



Knowledge centre environmental law and health law of the court of appeal of 's-Hertogenbosch (Netherlands)

Answers to the questionnaire in preparation of the EUFJE Conference 2016

Question	Answer
1.1	The triggers to open a file on an environmental offence are: The notice and recording of an offence by public servants with an environmental inspection task or a report at the police station by a citizen.
1.2	<p>It is prescribed in the Code of criminal procedure that there are at least 10 days between the citation and the first day in court. Often the citation is issued approximately a month before the first day in court.</p> <p>From the moment the suspect knows that he is charged with a criminal offence – that can be days, weeks or months before the citation is issued – it can take between some weeks and a year till the judgement in first instance is given, depending on the scope and difficulty of the case.</p> <p>From the judgement in first instance till the judgement in appeal, it takes between a month and a year and a half.</p> <p>As soon as the trial in first instance or appeal starts, the case can be decided in one day (police court) or fourteen days (full court), but when further investigation (witnesses, technical research) is necessary, it takes longer.</p>
1.3	Hearing witnesses, further technical (environmental) research ordered by the judge.
1.4	Yes.
1.5	Undue delay, if caused by the prosecution, can lead to a lower sentence.
2.1	<p>In environmental law both punitive and remedial sanctions are possible. In criminal cases most of the time punitive sentences (chiefly fines) are applied. The sentences are implemented. The prosecution is in charge.</p> <p>In administrative law primarily remedial sanctions are applied, both reinstatement of the environment as compensatory action. The government is in charge but third parties (complainers) can request implementation of a remedial sanction. When implementing a noncompliance penalty the government has to prove there's a repeated violation.</p>
2.2	In criminal cases a remedial sanction can be imposed but this doesn't happen very often. Most of the time a remedial sanction has been

	imposed in the parallel administrative case before. They can imposed ex officio and on request by the prosecution.
2.3	A worldwide NGO cannot be a third party in a criminal case. They can (and the do) take part in an administrative case and request remedial action.
3.1	<ul style="list-style-type: none"> - There have to be at least two means of proof. The exception is a report of the offence, written by a police officer that saw it happen. - The admissible means of proof are listed in the Code of criminal procedure (the observation of the judge, statements (or testimonies) given by the suspect, a witness or an expert, written evidence like reports). - The most common means of proof in an environmental case are the own statement of the suspect and reports from (specialised) police officers and experts.
3.2	The rights of a suspect have to be regarded during the investigation by the police and during the trial. This includes the legal assistance of a lawyer, the right to remain silent and the right of contra-expertise.
3.3	It is not possible for the Knowledge centre environmental law and health law to answer these question in general.
3.4	
4.1	Environmental law makes extensive use of self-monitoring and reporting obligations. In environmental permits of IPPC installations or smaller installations the use of controlling instructions is common. In general regulations there is a growing use of controlling and reporting instructions. By law the inspection has the right to ask information, perform an inspection. Noncompliance with such a request can be sanctioned.
4.2	There is a thin line between administrative inspections and criminal investigation. Evidence gathered during an administrative inspection can be used in an criminal investigation. When during an inspection a criminal investigation is started, the offender has to be informed of his rights in regard to self-incrimination.
5.1& 5.2	There is the possibility of a criminal and an administrative case at the same time. By law an administrative fine cannot be imposed if a criminal case is being tried. (5:44 AWB). However, there's no law prohibiting a (administrative) revocation of a permit (which in circumstances can be seen as a punitive sanction) pending an administrative case.
6.1	No
6.2	
6.3	It is prescribed in the Code of criminal law that the financial capacity of a suspect is taken into account by determining the height of a fine.
7.1	No
7.2	No
8.1	Yes. In more and more case there's an appealing for article 8 ECHR and the precautionary principle. (ECLI:NL:RVS:2013:1457 and ECLI:NL:RBOBR:2013:2855).
8.2	Yes, in cases where the available knowledge of risks is not available

9.1	Yes. This principle lies on the base of prosecution of environmental crimes. It is taken into account in the motivation of the sanctions.
9.2	Yes

If there are any questions please mail to m.j.h.m.verhoeven@rechtspraak.nl

Yours sincerely

Mr. M.J.H.M. Verhoeven
Senior judge
District court of 's-Hertogenbosch
Coördinator administrative law Knowledge centre environmental law and health law of
the court of appeal of 's-Hertogenbosch