

# Articles

## POLITICS, ENVIRONMENT, AND THE RULE OF LAW IN BULGARIA

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### I. INTRODUCTION

The newly aspiring pluralist democracies of Eastern and Central Europe seek civil societies governed by the Rule of Law<sup>1</sup> and natural environments cleansed of the toxins produced during the Soviet years. These two goals are related and both are uncertain of achievement. Observers from the West and participants from the East hailed the mostly peaceful revolutions of 1989-91 as signaling the advent of the Rule of Law, in triumph over the arbitrary bureaucratic discretion of Communist Party regimes.<sup>2</sup> The Communist Party may have fallen throughout the region, but conditions are still problematic for a true Rule of Law. The evils of partisanship, corruption, and bureaucratic arbitrariness are often embedded in the political cultures of these countries, impeding the movement toward democracy and principled

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1. Kjell Engelbrekt, *Toward the Rule of Law: Bulgaria*, 1 RFE/RL Res. Rep. 4, 8-9 (1992).

2. See, e.g., Att'y Gen. Dick Thornburgh, *The Rule of Law in the Soviet Union: A Necessary Framework for Democratic Reform*, Address Before The Heritage Foundation (July 10, 1990), in THE HERITAGE LECTURES, July 1990, at 1 (stating that the Rule of Law is the only mechanism through which former Soviet counterparts can emerge from the upheaval in Eastern Europe).

government.<sup>3</sup> The lack of a tradition of advocacy against authority within the legal profession is one of the major deficiencies within the political culture, and has frustrated the implementation of environmental regulation, especially in Bulgaria.<sup>4</sup>

Like most former Soviet satellites, Bulgaria faces critical environmental challenges, a legacy of the old Communist regime.<sup>5</sup> Under the Soviet regime, a production-at-all-costs economy promoted near-term output at the expense of nature and of human health.<sup>6</sup> A system of party domination, personal discretion, and public corruption aggravated the problem.<sup>7</sup> Finally, the hollowness of apparent legal protections left the environment almost totally defenseless to degradation.<sup>8</sup>

The revolution of the late 1980s which rolled over Eastern Europe, in part crossed the Bulgarian frontier as a protest on environmental issues. The Ruse Committee, organized to oppose air pollution crossing the Danube from Romania (in the face of central government inaction on the problem), was the seminal predecessor to a national *environmental* movement, and eventually a *political* movement, that forced President Tudor Zhivkov out of office in November 1989 after three decades of authoritarian rule.<sup>9</sup>

3. See Janusz Bugajski, *Requiem for the System*, WASH. POST, Oct. 30, 1990, at G4.

4. Ironically, some environmental improvement has occurred not by regulation or other intentional policy, but with the collapse of much of the heavy industrial base in Bulgaria. In the four years since the fall of Communism many of the worst polluting, and often energy-inefficient, factories have either closed down or cut production. Cf. *Bulgaria: Stiff Sanctions for Pollution Introduced in Amendments to Broad Environmental Law*, INT'L ENVTL. DAILY (BNA), Jan. 7, 1993 available in LEXIS, Envirn Library, BNAIED File. However, economic decline is obviously no sustainable solution to environmental pollution.

5. World Bank Environmental Technical Cooperation Mission, June 25 - July 6, 1990, Aide-Memoire, July 5, 1990. See Daniel H. Cole, *Marxism and the Failure of Environmental Protection in Eastern Europe and the U.S.S.R.*, 17 LEGAL STUD. F. 35, 36 (1993) (providing reasons for socialism's environmental failures); see also Kenneth J. Serafin, Note, *Bridging the Gap in Eastern Europe: Forty Years of Communist Indifference and the New Environmental Realities in Poland*, 10 DICK. J. INT'L L. 159, 160-61 (1991).

6. Serafin, *supra* note 5, at 160-61; cf. James Friedberg, Field Interview Notes (1991-1993) (unpublished manuscript compiling three summers' worth of research conducted by author documenting environmental and political change in Bulgaria) (on file with author) [hereinafter Field Notes] (Interview with Dr. Tzonio Mihailov Konstantinov, Research Center, Bulgarian Ministry of the Environment, June 17, 1991).

7. See Cole, *supra* note 5, at 36; see also Serafin, *supra* note 5, at 159-61 (stating that the model of the former Soviet Union is the source of many of Eastern Europe's current environmental problems).

8. Cole, *supra* note 5, at 36; Serafin, *supra* note 5, at 159-61.

9. Judy Dempsey & Ariane Genillard, *Business and the Environment: The Danger of Being Left Out*, FIN. TIMES, May 8, 1991, at I31. See *Zhelev Addresses Conferences on Balkan Conflicts* (BBC Summary of World Broadcasts and Monitoring Reports, March 16, 1994), available in LEXIS, World Library, CURNWS File; see also Raymond Bonner, *Bulgaria is Slow*

Bulgaria, however, was left with overwhelming problems—economic, ethnic, political, and environmental. Its new institutions, including the constitution of 1991, proclaim a commitment to environmental improvement.<sup>10</sup> But, if either political will (including an advocacy mentality) or economic capability is lacking, such a commitment will remain unfulfilled. At this juncture, the achievement of these requirements appears problematic. This Article examines, therefore, the new public order in Bulgaria, its significance for environmental improvement and regulation, and the obstacles to such progress.

This Article proposes that without adherence to the Rule of Law in Bulgaria, true environmental protection cannot be achieved. Part II examines the recent changes to the political and constitutional landscape of Bulgaria and how the future of the environment will be affected by these changes. Part III looks at the structure of environmental law as it currently exists in Bulgaria, commenting on the institutions and authorities that have the power to act on environmental matters. Part IV reviews both the contents and weaknesses of the new Environmental Protection Act.<sup>11</sup> Part V deals with the difficult environmental problems created in Bulgaria by the economic, political, and legal structures left by its Communist past. Part VI looks at the culture of advocacy that must emerge in Bulgaria to protect environmental objectives. Finally, Part VII reviews how Bulgaria has struggled with its environmental aspirations while facing harsh post-Communist economic and political realities.

## II. POLITICAL AND CONSTITUTIONAL CHANGE

Bulgaria has radically transformed itself since 1989, creating a multiparty political system, a democratic constitution, a democratically

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to *Cut Its State Companies Loose*, N.Y. TIMES, Feb. 20, 1994 at A13 (blaming political fighting for a lack of privatization progress).

10. BULG. CONST. ch. 1, art. 15; ch. 2, art. 55, reprinted in III CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, Constitution of the Republic of Bulgaria, 87 at 89, 97 (Albert P. Blaustein & Gisbert H. Fianz eds., 1993) [hereinafter BULG. CONST.]. All further references to the Bulgarian Constitution refer to the version adopted on July 12, 1991. For an analysis of earlier Bulgarian constitutions, see ANTAL ÁDÁM & HANS-GEORG HEINRICH, SOCIETY, POLITICS AND CONSTITUTIONS: WESTERN AND EAST EUROPEAN VIEWS 89-112 (1987).

11. Zakon za opazvane na okolnata sreda [Environmental Protection Act of 1991], No. 86, ch. 2, art. 11; ch. 5, arts. 24-27, Oct. 2, 1991, Durzhaven Vestnik [State Gazette] reprinted in PARKER SCH. FOREIGN & COMP. LAW, CENT. & E. EUR. LEGAL MATERIALS: BULGARIA No. 17 (1993) [hereinafter Environmental Protection Act of 1991].

elected parliament<sup>12</sup> and president, and three governments resulting from two parliamentary elections.<sup>13</sup> Bulgarian public life is increasingly characterized by political pluralism, although threats to such tolerant pluralism do exist.<sup>14</sup> Independent trade unions have emerged as powerful social forces, as have independent news media.<sup>15</sup> To an extent not possible under old cold war conditions, Bulgaria's foreign policy now respects international law.

The Republic of Bulgaria has a parliamentary system of government.<sup>16</sup> The people exercise sovereign power through the bodies established by the Constitution. The Constitution of the Republic of Bulgaria is the supreme law and its provisions apply directly: its rights and duties are enforceable without further legislation.<sup>17</sup> The Grand National Assembly<sup>18</sup> adopted it on July 12, 1991. The Constitution guards the national and state integrity of Bulgaria and guarantees equal rights before the law to *all* Bulgarian citizens by pledging adherence to universal human values and by proclaiming the dignity and personal security of the individual.<sup>19</sup> The importance of these guarantees is obvious given the absence of such rights under the previous regime and the particular persecution of persons belonging to the Turkish minority.<sup>20</sup> All international treaties, ratified by constitutionally established procedures, are considered part of domestic legislation<sup>21</sup> and supersede any contrary domestic legisla-

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12. The Bulgarian Parliament is also called the "National Assembly." The terms are used interchangeably in this Article.

13. *See generally*, COMMISSION ON SECURITY AND COOPERATION IN EUROPE, IMPLEMENTATION OF THE HELSINKI ACCORDS: HUMAN RIGHTS AND DEMOCRATIZATION IN BULGARIA 1-4 (Sept. 1993) [hereinafter DEMOCRATIZATION IN BULGARIA] (explaining Bulgaria's recent efforts towards becoming a democratic state).

14. *See id.* at 4.

15. *See id.* at 6-7.

16. BULG. CONST. ch. 1, art. 1.

17. *Id.* art. 5 (declaring that the supreme law "shall have direct application").

18. The Grand National Assembly was the first freely elected post-Communist parliament. The "grand" in its name signified its powers to promulgate constitutional provisions as well as normal statutes. The present parliament is an ordinary "National Assembly."

19. BULG. CONST. ch. 2, art. 54(1).

20. *See* Petko Georiev, *Bulgaria: Turkish Minority Party Gains Power*, INTER PRESS SERVICE, available in LEXIS, World Library, ALLWLD File; *see also* DEMOCRATIZATION IN BULGARIA, *supra* note 13, at 9-10 (stating that the Bulgarian Constitution, in addition to other post-1989 legislation, has generally strengthened minority rights).

21. BULG. CONST. ch. 1, art. 5(4).

tion.<sup>22</sup> This provision makes Bulgaria one of the most progressive countries in promoting respect for international law.<sup>23</sup>

Significantly, the new Bulgarian Constitution protects the environment by explicit provisions, creating both citizens' rights to a healthy environment<sup>24</sup> and a government duty to protect the environment.<sup>25</sup> Thus, Bulgaria joins a small vanguard of environmentally conscious states that have raised environmental quality to the level of a basic legal right, superior even to parliamentary law.<sup>26</sup> Whether such broad legal declarations will have concrete effect remains to be seen, dependent on many of the factors to be discussed in this Article.<sup>27</sup>

### A. Division of Power

State power in Bulgaria is divided among the three branches (plus, to some small degree, the presidency): legislative, executive, and judicial.<sup>28</sup> The organs of these governmental branches are distinguishable on the principle of the separation of powers, although their functions often intermingle and overlap. This recognition that power must be dispersed in order not to be abused is a major institutional improvement in Bulgaria's government structure.<sup>29</sup> Implementation of this principle will be a major challenge. Bulgarian citizens, especially lawyers, must foster a "culture of advocacy" where "authoritative" interpretations (of statutes, regulations, procedures, etc.) and customary limits on disputation are questioned. In addition, the society as a whole must develop a respect for neutral, principled decision making, that balances vigorous public advocacy with procedural legitimacy.

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22. *Id.*

23. The United States, by contrast, does not recognize the superior status of international law, nor does it recognize its direct effect in all instances. See Louis Henkin, *Current Development: Restatement of the Foreign Relations of the United States*, 74 A.J.I.L. 954 (Oct. 1980) available in LEXIS, Intlaw Library, AJIL File.

24. BULG. CONST. ch. 2, art. 55.

25. *Id.* ch. 1, art. 15.

26. See Ernst Brandl & Hartwin Bungert, *Constitutional Entrenchment of Environmental Protection: A Comparative Analysis of Experiences Abroad*, 16 HARV. ENVTL. L. REV. 1, 9-22 (1992).

27. See *infra* notes 224-63 and accompanying text.

28. BULG. CONST. ch. 1, art. 8.

29. Under the old regime, which existed prior to November 1989, there was some separation of powers by law and theoretical structure, but in fact, centralized bureaucratic discretion in the Communist party elite made a sham of any such structure. See Engelbrekt, *supra* note 1, at 4-5.

1. *President as Head of State.* The president is the head of state, the symbol of national unity, theoretically above partisan politics. He or she is elected directly by the people for a five year term and is eligible for reelection only once.<sup>30</sup> The latest election was held in January 1992.<sup>31</sup> The president schedules parliamentary elections, promulgates laws, appoints and dismisses ambassadors, appoints permanent representatives and other state officials to international organizations, and awards orders of merit and medals.<sup>32</sup> After consulting parliamentary groups, the president appoints the prime minister.<sup>33</sup> He or she has the power to promulgate laws only.<sup>34</sup> In international affairs the president personifies the state, concludes treaties, and has the power to declare war and peace.<sup>35</sup> The incumbent President, Zhelyu Zhelev, has both tried to maintain a centrist and nonpartisan position in times of recent political strife and yet strongly assert the constitutional prerogatives of his office—often to the chagrin of other political leaders who would prefer a figurehead president.<sup>36</sup>

2. *Legislative Branch.* The National Assembly is the supreme legislative authority.<sup>37</sup> Its 240 members are elected for a term of four years.<sup>38</sup> General elections are held by secret ballot within two months of the expiration of the mandate of the preceding Assembly.<sup>39</sup> Unlike some other parliaments, the work of the National Assembly is not divided into sessions.<sup>40</sup> It works permanently and takes ad hoc decisions for recesses.<sup>41</sup> This contrasts with the old

30. BULG. CONST. ch. 4, arts. 92(1), 93(1), 95(1).

31. *Bulgarians Voting for President for First Time*, N.Y. TIMES, Jan. 12, 1992, § 1, at 4; *Zhelyu Zhelen Re-elected President*, BULG. BUS. NEWS, Jan. 27-Feb. 1, 1992, at 1.

32. BULG. CONST. ch. 4, art. 98(1),(4).

33. *Id.* art. 99(1).

34. *Id.* art. 98(4).

35. *Id.* arts. 92-104 (listing general presidential powers and duties); *id.* arts. 92(1), 98(3), 100(5) (listing specific presidential powers).

36. "Republic of Razgrad" *Statements by President and Government* (BBC Summary of World Broadcasts and Monitoring Reports, Nov. 27, 1990), available in LEXIS, World Library, ALLWLD File; *UDF Leaders Discuss Strategy for New Session of Parliament, Criticize Zhelev* (BBC Summary of World Broadcasts Monitoring Reports, Sept. 3, 1993), available in LEXIS, World Library, ALLWLD File.

37. BULG. CONST. ch. 3, art. 62.

38. *Id.* art. 64(1).

39. *Id.* arts. 62, 63, 64(1),(3).

40. *Id.* art. 74 (stating National Assembly as permanent body). *But cf. id.* art. 76(3) (referring to sessions).

41. *Id.* art. 74.

regime during which the legislature rarely met and executive authority went unchallenged.<sup>42</sup> The National Assembly passes laws, provides the budget, establishes taxes, and scrutinizes government policy.<sup>43</sup>

The political party system of government is meant to ensure that the National Assembly legislates with its responsibility to the voters in mind. This system relies upon the existence of organized political parties, each laying policies before the electorate for approval. The differing policies promoted by the various parties exemplify the changed role of the Assembly from the Communist era, in which it was a rubber stamp for a single set of policies formed by the Communist Party hierarchy. The parties are registered at Sofia City Court according to Article 9 of the Law on Political Parties of 1990.<sup>44</sup> Refusals of party registration can be appealed before the Supreme Court.<sup>45</sup> Outside parliament, party control is exercised by both central and local authorities.

The political parties or coalitions present in the National Assembly after the October 1991 elections were the Union of Democratic Forces (U.D.F.), the Bulgarian Socialist Party (B.S.P.), and the Movement for Rights and Freedoms (M.R.F.). The U.D.F. was established on December 7, 1989 as a political alliance of independent organizations unified by a desire to seek a democratic society while condemning the totalitarian Communist regime.<sup>46</sup> The U.D.F. alliance consists of some re-established traditional Bulgarian parties such as the Democratic Party (established in 1896) and the Radical-Democratic Party (established in 1907), and some new organizations such as the United Democratic Center, Eco-glasnost, the Conservative Green Party, and the Alternative Social-Liberal Party.<sup>47</sup> In 1991 the original U.D.F. alliance split into two factions, one center-right and the other center-left.<sup>48</sup> The right-wing won the right to use

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42. See generally Engelbrekt, *supra* note 1, at 4-5 (stating that the new regime would support the separation of powers, in contrast to the old system, in which executive powers reigned supreme).

43. BULG. CONST. ch. 3, arts. 62-91.

44. Zakon za politicheskite partii [Law on Political Parties], No. 29, art. 9, Apr. 10, 1990, Durzhaven Vestnik [State Gazette].

45. One noteworthy example of refusal to register a political party has been the rejection of the application of the Macedonian Nationalist Party. See DEMOCRATIZATION IN BULGARIA, *supra* note 13, at 15.

46. *Union of Democratic Forces Sets Out Its Aims* (BBC Summary of World Broadcasts and Monitoring Reports, Dec. 9, 1989), available in LEXIS, World Library, ALLWLD File.

47. *Id.*

48. The authors acknowledge that the terms "right" and "left" sometimes oversimplify the political complexities of post-communist Eastern Europe. They are used here only as broad

the U.D.F. label and color (blue), and became the dominant non-socialist grouping in the October 1991 elections.<sup>49</sup> The leading organ of the alliance is the National Coordinating Council chaired by Filip Dimitrov,<sup>50</sup> who was Prime Minister following the October 1991 elections until the fall of his government at the end of 1992. The U.D.F. held 110 seats in the Assembly while it led the government through most of 1992.<sup>51</sup> At the end of 1992, a number of its delegates split off to form a new center-left government with the B.S.P. and M.R.F.

Until 1990, the B.S.P. was known as the Bulgarian Communist party. It was the only political party in Bulgaria from 1948 to 1989, and governed Bulgaria by suppressing all opposition. Its leading organ is the Supreme Party Council chaired by Alexander Lilov.<sup>52</sup> The B.S.P. alliance, consisting of the B.S.P. and eight very small, mainly nationalistic groups, has 106 seats in Parliament.<sup>53</sup>

The M.R.F. was technically established on January 4, 1990, but originated among disaffected citizens of Turkish origin during the so-called revival process of 1984-89.<sup>54</sup> During this period Turks were oppressed by government policy restricting Turkish names, suppressing Turkish culture, and otherwise discriminating against them. The M.R.F. is led by a central council and a central operative bureau;<sup>55</sup> its chairman is Ahmed Dogan.<sup>56</sup> It won twenty-four seats in the Assembly in the elections of October 1991.<sup>57</sup>

directional signs, not as precise political locators.

49. Roger Boyes, *Exiles Dream of Comeback as Royal Stock Rises in East Europe*, THE TIMES (LONDON), May 7, 1991, (referring to separation).

50. *Union of Democratic Forces to Ask Parliament to Call November Election* (BBC Summary of World Broadcasts and Monitoring Reports, July 9, 1993), available in LEXIS, News Library, OMNI File.

51. Mike Power, *Bulgaria's Muslim Minority Enjoys a Peaceful Resurgence: Ethnic Turks are Reclaiming Rights Lost Under Communism*, THE GUARDIAN, June 17, 1992, at 7. A few of the members of the Assembly who were elected under the U.D.F. banner in October 1991 split with their colleagues and joined a coalition of Socialists and Rights and Freedoms Party parliamentarians to form a new government after Dimitrov's government was toppled by a vote of no confidence. "Heated Disputes" at UDF Conference, Call for Early Elections (BBC Summary of World Broadcasting and Monitoring Reports, Mar. 16, 1993), available in LEXIS, World Library, ALLWLD File.

52. *Gorbachev, Lilov Discuss Changes in Eastern Europe*, The Telegraph Agency of the Soviet Union (TASS), May 6, 1991, available in LEXIS, World Library, ALLWLD File.

53. See Power, *supra* note 51, at 7.

54. DEMOCRATIZATION OF BULGARIA, *supra* note 13, at 10-11.

55. See *Other Reports on Bulgaria; Leader of Bulgaria's Ethnic Turkish Organization Meets Simeon II in Madrid* (BBC Summary of World Broadcasts and Monitoring Reports, Mar. 17, 1992), available in LEXIS, World Library, ALLWLD File.

56. *Id.*

57. See Power, *supra* note 51, at 7.



Only the above three political forces—the U.D.F. alliance, the B.S.P. alliance, and the M.R.F.—elected representatives to the present Assembly, because of a provision in the General and Local Elections Law of 1991 requiring that a party or alliance get at least 4 percent of the total national vote in order to be represented in the Assembly.<sup>58</sup> This rule deprived a number of other popular parties of the right to representation by just narrowly failing to pass the 4 percent barrier. Notably, these included the two branches of the former Agrarian Party—now called the Bulgarian Agrarian Peoples Union (United) and the Bulgarian Agrarian Peoples Union (Nikola Petkov). The latter party was originally part of the U.D.F., but split from it just a month before the election. Two other splinter groups from the U.D.F. with more centrist or leftist orientation also failed to post the 4 percent vote requirement: the U.D.F.-Center and the U.D.F.-Liberals. These splinter groups ceased to exist soon after their election defeat.

In December 1992 the M.R.F., which was a coalition partner of the U.D.F. but without direct participation in the government, started to question persistently the policies of the government and to demand changes in the cabinet.<sup>59</sup> This led Prime Minister Philip Dimitrov to ask for a vote of confidence in his government, which he lost because both the M.R.F. and B.S.P. voted against him.<sup>60</sup>

In accordance with the provisions of the Constitution, President Zhelev had asked the U.D.F. and then the B.S.P. to form a government. When they failed, the right to form the government passed on to the third biggest party—the M.R.F.<sup>61</sup> Knowing that it stood no chance of passing through the Assembly a government of its own, the M.R.F. proposed a “government of experts” (implying a nonpartisan, technocratic approach to governing) led by President Zhelev’s Adviser on the Economy, Professor L. Berov.<sup>62</sup> Thus, a loose alliance between the M.R.F., B.S.P., and a group of a dozen deputies from the

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58. *Zakon za izbirane na narodni predstaviteli, obshtinski savetnitsi, kmetove* [The General and Local Elections Law], No. 69, art. 86, Aug. 22, 1991, *Durzhaven Vestnik* [State Gazette].

59. For example, the M.R.F. was upset at the uncharacteristically rapid decollectivization of the tobacco industry, where predominantly Turkish labor was forced into tenant farming or out of work.

60. *Government Reigns*, BULG. BUS. NEWS, Nov. 2-8, 1992, at 1.

61. *Bulgarian Premier Suffers Heart Attack*, REUTERS, Mar. 8, 1994, available in LEXIS, World Library, ALLWLD File.

62. Evgeniya Drumeva, *New Government's Parliamentary Support Analyzed by BTA Reporter* (BBC Summary of World Broadcasts and Monitoring Reports, Jan. 1, 1993), available in LEXIS, World Library, ALLWLD File.

U.D.F. was formed, and voted this new government into power.<sup>63</sup> The outcry within the U.D.F. against its deputies who voted in support of Berov's cabinet was very strong and they were dismissed from the U.D.F.'s parliamentary group. This outcast group then registered as a new fourth parliamentary group called the New Union for Democracy (N.U.D.).<sup>64</sup> A new alliance of the center has formed around it, as well as around some smaller parties not represented in the National Assembly. Political observers speculate that such an alliance might be necessary to keep some balance between the far right and far left.<sup>65</sup> It remains to be seen, however, whether its formation is premature for political life in Bulgaria, which at present is very bipolar and based on outright confrontation.

Berov's government, backed by the M.R.F., B.S.P., and the N.U.D., must seek compromise within its ranks, while trying not to antagonize the U.D.F. and its supporters, given its patchwork coalition and slim majority in the National Assembly. Thus far it has survived five "no-confidence" votes. Continuing challenges to its existence are certain.

3. *Executive Branch.* The Council of Ministers (the "cabinet") directs the implementation of the state's domestic and foreign policy.<sup>66</sup> The functions of the cabinet include managing the budget and the state's assets, final determination of economic policy, and coordination of ministries, agencies, and other offices.<sup>67</sup> The Cabinet has "dual responsibility"—both the collective responsibility which ministers share for government policy and actions, and the ministers' individual responsibility before the Assembly.<sup>68</sup> Ministers normally decide all matters within their competence on their own, although on important political matters they usually consult their colleagues in the

63. *Recorded Interview with Zhelyu Zhelev, President of Bulgaria, in Unspecified Location* (BBC Summary of World Broadcasts & Monitoring Reports, Sept. 8, 1993), available in LEXIS, Europe Library, BULGAR File.

64. *MPS Expelled from UDF Parliamentary Group over Berov Vote: Protest Resignations* (BBC Summary of World Broadcasts and Monitoring Reports, Jan. 29, 1993), available in LEXIS, News Library, CURNWS File. The existence of a fourth parliamentary group, splintered from the UDF, also was described to the Author during July 1993 interviews in Sophia by Professor Brian Koulov (formerly at the University of Sophia, presently at the American University) and Member of Parliament Kostia Karaivanov.

65. *Correlation between Parliamentary Forces Changes*, BULG. BUS. NEWS, Feb. 8-14, 1993, at 1.

66. BULG. CONST. ch. 5, art. 105(1).

67. *Id.* art. 106.

68. *Id.* arts. 105, 106, 108 (describing the collective and individual responsibilities of cabinet members).

cabinet. A decision by any minister, however, binds the government as a whole.<sup>69</sup> The ministers also may receive input from parliamentary committees.<sup>70</sup> Since 1990, such consultation between the Ministry of the Environment and the parliamentary Committee on the Environment has occurred with varying frequency and varying success.

Particularly relevant to environmental regulation has been the Committee on Standardization. Under earlier governments, it promulgated technical pollution standards.<sup>71</sup> While hundreds of pages of such standards existed, their enforcement was spotty at best. The present government has moved the task of regulation drafting to the Environment Ministry.<sup>72</sup>

4. *Judicial Branch.* The judicial branch of state power is independent and safeguards the rights and legitimate interests of all citizens, legal entities, and the state.<sup>73</sup> This contrasts with the court system under the old regime in which the Communist Party effectively controlled the judiciary.<sup>74</sup> An independent judiciary is a prime element in a movement toward a civil society governed by the Rule of Law.<sup>75</sup>

Formerly the judiciary was elected, but judges had some of the rights and obligations of civil services employees.<sup>76</sup> Judges were nominated by the minister of justice. More than one candidate could run for an office. However, this was not done before 1989.<sup>77</sup> At present, the Bulgarian judicial system consists of regional (local) courts, district courts and the Supreme Court. The main trial court is the regional court. It tries all cases as a court of first instance,

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69. *Id.* arts. 105-16 (concerning Council of Ministers' General Powers).

70. *Id.* art. 112.

71. Field Notes, *supra* note 6 (interview with Branimir Zaimov, Ministry of Foreign Affairs, June 17, 1992).

72. See Angela K. Conway, Note, *Winds of Change: Eco-Glasnost in Eastern Europe*, 1 KAN. J.L. & PUB. POL'Y 51, 59 (1991).

73. BULG. CONST. ch. 6, arts. 117-34 (generally); *id.* ch. 6, art. 117(1),(2) (specifically); see also DEMOCRATIZATION IN BULGARIA, *supra* note 13, at 16-17 (describing current constitutional and judicial reform in Bulgaria).

74. Engelbrekt, *supra* note 1, at 4, 9.

75. *Id.* at 4-5.

76. See generally Herman Schwartz, *The New East European Constitutional Courts*, in CONSTITUTION MAKING IN EASTERN EUROPE 163, 175 (A.E. Dick Howard ed. 1993) (comparing court selection methods in Eastern Europe).

77. See Engelbrekt, *supra* note 1, at 4.

except those which are tried by the district court.<sup>78</sup> The district court acts as a trial court for cases involving more than 10,000 levs., some family law cases, as well as cases determined by other specific laws.<sup>79</sup> Decisions of the regional court can be appealed to the district court, while decisions of the district court acting as a court of first instance can be appealed to the Supreme Court, if not otherwise provided.<sup>80</sup> The judicial system is thus a two instance system, the second instance being the last. The only exceptions, providing a further possibility of review of the decision, are for "supervisory review"<sup>81</sup> and for "annulment of effective decision."<sup>82</sup>

Under the 1991 Constitution,<sup>83</sup> justice should be administered by the Supreme Court of Cassation, appellate, district, and regional courts. However, the necessary legislative amendments have still not been made to introduce the three instance system and bring the existing system into compliance with constitutional requirements.

The top judicial level consists of both a Supreme Court of Cassation for civil and criminal matters, and a Supreme Administrative Court.<sup>84</sup> Until they are formed, the old Supreme Court will continue to be the single high court. The district court is the court of first instance.<sup>85</sup> The local courts are the lowest level.<sup>86</sup> Both the district and the local courts have one judge and two lay assessors.<sup>87</sup> Panels of the Supreme Court previously consisted of three judges and four lay assessors;<sup>88</sup> however, lay assessors were eliminated under the

78. *Grazdanski protsesdalon kodeks* [Code of Civil Procedure], No. 12, art. 79(1), 1952, *Durzhaven Vestnik* [State Gazette] amended by Nos. 31/1980, 38/1980, 31/1990, 62/1991, 55/1992, *Durzhaven Vestnik* [State Gazette] [hereinafter Code of Civil Procedure].

79. *Id.* art. 80(1).

80. *Id.* art. 196.

81. *Id.* art. 225.

82. *Id.* art. 232.

83. BULG. CONST. ch. 6, art. 119.

84. *Id.* ch. 6, arts. 119(1), 124, 125.

85. Thomas H. Reynolds & Arturo A. Flores, *Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World: Bulgaria*, II AALL Bulgaria 1, Bulgaria 5 (1989) (pagination by country name and applicable page number).

86. *See id.* (stating that regional tribunals are courts of first instance).

87. Code of Civil Procedure, *supra* note 78, art. 227. *Cf. The Legal System of Bulgaria* 8 MODERN LEGAL SYSTEMS CYCLOPEDIA §§ 4.4(A), 1.4(C)(2) (revised 1991) (1984) [hereinafter MODERN LEGAL SYSTEMS] (stating that assessors participate in the disposition of justice).

88. Code of Civil Procedure, *supra* note 78, art. 227. *See* MODERN LEGAL SYSTEMS, *supra* note 87, § 1.4(C)(2) (stating that while judges serve in the Supreme Court, judges and court assessors serve in the district courts).

new Code of Civil Procedure.<sup>89</sup> The intent has been to make the judiciary more professional and less political.<sup>90</sup>

A Supreme Court Judge previously had to have twenty years experience in lower courts before appointment to the Court.<sup>91</sup> In 1991 and 1992, the various political parties negotiated an amended set of appointments on a pro rata basis.<sup>92</sup> Judges, prosecutors, and investigating magistrates will be elected, promoted, or dismissed by the Supreme Judicial Council.<sup>93</sup> They will have life tenure after a three year probationary period.<sup>94</sup>

As a transitional measure, the Supreme Judicial Council reviewed the competence of all judges and prosecutors, and dismissed some.<sup>95</sup> Such a transitional period has ended and all remaining judges and prosecutors now enjoy tenure according to their years of service.<sup>96</sup> Recently the majority in the Assembly, led by the B.S.P., has been trying to get rid of prominent magistrates appointed by the U.D.F. government, and has passed through the Assembly the second reading of amendments to the Law on the Judicial Establishment.<sup>97</sup> These amendments would require a person applying for the post of Chair of the Supreme Court of Cassation, Chair of the Supreme Administrative Court, or Chief Prosecutor to have fourteen years of experience in legal practice and five years' experience as a judge or prosecutor.

A Constitutional Court has been created under the provisions of the new Constitution.<sup>98</sup> Although the old system did not seem to provide any mechanism, and certainly no tradition, to allow a neutral judicial body to declare legislative or executive acts to be unconstitutional and therefore void, the new Constitutional Court does allow for

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89. Code of Civil Procedure, *supra* note 78, art. 227. See Engelbrekt, *supra* note 1, at 6, 9.

90. DEMOCRATIZATION IN BULGARIA, *supra* note 13, at 16, 17.

91. Zakon za ustrejstvo na sadilishtata [Law on Judicial Establishment], No. 23, Mar. 19, 1976, Durzhaven Vestnik [State Gazette].

92. BULG. CONST. ch. 6, art. 129(1).

93. *Id.* art. 129(3); see also Engelbrekt, *supra* note 1, at 6 (stating that the Supreme Judicial Council has broad authority to make decisions on appointments, promotions, and transfers of judges, prosecutors, and investigators).

94. BULG. CONST. ch. 6, art. 129(3).

95. See *Other Reports: Supreme Judicial Council Dismisses Three Prosecutors and Retires 22 Judges* (BBC Summary of World Broadcasts and Monitoring Reports, Mar. 14, 1992), available in LEXIS, World Library, ALLWLD File.

96. Zakon za Wishija sudeben suwet [Law on Supreme Judicial Council], No. 74, Sept. 10, 1991, Durzhaven Vestnik [State Gazette].

97. See Engelbrekt, *supra* note 1, at 4 (stating that the BSP has dominated the post-Communist Party governments and has selected some new members to hold top judicial positions).

98. BULG. CONST. ch. 8, arts. 147-152.

such judicial review.<sup>99</sup> The Constitutional Court has already had significant impact. In a landmark case brought by the B.S.P. against the M.R.F., the Constitutional Court held that the latter was a legitimate party notwithstanding the claim by the former that M.R.F. violated the constitutional ban on ethnically based political parties, due to its predominantly Turkish membership.<sup>100</sup> The impact of this decision was felt both in the formation and in the recent fall of the Bulgarian government, in which the M.R.F. was a coalition partner.<sup>101</sup>

## B. Local Government

Local government is provided by democratically elected municipal authorities.<sup>102</sup> These local governments have considerable freedom to make arrangements for carrying out their duties and are free to associate with other localities in the solution of common concerns, including environmental protection.<sup>103</sup> The mayor holds executive power within a municipality.<sup>104</sup>

The ultimate distribution of power in the new order between the central and local governments is still unclear, as national and local politicians jockey for position in a fluid political climate.<sup>105</sup> Furthermore, the local government statute envisions three levels of decentralized government—regional, district, and local<sup>106</sup>—although the middle level of district does not exist in practice.<sup>107</sup> Especially in the area of the environment, local leaders are asserting powers to regulate and an entitlement to certain public funds; this puts localities on a possible collision course with the central authorities in Sofia.<sup>108</sup> During July 1992, local officials from throughout Bulgaria met to discuss local environmental problems and possibilities for municipal

99. *Id.* art. 149; see also Schwartz, *supra* note 76, at 168.

100. Konstitutsionen sud, Reshenie No. 4 ot 1992 [46 Constitutional Court, Decision No. 4], No. 35, Apr. 28, 1992, *Durzhaven Vestnik* [State Gazette]; see also Engelbrekt, *supra* note 1, at 6 (holding that the MRF had not violated the Constitution in its capacity as a political party).

101. See Joanna Regulska, *Self-Governance or Central Control*, in CONSTITUTION MAKING IN EASTERN EUROPE, *supra* note 76, at 133, 150; see also *supra* text accompanying notes 59-65.

102. BULG. CONST. ch. 7, arts. 135-46.

103. See Regulska, *supra* note 101, at 151-57.

104. Zakon za mestnoto samoupravlenie i mestnada administrada [Local Self-Government and Local Administration Act], No. 77, Sept. 17, 1991, *Durzhaven Vestnik* [State Gazette].

105. Jorge Martinez-Vasquez, *Intergovernmental Fiscal Relations in Bulgaria*, POL'Y RES. CENTER GA. ST. U. 2-6 (1993).

106. *Id.*

107. *Id.*

108. See Regulska, *supra* note 101, at 136-37.

regulation.<sup>109</sup> Skepticism of the central government's commitment to addressing their local environmental needs was apparent.<sup>110</sup> Although further meetings have been held, the eventual relationship of the localities with the central government is still not yet fully defined.

### III. THE STRUCTURE OF ENVIRONMENTAL LAW IN BULGARIA

#### A. Institutions and Authorities which Act on Environmental Matters

Both central and local authorities, as well as specialized regulatory institutions of environmental protection, legislate and enforce environmental policy in Bulgaria.<sup>111</sup> The parliament develops national policy on the environment through legislative and planning activities, as well as through parliamentary control over the environmental protection work of the Council of Ministers and separate ministers. Within the National Assembly there is a standing Committee on the Environment which drafts laws for the Assembly's approval, and makes recommendations to different state authorities for the improvement of their environmental protection activities.<sup>112</sup> Under the first post-Communist National Assembly, this committee had meaningful influence, including members who had experience in environmental matters.<sup>113</sup> It was the Committee on the Environment that drafted the landmark Environmental Protection Act of 1991.<sup>114</sup> However, many of the liberal or centrist environmentalists were defeated in the 1992 elections. The resulting shift in government priorities and loss of expertise may have diminished the committee's clout in 1992. It remains to be seen whether under the most recent realignment in parliament, a strong pro-environment committee will re-emerge.

The Council of Ministers has regulatory functions for implementation of the statutes passed by the National Assembly, as well as for

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109. Field Notes, *supra* note 6 (interview with Stephen Velez, Bulgarian Academy of Sciences, July 9-10, 1992) (meeting of local environmental officials from throughout Bulgaria, held in Burgas).

110. *Id.*

111. Environmental Protection Act of 1991, *supra* note 11, arts. 11, 24-27.

112. See Conway, *supra* note 72, at 59.

113. Field notes, *supra* note 6 (interview with Dr. Krassen Stanchev, Chair Environmental Committee, June 18, 1991).

114. Environmental Protection Act of 1991, *supra* note 11.

settling matters unresolved by those laws in the field of environmental protection.<sup>115</sup> Additionally, the ministers perform environmental protection activities within their specific areas of competence. The most important among them for environmental purposes is the Ministry of the Environment, having the following powers:

- to effect control on the observance of environmental legislation and impose sanctions on legal persons and individuals for their non-observance;

- to supervise the environmental impact assessment process;

- to issue permits;

- to participate in the promulgation of environmental standards and norms of maximum admissible concentration of harmful substances in the environment.<sup>116</sup>

All these powers have been exercised only to a limited extent until now. Prior to 1989, significant political, technical, and economic constraints prevented such exercise. Now, the political constraints have lessened, but the economic and technical ones are still strong.<sup>117</sup>

## B. Categories of Environmental Laws and Regulations

Bulgarian environmental legislation can be grouped conceptually into three categories of laws and regulations: the general, those specialized (in terms of protected resources), and those in other fields of legislation that include environmental rules.<sup>118</sup> A new fourth group consists of international norms created by treaty and incorporated into Bulgarian domestic law by direct applicability.<sup>119</sup>

The Constitution is, of course, the most important law of Bulgaria. In the Constitution, the protection of the environment and natural resources is proclaimed as an obligation of all state authori-

115. BULG. CONST. ch. 5, arts. 114-115.

116. Postanovlenie No. 14 za funkejiite i zadachite Ministerstvoto na okolnata sreda [Regulation on Functions and Aims of the Ministry of the Environment], No. 10, Feb. 4, 1992, Durzhaven Vestnik [State Gazette].

117. Conway, *supra* note 72, at 54; *cf.* Serafin, *supra* note 5, at 186-87 (citing Poland's technological and economic problems achieving its environmental goals now that the political atmosphere has changed from a socialist to a more democratic state).

118. ENVIRONMENT AND DEVELOPMENT OF THE REPUBLIC OF BULGARIA, SUMMARY OF THE NAT'L REP. FOR THE UN CONF. ON ENV'T & DEV.-BRAZ. (UNCED) 64 (1991). The report refers to general laws and to specific laws which emphasize the special issues that apply to particular natural resources such as waters, forests, and game reserves. *Id.* The report also describes four types of legal responsibilities which apply in the area of environmental protection: administrative, penal, civilian, and special responsibilities. *Id.*

119. *See id.* at 79-85 (describing Bulgaria's international relations and commitments in the environmental area).



ties.<sup>120</sup> Additionally, the Constitution proclaims the right of citizens to a favorable and healthy environment as a fundamental human right.<sup>121</sup> Citizens also have the duty to protect the environment.<sup>122</sup> This clause places Bulgaria with a number of other states in the forefront of a trend which has begun to enshrine the constitutional status and human rights character of environmental concerns.<sup>123</sup> In addition, the Constitution declares most natural resources, with the exception of land, to be state property.<sup>124</sup> This may serve as a protection against the extreme abuse of nature that unfettered privatization could bring.

The first group of laws and regulations of Bulgarian environmental legislation are called "general" because they cover the protection of the environment as a system of interrelated components. These laws and regulations cover matters of general significance concerning the quality of the environment including: the Law on Nature Protection of 1967;<sup>125</sup> the Law on the Protection of Air, Water and Soil of 1963;<sup>126</sup> the Environmental Protection Law of 1991,<sup>127</sup> as well as regulations for their implementation.<sup>128</sup>

The second group of so-called "specialized" laws regulate protection from pollution from particular industries or sources and mandate the rational use of specific natural resources. These include: the Law on Forests of 1958;<sup>129</sup> the Law on Water of 1969,<sup>130</sup> the

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120. BULG. CONST. ch. 1, art. 15.

121. *Id.* ch. 2, art. 55.

122. *Id.*

123. See Brandl & Bungert, *supra* note 26, at 85-92. Bulgaria's progressive constitutional provision is not examined in this otherwise detailed survey.

124. BULG. CONST. ch. 1, art. 18.

125. Zakon za zashtita na prirodata [Law on Nature Protection], No. 47, June 16, 1967 Durzhaven Vestnik [State Gazette] amended by Nos. 3/1977, 39/1978, 28/1982, 26/1988 & 86/1991, Durzhaven Vestnik [State Gazette].

126. Zakon za opasvane na wusduha, wodite i pochvata ot zamarsiavane [Law on the Protection of Air, Water & Soil], No. 84, Dec. 29, 1963 Durzhaven Vestnik [State Gazette] amended by Nos. 26/1969, 95/1975, 3/1977, 1/1978, 26/1988, 86/1991 Durzhaven Vestnik [State Gazette] [hereinafter Air, Water & Soil Act].

127. Environmental Protection Act of 1991, *supra* note 11.

128. *Id.*

129. Zakon za gorite [Law on Forests], No. 89, Nov. 7, 1958, Durzhaven Vestnik [State Gazette] amended by Nos. 26/1968, 44/1977, 36/1979 Durzhaven Vestnik [State Gazette].

130. Zakon za wodite [Law on Water], No. 29, Apr. 11, 1969, Durzhaven Vestnik [State Gazette] amended by Nos. 3/1977, 36/1979, 44/1984, 36/1986, 24/1987 Durzhaven Vestnik [State Gazette].

Law on Protection of Arable and Pasture Land of 1973;<sup>131</sup> the Mines and Quarries Law of 1957;<sup>132</sup> the Law on Nature Reserves of 1982;<sup>133</sup> and the Law on Fish Industry of 1982.<sup>134</sup>

The third group of laws and regulations consists of acts primarily regulating other subject matters but which also contain rules on the environment. This group includes more than a hundred legislative acts, thus comprising with the first two groups a complex system of Bulgarian environmental legislation. Worth special mention are the Law on Public Health of 1973,<sup>135</sup> the Town and Country Planning Law of 1973,<sup>136</sup> the Law on the Peaceful Use of Atomic Energy of 1985,<sup>137</sup> the Marine Areas Law of 1987,<sup>138</sup> and the Law on the Protection of Farm Property of 1974.<sup>139</sup>

In accordance with the Constitution, "[i]nternational treaties, ratified constitutionally, . . . are part of the country's internal laws."<sup>140</sup> In this way a number of international conventions ratified by Bulgaria in the field of environmental protection are also part of Bulgarian environmental legislation, and thus for practical purposes form a new fourth group.<sup>141</sup> Important among those international conventions are: the Convention on Transboundary Air Pollution of

131. Zakon za opazvane na obrabotvaemata zemia i pasishtata [Law on Protection of Arable and Pasture Land], No. 27, April 3, 1973, Durzhaven Vestnik [State Gazette] amended by Nos. 3/1977, 102/1977, 102/1981, 58/1985, 24/1987, 26/1989 Durzhaven Vestnik [State Gazette].

132. Zakon za minite i karierite [Mines and Quarries Law], No. 92, Nov. 15, 1957, Durzhaven Vestnik [State Gazette] amended by 17/1958, 68/1959, 104/1960, 84/1963, 27/1973, 36/1979, 56/1986, Durzhaven Vestnik [State Gazette].

133. Zakon za lovnoto stopanstvo [Law on Game Reserves], No. 91, Nov. 19, 1982, Durzhaven Vestnik [State Gazette].

134. Zakon za ribnoto stupanstvo [Law on Fish Industry], No. 91, Nov. 19, 1982, Durzhaven Vestnik [State Gazette].

135. Zakon za narodnoto zdrave [Law on Public Health], No. 88, Nov. 6, 1973, Durzhaven Vestnik [State Gazette] amended by Nos. 92/1973, 63/1976, 28/1983, 66/1985, 26/1986, 27/1986, 89/1988, Durzhaven Vestnik [State Gazette].

136. Zakon za tertoriaino i selisho ustroistvo [Town and Country Planning Law], No. 29, April 10, 1973, Durzhaven Vestnik [State Gazette] amended by Nos. 32/1973, 87/1974, 3/1977, 102/1977, 36/1986, 31/1990, Durzhaven Vestnik [State Gazette].

137. Zakon za ispolsvaneto na atomnata energija za mirni tseli [Law on the Peaceful Use of Atomic Energy], No. 79, Oct. 11, 1985, Durzhaven Vestnik [State Gazette].

138. Zakon za morskite prostranstova na NKB [Marine Areas Law] No. 55, July 17, 1987, Durzhaven Vestnik [State Gazette].

139. Zakon za opazvane na selkstopanskoto imushtestvo [Law on the Protection of Farm Property], No. 54, July 12, 1974, Durzhaven Vestnik [State Gazette] [hereinafter Law on Protection of Farm Property].

140. BULG. CONST. ch. 1, art. 59(4).

141. The recognition of international agreements as superior and directly applicable sources of domestic Bulgarian law is an innovation which creates a new reservoir of legal norms. See Schwartz, *supra* note 76, at 168. It places Bulgaria among a minority of nations that take such a progressive attitude toward the international rule of law. See *id.*

1979,<sup>142</sup> and the Protocols of 1984,<sup>143</sup> 1985,<sup>144</sup> and 1988<sup>145</sup> related to it,<sup>146</sup> the Convention on the Protection of the Ozone Layer of 1985,<sup>147</sup> and Montreal Protocol of 1987 related to it;<sup>148</sup> the International Convention for the Prevention of Pollution from Ships;<sup>149</sup> and the Convention on Trade in Endangered Species of 1973.<sup>150</sup>

As can be seen from the aforementioned structure of environmental legislation in Bulgaria, the problems do not lie in a lack of legislation, but in implementation. In order to address the issue of effective implementation, one must understand the specifics of the existing legal system of sanctions and responsibility.

### C. Types of Liability

Generally speaking, Bulgarian environmental legislation can be viewed as five types of responsibility:<sup>151</sup>

1. *Administrative Responsibility.* This type of responsibility is the most widely used in Bulgaria and includes most of the laws on the protection of the environment, as well as of the penal code. It consists of the imposition of fines for those who pollute and thus violate the laws, as well as for officials who have not performed the duties entrusted to them in relation to the protection of the environment.

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142. Convention on Long-Range Transboundary Air Pollution, Nov. 13, 1979, 27 I.L.M. 698.

143. Protocol to the Convention on Long-Range Transboundary Air Pollution, Sept. 28, 1984, 18 I.L.M. 1442 [hereinafter 1984 Protocol].

144. Protocol to the Convention on Long-Range Transboundary Air Pollution, July 8, 1985, 24 I.L.M. 484 [hereinafter 1985 Protocol].

145. Protocol to the Convention on Long-Range Transboundary Air Pollution, Oct. 31, 1988, 27 I.L.M. 698 [hereinafter 1988 Protocol].

146. Kalinka Moudrova, *State of Environmental Law: Bulgaria*, CTR. FOR INTL. ENV'T. L., at 31 (citing Convention on Transboundary Air Pollution of 1979 and related Protocols).

147. Helsinki Declaration on Protection of the Ozone Layer, Sept. 1985, 28 I.L.M. 1335.

148. The Montreal Protocol on Substance that Deplete the Ozone Layer, Sept. 16, 1987, 26 I.L.M. 1550 (entered into force Jan. 1, 1989).

149. International Convention for the Prevention of Pollution from Ships, Nov. 2, 1973, S. TREATY DOC. NO. 1, 95th Cong., 1st Sess., 12 I.L.M. 1319 (1977) [hereinafter MARPOL].

150. Endangered Species Act of 1973, 16 U.S.C. §§ 1531-34; see also Moudrova, *supra* note 146 at 31.

151. Responsibility and liability, both translated *otgovornost*, to some degree exemplify the inattention given under Bulgarian law to tortious claims, and hence the lack of an institutional environment receptive to civil environmental suits.

2. *Criminal Responsibility.* Criminal liability is specified in the penal code,<sup>152</sup> as well as in some penal provisions in other laws. However, to some degree prosecutors have neglected to exercise such powers when they are not derived explicitly from the penal code. There has also been debate among lawyers regarding such jurisdiction. A difference between criminal and administrative responsibility reflects the extent to which the violation of law harms or endangers the community. Criminal penalties consist of jail terms as well as fines, but in practice they have been very rarely imposed.

3. *Civil Liability.* This type of liability is just beginning to be used for environmental protection. It consists of compensation for damages suffered by someone as a result of pollution of natural resources. The difference between the first two types of liability and civil liability is that in the former the violator can only be a physical person, while in the latter the violator can be either a natural or a legal person. This type of liability is regulated by the general rules of the Law on Contracts and Obligations of 1950,<sup>153</sup> or if farm property is involved, by the Law on Protection of Farm Property of 1974.<sup>154</sup>

4. *Special Environmental Liability.* This liability can only be imposed on legal persons and consists of material fines imposed by the Ministry of the Environment. It is regulated in a number of specialized laws.<sup>155</sup> The procedure for the imposition of such fines as well as for determining their amounts appears in the Regulation of the Council of Ministers of 1978 on Material Sanctions in Cases of Pollution of Air, Water and Soil.<sup>156</sup>

152. Nakazatelen kodeks [Criminal Code], arts. 352-53, cited in Moudrova, *supra* note 146, at 23-25.

153. Zakon za zadulzhenijata i dogovorite [Law on Contracts and Obligations of 1950], No. 275, arts. 45-54, Nov. 22, 1950, Durzhaven Vestnik [State Gazette]; see also Moudrova, *supra* note 146, at 22.

154. Law on Protection of Farm Property, *supra* note 139, arts. 29-31.

155. See, e.g., Naredba za imushtestvenite sankeji pri zamarsiawane na wusduha, wodite i pochvata [Regulation of the Council of Ministers of 1978 on Material Sanctions in Cases of Pollution of Air, Water and Soil], No. 30, art. 18, Apr. 18, 1978, Durzhaven Vestnik [State Gazette].

156. Naredba za reda za opredeljane i nalagane na sanktsii pri uwrezhdane ili pri zamarsiawane na okolnata sreda nad dupustimite mormi [Regulation on Impositions of Sanctions in Cases of Damage or Pollution to the Environment Above the Admissible Levels], No. 15, Feb 15, 1993, Durzhaven Vestnik [State Gazette].

5. *Administrative Sanctions.* The Ministry of the Environment and the Ministry of Health may impose fines or injunctive sanctions on plants and factories, or on the plant or factory managers which pollute the air, water, and soil above permitted levels.<sup>157</sup> Injunctive sanctions consist of orders to suspend the operation of such polluters until prescribed corrective measures are implemented.<sup>158</sup>

Traditional Bulgarian legal doctrine has denied any private right to sue an administrative official for nonperformance of his or her legal duties, unless specific legislation grants such authority.<sup>159</sup> However, the new Constitution may have created just such a right. Article 120 reads: "(1) The courts shall supervise the legality of legislation and actions of the administrative bodies. (2) Private citizens and judicial persons may appeal any administrative act affecting them other than those stipulated by laws."<sup>160</sup> The word for "actions" is *deistvie* in the official Bulgarian version of the Constitution, meaning both affirmative activity and inactivity. Therefore, a court arguably has the legal power to condemn the inactivity of an administrative officer and possibly to order appropriate action.<sup>161</sup> The significance of this analysis to environmental enforcement is great. The environmental laws do not specifically grant a right of action against a government official who fails to enforce an environmental norm. Under this interpretation of Article 120, such a claim would be admissible.

The whole system of environmental responsibility and its enforcement has proved to be ineffective up to now. A major problem has been the lack of supporting regulations to promote enforcement of the laws.<sup>162</sup> Lack of enforcement has unfortunately led to the loss of credibility for environmental laws, as the realities of environmental pollution continue to be at odds with the apparent rigor of the law.

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157. *Bulgaria: National Environmental Fund to Provide \$436,700 for Urgent Projects*, INT'L ENVTL. DAILY (BNA), Aug. 27, 1993, available in LEXIS, World Library, ALLWLD File; see also Moudrova, *supra* note 146, at 24.

158. Field Notes, *supra* note 6 (interview with Mr. Netsov, Legal Advisor to Environmental Minister, June 19, 1991); see also *id.* (interview with Mr. Natov, Ministry of the Environment, June 19, 1991).

159. See Moudrova, *supra* note 146, at 27.

160. BULG. CONST. ch. 6, art. 12(1),(2).

161. This interpretation is supported by article 5 of the Constitution, which is given authority over all other laws through "direct application." *Id.* ch. 1, art. 5(2).

162. See Moudrova, *supra* note 146, at 25.

#### IV. SOME LEGAL ASPECTS OF THE POST-COMMUNIST ENVIRONMENTAL PROTECTION POLICY

The political changes in Bulgaria since 1989 caused the abolition of the monopolistic position of the Communist Party and a fundamental reorientation of policy.<sup>163</sup> This new situation has led to a higher status for environmental priorities, reflecting the fact that the environmental movement was in the vanguard of the political movement that brought down the former Communist regime.<sup>164</sup> These new environmental priorities of the government, however, are yet to be clearly formulated and promoted. The task of formulating a long-term strategy on environmental protection lies before the National Assembly and its Committee on the Environment, the government, and perhaps the most influential of the environmental parties and non-governmental organizations (NGOs).

An attempt to formulate a system of environmental policy was begun in 1991 by the Ministry of the Environment with the assistance of the World Bank and the United States Environmental Protection Agency,<sup>165</sup> but it is still too early for any definitive judgments on the outcome of this attempt. To what extent their recommendations will, or indeed can, be fulfilled by the Assembly is uncertain.

Basic legislation on environmental protection in Bulgaria originated in the 1960s.<sup>166</sup> At present, these basic environmental laws are supplemented by more than 120 other laws that relate to environmental protection. As noted above, the biggest problem is that while strict environmental quality standards exist,<sup>167</sup> the enforcement system is largely ineffective.<sup>168</sup> The old economy—driven

163. BARBARA JANCAR-WEBSTER, *The East European Environmental Movement and the Transformation of East European Society*, in ENVIRONMENTAL ACTION IN EASTERN EUROPE: RESPONSES TO CRISIS 192, 194 (1993).

164. *Id.* at 194; see also John Daniszewski, *Amid Poland's Slag Heaps and Sulfurous Air, A Glimpse of Hope*, L.A. TIMES, July 11, 1992, at A22 (discussing Polish environmental groups and their battles with the Communist regime's legacy of environmental degradation).

165. Bulgaria Joint Environment Mission, Aide-Memoire, June 9-22, 1991.

166. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (WORLD BANK), BULGARIA ENVIRONMENT STRATEGY STUDY, Rpt. No. 10142, at i, Mar. 17, 1992 [hereinafter WORLD BANK]; see generally Cole, *supra* note 5, at 45 (regarding resource "use" charges in Socialist states); S. Ercman, EUROPEAN ENVIRONMENTAL LAW: LEGAL AND ECONOMIC APPRAISAL 36-42, 130-32, 182-83, 204, 225-26 (1977) (citing Bulgarian environmental legislation prior to 1976).

167. Moudrova, *supra* note 146, at 2. See Field Notes, *supra* note 6 (describing the function of the Committee on Standardization, June 18, 1991).

168. Bart E. Cassidy, *Cleaning Up Eastern Europe: Proposals for a Coordinated European Hazardous Waste Management Regime*, 12 VA. ENVTL. L.J. 185, 188 (1993); Serafin, *supra* note

by near-term production goals and managed by officials not really accountable to the legal order—resulted in havoc for the natural environment.<sup>169</sup> Even *within* the statutory scheme, there were loopholes which further eroded regulation and legitimate bureaucratic discretion.<sup>170</sup> The most significant of these loopholes was Article 24 of the Air, Water and Soil Statute, essentially granting an unreviewable national interest exception to any new project which the old government chose to promote.<sup>171</sup>

The need for a new general environmental law was widely recognized and several versions of such legislation were prepared after 1989.<sup>172</sup> Implementation of this legislation, however, requires the development of an environmental strategy closely linked to the ongoing economic reform process.<sup>173</sup> While the new environmental statute has been passed,<sup>174</sup> a comprehensive implementation plan has not.<sup>175</sup>

The cornerstones of the new environmental policy can be found in the recent legislation passed by the National Assembly after the start of the democratic changes in Bulgaria. The two most important legal acts in this respect are undoubtedly the 1991 Constitution,<sup>176</sup> and the Law on the Protection of the Environment.<sup>177</sup> The Constitution proclaims: "Citizens shall have the right to a healthy and favorable environment corresponding to the established standards and regulations. They have an obligation to protect the environment."<sup>178</sup> Thus, the environment is tied to both a fundamental human right and a civil obligation. On the other hand, Article 15 deals with the responsibility of the state: "The Republic of Bulgaria ensures the

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5, at 160, 163-64.

169. See WORLD BANK, *supra* note 166, at i (detailing economic contributions to environmental degradation).

170. See *id.* at iv (outlining deficiencies of environmental legislation).

171. Air, Water & Soil Act, *supra* note 126, art. 24.

172. See generally Moudrova, *supra* note 146, at 13-17 (discussing elements of Bulgaria's Environmental Protection Act of 1991).

173. See, e.g., Cassidy, *supra* note 162, at 189-90 (discussing Eastern Europe's required response to environmental contamination); cf. Serafin, *supra* note 5, at 181-84 (citing a similar situation in Poland).

174. Environmental Protection Act of 1991, *supra* note 11.

175. CONWAY, *supra* note 72, at 56 (discussing Bulgaria's political coalitions and environmental movements); see also Duncan Fisher, *The Emergence of the Environmental Movement in Eastern Europe and Its Role in the Revolutions of 1989*, in ENVIRONMENTAL ACTION IN EASTERN EUROPE: RESPONSES TO CRISIS, *supra* note 163, at 89, 94-95.

176. See generally BULG. CONST. ch. 1, art. 1 (declaring the creation of a democratic state).

177. Environmental Protection Act of 1991, *supra* note 11.

178. BULG. CONST. ch. 2, art. 55.

protection and conservation of the environment, the sustenance of animals and the maintenance of their diversity, and the sensible utilization of the country's natural wealth and other resources."<sup>179</sup>

#### A. Contents of the New Environmental Protection Act

By far the most important statute so far, which contains the foundations of a new policy on the environment, is the Environmental Protection Act of September 1991 (EPA).<sup>180</sup> Significant elements of the new law include:

1. *Fundamental Environmental Rights.* One fundamental environmental right is the right to a favorable and healthy environment.<sup>181</sup> The EPA confirms the right of citizens to request that governmental agencies take control over possible sources of pollution.<sup>182</sup> A second fundamental right is the right of information, including a right of each person to know the real conditions in which they are supposed to live.<sup>183</sup> Information on the environment is specifically regulated in articles addressing what ought to be known,<sup>184</sup> who has the right to information,<sup>185</sup> who is responsible for gathering information,<sup>186</sup> and that the provided information should be understandable and up-to-date.<sup>187</sup> Finally, each person has the right to hold responsible those who infringe personal rights.<sup>188</sup> Special procedures for the protection of citizens' rights are provided in the law. Citizens can seek protection of their rights through administrative and judicial means such as the imposing of fines on civil servants who violate the law.<sup>189</sup> If the violation is repeated, the fine is up to 30,000 levs.<sup>190</sup> Penal sanctions are issued by the Minister of the Environment in accordance with the Law on Administrative Violations and Punishments,<sup>191</sup> and accordingly the question of legal responsibility of the minister might arise. Citizens

179. *Id.* ch. 1, art. 15.

180. *See* Environmental Protection Act of 1991, *supra* note 11.

181. *Id.* ch. 1, art. 2.

182. Environmental Protection Act of 1991, *supra* note 11, at ch. 3, art. 18(1)(2).

183. *Id.* chs. 2-4.

184. *Id.* ch. 2, art. 8.

185. *Id.* art. 9.

186. *Id.* art. 11.

187. *Id.* art. 10.

188. *Id.* ch. 6.

189. *Id.* art. 32.

190. *Id.* (34-35 lev. = 1 USD on Nov. 11, 1993). *Panic Spreads as Lev Reaches Record Low*, BULG. BUS. NEWS, Nov. 22-28, 1993, at 3.

191. Environmental Protection Act of 1991, *supra* note 11, ch. 6, art. 35.



arguably may lodge a court action against the minister in accordance with Article 120 of the Constitution, as discussed above.<sup>192</sup>

Actions may also be filed by local authorities and nonprofit NGOs.<sup>193</sup> In these suits, the plaintiff must prove that the action undertaken, or the lack of such action, has led to harm, that harm being either an infringement of the law or pollution of the environment.<sup>194</sup> If the court decides that the plaintiff has been harmed because of the lack of regulation by a competent authority, and that action (or inaction) is considered by the court to be a crime, fines can be imposed of up to 150,000 leva for individuals (300,000 for repeat offenders), or up to 2,000,000 leva for an enterprise.<sup>195</sup>

2. *The Minister of the Environment.* The general responsibility for enforcing the new law lies with the Minister of the Environment, and not with the unpersonified "Ministry" as was previously the case.<sup>196</sup> "The Minister of the Environment may discontinue the execution of acts of ministries and local government bodies, contradictory to the provisions of this Law."<sup>197</sup> No other minister has such wide powers granted by law. One apparent benefit of these strong powers is that they might make the minister subject to personal liability for breaches of his or her official duties.

Other important functions given to the minister include: the issuing of instructions for the labeling of goods;<sup>198</sup> the right to make additions to the list of projects on which an environmental impact assessment (EIA) should be carried out;<sup>199</sup> and the right to issue licenses for persons to carry out activities, usually reserved for government agencies.<sup>200</sup>

3. *Pollution Taxes.* The Environmental Protection Act of 1991 also provides for taxes on pollution and on natural resource use.<sup>201</sup> The charges "shall be determined by an act of the Council

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192. *Id.* ch. 6, arts. 20, 30(2); *see also* BULG. CONST. ch. 6, art. 120(2).

193. *See* Environmental Protection Act of 1991, *supra* note 11, ch. 6, art. 30(2).

194. *See id.*

195. *Id.* arts. 32, 34.

196. *Id.* art. 24.

197. *Id.* ch. 5, art. 28(2).

198. *Id.* art. 24(1)(6)(c).

199. *Id.* ch. 4, art. 19(4).

200. *Id.* ch. 5, art. 24(1)(10).

201. *Id.* ch. 1, art. 3(1) (noting that fees are to be paid for mere use, not just for pollution).

of Ministers."<sup>202</sup> In accordance with Article 3, up to 90 percent of the taxes collected should remain at the local government level.<sup>203</sup> This provision should in turn stimulate local authorities to improve their monitoring and control functions, including enforcement. However, the Minister of the Environment under the 1992 U.D.F. government amended this provision by lowering the percentage to 40 percent of taxes collected to remain with local government, while 60 percent is earmarked for the central government.<sup>204</sup>

4. *The Annual Report.* There are provisions for an annual report on the state of the environment to be prepared, introduced before the National Assembly, and published yearly by the Council of Ministers.<sup>205</sup>

5. *The Ban on Trade in Hazardous Waste.* The import and transportation of hazardous waste and technologies may be prohibited under certain circumstances.<sup>206</sup> Despite this ban, there have already been incidents of West European industry attempting to dump waste in Bulgaria.<sup>207</sup>

6. *Harmonization with European Community (EC) law.* The norms and standards of the EC are envisaged as guidelines for environmental protection in Bulgaria.<sup>208</sup> Such harmonization of environmental standards is consistent with Bulgaria's ongoing attempt to achieve closer association with the EC.<sup>209</sup> It should also alert

202. *Id.*

203. *Id.* art. 3(3) (mandating that 50 percent of fees go to local protection funds and 40 percent to regional funds).

204. *Zakon za opazvane na okolnata sreda* [Environmental Protection Act], No. 100, art 3(2), Dec. 10, 1992, *Durzhaven Vestnik* [State Gazette].

205. Environmental Protection Act of 1991, *supra* note 11, ch. 1, art. 4.

206. *Id.* art. 7(1)-(2) (allowing the transport of hazardous materials if the Minister of Environment issues a permit and transport is in accordance with international treaties to which Bulgaria is a party).

207. *Bulgaria: Measures to Combat Import of Toxic Waste* (BBC Summary of World Broadcasts and Monitoring Reports, Aug. 27, 1992) available in LEXIS, News Library, CURNWS File; *Poland Threatened with Waste Invasion*, POLISH NEWS BULL., Aug. 28, 1992, available in LEXIS, World Library, ALLWLD File; *World Politics and Current Affairs*, THE ECONOMIST, Nov. 7, 1992, at 59.

208. See Environmental Protection Act of 1991, *supra* note 11, ch. 1, art. 6.

209. See *Brittan Calls For Faster Integration of West and East Europe*, AGENCE FRANCE PRESSE, Jan. 26, 1994, available in LEXIS, News Library, CURNWS File; Tyler Marshall, *Europe: EU Has Change of Heart Toward Nations to East*, L.A. TIMES, Apr. 2, 1994, available in LEXIS, News Library, CURNWS File; cf. Michael Binyon, *Ministers Tackle Implications of a Unified Europe*, THE TIMES, May 8, 1990, available in LEXIS, News Library, ARCNWS File (describing the environment as an "essential core responsibility" for EC membership and

American lawyers working with Bulgarians that American environmental regulations will not necessarily be an appropriate model for a country that seeks to integrate into Europe.

7. *Environmental Impact Assessments.* The process for carrying out Environmental Impact Assessments (EIAs) is regulated in the EPA. The EPA has two Appendices<sup>210</sup> which are based on the Annexes of Directive 337/85 of the European Community<sup>211</sup> and the Convention on Environmental Impact Assessment in a transboundary context.<sup>212</sup> In fact, in some areas, the Bulgarian list is even more elaborate than that of the EC.<sup>213</sup> The problems in Bulgaria, of course, lie mostly in existing pollution. For that reason, there is a provision in the concluding sections of the EPA which requires that an EIA be carried out for existing pollutants. If such an EIA is not performed, the provisions of Article 23 can be triggered, prohibiting the continuation of the project.<sup>214</sup>

Any type of project can be an object of an EIA, but it is compulsory for projects listed in Appendix I of the EPA.<sup>215</sup> Projects and plans prepared before the entry into force of the new law must also be examined.<sup>216</sup> The requirements concerning the documentation for an EIA are laid out in Article 21.<sup>217</sup> Government authorities can empower independent experts to carry out an EIA,<sup>218</sup> expenses for its completion are borne by the investor.<sup>219</sup> The final stages of an EIA are regulated in Articles 22 and 23, providing that

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Bulgaria's intent to create closer economic ties with the EC). *See generally* Cassidy, *supra* note 168, at 191-234 (discussing incentives and proposals for European Community and Eastern European cooperation on environmental clean up).

210. Environmental Protection Act of 1991, *supra* note 11, apps. 1-2 (dealing with projects liable to environmental impact assessment according to chapter 4 of the Act) (appendices on file with author) .

211. *See* Council Directive on the Assessment of the Effects of Certain Public and Private Projects on the Environment 85/337, Annexes I-II, 1985 O.J. (L 175) 40, 44-47.

212. Convention on Environmental Impact Assessment in a Transboundary Context, Feb. 26, 1991, Appendix I, 30 I.L.M. 800 (1991) [hereinafter Environmental Impact Assessment].

213. *See* Environmental Protection Act of 1991, *supra* note 11, apps. 1-2.

214. *Id.* ch. 4, art. 23.

215. *Id.* art. 19(2)(2).

216. *Id.* art. 19(2)(3); *see also id.* at Transitional and Concluding Provisions § 2(1).

217. *Id.* art. 21.

218. *Id.* art. 20(3).

219. *Id.* art. 22(4).

if the EIA concludes that significant ecological impact exists,<sup>220</sup> the project or activity cannot proceed.<sup>221</sup>

## B. Weaknesses in the Environmental Protection Act of 1991

There are a number of weak points in the amended law, including the lack of a blanket preemption of the old law. The concluding provisions of the EPA do not provide for the suspension of the existing general laws, such as the Air, Water, and Soil Protection Law of 1963 and the Nature Protection Law of 1967, but only proclaim as void certain articles of these laws.<sup>222</sup> Further, there is a need for implementing regulations. Some of the provisions are very general and therefore cannot be implemented without further regulation. An example of such a provision is Article 14, which states that "[t]he producers of goods and services, their intermediaries and tradesmen, . . . shall have the duty, at the time of sale or of rendering the service, to supply the purchaser or consumer with written, or . . . oral information about those components of the goods or services which are hazardous . . . ."<sup>223</sup>

## V. DIFFICULT SOLUTIONS

Bulgaria suffers from many of the ills of environmental degradation common to the former Soviet satellites of Eastern Europe.<sup>224</sup> Solving these problems has been difficult because of economic, political, cultural, and legal constraints.

### A. Economic Constraints

Most obviously, environmental improvement costs money. Bulgaria has even less to spend than it did a few years ago, because its economy has shrunk in the first phase of democratization.<sup>225</sup>

220. *Id.* art. 22(3).

221. *Id.* art. 23.

222. *See id.* at Transitional and Concluding Provisions § 5.

223. *Id.* ch. 2, art. 14.

224. Daniszewski, *supra* note 164, at A22; Andrew Manle, *Analysis and Perspective: Agriculture and the Environment in Central and Eastern Europe*, INT'L ENVTL. REP. CURRENT REP., June 2, 1993, available in LEXIS, Intlaw Library, INTENV File.

225. *First Quarter Production Drops by 25%*, BULG. BUS. NEWS, Apr. 27-May 3, 1992, at 5 (reporting that the deterioration of industry accelerated in 1992); *60 Per Cent of State Companies Report Larger Loss*, BULG. BUS. NEWS, Sept. 13-19, 1993, at 5 (reporting 60 percent of state-owned enterprises reporting a cumulative loss of 19.1 billion lev, treble the figure for January through June 1992); *see* Wes Jonasson, *Bulgaria-Economy: Privatization Proceeds Slowly*, INTER PRESS SERVICE, Feb. 15, 1994, available in LEXIS, News Library, CURNWS File; Brad Knickerbocker, *Hopes of Ecological Bliss Elude the Former Soviet Block*, THE CHRISTIAN

Funding is needed for monitoring devices, training of environmental personnel, salaries, waste clean up, antipollution equipment, etc. The country is short of funds generally and certainly has insufficient economic resources for many of these items. There is some hope that financing for certain environmental projects will be forthcoming from international sources such as the World Bank's Environmental Facility and the EC's PHARE program.<sup>226</sup> However, such money is just beginning to flow in, and is only directed at a few isolated projects. The financial resources needed for an integrated environmental infrastructure of rulemaking, monitoring, enforcement, prevention, and remediation is woefully lacking. The 1990-91 crisis at the Kozloduy nuclear plant highlighted this unfortunate mix of environmental and economic troubles.<sup>227</sup> The plant, an acknowledged danger, is operating only because Bulgaria cannot afford safe replacement energy.<sup>228</sup> Only when Western media reported the possibility of a Chernobyl-like incident did the European Community decide to provide funds for repairs.<sup>229</sup> For those environmental dangers threatening Western Europe less directly, the Community has been hesitant to open its pocketbook.<sup>230</sup>

## B. The Effect of Industry on the Environment

Compounding the problem, surviving industry is unwilling to damage its short-term competitiveness any further by increasing outlays for environmental activity.<sup>231</sup> Similarly, new industries attempt to begin operations at as low a cost as possible and avoid assuming costs of environmental protection.<sup>232</sup> In this sense the new profit-driven economy is no better for the environment than the old production-driven one.

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SCIENCE MONITOR, Mar. 16, 1994, available in LEXIS, News Library, CURNWS File.

226. See Ann MacLachlan, *Bulgarian Regulator Promises 'Big Decisions' for Kozloduy in 1992*, NUCLEONICS WEEK, Feb. 13, 1992, available in LEXIS, Energy Library, NUWEEK File; *Bank Lends \$2 Billion in Fiscal 1993 For 'Primarily Environmental' Projects*, INT'L ENVTL. REP. CURRENT REP., Sept. 22, 1993, available in LEXIS, Intlaw Library, INTENV File; see also Cassidy, *supra* note 168, at 231-32.

227. MacLachlan, *supra* note 226.

228. Liliana Semerdjieva, *Bulgaria's Troubled Nuclear Plant Plagued By Security Risks*, THE REUTER LIBRARY REP., Oct. 28, 1991, available in LEXIS, News Library, ARCNWS File.

229. See MacLachlan, *supra* note 226.

230. See Cassidy, *supra* note 168, at 191.

231. See *id.* at 190.

232. Cf. Serafin, *supra* note 5, at 181-84 (citing similar attempts to overcome the costs of controlling pollution in Poland).

Under the new regime, one of the industry-based problems that contributed heavily to pollution has certainly disappeared—the undervaluing and waste of energy resources.<sup>233</sup> Hydrocarbon fuel from the Soviet Union had been cheap, sold to satellites, including Bulgaria, at less than its true value.<sup>234</sup> Furthermore, these supplies were not threatened by the oil shocks of 1973 and 1979, since the Soviets were able to insulate their client states from the international market.<sup>235</sup> Therefore Bulgaria never implemented the sort of fuel efficiency legislation that burgeoned in the West in the 1970s and early 1980s.<sup>236</sup> Now that Bulgaria is entering the global economy, such legislation may be advisable. Entering this economy at a time of relative energy surplus, the true risk of not converting to more efficient processes is not fully felt from market forces alone. And, of course, greater energy efficiency means environmental gains.

### C. Politics and the Environment

During the past several years, the environment has lost much of its political importance in Bulgarian politics. Originally, the birth of such groups as the Ruse Committee and Eco-Glasnost were means for relatively safe confrontation with the former Communist government.<sup>237</sup> Environmental demands were only indirectly related to the government's political legitimacy, thus making political opposition somewhat easier. Having thrown out the old Communist regime, many "green" activists, whose real agenda was never centrally focused

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233. See Cole, *supra* note 5, at 44-45.

234. There is some debate surrounding this point. While it is true that Bulgarians did not pay world market price for Russian oil, they sometimes claimed that the processed goods that the Soviets received in exchange were even more undervalued. See Serafin, *supra* note 5, at 161-64 (describing the manipulated valuations under the Communist regime). In any event, oil and energy were plentiful and conservation strategies were rare. See *id.* at 165-66 (stating that the abundance of natural resources coupled with socialist theory of environment created atmosphere hostile to conservation).

235. But see *Eastern European Countries to Boost Their Own Energy Supply*, THE XINHUA NEWS AGENCY, Aug. 14, 1977, available in LEXIS, World Library, ALLWLD File ("with Moscow boosting the fuel prices and curtailing exports to Eastern Europe again and again, these countries have been plagued by mounting difficulties arising from inadequate energy supply [sic] in recent year [sic].").

236. But see *id.* (stating that in 1977, "Bulgaria has launched a campaign. . . to economize on fuel and energy"); Frank Bryant, *Bush Signs Energy Bill, Spurring Conservation*, DSM INITIATIVES, ENERGY USER NEWS, Nov. 1992, available in LEXIS, Energy Library, ALLNWS File.

237. Cf. Conway, *supra* note 72, at 55.

on the environment, seem to have lost interest in ecological causes.<sup>238</sup>

Political will may be lacking for additional reasons. Environmental protection is lower on the political agenda than it was in the revolutionary days of the late 1980s. First, prior to the events of autumn 1989, it was unsafe and even illegal to directly challenge government legitimacy.<sup>239</sup> The environment offered a less transparent, and thus less dangerous, field for dissent than did direct political protest. Opposition leaders, whose main concern may have been political change rather than the protection of nature, joined the environmental movement.<sup>240</sup> With the advent of political liberty, their interest in the environment waned.<sup>241</sup> Second, outside forces such as economic conditions and pressure from international financial institutions have forced recent legislative energies to be devoted to the rapid privatization of the economy with little room left on the lawmaking agenda for anything else.<sup>242</sup>

The political situation in Bulgaria has been in a state of continuing flux since at least 1989.<sup>243</sup> The U.D.F. government in 1992 was not as fully committed to environmental regulation as might be expected from the prominent role played by environmental protest in the ouster of the old Communist regime. Such weakening of its environmental momentum may have been partly due to the split in the U.D.F. prior to the last parliamentary elections.<sup>244</sup> As a result of the split, many of the activists in environmental matters in the first post-Communist government and first post-Communist National Assembly no longer held government positions, so their expertise was not available to, for example, implement new environmental

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238. See Field Notes, *supra* note 6 (interview with Ventsisav Valev, President of Ecoglasnost, June 20, 1991). *But cf.* Conway, *supra* note 72, at 62 (suggesting that "as Eastern Europeans experience individual political choice . . . they may elevate the environment to the top of their political agendas.").

239. See Moudrova, *supra* note 146, at 2-3.

240. Conway, *supra* note 72, at 55; see also LINCOLN GORDON ET AL., *ERODING EMPIRE, WESTERN RELATIONS WITH EASTERN EUROPE* 29 (1987) ("The disaster [Chernobyl] may also have shaken the complacency among both officialdom and the public at large about ecological decay; it certainly led to increased vigilance at nuclear power stations.").

241. Another possibility is that new governments are merely facing the difficult reality of balancing the concerns of different interest groups. Conway, *supra* note 72, at 55, 57. Concerns for the economy may take priority over environmental issues for some people. *Id.* at 55.

242. ZBIGNIEW BOCHNIARZ, *ENVIRONMENTAL POLICIES IN CENTRAL AND EASTERN EUROPE: DEVELOPMENT AND INFORMATION* 165-67 (1992).

243. *DEMOCRATIZATION IN BULGARIA*, *supra* note 13, at 1-4, 11, 18-23.

244. See *id.* at 13.

standards. The EPA was drafted by such environmental activists who are now out of power. Their successors in the Assembly and the government were not enthusiastic about enforcing their predecessors' policies, partly for reasons of personality and partly for reasons of ideology. In any event, only a small amount of implementing legislation and regulation envisioned by the general 1991 statute was passed in 1992.<sup>245</sup> Finally, there are simply not that many environmental experts in Bulgaria. Conformity may now be the more important criterion for election or appointment to office.

Perhaps the new coalition government of Professor Berov will provide renewed leadership and expertise on environmental issues. However, after its first year of very troubled economic and political times, it is difficult to judge the new government's environmental commitment.

#### D. Central Power v. Local Autonomy

The lack of definition in the jurisdictional divisions between central and local authority of the post-Communist Bulgarian system creates another political constraint.<sup>246</sup> Most local governments have not fully tested the limits of their ability to regulate pollution against the backdrop of the prerogatives of the Ministry of Environment, exercised in part by the ministry's regional inspectorates.<sup>247</sup> Uncertainty is exacerbated by disagreement over entitlement to certain funds generated by environmental fines in conformance with the 1991 legislation. During 1992, some localities claimed that the central government was withholding its share of such money.

#### E. Expertise

There are very few environmental lawyers in Bulgaria.<sup>248</sup> In the past there was little environmental enforcement and no Rule of Law. Under the Zhivkov regime, any real decision-making power concerning the environment rested with government officials and enterprise managers. Environmental lawsuits challenging major decisions were rare, if not nonexistent.<sup>249</sup> The lack of such legal expertise slows all current aspects of environmental enforcement. The drafting of laws

245. *Teetering Eastern European Economies Divert Attention From Environmental Woes*, INT'L ENVTL. DAILY (BNA), Feb. 7, 1992, available in LEXIS, Envirn Library, BNAIED File.

246. BULG. CONST. ch. 7.

247. Tamara Raye Crockett & Cynthia B. Shultz, *Analysis and Perspective: Environmental Protection Issues in Eastern Europe*, 13 INT'L ENVT REP. CURRENT REP. 258 (1990).

248. Field Notes, *supra* note 6 (interview with Judge Sabina Christova, June 25, 1991).

249. See Philip Warburg, *Opening the Door*, THE ENVTL. F., Nov./Dec. 1991, at 18, 22.



and regulations, prosecution of violators, administration of existing standards, and the pursuit of civil remedies are all retarded by the lack of legal expertise.<sup>250</sup>

Furthermore, there is a lack of technical expertise, whether for monitoring, standard setting, or enforcement. For instance, the possibility of using civil litigation as a tool for environmental improvement, as has been done in the United States, is limited not just by too few environmental lawyers, but also by too few competent expert witnesses who are necessary to prove the existence, degree, and causation of environmental damage.<sup>251</sup> The promulgation of effective implementing regulations for the new environmental statute and for other ecological aims is likewise stalled in part by this lack of legal and technical experts. And, of course, as mentioned above, the money to support such experts and their work is lacking.<sup>252</sup>

#### F. Legislative Agenda and International Pressure

There is a pressing need for new legislation and regulations to implement the promises of the EPA and its December 1992 amendment.<sup>253</sup> However, the U.D.F. government devoted its legislative energies to other tasks, mostly related to new laws promoting privatization and the new market economy. Both the inclinations of the right-of-center government and external pressures from bodies such as the International Monetary Fund (IMF) and the World Bank<sup>254</sup> caused this concentration on economic and ideological goals at the expense of all other concerns, including the environment. In early 1992, for example, the World Bank and the IMF demanded that, before hundreds of millions of dollars of credit would be made available, new legislation on enterprise privatization, land privatization, and banking be passed.<sup>255</sup> All three were passed within a few months by the National Assembly while environment legislation lay

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250. See also *id.* at 20 (stating citizens' groups are angered at slow progress, and are initiating educational measures).

251. Field Notes, *supra* note 6 (interview with Judge Sabina Christova, June 25, 1991).

252. See *supra* text and accompanying notes 232-51.

253. See Moudrova, *supra* note 146, at 25.

254. *Bulgaria: Press Error Sparks Political Debate on Ties with IMF*, INTER PRESS SERVICE, Mar. 18, 1992, available in LEXIS, News Library, INPRES File (asserting that the IMF and World Bank have made massive loans dependent on parliamentary progress on legislation relating to the market economy) [hereinafter *Press Error Sparks Political Debate*].

255. *Id.*

dormant.<sup>256</sup> Apparently freedom from Moscow's writ has been replaced by a different form of outside pressure.

There is an irony here. A strong argument can be made that ignoring the environmental problems, including their legal aspects, impedes economic growth by fostering uncertainties that inhibit Western private investment.<sup>257</sup> Western companies do not want to buy uncapped and even unidentified environmental liabilities.

### G. What Law Applies?

Effective environmental legislation did exist prior to the 1989 revolution.<sup>258</sup> The problem under the old regime was the lack of enforcement. Bureaucratic discretion, corruption, and a production-driven economy were also obstacles—both for environmental protection and law enforcement in general. A provision of the penal code, supplemented by the classification of environmental reports, actually made it a crime to reveal pollution information concerning state enterprises.<sup>259</sup> Another law exempted projects from the pollution standard if they were in the national interest,<sup>260</sup> a loophole large enough to let any government-sponsored project proceed. This classification practice has ceased, and the exception provision has been repealed.

Yet almost all of the old environmental regulations are still on the books. This includes statutes, executive decrees, ministry regulations, and norms promulgated by the Committee on Standardization.<sup>261</sup> Preexisting environmental norms are a mixed blessing. On the one hand, they provide standards that can be enforced currently, without waiting for a slow legislative process. On the other hand, they create some confusion as new laws are passed. It is not likely that there will be explicit repeal of past law in all cases.<sup>262</sup>

256. *\$212 Million in Stand-by Credit Approved for Bulgaria, IMF Says*, INT'L FIN. DAILY (BNA), Apr. 21, 1992, available in LEXIS, Banks Library, BNAIFD File [hereinafter *Stand-by Credit*].

257. Marlise Simons, *Pollution Blights Investment, Too, in East Europe*, N.Y. TIMES, May 13, 1992, at A1 (stating that "experts say a major obstacle to investment is the absence of any firm rules defining responsibilities for past ecological damage.").

258. See *supra* text accompanying notes 250; see also Field Notes, *supra* note 6, (interview with the Burgas District Council).

259. See Cole, *supra* note 5, at 53 (stating that, in the Soviet Union, "[e]nvironmental statistics were state secrets").

260. Air, Water & Soil Act, *supra* note 126, art. 24.

261. See Field Notes, *supra* note 6 (interview with Krassen Stanchev, Chair, Environmental Committee, June 18, 1991).

262. See Engelbrekt, *supra* note 1, at 7.

Rather, by the language and context of the new norms, lawyers, officials, judges, and managers will have to figure out what still applies from the old regulations. In cases of direct conflict, a new, legitimately formed norm would clearly control. However, there will undoubtedly be situations where it is not apparent whether a new standard is meant to replace or to supplement an old one.

This issue is subject to further confusion through politicization. For instance, there is a story of a government official who proclaimed that since he was the minister of a new government, he was not bound by executive decrees of the old regime, including environmental ones.<sup>263</sup> Such a position is legally incorrect, although it might represent the misinformed view and practice of certain officials.

#### IV. THE RULE OF LAW AND A CULTURE OF ADVOCACY: STILL MISSING

Law was not respected under the old regime. Democratization offers the opportunity that laws, including environmental laws, will be respected. However, an opportunity is not a guarantee. New forms of domination may replace old forms, with the law and the environment both victims. Danger on a number of fronts, threatens the development of a true democratic Rule of Law that effectively enforces environmental norms benefiting the Bulgarian people.

First, a new political elite does not necessarily mean a new political culture. Rather than demonstrating a commitment to pluralist tolerance and neutral application of public power, both political leaders and government officials have often treated opponents as enemies to be purged, rather than legitimate participants in public debate.<sup>264</sup> Such lack of neutral principles in exercising state and political power bodes ill for enforcement of environmental

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263. Of course, many decrees of the old Communist regime are no longer law because they have been implicitly or explicitly revoked by valid new laws, including the new Constitution. However, legitimately set norms not revoked should continue to be binding law by generally accepted principles of legal interpretation.

264. Vladimir Shevelev, *Are Politics Now Being Decided in the Courts?*, MOSCOW NEWS, Aug. 26, 1992, available in LEXIS, Europe Library, MOSNWS File; *UDF Accuses Government of "Political Dismissals"* (BBC Summary of World Broadcasts and Monitoring Reports, Feb. 3, 1993), available in LEXIS, News Library, BBCSWB File; DEMOCRATIZATION IN BULGARIA, supra note 13, at 18-21; see also Engelbrekt, supra note 1, at 8 (citing the return of repressive police practices).

standards, which by their nature often strike governments as inconvenient.

Second, the concentration of wealth in the least public-spirited segments of society—black, red, and blue money<sup>265</sup>—threaten environmental gains. The legal and extra-legal means powering privatization in Bulgaria seem calculated to redistribute the common wealth to a less-than-scrupulous small minority of citizens (and perhaps some noncitizens).<sup>266</sup> Concentrated wealth, especially in the hands of those who have already demonstrated their preference for private gain over the public good, is likely to impede environmental progress in two ways: one, its disproportionate influence on the legislative process will retard formation of strong environmental norms; and two, its power will help to shield its acts from rigorous oversight or enforcement.

Furthermore, new external forces may be replacing Soviet domination as a limit on national autonomy. For the environment, this may be a mixed phenomenon. On the one hand, entities such as the Council of Europe and the European Community may promote their relatively strong environmental standards as part of the price for gradual integration of Bulgaria into the European political and economic region.<sup>267</sup> On the other hand, international economic institutions—exemplified by the World Bank and the IMF—with their strong influence on the legislative agenda of the National Assembly—may come to represent a serious check on Bulgarians' ability to choose the laws by which they rule themselves. Recent environmental legislation has taken a back seat to the privatization program demanded by Western financial institutions.<sup>268</sup> The achievement of an internal Rule of Law means little if external forces render it irrelevant.

265. The most common allegations for "black" money concern former secret police agents. In the past these agents facilitated the smuggling of cigarettes, drugs, arms, and other contraband through Turkey. The smuggling has continued since 1989, now for the private profit of the former agents themselves. *See, e.g., BULGARIA — A COUNTRY STUDY*, 265 (Glenn E. Curtis 2d ed. 1993). "Red" money is usually believed to have been taken out of the country and later "laundered" through the numerous small commercial companies used by the former Ministry of Foreign Trade. Allegations of "blue" money concern UDF deputies who have allegedly misused their positions as government officials or members of newly elected governing boards of banks or state enterprises.

266. *See also* Cole, *supra* note 5, at 57 (supporting argument that laissez-faire privatization may cause problems, but asserting the claim that most theorists today advocate regulated capitalism with respect to the environment).

267. *See* Cassidy, *supra* note 168, at 201-02.

268. *See Stand-by Credit, supra* note 256; *Press Error Sparks Political Debate, supra* note 254; *Bulgarian Premier Predicts Early Approval of New Laws to Attract Foreign Investment*, 9 INT'L TRADE REP. (BNA) (Mar. 11, 1992), at 456.

Finally, Bulgaria lacks a culture of advocacy. The obligation of "zealous representation" is an ethical norm that binds American lawyers to assertive advocacy of their clients' interests<sup>269</sup>—often including challenges to authority or accepted wisdom. Bulgaria, however, could use a small dose of such "zealotry." Bulgarian attorneys are far too ready to accept a procedure as appropriate simply because it has always been followed. There is not the critical and creative mentality of challenge that in the West we expect of our legal advocates. Before the Rule of Law can take hold in Bulgaria or advance environmental regulation, certain challenges must become more commonplace within the legal system including: the challenge of accepted (but not literally mandated) jurisdictional limits; of interpretations of law imposed by bureaucrats in authority; and of actions by powerful enterprises or individuals whose legality is never questioned because of the status of the actors. Weak enforcement of a particular provision of the Environmental Protection Act of 1991 provides a noticeable example of the lack of a culture of advocacy. Articles 29 and 30(2) of the statute read:

Article 29

The persons found guilty of harming others by pollution or damage to the environment shall be bound to remedy the damage. The compensation may not be less than the sum required to repair the damages caused.

Article 30(2)

The claims to cease the disturbance and to eliminate its effects may be lodged by the municipal authorities, as well as by associations of citizens with an ideal purpose and by every citizen.<sup>270</sup>

This provision would seem to provide public procurators, who act in a similar capacity to Western district attorneys, with the authority to seek environmental damages on the public's behalf against polluters. When asked about this possibility, a local procurator in the Bourgas region indicated that his office did not pursue such claims.<sup>271</sup> He cited the ambiguity in the admissibility and competence sections of the EPA<sup>272</sup> as the cause for this lack of prosecutorial zeal.<sup>273</sup>

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269. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.3, cmt. 1 (1992), *reprinted in* THOMAS D. MORGAN & RONALD D. ROTUNDA, *SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY* 12 (1992).

270. Environmental Protection Act of 1991, *supra* note 11, ch. 6, art. 30(2).

271. Field Notes, *supra* note 6 (interview with Bourgas District Attorney, July 5, 1993).

272. Comparable to certain issues of standing and jurisdiction in American courts.

273. Field Notes, *supra* note 6 (interview with Mr. Bajanov).

There is no apparent reason that a statute duly passed by the National Assembly should not take precedence over older laws and mere customary practice. The Environmental Advisor to the President confirmed the suspicion that the problem was partly one of legal culture.<sup>274</sup> He argued that the new statute authorized the sort of litigation discussed with the local procurator, and that prosecutorial inaction was more a function of training and habit than of jurisdiction.<sup>275</sup>

Another example of the missing culture of advocacy surfaced in discussion between the head of an agricultural cooperative in the Bourgas region and this Article's investigators.<sup>276</sup> The head of the cooperative told us proudly that he employed a full-time attorney. At a later point in the conversation, he complained about a loss of cooperative land that had been taken by a huge state-owned petrochemical complex a number of years before without compensation. One investigator asked whether his lawyer had examined the possibility of suing the government or the petrochemical complex under the new land restriction laws or under any other statutes or regulations. After a moment of hesitation he responded that this was not the sort of thing that attorneys do. Asked what, in fact, his attorney did, he claimed that problems of payment collection from the cooperative's customers and job-related injury claims from workers occupied most of his lawyer's time.<sup>277</sup> The attorney thus appears to be just another bureaucratic functionary—not a creative advocate for the cooperative's interests, willing to assert innovative and challenging claims.

These preceding examples seem characteristic of the lack of advocacy mentality in Bulgarian culture. This is understandable after four-and-a-half decades of Communism, where lawyers served the bureaucracy rather than challenging it. However, in order to promote progress, especially in areas like the environment, the democratic experience of the West shows that a more crusading legal community is needed.<sup>278</sup>

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274. *Id.*

275. *Id.*

276. Field Notes, *supra* note 6 (interview with Mitko Dobrev, Chair of Liquidation Committee of Kameno Cooperative).

277. *Id.*

278. Contrast the importance of environmental nongovernmental organizations (NGOs) and their lawyers in pushing forward social programs through litigation in the United States.

## VII. CONCLUSION

Environmental activism was central to the peaceful Bulgarian revolution that culminated in the ouster of Todor Zhivkov in November 1989. Terrible ecological degradation coalesced with a national desire for change to incubate political rebellion in the relatively protected atmosphere of environmental protest—an atmosphere safer than direct political challenge to the totalitarian regime. Therefore, it is not surprising that both Bulgaria's new Constitution and one of its first major post-Communist general statutes proclaim a commitment to protecting and improving the natural environment and safeguarding human health which is dependent on it. Unfortunately, however, the road from word to deed is a long and rocky one.

Even under the Communists, decent environmental laws existed on paper. The problem was that they were not enforced due to the production-driven economy; the corrupt and unresponsive bureaucracy; the immense discretionary power of the Communist elite; and the lack of respect for neutral legal norms as regulating principles for social behavior. Whether all these obstacles have disappeared with the recent revolution is debatable. There is some evidence that a true culture of civic responsibility has not fully replaced the old culture of favoritism and bureaucratic discretion. It is not clear that persons newly in power will elevate public good and neutral principles over private gain and partisan policy. Furthermore, Bulgaria is presently lacking in the resources needed—financial, technical, and legal—to implement fully a new environmental policy. These inadequate resources are further strained by short-term political priorities that are directing legislative and administrative energy toward the privatization process. Bulgaria had made a hopeful start toward progress on environmental regulation in the first two years of post-Communist rule. However, that progress has been stalled and the nation seems to be taking an ambivalent pause while it struggles with many problems and few easy solutions.

