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Environmental Protection Liability in Poland – Aspects of Substantive Administrative Law[1]

Abstract

Firstly, administrative law was defined and characterised, and substantive law issues were distinguished from procedural. The sources of administrative law and their specific features were indicated. The next part concerns the legal framework governing administrative competencies, including a presentation of Polish public administration bodies responsible for environmental policies. The principles of law applicable to the activities of those were discussed. The focus is then shone on the regulatory powers of administrative authorities, including various acts issued in the field of the environment and the duties and obligations contained therein. The next part concerns administrative environmental offences, those included in criminal codes and administrative acts. The accumulation of administrative and criminal liability, and to a lesser extent civil is also discussed. The focus then shifts to administrative sanctions and penalties in the field of the environment, which were characterised. The last part deals with challenges in administrative governance and future perspectives of Polish environmental law enforcement and contains proposals de lege ferenda.

Keywords: Environmental law, public administration, administrative liability, administrative sanctions

1. Introduction

Substantive administrative law is the dominant branch of administrative law in terms of the number of regulations, and regulates the content of the rights and obligations of addressees of the law in their relations with public administration.

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1 | The research and preparation of this study was supported by the Central European Academy.

Tomasz BOJAR-FIJAŁKOWSKI: Environmental Protection Liability in Poland – Aspects of Substantive Administrative Law. *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2026 Vol. XXI No. 40 pp. 197–216

https://doi.org/10.21029/JAEL.2026.40.197

As Ochendowski pointed out, it is a set of norms that regulate the administrative activities of the state.[2] It also defines the tasks and competences of public administration bodies in the performance of state functions, setting out the rules for the exercise of state authority over individuals, whether natural persons, entrepreneurs or other organisational units. In the case of countries which, according to their own political philosophy, see a greater role for the state in economic and social life, e.g. in environmental protection, construction and public housing, education, health care, transport or social assistance, the sphere of administrative law, especially substantive law, will automatically be greater, as it will regulate the rules and limits of such state activity.

A characteristic feature of substantive administrative law is that, through its norms, it regulates the legal situation of its addressees by specifying what is permitted, prohibited or required. It is the dominant part of public law,[3] alongside the smaller part of criminal law, if we judge by the number and frequency of use of regulations. Substantive administrative law also defines the limits and rules of operation of state authorities in the process of granting, exercising and controlling the rights and obligations of individuals, such as obtaining social benefits, building permits or consent to conduct certain types of economic activity. In this process, authorities acting on behalf of the state must do so in accordance with the provisions of substantive administrative law, including in conjunction with constitutional law.

The role of substantive administrative law is to implement public policies designed by the authorities, most often elected ones. Substantive administrative law forms the basis for sectoral policies in such important areas as public safety, health care, environment etc. What is more, this law simultaneously sets standards for the operation of public administration, establishing the level of protection and implementation of civil rights. In fact, all public management is carried out with the help of substantive administrative law. It creates the foundations for the legal, rational and effective functioning of the public administration. On the one hand it protects the interests of citizens, and on the other it enables the state to perform its administrative functions efficiently. It is the basis for the functioning of a modern state governed by the rule of law.

The difference between substantive administrative law and procedural administrative law is fundamental and concerns the nature of the regulated norms and their function in the administrative law system. As already indicated, substantive administrative law is a set of legal norms that define the rights and obligations of citizens and other entities in their relations with public administration, as well as the competences and tasks of administrative bodies. Due to its very broad scope it is covered by hundreds of specific-sector legal acts. Procedural administrative

2 | Ochendowski 1996, 14.
3 | Zimmermann 2022, 34.

law, on the other hand, is a set of legal norms that regulate the administrative procedure, i.e. the way in which administrative bodies operate[4] when issuing decisions and other acts applying substantive law, and how they should operate in the process of enforcing the law. Its purpose is to ensure the implementation of substantive law norms.[5]

In Poland, regulation is quite concise. While standards of this type may be part of substantive legal acts, e.g. regulations concerning access to public information, they are most often only minor issues regulated in a special, separate manner in accordance with the principle of *lex specialis derogat legi generali*. The primary source of administrative procedural law is the Administrative Procedure Code,[6] largely based on the first Polish regulation of this type from 1928, which drew on Austrian solutions.[7] In addition to the KPA, the Act on Enforcement Proceedings in Administration[8] also plays a role, but at a different stage of the process. In principle, these two acts establish the general rules of procedural action for the Polish public administrative authorities, which may only be included differently in sectoral acts on an exceptional basis, which is rarely the case. In environmental matters, authorities most often act on the basis of the KPA, although there are cases where environmental laws set different procedural standards, but this is not common.[9]

In the area of substantive administrative law in Poland, all possible sources of law are present. The Constitution of the Republic of Poland[10] establishes a number of public administration bodies, the most important of which are the president, the government and the parliament. They also pursue environmental policy to some extent, and to a greater extent they create it. An important role of the constitution is to establish principles, including the principle of legality in Art. 7, the right to the environment in Art. 74, the principle of sustainable development in Art. 5, which applies not only to the environment but to all types of development, and the right to a safe environment in Art. 68. In summary, the constitution sets out the legal framework for the activities of public authorities and guarantees citizens' rights that must be taken into account in administrative activities, e.g. when issuing environmental decisions.

Acts have the highest rank after the constitution and regulate both substantive and procedural aspects of public administration. The role of the KPA has already been discussed. A number of acts establish public administration bodies and define

4 | Zimmermann 2022, 43.
5 | Sługocki 2007, 16.
6 | Act of 14.06.1960 Administrative Procedure Code (Journal of Law 2025 position 572 with further amendments). Thereinafter as 'KPA'.
7 | Wierzbowski 2010, 6.
8 | Act of 17.06.1966 Act on Enforcement Proceedings in Administration (Journal of Law 2025 position 132 with further amendments).
9 | This is particularly noticeable in the environmental impact assessment procedure.
10 | Act of 02.04.1997 the Constitution of the Republic of Poland (Journal of Law 1997 number 78 position 482 with further amendments).

their tasks in the implementation of public management or the performance of public tasks. These include, for example, acts establishing Polish local government units: municipalities,[11] counties[12] and provinces,[13] or creating the office of the provincial governor,[14] various environmental, maritime and food safety authorities, etc. A separate category of substantive administrative law acts are those that strictly define the rights and obligations of addressees, e.g. on access to public information,[15] nature conservation,[16] waste.[17]

Acts in the Polish legal system are abstract and general in nature, and their creation requires the activity of both chambers of parliament, and ultimately the signature, i.e. approval, of the president. Very often, an adopted act provides for the issuance of a regulation by a specific minister on a more specific matter, e.g. technical standards, application forms, algorithms for calculating various indicators, or lists of substances. In environmental law, such regulations concern, for example, the determination of permissible levels of pollutant emissions and the classification of waste according to its type and properties. Thus, a regulation is a tool for specifying the details of a law.[18]

Local law acts, mainly resolutions adopted by the legislative and supervisory bodies of local government units, also play an important role in the system of sources of law. However, unlike the sources discussed above, their validity is limited to the territory of a given local government unit, e.g. a city or county. The role of these acts in the area of substantive administrative law is significant in many industries. They designate areas of the municipality where specific development is permitted, e.g. industry, services, housing or recreational areas. Similarly, they regulate the organisation of household waste collection and fees for this service.

The catalogue of sources of substantive administrative law is complemented by international agreements and, in the case of Poland, acts of European Union law. Undoubtedly, most of these sources of law create specific privileges and obligations, setting limits on freedom of action in specific areas of activity. The Polish national law discussed above cannot conflict with the international and EU

11 | Act of 04.06.1990 on Municipal Self-Government (Journal of Law 2025 position 1153 with further amendments).
12 | Act of 05.06.1998 on County Self-Government (Journal of Law 2024 position 107 with further amendments).
13 | Act of 05.06.1998 on Provincial Self-Government (Journal of Law 2025 position 581 with further amendments).
14 | Act of 23.01.2009 on the Province Governor and Government Administration in the Province (Journal of Law 2025 position 428 with further amendments).
15 | Act of 06.09.2001 on Access to Public Information (Journal of Law 2022 position 902 with further amendments).
16 | Act of 16.04.2004 on Nature Conservation (Journal of Law 2025 position 884 with further amendments).
17 | Act of 14.12.2012 on Wast (Journal of Law 2024 position 1914 with further amendments).
18 | Sługocki 2007, 29.

legal regulations adopted by Poland. In practice, EU regulations and directives in particular set uniform standards in all EU member states in many sectors, leaving national administrative law essentially with the task of designating the administrative bodies that will control and enforce EU standards.

2. Legal framework governing administrative competencies

The division of administrative powers in the field of the environment between individual authorities in Poland is based on the principle of decentralisation of public administration and the division of competences between government and local government administration.

Art. 5 of Act on Government Administration Departments[19] establishes a total of 36 areas that each Polish government must assign to individual ministers in specific ministries. These include, separately: climate and environment, which are most often, though not necessarily, managed within the same one ministry.

Therefore, when identifying the Polish public administration responsible for environmental matters, one should start with the central authorities, including the minister responsible for climate and the environment. To a limited extent, certain competences are also held by the ministers responsible for infrastructure and health. The central authorities, i.e. those with competences extending to the whole country, also include the General Director for Environmental Protection,[20] the Chief Inspector for Environmental Protection[21] and the State Water Management Authority.

In accordance with the aforementioned principle of decentralisation, a number of tasks are performed by local authorities whose jurisdiction covers a specific part of the country. At the regional level,[22] environmental tasks are performed by:

- The provincial governor, who is the government representative in a certain region,
- The provincial self-government, headed by the marshal as the executive body and the provincial council as the legislative and supervisory body,
- The Regional Director for Environmental Protection,[23] subordinate to GDOŚ,
- The Provincial Inspector for Environmental Protection,[24] subordinate to GIOŚ and the provincial governor.

19 | Act of 04.09.1997 on Government Administration Departments (Journal of Law 2024 position 1370 with further amendments).
20 | Thereinafter as 'GDOŚ'.
21 | Thereinafter as 'GIOŚ'.
22 | These units are called 'voivodeships' in Poland, and there are 16 of them.
23 | Thereinafter as 'RDOŚ'.
24 | Thereinafter as 'WIOŚ'.

A number of tasks are also carried out by the authorities of the other territorial units:

- The county administrator, who is the executive body of the district. A district is a medium-sized unit of territorial division, of which there are 380, including 314 land districts consisting of several to a dozen or so municipalities and 64 cities that are also districts. The county is a local self-government unit, and its legislative and supervisory authority is the county council elected by the residents of that unit.
- The *wójt* is the executive body of a rural commune, the mayor of a rural-urban commune and a small town, and the city president of a larger town. There are 2,479 communes in Poland. Both their executive bodies and their legislative and supervisory bodies, i.e. the commune council, are elected by direct vote.

Certain environmental tasks can also be found in maritime administration, river administration, sanitary administration and veterinary administration. State funds financing environmental activities also play an important role: the National Fund for Environmental Protection and Water Management and 16 provincial funds, one in each region. In practice, numerous non-governmental organisations play an extremely active role, particularly in monitoring the stage of the environment and promoting environmental and climate protection.

With such an extensive catalogue of institutions involved in environmental activities, the principles of their cooperation are important, especially the principle of subsidiarity, the principle of decentralisation and the principle of cooperation. The transfer of regulatory powers and competences in public administration, including in the field of the environment, is based on specific legal principles that guarantee the legality, effectiveness and accountability of administrative bodies. The key ones are:

- The principle of legality, which requires public authorities to act on the basis of and within the limits of the law. According to this principle, the transfer of competences must result directly from legal provisions, e.g. an act or regulation, and no authority may arbitrarily transfer its tasks to another entity unless it has explicit statutory authorisation to do so.
- The principle of presumption of statutory powers, according to which a public administration body exercises only those powers that have been expressly granted to it by law. In the event of a dispute over which body has a given power, it is presumed that there is no power if it is not clearly assigned in the law.
- The principle of decentralisation and subsidiarity, according to which public tasks are delegated as closely as possible to citizens, i.e. to local government units, if they have the capacity to perform them. The delegation of tasks from the central to the local level, e.g. waste management, is based on the assumption that local authorities are more familiar with the needs of the community.

- The principle of specialisation and competence, according to which competences are transferred to bodies that have the knowledge and resources to perform them.
- The principle of presumption of competence of local self-government, unless expressly provided otherwise by law, and within local self-government, the presumption of competence of the municipality, unless expressly provided otherwise. Hence the municipality's responsibility for so many areas and the assignment of tasks to it in the case of many new public services and activities.

3. Regulatory powers of administrative authorities

In terms of implementing environmental policies, legal and administrative obligations are defined by various types of administrative acts, both at national and EU level. Each of these acts has a different function and legal force, ranging from general rules of common law to specific decisions issued for individual cases.

Normative acts establish general standards for the environment and apply to all citizens and entities operating within the territory of a country or the entire European Union. These include national laws and implementing regulations, as well as EU regulations[25] and directives. Acts that are generally applicable, but within a specific area, are resolutions issued by the legislative and supervisory bodies of local self-government units.

A separate category of administrative acts are individual acts addressed to a specific addressee and binding only on that addressee. These are issued by public administration bodies in specific cases and do not constitute sources of general law. Polish doctrine generally defines them as administrative decisions, i.e. unilateral, authoritative decisions on individual cases made by an administrative body towards an addressee who is not subordinate to that body in the administrative structure.[26] Administrative decisions are issued at the end of administrative proceedings and their mandatory elements are specified in Art. 107 of the KPA. An administrative decision is both a category and a possible title of a document, which may, however, be different: a permit, authorisation, prohibition, order, licence or concession.

It is also worth mentioning planning and programme acts of a policy nature, which although not classic administrative acts, have a significant impact on the shape of environmental obligations. These include, for example, environmental protection programmes, waste management plans and local spatial development plans.

25 | A clear distinction must be made between the legal nature of a regulation issued by a Polish minister on the basis of an authorisation contained in a statute and an EU regulation. Although they have the same name, EU regulations are much closer to Polish national statutes, i.e. abstract, general acts originating directly from the law-making body.
26 | Wierzbowski 2010, 142.

Public authorities enforce compliance with environmental regulations through a system of control, monitoring and administrative enforcement measures. The aim of these measures is to ensure that entities using the environment operate in accordance with the law and, in the event of violations, that their activities are suspended, restricted or remedied.

The following entities are responsible for monitoring the condition of environmental elements:

- GIOŚ and WIOŚ from each region
- Polish Water Management Authority
- State Sanitary Inspection and Veterinary Inspection
- GDOŚ and RDOŚ in the field of habitats, protected species, etc.

They monitor air, water and soil quality, noise levels, emissions from industrial plants, pollution and illegal waste, Natura 2000 areas and other forms of area-based nature conservation. Administrative control is a form of public administration, also in the environmental sphere. It is carried out by:

- WIOŚ, which is the main environmental control authority,
- Executive bodies of local self-government units within the scope of their competences,
- Sanitary inspection, construction supervision, Road Transport Inspection in cooperation.

Administrative controls are divided into planned, ad hoc and thematic, and their scope includes, for example:

- Possession of permits and authorisations,
- Compliance with the terms of administrative decisions,
- Conducting measurements, record keeping, reporting,
- Fulfilment of obligations, e.g. in the field of waste management.

Enforcement measures, i.e. legal instruments in this area, include administrative orders and prohibitions, e.g. an order to remove waste under Art. 26 of the Waste Act,[27] a prohibition on conducting activities under Art. 367 of the Environmental Protection Act,[28] and suspension of the operation of an installation by decision of the WIOŚ. Such instruments also include increased fees and administrative financial penalties, e.g. for: failure to submit reports or for exceeding limits, increased fees for using the environment without the required permit, fines to enforce compliance in administrative enforcement proceedings. In the enforcement proceedings themselves, which are initiated in order to enforce an obligation when the

27 | Act of 14.12.2012 on Wast (Journal of Law 2024 position 1914 with further amendments).
28 | Act of 27.04.2001 Environmental Protection Law (Journal of Law 2025 position 647 with further amendments).

addressee of an administrative decision has failed to comply with it, the following are issued: warnings, enforcement of non-monetary obligations, e.g. waste removal or demolition of buildings, monetary enforcement of unpaid fines, and fines are imposed. In the case of serious violations of the law, e.g. environmental crimes, the administrative authorities report the matter to the public prosecutor's office or the police and cooperate with the WIOŚ and the fire brigade. Public registers, which are open to anyone interested, are also a reliable instrument of law enforcement. The disclosure of irregularities in these registers may result in public pressure or damage to reputation.

Public administration authorities in environmental matters may impose preventive measures on the addressee in order to avoid damage to the environment before it occurs. This is the nature of the decision on environmental conditions, which is a mandatory stage before the start of an investment that may have a significant impact on the environment. Other preventive measures include, for example, a ban on investments in a specific location, an order to use low-emission technology, an obligation to maintain migration corridors for animals, and time restrictions on work during the breeding season.

These instruments also include the obligation to carry out an environmental impact assessment, the purpose of which is to identify potential threats and develop measures to eliminate them before a permit for the investment is issued. Similar in nature are: integrated permits, water law permits, emission permits, and waste management permits. Authorities may also require the use of specific technical safeguards such as filters, acoustic screens, sealed tanks, and organisational safeguards such as employee training, emergency response plans, and subcontractor control. Authorities may approve or impose an obligation to develop waste management programmes, flood risk management plans, air protection programmes, and noise reduction plans. These are documents that oblige entities to take preventive measures and respond early.

The WIOŚ may also issue preventive orders when there is a suspicion of possible damage, but it has not yet occurred, including an order to temporarily suspend operations, an order to conduct tests, an order to remove the source of the potential hazard, and an obligation to use a specific technology or procedure.

Guided by the principle of precaution and prevention, in some cases the authorities may require the investor to provide financial security in the event of damage. For example, an entrepreneur processing hazardous waste must have a bank guarantee or insurance policy to cover any damage.

4. Types of administrative offenses

In environmental matters, apart from environmental offences covered by criminal law, mainly the Criminal Code[29] and the Code of Misdemeanours,[30] we also deal with violations of administrative and legal obligations, which are not criminal offences but constitute a tort punishable by an administrative penalty, a financial penalty, a fine or other sanctions. Such acts or omissions consist in the violation of obligations provided for in laws and executive regulations or their non-performance, in particular related to: lack of required permits, non-compliance with the terms of administrative decisions, neglect of record-keeping and reporting obligations, and conducting activities in violation of regulations. Further examples include: conducting business activities without an environmental decision, water permit, emission permit, etc.; exceeding emission limits, waste management that is not in accordance with the decision; failure to send reports to the National Centre for Emissions Balancing and Management, failure to submit reports to the Waste Database; lack of waste transfer cards, lack of emission records; water abstraction, sewage discharge without a permit; lack of entry in the Waste Database, lack of registration in the National Centre for Emissions Balancing and Management system; refusal to admit a WIOŚ inspector, failure to present documentation; failure to comply with an order of the environmental protection authority; abandonment of waste, storage without a permit.

Individual environmental regulations individually design the form of liability for such acts and omissions. These solutions are in principle, always decided by the national legislator, although the acts themselves are often based on EU law. The most common forms of liability are, for example:

- In terms of administrative liability: financial penalty, withdrawal of permit, prohibition of activity,
- In terms of criminal liability for offences: financial penalties,
- In terms of enforcement liability: coercion to perform an obligation, e.g. waste removal,
- In terms of civil liability: claims for damages before the courts in civil proceedings.

Administrative liability may be based on the principle of risk,[31] also known as objective liability. In such cases, intention is not required, and the violation itself is sufficient, without the need to prove the guilt of the perpetrator. The mere fact of

29 | Act of 06.06.1997 Criminal Code (Journal of Law 2025 position 383 with further amendments) thereinafter as 'Criminal Code'.
30 | Act of 20.05.1971 Code of Misdemeanours (Journal of Law 2025 position 734 with further amendments).
31 | Ratusznik 2025.

the violation is sufficient to hold the perpetrator liable. The public administration body does not have to prove that the perpetrator acted intentionally or negligently. It is sufficient that a specific violation of environmental regulations has occurred. Such liability arises from the mere fact that the event occurred or the standards were exceeded. Examples of such situations include exceeding pollution emission limits, unauthorised use of land, lack of a valid entry in environmental registers, failure to comply with reporting obligations, illegal discharge of sewage, and failure to properly operate filtration systems. In such cases, the mere fact of the act automatically results in an administrative penalty, most often a financial penalty and/or an appropriate order to remedy the violation. This solution greatly facilitates law enforcement, although it may be considered to disregard any circumstances on the part of the perpetrator, who nevertheless bears the risk of their activity.

Importantly, the application of administrative and legal liability does not preclude the parallel application of criminal or civil liability. It is possible to apply all these liabilities simultaneously in the case of a single act and a single perpetrator. For example, an entrepreneur involved in the collection of waste electronic equipment who was not registered in the Waste Database was imposed an administrative fine of 100,000 PLN and a report was filed with the public prosecutor's office regarding the possibility of a criminal offence having been committed.

Such hybrid offences may give rise to both administrative and criminal liability. In other words, violations of environmental law, which on the one hand result in administrative sanctions, on the other hand may be classified as criminal offences and result in criminal liability, including the restriction of liberty and imprisonment. An example of such a situation may also be illegal waste disposal resulting in an administrative penalty, an order to remove the waste and a fine under the waste regulation, and at the same time it may be classified as an offence under Art. 183 of the Criminal Code, punishable by a fine, the restriction of liberty or imprisonment for up to five years. A similar combination of administrative and criminal liability can be found for the unauthorised discharge of sewage into water and soil under the Water Law[32] and Art. 182 of the Criminal Code. Other examples include exceeding permissible emission standards, illegal hazardous waste management and illegal waste storage.

The boundary between administrative and criminal liability in relation to the environment is crucial for the correct classification of infringements and the imposition of appropriate sanctions. When assessing this, the degree of social harm of the act must be taken into account, which when low or moderate, suggests only administrative liability, and when high, additionally suggests criminal liability. In the case of criminal liability, it is necessary to prove and assign guilt to the perpetrator, which is not always the case in the enforcement of administrative liability. Administrative liability is encountered in the case of violations with less

32 | Act of 20.07.2017 Water Law (Journal of Law 2025 position 960 with further amendments).

severe, often reversible consequences. Criminal liability is encountered when the consequences are significant and permanent, when human life and health are at risk. When deciding on the type of legal liability for environmental offences, recidivism, i.e. repeat offences, as well as the perpetrator's awareness and intentions, are also taken into account. When analysing the possibility of applying administrative or criminal liability, the principle of proportionality of penalties should be followed, which means that the penalty imposed should be proportionate to the seriousness of the violation, its consequences and the circumstances in which it was committed. This is particularly important in environmental protection, as the range of offences is very wide, from minor formal violations to serious ecological damage.

The catalogue of acts subject to both administrative and criminal liability is specified in statutes, and criminal liability is not only included in the Criminal Code or the Code of Misdemeanours, but such norms are often part of industry-specific statutes, alongside a much larger number of substantive and procedural administrative norms. It should also be remembered that criminal liability is by definition, most often the liability of a specific natural person – an individual. Holding legal persons, such as companies, criminally liable is possible under the Act on the Liability of Collective Entities for Acts Prohibited Under Penalty of Law,[33] but it is rare. Holding legal persons administratively liable is standard, well-known and relatively simple, also through the procedures of the Act on Enforcement Proceedings in Administration.[34]

5. Administrative sanctions and penalties

In the field of the environment, certain acts may be punished with various types of penalties and coercive measures. The main instruments that administrative authorities may use include:

- Warnings, which are the mildest form of punishment. They are a warning to the perpetrator, usually for minor violations such as failure to obtain a minor permit on time, minor formal irregularities
- Administrative fines, i.e. financial penalties imposed for violations of regulations. These may vary in amount depending on the severity of the offence, e.g. exceeding emission limits, failure to keep the required documentation
- Orders to remedy the effects of the violation, i.e. the obligation to restore the situation to a lawful state, e.g. removal of illegal waste, land reclamation.

33 | Act of 28.10.2002 on the Liability of Collective Entities for Acts Prohibited Under Penalty of Law (Journal of Law 2024 position 1822 with further amendments).
34 | Act of 17.06.1966 Act on Enforcement Proceedings in Administration (Journal of Law 2025 position 132 with further amendments).

- Revocation or suspension of permits or licences to carry out specific activities related to the environment, e.g. revocation of an emission permit or suspension of a plant's operations
- Prohibition of specific activities when the administrative authority prohibits activities that pose a threat to the environment. E.g. prohibition of the operation of equipment that emits pollutants
- Obligation to submit reports or conduct monitoring, i.e. an order to report regularly on the status of environmental activities or to introduce additional supervision.
- Compulsory performance of activities, e.g. elimination of sources of pollution, modernisation of sewage treatment systems after detection of exceedances.

Under Polish environmental law, the amount of administrative fines depends on the specific statutory provision, the type of violation and the circumstances of the case. They range from several hundred to several hundred thousand. For example, the fine for non-compliance with environmental conditions is up to 5,000 PLN, for improper waste management up to 50,000 PLN, and for illegal discharge of sewage or use of water without a permit, several hundred thousand. However, the laws most often indicate the maximum possible penalty, and the certain amount, within these limits, is decided by the authority handling the case.

Incentives to comply with regulations are an important element of effective enforcement of administrative law, including in the field of the environment. They help not only to punish violations, but also to motivate active damage repair and compliance with standards, which is ultimately beneficial for the environment and all parties. Therefore, authorities may offer a reduction in the penalty or waive it altogether if the perpetrator remedies the effects of the violation in a timely manner, thus avoiding lengthy and costly proceedings. After all, prompt remediation reduces permanent damage to the environment. Therefore, authorities promote a proactive approach rather than simply reacting to infringements or engaging in lengthy appeal proceedings and administrative court proceedings. Furthermore, incentives show that the law is not only a tool for punishment, but also for support and education, which increases the awareness and responsibility of entities towards the environment.

In most cases, the potential penalty may be reduced if the perpetrator reports the violation themselves and repairs the damage. It is also possible to defer or spread out the administrative fine in instalments.

6. Challenges in administrative governance and future perspectives

Restructuring Polish public administration to improve the effectiveness of environmental enforcement requires a comprehensive approach that takes into account organisational structure, human resources and decision-making processes.

The activities of the Polish environmental administration to date raise a number of concerns. Its current structure is the result of politically motivated decisions rather than well-thought-out measures. In 2008, with the introduction of the regulation on environmental impact assessment and public participation in environmental protection,[35] the GDOŚ and RDOŚ was established at central and regional levels, but this was at least partially dictated by the Prime Minister's promise to reduce employment in provincial governor offices from 1st January 2009. Employment fell with the liquidation of the environment and agriculture departments, with agriculture matters being transferred to the provincial self-government and a new entity being created to handle environmental matters. Secondly, RDOŚ operate in parallel with WIOŚ, both in the regions and GDOŚ with GIOŚ. This solution is costly, and although both institutions perform different tasks, they are related to the same issue, i.e. the management and protection of environment. The first proposal would therefore be to merge the government institutions responsible for the environment into one, eliminating duplicate service and administrative structures and using the budget savings for activities. Until now, WIOŚ in particular has been heavily criticised both for its slow response to frequent landfill site fires and for its lack of a rapid response to the poisoning of fish in the Oder River with salt water. The proposal to establish a Polish Environmental Protection Agency and strengthen its policing function and response speed appeared in doctrine years ago.[36]

The second systemic and structural problem of Polish public administration, which results in the effectiveness of environmental activities, is the fragmentation of public administration and the large number of authorities at all levels of the hierarchy. Hence, some tasks are carried out by the minister responsible for the environment, and others by the minister responsible for climate, as these are sometimes separate institutions. The ministers of infrastructure, health and agriculture also have their own tasks here. Each of the ministers has central offices under their authority, which usually also have local structures. This creates an extremely complex network that is not easy for clients to navigate. In addition,

35 | Act of 03.10.2008 on Access to Information on the Environment and its Protection, Public Participation in Environmental Protection, and Environmental Impact Assessments (Journal of Law 2024 position 1940 with further amendments).
36 | Bojar-Fijałkowski 2016, 177–188.

there are selected environmental tasks assigned to all three levels of territorial self-government. This system should be greatly simplified. At the same time, the monitoring of environmental elements and reporting methods should be strengthened to make a greater use of digitalisation and e-administration.

A consequence of the above is, of course, a shortage of personnel, as a large number of authorities have relatively small budgets, which creates limited equipment and staffing capabilities. Incentives for officials and additional positions, especially for monitoring and control ones, are necessary. This also applies to training opportunities in specialist technical knowledge.

In terms of law enforcement, it is worth considering shortening and simplifying certain procedures, standardising forms and report templates, and digitising them. The proposal to facilitate the work of organisations that can demonstrate an integrated and efficient internal environmental management system such as ISO 14000 or EMAS has never been heard of by the Polish legislator.[37]

Given the multitude and individuality of administrative proceedings, there exist very or even completely different approaches by authorities to similar cases, within the limits of their decision-making freedom. It is therefore worth considering clarifying, for example, the system of administrative fines by narrowing the range or clearly indicating the amount of the fine.

The effectiveness of administrative penalties in ensuring compliance with environmental regulations in Poland depends on many factors. Administrative penalties are primarily intended to serve a preventive function, i.e. to deter violations of the law. They are also intended to compel entities to repair damage and ensure that violations are quickly remedied. They are often more flexible than criminal sanctions, which allows them to be adjusted to the severity of the offence.

In practice, the penalties imposed by administrative authorities for violations of environmental law are sometimes insufficient. The financial penalties specified in the regulations lose their value and deterrent effect after a number of years. It would be worthwhile to introduce a system known from competition law, where penalties are a percentage of the entrepreneur's turnover.

In general, criminal sanctions are relatively less effective in cases of administrative law violations. The criminal procedure itself is specific because it is based on the principle of *nullum crimen sine lege*, the need to prove guilt and the principle of presumption of innocence. In the Polish reality of protracted court proceedings, with the possibility of prolonging criminal proceedings by the actions of the accused and their defence lawyers, this results in a very distant realisation of justice. What is more, criminal courts still take a somewhat lenient view of acts not directly related to loss of health of life, which means that sentences for other cases are quite lenient. Prosecutors are not particularly keen to initiate environmental cases, as their jurisdiction tends to focus on acts against people as defined in the

37 | Bojar-Fijałkowski 2011, 237–238; Bojar-Fijałkowski 2023, 116.

Criminal Code. Only recently have Polish criminal courts begun to severely punish ones who abuse animals, although custodial sentences are still the exception.

Data from the Police Headquarters[38] indicate that in 2020, a total of 439 offences under Chapter XXII of the Criminal Code, devoted to offences against the environment, were registered. In 2021, this number was around 388, which is still significantly higher than in the middle of the previous decade. In 2022, probably due to the peak of the Covid-19 pandemic, the data is distorted, as only 90 offences were recorded. In 2023, however, there were already 507 recorded offences. These figures show little interest on the part of law enforcement agencies, the police and prosecutors in environmental matters. The number of reports and detected crimes prosecuted under criminal law is very low for a country with an area of 312,000 km² and a population of almost 38 million.

When analysing the qualitative data, an increase in the segment of waste crimes was particularly noticeable in 2023. There were 415 such crimes reported. This suggests that this category alone accounted for a significant proportion of all environmental crimes. The structure of the subject matter is consistently dominated by 'waste' crimes under Art. 183 of the Criminal Code,[39] including in particular the abandonment and illegal storage of waste,[40] processed without the required decisions or in violation of their conditions, and the unauthorised cross-border movement of waste.[41] Other types of destruction in the plant and animal world, and environmental pollution remain at relatively lower levels and show less variability, while offences classified as a failure to maintain protective equipment, destruction of protected areas and facilities, and activities threatening the environment have a marginal share.

Therefore, if lengthy criminal proceedings result in a fine, it is, apart from an entry in the register of convicted persons, *de facto* the same as an administrative fine imposed by an administrative authority. At the same time, administrative proceedings, even with appeals and verification of decisions by two levels of administrative courts, are still faster than criminal proceedings. The legislator itself has proven the greater effectiveness of administrative sanctions over criminal sanctions by regularly replacing restrictions and deprivation of liberty with high administrative fines in a number of laws. This was the case with the 2018 Act on Cosmetics Products,[42] which replaced Act on Cosmetics.[43] For the

38 | Portal Polskiej Policji 2025.
39 | For information on the environmental and criminal law implications of illegal waste disposal in Poland, see: Wielec 2024, 307–328.
40 | A special area of Polish waste legislation is the provisions on bio-waste. For more information on this area and its criminal law implications, see: Haładyj 2025, 9–29.
41 | Danecka & Radecki 2021, 221.
42 | Act of 04.10.2018 on Cosmetic Products (Journal of Law 2018 position 2227 with further amendments).
43 | Act of 30.03.2001 on Cosmetics (Journal of Law 2001 number 42 position 473 with further amendments).

same offences, the 2001 act provided for custodial penalties, while since 2018, administrative fines of up to 100,000 PLN have been imposed.[44] Similarly, under the Act on Combating Drug Addiction,[45] in the area of placing new, unknown and non-prohibited psychoactive substances on the market. By constantly changing the chemical composition, their manufacturers avoided responsibility for the death of customers due to the principle of *nullum crimen sine lege*. Unable to keep up with their activities, the legislator curtailed, at least partially, the production of such substances by means of administrative sanctions. An obligation to register as a producer of legal psychoactive substances was introduced, as administered by the State Sanitary Inspection.[46] For operating without registration, which no one had done, an administrative fine of 1 million PLN was imposed in several cases.

44 | Bojar-Fijałkowski 2019, 166.
45 | Act of 29.07.2005 on Combatinmg Drug Addicion (Journal of Law 2023 position 1939 with further amendments).
46 | Bojar-Fijałkowski 2019, 180–181.

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