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Environmental Protection in Post-Socialist Eastern Europe: The Polish Example

By JULIAN JUERGENSMEYER,* MICHAEL KULESZA,** AND
EWA GMURZYNSKA***

The significant political and governmental changes currently taking place in Eastern Europe have wrought an explosion of information concerning the economic and social state of the nations in that region.¹ Revelations of the outmoded industries and malfunctioning economies of Eastern Europe probably did not shock most Eastern or Western Europeans, but very few people realized how terrible the environmental degradation had become in that part of the globe.

At least part of this surprise can be attributed to decades of repression of information and data concerning environmental pollution in those countries. The prevalence of Marxist legal theory in Eastern Europe since the end of World War II was also responsible for environmental mismanagement. A Polish article on socialist environmental law attributed the following environmental "principle" to a Soviet scholar:

In capitalist societies, the mitigation of the conflict between society and nature meets overpowering and insurmountable difficulties caused by internal inconsistencies, among which are egoistic production. Socialism, on the other hand, has within its principles the circumstances for solving problems which stem from mutual relations between existing society and the surrounding environment. Only the socialistic system is able to oppose egoistic production relations and efficiently stop the degradation of the environment.²

Lack of information concerning environmental problems, as well as

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1. *Environmental Protection Issues in Eastern Europe*, 13 Int'l Env't Rep. (BNA) 258 (1990) [hereinafter *Environmental Protection*].

2. Fiedosjew, *Obszczestwo i Priroda* (Nation and Environment), in 3 WOPROSY FILOZOFII (1973).

frequent official denials of their very existence, hindered the development of environmental action groups capable of lobbying for public or official notice of environmental protection issues.³ Even today, though a common understanding of the region's ecological emergency is developing in Eastern Europe, people tend not to relate it to their own sphere of activity—they do not realize the ecological effects of their labors in agriculture or industry.

The current reform of environmental regulation in Eastern Europe must be evaluated within the context of the environmental catastrophe it must confront. This Article will examine reforms in Poland for several reasons, including the personal experience and expertise of the authors. Poland is a pioneer in post-socialist legal, social, economic, and political, as well as ecological, reforms. Furthermore, Poland had one of the most advanced systems of environmental law and administration in Eastern Europe, even prior to recent reforms. It is thus far ahead of its neighbors in implementing reforms in its environmental protection laws and policies. Finally, and tragically, Poland is the site of terrible environmental degradation. In Part I, this Article will examine the Polish environmental crisis. Part II will outline the prereform environmental law of Poland in order to reveal the bases which are rejected or modified by the new legal reforms. Part III will examine the current proposals for reform in Poland. The Article will conclude with a discussion of the prospects for the future of environmental protection in Poland and the rest of Eastern Europe.

I. THE ENVIRONMENTAL CATASTROPHE

The centrally planned economies of postwar Eastern Europe placed great emphasis on rapid industrialization. As a result, these nations became dependent on coal-based, energy intensive industries, of which a main characteristic is the lack of diversified energy sources, particularly oil and natural gas. Thus, the energy consumption levels in the industrial and consumer sectors of Eastern Europe are very high by international standards. Many other factors also have had a deleterious effect on environmental protection in Eastern Europe. These include economic stagnation, outdated economies which stressed polluting industries, vague government programs to deal with environmental issues, and inadequate environmental laws and regulations. Throughout Eastern Europe, the centralized governments have not provided incentives for the industrial sector to pursue environmental protection efforts. Controls on

3. *Environmental Protection*, *supra* note 1, at 258.

environmental pollution are almost nonexistent in these countries whether at the local, national, or regional level. The industrial sectors are not alone in suffering from this phenomenon, as East European countries have never adopted measures to improve the efficient use of natural resources in their consumer sectors.⁴

Poland presents a good, or rather "bad," example of all of these problems. For many years, environmental protection in Poland was practically nonexistent. Even basic pollution control did not exist. From time to time various unorganized groups protested against individual polluting companies or factories, but even when officials decided to close the offending plants, those decisions were seldom executed. The state enterprises preferred to pay the insignificant fines for polluting air or water rather than to build or install pollution control facilities. In many instances, enterprises had no real choice but to pollute, since pollution control equipment was not available locally, and the enterprises had insufficient convertible currency reserves to purchase it on the international market.

The current level of air pollution in Poland is typical of that found throughout Eastern Europe. The major air pollutants in Poland include sulfur dioxide, nitrogen oxides, and dust.⁵ In spite of the terrible quality of air in Poland, the ambient air contains nearly the least amount of sulfur dioxide of any European nation, with only twelve tons of deposition per square kilometer per year.⁶ First place in this macabre contest is held by the former German Democratic Republic, whose air currently contains thirty-five tons of sulfur dioxide per square kilometer per year.⁷ Thus, ironically, possibly the only continuing significance of Europe's division into East and West is that the East's worst legacy of environmental degradation is now found in the West.

Although Poland as a whole compares reasonably well with neighboring countries with regard to sulfur dioxide pollution, certain areas of Poland contain disastrously high levels of this pollutant. Throughout much of the 1980s an average of 14 tons was emitted annually in southern Poland, 20 tons in Warsaw, 1687 tons in Krakow, and 4075 in Chorzow in the center of Silesia.⁸ In Katowice, sulfur dioxide levels often exceed safe limits by 200 percent, and carbon monoxide emissions

4. Fiedosjew, *supra* note 2.

5. *Pollution and Health in Eastern Europe*, in WOODROW WILSON CENTER REPORT No. 5 [hereinafter *Pollution in Eastern Europe*].

6. *Id.*

7. *Id.*

8. *Id.*

often peak at 21 times permissible health and safety levels.⁹ "Acid rain in Silesia is five times worse than in the Ruhr region of West Germany. Life expectancy in southern Poland is four years lower than in the rest of the country because of the health problems created by air pollution."¹⁰ Krakow, the center of Polish tourism, is the most polluted town in Poland. The infant mortality rate is 258 out of every 100,000 births, as compared with the national average of 184,¹¹ and the number of patients registered with asthma has tripled during the past 8 years.¹² Furthermore, three-fifths of the food produced in the Krakow area is regarded as unfit for human consumption.¹³ Tourists traveling to Krakow are presently being warned not to stay more than three days because of the harmful air.¹⁴ People are not the only casualties of Poland's polluted atmosphere; many historic (and nonhistoric) buildings are deteriorating at an alarming rate.¹⁵ According to a recent report of the Polish Academy of Sciences, construction materials are decaying up to 400 times more rapidly than they ought to due to air pollutants.¹⁶

Water pollution is another major environmental problem in Poland, especially pollution of the two major rivers, the Vistula and the Odra. These rivers flow into the Baltic sea and contribute to the poor ecological condition of the land area around it. Approximately sixty-five percent of the rivers in Poland are considered so badly contaminated that industries are reluctant to use river water for fear of its corrosive effect on their equipment.¹⁷ Yet, these rivers are the principal source of drinking water for urban areas. As the Vistula River flows north, it collects effluents, chemicals, and untreated sewage from each factory and town along its banks. The worst water pollution problem, however, is the salinization of the Vistula and Odra resulting from the discharge of waste water from coal mining operations. Approximately 4 million tons of salt are discharged into the Vistula every year, and the level of salt in one location

9. Fiedosjew, *supra* note 2.

10. *Poland Suffers from Severe Pollution: Krakow Is Not a Nice Place Even to Visit*, GREENPEACE, Aug. 15, 1990 [hereinafter *Poland Suffers from Severe Pollution*].

11. *Id.*

12. *Pollution in Eastern Europe*, *supra* note 5.

13. *Poland Suffers from Severe Pollution*, *supra* note 10.

14. *Id.*

15. See Cole, *Cleaning Up Kraków: Poland's Ecological Crisis and the Political Economy of International Environmental Assistance*, 2 COLO. J. INT'L ENVTL. L. & POL'Y — (1991) (forthcoming).

16. *Poland Suffers from Severe Pollution*, *supra* note 10.

17. *Id.*; see also *Polish Environmentalist Says Economic, Environmental Recovery Linked*, 13 Int'l Env't Rep. (BNA) 330 (1990).

near Krakow exceeds the norm by 2400 percent.¹⁸

Silesia, in southwestern Poland, merits the special attention of environmentalists because of the magnitude of the ecological catastrophe in that area and its multinational ramifications. Silesia is indisputably the most polluted area in all of Europe.¹⁹ The pollution there not only affects Silesia's inhabitants, but those of neighboring countries as well. Air pollutants from Silesia travel for hundreds of miles and seriously affect areas of Sweden, Finland, and Germany.²⁰ The water pollution adversely affects a surprisingly high percentage of watercourses connecting throughout the European continent.²¹

The roots of the ecological disaster in Poland are not confined to the deleterious effects of the country's own polluting industries and their mismanagement. Recent economic cooperation with the West has created another serious and novel problem in Poland which has only recently been discovered: the importation of toxic wastes from Western Europe. In the same vein, it was also recently discovered that, as part of the European Community assistance for Polish agriculture, fifty million dollars worth of questionable pesticides were imported into Poland.²² Representatives of the Polish Ministry of Agriculture agreed at the time of receipt that the pesticides were not dangerous to human health and the environment. However, after conducting more specific tests, the Ecologic Institute in Warsaw discovered that several of these pesticides were harmful.²³ Some of these pesticides had never been approved for sale in the United States because of their harmful effects, and some of them had not been sold in other countries for a number of years.

In short, the ecological disaster in Poland remaining from the communist years is so great that it is impossible to put a price tag on its remedy. The Polish Ministry of Environmental Protection, Natural Resources, and Forestry has estimated that an expenditure of twenty billion dollars over the next ten years will be required to correct only the major environmental problems of the country.²⁴ Thus, the cost of cleaning up

18. Rzeczpospolita (No. 245), Nov. 20, 1990.

19. See *Poland Suffers from Severe Pollution*, *supra* note 10; *Pollution in Eastern Europe*, *supra* note 5.

20. *Environmental Protection*, *supra* note 1.

21. *Id.*

22. *Afera pestycydowa*, Rzeczpospolita (No. 283), Dec. 5, 1990.

23. *Id.*

24. FORESTRY OF THE REPUBLIC OF POLAND, PRIORITIES OF ACTIVITY [hereinafter PRIORITIES OF ACTIVITY]. Cleaning up Silesia would probably improve the environmental situation in all Europe much more than spending the same money for small environmental problems in West Europe.

Poland's major pollution would be no less than ten to twenty per cent of the nation's annual gross national product.²⁵ With new environmental atrocities being discovered weekly, actual costs will no doubt far exceed that estimate.

II. ENVIRONMENTAL PROTECTION UNDER COMMUNISM

As suggested above, the condition of environmental protection in Poland immediately after the post-socialist era was as bad as, or even worse than, many other branches of public life and the national economy. Several factors contributed to the situation: insufficient use or complete lack of pollution control equipment and the lack of industries to produce such equipment; economic stagnation which, though it signifies a decrease in the emission of pollutants, stifles investment in environmental protection; inadequate and imperfect monitoring, inspection, and supervision of established pollution standards; vague or undefined government environmental program goals and objectives, and no coordination of environmental concerns with economic policies; poorly written and conceived laws; and an ambivalent state of environmental social consciousness on the part of the public and government officials. The ecological disasters of the socialist era cannot, however, be attributed to a dearth of environmental laws and regulations. In fact, the environmental protection laws in effect in Poland at the beginning of the 1990s, and largely still in effect pending adoption of replacements, were quite extensive. A detailed examination of these laws is pointless, since the government plans to replace or revise them presently, and the extent of their current implementation is questionable. Generally, these laws establish vague principles concerning environmental protection and pollution control, and authorize various state administrative authorities, especially the Ministries of Environmental Protection, Natural Resources, and Forestry, to give these principles meaning through the promulgation of rules and regulations. Many of these regulations are almost entirely administrative in character, including the laws on Use and Conservation of Inland Waters,²⁶ Land Management,²⁷ Mining Law,²⁸ Forests,²⁹ Town and

25. *Polish Environmentalist Says Economic, Environmental Recovery Linked*, *supra* note 17, at 330.

26. *DZIENNIK USTAW* (Journal of Laws) [hereinafter *Dz. U.*] (No. 38) item 38 (subsequently amended) (1980).

27. *Dz. U.* (No. 14) item 74 (1989); *Dz. U.* (No. 29) item 154 (1989); *Dz. U.* (No. 79) item 464 (1990).

28. *Dz. U.* (No. 4) item 12 (subsequently amended) (1978).

Country Planning,³⁰ Land Recultivation,³¹ and others. Other regulations bear a protective character (e.g., Law on Preservation of Nature Concerning Protected Natural Objects),³² and some, such as the Law on Building, are designed as an overall regulatory framework for a given type of activity.³³

One general, or comprehensive statute, the Law on Protection and Formation of Environment,³⁴ was designed as a crown to the whole system of environmental protection, and sets general principles to guide solutions.³⁵ Additional statutes, which are not classified as environmental laws, also have important consequences on environmental protection. These include health regulations, such as the Law on State Sanitary Inspection,³⁶ and numerous executory acts concerning environmental matters within the jurisdiction of various ministries.³⁷

As in most countries, specific environmental laws operate within the entire legal system, which includes laws having equal effect on the condition of the natural environment. Thus, in evaluating the totality of environmental law in Poland, it is important to consider the system of public administration, the principles of civil liability and criminal responsibility, tax regulations, the general condition of legal consciousness in society, the role played by citizens and by economic entities in the law, and the efficiency of the institutions of legal protection and administrative authorities.

III. ENVIRONMENTAL REFORM IN THE POST-SOCIALIST ERA

Environmental reform began in Poland at the same time as changes began in the economy and government—namely, between February and

29. Dz. U. (No. 63) item 494 (subsequently amended) (1949); Dz. U. (No. 48) item 283 (subsequently amended) (1973); Monitor Polski (No. 21) item 118 (subsequently amended) (1974).

30. Dz. U. (No. 35) item 185 (subsequently amended) (1984).

31. Dz. U. (No. 11) item 79 (subsequently amended) (1982).

32. Dz. U. (No. 25) item 180 (1949); Dz. U. (No. 33) item 180 (1987).

33. Dz. U. (No. 3) item 6 (subsequently amended) (1983).

34. *Id.*; Dz. U. (No. 44) item 210 (1983); Dz. U. (No. 33) item 180 (1987); Dz. U. (No. 26) item 139 (1989); Dz. U. (No. 35) item 192 (1989).

35. L. JASTRZEBSKI, *PRAWO OCHRONY SRODOWISKA W POLSCE* (Law on Environmental Protection in Poland) 270 (Warsaw 1990).

36. Dz. U. (No. 12) item 49 (1985).

37. *See, e.g.*, The Ordinance of the Council of Ministers on the Amount of and Rules on Imposition of Penalties for Pollution of 1990; The Ordinance of the Council of Ministers on the Administration of the Protection Zones of 1980; The Ordinance of the Council of Ministers on Protection From Noise and Vibrations of 1980.

April of 1989, during the so-called Round Table Talks between the Socialist government and Solidarity representatives.³⁸ Environmental protection issues were among the topics discussed and agreed upon during the talks. The parties decided that the most important environmental imperatives in the near future are the lowering of sulfur dioxide and nitrogen oxide emissions by at least fifty percent; improvement of river water quality, particularly of the Vistula; utilization of industrial and community waste; and introduction of ecological order in the economy.³⁹ These tasks require broad international cooperation based on the ecoconversion of Polish national debts.⁴⁰

The Report of the Round Table Subunit On Ecology also concluded that the following legal reforms should be accomplished within set deadlines:

- A. Execution, within two years of the law's codification, of environmental protection through the improvement (altering) of rules and regulations. These rules should regulate two main areas of concern:
 - (1) the relation of man to nature, with particular consideration to plant and animal life;
 - (2) the relation of society to the natural environment.
- B. This regulation would apply particularly to (1) preservation of the environment, (2) protection and management of natural resources and natural values, and (3) preservation and formation of natural living conditions and better health conditions.
- C. These complex improvements to environmental law should particularly cover the following:
 - a. protection and shaping of the environment;
 - b. protection of nature;
 - c. water law;
 - d. protection of rural and forest lands;
 - e. regulation of mining and geological laws; and
 - f. reforestation.
- D. Improvements should also consider the protection of the maritime environment of the Baltic Sea.
- E. The improvements should also aim at ensuring the completeness, thoroughness, and cohesion of environmental protection. Thus, the principle of equality before the law should exist for all the subjects taking part in the process of utilization of the natural environment.⁴¹

38. Report of the Round Table Subunit on Ecology (Scitran, CA trans.).

39. *Id.* at 1.

40. *Id.*

41. *Id.* at 9 n.29.

The Report specified that the work of the Codification Commission must be completed by the end of 1990.⁴² It also recommended the adoption of a principle of judicial standing for all individuals and legal entities to sue injunctively, without costs, for cessation of activities which damage the environment.⁴³ The Round Table reports have had a significant and positive influence on the understanding of environmental protection in Poland. However, as of the beginning of 1991, major laws have been drafted, but not enacted by Parliament. These are laws on the following: (1) Protection of the Natural Environment; (2) Hunting; (3) Enforcement of Environmental Protection; and (4) several laws relating to concerns such as mining or geology, which have an impact on environmental protection. Legislative drafting continues despite the passing of the original target dates, and it has been announced that a series of drafts will be directed to Parliament in 1991.⁴⁴

The most important of the new drafts is the Draft of the Law on Environmental Protection⁴⁵ (Draft Law). Hopefully, a number of changes will be made in the latest version of the Draft Law before Parliamentary action is taken on it, but this Article can only comment on and criticize the Draft Law as it existed in October 1990.

Despite its drafters' high goals and individual competence, the Draft Law is highly eclectic and does not adequately respond to the current demands of Poland's ecological problems. This is because the authors of the Draft Law have not responded adequately to the transformations which the Polish legal, economic, and administrative systems are undergoing.

The Draft Law fails to address three fundamental themes and conditions which any new Polish environmental laws must satisfy:

- A. Europeanization of Polish environmental law;
- B. Ecologization of Polish law; and
- C. Economization of environmental protection activities. The Draft Law's deficiencies in these areas will be discussed in turn.

A. Europeanization of Polish Environmental Law

If any summary or simplification is possible of the impetus for re-

42. *Id.* at 21.

43. *Id.* at 23.

44. Legislative Comm'n appointed by the Prime Minister, Draft of the Law on Environmental Protection of Oct. 1990 [hereinafter Legislative Comm'n Draft Law].

45. Ministry of Environmental Protection, Natural Resources & Forestry of the Republic of Poland, Draft of the Law on Environmental Protection [hereinafter Ministry of Environmental Protection Draft Law].

cent legal, economic, social, political, and psychological changes in Poland, it is that Poland now considers itself, and wishes to be considered, as once again a part of Europe. This is particularly important in regard to ecology, since Polish pollution affects the rest of Europe, and Europe's pollution affects Poland. Furthermore, foreign investment in Poland, which is greatly wanted and needed by the Poles, threatens to further deteriorate the Polish environment if lax environmental protection standards are adopted to attract "dirty," but profitable industries. Europeanization of Polish environmental laws and regulations, the adoption of environmental protection standards on par with the rest of Europe, and environmental protection principles which act as adequate bases for international agreements between Poland and other European countries, are essential for Europe to be protected from Polish environmental atrocities. The same is true to protect Poland from the environmental atrocities of other European nations, or of foreign investors in Poland.

Unfortunately, no meaningful response to this need for Europeanization is found in the current environmental laws or in the Draft Law. The Draft Law provides no procedure or method for assessing the state of the environment,⁴⁶ nor does it provide any ecological standards, which it instead makes the responsibility of administrative authorities. Thus, neither the current laws nor the Draft Law creates sufficient safeguards for the protection of individual or societal environmental interests.⁴⁷

With regard to Poland's international environmental obligations, the Draft Law provides only that international obligations should be recognized in provisions of the national law.⁴⁸ Thus, there is no indication when, and to what extent, European standards will become binding in Poland.

The Draft Law adopts the same jurisprudential approach as the current laws. Thus, it provides for the absolute superiority of administrative over legislative activity. In fact, the administrative authorities, especially the Ministers of Environmental Protection, Natural Resources, and Forestry, are empowered to set standards under the current law,⁴⁹ and will

46. Wasilewski, *Ochrona Srodowiska jako Kryterium Ocen Prawnych* (Environmental Protection as a Criterion of Legal Opinion), 12 KRAKOWSKIE STUDIA PRAWNICZE (1983); see also Kulesza, *Efektywnosc Prawa i Administracji w Zakresie Ochrony Przyrody* (The Effectiveness of Law and Administration Within the Sphere of Nature's Protection), in ISSUES OF THE PROTECTION OF POLISH NATURE (Warsaw 1987).

47. Boc, *O Sytuacji Jednostki w Unormowaniach Prawnych Ochrony Srodowiska Naturalnego* (On the Situation of Individuals in the Provisions Concerning the Environment), 78 ACTA UNIVERSITATIS WRATISLAVIENSIS (Wroclaw 1978).

48. Ministry of Environmental Protection Draft Law, *supra* note 45, at 32.

49. *Id.*; see also Legislative Comm'n Draft Law, *supra* note 44.

continue to do so pursuant to the Draft Law.

In communist Poland, giving this dominant role to the executive and assigning Parliament a rubber stamp function were symptoms of the natural configuration of State administrative powers. Today, however, this system is inappropriate, and inconsistent with the various governmental reforms being instituted in other sectors of the legal and political system. Communist law was generally based on general resolutions of a declarative character, and the actual resolution of concrete problems was the province of administrative decisions. This system was the product of a theory that the state administration could creatively fulfill the extensive organizing functions of social and economic life. Under this theory, national plans were used to establish the policy goals of state activity and set the tasks to perform. The role of the legislature was to govern administration rather than citizens: to regulate its structures, tasks, and powers.

Thus, under the Communist system there was a basic assumption, corresponding with the system of state administrative authorities, that environmental regulation would be an administrative function. Consequently, citizens' rights were of no significance in the environmental arena, since the state and its administration would act in the name of society as a whole, and on behalf of economic development.⁵⁰ Individual environmental action could only obstruct this statist scheme.

A practical consequence of continuing the prereform approach to environmental regulation is that the Draft Law will provide neither Polish nor foreign investors with any precise information concerning the ecological standards they must meet in order to undertake economic activity in Poland.

Thus, as long as the prereform administrative system is preserved, the Europeanization of Polish environmental law will not be accomplished by the Draft Law.

B. Ecologization of Polish Law

Environmental protection in Poland cannot be accomplished without reorienting all laws and legal processes which have an impact on that field. In this regard, two major problems are inherent in the Draft Law. The first deals with civil liability.⁵¹ The Draft Law's chapter on civil

50. Cf. M. WYRZYKOWSKI, POJECIE INTERESU SPOŁECZNEGO W PRAWIE ADMINISTRACYJNYM (The Term of Societal Interest in an Administrative Law) (Warsaw 1986); J. BOC, OBYWATEL WOBEC INGERENCJI WSPÓŁCZESNEJ ADMINISTRACJI (The Citizen Before Intervention of the Administration) (Wrocław 1985).

51. Ministry of Environmental Protection Draft Law, *supra* note 45.

liability for environmental damage is very well-reasoned: it provides all interested parties with full judicial protection, and subjects wrongdoers to liability for both individual and group actions.⁵² However, while the Draft Law does not exclude liability pursuant to other laws, liability as provided in the Draft Law is not based on negligence principles nor on the principle of no-fault liability.⁵³ Instead, the measure of liability is the unlawfulness of the act. One advantage of the lawfulness standard is that it is objective and easy to determine. A serious disadvantage, on the other hand, is that it is based on norms and standards which must be established by the administrative authorities, an approach which, as we have seen, has been fraught with problems and which is inappropriate at present. It must be emphasized, however, that the civil liability provisions of the Draft Law do not preclude the use of liability theories based on provisions of the Polish Civil Code.⁵⁴ The Draft Law's administrative provisions on environmental protection are formulated along very traditional lines, similar to the current legislation. Thus, the Draft Law provides "control and order" administrative measures which are based on a classical formula of jurisdictional administrative procedures which culminate in individual ex parte decisions.⁵⁵ In many cases this approach is satisfactory, but in many others, especially where numerous ecological conflicts are at issue, such legal solutions are not sufficient. The Draft Law lacks standardized, specific procedures of a public character, which would allow for truly comprehensive assessment of more complicated cases. It also lacks the institution of an "ecological license," the contents of which would specify all aspects of environmental use by a specific person or undertaking.

Thus, the Draft Law does not allow for comprehensive administrative decisions in the field of environmental protection. For example, a shortcoming which is crucial to foreign and domestic investors is that the law does not provide for negotiation procedures. It is as though the drafters overlooked the very plausible scenario in which a developer can

52. See POLISH ACADEMY OF SCIENCES, INST. OF STATE & LAW, CIVIL CODE OF THE POLISH PEOPLE'S REPUBLIC tit. VI (1981).

53. *Id.*

54. Compare M. LONMCHAMPS, ODPOWIEDZIALNOSC ZA SZKODE EKOLOGICZNA (Liability for Ecologic Damage) (Wroclaw 1986) with Agopszcwicz, *Cywilnoprawne Srodki Ochrony Srodowiska w Swietle Ustawy o Ochronie i Kształtowaniu Srodowiska* (Civil Law Methods of Environmental Protection in Light of the Law on Environmental Protection), in ZAGADNIENIA PRAWNE OCHRONY SRODOWISKA (Legal Issues of Environment Protection) (Katowice 1981).

55. Legislative Comm'n Draft Law, *supra* note 44.

confer meaningful environmental benefits to a region in return for relatively meaningless variances of rules or standards.

The Draft Law's eclectic character constitutes another, very important deficiency. It contains vague provisions relating to many branches of environmental protection already regulated by other laws. Thus, the Draft Law contains, as does the current law, a chapter on conservation of inland waters,⁵⁶ which consists of several sketchy, general provisions on the subject. However, there is also a new Draft on Water Law under preparation, which, obviously, will include protective provisions worked into a legal system of water management. This legislative dualism occurs in many other areas covered by the Draft Law, making it a melange of miscellaneous provisions rather than a comprehensive law. Legal dualism was common in communist Poland: different sources of law covering the same subject were mutually uncoordinated, thus allowing for different interpretations of law on the same matter.⁵⁷ This unfortunate and dangerous phenomenon is especially evident in regard to land use planning and development control law, both of which are covered in two draft laws—the Law on Environmental Protection and the Law on Land Use Planning—which to date have not been coordinated.

The duality problem merits emphasis, given that the authors of new drafts, for different reasons, are not taking advantage of their unique opportunity to review the entire current administrative legislation and to introduce pro-ecology amendments to ineffective environmental laws. Instead, the new regulations often possess a facade character, and resemble political declarations, which are no longer necessary.⁵⁸

Finally, one must note the Draft Law's deficiency in considering the major role of local governments as indispensable participants in environmental protection. In fact, local government is almost absent in the Draft Law. All powers concerning environmental protection have been exclusively ascribed to the state administrative bodies, which are subordinate to the central government.⁵⁹ These powers include supervisory, control, and police powers, as well as the responsibility for environmental conditions and the organization of undertakings on their behalf in the course of regular government activities.⁶⁰ The provisions on financ-

56. Ministry of Environmental Protection Draft Law, *supra* note 45.

57. See generally L. JASTRZEBSKI, *supra* note 35.

58. M. KULEZA, *ADMINISTRACYJNOPRAWNE UWARUNKOWANIA POLITYKI PRZESTRZENNEJ* (Administration Conditions of Land Use Planning) (Warsaw 1987).

59. See Law on Protection and Formation of Environment, 1980, Dz. U. (No. 3) item 6 (1983); Dz. U. (No. 44) item 210 (1983); Dz. U. (No. 33) item 180 (1987); Dz. U. (No. 26) item 139 (1989); Dz. U. (No. 35) item 192 (1989).

60. *Id.*

ing environmental protection are odd in that allocation of respective funds are very carefully located beyond the decision-making authority of local governments. Such provisions are not only unwise, but are distinctly in contradiction with the Law on Self-Local Government of March 1990.⁶¹ Again, this exemplifies the centralist theme of the Draft Law.

C. Economization of Environmental Protection Activities

The third necessity which the Draft Law fails to address, and which is crucial to the salvation of Poland's ecology, is the consideration and use of economic measures and analysis to accomplish environmental goals. Were it not for the fact that the Draft purports to be comprehensive in character, it could be assumed that other laws will provide solutions, such as legislation on taxation.⁶²

The Draft Law and the current laws provide two economic means of environmental protection: fees for using the environment and fines for improper and unlawful use.⁶³ But these are proper and effective instruments only when coordinated with other solutions. In the past, economic disincentives have not functioned properly because only state sector enterprises were affected. These enterprises were supervised and funded by the state administration, which was mainly interested in increasing production, and not in profit or environmental protection.

Perhaps the gravest shortcoming of the Draft Law, in regard to the use of economic leverage, is that it does not provide mechanisms allowing for at least partial transfer of the responsibility for environmental protection to the private sector. This is probably a reflection of the Draft Law's traditionalist basis. In other countries, such tasks are frequently performed by economic entities in the private sector.

The examination of environmental reforms in the post-socialist era would not be complete without mention of the recent activities of the Minister of Environmental Protection, Natural Resources, and Forestry (Minister), and his recently issued Report, "Ecologic Strategy of the Country."⁶⁴ According to this document, the primary goals of ecological strategy in the next three to four years should concern the remedy of pollution particularly dangerous to human health and life. Among these goals are decreasing emissions of dust and sulfur dioxide, and finding

61. Dz. U. (No. 16) item 95 (1990); Dz. U. (No. 34) item 199 (1990).

62. Dz. U. (No. 25) item 180 (1949); Dz. U. (No. 33) item 180 (1987).

63. Legislative Comm'n Draft Law, *supra* note 44, at 24.

64. Rzeczpospolita (No. 211), Sept. 10, 1990.

sources of clean, healthy water.⁶⁵ The Minister also announces that within the next ten to twenty years, Poland will be ready to adopt the European Community's environmental standards and to harmonize its environmental policy with those of other European countries.⁶⁶ As seen above, this time frame is totally unacceptable.

The Minister also emphasizes the need to revise the system of legal environmental regulation as quickly as possible. He points out that some changes have already been made. For example, the law on "protection zones," which made it possible to establish zones in which industrial plants could be free of pollution controls, has been abandoned because it was "a notorious loophole allowing industry to reduce abatement efforts."⁶⁷

Another regulatory reform adopted in recent months is an ordinance setting new emission standards for water and air.⁶⁸ The Law on Forests,⁶⁹ proposed in December 1990 would provide a new treatment of forest protection. In the past, all forests, even those which were state owned, were treated as regular businesses. They had to pay taxes and cover all costs of operation, production, and protection, from their timber sales revenues. As a result, forest management revolved around income production rather than preservation and protection; consequently, Polish forests have been shrinking. Under the proposed law, the role of profit and production is much less important than before. For example, instead of an income tax, a special forest tax is established which takes account of the age and sustainable yield characteristics of the individual forest.⁷⁰

Another reform cited by the Minister is the income tax law relating to legal entities, adopted January 31, 1989,⁷¹ which provides that business income spent on environmental protection is tax exempt.

In another recent development, the Polish government has issued a list of the eighty most polluting industrial plants, including chemical, steel, and metallurgic factories, and power stations.⁷² In September 1990 the government imposed environmental fees designed to force those

65. PRIORITIES OF ACTIVITY, *supra* note 24.

66. *Id.*

67. *Id.*

68. Dz. U. (No. 15) item 181 (1990); Dz. U. (No. 35) item 479 (1990).

69. Ministry of Environmental Protection of the Republic of Poland, Natural Resources, and Forestry, Draft Law on Forests.

70. *Id.*

71. Dz. U. (No. 3) item 12 (1989).

72. Rzeczpospolita (No. 206), Sept. 5, 1990.

eighty enterprises to initiate pollution reduction improvements.⁷³

Poland has already embarked on an intensive program to protect the "green lungs" of the country, which encompass five provinces: Suwalki, Olsztyn, Bialystok, Lomza, and Ostroleka.⁷⁴ There are several unique forests in this area, including Puszcza Bialowieska, often called the last forest in Europe because it is the last vestige of the European primeval forests.

IV. CONCLUSION: THE FUTURE OF ENVIRONMENTAL PROTECTION IN POLAND AND EASTERN EUROPE

The extent of the environmental crisis in Poland and the rest of Eastern Europe indicates that this is the last opportunity for Poland to protect its environment. There are many who believe that the renunciation of communism, the movement to democratic institutions, and the adoption of free market economies will inevitably either erase the damage already suffered or prevent further damage. These people should consider the environmental problems of several other nations which have had democratic societies and free market economies for many years. Currently, Poland's main concern is its economic survival, and the normal tendency in a developing economy is to avoid investment in environmental protection, and to delay until tomorrow any environmental regulations that would discourage foreign and domestic investment. But for Poland, tomorrow may be too late.

The themes which Poland's legislative reforms should follow have been discussed in detail in Part III. It is reemphasized, however, that reform of the Polish legal system must make the law responsive to ecological needs. There is no greater inherent guarantee of environmental protection in "capitalist" law than there is in socialist law, so Polish law must specifically and comprehensively require and allow protection of the environment by both private individuals and government entities. Poland must resist the temptation to attract foreign and domestic investment in "dirty" industries. Allowing such industries could turn Poland into the garbage dump of Europe, and any economic benefits from such investments would at best be short-lived. Thus, this Article has stressed

73. *Id.*

74. "The area of Poland's 'green lungs' is our country's contribution to the European system of ecological security being formed at present" said the deputy chairman of the Polish Parliament's Committee for Environment Protection, Professor Stefan Kozlowski. *We Must Create a European System of Ecological Security*, Warsaw Voice, Nov. 18, 1990.

the need for Poland to bring its environmental standards in line with the European Community's at the earliest possible date.

In order to provide the maximum possible assurances that economic development will alleviate, rather than compound, environmental problems, Poland should revamp its relevant laws and regulations to include the principles of Europeanization, Ecologization, and Economization. The following must also be implemented:

1. American or European Community style environmental impact study requirements must be established, which would insure that the environmental consequences of private and public economic activities are evaluated with a comprehensive and realistic understanding of their effects on the human and natural environment.
2. Infrastructure funding requirements must be placed on private developments of all types (housing, manufacturing, marketing, and other similar developments) to insure that adequate public facilities exist (roads, water, sewage treatment, and other governmental type services) to support new business activities. The experience of other countries has shown that inadequate infrastructure for industrial and business activities inevitably leads, directly or indirectly, to environmental degradation.
3. Local governments in Poland must be assigned a greater role in environmental protection. The experience of other countries indicates the importance of giving power and responsibility in environmental matters to those who will be most directly affected.
4. The right of private citizens and environmental interest groups to participate in environmental decisions must be established and made easy to exercise. There should be three parties to all environmental decisions: government regulators, private parties wishing to undertake economic development, and representatives of the public concerned with environmental protection.

Finally, Poland must continue to seek the aid of other countries to help alleviate its current environmental crisis. As suggested earlier, several other European nations can help their own environment by helping Poland's. Many nations, along with the United States, have already committed modest economic aid to Poland. The types of assistance received thus far are:

1. Bilateral agreements on cooperation in, and funding of, environmental projects.⁷⁵
2. Multilateral assistance by the World Bank, the International Monetary Fund, and the European Community.

Foreign financial assistance for environmental protection is extremely important, since Poland must currently spend its own money, as well as foreign credits, on the restructuring of its economy. As the ex-Prime Minister of Poland, Tadeusz Mazowiecki, noted at the Baltic Sea Conference, the cessation of "continuing degradation of this environment" can be "unrealistic without significant financial and technological support from abroad" for Poland.⁷⁶ Poland must pursue foreign assistance innovatively, through debt-for-nature swaps, and by encouraging the privatization of environmental cleanup efforts. These actions will make assistance profitable to foreign investors.

75. OECD countries - 25 mln \$, USA - 35 mln \$, Sweden - 35 mln \$, Belgium - 37 mln \$. Also some financial assistance was offered by Germany, Japan, France, Denmark, and Norway. According to the Minister of Environmental Protection, Poland can expect two hundred million dollars during the next three to four years as assistance for environmental protection from individual countries.

76. *In the Interest of the Baltic States and Nations*, Warsaw Voice, Nov. 18, 1990.