerstwo Gospodarki; Ministerstwo Środowiska 2014) [https://kigeit.org.pl/FTP/PRCIP/Literatura/008\\_3\\_Strategia\\_Bezpieczenstwo\\_Energetyczne\\_i\\_Srodowisko\\_2020.pdf](https://kigeit.org.pl/FTP/PRCIP/Literatura/008_3_Strategia_Bezpieczenstwo_Energetyczne_i_Srodowisko_2020.pdf) accessed 10 March 2023.

<sup>63</sup> Ibid. 53.

<sup>64</sup> Zbigniew Niewiadomski, *Planowane przestrzenne w systemie samorządu terytorialnego. Zagadnienia administracyjnoprawne* [Spatial Planning in Self-government System. Administrative Law Issues] (Wydawnictwo Naukowe PWN 1994) 40.

<sup>65</sup> Act of 20 May 2016 on investments in wind power plants (uniform text Journal of Laws of 2021, pos 724).

<sup>66</sup> Judgement of the Supreme Administrative Court of 15 March 2018, II OSK 2305/17, LEX no. 2497787; Marcin Makowski, *Ustawa o inwestycjach w zakresie elektrowni wiatrowych. Komentarz* [Commentary on The Wind Farm Investment Act] (LEX/el 2018) art. 3.

policy and take the form of a social allowance<sup>67</sup>, which is a direct aid to consumers suffering from energy poverty. They tend to be a type of a special shield allowance, such as energy or coal given to entities to support their access to and use of energy. They are also carried out by local authorities, but the funds are not part of the local budget.

For example, the energy allowance granting process belongs to the competence of the local self-government in a commune. An energy allowance is granted by an executive body in an administrative decision on the application by a consumer claiming energy vulnerability (Art. 5d of the Energy Law Act). A commune cannot therefore begin the procedure on its own, but on the initiative of an entity<sup>68</sup>. The role of self-government is limited only to the procedure, whereas the payment of an allowance is a task of the central government administration (Art. 5f § 1). For that purpose, communes receive subsidies from the national budget for the payment of energy allowances, and the budget strictly limits the funds provided for that specific cause<sup>69</sup>. By binding it with the household allowance, it is also perceived as a form of combating a wider scope of poverty<sup>70</sup>. A similar role is played by other allowances introduced into the legal system as a result of disturbances in the energy fuel market.

Deceptively existing instruments can be seen as parts of a complementary system effectively counteracting energy poverty based on the actions of the government and commune administration, which prevents and deals with the effects of that problem. First, the energy policy in the area of combating energy poverty depends on numerous factors, and it is very specific from country to country and commune to commune. Therefore, the ability to deal with it will be different in every commune and determined by various factors. A closer look at the regulations and their functioning shows that the road to the achievement of that purpose will be illusory and difficult.

Counteracting energy poverty in communes can lead to a conflict of values guaranteed in the public interest and can therefore be insufficient. Self-government authorities are obliged not only to secure energy safety, plan their actions, provide

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<sup>67</sup> Angelika Kurzawa, 'Pomoc dla odbiorców wrażliwych energii elektrycznej – dodatek energetyczny' ['Hhhelp for the Vulnerable Consumer of Electricity: Energy Allowance'] (2016) 2 *Studia Prawnicze i Administracyjne* 35.

<sup>68</sup> See: Judgment of Voivodship Administrative Court in Cracow of 6 May 2016, III SA/Kr 1421/15, Lex no. 2050421.

<sup>69</sup> Michał Cyrankiewicz, 'Rusza dodatek energetyczny' (2014) 1 *Rzeczpospolita* 2 <<https://sip.lex.pl/publication/151185467/cyrankiewicz-michal-rusza-dodatek-energetyczny?keyword=Micha%C5%82%C2%0Cyrankiewicz,%20%E2%80%98Rusza%20dodatek%20energetyczny%E2%80%99%20&cm=SFIRST>> accessed 16 May 2023.

<sup>70</sup> Andrzej Skoczylas, and Mariusz Swora, 'Wsparcie dla odbiorcy wrażliwego w świetle przepisów ustawy – Prawo energetyczne' ['The Support for the Vulnerable Consumer in the Light of The Energy Law Act] (2014) 9 *Samorząd Terytorialny* 8.

energy (fuels suitable to the infrastructure) to residents but, at the same time, to protect other important values, such as the natural environment, and combat other social problems occurring. The Constitutional Court held in its judgement of 25 July 1996 that there may be a conflict in the energy economy between such values and constitutional principles as economic freedom, citizen safety, sustainable development, and environment protection. It is the responsibility of public authorities to provide energy safety with consideration given to ecologic safety<sup>71</sup> and sustainable development<sup>72</sup>. Keeping that balance can make combating energy poverty and protecting the natural environment impossible because of financial difficulties and a deficiency in the legal regulations<sup>73</sup>, which become apparent especially during the introduction of ‘green energy’.

Although commune self-government is seen as an increasingly important leader in the renewable energy sources development<sup>74</sup>, it still encounters local and national barriers. This is the case particularly with commune spatial and energy planning, which is more limited and less than open to new possibilities.

First, the state legislation regulating spatial planning, including renewable energy sources, is too complicated and regulated in many legal acts, both national and local, making it hard to navigate it<sup>75</sup>. Second, communes do not have an economic interest in introducing spatial plans, and it is not their legal obligation; therefore only about 30 per cent of the country territory is regulated in plans<sup>76</sup>. It has a huge impact on wind power plants, which can be situated only on the terms indicated in a plan. Third, even the implementation of such an investment on a different basis is difficult because they are not investments with a public purpose<sup>77</sup>.

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<sup>71</sup> Judgement of the Constitutional Tribunal of 25 July 2006, P 24/05, OTK-A 2006/7/87, Dz.U.2006/141/1012 <[www.otk.trybunal.gov.pl](http://www.otk.trybunal.gov.pl)> accessed

<sup>72</sup> Czesław Puchalski, Bogdan Saletnik, and Anna Wójtowicz-Dawid, ‘Realizacja regionalnej polityki energetycznej na podstawie planowania’ [‘Realisation of Regional Energetic Policy on the Ground of Planning’] (2021) 25 Polish Journal for Sustainable Development 73.

<sup>73</sup> Rechul (no 53) 68.

<sup>74</sup> Eryk Kosiński, and Michał Trupkiewicz, ‘Gmina jako podmiot systemu wspierania wytwarzania energii elektrycznej z odnawialnych źródeł energii’ [‘The Commune as an Entity in the System of Supporting Production of Renewable Resources Energy’] (2016) 3 Ruch Prawniczy, Ekonomiczny i Socjologiczny 93–107.

<sup>75</sup> Katarzyna Małyś-Sulińska, ‘Regulacje szczególne dotyczące wydawania decyzji o warunkach zabudowy dla inwestycji kwalifikowanej jako instalacja odnawialnego źródła energii’ [‘Special Regulations Regarding the Issue of Decisions on Building Conditions for Investments’] (2019) 3977 Acta Universitatis Wratislaviensis 469–481.

<sup>76</sup> Julia Niedziela, ‘Lokalizacja instalacji odnawialnych źródeł energii – aspekty prawne’ [‘Localisation of Renewable Energy Sources Installations: Legal Issues’] (2020) 86 Studia Iuridica 201.

<sup>77</sup> Judgment of the Voivodship Administrative Court in Cracow of 3.11.2015, II SA/Kr 1179/15, LEX no. 1939256; Judgment of the Voivodship Administrative Court in Warsaw of 9.02.2007, IV SA/Wa 2339/06, LEX no. 319125; Judgment of the Voivodship Administrative Court in Poznań of 22.04.2010, IV SA/Po 878/09, LEX no. 1699526; Judgment of the Voivodship Administrative Court in Cracow of 30.01.2009, II SA/Kr 735/08, LEX no. 519780.

Even where a commune uses that source in its own company, it still will not be treated as a public utility<sup>78</sup>. Fourth, even where a plan foresees the possibility of building such a structure, it is not a general permission, but it is limited with bans and conditions<sup>79</sup>. Spatial planning defines a local energy policy. Besides prejudging the location of the energy infrastructure, plans also prioritize commune economy goals and a timeline of a local energy policy. As a result, local spatial plans have an impact on commune energy plans, and they may facilitate or impede the energy supply.

This dependency is depicted in Art. 18 (2) point 1 of the Energy Law Act, which requires local energy planning acts to be consistent with spatial planning. This imposes on a commune the obligation to know the local market conditions exactly and make a forecast both at the stage of spatial and later energy planning. But it still cannot be enough to develop a sufficient policy against energy poverty. The problem lies both in the procedure of preparing energy plans and later in their legal nature.

The introduction of energy plans in communes is conditional and indicates a gradation of commune tasks. The only legal obligation that must be fulfilled is the adoption of assumptions for plans on heat, power, and gaseous fuel supply for communes (Arts. 19 and 20 of the Energy Law Act). A plan can be adopted in a commune only when the energy company's plans do not meet the assumptions. Moreover, when a professional energy supplier operates in a commune, there is no obligation for a commune to supply energy for residents. It corresponds with the popular view that one cannot interpret a commune's task of supplying energy to its residents from Art. 18 of the Law Energy Act<sup>80</sup>. In that situation, there is a lack of competency<sup>81</sup>, which is certainly coherent with the subsidiarity rule<sup>82</sup>, but it simultaneously weakens competition in the market. Both actions can then be conducted as a two-step operation, depending on the sufficient activity of a private energy provider, who is also responsible for the infrastructure.

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<sup>78</sup> Kosiński and Trupkiewicz (no 74) 93–107.

<sup>79</sup> Filip Nawrot, 'Budowa instalacji odnawialnych źródeł energii a planowanie przestrzenne' ['Construction of Renewable Energy Sources Installation and Spatial Planning'] (2017) 1 *Prawne Problemy Górnictwa i Ochrony Środowiska* 73.

<sup>80</sup> Jerzy Baehr, Edward Stawicki, and Jacek Antczak, *Prawo energetyczne. Komentarz* [The Energy Law Act: Commentary] (Zakamycze 2003) 167.

<sup>81</sup> Marzena Czarnecka, and Tomasz Ogłódek, *Prawo energetyczne. Komentarz* [The Law Energy Act: Commentary] (C. H. Beck 2012) 475; judgement of the Appeal Court in Wrocław of 5 May 2016 r., I ACz 777/16, unpublished.

<sup>82</sup> Aleksandra Wiktorowska, 'Zasada subsydiarności' ['The Rule of Subsidiarity'] in Iwona Niżnik-Dobosz, Piotr Dobosz, Dorota Dąbek, and Marcin Smaga (eds), *Instytucje współczesnego prawa administracyjnego. Księga jubileuszowa Profesora zw. dr hab. J. Filipka* [The Institutions of Contemporary Administrative Law. Jubilee Book of Professor J. Filipek] (Wydawnictwo Uniwersytetu Jagiellońskiego 2001) 759 et seq.

Another problem is the mandatory nature of the stipulations made in plans and, at the same time, their lack of flexibility. Energy plans are not normative acts but are qualified as an act of applied law<sup>83</sup>. They bring legal consequences because they are formally validated<sup>84</sup>. However, because they mainly consist of indicative and influence provisions, they cannot be defined as authoritative instruments for other entities than commune authorities. They can set purposes for the development of a commune on the administrative level, but it is hard to agree that they can impact the energy market, as is the case, for example, with spatial planning. Consequently, it is questionable whether they can lead to solving the energy poverty issue.

Reports published by the Supreme Audit Office listed examples of communes' efforts to improve the local energy policy and combat energy poverty. They were all declared as insufficient. Participation in clusters and the use of new technologies, especially in renewable energy sources, did not lead to energy safety and did not produce any effects. A majority of the audited communes also did not adopt or update assumptions for plans on the heat, power, and gaseous fuel supply. The adopted assumptions contained many errors concerning forecasts of residents' needs and systems efficiency. Moreover, there were no systems monitoring how authorities and energy companies reached the energy goals. There was also a marked absence of communication between local and government authorities, who did not have a good understanding of their needs and actions<sup>85</sup>. This shows that the systemic assumptions do not fulfil their role and must be improved.

Similar problems are also visible in the micro-scale specified by allowances dedicated to individuals suffering from energy poverty. They result from the restriction of access to allowances only to specific recipients and a lack of a system to verify it.

Although common sense would dictate that communes' tasks fulfil the public interest<sup>86</sup>, serve the community, and not be dedicated only to groups or individuals, it is understood that some of them are to soothe social differences. That is why they are addressed to particular groups that have been excluded in one way or another. A problematic situation arises when such a group is identified using blurred criteria; the aid does not solve the issue, and it is not addressed to the right entity. Such doubts first bring to mind the main tool of direct aid: the energy

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<sup>83</sup> Marek Zirk-Sadowski, 'Tak zwana prawotwórcza decyzja sądowego stosowania prawa' ['So-called Law-making Decision of Court's Application of Law] (1980) 1–2 *Studia Prawnicze* 255.

<sup>84</sup> Michał Kulesza, *Administracyjnoprawne uwarunkowania polityki przestrzennej* [Administrative Law Conditioning of Spatial Planning] (Wydawnictwa Uniwersytetu Wrocławskiego 1987) 193.

<sup>85</sup> The Supreme Audit Office Report on Local Energy Safety from 2022 <file:///C:/Users/admin/Downloads/kgp\_p\_19\_014\_201905211159531558432793\_01%20(1).pdf> accessed 10 March 2023.

<sup>86</sup> Jan Boć in Jan Boć (ed), *Prawo administracyjne* (Kolonia Limited 2000) 24.

allowance dedicated to vulnerable consumers under Art. 5d of the Energy Law Act.

Problems begin with the definition of ‘a vulnerable consumer’ in the Energy Law Act. The regulations provide that it can only be a person who has received a household allowance. It means that persons who suffer poverty but do not meet that formal condition are outside the law’s scope<sup>87</sup>. Moreover, it complicates the manner of granting aid and extends it in time. The allowances are granted in two different procedures determined by different criteria and applications. To apply for an energy allowance, an applicant should prove that he is first a recipient of a household allowance<sup>88</sup>. During the procedure for an energy allowance, his situation and qualifications are examined again by local authorities<sup>89</sup>, so even if he receives a household allowance legally, it does not mean that he will receive energy support. Another major drawback is the fact that such a procedure always requires an application from an interested individual and cannot be processed *ex officio*. It seems that it should be communes’ duty to gather data on their residents suffering from poverty and to make sure that they are granted an allowance.

Limiting the energy allowance only to a vulnerable consumer also excludes other entities who are affected by energy poverty problems as a consequence of actions of their debtors (i.e., communes or energy companies). Under Art. 5e, the payment of an allowance must be made straight to a vulnerable consumer. In addition, the regulation also does not provide any imperative steps to force a recipient to pay his energy bills using an allowance. Consequently, there is no mechanism to verify how the funds were spent<sup>90</sup>. It is risky, especially for communes responsible for spending funds received from the government and being unable to direct them straight to combat energy poverty<sup>91</sup>. Thus, vulnerable consumers are not motivated to undertake actions to change that state<sup>92</sup>. And a huge difference can be seen between the solution regulated in Art. 5a conducted by energy companies and making communes support only individuals in need, and not business entities. Therefore, especially because of a strong connection between energy and household allowance, it is hard to view that tool as a form of

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<sup>87</sup> Judgment of the Voivodship Administrative Court in Szczecin of 6.04.2017, II SA/Sz 20/17, LEX no. 2276451.

<sup>88</sup> Judgment of the Voivodship Administrative Court in Białystok of 15.01.2015, II SA/Bk 1043/14, LEX no. 1623316.

<sup>89</sup> Judgment of the Voivodship Administrative Court in Białystok of 19.02.2015, II SA/Bk 1130/14, LEX no. 1682511.

<sup>90</sup> Skoczylas and Swora (no 70) 9.

<sup>91</sup> Ibid. 11.

<sup>92</sup> Aneta Pawłowska, ‘System wsparcia odbiorców wrażliwych energii elektrycznej. Zmarnowana szansa czy dobry początek?’ [‘System of Support of Vulnerable Consumers of Electricity: Lost Chance or New Beginning?’] (2014) 3 *Biuletyn Urzędu Regulacji Energetyki* 28–35.

combating energy poverty. Instead, it counteracts poverty in general<sup>93</sup>. And the deficits in the regulations make it impossible to call it a tool against energy poverty.

The above analysis shows that both the whole system and the particular means to combat energy poverty are not appropriate. They miss the point and make a wrong impression of directed actions without solving the real problem at the level of causes and effects. This seems to be a consequence of a failure to notice the complex nature of energy poverty and its repercussions. The lack of the term 'energy poverty' in the legal acts (except for a definition in the Energy Law Act) and the need to interpret it using other terms like 'energy safety' or 'vulnerable consumer' make it invisible and let it lie hidden under other problems, tasks, and operations. There is a chance that naming this problem literally could help to create instruments dedicated to fighting it directly and not by way of solving other issues. It can change the perspective of the actions by public administration and widen the scope of perception of the problem of energy and energy poverty, which is not only a financial problem of individuals, but an issue that impacts all communities in communes, the state, and further.

## **V. CONCLUSIONS**

This paper is only a humble attempt to examine the problem of energy poverty in Poland. Because energy poverty itself and its management are multi-dimensional and complex problems, it is almost impossible to investigate them comprehensively in such a study. However, the above considerations and conclusions allow for pointing out the most important issues and reasons for still existing problems.

Combating energy poverty efficiently requires a correct specification of its nature. It has been shown that it is not only a financial issue for an individual and individuals suffering from poverty but a serious social problem that directly and indirectly impacts all communities and nations. Nowadays, it is not only connected with infrastructure problems and the shortage of fuels, but also environmental security, the health system, communication, and education. Just as energy safety has a strategic meaning, energy poverty is a threat to it and a sign of the weakness of the state.

Therefore, it is necessary to adapt the legal system to such an understanding of this phenomenon so the lawmaker and the authorities understand it better and select suitable instruments to combat it. The legal system should not only shape the future of the country, but it is also a mirror for reality. The problem of energy

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<sup>93</sup> Skoczylas and Swora (no 70) 10–14.

poverty shows that the existing regulations do not apply to non-legislative conditions; it is also due to a failure to see ‘energy poverty’ in regulations, which are ineffective with this issue. Consequently, strong domestic and international cooperation, both on the level of the general and local law-making process and between government and self-government authorities and communities, is the key to the problem. It leads to opening to new possibilities and correcting errors that tend to be continuously overlooked.

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