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# **ORGANISATION MODEL OF SERVICES RESPONSIBLE FOR CONTROL OF STATE OF THE ENVIRONMENT: VS. THEIR EFFECTIVENESS OF WORK BASED ON EXPERIENCE OF THE INSPECTION FOR ENVIRONMENTAL PROTECTION IN POLAND**

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## **SUMMARY**

From 1991 to 1999, the Polish State Inspectorate for Environmental Protection developed and successfully implemented a program to enforce environmental laws and encourage industry to adopt pro-environment activities. This article discusses the effects of the administrative reforms on the Inspectorate's work and highlights the advantages and disadvantages of decentralisation.

## **1 DEVELOPMENT OF INSPECTION SERVICES IN POLAND**

The origins of environmental protection services in Poland date back to 1980 when the Environmental Protection and Management Law created a basis for the establishment of a national level Inspectorate. The Inspectorate was headed by the Chief Inspector for Environmental Protection, who managed Field Offices in the 9 largest Polish cities and 2 teams that carried out inspections and assessments of the state of the environment and were responsible for the prevention of extraordinary environmental hazards throughout Poland. At that time, the Inspectorate was an agency of the Minister of Environment. Additionally, each Voivodship (Region of Poland) had its own Environmental Protection Department operating under the structure of the Voivodship Office (regional administration), and an Environmental Research and Control Centre (or Laboratory); both bodies were subordinated to the Voivod (head of regional administration) and implemented tasks related to the inspection of compliance with environmental law for the needs of the regional

government.

This situation did not contribute to the effective use of environmental law enforcement resources. Research was carried out according to different procedures, enterprises were evaluated based on various criteria, and measurement data was taken on different types of equipment and according to different methodologies. Due to this, the results achieved were not comparable and could not be used for the development of overall assessment and reports. Thus, one of the changes proposed in 1990 by the Solidarity movement, which organised a special "small round table" to solve environmental problems, was to integrate the uncoordinated and chaotically working environmental protection services into a single body. In 1991, as a result of a thorough reorganisation of personnel, property and technical facilities of the central inspection and the regional centres, the State Inspectorate for Environmental Protection was established. It was a two-level structure. The Chief Inspector for Environmental Protection performed his tasks via the central unit – the Chief Inspectorate for Environmental Protection and the 49 Voivodship (regional)

Inspectorates working in the field. Work plans, budget and overall implementation of the Inspection's tasks were supervised by the Chief Inspector for Environmental Protection.

Working under that structure for almost 10 years, the Inspection developed coherent and comprehensive rules of conducting inspections. Standard measurement methodologies were also developed and implemented. The laboratory potential of Voivodship Inspectorates was extended, which enabled research on the state of the environment throughout the country and reliable control of compliance with environmental regulations by industries. Central management enabled effective planning of laboratory equipment purchases; central budget allowed for effective co-financing of purchases financed by the National Fund for Environmental Protection and Phare programmes. Since late 1990s the Inspection had a network of 48 laboratories with state-of-the-art equipment and quality system certificates for compliance with the PN-EN 45 001 and ISO/IEC 25 Manual standards. Also, most of the buildings in which environmental protection services are located were constructed or modernised in the years 1991-98.

The Inspection implemented a number of modern solutions in the fields of environmental law enforcement and industries' stimulation for pro-environmental activities. The solutions include, among others, a system of imposing obligatory fines for transgression of environmental regulations, with the option of suspending the fine, which allows the fined enterprises to change the sanctions imposed into investments eliminating the cause of non-compliance. Another instrument was the creation of the so-called "List of 80" which specifies the largest polluters whose names are made available to the general public. Being under a strict inspection regime and pressure by Non-

Governmental Organisations, all plants from the list started environmental adjustment programmes. By now, many of them have completed their programmes and reached full compliance with environmental regulations. A new solution was the development, together with consultants from the US Environmental Agency, of adjustment programmes which have the status of regular legal instruments specified in the Polish environmental law system.

Also in 1990s the rules of work of the State Environmental Monitoring were developed. Under the existing system environmental data is collected, further research and measurements are recommended, environmental change trends are analysed and regular reports on the state of the environment in individual regions and in the country are developed. Since 1991, under the standardised series "State Environmental Monitoring Library" almost 500 different titles have been published which include a variety of papers, reports and analyses. Another achievement of the centralised, uniform inspection system included the implementation of the programmes for counteracting extraordinary environmental hazards and control of transboundary movement of wastes.

In the opinion of environmental decision-makers, the centralised, strongly managed State Inspection for Environmental Protection had an excellent impact on the creation of a coherent and effective environmental management system in Poland. In the country in which environmental issues had been significantly neglected, that system was of special importance. The effective work of the Inspection guaranteed enforcement of fees for economic use of the environment and of fines for non-compliance with emission limits. The fees and fines were paid into environmental protection funds, which, in turn, granted preferential credits for pro-environmental investments. The whole system,

based on the “stick and carrot rule”, i.e. sanctions on the one hand and preferential cheap credits on the other hand, led to the development of a big environmental investments market. Annual investments into environmental projects constituted about 1.5-1.7 % GDP, which over the last 20 years contributed to a major improvement of the state of the environment in Poland.

However, the centralised structure of the Inspection, based on a strong enforcement regime, was associated with a police-like system. Thus the popular name “the Green Police”, used even today by the media and NGOs to express their high opinion on the Inspection services. Yet the system in its previous central-control shape was perceived as unfriendly by inspected industries. The inspectors, although having good knowledge of environmental protection regulations and pro-ecological solutions and technologies, were not able to act as consultants or advisors and could not be partners to industries without being suspected of corruption.

## **2 EFFECTS OF THE ADMINISTRATIVE REFORM ON THE INSPECTION'S WORK**

The beginning of 1999 brought the administrative reform of the country, aimed at decentralisation of the State administration system and transfer to lower levels of all competencies that could be taken over by local governments, in accordance with the principle of subsidiariness. The Voivod, as a representative of the central administration, lost many of his prerogatives, transferring them to Voivodship (regional) governments. Instead, as compensation, he was vested with supervision over the Voivodship conjoined administration, under which all inspections and special forces existing in the Voivodship were included. This way the Voivodship Inspectorates for Environmental Protection

came under the responsibility of the Voivods (heads of Voivodship administration). At the same time however, they formed and still form a part of the structure of the Inspection for Environmental Protection supervised by the Chief Inspector. The Inspection lost the word “State” from its name, in spite of the fact that its activities still cover the whole of the country. The Chief Inspector still sets the directions of the Inspection's work, supervises its task performance and is an appeal body for decisions taken by Voivodship inspectors, but is no longer in charge of the organisation's budget.

In the first years after the reform, the work of the Inspection services was automatically running along the old track. But the dual subordination – to the Voivod and to the Chief Inspector – is starting to be more and more troublesome. Especially that one of them assigns the tasks without allocating any funds and the other one limits the Inspection's budget to finance other, more neglected services. It is estimated that most of the Voivodship Inspectors have at their disposal only 50% of funds as compared with 1999. Other factors that need to be taken into account are inflation and the fact that a number of tasks increase each year, for instance, due to the implementation of new legislative acts. A lot indicates that due to the shortage of funds, instead of being strengthened, the Inspection services will be limited and some of the field offices will have to be closed down.

The tasks of the Chief Inspection should be implemented in a uniform manner in order to ensure comparability, and co-ordinated on the national scale in order to obtain reliable results. However, in practice the work of individual Voivodship inspectors is becoming more and more differentiated due to different policies, development plans and priorities promoted in individual regions. Coordination of labora-

tory work and investment purchases for laboratories to use the resources more effectively is impossible, because each Voivodship finances only its own inspection office, based on the policy and funds determined by the Voivod. Therefore sometimes the costly equipment that could serve several Voivodships is left unused. Renewal of Good Laboratory Practice certificates is now at risk.

Privatisation is rapidly progressing in Poland, but there still is a large group of State-owned enterprises. Application of enforcement measures towards those enterprises, for which the funding authority is the Voivod, in situations where the Voivod is also the head of the environmental inspection, creates a conflict of interest. The Voivod imposes fines on his own entities and is a judge in his own cases. In the current structure, the Chief Inspectorate has limited possibilities of submitting to Voivodship Inspectors of recommendations and guidelines regarding methods of performing the Inspection's tasks. This applies in particular to the performance of follow-up inspections and to analysis of claims and requests. It is much more difficult, and in practice even impossible, for the Chief Inspectorate to react to negligence and irregularities in the work of the Voivodship administration or to demand verification of incorrect administrative decisions.

The society perceives the decentralisation of the Inspection, implemented in 1999, as the lowering of its rank and importance, and limitation of its independence in implementation of enforcement activities. Opinions that the effective system was disassembled or disintegrated are frequent. And this happens in the situation when the Inspection is facing new challenges connected with Poland's integration with the European Union. For example, only the implementation of the European Parliament's recommendations regarding the minimum criteria of environmental

inspection's work requires inter alia:

- Uniform planning of inspection activities.
- Keeping of a consistent register of inspected installations.
- Evaluation of control of compliance of the inspected facilities with the EU legal requirements.
- Guaranteeing appropriate frequency of inspections for particular categories of installations.
- Presenting reports and collective data regarding the effects of inspection activities carried out.

Such requirements can be met only when national coordination of inspection activities is ensured and the policy of the Minister of the Environment is consistently implemented.

### **3 OPTIMUM SOLUTIONS TO BE APPLIED IN THE FUTURE**

In view of the threats to the continuity of tradition and to the quality of inspection work, the search for good model solutions for the future was undertaken. The Chief Inspectorate analysed and compared the experience, structures and work organisation of counterpart organisations in the USA, Ireland and Denmark. We have thoroughly analysed all reports developed within the framework of AC IMPEL, i.e. the European Network for the Implementation and Enforcement of Environmental Law, of the countries associated with the EU. Those reports evaluated inter alia structures responsible for environmental protection in Estonia, Poland, Czech Republic, Slovenia, Cyprus and Latvia. We looked for guidelines and recommendations that would be adequate to the Polish conditions. Within the framework of the twinning PHARE project aimed at the strengthening of Polish public administration bodies, including Inspectorates for Environmental Protection, in the field of law enforcement,

an analysis was performed as to the division of competencies, organisation structures and interrelations among institutions responsible for environmental protection management in Poland after the reform. Taking into account all advantages and disadvantages and the experiences of other countries, the experts are to propose the solutions that are most appropriate for the Polish conditions.

On the basis of the analyses made so far, we know that good law enforcement organisation requires strategic planning in order to define tasks and schedules, indicate responsible persons and sources of funding, evaluate factors that can have an impact on execution, and conduct appropriate consultations with the society. In Poland the work plan for inspection activities is developed by Voivodship Inspectors on the basis of the Chief Inspector's guidelines in which selected priorities are specified. Voivodship Inspectors also take into account issues identified in the State and regional Environmental Policies, results of previous inspections, monitoring data, and complaints by citizens. The annual and quarterly plans cover routine inspections, i.e. comprehensive inspections of overall environmental impact of the inspected enterprise on the environment, and follow-up inspections to check the fulfilment of post-inspection orders issued after the previous inspections. The plan includes a time reserve for potential non-routine inspections, i.e. follow-up inspections conducted as a result of complaints and interventions by citizens. It seems that in the future the plans should also take into account the proportion of the inspected installations to the total number of installations of a given type. Such strategic plans for the issuance of permits and inspections of enterprises should be prepared by one central authority in cooperation with the parties involved.

Improving the state of the environment or counteracting environmental dam-

age requires regulatory actions, i.e. issuance of permits regulating, for example, permissible emission levels or operational processes. If the process of issuing a licence for the use of the environment is to take into account all aspects of the enterprise's impact on the environment and possibilities created by best available techniques as in the case of integrated permits, it has to be carried out by a group of experts with nationally recognised qualifications. It is also very important to ensure cooperation of inspection services and permit-issuing staff, to ensure joint consideration of conditions required from and possible to be complied with by the enterprise. Information from inspections is of key importance for the revision of permits. Also information on the state of the environment, so-called monitoring, impacts both the inspection planning process and the parameters defined in the permit. Thus, an optimum solution for the environmental management system is a national organisation with regional branches, responsible both for implementation and enforcement of the law, for instance an agency combining the permit-issuing, inspection, and monitoring functions.

In the future environmental protection agency model, we would like the inspectors to retain their current powers and competencies. In particular, during an inspection an inspector should be authorised to access the installations 24 hours a day, and other facilities between 6 and 10 a.m., as it is currently the case. We would also like to retain an inspector's right to inspect vehicles at any time of the day and night. During the inspection, the inspectors may take samples and conduct other activities in order to verify if the enterprise carries out its activity in accordance with the environmental permit. The inspectors may also:

- Demand written or verbal information from the personnel in order to determine

facts;

- Demand access to documents and data connected with the inspected facility;
- Verify whether the methods of operation of the installation, including transport means, are correct;
- Verify whether protective installations and devices are used and correctly maintained.

During an inspection, the inspectors examine the impact of the enterprise on all environmental media. The inspectors also check the formal and legal documentation, permits, payment of the fees and charges, type of technologies and raw materials used.

Following the inspection, an official inspection report is prepared which includes measurement data, information about sample collection and surveys, administrative decisions, declarations, etc. If irregularities are found, relevant law enforcement instruments are applied, depending on the type of the irregularity. The sanctions include: post-inspection orders, fines, obligation to take steps to eliminate the source of negative environmental impact before a specified deadline, suspension of the operations that violate environmental regulations, notification to the public prosecutor's office or to public administration agencies. In addition to individual reports, the Inspection for Environmental Protection prepares an annual report— so-called summary of notice tasks executed. We evaluate all these experiences very positively and we are convinced that they should be used in the process of organising the new inspection organisation/agency.

In practice, the Inspection in Poland relies on measurements performed by its internal laboratories. Since results are the basis for imposing any penalties, it is imperative that measurements are carried out in a reliable manner so as not to be questioned by industrial plants. In western

countries, industrial plants themselves perform many measurements. This self-monitoring is of great importance for the discipline of the industrial plant, because it enables the plant to control its own impact on the environment and to take corrective action independently before an inspection is started. The self-monitoring is vital for plants that demonstrate a voluntary, active approach to environmental issues. However, self-monitoring provides no basis for enforcement measures. Therefore, for indifferent or unwilling plants, the only form of law enforcement is inspections with measurements under so-called "compliance monitoring" with the use of appropriate enforcement instruments such as fines, post-inspection orders, notification to the prosecutor's office or suspension of the plant's operation. Many inspections outsource these measurements to certified third party laboratories. The Polish Inspection is fortunate enough to be the owner of such laboratories, which allows for their wide and comprehensive use both in inspections of industrial plants and in monitoring of the environment. We would like to preserve this situation in the future organisational solutions.

Ensuring adequate levels of expertise and qualifications of employees that issue permits and conduct inspections requires a standardised training system, which should be arranged by one nationwide organisation. A single institution should collect information, prepare periodic reliable reports, and present them to the public in a systematised manner.

The opinions and experiences presented in this paper will be used as guidelines in the organisation of services responsible for the environmental protection management in Poland. We will endeavour to use all the experience of the State Environmental Protection Inspection (a centralised, uniformly managed organisation, which operated between 1991 and

1999), and also to incorporate new valuable elements, which we have discovered while cooperating with the IMPEL network, such as partnership approach to industrial plants or linking of the permit issuing function with the compliance control function. I am also sure that the experience presented by the inspectors participating in the INECE Conference in Costa Rica will inspire us to come up with new ideas to shape our new organisation for environmental law implementation and enforcement in Poland.