Supplier's liability for electrical power outages

Access to utilities (electricity, sewerage, water, etc.) is one of the fundamental conditions for being able to take proper advantage of a property. Interruption of supply causes significant inconvenience to the property user (owner, tenant, lessee, etc.). From the point of view of running a business from a property, the most dangerous are probably electrical power outages. This begs the question of what claims are valid in respect of the utility supplier in such cases, and on what grounds.

In the first instance it should be pointed out that the property user is entitled to specific discounts for interruptions in supply not in accordance with legal regulations, i.e. not suitably planned, and of which the client was not informed in a manner and according to the principles set down in law. Pursuant to § 37 par. 2 of the Ordinance of the Minister of the Economy of 2 July 2007 regarding the detailed principles for compiling and calculating tariffs and payments in trading in electrical power (Journal of Laws 2007 no. 128, item 895 as amended), "for every unit of electrical power not supplied, the client is entitled to a discount to the sum of five times the price of electrical power referred to in Article 23 par. 2 pt 18 let. b of the Act (the Power Law – MŻ) for the duration of the interruption in supply of that power". This regulation is a very clearly defined solution. It does not require of the addressee any complicated interpretations. Significantly, there is no need to prove damage, and the only circumstances that require proof are the fact of the power outage and its duration. Other positions adopted by electrical power suppliers, demanding proof of other circumstances before payment of compensation will be made, are in contravention of the literal reading of the above regulation, as the Power Regulation Office has indicated on many occasions. Pursuant to the position of the Power Regulation Office the above-cited legal regulations in their literal reading do not waive the power supplier's liability even in the case of an outage as a consequence of force majeure. Current information and positions in this regard may be found on the Power Regulation Office's internet site (http://www.ure.gov.pl).

Further to the above, in case of an electrical power outage, in particular where the discount paid out does not cover in full the damages incurred, there is an entitlement to compensation from the utility supplier under the general principles set down in Article 471 and Article 435 of the Civil Code. The selection of the appropriate legal grounds for pursuing the claim will depend on the circumstances of the particular case, and in particular on the clauses in the contract binding the parties and the principles of liability set down therein.

The first type of liability is "contractual liability". Pursuant to Article 471 of the Civil Code, failure to discharge or inappropriate discharge of obligations gives rise to the liability of the debtor (in this case the energy supplier) to make good any damage, unless the above is the consequence of circumstances for which the debtor is not liable. In order to seek compensation effectively, the case must prove:

- the event that caused the damage (the interruption of supply);
- the fact of non-discharge of obligations causing the event to happen;
- the damage;
- the causal link between the non-discharge or inappropriate discharge of obligations and the damage.

It is worth pointing out that invocation of Article 471 of the Civil Code engages the assumption that the inappropriate discharge of the obligation or its non-discharge was due to circumstances for which the debtor was liable. The onus to disprove this assumption is on the debtor, i.e. the power supplier.

Pursuant to Article 361 § 1 of the Civil Code, sufficient causal link may be reduced to the fact that the entity liable for making good the damage is liable only for the normal consequences of the action or negligence that resulted in the damage.

Another element vital for obtaining compensation, as demonstrated above, is the occurrence of damage to the victim's property. Basically, damage to property may occur in two forms. These are, essentially, the damage suffered by the victim (*damnum emergens*) and the loss of benefits that could have accrued to him had he not suffered the damage (*lucrum cessans*).

Aside from the abovementioned contractual liability, and regardless of the exclusions of liability that such contract contains, the energy supplier may be liable in tort, under Article 435 § 1 of the Civil Code. Pursuant to this regulation, the owner of an enterprise or works powered by natural forces (here electricity) is liable for damage caused to any persons or their property by the operation of the enterprise or works, unless the damage occurred as a result of force majeure, or exclusively through the fault of the victim or a third party for whom the former is not liable. If the power entrepreneur wishes to avoid liability, he must prove that one of the circumstances cited in Article 435 § 1 of the Civil Code excluding his liability came into play. In practice, power entrepreneurs often cite damage to transmission infrastructure caused by the action of sudden and unexpected atmospheric conditions, as force majeure. It is important to note that not all atmospheric turbulence may be qualified as force majeure. For instance, pursuant to Supreme Court rulings, atmospheric phenomena (e.g. lightning) that are predictable even by virtue of the fact that they occur every year in this country, may not be treated as force majeure (cf. e.g. Supreme Court verdict of 31 August 1989, case no. I_CR_378/89).

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