

I. Introduction

The Polish system of law is based on positive, codified law, including constitutional law, administrative law, civil law and penal law. The level of constitutional protection of environmental protection is high, it results from art. 5 of Polish Constitution. This article ensures environmental protection applying the principle of sustainable development. In Polish law this principle is a constitutional principle. In order to ensure environmental protection in just cases, after fulfilling certain conditions, exists a possibility to limit constitutional freedom and rights, but only when it is included in a legal act necessary in a democratic country and these limits do not violate the essence of freedom and rights (art. 31 sec. 3 Polish Constitution). According to Polish Constitution, public authorities are obliged to prevent negative effects for health of environmental degradation (art. 68 sec. 4 Polish Constitution). The fact that environmental protection is a duty of public authorities results directly from art. 74 sec. 2 Polish Constitution. Such action has to ensure environmental security for contemporary and future generations (art. 74 sec. 1 Polish Constitution). Everyone has a constitutional right to the right of information about the state of environment and its protection (art. 74 sec. 3 Polish Constitution). The duty of public authorities is also to support citizens in actions to protect and improve the state of the environment (art. 74 sec. 4 Polish Constitution). The duty to take care of the environment Polish Constitution imposes not only on public authorities but also on everyone (art. 86 Polish Constitution). This article is also a constitutional base for bearing responsibility for deterioration of the state of the environment caused by everyone. The principles of this responsibility are described in detail in particular legal acts.

The law of environmental protection is a codified law. The legal acts in a detailed way determine not only the rules of proceedings but also sanctions for their violation. The most significant part of law of environmental protection is included in the administrative law. The Polish legal order protects environment with the use of civil legal norms and penal norms as well. Polish system of law encompasses almost all laws relating to provisions on environmental protection.

It is worth to emphasize that organs of municipal authority based on the Constitution are entitled to protect environment also by enactment of law which is in force on their territory.

II. Training and information

A. Training

In Poland exist 2 different ways of becoming a common court judge. In the first case there is no need for a special training (judge pupillage) but there are other conditions to fulfil. The judge of common court of first instance (without judge pupillage) can be:

- prosecutor, professor, habilitated doctor
- person who has performed for at least 3 years the occupation of barrister, solicitor or notary
- person who for at least 3 years has been a chairmen, vice - chairmen, adviser or of General "Prokuratoria".

In the second case, there is a 36 – month judge pupillage. The pupillage is conducted by the central body – The National School of Judiciary and Prosecution. The supervisor of the pupillage is the minister of justice. The participants in the pupillage take part in theoretical and practical classes. They have apprenticeships in different courts (including administrative court) in their departments and prosecutor's office where they have supervisors. The judge pupillage finishes with a judge exam. Passed judge exam opens the door to become a judge advocate (judge for trial) for 4 years. After three years of being a judge for trial they can apply for a judge position. This work is controlled and assessed. The judge of common court of first instance must be at least 29 years old.

It should be remarked that in Poland, apart from ordinary courts, function administrative courts of two instances: regional administrative courts and Supreme Administrative Court. In the case of administrative judges legislator did not foresee the necessity to finish a special judge pupillage. The judge of regional administrative court can be a person who is at least 35 years old:

- a person occupying for at least 8 years the position of an ordinary court judge,
- a person occupying for at least 8 years the position of prosecutor,
- chairman, vice – chairman or adviser of Polish General "Prokuratoria",
- a person occupying for at least 8 years the position of barrister, legal adviser, notary,
- a person occupying for at least 10 years a position in public institutions connected with applying or writing administrative law,
- a person occupying for at least 2 years a position of judge of trial in a regional administrative court.

The judge of trial in regional administrative court can be a person who is at least 30 years old and for at least 4 years occupied the position of ordinary court judge, or prosecutor, or chairman, vice – chairman, adviser of Polish General “Prokutoria”, or a person occupying for at least 4 years the position of a barrister, legal adviser, notary or a person occupying for at least 6 years a position in public institution connected with applying or writing administrative law.

During performing the function of a judge, a judge has a duty to continue training, because they are obliged to continuously improve their professional qualifications (art. 82a sec. 1 of legal act from 27 of July 2001 the law on common courts)

Every judge is obliged to participate at least once a year in a training organized by the National School of Judiciary and Prosecution in order to supplement their specialized knowledge and professional skills (art. 82a sec. 3 the law of common courts). The trainings take part periodically according to annual schedule and these trainings are organized in a centralized way. In ordinary courts as a rule trainings are organized by central body which is the National School of Judiciary and Prosecution. The scope and the topics of trainings are adjusted to current needs. Participation in trainings has importance when evaluating the candidacy of a judge who applies to a court of higher instance. The scope and the topics of trainings are determined by the National School of Judiciary and Prosecution in an annual schedule. However, depending on the needs, the topics and number of trainings can be supplemented during the year. The minister of justice can order the National School of Judiciary and Prosecution to conduct other trainings or other forms of professional development, however, the minister can do it on their own initiative or based on request of chairman of appeal court. The National School of Judiciary and Prosecution organizes not only trainings but also postgraduate studies on different topics. Judges do not bear the cost of these trainings or postgraduate studies. Judges participate in trainings on topics of cases they handle.

Trainings for regional administrative court judges are organized by these courts with various frequency, at least twice a year. Ordinary court judges as well as administrative court judges take part in trainings organized by different institutions of the European Union, as well as they participate in conferences organized by different universities and institutions of higher education.

During judge pupillage judge trainees have the possibility to become familiar with the environmental protection law during internships in regional administrative courts.

Administrative courts judges have the possibility to participate in trainings on environmental protection organized by administrative courts. The topics of conferences are determined according to the needs of judges. Their frequency depends also on needs. Lectures are conducted by judges including judges of Administrative Supreme Court and lecturers from universities. Judges settling environmental protection disputes can also participate in scientific conferences on these topics organized by universities. In trainings and conferences on environmental protection all judges can participate, not only those who settle this kind of disputes.

Judges can submit a request for a training on a given topic from environmental protection. The request can be submitted by chairman of a division. On their own initiative a chairman of an administrative court proposes judges to conduct trainings on certain topics if there is interest among judges. Their frequency depends on the need.

Judges have a possibility to use materials prepared by the EU.

B. Availability of Information on environmental law

Polish judges have access to information on environmental protection in a wide range of forms, especially on the internet, special legal computer programs or on paper. All judges have computers and databases with national, European and international law. These programs and computers are delivered by courts.

C. Proposals for training or improving availability of information

Developing training materials and organising training sessions would be helpful in the following areas:

General principles of law, e.g. –

International environmental law

European environmental law

Comparative environmental law

Particular aspects of environmental law, e.g. –

Environmental Impact Assessment

Sustainable Development

Access to Justice and Standing (Aarhus Convention)

The role of NGOs

Specific topics, e.g. -

Freshwater Pollution,
Nature Protection
Landscape and Monuments – Natural Sites
Air pollution
International trade in protected species
International transfer of waste
Environmental procedural requirements, in particular impact assessments relevant for spatial planning, energy and transport

III. Organization of courts and enforcement agencies

A. Courts or tribunals responsible for environmental law

In Poland disputes about environmental protection are settled by the following courts: penal courts, civil courts and administrative courts. It depends on the type of dispute. Ordinary penal courts handle disputes regarding crimes connected with environmental protection. For example, they handle the following disputes: destruction of plant or animal environment of major size, water pollution, air pollution or the surface of earth pollution with substances or ionizing radiation in such quantity or such a form that it can endanger the life or health of human beings or cause considerable deterioration of the quality of water, air or the surface of earth or damages in the plant or animal world of major size; landfill of waste, disposal of waste, waste treatment, recycling of waste, transport of waste or substances in such conditions or in such a way that it may endanger life or health of human being or cause considerable deterioration of water quality, air quality or the surface of earth or damages in the plant or animal world of major size; serious damage or considerable lowering of natural values of legally protected areas or objects.

Penal courts not only impose penalties on convicted persons but also may impose the duty to remedy damages.

Civil courts to the rule settle disputes about financial compensation, including environmental damage. Entitled person can file a suit regarding the prohibition of certain actions or activities by the owner of property which actions and activities would allow the plaintiff for example to use their property in accordance to the law or, for example, disturb their peace.

The majority of cases concerning environmental protection is settled by administrative courts which are of two instances (regional administrative court and Supreme Administrative Court). Disputes about environmental protection settled by administrative courts concern above all appeals from decisions of public administrative authorities, municipal authorities and specialized environmental protection authorities. Administrative courts evaluate the legality of administrative decisions in other words if it was taken according to the law. Administrative courts determining that a decision was taken against the law may repeal challenged decision and refer the case to be reviewed again by administrative authority. Since August 15, 2015 by repealing a decision taken against the law the administrative courts may in certain conditions decide in what way this case will be settled by the authority and what is the content of the decision. After filing a complaint administrative court based on claimant's request may suspend the execution of the challenged decision if there is a danger of causing considerable damage or causing effects difficult to revert. To the choice of administrative courts belong for example cases concerning environmental decisions about permission to locate an investment, the level of allowed noise in environment, landfill of waste, penalty for exceeding the level of allowed noise in environment, penalty for exceeding the emission of substances to environment, penalty for illegal landfill of waste, agreements concerning the location of investment for example building roads, due to environmental and natural conditions.

There are no special courts which would handle only cases concerning environmental protection but in large administrative courts are separate divisions which settle disputes about environmental protection, country planning, transportation.

There are no separate statistics about only the number of cases concerning matters of environmental protection because there is statistics on all cases handled by courts.

B. Specialised jurisdictions

In Poland there are no specialized courts which would handle only cases concerning environmental protection. In large administrative courts function divisions which settle these cases. More and more judges settling disputes about environmental protection specialize in this field and are professors of law or have PhDs in environmental protection law.

Clearly defined scope of competences of ordinary and administrative court in environmental protective cases causes that in practice almost do not exist any competence disagreements between ordinary and administrative court concerning who is entitled to settle

a given dispute about environmental protection. When an ordinary court considers itself inappropriate to handle the complaint then regional administrative court is obliged to settle this dispute.

C. Criminal violations

In Poland responsible for conducting penal proceedings is the police and prosecutor. There are no special agencies entitled to conduct this type of penal proceedings. Obviously, General Directors of Environmental Protection and regional directors of environmental protections are entitled and obliged to inform police and prosecution about irregularities which can be considered a crime.

Cases concerning environmental protection crimes are settled by ordinary penal courts.

There are no commonly available statistics regarding only committed environmental protection crimes.

Prosecutors conducting penal proceedings concerning environmental protection do not have any special specialization in this field. Depending on the weight of the crime jurisdiction can be national or local.

Prosecutors do not have assistants specializing in environmental protection. They always can use the help of experts who explain complicated technical matters and other non - legal problems.

D. Administrative violations/cases

Whether it is a penal case or it has administrative character decide provisions of special acts. They list in detail what belongs to what category.

E. Civil cases

Civil court settles cases concerning environmental protection if according to civil code they can be categorised as civil cases. These are, above all cases regarding compensation and prohibition of undertaking certain activities for example by the property owner if it causes harm to other subjects (nuisance). Civil court may oblige to remedy a damage or impose a financial penalty. In civil court there is no specialization in environmental protection law.

F. Standing

NGOs have the right to participate in proceedings in all courts: civil, penal and administrative.

NGOs participation in administrative court in cases concerning environmental protection is considerable. NGOs may demand to initiate proceedings and participate in an ongoing proceeding regarding another person if it is justified by statute goals of this organization and it is based on social interest. Moreover, each ecological organization conducting statute activity in environmental protection or protection of nature for at least 12 months before the day of initiation of proceedings may request participation in a given proceeding requiring participation of society. In this situation even when a social organization did not participate in such a proceeding in front of administrative authority, it can submit a complaint on the decision to the regional administrative court. Also in penal cases NGOs can request participation in court proceeding if there is a need to protect social interest or individual interest included in statute tasks of this NGOs, especially freedom and human rights (art. 90 § 1 penal code).

In civil proceedings NGOs can also initiate court proceedings and participate in ongoing proceedings if it is necessary to protect citizen rights and included in act for example art. 57 sect 2 act from June 22, 2001 on microorganisms and genetically modified organisms, NGOs can initiate civil proceedings if damage concerns the environment as common good. If the conditions listed above are not fulfilled, civil, administrative or penal court does not allow NGOs to participate in the proceedings.