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Environmental protection law in Poland

Ustawa o ochronie środowiska w Polsce

INTRODUCTION

This chapter aims at presenting the formation of the concept of "environment" as the object of legal protection in Poland. The analysis includes the prevailing respective legal regulations. Art. 86 of the Constitution of Poland ensures citizens the right to use the environment values with the simultaneous obligation to protect the environment[1]. Therefore, the Parliament voted the Act of January 31, 1980 of the environment protection and management[2]. This act falling within the system of administrative law realizes not only natural protection (a static aspect) but even a dynamic aspect. That is why the environmental degradation is understood to be physical phenomena, life complicating conditions or situations affecting the environment e.g. noise, vibrations, radiations, pollution of the atmosphere and wastes. The above-mentioned problems were and are still regulated with respect to the ecological balance preservation. Moreover, introduction of the market economy rules in Poland as well as the Act of 8th March 1990 about Communal Local Self-Government[3] brought new sources of legal interest collisions in the field of environmental protection. These are positive expressions of the own legal interests also in the field of environmental protection. This is of particular importance in the areas of ecologic disaster.

[1] J. Stelmasiak: *Environmental protection as a political-legal problem in Central-Eastern European Countries*, The Journal of East and West Studies 1992, Vol. 21, No 2, pp. 59–67.

[2] Official Law Gazette 1994, No 49, Pos. 196 (the final text with further amendments).

[3] Official Law Gazette 1996, No 13, Pos. 74 (the final text with further amendments).

LEGAL PRINCIPLES AND DEFINITIONS

The term "protection" is often used in the administration law and organizational activity of the state administration organs. It consists in preventive action or neutralization of the harmful activity in reference to the case which should be consistent with the standard determined by legal norms. The domain of this general term includes two subdomains[4]. The term "protection" refers to using material and technical means which are first of all of preventive character. Hence, "legal protection" refers to a set of legal norms created to guarantee such social-economic relations which would prevent from harmful and undesirable changes.

However, only the Act of Environmental Protection and Management introduced the following terms to determine their legal definitions:

– "environment" – the entirety of the nature elements like: flora, fauna and landscape both in the natural state and their altered form as a result of human activity (biospheric elements) as well as water, air, mining resources and the surface of the earth inclusive of soil,

– "environmental protection" – every action or giving it up, the aim of which is to preserve or restore the ecological balance i.e.:

– rational formation of the environment,

– rational development of nature resources,

– prevention and action against harmful and negative effects on the environment,

– restitution of nature elements to the ecological balance state,

– "environment formation" – transformation of the environment elements to reach the intended social-economic objectives and not to disturb the ecological balance conditions as well as to make resources regeneration possible in a given area.

The ecological damage is of a complicated character. That is the damage being out of the range determined by the civil code (*damnum emergens* and possibly *lucrum cessans*) as some of its elements are difficult to be estimated in terms of money, e.g. the damage made in the natural landscape. Such harms are often caused by various sources of the environment pollution. Moreover, the legislator introduced legal definitions for "burdens for the environment" and "harmful burdens for the environment". The former term determines all physical phenomena or states making living difficult and having a bad effect on the environment like: pollution of water and air, noise, vibration and wastes. The latter term is a complement to the former one because it determines the range of harmful burdens for the environment. These are states or phenomena whose intensity of negative effects on life or environment causes threat for health or destruction of the environment resources.

[4] W. Brzeziński: *Ochrona prawna naturalnego środowiska (Environmental Protection Law)*, Warszawa 1975, p. 17.

I. LEGAL RESPONSIBILITY IN THE ENVIRONMENTAL PROTECTION

In the Polish system of environmental protection law the problem of legal responsibility in the environmental protection is of three main kinds. These are laws of administrative responsibility, civil responsibility and penal responsibility.

Legal regulations concerning the environmental protection are generally prevailing[5]. They must be imposed on all economic units which carry out activities potentially harmful for the environment. That means that the same rights and duties are obligatory for both Polish and foreign economic units. All economic units are obliged to use technical and technological device, available owing to their effectiveness in elimination or limiting the harmful effects on the environment. Moreover, it is required to install the suitable controlling and measuring apparatus by the economic units whose activity is harmful for the environment. That is a legal requirement of the environmental protection and management law in order to make up necessary measurements of the extent of harmful effects on the environment caused by such an economic activity. That is why it is necessary to introduce the regulation ("the polluter pay" principle which means that responsibility is taken by the doer within the legal responsibility based on the administrative law, civil law and penal law. It would also include the principle that using the environment and making changes must be paid for with effluent administrative charge or non-compliance fee for economical use of the environment which go to the National Fund of Environmental Protection and Water Economy and voivodeship founds whose finances are spent on the environmental protection investments. Therefore e.g. after establishing a joint venture, it is necessary to take over hitherto existing legal responsibilities of the former state enterprise in the field of environmental protection. In practice, the joint venture must make an analysis of economic effectiveness of prospective economic activities. Hence, its business plan should include legal standards concerning the environmental protection, in particular, a complex assessment of prospective economic activity as far as its harmful effects on the environment are concerned. It includes also analysis of the reasons for non compliance fees and administrative charges for economic exploitation of the environment paid by the state enterprises which were transformed into a joint venture.

a. Administrative Responsibility

The essence of administrative responsibility in the environmental protection concerns violation of administrative decisions or legal standards for the environmental protection by the individual or the legal entity.

[5] 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. 73–76

That is why the main legal measures in this field are as follows. The first, the non-compliance fees imposed in a form of the administrative decision by a Voivodeship Inspector for the Environmental Protection[6]. Such a procedure should be correlated with the state system of environment monitoring based on art. 23 the Act of July 20, 1991 of the Inspection of Environmental Protection. The second, the Inspection of Environmental Protection is to control observing of regulations about environmental protection and investigations of the environment state based on the national uniform monitoring system. It refers to non-compliance fee for exceeding pollution standards a possible closure of the enterprises which are specially harmful for the environment e.g. such an enterprise does not possess the required protective device. The above mentioned decisions can be appealed to the Chief Inspector of Environmental Protection and then a complaint can be lodged with the Superior Administrative Court. Appealing, however, does not prevent from execution of the decision.

b. Civil Responsibility

The civil responsibility in the environmental protection concerns legal consequences for a harmful influence on the environment or ecological damage which the doer must bear, as determined by the Civil Code. This responsibility is most frequently based on the risk taken by the doer according to art. 435, Civil Code or the guilt according to art. 415, Civil Code. Therefore the civil responsibility in the environmental protection is of two kinds. The first one is the financial compensation when the ecological damage has already taken place and another responsibility is of preventive character when this damage may take place (art. 439, Civil Code).

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 access to information which is of great importance for the environmental protection.

[6] Official Law Gazette 1991, No 77, Pos. 335 with further amendments; W. Radecki: *Ustawa o Państwowej Inspekcji Ochrony Środowiska*. Seria: Komentarze (*The Act about State Inspection of Environmental Protection*). Series: Commentary, Wrocław 1992, pp. 76–79.

c. Penal Responsibility

The penal responsibility in the environmental protection is characterized by the fact that only the individual can be a subject to penal responsibility resulting from the guilt for the crime of offence against the environment (art. 181–188 Penal Code). Based on this, each individual who does not employ the device for the environmental protection (e.g. of water, air and soil) against pollution or harmful influences of noise, vibrations or communal and industrial wastes can be subjected to this responsibility. As follows, the main legal requirement is that each newly established or modernized economic unit of this type cannot take up an economic activity without a simultaneous installation of effective device protecting the environment based on art. 66 along with art. 68, (4 the Act of 31 January 1980. Violation of that requirements is a crime punished with 2 years of prison based on art. 186 Penal Code.

The penal responsibility is for the offence of water pollution according to the act of environmental protection as well as for not maintaining in a proper state and not exploiting the device used for protection against water pollution. However, the doer is punished for the petty offence, e.g. for exploitation of water without the license for a specified use of inland waters or for violation of its requirements.

II. LEGAL SYSTEM OF ENVIRONMENTAL PROTECTION

1. Environmental Protection and Management Act

A. Air Protection

Air protection consists in protecting against admissible imission norms (concentration of air polluting substances) as well as limiting or even eliminating the amount of these substances emitted into the air by economic units, waste piles or waste dumps and mechanical vehicles (art. 25 Act of 31 January 1980). Air pollution according to Art. 26 of this Act is emission of solid, liquid or gaseous substances into the air in the amounts which can have harmful effects on the environment resources causing damages in the environment or having a harmful effect on human health.

To carry out the above tasks the legislator introduced some legal measures for air protection in particular:

– duty imposed on economic units carrying out a harmful economic activity of this type to install and exploit the protection device. They are obliged to use methods, technologies and technical device to protect air against pollution. Moreover, the users of vehicles are obliged to have the engines of the vehicles

in such a technical state which would not cause air pollution exceeding the prevailing norms,

– duty of each economic unit carrying this type of harmful activity for the environment to measure pollution concentration. Its disregard is treated as a petty offence (Art. 106 § 1),

– in case the technical measures, methods and technologies fail, then the economic unit can lodge a motion for an administrative decision based on the Administrative Procedure Code to the voivode (head of province administration) to create a protective zone around the source of air pollution emission or to give the rules for using the areas where the air pollution occurs. They must be included in the local land-use plans proposed by the commune board and voted by the commune council,

– within the administration responsibility in the environment protection the non-compliance fees are imposed for not observing the administration decision concerning the acceptable individual emission norm given by the voivode for a given economic unit. The decision about the non-compliance fee is given by the Voivodeship Inspector for Environment Protection taking into consideration the kind and amount of pollution exceeding the norm included in the decision about the individual emission,

– administrative charges for polluting the air are the economical means given in a form of administration decision by a voivode depending on their kind and quantity,

– individual norms of acceptable emission are determined based on the administrative decision given at the motion of a given economic unit by a voivode for a determined period of time. This decision takes into account the current as well as the predicted imission extent in a given area and the data provided particularly by a given economic unit: description of technology and characteristics of individual emittors, conditions of polluting the air, characteristics of purifying device and their effectiveness, determination of quantity and kind of the dust and gas impurities being emitted.

The voivode cannot make a decision about acceptable emission without a motion issued by a given economic unit. It may refer to both the entire economic unit and individual emittors provided that the emission conditions especially its quantity cannot violate the existing norms of imission in the specially protected areas and other areas.

The legal regulations in this field do not include the procedures for making measurements and analyses of dust or gas pollution emission.

– However, the voivode's valid decision can be changed only when one of the following conditions takes place: i.e. new sources of air pollution emission in a given area, due to legal regulation changes in this field, the emission norms in a given area are also changed, change of kind, amount and conditions of pollutant emission.

General standards of acceptable emission are regulated by the Ordinance of the Minister of Environmental Protection of 28 April 1998 About the Air Protection Against Pollution[7] and determine the emission of sulfur dioxide, nitrogen oxide or dust from the fuel energetic process.

Standards of acceptable imission are made by virtue of the law based on the above ordinance and divide the area of Poland into specially protected areas and other areas where the lower standards of imission prevail. Specially protected areas include among others national parks, as well as health resorts and resort protection areas. The above standards of emission are determined in Supplement No 2 to 5 for the above ordinance. They do not concern the areas affected directly by the air pollution sources because in these areas the standards of highest acceptable emission and imission, harmful for the human health in the workplaces are regulated by the ordinance of the Minister of Labour and Social Policy.

B. Protection of the Environment Against Noise and Vibration

Art. 49 the Act about the Environmental Protection and Management defines the protection against noise and vibration as prevention, from their formation and getting into the environment. In particular, organizational units and individuals are obliged to ensure protection against noise by giving up the noise-causing activity, but in case such activity is not possible, to use suitable technical device preventing from noise making or its getting into the environment. If the above mentioned means prove ineffective, the noise sources should be isolated from the environment by creating protection zones. The ordinance of 13 May, 1998 issued by the Council of Ministers about the Protection of the Environment Against Noise[8] determines the areas under protection dividing them into 5 groups.

In the first group the acceptable noise intensities are the lowest, in the next groups they increase and in the last group they exceed the intensity of that in the first group by over 35 per cent. Besides, the acceptable noise intensities are different during the day from those at night which are lower.

Intensities of noise and vibrations are determined by the voivode from the measurements made in the areas adjacent to those in which the noise or vibration making activity is carried out or those situated in the protection zone. The administrative decision determining a level of noise and vibration which can get into the environment is taken by the voivode only when it is necessary to decrease noise intensity to the acceptable norm as given by the above mentioned ordinance.

[7] Official Law Gazette, 1998, No 55, Pos. 355.

[8] Official Law Gazette, 1998, No 66, Pos. 436.

Exceeding the acceptable noise norm as determined by the voivode's decision can cause closure of such activity due to the administrative decision taken by the Voivodeship Inspector of Environmental Protection.

Vibrations are defined as movements in the ground or buildings caused by their construction and having a mechanical effect on people and the environment. The users of technical device who might cause vibration are obliged to apply suitable technical means eliminating or at least limiting vibrations and are forbidden to use such device which produce vibrations of the intensity harmful for health of people as well as for buildings. The extent of the vibration intensity is determined by the Polish norm. However, new buildings can be erected in the range of vibration sources provided the device eliminating the vibrations is installed.

The above aim is achieved using the following legal measures:

– the decision issued by the voivode concerning formation of the protection zone around the sources of noise and vibrations,

– determination of the time and exploitation ways of technical device and transport means harmful for the environment as far as noise and vibrations are concerned based on the resolution by the communal self-government organs,

– non compliance (fees issued by the Voivodeship Inspector for Environment Protection in case or exceeding the norms of administration decision concerning the acceptable norms noise and vibrations in the environment by individuals or legal entities.

Environmental protection legal requirements concerning noise and vibration determined in the above discussed regulations do not refer to the protection against noise and vibrations in the workplaces. These problems are determined by other regulations about work safety and hygiene[9].

C. Protection of the Environment Against Wastes

The basic legal rules for the environment protection against wastes are regulated by the Act of 27 June 1997 about the Wastes. First of all it defines the term "wastes" and then the term "harmful wastes". The first term means used up objects as well as solid substances, liquid substances not being sewages related to the man's life and economic activity and being useless or even harmful for the environment. However, the term "harmful wastes" refers to the wastes which due to their origin, chemical and biological compositions as well as other properties constitute a threat for human life and health or the environment. They must be included in the list determined by the ordinance of the Minister of Environment Protection.

[9] Official Law Gazette 1997, No 96, Pos. 592 with further amendments.

The basic legal duty in this field refers to the economic units carrying out the activity resulting in wastes production. They are obliged to protect the environment from pollution, destruction or other negative influence of these wastes. Moreover, it is obligatory for them to take the action to protect the environment against wastes, and to treat their economic utilization as a priority.

Another legal duty concerns prohibition of the harmful wastes import and the import of other wastes requires a permit given by the Chief Inspector of Environment Protection as proposed by the economic unit under consideration.

However, such a permit can be given only when the wastes satisfy all the following requirements;

– they must be designed for recycling as raw materials at home or abroad;

– there are no equivalent wastes or they are in a small amount at home to be used economically;

– the imported wastes or the way of their utilization both at home and abroad will not increase the threat for the environment and will not enlarge the deposited material amount.

The issue of the above mentioned permit is preceded by the opinion of the competent voivode and self-government organ.

Harmful wastes can be exported only with the permit given by the Chief Inspector of Environment Protection. Issuing the permit must satisfy the following requirements: being harmless for the environment and economic utilization abroad; agreement for accepting and transit of these wastes given by the proper organs of the country accepting and individual transit countries.

The transit of harmful wastes in the Polish territory also requires an agreement issued by the Chief Inspector of Environment Protection and agreed with other transit countries.

However, the wastes other than harmful can be exported without a permit but the Ministry of Environment Protection can give an ordinance requiring a permit for their export to some states.

Moreover, a new Act About Keeping the Communes Clean and Tidy of 13 September 1996 has been issued[10]. It will regulate, among others, the problems of removal, utilization and application of municipal wastes except harmful wastes which are included in separate legal regulations above mentioned.

D. Protection of the Environment Against Radiation

This problem includes electromagnetic radiation whose legal protection is regulated by the Act of the Environmental Protection and Management as well as ionizing radiation regulated by the Act of the Nuclear Law of 10 April, 1986[11].

[10] Official Law Gazette 1996, No 132, Pos. 622.

[11] Official Law Gazette 1986, No 12, Pos. 70 with further amendments.

Radioactive substances and devices producing harmful radiation can be applied only under the condition of securing proper protection against their harmful effects on people and the environment. However, the economic exploitation of the radioactive substances requires the voivode's permit issued together with the radiological protection organ. Moreover, formation of protection zones around the radiation sources is another legal measure used.

According to the nuclear law the radiological protection consists in prevention from radiation affecting people and the environment or at least limiting its harmful effects. The main mean used for this protection is the permit issued by the President of the State Atomistics Agency to carry out the activities using the nuclear energy e.g. formation and exploitation of nuclear wastes dumping sites. Hence, the Nuclear Act provides the rules about utilization of radioactive substances and wastes and about functioning of the state organs for supervising nuclear safety and radiological protection.

Moreover, rational economy of fossil fuels and their protection are regulated not only by the Act about the Environmental Protection and Management but also by the Act of 4 February 1994 (the Geological and Mining Law[12].

2. Nature Protection Law

The most important in the nature protection is the Act of Nature Protection of 12 October, 1991[13]. According to this act the legal term: "nature protection" means conservation, proper use, restoration of resources and components of nature, particularly wild plants and animals as well as nature protection. Moreover, nature protection is the duty of each citizen, the state organs and local self-governments, as well as organisational units of a legal entity and individuals undertaking the activity having influence on nature. That is why, the nature protection in this act covers (art. 13):

1. creation of natural parks,
2. creation of nature reserves,
3. creation of landscape parks,
4. establishment of protected landscape areas,
5. protection of individual forms of flora and fauna, i.e.:

a) nature monuments,
b) objects of non-living nature,
c) ecological objects as remains of the unique ecosystem,
d) nature and landscape system.

[12] Official Law Gazette 1994, No 27, Pos. 96 with further amendments.
[13] Official Law Gazette 1991, No 114, Pos. 492 with further amendments.

Moreover, the protection of plants and animals was introduced by the ordinance of the Minister for Environment Protection determining a list of protected plant and animal species.

The legal measures of nature protection also include the rural parks established by the self-governing local councils on the basis of art. 47 of Act of 1980. Hence the voivode, as the head of the administrative state organs in this area, i.e. district, performs the tasks of the local state administrative organ in the field of nature protection with the help of the Nature Preservation Officer. He is nominated and dismissed by the voivode after the consultation with the District Nature Protection Committee.

The above mentioned protection areas according to the Polish environmental law doctrine are special areas of ecological character as legal measures of environmental protection. A special area, which is a doctrine term, includes a definite area with prevailing legal requirements excluding or at least limiting so far existing legal regulations (common legal norms)[14].

A special area is a typical example of collision between public and individual interests. The local land use planning should play a role of a co-ordinator of economic activity on land estates in this area. The basic legal regulation in this field, is art. 4 in connection with art. 34 of this Act of 1991 which established the legal rule that says: land-use plans should include requirements for nature protection in national parks, nature reserves and also landscape parks as well as areas of protected landscape and other nature elements that should be protected.

Special areas of ecological character are a non-uniform legal term which must be analysed taking into account the following criteria:

- procedure of formation (liquidation) of special areas;
- form of legal acts creating (liquidating) a given special area;
- contents of legal requirements prevailing in different kinds of special areas;
- kinds of units entitled to carry out special activities in such areas;
- analysis of correlations between the local land use planning and legal requirements prevailing in special areas of ecological character (these are so-called "land-use problems" of ecological character after the legal doctrine).

The next analysis of this problem concerns the landscape park because it is a typical special area in this field.

The landscape park is a protected area because of its natural historical, and cultural values and the aims of its creation are preservation and popularisation of these values under rational economic conditions. Hence, farming, forestry and other land being within the landscape park can still be economically used unless it is harmful to the nature in this area. Also, a protection zone can be found around the landscape area to protect it from harmful external influences.

[14] A. Wasilewski: *Konzeption des Schutzbezirks (Sondergebiets) auf dem Grunde des Verwaltungsrechts*, Archivum Iuridicum Cracoviense 1978, Vol. XI.

Moreover, the area of protected landscape, covers the area of special landscape of various ecosystem types. The economic activity of this area should secure the state of relative, ecological balance of the nature system. Hence, this protection should be included in the land-use planning. The "voivode" can give an ordinance about the landscape park or protected zone landscape area. Each ordinance as a local legal act must include the name of the park or the area of protected landscape and its spatial range together with its protected zone, basic economic rules as well as necessary limitations and prohibitions based on art. 37 § 1 of this Act.

Protection plans for the above mentioned special areas are made for the landscape parks with their protection zones. The contents of protection plan for the landscape park must be accepted obligatorily by voting and amending the local land-use plan by local self-government councils. Moreover, approval of projects of local land-use plans or other amendments can be made only by the local self-government council according to the Act of 8 March, 1990 concerning the Local Self-Government recognising this as its own legal duty. Just after giving an ordinance, the voivode should oblige the appropriate local self--government council for amendment of the local plan taking into account the limitations and prohibitions included in the ordinance. In the case of the local land-use plan, the voivode should introduce legal measures included in art. 91 of the Local Self-Government Act. However, the voivode can bring the case to the Supreme Administrative Court. The other legal problem concerns the Head of the Landscape Park who is nominated and dimissed only by the voivode. The Head of the Landscape Park that is situated in a few districts is nominated and dimissed by the Minister of Environmental Protection, Natural Resources and Forestry in agreement with relevant voivode's. The duties of this organ include in particular:

– nature protection according to the act of landscape park creation,
– organisation of scientific and educational activities,
– administrative decisions concerning nature protection within the landscape park and its zone (based on the voivode's permission),
– co-operation in the field of nature protection with organisational units, individuals and other entities.

3. Protection of Farmlands and Forests

The legal rules of farmlands and forests protection as well as their recultivation are included in the Act about the Protection of Farmlands and Forests of 3 February, 1995[15]. This protection consists among others in: limitation of their non-agricultural and non-forestry applications, prevention

[15] Official Law Gazette 1995, No 16, Pos. 78.

from degradation processes due to economic activity, recultivation and agricultural use of the grounds.

But the forest areas protection is regulated by the Act about Forests of 28 September 1991[16] which determines the rules of preservation, protection and enlargement of forestry areas as well as forestry economy combined with other environment elements and economy. This act also constitutes the legal measure for protective forests in the areas demanding special protection of forest areas.

4. Water Law

Water Law of 1974[17] includes inland waters (both surface and underground waters), territorial sea waters which are owned by the state. However, the subject of marine environment protection is included in another law of 16 March 1995 about Prevention from Water Contamination by Ships[18].

Inland surface waters in wells and ditches are a property of the owners of land in which they are situated. Water law refers to the sea water only in the range of protection against pollution from the land sources and protection against floods but in other cases if regulated a given water law.

Water law distinguishes three kinds of water exploitation:

– common exploitation includes the surface waters being the state property as well as the territorial Baltic Sea waters except the well and ditch waters as well as the reservoirs for fish. It is the legal right for everyone to use them for recreation, water sports, tourism and fishing,

– ordinary exploitation of waters belongs to landowners to satisfy their personal needs as well as household and farming needs, besides they can use the underground waters situated in their lands,

– specified exploitation of waters goes beyond the common and ordinary exploitations because it requires the licence for a specified use of inland waters issued by the proper public administration organ.

Water protection against pollution aims at preservation or restoration of their purity state as required by water law and executive regulations, particularly, the executive ordinance by the Minister of Environmental Protection of 5 November 1991 Concerning the Water Classification and the Requirements for the Sewage Getting into Waters or Soil[19]. However, harmful pollution of waters consists in physical, chemical, biological and other changes which cause that

[16] Official Law Gazette 1991, No 101, Pos. 444 with further amendments.

[17] Official Law Gazette 1974, No 38, Pos. 20 with further amendments; *Prawo wodne* (*Water Law*), Materiały z Seminarium dla posłów II kadencji, Kancelaria Sejmu, Warszawa 1996, tom XI.

[18] Official Law Gazette 1995, No 47, Pos. 243.

[19] Official Law Gazette 1991, No 116, Pos. 503.

waters cannot be used for people's needs or economical needs and cause harmful changes in the environment.

Moreover, the above mentioned regulation of 5 November 1991 introduces three classes of surface inland water purity.

The first class purity waters are those used for living needs and economic units which require such quality waters e.g. pharmaceutical firms. The second class purity waters are those used by fish for keeping farm animals as well as for water sports for recreation and swimming areas. The third class purity waters are those used to supply other economic units and for irrigating farming lands. The values of impurity indicators of inland waters are included in Supplement 1 of the regulation of 5 November 1991.

To protect waters against pollution the legislator introduced some legal measures. The first of them is the legal obligation to build and maintain in a good state the devices against water pollution and their proper exploitation imposed on each economic unit which discharges sewages into waters or soil.

Another legal measure is the license of a specified use of inland waters issued by a voivode in a form of administrative decision according to the administrative procedure code as proposed by the economic unit. The licence is given for a specified period of time and must include the following data quantity, kind and composition of sewages as well as requirements for their discharging into waters or soil. Moreover, the ordinance of 5 November 1991 in § 2 includes prohibition of sewage discharge particularly into: underground waters, closed lakes, sources and intakes of waters and within the arranged swimming areas and beaches. The discharged sewages cannot exceed the maximum admissible values of impurity indices in those getting into waters and soil and determined in Supplement 2 of the ordinance of 5 November 1991.

Protective zones are created around the water sources as ordered by the head of the local government administration district office and around the water intakes as ordered by the same due to the motion of the State Sanitary Inspection or due to the motion and cost of a given economic unit. In both cases it is in the form of the administration decision issued as an administrative procedure code. In the area of protective zones a special legal regime in the field of environment protection in the water sources and intakes against any water pollution is obligatory e.g. inhibition of sewage discharge or waste dumping.

The administrative charges for sewage discharge depending on the impurities contained in them are determined by the voivode in the form of administration decision based on the Ordinance of the Council of Ministers of 27 December 1993 about the Administrative Charge for Special Exploitation of Waters and Water Device[20]. However, non-compliance fees are imposed by the Voivodeship Inspector for Environmental Protection for discharging sewages into waters and

[20] Official Law Gazette 1993, No 133, Pos. 637 with further amendments.

soil which do not satisfy the requirements included in the license for a specified use of inland water. That is according to the Ordinance of the Council of Ministers of 20 June 1995 about Non-Compliance Fees Imposed for Violation of Requirements for Sewages Discharged into Waters or Soil[21].

5. The Special Role of Land-Use Planning in the Environmental Protection

The main problem concerns environment protection with regard to the land-use planning. Based on the former experience in the range of methodology of planning, certain postulates concerning the system of integrated planning including the land-use planning and ecological elements have been put forward. Therefore in the land-use planning the following problems are taken into account[22]:

- protection of marine environment,
- protection of inland waters (surface and underground),
- protection of air,
- protection of farms and forest lands,
- protection of land surface and minerals,
- protection of nature and landscape,
- protection of flora and fauna,
- protection of tourist and sightseeing values,
- protection against waste and pollution,
- protection against noise, vibration and radiation.

The second problem is a result of the activity of man causing physical, chemical or biological changes in the environment and an attack of life takes place. A man destroys the structure of various levels of organization of life. The local land-use plan for a given area can stimulate or limit the destruction of life. Thus, the land-use planning must observe the laws of nature. Therefore, the Act of 7 July 1994 of Land-Use Planning[23] as well as the Act of 16 October 1991 of Nature Protection have been introduced into many legal institutions of preventive and protective types. To attain the purpose, these instructions have regulated the social relations which are within the organizational framework and direct fulfilment of state responsibility in the fields of environmental protection. That is why in the Act of 1980 there are two groups of norms. The first group are the norms regulating the obligation for the systematic and national development of the environment. The second group are norms of obligations of the special

[21] Official Law Gazette 1995, No 79, Pos. 400.

[22] J. Stelmasiak: *Miejscowy plan zagospodarowania przestrzennego jako prawny środek ochrony środowiska (The Local Land-Use Plan as a Legal Measure of Environmental Protection)*, Lublin 1994, pp. 66–102.

[23] Official Law Gazette 1994, No 89, Pos. 414.

environmental protection on the part of governmental organs, self-government organs, legal entities and individuals. But the general protection belongs to administration and legal proceedings. The dynamic system of environmental protection is linked with the land-use plans. On this account, it is necessary to take into consideration the problem of environment protection according to the respective regulations not only according to the Act of 31 January 1980. On this basis, obligatory regard should be paid to the problems of environment protection and management in the Act of 7 July 1994. Therefore, the task is fulfilled by means of the local self-government organs which e.g. vote local land-use plans.

At present, in the administrative organs system the main co-ordinating organ in the environment protection is the Minister of Environment but the Inspection for Environmental Protection is subordinated to this Minister. Moreover, the introduction of market economy rules in Poland as well as the Law of 8th March about Communal Local Self-Government brought new sources of legal interest conflict in the field of environmental protection. There can be distinguished at least four kinds of interests. They are: state public legal interest, local public legal interest of commune and district (local self-government), regional self-government local group legal interest for example of a defined group of inhabitants and individual legal interest. These are positive expressions of the own legal interests also in the field of environmental protection. This is of particular importance in the areas of ecologic disaster. Hence, the co-ordination role of the local land-use plan is important.

III. REASONS AND TRENDS OF FORMING THE NEW ENVIRONMENTAL LAW ACCORDING TO THE EUROPEAN COMMUNITIES ENVIRONMENTAL LAWS

On 26 January 1993 the Polish Government submitted the program for adjusting the Polish legal system to the requirements of the European Agreement[24] to be accepted by the Parliament. The program assumptions are divided into the following stages: analysis of the laws of the European Communities, analysis of the current state of Polish legal system compared to the regulation of the European Communities and preparation of legislation necessary to attain a required state of legal harmony and/or adjustment.

For this purpose the Council of Ministers (Government) issued the Ordinance about Additional Requirements Concerning the Government Act Projects Taking into Account the Necessity of the Agreement with the European Communities Regulations of 29 March 1994[25].

[24] *The European Agreement Establishing the Association Between the Republic of Poland and the European Communities and Their Member States of 16 December 1991.* Official Law Gazette 1994, No 11, Pos. 38 (It came into force on 1 February 1994 but its section about trade on 1 March 1992).

[25] Official Law Gazette 1994, No 23, Pos. 188.

This is very important because the Polish Constitution lacks the article about the relation between the international law and the home law.

According to Art. 80 of the European Agreement, Poland should cooperate with the European Communities in the field of Environmental Protection. Hence, based on the European Agreement, the Minister of Environmental Protection, Natural Resources and Forestry is responsible particularly for:

– introduction of information collecting systems and information exchange prevailing in the European Communities,

– co-ordination of environmental protection requirements as well as restructuring and transformation of the Polish economy (adaptation of "pure" technologies),

– application of economical measures,

– co-operation on the regional level e.g. within the European Agency for the Environmental Protection,

– harmonization and adjustment of legal regulations and standards to the regulations of the European Communities, particularly in the case of extreme threats for the environment, Environment Impact Assessment (EIA),

– procedural regulations concerning the measurements and investigations of the environment pollution extent,

– co-operation in the field of information exchange about the environment state,

– financial support of the European Communities e.g. the PHARE programme.

CONCLUSIONS

For this reason, the trends of environmental protection law transformation based on market economy being introduced are based on the following particularly assumptions[26].

The first, the process according to the "White Book" of introduction of some new legal measures such as "Polluter Pays", EIA, EIS, "the Best Available Technology" as well as new rules of legal responsibility in the environmental protection prevailing in the market economy into the Polish legal environmental system takes place.

The second, the principle of universal of environmental laws concerning all legal entities, other organizational units, individuals and administration state and self-government organs should include ecodevelopment and ecopolitics in

[26] R. Paczuski: *Prawo ochrony środowiska (Environmental Protection Law)*, Bydgoszcz 2000, pp. 83–105; J. Ciechanowicz: *Międzynarodowe prawo ochrony środowiska (International Environmental Protection Law)*, Warszawa 1999, pp. 54–80.

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 renovable and unrenovable natural resources);

The third, the rule of environmental protection obligatory requirements in the procedure of project preparation of land-use plans including, particularly, specific requirements of environmental protection in the areas of ecological disaster;

The fourth, strictly defined the 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 disaster for the environment, imposing the duties of individual performance and assigning competence as seems 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 fifth, 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.

The sixth, the legal recommendations for participation of citizens, legal entities and other organizational units in the activities with respect to the environmental protection regulations in the field of environmental audit.

The last step will be achieved when Poland becomes a member of European Communities, which seems that the transient period (*vacatio legis*) will take place for some regulations in the environmental protection to be realised if it is necessary. It is very important, because the Polish legal system does not include a common law as well as judicial court decision precedents. In spite of this law-making effects of the Supreme Administrative Court judicial decisions are observed in amending of laws in the field of environment protection.

STRESZCZENIE

W artykule przedstawiono administracyjnoprawną problematykę ochrony środowiska w Polsce. W pierwszej kolejności poddano analizie założenia podstaw prawnych ochrony środowiska, a następnie zakres odpowiedzialności prawnej w ochronie środowiska. Ponadto omówione zostały kierunki przebudowy prawa ochrony środowiska w perspektywie przystąpienia Polski do Unii Europejskiej.

W drugiej części przedmiotem analizy prawnej była część szczegółowa prawa ochrony środowiska w Polsce.