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**The Formation of the New Environmental Protection Law in Poland
(Basic Problems)**

Kształtowanie się nowego prawa ochrony środowiska w Polsce
(Problemy podstawowe)

INTRODUCTION

My paper presents the formation of the concept of a modern environmental protection law in Poland.¹ The analysis includes both the existing respective legal regulations — particularly the bill of January 1980² concerning the protection and formation of the environment and at present the basic directions of environmental law novelty with the special consideration given to requirements of market economy.³

A SHORT HISTORICAL NOTE

In Poland, environmental law has ample traditions. The basis is the conservation of nature which has its roots in the reign of the Polish kings. Then, in the XIXth century, this problem (nature protection) was very

¹ This article was written according to the legal status prevailing on 10 December, 1991.

² Ustawa z 31 I 1980 r. o ochronie i kształtowaniu środowiska [the bill of January 31, 1980 of Environmental Protection and Management], Dziennik Ustaw Rzeczypospolitej Polskiej [Official Law Gazette] — abbr. Dz. U. 1980, no. 3, pos. 6, with further amendments.

³ The first legislature concept assumed voting a uniform bill about protection of environment and nature but another assumed voting separate bills about protection of environment and nature protection. Finally, the Parliament voted a new bill about nature protection on 16 October, 1991, which will come into use on the day of being published in Off. Law Gazette (Dz.U.).

difficult, because at that time Poland was a divided country (three Polish regions) among three invaders. The intense activity in the former Austrian part centered in the Jagiellonian University, because the political autonomy was only under the Austrian authority. That is why, the Parliament (Sejm Krajowy) voted the bill on July 10, 1869 relating to the offence of catching, extricating and sale of alpine animals, and those marmots and chamois in the Tatras.⁴

After the First World War, Poland was independent. Therefore, the movement of nature protection was characterized by two important events. The first was the decree of 10 June, 1925 of the Council of Ministers about creation of the National Council of Nature Protection. The second event was enacted by Parliament (Sejm) the bill of Nature Protection of March 10, 1934.⁵ These aims were realized among others in five forms i.e. the acknowledgement of natural phenomena as a natural monument, the establishment of a national park, the introduction of the protection of fauna and flora, the obligation to restore to the former condition or to meet the maintenance costs and creation of the social guardians of nature protection.

The third stage of nature protection was after the Second World War. In 1949 a new period for the environmental protection movement in Poland began. Sejm enacted the next bill of Nature Protection of April 7, 1949⁶ and later the others, particularly: the bill on the Protection of the Atmosphere Against Pollution (1966— at present not in use)⁷, the Building Code⁸ and the bill of Water Law⁹.

THE ENVIRONMENTAL PROTECTION BILL AND THE CODE OF ENVIRONMENTAL PROTECTION

The bill of January 31, 1980 of Environmental Protection and Management is a new period for the movement of the environmental protection. Since 1976, art. 71 Constitution of Poland¹⁰ has assured citizens

⁴ Dziennik Ustaw i Rozporządzeń Krajowych dla Królestwa Galicji i Lodomerii z Wielkim Księstwem Krakowskim, Część XI [Official Law Gazette and Orders for the Kingdom of Galicia and Lodomeria with the Great Dukedom of Cracow, Part 11], p. 16.

⁵ Dz. U. 1934, no. 31, pos. 274.

⁶ Dz. U. 1949, no. 25, pos. 180, (see: ref. no 3).

⁷ Dz. U. 1966, no. 14, pos. 87—abrogated by the bill of 31 January, 1980 of Environmental Protection and Management.

⁸ Dz. U. 1974, no. 38, pos. 229 with further amendments.

⁹ Dz. U. 1974, no. 38, pos. 230 with further amendments.

¹⁰ Dz. U. 1976, no. 7, pos. 36.

of the right to use environment values with the simultaneous obligation to protect the environment. Therefore, the Parliament voted the bill on January 31, 1980. This bill falls within the system of administrative law. Art. 1 of the bill strictly defined the terms: "environment" and "environment protection". This first term includes the entirety of the natural elements, especially the surface of the earth inclusive of soil, mining resources, water, air, flora and fauna and the landscape both in the natural state and their altered form as a result of human activity (biospheric elements).¹¹

However, the legal concept — "environment protection" means every action or giving it up, the aim of which is to preserve or restore the ecological balance. It should be realized by rational forming of environment and using the nature resources. It also covers prevention and counteraction in the case of harmful effects on the environment as for the legal responsibility within the administrative law, civil law and penal law, independent of restoring the nature elements to the appropriate state, when it is possible. In the Polish system of environmental protection law the legal administrative responsibility takes place when the administrative decisions or the administrative law regulations concerning environmental protection law are not obeyed. Moreover, the legal civil responsibility takes place when the legal entity or the individual undertakes the activity harmful for the environment and compensation must be paid when the ecological damage takes place and this harmful activity must be stopped as a result of legal procedure on the basis of the court verdict valid in law. But, the penal responsibility for crimes or offences in the environmental protection is taken only by the individual on the basis of guilt as a result of the court verdict valid in law. Hence, the bill of 1980 realizes not only natural protection (a static aspect) but even a dynamic aspect. The dynamic system of environmental protection links with spatial planning. On this account, it is necessary to take into consideration the aspects of environmental protection according to the respective regulations not only according to the bill of January 31, 1980 but also the Spatial Planning bill of July 12, 1984.¹² That is why environmental degradation is understood to be physical phenomena, life complicating conditions or situations affecting the environment e.g. noise, vibration, radiations, pollution of the air and wastes. The above mentioned problems were and are regulated with respect to the ecological balance preservation. The bill of 1980 was realized among others in many

¹¹ L. Jastrzębski, A. Rest: *Environmental Protection in the People's Republic of Poland* „Environmental Policy and Law”, 15 January 1982.

¹² Dz. U. 1989, no. 17, pos. 99 with further amendments.

forms, particularly: general principles and creation of conditions for the protection of the environment; protection of the earth surface and minerals, also flora and fauna; protection of the air, waters and marine environment; protection of the environment against noise and vibrations also against wastes, radiations and other forms of pollution; protection of open spaces in towns and villages.

This bill also regulates duties of legal entities, individuals and other organizational units (e.g. non-commercial partnership) in this field of environmental protection procedure e.g. in connexion with the use of the environment. Moreover, this act regulates different aspects of liability for the consequences of disruption of the state of environment and also economic environmental protection measures. Other problems considered by this act are e.g.: organization of environmental protection, exceptional environmental hazards and penal provisions. That is why, the answer to the main question concerning the name of the 1980 bill is obvious. It is not in a formal sense a code. But this bill forms new general legal principles and characteristic legal institutions (means) which refer not only to the administrative law but to the whole legal system. Therefore, it is the general bill but it includes legal institutions of preventive and protective types. To attain this purpose these institutions have regulated the social relations which are within the organizational framework direct fulfilment of state responsibility in the field of environmental protection. It is a difficult problem, because some norms in the environmental protection are supplemented for instance by those of the Civil Code and the Code of Offence. But, most of these norms refer to all fields, especially to administrative law and general administrative i.e. the Code of Administrative Procedure.¹³

REASONS AND TRENDS OF FORMING THE NEW ENVIRONMENTAL PROTECTION BILL

At present, the state of environment in Poland is characterized by the high degree of its degradation. On the basis of the resolution about the national socio-economic plan for the period 1983—1985¹⁴, twenty seven areas of ecological threat were distinguished in which the accepted standards of pollution of particular elements of the environment such as: inland water, air, farming lands and forests are exceeded many times. These areas of ecological threat constitute about 11.3% of Poland and

¹³ Dz. U. 1980, no. 9, pos. 26 with further amendments.

¹⁴ Dz. U. 1983, no. 24, pos. 103 and *Ochrona środowiska 1991* [Environmental Protection 1991] by GUS [the Main Statistical Organ], Warszawa 1991, pp. 278—293.

are populated by 35.5% of the whole population. Moreover, four areas i.e. Silesian Industrial District, Legnica—Głogów Industrial District, the area around Gdańsk and Puck Bays as well as the Cracow city have been recognized as areas of particularly high degradation. The problems of environment protection have a general character, that is efficiency of legal measures undertaken in home law is dependent on similar activity carried out in neighbouring countries. Of course, it may disturb e.g. the conception of state sovereignty, because no country is able to protect itself against the influence of harmful pollutions e.g. dust or gas from other countries.¹⁵

Here a question concerning low efficiency of the environmental protection law, especially of the bill of 1980 in practice should be asked. To answer it there should be formulated some conclusions.¹⁶

The main reason of low efficiency of the environmental protection law in practice was the economic system in Poland. According to the centralized system of economy management which existed to 1990, the state firms even specially harmful for the environment were subsidized as to guarantee or to maintain them for the sake of national economy needs. That is why non-compliance fee taken from their profits proved to be not effective. Moreover, the effluent charge for economic use of the environment e.g. deposit wastes, did not bring the expected effects. Charge included in the production costs, shown in higher prices can be the aim only within the consumer market as well as a free establishment of prices (elimination of the state prices and higher supply than demand). But, the decentralized management model has been introduced since 1 January, 1990 as well as market mechanisms. For environmental protection it will give possibility to liquidate some state enterprises also because of environmental requirements. Moreover, changes of space economy according to the environment protection and management bill and also spatial planning bill cause increase in preventive legal measures, among which local spatial plans play the main role. This should be correlated with elimination of subsidizing these firms also because of environmental protection. We must introduce legal-economic mechanisms which will make all economic units harmful for the environment take necessary protective activity. To reach this aim, central and local direc-

¹⁵ J. Stelmasiak: *The Environment as an Object of Legal Protection in the Countries of Central-Eastern Europe*, [in:] *International Ecological Security*, Ed. by Z. J. Pietraś and M. Pietraś, Lublin 1991, pp. 147—160.

¹⁶ J. Jendrośka, W. Radecki: *The Environmental Protection Act of 1980. an Overview and Critical Assessment*, [in:] *Designing Institutions for Sustainable Development: A New Challenge for Poland*, Ed. by Z. Bochniarz and R. Bolan, Minneapolis—Białystok 1991, pp. 62—66.

tive socio-economic plans ceased to be prevailing on 1 January, 1991.¹⁷ However, the effectiveness of the environmental protection law in Poland was closely related to the social-economic plans which were in practice given priority over the spatial plans. Moreover, existing since 1985 the system of spatial plans which includes environmental protection requirements is gradually introduced. Making new spatial plans needs some long studies and analysis. That is why there are simplified local spatial plans in communes which do not consider environmental protection law requirements. So far the state spatial plan has not been worked out. It had a bad effect on legal measures e.g. protective zones used for realization of the contents of the local spatial plans in the field of environmental protection. Creation of protective zones on the basis of art. 71 the bill of 1980 comes across some difficulties. Spatial isolation of the sources of pollution for environment requires not only limiting the zone area but also its economic development by introduction of special legal regulations e.g. prohibiting localization of houses, schools, hospitals and removal of such existing buildings. In practice, because of highly developed urbanization of many areas, it is often difficult to be done; particularly such a situation exists in the Silesian Industrial District. Moreover, lack of the uniform monitoring system of the environment has constituted a barrier for the effective control of the environment state through the previous and new "independent" ecological policy. Since 29 October 1991, the new State Inspection of Environmental Protection has acted as an independent institution controlling the environmental state in Poland which was formed on the basis of the bill of July, 1991.¹⁸ Moreover, the *ratione loci* competence and *ratione materiae* competence administrative governmental organs and self-governmental organs tasks in the field of environmental protection are realized. In this area, the legislator assumes priority of the national public interests over the local public interests which are realized by self-governmental organs or local administrative organs; the coordination center should be Minister of Environmental Protection, Natural Resources and Forestry.

Understanding the above mentioned problems, inspired in Poland for a new law of environmental protection¹⁹, particularly the bill of environment and nature protection, which will include adjustment of the Polish environmental law to the requirements of the standards prevailing in E.C. before joining this organization by Poland — the problem of reception

¹⁷ Dz. U. 1990, no. 87, pos. 505.

¹⁸ Dz. U. 1991, no. 77, pos. 335.

¹⁹ According to the project of the Bill about Protection of Environment and Nature, Ministry of Environmental Protection, Natural Resources and Forestry, Warsaw 1991.

into the home law of international standards in the field of environmental protection. For this reason, the trends of environmental protection law transformation resulting from market economy being introduced are based on the following assumptions.²⁰

The first, the principle of universality of environmental law concerning all legal entities, other organizational units, individuals and administration state and self-government organs should include ecodevelopment and ecopolitics in economy policy. That means establishing the legal duties in the field among others of preventing from and counteracting harmful changes of the environment of complex protection of the environmental resources, determination of the period of natural resources exploitation and the formation of the basic legal rules of nature protection (e.g. the procedure of using renewable and unrenovable natural resources).

The second, establishing the legal institution — "environment impact statement" in the procedure of investment localization particularly harmful for the environment (also privatization of state economy).

The third, introducing the compulsory regulation — "the polluter pays" principle which means that responsibility is taken by the doer both within the legal responsibility based on the administrative law, civil law and penal law. It would also include the principle that using environment and making changes must be paid for with effluent administrative charge or non-compliance fee for economical use of the environment which are included in the National Fund of Environmental Protection and Water Economy whose finances are spent on environmental protection investments.

The fourth, the rule of environmental protection obligatory requirements in the procedure of project preparation of spatial plans including particularly specific requirements of environmental protection in the areas of ecological threat.

The fifth, the legal recommendations for participation of citizens, legal entities and other organizational units in the activities with respect to the environmental protection law. It also concerns establishing the legal institution i.e. *actio popularis*. *Actio popularis* means that each person irrespective of his own individual legal interest has a right for court claim for giving up environmental violation and removing the effects of this violation against the doer (a plaintiff would have right to be released from costs of court proceedings). Moreover, each person should have

²⁰ *Instrumenty ekonomiczne dla ochrony środowiska* [Economic Instruments for Environmental Protection], Organization for Economic Co-Operation and Development (OECD), Warszawa 1990.

court claim to have access to information which is of great importance for environmental protection. In practice newly formed the State Inspection of Environmental Protection is to control observation of regulations about environmental protection and investigation on the environment state based on the national uniform monitoring system. It refers to non-compliance fee for exceeding pollution standards with possibility of closing up the enterprises which are specially harmful for the environment within the legal administration (i.e. administrative decision of voivodeship inspector of the environmental protection concerning liquidation of the enterprises harmful for the environment and health of people).

The sixth, change in the prevailing regulations namely giving out i.e. immission standards and introducing emission standards based on properly defined technical and economical possibilities considering *vacatio legis* of gradual liquidation of immission standards, particularly legal air protection and protection against harmful noise and vibration.

The seventh, strictly defined legal institution of "an extreme endangerment for the environment". The principle of universal protection against special threat for the environment requires, among others, assignment of duties of organizational units in the field of prevention and removal of effects of special threats for the environment, establishing the duties of individual performance and in re- and assignment of competence and tasks for public administration organs. Moreover, the legal term "ecological damage" would mean diminishing common interest or cause threat for it (it is based on the criterion of protection object).

The eighth, the management of environmental protection should be based on the regionalization rule which means the decentralization right in this field also on the behalf of local self-government organs. Moreover, it is necessary to change e.g. the organs responsible for the water economy based on the hydrographic system thus independent of the basic administrative divisions of Poland.

CONCLUSION

It should be emphasized that legal environmental protection is a very difficult problem not only ecological but also of social, economic and political character in the process of system transformation in Poland. To reach this it is necessary to form an ecological lobby to balance the building lobby, agriculture lobby and heavy industry lobby. This is a necessary condition to increase the ecological knowledge of the society, as well as to understand importance of the public interests in the environ-

mental protection law. The last elections for the Parliament showed a complete defeat of the "green" parties which did not win any seats in the Parliament. Hence, so-called in Poland "the radical way of the former GDR" in the process of introducing market economy forcing the changes of production profile or closing up the enterprises harmful for the environment causes strong opposition in Poland. This can be seen in the suggestion *de lege ferenda* for the future environmental bills and will be closely connected with the new economic policy in Poland considering the E.C. standards of the environmental protection.²¹

STRESZCZENIE

Przedstawiono podstawowe problemy występujące w procesie kształtowania się nowej gałęzi prawa, tj. prawa ochrony środowiska w Polsce. Przełomowym momentem w tym zakresie było wejście w życie ustawy z 31 I 1980 r. o ochronie i kształtowaniu środowiska (Dz. U. nr 3, poz. 6 z późn. zm.), pomimo że nie był to kodeks ochrony środowiska, lecz tylko akt normatywny o charakterze kompleksowym. Na tej podstawie po raz pierwszy w naszym ustawodawstwie wprowadzono instytucje prawne chroniące w sposób kompleksowy środowisko przed uciążliwościami. Jednak był to akt normatywny dostosowany do systemu nakazowo-rozdzielczego w gospodarce narodowej, co było przyczyną jego późniejszych nowelizacji. Z tego względu przedstawiono wnioski *de lege ferenda* do nowego prawa ochrony środowiska. Jego rozwiązania prawne będą musiały być powiązane nie tylko z mechanizmami gospodarki rynkowej, lecz także powinny uwzględniać obowiązujące w tym zakresie standardy w EWG, ponieważ będzie to jeden z warunków przyjęcia Polski do tej organizacji.

²¹ On 16 December, 1991 Poland initiated a contract about its affiliation in E.C.

