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Organization of Environmental Services in Poland

1. Initial Considerations

The obligation to perform duties referred to as environmental protection was imposed upon the public authorities by the Constitution. According to article 5 of the Constitution of the Republic of Poland, setting forth the principal guidelines and aims of the government activities, environmental protection has been considered one of the fundamental tasks (functions) of the public authorities to be implemented according to the rule of sustainable development¹. The government's tasks are executed by its authorities, first of all by the public administration authorities. Effective execution of the environmental tasks largely depends on assuring a competent administrative apparatus, whose role is implementing the standards provided for in environmental protection regulations. The necessary condition for implementing constitutional rules of environmental

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¹ Journal of Laws of 1997, No 78, item 483 with amendments.

protection by the public authorities in order to assure all the subjects environmental security is regular planning, implementation and verification of the adopted organizational solutions' effectiveness. Granting the powers to settle certain issues to specific public authorities requires deliberation and caution at various levels. The legislator may grant such competence to the existing public administration authorities, both at the central and local government levels, which would perform environmental tasks apart from their other assignments. The legislator may also decide to appoint specialized bodies to deal exclusively with environmental protection issues. Modern environmental protection law is a vast and highly complex area. To be substantially correct, solutions regarding environmental protection often require specialist knowledge, comprising not only wide range of administrative and legal issues but also science and technology. On the other hand, overdeveloped structures of specialized environmental protection bodies will generate higher costs of administration in general. 'It will also increase bureaucracy and obscure the general structure of public administration authorities'². The concept of environmental protection services organization must assure efficiency, effectiveness, cost-effectiveness and benefits of public administration authorities activities (criteria of so called 'good' administration).

The organization of environmental protection services functioning in Poland has been (and still is) subject to regular transformations determined, above all, by social and structural changes in 1990s, and also by the perspective of Poland's accession to the EU and then the actual accession, as well as the necessity to meet the obligations following both the Accession Treaty and the new EU regulations, which resulted (and still results) in extension of the environmental tasks index imposed upon the public administration authorities. The EU Member States are obliged to organize their institutional structures and share competences so that particular assignments concerning the UE law could be correctly implemented by appropriate bodies. It is worth mentioning that one of the criteria determining appropriate implementation of directives (dominating in the sphere of the EU environmental protection law) is creating a proper system of institutions responsible for application, monitoring and enforcing of harmonized standards. The intensification of integration processes

forces therefore significant changes in the national organization structure, which has to adapt to the new system of interrelations and actions taken to implement collective objectives. Thus, the steadily progressing integration process changes the structure of public administration authorities, including changes within environmental protection services.

2. Evolution of Environmental Protection Services

It is assumed that the inter-war period in Poland was the time since when we have been able to say about organized institutional activities (in subjective meaning) for nature preservation, although not environmental protection yet³. Organization of nature preservation was established by the act of 10 March 1934 on nature preservation⁴ and executive orders issued on its ground by the Minister of Religious Denominations and Public Enlightenment: dated 14 November 1936 concerning the National Council for Nature Preservation⁵ and dated 25 February 1937 on Nature Preservation Committees⁶. The process of nature preservation, however, started earlier – during a convention devoted to nature preservation held on 17 December 1919 in Warsaw. The Minister for Religious Denominations and Public Enlightenment (at that time responsible for nature preservation) appointed then the Temporary State Committee of Nature Preservation as an advisory body for the minister regarding nature preservation issues. The Committee was transformed into the State Committee for Nature Preservation (further referred to as the SCNP) by way of the order of the Council of Ministers dated 10 June 1925 on the mode of settling nature preservation issues, included into the competence of the Ministry of Religious Denominations and Public Enlightenment⁷. By way of the quoted order, the office of the Delegate for the Secretary of Religious Denominations and Public Enlightenment for Nature Preservation was established. The Delegate, by way of holding the

³ further: K. Sobieraj, *Ewolucja służb ochrony środowiska*, in: M. Rudnicki (dd.), *Organizacja ochrony środowiska*, Lublin 2011, pp. 39–55.

⁴ Journal of Laws of 1934, No 31, item 274.

⁵ Journal of Laws of 1936, No 94, item 660.

⁶ Journal of Laws of 1937, No 27, item 195.

⁷ W. Radecki, *Z dziejów ochrony przyrody i środowiska w Polsce. Państwowa Rada Ochrony Przyrody*, „Aura” 1990, No 1, p. 23

office, was the head of the SCNP. The authorities supporting the Minister for Religious Denominations and Public Enlightenment or the Delegate were SCNP local delegates⁸.

The first Polish act of 10 March 1934 on preservation of nature with respect to organizational issues continued principally the incipient organization created before the law implementation, but also added some new solutions. First of all, it was established in its provisions that local nature preservation authorities were the general administration authorities (the Voivodes and the Government Commissioner for the Capital City of Warsaw), and their competent representatives were the district nature conservation officers. In the executive order to the act dated 14 November 1936, the SCNP was referred to as an advisory body for the 'state administrative authorities as regards nature conservation issues', appointed by the Minister of Religious Denominations and Public Enlightenment as its chairman *ex officio*. Furthermore, on the grounds of the order of the Minister of Religious Denominations and Public Enlightenment dated 25 February 1937 on the Nature Preservation Committees, five committees of nature preservation were established.

Pursuant to the second Polish act on nature preservation of 7 April 1949⁹, a hierarchical, three stage system of nature preservation authorities was introduced. The Minister of Forestry, as the superior authority for nature preservation regarding animate and inanimate nature formations, conducted the Ministry's activities with the help of a competent authority, i.e. the Chief Nature Preservation Officer¹⁰. The second instance nature preservation authority was the voivode, whose competent authority was the nature preservation officer, whereas the advisory and consultative body was a regional nature preservation committee¹¹. The starost, acting by way of a locally competent forest inspector of a state national park or a manager (head) of a national park became the first instance nature preservation authority. The immediate supervision of protective regulations enforcement was held apart from competent authorities by the national forests administration authority. Unfortunately, the organization system created by the second Polish act on nature local preservation had survived only until

⁸ E. Symonides, *Ochrona przyrody*, Warszawa 2008, p. 339.

⁹ Journal of Laws Of 1949, No 25, item 180.

² The law provided for remits of other ministers regarding environmental protection.

¹¹ E. Symonides, *Ochrona przyrody...*, p. 346.

the act regarding the local unified state authorities dated 20 March 1950 became effective. The act introduced a system of national councils and their presidia, and abolished among others the posts of starosts and voivodes¹².

The beginnings of environmental protection services in Poland are related to establishing the Central Water Economy Office, as a central state administration authority subject directly to the Prime Minister¹³. This body was responsible for water economy and protecting water against pollution¹⁴, and since 1966 also for protection of air against pollution¹⁵. It was the beginning of the future ministry of the environment. After its liquidation in 1972, the Office of the Minister of Local Economy and Environmental Protection was appointed as the chief national administration authority, whose competence included environmental protection issues, in particular protection of water against contamination, protection of green areas and the air¹⁶. The office was then transformed in 1975 into the Ministry of Administration, Local Economy and Environmental Protection¹⁷.

The especially significant meaning for development of environmental protection services had the implementation of the act on protection and development of the environment of 31 January 1980¹⁸, which legitimized separating the organization of environmental protection and nature preservation. On those grounds, a department, separate from nature preservation services and responsible for environmental protection, was created. The leading role in that respect fell to the Minister of Administration, Local Economy and Environmental Protection as the supreme authority

¹² Journal of Laws of 1950 No 14, item 130.

¹³ Act dated 14 June 1960 on establishing the Central Office for Water Economy and transforming the office of the Minister for Navigation and Water Economy into the Office of the Minister of Navigation, Journal of Laws of 1960 No 29, item 163.

¹⁴ On the grounds of the act dated 31 January 1961 on the protection of water against contamination, Journal of Laws of 1961 No 5, item 33. The act was replaced by the act dated 30 May 1962 on the use and conservation of inland waters, Journal of Laws of 1962 No 34, item 158.

¹⁵ On the grounds of the act dated 21 April 1966 on air protection against contamination, Journal of Laws of 1966 No 14, item 87.

¹⁶ Art. 2 of the act dated 29 March 1972 on establishing the office of the Minister for the Local Economy and Environment, Journal of Laws of 1972 No 11, item 77.

¹⁷ On the grounds of the act dated 28 May 1975 on establishing the office of the Minister of Administration, Local Economy and Environmental Protection, Journal of Laws of 1975 No 16, item 90.

¹⁸ Journal of Laws of 1980, No 3, item 6.

coordinating activities of other ministers. Also, a central specialist authority, the National Inspection of Environmental Protection, supervised by the Minister of Administration, Local Economy and Environmental Protection was established. The National Inspection of Environmental Protection was managed by the Chief Inspector for Environmental Protection (further referred to as the Chief Inspector), appointed and dismissed by the Prime Minister, following the motion of the Minister of Administration, Local Economy and Environmental Protection, performing his duties on monitoring the implementation of regulations concerning environmental protection in cooperation with local public administration authorities¹⁹. Also, the National Environmental Protection Council (further referred to as the National Council), a consultative and advisory body on environmental protection services, was created and attached to the Council of Ministers²⁰. A considerable role in creating the financial foundations for environmental protection had the Environmental Protection Fund, which was divided into central and local funds. As regards organization of environmental protection at a local level, national councils and local administration authorities were responsible for providing proper solutions to implement regulations concerning environmental protection and monitor adherence to them, as well as their implementation in the area monitored by the authorities²¹.

It is worth mentioning that a considerable step in environmental protection was the implementation of the act dated 20 July 1983 on the system of national councils and a local government. On the grounds of article 124 section 4, a division of local authorities into general and specific competence authorities was made, whereby it included the entities at local and regional levels. As regards specific authorities of local administration environmental protection was the responsibility of the environmental protection, water economy and geology department managers at voivodeship level offices, as well as of the heads of environmental and water economy departments at local offices²².

¹⁹ §3 item 1 and §4 item 1 of the order by the Council of Ministers dated 30 September 1980 on the State Inspection for Environmental Protection and environmental protection monitoring, Journal of Laws of 1980 No 24, item 96.

²⁰ Section 4 of the order by the Council of Ministers dd 30 September 1980 on the organization, detailed rules and scope of operation regarding the National Environmental Protection Council, Journal of Laws of 1980 No 24, item 97.

²¹ Art. 90 item 1 and art. 91 of the act on environment protection and development.

²² W. Radecki (ed.), *Organizacja ochrony...*, p. 150.

In 1980s, principal changes were introduced at the national public administration level as regards environmental protection. In 1983, the Environmental Protection and Water Economy Office was established²³, and in 1985 issues within the Office competence were handed over to the newly established office of the Minister of Environmental Protection and Natural Resources²⁴. The competence of the newly appointed Minister included issues within the activities of the National Office of Geology and also environmental protection issues being within the competence of the Minister of Forestry and Timber Industry, whose office was closed down. The implementation of the above changes in the law is considered as the first stage in overcoming the problem of dualism as regards environmental protection and nature preservation. The issues of forestry were still within the competence of the Minister of Agriculture, Forestry and Food Administration. Not until the implementation of the act dated 20 December 1989 on establishing the office of the Minister of Environmental Protection, Natural Resources and Forestry may we consider concentration of all the public issues related to environmental protection, including forestry and nature preservation, within the competence of one supreme public administration authority²⁵.

An important step in supporting the environmental protection system of financing was creating in 1989 at the central level the National Fund of Environmental Protection and Water Economy, having a legal personality. It took place by joining two separate ecological funds existing at the central and local levels (the Water Economy Fund and the Environmental Protection Fund)²⁶. At the regional level, voivodeship funds, subordinate to the voivodes, started their operation.

Further evolution of environmental authorities' model shaping was influenced by the reform of public administration carried out in two stages

²³ Act dated 28 July 1983 on creating the Office of Environmental Protection and Water Economy, Journal of Laws of 1983 No 44, item 201.

²⁴ On the grounds of the act dated 12 November 1985 on the change of organization and scope of operation concerning some supreme and central national administration authorities, Journal of Laws of 1985 No 50, item 262.

²⁵ Journal of Laws of 1989 No 73, item 433.

²⁶ On the grounds of the act dated 27 April 1989 on the amendment of the act on environment protection and development and the act on use and conservation of inland waters – Journal of Laws of 1989 No 26, item 139.

in 1990s. In 1990, the local government at gmina level was reactivated²⁷. Executing environmental protection tasks was imposed upon the government administration authorities and local administration at gmina level. Local authorities responsibilities in environmental protection were divided among the voivodes and heads of the local offices (governmental administration), as well as gmina authorities (local council administration)²⁸.

The next important law concerning organization issues was the new act of 20 July 1991 on the National Environmental Inspection, which changed the status and organization of the Inspection as a primary authority to monitor conforming to the regulations concerning environmental protection and studies on environmental status²⁹. The National Environmental Protection Inspection, the government special administration, was subject to the Minister of Environmental Protection, Natural Resources and Forestry. At the central level, tasks were conducted by the Chief Inspectorate, whereas at the local (voivodeship's) level regional inspectors for environmental protection were appointed (further referred to as regional inspectors).

In the provisions of the third Polish act of 16 October 1991 on nature preservation three nature preservation authorities were mentioned³⁰. The supreme authority of the national administration was the Minister of Environmental Protection, Natural Resources and Forestry, performing the ministerial tasks by way of the Chief Nature Conservation Officer. The local government general administration authority responsible for nature preservation was the voivode. In its original version, the law also included among the administrative authorities responsible for nature preservation the national park manager as a special administration authority, acting as a voivode in performing tasks in the park area and acting in voivode's competence as regards nature preservation. Among the consultative and advisory bodies responsible for nature preservation, the following were included by law: the National Committee operating for the Minister of Environmental Protection, Natural Resources and Forestry, a regional nature preservation committee operating for the voivode and a scientific

²⁷ Act dated 8 March 1990 on the local government, Journal of Laws of 1990 No 16, item 95.

²⁸ Act dated 17 May 1990 on the allocation of tasks and competence provided for in the special statutes among gmina and governmental administration authorities, as well as on amendments to some acts, Journal of Laws of 1990 No 34, item 198.

²⁹ Journal of Laws of 1991 No 77, item 335.

³⁰ Journal of Laws of 1991 No 114, item 492.

and social council. The third Polish act on nature preservation extended the administration of protected areas, creating the National Parks Services (and the Park Guards) and Landscape Parks Services. A separate body, the National Parks Directorate, was also established. It is worth mentioning that the third Polish act on nature preservation did not only overtake the regulations on the Nature Preservation Services (liquidated as a result of the amendment of 2000), but also introduced regulations allowing natural persons to acquire the rights to be nature community conservators.

The next stage of development in the organization of nature preservation financing bodies' system took place in 1993, when gmina funds for environmental protection and water economy were set up, whereas the existing regional funds for environmental protection and water economy were granted the status of legal persons³¹.

Undoubtedly, the most significant law of those times, also as regards development of environmental protection law and evolution of environmental services, was the Constitution of the Republic of Poland enacted on 2 April 1997. The principles introduced in the Constitution regarding organization and functioning of the state administration authorities and local councils considerably influenced preparations for the public administration reform enacted in 1998. The solutions accepted as a result of its enactment contributed to identifying the ways of implementation of the environmental protection policy in Poland³².

Following the second stage of the state system reform (effective since 1 January 1999), local councils were established at the powiat level, and apart from the government administration at voivodeship level also the voivodeship councils³³. It resulted in continuation of the process regarding environmental services organization changes towards decentralization of environmental tasks on behalf of the local government. Consequently, the following years brought a considerable change of the structure and

³¹ On the grounds of the act dated 3 April 1993 on the amendment to the act on environment protection and development and the act on use and conservation of inland waters – Journal of Laws of 1993 No 40, item 183.

³² S. Wrzosek, *Zarządzanie środowiskiem przez administrację publiczną*, Białystok 1999, p. 107.

³³ Act dated 5 June 1998 on governmental administration in voivodeship, Journal of Laws of 1998 No 91, item 557. Act dated 5 June 1998 on the voivodeship government, Journal of Laws of 1991 No 91, item 576.

competence scope regarding the authorities and entities responsible for environment protection.

The next extension of the environmental protection funds' organizational structure was closely connected with introducing the local government reform. Since 1 January 1999, powiat funds for environmental protection and water economy were started, whereas the gmina funds for environmental protection and water economy were incorporated (i.e. granted the legal person status)³⁴.

Towards the end of 1990s, the next important amendment as regards organization of environmental protection services was made. It concerned the act on the State Environmental Protection Inspection of 20 July 1991. It resulted in the principal change relating to subordination of the environmental service voivodeship inspector. At the regional level, the Inspection's responsibilities were assigned to the voivode who performed them with the aid of regional inspectors (the Voivodship Environmental Service Inspection). The Inspection was referred to as the managing authority for environmental protection constituting a part of a unified voivodeship administration. The change also resulted in renaming the Inspection as 'the Environmental Protection Inspection', the transformation also affected appropriately the name of the act regulating the Inspection's operations.

The organizational issue referring to the supreme state administrative authorities regarding environmental protection was determined in 1999 when the Ministry of the Environment was established³⁵. The Minister in charge was assigned two departments of public administration: the environment and water economy³⁶. It is worth reminding that on the grounds of the law of 1999 on government administration departments, a separate *Environment* department included, among others, nature preservation³⁷.

The first decade of 21st century brought further acceleration of the environmental protection services system. Above all, the need to assure

³⁴ On the grounds of act dated 27 April 1989 on amendment to the law on environment protection and development and the act on use and conservation of inland waters, Journal of Laws of 1989 No 26, item 139.

³⁵ Order of the Council of Ministers dated 26 October 1999 on establishing the Ministry of the Environment, Journal of Laws of 1999 No 91, item 1017.

³⁶ Order of the Prime Minister dd 20 June 2002 on the Environment Minister detailed competence, Journal of Laws of 2001 No 85, item 766.

³⁷ Journal of Laws of 1998 No 141, item 943.

proper implementation of legal obligations of Poland towards the EU, and also obligations arising from many contracts, agreements and international conventions on environmental protection, resulted in a dynamically increasing scope of public responsibilities within environmental issues. That caused the need to improve the effectiveness of environmental protection services, to reorganize their operational principles, to share the competences of environmental protection authorities and institutions in order to implement the new economic and social challenges of the State. Very significant organizational solutions were introduced on the grounds of the act of 27 April 2001 – the Environmental Protection Act (further referred to as the EPA). The provisions of article 376 of the act (in its original text) included among the authorities competent in environmental issues: the gmina chief officer, municipality mayor, starost, voivode and the competent environment minister, as well³⁸. The regulations of article 377 also entitled the authorities of the Environment Protection Inspection to perform tasks referring thereto should the law provide so. As regards institutions (in subjective sense), the law enumerated: the National Committee as an advisory and consultative body attached to the competent minister for the environment, the National Council for Environmental Impact Assessment as an consultative and advisory body for the competent minister of the environment, regional boards for environmental impact assessment as consultative and advisory bodies for the voivodes, as well as environmental protection and water economy funds. With the implementation of the act on the national system of eco-management and supervision becoming effective in May 2004, the aforesaid index of institutions was extended by the National Board for Eco-Management as an consultative and advisory body for the competent environment minister with regard to eco-management and supervision³⁹.

Following the provisions of the fourth Polish act on nature preservation dated 16 April 2004 (in its original text), the government administration authorities as regards environmental protection were: the competent minister for the environment (executing his responsibilities with the help of the Chief Nature Conservation Officer) and the voivode (executing his responsibilities with the help of the voivodeship nature conservation

³⁸ Journal of Laws of 2001 No 62 item 627.

³⁹ Journal of Laws of 2004 No 70 item 631 (abrogated)

officer)⁴⁰. The voivode's tasks regarding nature preservation in a national park were implemented by the park manager. Local administration authorities within nature preservation were either a starost, gmina chief officer, or municipality mayor. According to the law provisions, consultative and advisory bodies for nature preservation were the National Committee attached to the competent minister for the environment, a nature preservation voivodeship council, attached to the voivode's office, a national park scientific council, attached to the national park manager's office, and also a landscape park or landscape parks complex council, attached to the landscape park or landscape parks complex manager's office. As regards administration of protected areas, on the day the above law became effective the State National Parks Directorate was closed.

Numerous changes regarding organization of environmental protection services (including extension of the aforementioned index of environmental protection authorities and nature preservation authorities) introduced in the final years of the first decade of 21st century were mainly (but not exclusively) the effect of implementing a concept of passing further environmental responsibilities from the central administration to the local government level. Since 1 January 2008, the environmental protection authority has been the Marshal of Voivodship, who has taken over an overwhelming majority of responsibilities within environmental protection (not nature protection) from the voivode, as well as the Sejmik (regional assembly) of the Voivodship⁴¹. As a consequence of the changes introduced by two acts, which became effective on 15 November 2008, not only the office of the General Director for Environmental Protection (further referred to as the General Director) was established but also the offices of regional directors for environmental protection (further referred to as regional directors) were appointed. They were entrusted tasks concerning environmental protection and nature preservation⁴². The act created

⁴⁰ Journal of Laws of 2004 No 92 item 880.

⁴¹ Act dated 29 July 2005 on amendments to some acts with reference to changes in transfer of responsibilities and competence of local administration, Journal of Laws of 2005 No 175, item 1462.

⁴² Act dated 3 October 2008 concerning access to information about environment and its protection, participation of society in environmental protection and environmental impact assessment, Journal of Laws of 2008 No 199, item 1227 and the act dated 3 October 2008 r. on amendment to the act on environmental protection and some other acts, Journal of Laws of 2008 No 201, item 1237.

separate budget entities, such as the General Directorate for Environmental Protection and sixteen regional directorates for environmental protection. Former voivodeship nature conservation officers were transferred to the newly created regional directorates for environmental protection and under the name of regional nature conservation officers became the first deputy regional directors for environmental protection. Similarly, the voivodeship councils for environmental protection earlier attached to the voivodes were renamed into the regional councils for environmental protection and became a consultative and advisory body for the regional directors. The National Council for Environmental Impact Assessment was attached to the General Directorate as its consultative and advisory body, whereas the voivodeship councils for environmental impact assessment changed their name to the regional councils for environmental impact assessment and were attached to the regional directorates. Further changes concerned transferring to the sejmiks and marshals of voivodeships or the regional directorates the majority of competences which had not been vested in the voivodes yet⁴³. On 1 January 2010, the structure of environmental protection financing authorities system was transformed by closing the powiat and gmina environmental protection and water economy funds⁴⁴. By the end of September 2011, the National Council for Eco-Management was liquidated.

3. Current system of environmental protection services organization

The currently binding institutional structure of environmental protection services in Poland is highly complex and extended. The responsibilities regarding environmental protection were entrusted both to the government

⁴³ Act dated 23 January 2009 concerning amendments to some acts in relation to changes in organization and transfer of responsibilities concerning public administration duties in voivodeship, Journal of Laws of 2009 No 92, item 753.

⁴⁴ On the grounds of the act dated 20 November 2009 on the amendment to the environmental protection act and some other acts introduces changes in the system of environmental protection authorities financing, Journal of Laws of 2009 No 215, item 1664.

and local administration authorities (of all levels). In principle, it is agreed that enumeration of the environmental protection entities' provided for in articles 376 and 377 of the EPA⁴⁵ – i.e. a gmina chief officer; municipality mayor; starost; sejmik of the voivodeship; marshal of the voivodeship; the voivode; the minister for the environment; the General Director; the regional directors; the General Inspector; the regional inspectors – is incomplete and the reference applied therein 'environmental protection authority' may only be considered appropriate regarding the duties performed on the grounds of the EPA⁴⁶. The specific acts outlining other competences of public administration authorities regarding environmental protection grant the competences to entities listed in articles 376 and 377 of the EPA or to other authorities.

The Minister competent for environmental protection is the supreme public administration authority managing the governmental department of 'the Environment' and 'Water Economy'. Moreover, at the central level the following authorities also operate: the General Director (performs functions on the grounds of several acts, above all: the act on providing access to environmental information and its protection, public participation in environmental protection and assessment of impact upon the environment, act on nature preservation⁴⁷, act on the national system of eco-management and supervision (EMAS)⁴⁸); the Chairman of the National Water Economy Council (competent as regards water economy, in particular water management and exploitation of waters); c) the Chairman of the State Agency for Atomic Physics (competent as regards nuclear safety and radiological protection according to the Nuclear Law⁴⁹); d) the Chairman of the Higher Mining Office (exercises the assigned responsibilities on the grounds of the geological and mining law⁵⁰); e) the General Inspector (performs functions assigned on the grounds of Environment Protection Inspection)⁵¹.

⁴⁵ Journal of Laws of 2008 No 25, item 150.

⁴⁶ See: G. Dobrowolski, *Pozycja reformy instytucjonalnej ochrony środowiska*, in: M. Górski, J. Bucińska, M. Niedziółka, R. Stec, D. Strus (ed.), *Administracja publiczna – człowiek a ochrona środowiska. Zagadnienia społeczno-prawne*, Warszawa 2011, p. 98.

⁴⁷ Journal of Laws of 2009 No 151, item 1220.

⁴⁸ Journal of Laws of 2011 No 178, item 1060.

⁴⁹ Journal of Laws of 2007 No 42, item 276.

⁵⁰ Journal of Laws of 2011 No 163, item 981.

⁵¹ Journal of Laws of 2007 No 44, item 287.

Among the local government administrative authorities, holding responsibilities with respect to environmental protection, the following entities may be included: the voivode, the Regional Inspector (since 1 January 2011 acting as a separate authority of the Environment Protection Inspection); regional directors; the regional director of water economy directorate, the mining office director, as well as the director of marine office and the regional inspector for marine fishery.

At the level of the local administrative authorities operating within environmental protection there are no specialized environmental protection authorities, but these are general administration authorities. At voivodeship level – appropriate environmental competence was entrusted to the voivodeship sejmik; the voivodeship administration; the marshal of voivodeship; at powiat level – to the powiat council, powiat administration, the starost; at gmina level – to gmina council and gmina chief officer (municipality mayor).

The nature preservation authorities (being specialized environmental protection authorities⁵²) are – according to the provisions of art 91 of nature preservation law – the following: the competent minister for environment, the General Director, the voivode, the Regional Director, the starost, gmina chief officer, municipality mayor. According to the rule, these are the same authorities as listed in article 376 of the EPA. Although the sejmik of voivodeship has not been mentioned in the provisions of article 91 of the law on nature preservation, it is undoubtedly a nature preservation authority, with its competence to create a landscape park and designate a protected landscape area. It is worth mentioning that with the implementation on 1 January 2012 of the next amendment of nature preservation law, the index of nature preservation authorities will also include the marshal of voivodeship⁵³. Moreover, in the amended article 91 of the law on nature preservation, nature preservation authorities will also clearly include the national park director who will manage national park operations and represent the national park externally (currently the law provisions include the national park director into Nature Preservation

⁵² B. Rakoczy, *Prawo ochrony*, p. 74.

⁵³ Act dated 18 August 2011 amending the act on environmental protection and nature preservation and some other acts, Journal of Laws of 2011, No 224, item 1337.

Services, although the doctrine highlights the fact that it is indeed a nature preservation authority⁵⁴).

Within the currently existing structure of environmental protection services, a great number of environmental protection institutions operate (in the subjective sense). Among the consultative and advisory bodies, the following should be mentioned above all: the National Council as the advisory and consultative body for the competent minister of the environment); the National Committee for Environmental Impact Assessment); (as the advisory and consultative body for the General Director); regional councils for environmental impact assessment (as the advisory and consultative body for the Regional Directors); the National Council (as the advisory and consultative body for the competent minister of the environment regarding nature preservation); regional councils for nature preservation (as the advisory and consultative body for regional directors regarding nature preservation); the national park scientific council (attached to the national park director); landscape park council or landscape parks complex council (acting attached to the director of a landscape park or landscape parks complex); GMO Council (as the advisory and consultative council for the minister regarding GMO); the National Council of Water Economy and water economy councils for water regions (as advisory and consultative bodies appropriately to the Chairman of the National Water Economy Board and water economy board regional directors). The financial institutions for environmental protection are the National Environmental Protection and Water Economy Fund and voivodeship funds for environmental protection and water economy. The current organization system of environmental protection services in force also includes many other entities, to which special acts grant competence regarding environmental protection. Forest administration authorities deserve special attention here, these are the State Forest Farm 'Lasy Państwowe' (and its constituent organizational entities: the Directorate General of State Forests; regional boards of State Forests; forest inspectorate, other non- incorporated organizational entities). Other institutions worth mentioning here are: the Forest Seed Production Office, the Environmental Information Centre; research institutes; nature preservation services and forest services; forest schools maintained by the Minister of the Environment.

4. Effectiveness of environmental services organization

Following the regular growth of environmental competences (mainly caused by the obligation to implement the Accession Treaty and the new EU regulations), further new responsibilities are assigned to the environmental protection services, increasing their environmental responsibilities. Individual environmental authorities assume obligations included in several acts of law, often of very different types. Frequently, particular responsibilities become dispersed among different environmental protection authorities. Repeated overlapping of different authorities' competences lead to organizational chaos and results in dispersing of responsibility for implementation of the tasks entrusted by the legislator. The broad scope of competences in the institutional structure of environmental services developed by the Polish legislator has been entrusted to general administration authorities. It is not uncommon that various actions requiring the broad scope of information, not only regarding law and administration but also natural and technical sciences, are imposed upon general administrative authorities not equipped with specialist knowledge. All these factors have an adverse impact upon the effectiveness of environmental services operations.

Material jurisdiction of the bodies established to issue decisions concerning environmental conditions has been created in such a way that a gmina chief officer (a municipality mayor) plays a dominant role, and other authorities only exceptionally are included therein (see article 75 of the law section 1 on providing access to environmental information). A starost is competent to issue such a decision in case of land consolidation, exchange or division, a director of a regional branch of the State Forests Directorate may issue a decision if a forest owned by the State Treasury is converted to arable land, whereas the General Director – in case of investments including a construction of nuclear power engineering object and accompanying undertakings. The Regional Director, on the other hand, is empowered with such competence in case:

- 1) undertakings that might have an environmental impact, such as: roads, railways, overhead electric power lines, transmission pipelines for crude oil, crude oil products, chemical substances or gas and artificial water reservoirs;
- 2) undertakings implemented in closed areas;
- 3) investments implemented in marine areas;

- 4) forest conversion, not owned by the State Treasury, into arable land;
- 5) implementation of investments concerning an airfield assigned for public use;
- 6) investments in condensed natural gas re-gasification terminal;
- 7) investments related to regional broadband networks;
- 8) undertakings related to expanding investments referred to in points 1–7;
- 9) undertakings related to flood control structures. The authority competent to issue a decision on environmental conditions usually carries out an assessment concerning impact upon the environment as this is the requirement.

Giving authority (as a rule) to issue such a key decision in the sphere of environmental law as is the decision on environmental conditions to the executive authority of gmina or municipality, (i.e. to a gmina chief officer or to a municipality mayor) that have been entitled and thus assess the investment impact upon the environment (including the assessment of an undertaking upon the Natura 2000 areas) ought to be considered the main drawback of the environmental services system in Poland.

In its assumptions, making a proper assessment of the environmental impact should help obtain a wide range of information concerning the type and scope of potential impact an investment may have upon the environment, as it may influence the environment considerably (also including the investment impact upon Natura 2000 areas). Proper arrangements during such a procedure condition the right content of a decision on environmental conditions, which completes the proceedings in a specific case and from the ecological point of view grants an individual investor the licence to implement a particular undertaking in a scope defined therein. During the assessment procedure, the authority making it is obliged to carry out many detailed arrangements, analysis, and above all to verify the content of a report on the investment impact upon the environment presented by an investor. The character of the procedure requires from the authority making it a broad knowledge, not only in law and administration but also in natural and technical sciences, which is hard to require from a gmina chief officer or a municipality mayor, being public administration authorities and performing environmental tasks, apart from many other responsibilities. In such a situation many decisions issued by a gmina chief officer or a municipality mayor are subject to cancellation in appeal proceedings; the same case is forwarded for reconsideration, which lengthens the investment

process commencement by several months⁵⁵. It is also worth mentioning that entrusting the key environmental decisions requiring highly specialized knowledge to general administration authorities causes difficulties in settling the cases of environmental protection in court and administration proceedings, which has been mentioned in the doctrine⁵⁶. Wrong assessment of facts established by competent public administration authorities leads to wrong assumptions and, as a result, to wrong administrative decisions. On account of the character of administrative judicature in Poland, the voivodeship administrative court can not, unlike a civilian court, appoint experts, summon and hear witnesses, or take evidence from site inspection as regards expertise on environmental protection, but must, according to the principle, rely on the evidence collected by competent authorities in administrative proceedings.

In this situation, it is undoubtedly necessary to postulate changes in the sphere of organization and sharing responsibilities by environmental protection authorities as regards issuing decisions on environmental conditions. Issuing key decisions related to environmental law must be entrusted exclusively to the specialist environmental protection authorities. One of the proposals concerning solutions to the problem, presented in the doctrine, is establishing specialist entities at a powiat level and transferring the competence of the voivodeship marshal and starost onto them⁵⁷.

Similarly, monitoring competence in the sphere of the environmental protection law has been dispersed among many authorities. Following the provisions of art. 1 of the act on the Environmental Protection Inspection, the Inspection has been appointed to monitor that the environmental protection regulations are respected, as well as to examine and assess the environmental condition. Both inspection authorities, i.e. the General Inspector and the Regional Director, monitor the subjects exploiting the environment in the scope provided for in provisions of article 2 section 1 of the act on the Environment Protection Inspection. It must be underlined, however, that the Inspection competence is not limited to monitoring responsibilities. Its competence may be divided into inspecting, monitoring

⁵⁵ G. Dobrowolski, *Pozycja reformy instytucjonalnej ...*, p. 100.

⁵⁶ J. Stelmasiak, E. Iwanek-Chachaj, *Wybrane zagadnienia orzecznictwa sądów administracyjnych w zakresie ochrony środowiska*, in: M. Rudnicki, A. Haładyj, K. Sobieraj (ed.), *Dekada harmonizacji w prawie ochrony środowiska*, Lublin 2011, p. 37.

⁵⁷ G. Dobrowolski, *Pozycja reformy instytucjonalnej ...*, p. 102.

and emergency operations in case of accidents. The environment protection regulations, on the other hand, also transfer monitoring function onto the public administration authorities, acting within the local government system. A detailed scope, competence and way to conduct an inspection regarding observance of environmental protection regulations is provided for by articles 379 and 380 of the environmental protection regulations. According to articles 379 and 380 of the environmental protection regulations, the marshal of voivodeship, starost and gmina chief officer, or municipality mayor, monitor the observance and application of environmental protection regulations within the authorities competence. Those authorities are not the only ones equipped with supervising competence. The index of such entities is much more extensive, although the scope of their competence is different. Among other administrative authorities having similar competence, the General Director or the Chairman of the National Water Economy Management might be enumerated. That situation leads to overlapping of different authorities' competence, further causing organizational chaos and dispersed responsibility for implementing the obligations imposed by the legislator.

The doctrine postulates concentration of the maximum number of dispersed assignments and competences (including supervision) in a unified institutional structure. An entity exemplifying the above (with respect to monitoring) might be the National Agency for Environmental Protection (and within its organizational structure, separate, special inspection and monitoring entities conducting operational activities), a corporate entity of homogeneous structure, which might assure comprehensive implementation of inspection and monitoring assignments as regards respecting environmental protection law, taking over from other entities a part of their assignments of similar type (above all the General Director and the Regional Director)⁵⁸.

Despite many other shortcomings regarding environmental protection services in Poland (e.g. lack of fundamental reform of some institutions' organizational structure and the rules of their functioning), repeated demands regarding the need for overall reconstruction of environmental protection services' system to assure proper implementation of the EU obligations by Poland, unfortunately the changes introduced by the Polish

⁵⁸ See: M. Rudnicki, *Zarys koncepcji reformy służb ochrony środowiska w kontekście nowych wyzwań gospodarczych*, in: J. Ciechanowicz-McLean, T. Bojar-Fijałkowskiego (ed.) *Gospodarcze prawo środowiska*, Gdańsk 2009, pp. 16–17.

legislator have only a 'cosmetic' character and only include the slight proposals of reforms. This has an adverse impact upon the final assessment of the Polish environmental services organization effectiveness. Developing the institutional and legal system and appropriate allocation of particular competence to different authorities of public administration is a complex process, dependent on numerous factors and continuous reform, as well as improvement for the increased effectiveness.