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ARTICLES

ENVIRONMENTAL LEGISLATION IN POLAND

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INTRODUCTION: A BRIEF CHARACTERIZATION OF POLISH LAW

THE Polish legal system belongs to the family of continental European law; or, to put it in other terms, it is statutory law. Acts of Parliament are the fundamental source of law. On the basis of such acts of Parliament, then, other rules are formulated, which include general norms. Regulations are issued primarily by the Council of Ministers, by particular ministers, and by other central or local bodies. However, in contra-distinction to the system of common law, the courts do not have a law-making function: that is, they do not issue binding decisions, which would serve as precedents for future cases. It is generally accepted that the role of the courts is limited to the application of the law to, or issuing decisions on, particular cases. On the other hand, certain court decisions, especially those of the Supreme Court, do have a significance extending beyond the case in question, and influence the interpretation and application of the law in similar cases in the future.

Communist law is often distinguished as a separate type of legal system, distinct from common law and continental law. Communist law is not formally different from continental law; it is also statutory law, built on a foundation of similar principles. However, a characteristic feature here is the "instrumental" attitude to law in Communist countries, i.e., the law has been used for achieving changeable goals established by rulers, and the attendant subordination of the law to politics and to collectivist ideology.

In Polish law, the influence of Communist ideology was less than in other Eastern European countries. The present constitutional system has a transitional character. Formally, the Communist Constitution of 1952 is still in force, although with numerous amendments.¹ The changes introduced in 1989/90,² which instituted basic reforms of the political and economic systems, are of truly fundamental significance. The reforms

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1. POL. CONST. (1952), *DZIENNIK USTAW* (amended Dz. U. No. 7/1976, item 36, Dz. U. No. 22/1980, item 81, Dz. U. No. 11/1982, item 83, Dz. U. No. 39/1983, item 175, Dz. U. No. 14/1987, item 82, Dz. U. No. 19/1988, item 129, Dz. U. No. 19/1989, item 101, Dz. U. No. 16/1990, item 94, Dz. U. No. 29/1990, item 171, Dz. U. No. 67/1990, item 397, Dz. U. No. 41/1991, item 176, Dz. U. No. 119/1991, item 514).

2. *Id.*

are based on the introduction of a political system similar to that of Western European democracies, and the proclamation of a free market economy. Many statutory provisions characteristic of the previous order have been eliminated from the Constitution: to wit, the principle of the directing role of the Communist Party, the principle of central planning, and the rule of the primacy of socialized ownership in the economy. Currently, discussions and work on a new Constitution are in progress, but it is hard to determine when this will be approved, or what provisions will be incorporated therein.

Although the most urgent constitutional changes were effected fairly quickly and easily, the reconstruction of the whole legal system, which is needed in order to remove the remnants of the Communist order and to adapt the legal system to the requirements of Parliamentary democracy and the market economy, has turned out to be a difficult and time-consuming task. The process of transforming the law is on-going, but it is still far from finished. Present Polish law is still evolving. On the one hand, some old laws, which take for granted that economic life is based on central planning, are still valid, while on the other hand some obvious elements of the new order are already in place, e.g., the freedom of business activities carried out by entrepreneurs, and the restriction of governmental influence on economic and social life. The transitional character of the legal solutions employed can be observed in the current legislation on environmental protection.

I. THE CONCEPT OF THE ENVIRONMENT AND ITS PROTECTION

In the context of Polish law, the definitions of "the environment" and the "protection" thereof have been established by the legislature itself.³ In the 1980 Law on the Protection and Control of the Environment (hereinafter referred to as "the LPCE"), a definition of "the environment" was adopted, which is operative in all Polish legislation, and is made up of the following essential parts:⁴

- a) the totality of natural elements (especially the surface of the earth, including soil, mineral resources, water, air, flora and fauna, and landscape,
- b) which is found either in a natural state or is transformed as a result of human activity.⁵

It follows from this definition that "man" is not regarded as a constituent element of "the environment". However, the protection of "the environment" as thus understood is a necessity only because of "man" and his welfare. According to Art. 2 of the LPCE, and in connection with

3. JAN BOC & ELZBIETA SAMBORSKA-BOC, PROTECTION OF ENVIRONMENT: LEGAL AND ECONOMIC QUESTIONS, 15-28 (1989); LUDWIK JASTRZEBSKI, ENVIRONMENTAL PROTECTION LAW IN POLAND, 39-44 (1990).

4. Law on the Protection and Control of the Environment [hereinafter LPCE] 1980, art. 1.1, DZIENNIK USTAW No. 3/1980, item 6 (Pol.).

5. *Id.*

Art. 1, the definition of "environmental protection" is made up of the following essential parts:⁶

- a) any action or restraint which brings about the preservation or restoration of the balance of nature,
- b) and which takes place on such a scale as to insure favorable conditions of life for present and future generations, the realization of their right to use environmental resources, and to preserve the value thereof.⁷

"Environmental protection" finds particular expression in the following activities:⁸

- the rational control of the environment;
- the rational exploitation of natural resources;
- the counteraction and prevention of harmful impacts on the environment, which may cause it to be destroyed, damaged, polluted, or changed in terms of its physical features and the character of its natural elements.⁹

Within the purview of such a fundamental understanding of "environmental protection" on the basis of Polish law, there is also included the question of "the protection of nature".¹⁰ According to the 1991 Law on the Protection of Nature, "the protection of nature" is defined as the preservation, proper use, and renewal of natural resources and elements, and especially of wild plants and animals, as well as ecological systems.¹¹ In this sense, "the protection of nature" is a part of ecological policy and a specialized aspect of environmental protection.¹²

II. GENERAL CHARACTERISTICS OF POLISH ENVIRONMENTAL PROTECTION LAW

In 1976, the Polish Constitution of 1952 was amended with two new provisions especially designed for environmental protection.¹³ To the existing Chapter 2 of the Constitution, entitled "The Social Economic Order", Article 12.2 was added, which included the following statement: "The Polish People's Republic insures the protection and the rational control of the natural environment, which is essential to the welfare of the nation."¹⁴ In addition, Chapter 8, entitled "The Basic Rights and Obligations of Citizens", was amended by an additional provision, Arti-

6. *Id.* art. 2.

7. *Id.*

8. *Id.*

9. *Id.*

10. JASTRZEBSKI, *supra* note 3, at 34-39.

11. Law on the Protection of Nature, 1991, art. 1.1, DZIENNEK USTAW No. 114/1991, item 492 (Pol.).

12. *Id.*

13. KAZIMIERZ SAND, STANISLAW STRACHOWSKI, *Constitutional Right of Citizens to the Protection of Environment and its Realization in Poland*, in CIVIL RIGHTS AND STATE ADMINISTRATION IN POLAND-AUSTRIA 162 (Janusz Letowski ed., 1983).

14. *Id.*

cle 71, stating that "Citizens of the Polish People's Republic have the right to make use of the resources of the natural environment and the obligation to protect it."¹⁵ However, taking into account the state of so-called "pragmatic socialism" as it existed in Poland at that time, the introduction of such provisions to the Constitution did not in practice cause any direct legal effects, and had primarily political and propaganda significance; such changes could only to a small degree influence the directions of the government's environmental policy. Nevertheless, it would be hard to deny that the LPCE of 1980 was created with reference to these constitutional amendments.¹⁶

In 1989, the Constitution was again subject to a change, this time a radical one, as Poland became a democratic government of laws.¹⁷ At the same time, the provisions of the former Article 12.2 of the Constitution, which pertained to environmental protection, were rescinded, together with other provisions characteristic of the Communist years.¹⁸ According to the prevailing reading of the Constitution (after its 1989 amendments), the government guarantees to citizens the right to make use of the resources of the natural environment, and at the same time obliges them to protect the environment.¹⁹ In addition, the enforcement of the laws of the Republic of Poland is the duty of every government agency.²⁰

The drafters of a new Polish Constitution have also been grappling with the issue of whether it will be necessary to include regulations on environmental protection in the future Constitution. However, there are differing opinions on the subject. Some proposals suggest that there be included in the Constitution such provisions as would oblige the government to offer guarantees of environmental protection, and/or would oblige citizens to protect the environment, and/or would specifically establish a citizen's right to use environmental resources. On the other hand, there are also those who voice doubts as to whether it is advisable to regulate environmental protection problems directly through the Constitution.

In 1980, the first Polish law on the protection of the environment was promulgated, and has been amended several times since then (that is, the LPCE).²¹ The preparation of a new law to replace the present act has been under consideration for several years.

The LPCE takes precedence in the Polish legal system over all legal

15. *Id.*

16. LPCE, *supra* note 4.

17. POL. CONST. art. 1.

18. POL. CONST..

19. *Id.* art. 71.

20. ANDRZEJ WASILEWSKI, *Relationship between the State and Economy with the Example of the Protection of Environment with Reference to the Polish Law, in: ADMINISTRATIVE COURTS - PROTECTION OF ENVIRONMENT - MUNICIPAL GOVERNMENT* 77-83, 91 (Heinrich Siedentopf ed. 1991).

21. LPCE, *supra* note 4.

regulations pertaining to environmental protection. This is stipulated *inter alia* in Article 111 of the LPCE, which establishes that in the case of concurring rules in other laws in force when the LPCE was enacted (i.e., the Water Law, the Law of Forests, the Mining Law, the Building Law, etc.), the LPCE should take precedence.²²

On the basis of Polish law, the LPCE defines the term "environmental protection" and establishes legal definitions for a number of other terms used in Polish law and related to environmental protection (for instance, the "balance of nature", "natural resources of the environment", "liquid waste", "solid waste", "environmental hazards" and "scenic values of the environment").²³ In addition, it does the following:

- determines the basic orientation of environmental protection, which is taken to include protecting the surface of the earth and its mineral resources, protecting water and the marine environment, protecting the air, protecting flora and fauna, protecting the scenic and recreational values of the environment, protecting the environment from noise and vibrations and from waste and pollution, and protecting the environment from non-ionizing radiation;²⁴
- specifies how environmental protection should be carried out, including the obligations of business entities in regards to environmental protection, the role of environmental protection in capital improvement activities, restrictions on the use of the environment, and environmental requirements for plant facilities and machinery;²⁵
- provides economic measures for environmental protection, including fees for the economic exploitation of the environment, and for changing the environment, as well as rules for the creation and disbursement of funds for environmental protection and water management;²⁶
- specifies penalties for disturbing the state of the environment or breaching binding regulations;²⁷
- describes the organization of efforts to execute these tasks, and lists the competencies of the various agencies involved in environmental protection.²⁸

This body of provisions is closely related to two other Polish laws: namely, the Law Creating the Ministry for Environmental Protection and Natural Resources and Forestry (1989) and the Law Creating the National Environmental Protection Inspection Agency (1991).²⁹

Beside the LPCE and the two laws mentioned above, there are a

22. LPCE, *supra* note 4, art. 111.

23. LPCE, *supra* note 4, art. 3.

24. *Id.* arts. 13-63.

25. LPCE, *supra* note 4, arts. 1-12, 64-79.

26. LPCE, *supra* note 4, arts. 86-88.

27. LPCE, *supra* note 4, arts. 80-85, 106-110c.

28. LPCE, *supra* note 4, arts. 89-105.

29. Law Creating the Office of Minister of Environmental Protection, National Resources and Forestry, 1989, DZIENNEK USTAW No. 73/1989, item 433 (Pol.); Law Creating the National Environmental Protection Inspection Agency [hereinafter NEPIA], 1991, DZIENNEK USTAW No. 77/1991, item 335 (Pol.).

number of other laws pertaining to environmental protection. However, these laws, in contrast to the LPCE, are usually detailed and specialized regulations designed for particular purposes. Here three groups of laws can be distinguished:

Group I - laws pertaining to the management of particular resources, especially the following:

- the Law on the Protection of Agricultural Lands and Forests (1982) and the Law on Land Use and Expropriation (1985);³⁰
- the Law of Forests (1991);³¹
- the Mining Law (1953);³²
- the Water Law (1974);³³
- the Law on the Breeding and Protection of Game, and the Hunting Law (1959).³⁴

Group II - laws formulating rules governing the conduct of various types of activities important for environmental protection. Here the following laws deserve mention:

- the Law of Land Use Planning (1984);³⁵
- the Building Law (1974);³⁶
- the Geological Law and the Mining Law (1960 and 1953 respectively);³⁷
- the Nuclear Law (1986);³⁸
- the Law on Freshwater Fishing (1985);³⁹
- the Law on Spas and Spa Healing Services (1966);⁴⁰
- the Law on the Protection of Nature (1991).⁴¹

Group III - other laws of diverse and widespread application. For example, the Law on the Protection of Domesticated Plants from Diseases, Pests, and Weeds (1961)⁴² and the Regulations of the President

30. Law on the Protection of Agricultural Lands and Forests, 1982, DZIENNEK USTAW No. 11/1982, item 79 (Pol.); Law on Land Use and Expropriation, 1985, DZIENNEK USTAW No. 30/1991, item 127 (Pol.).

31. Law of Forests, 1991, DZIENNEK USTAW No. 101/1991, item 444 (Pol.).

32. Mining Law, 1953, DZIENNEK USTAW No. 4/1978, item 12 (Pol.).

33. Water Law, 1974, DZIENNEK USTAW No. 38/1974, item 230 (Pol.).

34. Law on the Breeding and Protection of Game, and Hunting Law, 1959, DZIENNEK USTAW No. 33/1973, item 197 (Pol.).

35. Law of Land Use Planning [hereinafter LLUP], 1984, DZIENNEK USTAW No. 17/1989, item 99 (Pol.).

36. Building Law, 1974, DZIENNEK USTAW No. 38/1974, item 229 (Pol.).

37. Geological Law, 1960, DZIENNEK USTAW No. 52/1960, item 303 (Pol.); Mining Law, *supra* note 32.

38. Nuclear Law, 1986, DZIENNEK USTAW No. 12/1986, item 70 (Pol.).

39. Law on Freshwater Fishing, 1985, DZIENNEK USTAW No. 21/1985, item 91 (Pol.).

40. Law on Spas and Spa Healing Services, 1966, DZIENNEK USTAW No. 23/1966, item 150 (Pol.).

41. Law on the Protection of Nature, *supra* note 11.

42. Law on the Protection of Domesticated Plants from Diseases, Pests, and Weeds, 1961, DZIENNEK USTAW No. 10/1961, item 55 (Pol.).

of the Republic of Poland on the Protection of Animals (1928).⁴³

In connection with the reconstruction of the nation's legal system resulting from systemic changes and socio-economic reforms, it will be necessary to prepare a number of new regulations broadly pertaining to environmental protection law.

III. BASIC PRINCIPLES OF ENVIRONMENTAL PROTECTION IN POLISH LAW

The essence of "environmental protection" is the rational control and use of the environment and its resources, as well as the remediation or prevention of harmful impacts on the environment.⁴⁴ The "rational use of natural resources" is understood to mean the use of those resources to the extent justified by the public interest, taking into account the economic and non-economic significance of such resources for the balance of nature and the conditions of human life, and at the same time insuring the economical use of these resources without further harm to the state of the environment.⁴⁵

A. *The Principle of Preventing Environmental Hazards*

The realization of the principle of preventing environmental hazards is possible because of land use planning.⁴⁶ Under pre-sent Polish law, there is a legal obligation on the part of public administrative agencies to formulate plans for land exploitation. These plans acquire the force of law, binding everyone involved in land use operations.⁴⁷

Land use plans should be prepared in such a way as to insure conditions favoring the maintenance of the balance of nature, the rational exploitation of natural resources, and the preservation of scenic values and climatic conditions.⁴⁸ Land use plans contain very specific programs for the rational exploitation of the earth's surface, including requirements for water management, protection of the air, protection from noise, vibrations and radiation, as well as protection from solid and liquid wastes.⁴⁹ Administrative decisions should not depart from land use plans insofar as they pertain to environmental protection requirements; those administrative decisions which are contrary to such plans are null and void.⁵⁰

All capital investment and developmental projects must be undertaken in accordance with the applicable land use planning programs and envi-

43. Regulations of the President of the Republic of Poland on the Protection of Animals, 1928, DZIENNIK USTAW No. 42/1932, item 417 (Pol.).

44. LPCE, *supra* note 4, art. 2.1.

45. LPCE, *supra* note 4, art. 2.2.

46. BOC & SAMBORSKA-BOC, *supra* note 3, at 187-195.

47. LLUP, *supra* note 35, arts. 7, 25, 32.

48. *Id.* art. 6.2.

49. LPCE, *supra* note 4, art. 6.4.

50. LLUP, *supra* note 35, art. 46; LPCE, *supra* note 4, art. 7.

ronmental protection requirements included in such programs.⁵¹ Moreover, every investor, designer, and developer is obliged to take the following precautions in his operations:⁵²

- to respect environmental protection requirements in developmental activities;
- to insure the application and use of materials and equipment protecting people and the environment from hazardous impacts, referring here not only to the construction and modernization of properties, but also to both existing and newly introduced technologies, as well as to the methods of operation employed by such projects after completion;
- in making decisions pertaining to the placement of projects, and methods and techniques of building them, to observe any special regulations pertaining to those projects which are "especially hazardous for the environment and human health"⁵³

The list of projects which are especially hazardous for the environment is determined by the Minister of Environmental Protection, Natural Resources, and Forestry, in consultation with the Minister of Health and Social Welfare.⁵⁴ Before a decision on project placement is reached, it is necessary to obtain an expert opinion regarding the environmental and health impact of the project's placement, construction, and operation, and also on the kinds of regulatory requirements which may be necessary for effective avoidance of any negative impact. Expert opinions are obtained at the investor's expense and are recommended by local public administration authorities.⁵⁵

Rules similar to those concerning projects and their placement also refer to contractors, designers, and manufacturers of plants and machinery, the communication and transportation industries, and producers and suppliers of fuels and other types of machines and equipment.⁵⁶ In such instances, applicants are required to evaluate in advance any such piece of machinery, fuel, or other product, as to its compliance with environmental protection requirements, before a decision to grant permission for production, sale, use, and/or operation can be reached.

Manufacturers and distributors are also legally responsible for the following:⁵⁷

- up-to-date analysis of effects and impacts of their products on the environment and human health, and subsequent elimination of hazards through the upgrading of such products from the viewpoint of environmental protection;
- equipping each product with the relevant approvals, certificates, and

51. LLUP, *supra* note 35, art. 33.

52. BOC & SAMBORSKA-BOC, *supra* note 3, at 202-210; JASTRZEBSKI, *supra* note 3, at 95-100.

53. LLUP, *supra* note 35, arts. 39-45; LPCE, *supra* note 4, arts. 69-70.

54. LLUP, *supra* note 35, art. 39.

55. LPCE, *supra* note 4, art. 70; LLUP, *supra* note 35, art. 39; *see also* Part IV, *infra*.

56. LPCE, *supra* note 4, arts. 74, 79.

57. LPCE, *supra* note 4, art. 75.

necessary documentary materials pertaining to its compliance with environmental protection and human health requirements.⁵⁸

The same requirements also apply to machines, equipment, fuels, and other products imported into Poland.⁵⁹

B. *The Principle of Liability*

The constitutional obligation to protect the environment (Art. 71 of the Constitution) has been spelled out in various acts of Parliament.⁶⁰ In particular, entities carrying out business operations are obliged to insure environmental protection, and either to eliminate or minimize environmental hazards.⁶¹ Such an obligation is also imposed on citizens whenever they use the environment for various purposes, e.g., tourism or recreation.⁶²

A logical consequence of the accepted assumptions is that the obligation to rectify or to bear the expense of the rectification of harms and/or hazards inflicted on the environment is basically imposed upon that entity which caused such harm or hazard.⁶³ This involves responsibility not only for actual harms inflicted on the environment, but also those resulting from the cost of the prevention and elimination of hazards.⁶⁴ The limits on the imposition of this obligation to prevent and/or rectify environmental hazards or harms, as charged to the perpetrator, can be determined by the competent public administration authority in the course of administrative decision making. In such a case, the administrative authority should consider the following:⁶⁵ the public interest, the extent of environmental harm or hazard, and the actual capacity of the entity concerned to perform that duty.⁶⁶

The adopted legal solutions do not exclude concurrent liability of the perpetrator for the environmental harm caused, according to general rules laid down by the provisions of the Civil Code (see Part VI below), or in frequent cases which fall under other rubrics than those of the Civil Code (e.g., liability for harms inflicted under the heading of the Mining Law, the Water Law, the Nuclear Law, and other similar laws).⁶⁷ Legal provisions are constructed in such a way that whenever possible they require the perpetrator to actually repair the harm (i.e., undo the results of the harm) rather than to pay a monetary fine.

58. *Id.*

59. LPCE, *supra* note 4, arts. 77, 79.

60. POL. CONST. Art. 71.

61. LPCE, *supra* note 4, art. 64.

62. LPCE, *supra* note 4, art. 65.

63. LPCE, *supra* note 4, art. 80.

64. LPCE, *supra* note 4, art. 82.

65. LPCE, *supra* note 4, art. 82.2-3.

66. *Id.*

67. Mining Law, *supra* note 32; Water Law, *supra* note 33; Nuclear Law, *supra* note

C. *The Principle of Joint Cost Responsibility*

It is accepted that every user of environmental resources should have a share in the actions taken for the sake of environmental protection, and in such burdens as are incurred thereby. This refers not only to businesses - although to the greatest degree to them - but also to every citizen and public administrative authority. Financial resources dedicated to environmental protection, as well as physical resources and/or personal contributions, should be generated from all such entities.

In order to insure the financial resources necessary for such activities related to environmental protection are carried out on behalf of the public interest, earmarked funds have been created. For example, as authorized by the LPCE, special funds for environmental protection and water management have been established.⁶⁸ The sources of funds are the following:

- mandatory fees for economic or business use of the environment and for changing the environment (pollution of the air, clearing of trees and shrubs, waste dumping, the use of water resources, etc.);
- monetary fines imposed on the perpetrators for breach of regulations pertaining to environmental protection;
- income from business operations carried out for the sake of environmental protection and/or water management, including corporations created especially for such purposes;
- state budgetary subsidies and other revenue donated for such purposes by state authorities, public institutions, etc.⁶⁹

Funds generated from the above sources are earmarked for the following purposes:

- promoting the use of environmentally safe equipment, machines, and technology, as well as research related to environmental protection and water management;⁷⁰
- fulfilling the goals related to environmental protection, flood prevention, and/or rectification of so-called "extraordinary environmental hazards";⁷¹
- preparing programs of research, development, education, and so forth, pertaining to environmental protection, water management, etc.⁷²

Furthermore, in a situation involving extraordinary environmental hazards, everyone is charged with additional special duties, including the obligation of personal and material contribution (see also Part V, below).

68. LPCE, *supra* note 4, arts. 87-88.

69. *Id.*

70. *Id.*

71. LPCE, *supra* note 4, art. 104.

72. LPCE, *supra* note 4, arts. 87-88.

D. *The Principle of Cooperation in the Field of Environmental Protection*

The necessary conditions for the effective realization of goals and tasks in environmental protection include their properly organized execution and societal participation in the attainment of such ends.

The Polish regulations impose a legal obligation on state agencies, public institutions, social organizations, and private citizens to cooperate for the sake of environmental protection:

- public administrative agencies are obliged to cooperate with public institutions, organizations, entities, and/or citizens to prepare and realize programs and plans intended to improve the state of the environment;⁷³
- public administrative agencies and agents of the National Environmental Protection Inspection Agency, along with social organizations and local governments, are obliged to cooperate in collecting information and monitoring the state of the environment;⁷⁴
- public administrative agencies and private citizens are obliged to cooperate in mitigating extraordinary environmental hazards;⁷⁵
- the Polish state agencies are obliged to develop international cooperation in the field of environmental protection, and especially should consider the provisions of such environmental protection standards as may be included in international agreements signed by Poland.⁷⁶

IV BASIC LEGAL INSTRUMENTS SERVING ENVIRONMENTAL PROTECTION

The realization of the basic goals and tasks of environmental protection is made possible by the utilization of a variety of legal instruments. In terms of their importance for such realization, we should mention the following:

- legal instruments intended to avoid environmental harms and hazards (especially the planning of environmental activities, legal injunctions and orders, etc.);
- legal instruments intended to minimize environmental harms and hazards (e.g., determination of the so-called "norms" of allowed environmental pollution, an efficient system of environmental monitoring, a system of licensing hazardous activities, etc.);
- legal instruments which provide compensation for environmental harms or hazards (e.g., fees for the use of the environment, liability for causing environmental harm or hazards, etc.).

All the legal instruments of environmental protection are complementary, and are usually used in an appropriate configuration, depending on

73. LPCE, *supra* note 4, arts. 99.1.5, 100.2-3.

74. LPCE, *supra* note 4, art. 98; Law Creating NEPIA, *supra* note 29, arts. 2.7, 17, 23, 25.

75. LPCE, *supra* note 4, art. 105; Law Creating NEPIA, *supra* note 29, art. 30.2.

76. LPCE, *supra* note 4, art. 8.

the object of protection (e.g., air, water, forest, or the protection of the environment from pollution, noise, vibrations, etc.), the area of protection (e.g., national parks, as opposed to areas allowed for development, etc.), the duration of protection (e.g., temporary or single actions, as opposed to long term operations, or present versus future activities), the circumstances under which protective actions are taken (e.g., either ordinary or emergency hazards, prevention of hazards or rectification of existing hazards and harms), and/or the perpetrator (a single person or company, as against persons at large or users of particular devices).

Generally, we can divide legal instruments of environmental protection into those which serve a planned realization of environmental goals, those which consist of the application of coercive authority, and those which exert economic (non-authoritative) influence on activities in the environment.

A. *Instruments Serving the Planned Realization of the Goals of Environmental Protection*

Primarily, these are instruments designed to prevent environmental harms or hazards. They are issued as general legal acts, effective on the specific area, or as decisions concerning particular situations.

1. Land Use Planning⁷⁷

The object of land use planning is complex management of the whole territory of the country.⁷⁸ Land use planning is a course of actions covering in sequence the following: research and study, the preparation of prognoses for possible use of the area in question and its resources (considering current and future needs), the preparation of specifications and designs for development, the approval of such plans, the realization of requirements included in the plans (including project placement), the control of project realization, the evaluation of the state of development, and the regular (at least every five years) updating of plans.⁷⁹

Plans for land development are prepared for the area of the whole country (national plan), as well as the areas of regions (regional plans), towns and communes (local plans), and, when needed, for smaller areas selected because of their special economic, social, cultural, or natural/environmental functions (e.g., national parks). The national plan should specify, for instance, activities insuring environmental protection (with respect for the areas subject to special protection, and the areas of special hazard), as well as the protection and proper use of mineral resources, water, arable land, forests, etc.⁸⁰

Regional plans establish requirements and conditions for environmen-

77. See generally BOC & SAMBORSKA-BOC, *supra* note 3.

78. LLUP, *supra* note 35, art. 1.

79. LLUP, *supra* note 35, art. 2.

80. LLUP, *supra* note 35, art. 19.

tal protection (with respect to the areas of special protection and special hazard), and must be prepared on the basis of the national plan.⁸¹ Similarly, local plans, which are prepared on the basis of regional plans, should guarantee environmental protection, human health, and the proper use of land.⁸² Plans of land development create a system of interlocked and interdependent decisions, which should serve the land use coordination of all activities in the environment.

Plans are prepared and approved by various entities of public administration, in such a way that every interested person has a chance to file his remarks, proposals, objections to the proposed provisions of the future plan, and proposals for its amendment.⁸³ Regional and local plans are universally binding, so that any and all decisions concerning land use which may be contrary to such plans are null and void.⁸⁴ Local plans have a special importance, and constitute bases for zoning decisions, development decisions, and decisions involving a proposed change of land use or the removal of land from, e.g., agricultural or forest status.⁸⁵

2. Special Areas

In a situation where the realization of certain goals and tasks is possible only in a particular place or area, the law creates special legal guarantees of their fulfillment, provided that they serve the public interest. For example, the extraction of mineral resources is possible only where such resources naturally occur; the protection of nature is a significant issue only where natural resources worth protecting are concentrated and environmental protection can be effected where the hazards appear (e.g., noise, radiation, air pollution). There are numerous examples where it is necessary to create special legal regimens (a system of particular injunctions and orders), whose purpose is to make possible or facilitate (or to create legal preferences favoring) the realization of particular goals or tasks within a specified area. These are the so-called "special areas."⁸⁶

Creation of a "special area" is possible only as authorized by legal regulations and created by an ordinance with reference to a Parliamentary law and the provisions of the land use plan which would include any such area. The legal instrument which thus becomes a basis of the special area determines the boundaries of the area, its purpose, and a system of injunctions and orders which will be effective in the given area. "Special areas" have particular names in various regulations (e.g., national parks, natural reserves, scenic parks, etc.) created under the auspices of

81. LLUP, *supra* note 35, art. 21.

82. LLUP, *supra* note 35, art. 22.

83. LLUP, *supra* note 35, arts. 15, 22-25, 28-30, 34.

84. LLUP, *supra* note 35, arts. 25, 32, 46.

85. LLUP, *supra* note 35, art. 33.

86. BOC & SAMBORSKA-BOC, *supra* note 3, at 146-51; MICHAL KULESZA, *Special Area as a Legal Instrument of the Protection and Control of the Environment*, 2 *STUDIA IURIDICA* 57-71 (1974).

the Law on the Protection of Nature, mining areas created under the auspices of the Mining Law, or wildlife reserves and hunting areas created under the auspices of the Hunting Law.⁸⁷ There is a further and separate category of "special area" called "protected zones", which are created as authorized by the LPCE (e.g., air protection zones, noise and vibration prevention zones, non-ionizing radiation prevention zones, etc.) or on the basis of other laws (e.g., water springs and sources protection zones, created as authorized by the Water Law, protection zones around nuclear facilities, created as authorized by the Nuclear Law, etc.).⁸⁸

Whenever, despite the application of correct technical measures, the prohibited harmful impact on the environment cannot be eliminated, and whenever they are caused by activities carried out in a particular installation or on a particular property, a "protective zone" will be established.⁸⁹ The necessity to create such a zone, and the boundaries and conditions for its development and use, is decided by one of the public administrative agencies.

However, it should be mentioned that, besides zones created to protect the environment from the negative impacts attendant upon particular activities (e.g., air pollution, noise, vibrations, etc.), protection zones are also created in order to protect a particular type of activity or area from such negative impacts as may be suffered in particular environmental conditions. That is the case of water protection zones, whose purpose is to protect water springs and sources, or the case of the so-called "belts" around national parks, created as authorized by the Law on the Protection of Nature.⁹⁰

3. Environmental "Norms"

The limits of tolerated environmental hazards are determined by numerous executive orders implementing the LPCE and other laws pertaining to the management of natural resources (e.g., the Water Law, the Law on the Protection of Agricultural Lands and Forests, the Nuclear Law, the Building Law, etc.).⁹¹ Special attention should be focused on the regulations which determine the so-called environmental norms or standards.⁹² These are general standards, established by the authorized state administrative agencies. They are either generally or locally effective, and determine the maximum allowed limits of environmental pollu-

87. Law on the Protection of Nature, *supra* note 11; Mining Law, *supra* note 32; Law on the Breeding and Protection of Game, and Hunting Law, *supra* note 34.

88. See generally JERZY STELMASIAK, THE INSTITUTION OF PROTECTION ZONES AS A LEGAL INSTRUMENT OF ENVIRONMENTAL PROTECTION (1986). See also Water Law, *supra* note 33; Nuclear Law, *supra* note 38.

89. LPCE, *supra* note 4.

90. Law on the Protection of Nature, *supra* note 11.

91. See LPCE, *supra* note 4; Water Law, *supra* note 33; Law on the Protection of Agricultural Lands and Forests, *supra* note 30; Nuclear Law, *supra* note 38; Building Law, *supra* note 36.

92. BOC & SAMBORSKA-BOC, *supra* note 3, at 151-53.

tion (or hazards), e.g., pollution of the air, water, soil, exposure to ionizing and non-ionizing radiation, the level of noise and vibrations, etc.).

The norms determine the highest allowable levels of pollution or hazards, and differ depending on the type of hazard, the substance involved, the extent (concentration or power) of the pollution within a given unit of area or time, the area of occurrence and often on the character of the activities which are the sources of the pollution. This means that the application of norms in practice is possible only through an particular administrative decision specifying the norm allowed for a particular type of pollution in a given case or situation.

The allowed limits of maximum hazards are established with reference to general norms, but with due consideration for the state of pollution or environmental hazards existing in a given situation, place and time. Therefore, the norms of allowable environmental pollution are subject to change from time to time, and any decision issued on their basis to determine the "limits" of allowable pollution for particular activities or entities are periodically updated, with due consideration for the place and time.⁹³

Although in a formal sense any activities carried out in compliance with the established norms and with such decisions as may be issued on that basis are considered lawful, this does not relieve an entity from financial or other responsibility for damages caused by their activities when carrying out operations that are harmful for the environment.

B. *Legal Instruments of Coercive Authority*

Polish Law contains legal instruments which allow the public authority to intrude into areas ordinarily protected by legally guaranteed freedoms (e.g., the freedom of economic activity and the rights of ownership), in order to protect the environment.⁹⁴

1. Legal Orders

The essential nature of legal orders is that they charge entities with certain obligations, (e.g., permanent monitoring of the state of the environment and its level of pollution), inhibitions (e.g., the duty to desist from certain types of activities or the use of certain types of machinery), or tolerances (e.g., the obligation to "tolerate" the results of mining activities, or to allow the environmental protection services to carry out measurements on private properties) due to the needs of environmental protection.

Such obligations may either be incurred directly from the law (e.g., the obligation of every person who is operating devices that generate non-ionizing radiation to monitor the radiation emitted into the environ-

93. LPCE, *supra* note 4, art. 30.

94. JASTRZEBSKI, *supra* note 3, at 63-75.

ment;⁹⁵ or the obligation to provide "adequate living conditions" to every domesticated animal),⁹⁶ or they may be imposed on particular entities in individual cases by administrative decisions (e.g., obligations imposed when the state administrative agency determines the range and method of fulfilling the obligation to rectify environmental hazards and harms).⁹⁷

2. Legal Prohibitions or Restrictions

Legal prohibitions or restrictions serve to fully or partially prohibit certain behaviors for the sake of environmental goals. They may either emerge directly from the law (e.g., the prohibition against the destruction of plants which bind soil, or against the destruction of plants and animals which clean the environment, especially water;⁹⁸ or the prohibition against the importation of waste materials)⁹⁹ or, depending on the situation, they may be created by an administrative decision (e.g., the prohibition against the use of vehicles or fuel at a particular time or in a particular area;¹⁰⁰ or the prohibition against carrying out particular business operations which may be causing harm or hazard to the environment).¹⁰¹ Such injunctions are usually either preventive¹⁰² or repressive in character.¹⁰³

3. Administrative Permissions and the Monitoring of Environmental Hazards

Environmental restrictions pertaining to various activities should be specific, with reference to particular types of activities and situations (place and time), and often with reference to other circumstances (e.g., the method of carrying out such activities). That is why the regulations of environmental protection, broadly understood, very often authorize the public administrative agencies to make administrative decisions concerning permits for such activities, together with the specification of necessary conditions, such as project placement cases, building permits, extraction of mineral resources, and water use permits (including the dumping of waste water, the construction of dams, etc.). When making such decisions, administrative agencies are obliged by the law to carry out procedures whose purpose is to examine, for instance, to what degree the activities may impact on the environment (this is the case for project placement decisions or building permits, especially when such decisions pertain to hazardous projects, such as mines, power plants or waste ma-

95. LPCE, *supra* note 4, art. 62.

96. Regulation of the President of the Republic of Poland on the Protection of Animals, 1928, DZIENNIK USTAW No. 42/1932, item 417 (Pol.).

97. LPCE, *supra* note 4, art. 82.

98. LPCE, *supra* note 4, art. 37.

99. LPCE, *supra* note 4, art. 53a.

100. LPCE, *supra* note 4, art. 32.

101. LPCE, *supra* note 4, art. 83.

102. LPCE, *supra* note 4, art. 32.

103. LPCE, *supra* note 4, art. 83.

terial dumping sites, etc.). Examination of the impact of planned projects on the environment should allow an answer to the question as to whether the planned project may be placed in the particular area, and if so, what conditions should be observed to make it safe and the least hazardous for the environment.¹⁰⁴

Legal regulations require that every entity involved in business operations which may create environmental hazards should receive separate decisions concerning permits for the use of environmental resources; these decisions should specify the types and quantities of substances polluting the air (i.e., a decision on allowable emissions),¹⁰⁵ on the allowable noise and vibration levels,¹⁰⁶ on the allowable methods of collection or dumping of waste materials,¹⁰⁷ on the use of water and its pollution,¹⁰⁸ and/or on the requirements and preconditions for the use of nuclear energy¹⁰⁹

Similar permits are required before starting the construction or design of manufacturing works, or when carrying out business activities with the use of machines and technical equipment, fuels, or any other devices which may be harmful to the environment.¹¹⁰ Allowed norms of pollution concentration, and/or the allowed level of environmental hazards which result from particular activities (as provided in legal regulations and established by administrative decisions), are to be treated by every entity involved as maximum allowable limits in a given case (see Part IV above). However, they do not relieve authorized entities from the duty to apply all the available means and methods which may insure the greatest possible protection of the environment¹¹¹ during the particular business activities, within the limits of physical possibility¹¹²

Administrative decisions allowing certain levels of pollutants or hazards for particular entities may be either changed or rescinded by the authorized public administrative agency,¹¹³ provided that at least one of the following conditions has been met:

- the circumstances have changed, for which those norms (or limits) of allowable hazards were established;
- general legal regulations have been changed, especially if they have become stricter;
- new hazards have been created in the area, which as a result require a change in the "balance" of the allowable environmental hazards that

104. See, e.g., LPCE, *supra* note 4, arts. 69-70; LLUP, *supra* note 35, art. 39; Building Law, *supra* note 36, art. 28.

105. LPCE, *supra* note 4, art. 30.

106. LPCE, *supra* note 4, art. 49.

107. LPCE, *supra* note 4, art. 53.

108. Water Law, *supra* note 33, art. 53.

109. Nuclear Law, *supra* note 38.

110. LPCE, *supra* note 4, art. 74.

111. LPCE, *supra* note 4, art. 9.

112. LPCE, *supra* note 4, art. 82.2.

113. Cf. LPCE, *supra* note 4, art. 30.3, art. 51.2a-2c.

can be tolerated at a given place and time.¹¹⁴

Any entity which has incurred actual loss due to the introduction of changes in its permit, provided that the permit has actually been put into use, can claim damages. Likewise any entity or entities which may have profited by obtaining new permits for the pollution of the environment within the determined limits should pay some share of the costs of the damages paid.

C. *Environmental Fees*

Polish law provides for a system of environmental fees, for the use of the environment and changes made therein.¹¹⁵ In cases of polluting the air, of dumping waste materials, of clearing trees or bushes, etc., fees are collected.¹¹⁶ In the case of using water as authorized by a water use permit, fees are charged according to the rules specified in the Water Law,¹¹⁷ while fees for the extraction of mineral resources are regulated by the Mining Law¹¹⁸

The intention of regulations concerning the system of fees for the use of environmental resources (especially for business purposes) is to rationalize the exploitation of such resources; therefore, they are stimulative and motivational in character, and only to a very slight degree do they have the function of "prices" or "taxes." The regulations determine general rules, procedures, and the basic rates of fees, which in particular cases are specified by administrative decisions issued by authorized public administrative agencies, which usually take under consideration the type of business activities, the way of using the environment (causing harm or hazard), the degree and scope of the attendant hazards, and the state of the environment at a given place and time of activity. Depending upon the types and objects of business activities, it is also possible to either increase or reduce the environmental fee rates, and in some cases the regulations allow the obligation to pay them to be suspended. That decision in each particular case is made separately by the administrative agency responsible for oversight of the activity under review.

Environmental fees are usually paid into specific funds intended to finance specific tasks within the general area of environmental protection, e.g., into the account of the "Environmental Protection and Water Management Funds," the Forestry Fund, the Arable Land Protection Fund, etc. (see Part III above).

114. *Id.*

115. BOC & SAMBORSKA-BOC, *supra* note 3, at 165-69; *See generally* JERZY MALECKI, FINANCIAL LEGAL INSTRUMENTS OF ENVIRONMENTAL PROTECTION AND CONTROL (1982); MAREK MAZURKIEWICZ, FEES AND FINES IN THE SYSTEM OF ENVIRONMENTAL PROTECTION IN POLAND (1986).

116. LPCE, *supra* note 4, art. 86; Law Creating NEPIA, *supra* note 29.

117. Water Law, *supra* note 33.

118. Mining Law, *supra* note 32.

D. *Environmental Information*

An important legal instrument allowing for effective operations in furtherance of environmental protection is the environmental information system.¹¹⁹ There are three types of regulations within the Polish legal system which serve this purpose:

- regulations charging state agencies with the obligation to collect information concerning environmental resources and the method of their disposal; a typical example in this respect being regulations that order the keeping of an official record of water springs and resources (water register), or the documentation of the methods of using water (water books), as well as analogous regulations which control the registration of mineral resources, of land, especially arable lands and forests, and their use;
- regulations ordering the registration of such decisions as may be deemed very important for environmental protection and pertaining to land use planning (e.g., the obligation to administer the register of placement decisions);
- regulations ordering continuous monitoring, evaluation, and prognosis of the state of the environment, or the so-called "environmental monitoring"¹²⁰

The purpose of "state environmental monitoring" is to increase the effectiveness of activities for the sake of environmental protection through collection, analysis, and dissemination of data about the state of the environment and changes occurring therein. All work in this regard is coordinated by the Chief Inspector of Environmental Protection. All public administrative agencies, along with such institutions as carry out measurements and analyses of the state of the environment as their regular business, are obliged to cooperate with the Chief Inspector. The Inspector's office is obliged to disseminate the results of their observations, examinations, and evaluations of the state of the environment, together with information about the methodologies used in this respect, to all public entities and institutions. In addition, the National Environmental Protection Inspection Agency is obliged to inform the public at large about the state of the environment.¹²¹

E. *Environmental Policing*

In order to insure the effective realization and observance of environmental protection regulations, a system of specialized jurisdiction over such environmental protection regulations has been created in the relevant Polish legislation. The legal basis of the system's functioning -

119. See generally JAN BOC, JERSZY JENDROYKA, KONRAD NOWACKI, GERD WINTER, *THE ACCESS TO INFORMATION AND DOCUMENTATION PERTAINING TO ENVIRONMENTAL PROTECTION* (1990).

120. Law Creating NEPIA, *supra* note 29.

121. LPCE, *supra* note 4, art. 28.

sometimes called environmental policing - is NEPIA.¹²²

The goals of NEPIA include the following, with respect to all the entities concerned:

- the control of the observance of those regulations and decisions which pertain to environmental protection;
- the control and evaluation of the state and operation of facilities and equipment whose functioning may have an impact on the state of the environment;
- the organization and coordination of the activities of the state environmental monitoring system (see 5.5 above);
- active cooperation with all public entities, social organizations, and private citizens, in matters pertaining to environmental protection.¹²³

In order to realize the above tasks, NEPIA has the following competencies:

- It has the right at any time and to any extent to place under its control every person and institution (or part thereof), in pursuit of the proper observance of environmental protection regulations, and the right to request the supplying of such information concerning the environment as may be possessed by public administrative agencies.
- As a result of such control, as authorized by regulations, it can issue a decision or order other solutions whose purpose is to remedy discovered shortcomings, to prevent hazards, or to request compliance with legally fixed obligations (e.g., it has the right to order an immediate halt to business activities which cause "worsening of the state of the environment and the endangerment of human life or health").¹²⁴
- It has the right to initiate and to participate in either administrative or judicial proceedings in environmental protection cases.¹²⁵

Special competencies are granted to NEPIA in order to prevent environmental harms, or to allow it to act in the case of so-called extraordinary environmental hazards.¹²⁶ Polish law defines extraordinary environmental hazards as those hazards which are:

- a) caused by serious accidents (e.g., explosions),
- b) are not natural disasters (e.g., not a volcanic eruption),
- c) may cause either extensive destruction of the environment or a deterioration of its condition, and
- d) at the same time create a general hazard to people and the environment.¹²⁷

NEPIA is obliged to compile a register of such extraordinary environmental hazards, and to prepare detailed evaluations of the harm caused by such events.

122. Law Creating NEPIA, *supra* note 29.

123. *Id.*

124. Law Creating NEPIA, *supra* note 29, art. 13.

125. *Id.* arts. 15-16, 19.

126. *Id.* arts. 29-30.

127. LPCE, *supra* note 4, art. 104.

V. THE ORGANIZATION OF ENVIRONMENTAL PROTECTION

In light of the Constitution and of the laws currently in force, environmental protection is a governmental task, and it is accomplished through governmental agencies.¹²⁸

A. Governmental Agencies of Environmental Protection

The Parliament (Sejm and Senate) performs its task by passing laws. There is general agreement that environmental protection should be a consideration in all legislative enactments. When creating legal rules regulating various aspects of life, the effect on the environment of such rules should be examined.

Besides legislative functions, the Parliament exercises control over the functioning of the executive in matters pertaining to environmental protection, and over the observance of the law in that field. The Minister of Environmental Protection, Natural Resources, and Forestry is obliged to submit reports to the Sejm about the enforcement of the Law on the Protection and Control of the Environment every three years.¹²⁹ In practice, environmental debates take place in the Parliament more often; they are concluded with the adoption of resolutions by which the Sejm or Senate evaluates the state of the environment, and instructs the executive to take actions meant for the improvement thereof. In both chambers of Parliament, there are committees involved with environmental affairs.

The President of the Republic of Poland does not have special competencies in the field of environmental protection. However, he can influence environmental matters by making use of his general competencies, e.g., by submitting drafts of bills, by vetoing bills, and/or by exerting pressure on ministerial agencies.

The activities of governmental agencies, both central and local, have the greatest importance for environmental protection. Generally, it can be said that administrative agencies have legislative, organizational, control, decision-making, and even repressive functions in matters pertaining to the environment. Many agencies are involved in environmental protection.

The Council of Ministers ("the Government") has legislative competencies in environmental matters in those cases which are delegated to them for implementing regulations by Parliamentary laws. The coordination functions of the Council of Ministers and the Prime Minister are equally essential. Environmental protection matters belong within the scope of activities of various ministers, and so it is necessary to coordinate various activities. In addition, the Council of Ministers has other competencies in environmental matters; for example, it decides about the creation of new national parks.

128. BOC & SAMBORSKA-BOC, *supra* note 3, at 55-73.

129. LPCE, *supra* note 4, art. 115.

At the level of central administration, the Minister of Environmental Protection, Natural Resources, and Forestry has the greatest importance, and functions as authorized by the 1989 law.¹³⁰ The Minister has a wide scope of operations. He performs national tasks in the fields of environmental protection, forestry, reforestation, and hunting, as well as the management of natural resources, including water and mineral resources. The Minister coordinates the activities of other agencies involved in environmental protection, exercises control over the observance and enforcement of the relevant laws, clarifies issues that may arise concerning the proper enforcement of the law, and evaluates the state of the environment and the changes therein. He has wide competencies to issue executive orders supplementing acts of Parliament, e.g., specifying allowable levels of pollution. Rulings issued by other ministers and pertaining to ecological matters, even indirectly, must be made in consultation with the Minister of Environmental Protection.

The Minister performs his duties with the assistance of the Chief Inspector of Environmental Protection, and the Chief Inspector of Nature, who are his deputies. The Minister's advisory bodies are the National Council for Environmental Protection and the National Council for the Protection of Nature. The Minister appoints the management and the board of the National Environmental Protection Fund (see Part III above).

In 1991, the legal position of NEPIA was reconstituted.¹³¹ It is now structurally separate from the governmental administrative agencies. The NEPIA reports to the Minister of Environmental Protection.¹³² It operates on both central and local levels.

NEPIA has the right to control the activities of all enterprises or facilities which may present a hazard to the environment. Regional inspectors can issue orders to take necessary actions, can levy fines, or can order a halt to activities which infringe environmental protection regulations. They are thus called "the environmental police" (see Part IV above). The Chief Inspector of Environmental Protection administers the nationwide monitoring of environmental protection (see Part IV above).

The Chief Executive of each region (to use the Polish terminology, the "voivode" of each "voivodeship") is a part of governmental administration, operating within a given voivodeship, and is also involved in environmental protection.¹³³ He controls the observance and enforcement of regulations, and is obliged to ensure such conditions as may be necessary

130. Law Creating the Office of Minister of Environmental Protection, Natural Resources and Forestry, *supra* note 29.

131. See Law Creating NEPIA, *supra* note 29.

132. *Id.*

133. A voivodeship is a unit within a voivoda, a Polish regional governmental body. Poland has 49 voivoda. These local governmental bodies "have the bulk of the authority for ensuring compliance with environmental laws." Margaret Bowman & David Hunter, *Environmental Reforms in Post-Communist Central Europe: From High Hopes to Hard Reality*, 13 MICH. J. INT'L L. 921, 933 n.35 (1990).

for the enforcement of environmental protection regulations within his jurisdiction by the agencies under his control.

Most important for present purposes is the voivode's authority to determine the methods of carrying out business activities on the part of various enterprises, so that they meet environmental protection requirements. In particular, the voivode determines the maximum allowable quantities of substances that may pollute the air, of solid and liquid waste, and of noise and vibrations emitted by particular enterprises into the environment.¹³⁴ The voivode can order restrictions on the emission of such pollutants, or on the use of vehicles, in cases where an unfavorable atmospheric situation or the concentration of pollutants may require such a decision.¹³⁵

The proper placement of hazardous projects is extremely important for the environment. According to Polish law, the voivode issues decisions, in which he specifies the conditions for using such land as may be allocated for development, and the environmental protection requirements mandatory for such projects.¹³⁶ As authorized by the LPCE,¹³⁷ the voivode evaluates the designs of projects, and can request the preparation of appropriate expert evaluations (see Parts III and IV above).

In cases where certain business enterprises have a harmful impact on the environment, the voivode orders the causes of such impact or hazard to be eliminated, and the environment to be restored to its proper state. If the company concerned is unable to comply with this obligation, the voivode orders the payment of an appropriate sum to the National Environmental Protection Fund, to the water management fund, or to voivodeship funds.¹³⁸

The voivode has the authority to impose fees for the commercial use of the environment and for changing its condition (see Part IV above).

The voivode spells out the obligations of government administrative agencies and local governments in cases of extraordinary environmental hazards (see Part IV above). The voivode can invoke the obligation of personal contributions as may be necessary to organize public action in case of emergency¹³⁹

There are also other special agencies involved in environmental protection within the Polish administrative structure. They include, for instance, the directors of national parks, acting as authorized by the 1991 Law on the Protection of Nature.¹⁴⁰ The directors of national parks issue detailed regulations for the protection of nature in park areas. They

134. LPCE, *supra* note 4, arts. 30, 51.

135. *Id.* art. 32.

136. LPCE, *supra* note 4; see also MICHAL KULESZA, ADMINISTRATIVE LAW CIRCUMSTANCES OF LAND USE POLICY, 301-302 (1987).

137. LPCE, *supra* note 4, arts. 69-70.

138. *Id.* art. 82.

139. *Id.* art. 105.

140. Law on the Protection of Nature, *supra* note 11.

are authorized by the Public Prosecutor to act in certain criminal cases pertaining to alleged infringement of the laws pertaining to the protection of nature. Their tasks are executed by uniformed and armed national park rangers.

B. *Local Government*¹⁴¹

Matters pertaining to environmental protection are of interest not only to agencies of the central administration, but also to local government bodies in communes (i.e., municipalities) and towns. According to the 1990 Law of Local Governments,¹⁴² the local government is concerned with "all local matters not within the purview of other bodies." The commune is obliged to fulfill the collective needs of local residents. The matters which fall under that category include, for example, land use planning, land utilization, and environmental protection.¹⁴³ Local governments should take all steps within their legal, organizational, and financial capacities which may lead to the improvement of the state of the environment. However, the involvement of local government in environmental protection, insofar as the rights and obligations of citizens or companies are involved, must be based on the provisions of Parliamentary laws. Such legal provisions can be found primarily in the LPCE, which charges local governments with the obligation to insure necessary conditions for the enforcement of environmental protection regulations within their jurisdiction, and exercising control over the observance and enforcement of those provisions.¹⁴⁴ The tasks of the commune and of other governmental administrative agencies, especially those of voivodes, are similar.

Local governments are occupied with matters pertaining to green areas, waste treatment, and order and cleanliness within their jurisdictions. They can also impose limits on the time of operation or use of technical facilities or vehicles which create environmental hazards, e.g., noise and vibrations.¹⁴⁵

C. *The Position of Social Organizations and Citizens in the Field of Environmental Protection*¹⁴⁶

Although environmental protection is an essential task of the govern-

141. See generally WOJCIECH RADECKI, *Local Self-Government and Environmental Protection*, in *DESIGNING INSTITUTIONS FOR SUSTAINABLE DEVELOPMENT: A NEW CHALLENGE FOR POLAND*, 141-46 (Zbigniew Bochniarz and Richard Bolan eds., 1991).

142. Law of Local Governments, 1990, *DZIENNIK USTAW* No. 16/1990, item 95 (Pol.).

143. *Id.* art. 7.1.1.

144. LPCE, *supra* note 4, arts. 90, 91.

145. *Id.* art. 52.

146. See generally JERSZY JENDROSKA & KONRAD NOWACKI, *Participation Rights of Environmental Associations and Their Possibilities of Taking Legal Action in Poland*, in *PARTICIPATION AND LITIGATION RIGHTS OF ENVIRONMENTAL ASSOCIATIONS IN EUROPE*, 39-56 (Martin Fuhr & Gerhard Roller eds., 1991).

ment, it is obvious that it is of equal interest to private citizens and organizations. A characteristic feature of present legal solutions in Poland is that citizens can influence environmental protection activities mainly through social organizations. Private citizens and spontaneous ad hoc groups have fewer rights in this respect than do social organizations.

The social organizations in question constitute a very diversified category. The first type includes organizations which actively participate in political life, especially political parties and trade unions. Environmental protection accounts for only a part of their interests, and becomes important proportionally to the role played by ecological problems among members and sympathizers. Ecological parties in which environmental protection occupies a central place are rather weak in Poland.

The second type includes various societies which lack political aims, but rather advance economic, social, or cultural goals, for whom environmental protection constitutes only part of their fundamental activities, e.g., associations of engineers, of architects, of boosters of a particular city or region, as well as tourism, sports, and landmark preservation societies.

The third and most important type is the group of ecological associations for which environmental protection constitutes the chief and exclusive object of interest. The 1989 Law of Associations established the grounds for the foundation of such associations.¹⁴⁷ Besides these new societies, there also exists societies with well-established traditions. Ecological associations differ from each other as to their territorial range, the number of members, their programs, and the forms of their activity. In the last few years, in Poland, the role and number of such associations have grown both nationally and locally.

The above three types of associations are fairly equal under the law, because the LPCE, which grants rights to various social organizations, makes use of an umbrella term, "social organizations interested in environmental protection as an object of their activities"¹⁴⁸

In light of current law, social organizations, whether type one, two or three, have numerous rights in environmental protection matters.¹⁴⁹ Primarily, social organizations attempt to develop ecological awareness in the society at large. They also initiate and carry out activities pertaining to environmental protection. Such activities on the part of social organizations were dealt with by Art. 99 of the LPCE;¹⁵⁰ this was not in fact necessary, because such goals are incorporated in the rules of such organizations. According to the LPCE, central and local government agencies cooperate with social organizations in matters pertaining to environmental protection, and are obliged to help them.¹⁵¹

147. Law of Associations, 1989, DZIENNIK USTAW No. 20/1989, item 104 (Pol.).

148. LPCE, *supra* note 4.

149. *Id.*

150. LPCE, *supra* note 4, art. 99.

151. LPCE, *supra* note 4, art. 102.

Social organizations can be granted the function of environmental protection supervision in coordination with governmental institutions.¹⁵² However, no regulations describing the methods of executing such a function have been issued. Governmental agencies can also establish volunteer environmental protection wardens from among the representatives of social organizations involved in environmental protection.¹⁵³ According to a provision of the 1991 Law on the Protection of Nature,¹⁵⁴ the Minister of Environmental Protection can authorize social organizations to create such wardens. Members have the right to reprimand and to check the identification of persons who are in violation of regulations, to collect fines, to confiscate objects obtained in violation of environmental protection regulations and tools used for that purpose, and to prosecute cases in the public interest.¹⁵⁵

Social organizations play an essential role in the land use planning process, and whenever decisions are made about setting aside land for various purposes, including such future development as may influence the environment, they have the right to express their opinions and submit petitions concerning land use and zoning plans.¹⁵⁶ Any governmental administrative agency which is making decisions about the placement of projects with considerable environmental effects must inform those social organizations about their intentions, so that appropriate motions and objections can be filed. The opinions, petitions, and objections of social organizations are not legally binding on the governmental agencies involved, but those agencies are obliged to inform social organizations about the disposition of their opinions, petitions, and objections.¹⁵⁷

As authorized by Art. 31 of the 1960 Code of Administrative Procedure,¹⁵⁸ a social organization can participate in administrative processes concerning another person, if such participation is justified by the public interest and the fundamental constitutive purposes of a particular organization. An administrative agency is also obliged to notify a social organization about pending cases, if they might be of interest to a particular organization because of its fundamental aims. During the proceedings, a social organization can file motions, present evidence, lodge objections, and, in the case of unfavorable decisions, file appeals with the Superior Court of Administration.

The LPCE grants social organizations even more rights than the Code of Administrative Procedure.¹⁵⁹ For example, trade unions and social organizations interested in environmental protection in connection with

152. LPCE, *supra* note 4, art. 9.9.

153. LPCE, *supra* note 4, art. 99a.

154. Law on the Protection of Nature, *supra* note 11, art. 48.

155. *Id.*

156. LLUP, *supra* note 35, arts. 20, 23, 28.

157. LPCE, *supra* note 4, arts. 100, 102-03.

158. Code of Administrative Procedure, 1960, DZIENNIK USTAW No. 9/1980, item 26 (Pol.).

159. LPCE, *supra* note 4, art. 100.

the scope of their activities have the right to request from the proper governmental administrative agencies the employment of measures intended to remedy environmental hazards. They also have the right to apply to the court to rectify a disruption of the environment in a given area. The remedy can either be the restoration of the environment to its previous state or the repairing of the harm done. The court may also order the prohibition or the restriction of activities which are hazardous to the environment.¹⁶⁰ This problem will be further discussed in Part VI below

Polish law does not provide any special forms of participation in environmental protection matters for ad hoc, informal groups of citizens. Such groups, however, do have certain rights. For example, they can organize demonstrations to defend an endangered environment, as authorized by the 1990 Law of Assembly¹⁶¹ Moreover, citizens can submit group petitions, as authorized by Art. 86 of the Constitution¹⁶² and Art. 221 of the Code of Administrative Procedure.¹⁶³

In Polish law, individual citizens have standing in environmental matters whenever individual rights have been infringed or endangered. Such situations are determined by the provisions of administrative and civil laws (see Part VI below).

There are also other possibilities for the role of citizen involvement in environmental matters. For example, as authorized by the 1991 Law on the Protection of Nature,¹⁶⁴ individual adult Polish citizens can be authorized as volunteer caretakers of nature by voivodes. They then have the right to reprimand people who are in violation of natural protection regulations, but they are deprived of the right to coerce, e.g., to levy fines.¹⁶⁵

VI. RESPONSIBILITY IN ENVIRONMENTAL PROTECTION LAW¹⁶⁶

In Polish law, there exist provisions for administrative, civil, private, and criminal responsibility for protection of the environment, as outlined below

160. *Id.*

161. Law of Assembly, 1990, *DZIENNIK USTAW* No. 51/1990, item 297 (Pol.).

162. POL. CONST. art. 86.

163. *Id.*

164. Law on the Protection of Nature, *supra* note 11, art. 49.

165. *Id.*

166. See MALGORSATA LONGCHAMPS, RESPONSIBILITY FOR ECOLOGICAL HARM; WOJCIECH RADECKI, *Responsibility in Environmental Law*, in ENVIRONMENTAL CONTROL AND POLICY, 91-110 (Andras Tomas & Dorottya Lodner eds., 1988).

A. *Instruments of Administrative Responsibility in Environmental Protection*¹⁶⁷

Polish law does not have a complete structure of administrative responsibility, and its elements can be found in various legal regulations. There are numerous solutions, based on the fact that public administrative agencies must react to the violation of the state of the environment by legal entities, especially by businesses. It is therefore administrative agencies which both prosecute offenders and determine whether liability exists. Courts are involved in such cases only to review administrative actions.

The administrative agencies' operations under consideration are elements of the governmental mandate to protect the environment and care for its proper state. Their operations serve to protect the public interest, although obviously and frequently individual interests are protected, together with and in parallel to the public interest. The administration acts in such situations under statutory authority, and the initiation of proceedings does not depend on any application from interested persons, e.g., those who are harmed by the destruction of the environment.

Administrative liability is based on a finding that the environment has been harmed. However, it is not important whether the property of actual persons has been harmed (which may be essential in case of civil liability), or whether the perpetrator's guilt has been established, which on the other hand is essential in cases of criminal liability

The voivode can force business entities to take actions intended to eliminate the causes of a harmful impact on the environment or potential hazards to it. The voivodeship can also determine to what extent the businesses involved are obliged to restore the environment to its proper state. When establishing such obligations, the voivode considers the public interest, the existing state of environmental pollution or hazard, and the realistic possibility that such obligations will be discharged.¹⁶⁸

In a case where the business entity is unable to perform the obligation in kind, the voivode obliges it to contribute, either to the National Environmental Protection Fund or to voivodeship funds, an amount proportional to the value of damages resulting from a violation of the state of the environment. The voivodeship inspector of environmental protection, or in some cases the local government, issues decisions about the levying of financial penalties for the infringement of environmental protection regulations on the part of legal entities.¹⁶⁹ Such penalties are assessed for the following cases: changing the type or quantity of allowed substances emitted into the air, exceeding the allowed noise level, collecting or dumping waste in unauthorized areas or contrary to standard pro-

167. BOC & SAMBORSKA-BOC, *supra* note 3, at 223-229; see also WOJCIECH RADECKI, ADMINISTRATIVE RESPONSIBILITY IN ENVIRONMENTAL PROTECTION (1985).

168. LPCE, *supra* note 4, art. 82.

169. See MAZURKIEWICZ, *supra* note 115.

cedure, destroying green areas, trees, and bushes, as well as dumping waste which does not meet required standards into water or soil.¹⁷⁰ The upper limits of penalties are determined by the Council of Ministers.

Polish law allows rulings that order a halt or a limitation on business operations which may put a strain on the environment. This is a radical measure, which should be applied as a last resort, because, besides positive results, it also brings about negative consequences, e.g., market disturbances or unemployment. That is why the decision to halt business activities should generally be preceded by milder measures, and by warning notices and an order to introduce changes favorable to the environment.

Restarting halted business activities is allowed only by permission of the agency which issued the cease and desist order, on the condition that the methods of carrying out the business activities have been changed so as to render them more favorable to the environment. Restarting may occur, for instance, after the installation of proper equipment.¹⁷¹

Decisions which pertain to the halting of business activities appear in different regulations in Polish legislation. They can be issued in cases of excessive air and water pollution, or when allowable levels of noise and vibrations have been exceeded. Besides detailed provisions, Polish law also confers a more general competency to halt business operations which worsen the state of the environment, especially those which present a hazard to human life or health.¹⁷² The decision to halt business activities is made by the voivodeship inspector of environmental protection.

In addition, it is possible to issue an order halting or restricting business operations in emergency situations, namely in cases of especially unfavorable atmospheric conditions, or under other circumstances such as may cause the allowed concentration of air pollution to be exceeded to such a degree that it presents a direct danger to human life or health. In such a situation, the voivode issues a prohibition against the emission of specific pollutants into the air.¹⁷³ He can also restrict or prohibit the use of vehicles driven by internal combustion engines. Such a provision can be applied in cases of serious hazard to the state of historic landmarks.

In an analogous fashion, local government agencies can introduce restrictions on the type of work or the use of technical devices and vehicles which might create a hazard to the environment in the form of noise and vibration. These agencies can order that the use of such machinery or technical installations be halted, whenever no steps have been taken to limit the hazard they present for the environment.¹⁷⁴

Similar scope has been granted to the authority of the Minister of En-

170. LPCE, *supra* note 4, art. 110.

171. Law Creating NEPIA, *supra* note 29, art. 13.2.

172. LPCE, *supra* note 4, art. 83.

173. LPCE, *supra* note 4, art. 32.

174. LPCE, *supra* note 4, art. 52.

vironmental Protection, who can request that the manufacture or import of machines and other technical facilities which are hazardous for human health or which cause hazard to the environment be halted.¹⁷⁵

In many situations public administration agencies issue individual administrative decisions. Such decisions are issued after carrying out a procedure dictated by the provisions of the 1960 Code of Administrative Procedure.¹⁷⁶ The parties to such proceedings can be entities which have a legal interest;¹⁷⁷ usually this is understood to mean business entities infringing the state of the environment, as well as other entities, e.g., the owners of neighboring properties. The parties have the right to present their positions, to file motions, and to participate in evidentiary proceedings.

After a decision has been issued by an administrative agency, the parties have the right to complain to an administrative entity of higher rank, and then to file an appeal with the Superior Court of Administration. The Court examines the legality of the administrative decision, in terms of both substance and procedure,¹⁷⁸ but does not examine its appropriateness as evaluated from an economic viewpoint.

As discussed in Part V above, the Code of Administrative Procedure allows social organizations interested in a case due to the object of their activities can participate in administrative proceedings concerning another party, according to the Code of Administrative Procedure.¹⁷⁹ In such situations, social organizations have the same procedural rights as the parties directly involved.¹⁸⁰

Trade unions and social organizations interested in environmental protection because of the object of their activities also have the right to request public administrative agencies to take steps intended to eliminate environmental hazards.¹⁸¹ The agency is then obliged to start proceedings and issue appropriate administrative rulings, e.g., halting certain business operations which are harmful to the environment, or levying a fine.

B. *Instruments of the Civil (Private) Law of Environmental Protection*¹⁸²

The provisions of civil law are designed to protect the individual interests of private persons rather than the public interest. The kind of environmental protection enforced by civil procedures is an indirect and

175. LPCE, *supra* note 4, art. 78.

176. Code of Administrative Procedure, *supra* note 158.

177. *Id.* art. 28; see also JENDROSKA & NOWACKI, *supra* note 146, at 40-41.

178. Code of Administrative Procedure, *supra* note 158, art. 196.

179. Code of Administrative Procedure, *supra* note 158, art. 31.

180. *Id.*

181. LPCE, *supra* note 4, art. 100.

182. See generally JOZEF SKOCZYLAS, CIVIL LEGAL INSTRUMENTS OF ENVIRONMENTAL PROTECTION (1986).

reflexive protection, oriented towards the protection of individual interests. In evaluating the availability of civil law legal instruments for environmental protection, it is worth noting that the mechanism under discussion is initiated by the interested legal entities, and not either automatically by virtue of the law itself or by courts or administrative agencies. Therefore, even serious infringements on the state of the environment, touching upon great numbers of citizens, can be excluded from the instruments of civil law, if such infringements are not taken to be harmful to any individual person who has the right to apply to the court for legal protection. These results are symptomatic of an underdeveloped system of collective rights protection in Polish law

Civil legal claims are tried before civil courts, as authorized by the 1964 Code of Civil Procedure.¹⁸³ In Polish law, there are essentially no special civil legal instruments created for the sake of environmental protection. Rather, the general provisions of the 1964 Civil Code are applicable, as supplemented by the provisions of the environmental protection law.¹⁸⁴ Instruments of Polish civil law which may be employed towards the ends of environmental protection, include the petition to halt infringement on the state of the environment, the petition to prevent a danger of harm, and the claim for payment of damages.

Petitions to halt infringement on the state of the environment can have different forms in Polish civil law. One petition, originating from ancient Roman law, is based on the principle that a property owner has the right to sue any person who has harmed his property, and to request the restoration to its proper condition and a halt to any further infringements.¹⁸⁵ A similar provision also appears in a slightly different form in the environmental protection law.¹⁸⁶ The petition under discussion can be used not only by property owners, but also by persons who possess other property rights (e.g., lessees).

In order for the petitioner to obtain legal protection, the essential issue is whether the disruption of the use of property is excessive.¹⁸⁷

An order to halt the infringement of property rights can be obtained in various ways. In extreme cases, the court can issue a cease and desist order against activities that may be causing the infringement of ownership rights, or other rights. However, the court must balance the interests of both petitioner and respondent, as well as those of other persons who do not formally appear in the case, but whose rights may also be infringed by the respondent.

Polish law includes the petition to avert the danger of harm.¹⁸⁸ This is

183. Code of Civil Procedure [hereinafter "Civil Code"], 1964, DZIENNIK USTAW No. 43/1964, item 296 (Pol.).

184. LPCE, *supra* note 4, art. 80.

185. Civil Code, *supra* note 183, art. 222.2.

186. LPCE, *supra* note 4, art. 81.

187. Civil Code, *supra* note 183, art. 144.

188. Civil Code, *supra* note 183, art. 439.

a provision which is rare in other legal systems, and which potentially could play an important part in the field of environmental protection. The significance of this legal instrument is that it enables parties to petition the Court to provide protection before the harm has been done. Therefore, this is a purely preemptive petition, which creates a highly favorable situation for environmental protection. The preemptive petitions under discussion are available to those who are directly endangered by any such harm as may result from someone else's behavior, especially from negligent supervision, either of the operation of a company or plant, or of the condition of the buildings or other facilities possessed by the other party. The petitioner can in such situations demand that the respondent take any necessary steps to avert imminent danger.

The petitions having the greatest importance in current legal practice are the petitions for indemnification. In cases of harms caused by activities which worsen the state of the environment, Polish law allows for damages when material harm is done either to property or to persons.

In some cases, there can be problems in identifying the perpetrator. This happens when, in the same area and at the same time, there are a number of various entities emitting similar pollutants. Further problems occur when the existence of a "normal cause and effect relationship" has to be established between those events which are alleged to have caused the harm and the actual harm done. It should be noted that the practice of the courts tends to favor the injured party.

Damages have primarily a compensatory function, and are intended to compensate for the actual harm done to the property. Damages do not have a direct influence on environmental protection; that is, they do not cause an automatic restoration of the infringed environment to its previous state.

According to Polish law, the injured party selects the method of rectification, i.e., either by a restoration to the previous state or by some financial compensation.¹⁸⁹ However, the perpetrator cannot be ordered to remedy destruction in kind if this is either impossible or if it might entail excessive difficulties and costs. From the viewpoint of environmental protection an in kind remedy is desirable; however, in practice financial compensation is more common.

According to Polish law, the responsibility to rectify depends on proving that the perpetrator is at fault.¹⁹⁰ However, in court practice, fault on the part of the perpetrators of environmental harm is understood broadly, which is beneficial to the injured parties. Moreover, the observance of allowable maximum standards of air and water pollution and/or the emission of radiation or noise (see Part IV above) neither excuses nor limits the perpetrator's responsibility for causing harm.

In many cases of environmental harm, the perpetrator's responsibility

189. Civil Code, *supra* note 183, art. 363.1.

190. Civil Code, *supra* note 183, art. 415.

is independent of his culpability. That occurs, according to Polish law, when the harm is done by a company driven by forces of nature (including steam, gas, electricity, liquid fuels, etc.).¹⁹¹ This pertains in practical terms to industrial plants which emit environmental pollutants.

The effect of damages on the perpetrator's reluctance to refrain from environmental infringement and harm in the future is indirect. Only when the perpetrator is financially stung by the compensation, and also may expect to lose further suits, is it likely that damages will motivate him to take steps intended to avoid paying further damages in the future. In the previous system of planned economy, the costs of compensation were charged to the consumers of products and services; therefore, compensation did not fulfill its deterrent function.

When environmental harm is caused by a business entity, the deterrent function of the obligation to remedy the harm depends also on whether the financial responsibility will extend to those particular individuals within that organization who were personally responsible for the harm. According to the LPCE,¹⁹² the director of the entity and other employees, if they have caused an infringement on the state of the environment which has resulted in harm, either because of their negligence or through the normal routine execution of employee duties, can be held responsible, according to principles established by law. The Labor Code states that the employee is obliged to compensate his employer for harm.¹⁹³ If the harm was done inadvertently, the value of compensation cannot exceed the value of the employee's three-month remuneration.¹⁹⁴

It is a matter of controversy in Polish civil law whether one can identify "the right to the environment" and "the right to use the environment" as distinguishable personal human rights, protected by law.¹⁹⁵ If so, this would entail the granting of wide possibilities for legal protection to those who are so entitled. For instance, the person whose personal rights are endangered by somebody else's activities can demand that these activities be stopped, unless such activities are legal. In the case of infringement, he can also request that the person who caused infringement perform those actions necessary to remedy the results of such activities. The injured party can also request compensation for the harm done.¹⁹⁶

Polish legal literature quotes views supporting the recognition of the right to the environment as a personal right.¹⁹⁷ One consequence of such a recognition would be the granting to private persons of the right to

191. Civil Code, *supra* note 183, art. 435.

192. LPCE, *supra* note 4, art. 81.2.

193. Labor Code, 1974, arts. 119 and 120.2, DZIENNEK USTAW No. 24/1974, item 141 (Pol.).

194. *Id.*

195. See generally JERSZY SOMMER, THE HUMAN RIGHT TO NATURAL ENVIRONMENT (1987).

196. Civil Code, *supra* note 183, art. 24.

197. WOJCIECH RADECKI, *Civil Law Instruments of Protection of the Environment*, in

appear in court, not only in their own interest, but also in the interest of other people who are entitled to the same. This would also open the way to the *actio popularis*, which is unknown to Polish law. Nevertheless, up until now court decisions, including those of the Supreme Court, have rejected such a conception. However, this question has not been finally resolved.¹⁹⁸

We mentioned above that the instruments of civil law are intended to protect individual interests; Polish law does not recognize class action in its pure form. However, Art. 100 of the LPCE allows for the protection of group interests as opposed to individual interests.¹⁹⁹ Such a construct to a considerable degree substitutes the class action. According to these provisions, trade unions and social organizations interested in environmental protection because of the object of their activities can go to court and petition for a halt to environmental infringement within a given area, and for a restoration of the previous state, as well as for either the repair of the harm done or the prohibition or restriction of activities which endanger the environment.

In interpreting this provision, many doubts arise, which cause its practical significance to be less than its potential. Various necessary procedural matters, e.g., whether a petition filed by organizations excludes further individual claims, or whether a social organization appears in court on its own behalf or only represents its members or others who have legal standing in the case, have not been regulated in Art. 100.²⁰⁰ Moreover, it is unclear whether the provisions of Art. 100 create a separate basis for the claims of social organizations, regardless of the basis of any other civil liabilities resulting from other provisions of the law, or only increase the number of parties which may file their claims, by giving an additional right to proceed to social organizations.²⁰¹

C. *Criminal Liability*²⁰²

Criminal liability is the most serious kind of legal responsibility in the sphere of environmental protection. It is applied in the case of the commission of deeds which are recognized as felonies or misdemeanors, or which are dangerous to society.

Poland recognizes a principle which is known to all civilized legal systems. This principle states that an act is a crime only if it is prohibited by a valid law when the act is committed.²⁰³ Only for such a deed can a

THE EFFECTIVENESS OF ENVIRONMENTAL PROTECTION IN THE CIRCUMSTANCES OF ECONOMIC REFORM, 201-05 (Jerszy Sommer ed., 1990).

198. *Id.* at 205-06; JENDROSKA & NOWACKI, *supra* note 146, at 45-46, 53.

199. LPCE, *supra* note 4, art. 100.

200. *Id.*

201. *Id.*

202. See generally WOJCIECH RADECKI, CRIMINAL LEGAL PROTECTION IN THE REPUBLIC OF POLAND (1981).

203. Penal Code, 1969, art. 1, DZIENNEK USTAW No. 13/1969, item 94 (Pol.).

penalty be exacted (*nullum crimen, nulla poena sine lege*).

Polish law differentiates between "felony" cases, which are referred to criminal courts, and "misdemeanor" cases, which are tried by special misdemeanor courts operating under the auspices of criminal courts. Misdemeanors are deeds punished by detention or probation of up to three months, or a fine of up to 5 million PZL (about 380 dollars), while those deeds which are punished more severely are felonies.

In matters pertaining to the environment, felonies or misdemeanors are included in the provisions of the 1969 Penal Code,²⁰⁴ the LPCE,²⁰⁵ and in other laws.²⁰⁶ The penal provisions included in various laws originate from various periods and are not fully harmonized, e.g., as to the severity of the punishment for committing prohibited deeds. Generally, we can say that those deeds which consist of a serious and culpable infringement of obligations regarding the environment are subject to criminal liability. Such deeds are subject to the penalties of fine, arrest, probation, or imprisonment.

Under Polish law a felony or misdemeanor can be committed only by a human being; thus Polish penal procedures do not provide for the commission of felonies or misdemeanors by organizations or institutions, e.g., by a company. When discussing administrative instruments of environmental protection, on the other hand, it was mentioned that fines can be levied on organizations by administrative agencies for the infringement of the state of the environment (see Part VI above). However, these are not "penalties" in the understanding of Polish criminal law.

The fact that only a human being can be held criminally liable considerably restricts the possibilities of using penal law instruments for the sake of environmental protection, because infringement is often associated with the activities of organizations rather than individuals. That is why, in the case of a felony or misdemeanor occurring during business operations, it is necessary to identify the particular individual(s) as perpetrator(s), who could be found guilty. This is often quite difficult, because the decision-making process in many organizations is diffuse, spread among many people functioning on various levels of management. Moreover, there is also the problem of collective decisions; therefore, in cases of criminal liability there arises a difficult problem in connection with the assignment of culpability, not only to direct perpetrators, but also to those so-called "managerial perpetrators" who occupy key positions in business organizations, whose decisions or negligence caused the commission of felonies or misdemeanors.

Assigning culpability to perpetrators of crimes against the environment becomes difficult when the actual outcome of one person's actions, which may have caused harm to the environment, also depends on nu-

204. *Id.*

205. LPCE, *supra* note 4.

206. See Building Law, *supra* note 36; Water Law, *supra* note 33; Law on the Protection of Nature, *supra* note 11; Hunting Law, *supra* note 34.

merous factors which are either beyond the perpetrator's control or difficult to foresee (e.g., the weather, or overlapping pollution by various companies).

Currently, criminal law does not play a considerable role in the enforcement of environmental law. Verdicts are few in number, and criminal proceedings are frequently dismissed by prosecutors.

There are several reasons for this state of affairs. Some penal provisions are imperfectly formulated (i.e., either too general or too specific). Moreover, it is also difficult to establish the culpability of particular individuals. This results from the above-mentioned complicated multi-level method of decision-making in business organizations. In such cases, the indictment of direct perpetrators who are employees of lower executive rank in business organizations is often criticized as "looking for scapegoats."

However, those suspected or accused of felonies or misdemeanors naturally look for excuses for their criminal acts or omissions. They usually claim that their infringement of regulations pertaining to environmental protection results from their business operations, which are beneficial both to the economy and to society. The counteraction and prevention of environmental infringement during business operations is very difficult, and entails high costs. In other words, perpetrators of crimes against the environment often allege reasons of a peculiarly understood "business necessity." However, in the light of Polish law, that circumstance does not exclude penal liability, although in practice such arguments have been considered by both prosecutors and courts.

VII. PROSPECTIVES FOR CHANGE AND DEVELOPMENT OF POLISH ENVIRONMENTAL PROTECTION LAW

The direction of change and evolution in Polish environmental protection law will be determined primarily by such basic systemic and legal principles as are foundational for the amended Constitution and the future Constitution. The reconstruction of Polish systemic and legal structures carried out since 1989 is based on the assumption that Poland is a democratic government of laws,²⁰⁷ which guarantees basic freedoms, including economic freedom, as well as individual ownership, and is also a government in which the freedom of self-government is guaranteed, including especially the constitutionally guaranteed functions of local government. The accepted assumptions about the building of Polish statehood mean that the present government monopoly in the spheres of public administration and the economy will have to give way to the dualism of administration: besides the central government administration, there is also the local government administration. In the economic sphere, there is an on-going process of general privatization of state-owned enterprises, which have previously dominated the economy. The

207. POL. CONST. art. 1.

new economic freedom has brought about the creation of numerous new private companies.

In such a situation, the current regulations pertaining to environmental protection, which mostly referred to the old structures and principles of government and to the economy of "pragmatic socialism", or to the principles of centralized government and a centrally planned economy, will have to be changed.

Moreover, the present regulations, together with many provisions of the LPCE, were to a great extent based on the premise of the priority of economy over ecology, which resulted from the fact that the government of "pragmatic socialism" took upon itself the responsibility for the functioning of the whole political, administrative, and economic system, and therefore was unable to execute consistently "a se ipso" observance of environmental protection regulations. This, then, is another reason why the regulations should be changed.

Finally, there is another reason why the present state of legal regulations pertaining to environmental protection is imperfect, regardless of the LPCE. Regulations are scattered among numerous detailed laws, which have been adopted by the Polish Parliament in various periods of time (since the 1920s), and for that reason they are not consistent, and do not meet the requirements of a modern environmental protection law. It is also significant that in the present environmental protection law, there are a number of gaps in the legal regulations; that is to say, regulation is fragmentary in many fields. As a result, it is impossible under Polish law to apply consistently the "cradle-to-grave" principle. This must be changed promptly.

All the above circumstances have caused the Polish Parliament to recognize an urgent need to reform Polish environmental protection law, and to prepare a whole package of new laws in that sphere, in a special resolution adopted in 1990. Some laws have already been passed, e.g., NEPIA,²⁰⁸ the 1991 Law Forests²⁰⁹ and the 1991 Law on the Protection of Nature.²¹⁰ Other drafts of laws are in the last stages of preparation, including, most importantly, a revised LPCE, new regulations for geological and mining activities, water law, land use planning regulations, building law, etc. Generally, the regulations will be based on the priority of ecology over economy, the principle of the separation of competencies in matters pertaining to environmental protection between governmental institutions and local administrative agencies, and on the introduction to a greater extent of economic and legal instruments of environmental protection, including not only fees, but also environmental "taxes", "prices", "insurance", or "fines." These will have a stimulating and motivating function for those entities which have a harmful effect on the environ-

208. Law Creating NEPIA, *supra* note 29.

209. Law of Forests, *supra* note 31.

210. Law on the Protection of Nature, *supra* note 11.

ment, and thus will obviate the necessity to use coercive power employed by administrative agencies in a way which is abhorrent to the rules of the market economy; and, at the same time, they will allow the funds necessary for the realization of public goals in environmental protection to be collected. It is also obvious that the new legal regulations presently being prepared should also consider the environmental protection standards in effect in Western Europe and the world.