

THE ROLE OF THE JUDICIARY IN THE IMPLEMENTATION AND ENFORCEMENT OF ENVIRONMENTAL LAW¹

By Justice Amedeo Postiglione

The significance of this theme is demonstrated by the chronology of events listed below.

It has to be recognised that UNEP (the United Nations Environment Programme) has the merit of having introduced, with respect to the Conference of Rio de Janeiro of 1992 (directed at the States and only NGOs) an innovation: the involvement of the Supreme Courts of the different continents in the "Global Judges Symposium on Sustainable Development and the Role of Law" held in Johannesburg from 18 to 20 August 2002, to coincide with the World Summit on Sustainable Development.

The following events came within this strategy:

- The *Symposium on Environmental Law for European Judges*, held in London, on 10 and 11 October 2002, on the initiative of the European Environmental Law Association, IUCN and ICEF;
- The *Judges' Planning Meeting for the Implementation of the Johannesburg Principle*, held in Nairobi, Kenya, on 30 and 31 January 2003, on the initiative of UNEP and with the participation of different international organisations as observers (IUCN, ICEF, INECE);
- The Symposium *Johannesburg Summit Next Steps: The Role of the Judiciary in the Implementation and Enforcement of Environmental Law*, held in Rome, on 9-10 May 2003, on the initiative of ICEF, in co-operation with the Italian Council of the Judiciary, UNEP, OECD, the Council of Europe, the European Commission, the Italian Government, the Italian Constitutional Court, the Italian Supreme Court, the Italian Council of State, IUCN, the European Environmental Law Association, the International Court of Environmental Arbitration and Conciliation, the Cousteau Society, the Centre International de Droit Comparé de l'Environnement and Biopolitics International. The Rome Symposium agreed with the necessity and urgency for creating a specific and permanent group of European judges working within the environmental law domain which came to be called the **European Union Forum of Judges for the Environment (EUFJE)**. During the work in progress at the conference a discussion was held, in an ad hoc meeting, about the organizational phase for the preparation of the Forum. A small team of judges was nominated with the duty of defining its targets, structure, attributions, working program and annual

¹ Preface to the volume "The Role of the Judiciary in the Implementation and Enforcement of Environmental Law" by Amedeo Postiglione (ed), Bruylant, Brussels, 2008.

budget, with the required flexibility. Members of this team were: Guy Canivet, Chief Justice, Court of Cassation, France (with the role of. President of the Forum); Robert Carnwath, Royal Courts of Justice, United Kingdom; Luc Lavrysen, Court of Arbitration, Belgium; Ulf Bjallas, Environmental Court of Appeal, Sweden; Amedeo Postiglione, Supreme Court of Cassation, Italy.

- Meeting of the European Union Forum of Judges for the Environment - Luxembourg, April 2004;
- Meeting of the Arab Forum of Judges for the Environment - Cairo, May 2004;
- An ICEF initiative in Ostia Antica (Rome) on 26-28 May 2005, held in association with the EUFJE and the European Commission on the very topical issue of *The Prevention and Remedying of Environmental Damage in the light of Directive 35/2004/EC*. Judges were participating from the 25 Member States of the European Union and the Proceedings were published by Bruylant, Brussels.
- EUFJE's Annual Conference in November 2005 in London on Waste;
- EUFJE's Annual Conference in September 2006 in Helsinki on the *Protection of Natural 2000 Sites*;
- EUFJE's Annual Conference in December 2007 in Luxembourg on *Criminal Enforcement of Environment Law in the light of the new Directive* ;
- The Venice Conference on 24-26 May 2007 organised by ICEF on *The Protection and Sustainable Development of the Mediterranean Black Sea Ecosystem* was the next important step. Focusing on the sea in general deserves greater effort in awareness raising by the entities called upon to apply the laws in practice (not only Judges but also administrative bodies). ICEF acted in this spirit, fully aware that the difficulties regarding the chosen topic were considerable (the subject matter is not sectoral. It is regulated, above all, by international law and less so by Community law. In the case of the Mediterranean Black Sea, the role of North Africa and the Middle East cannot be ignored, as well as the Black Sea, which is flanked by the new Member States of the EU, like Romania and Bulgaria. The most advanced experiences of the model for the protection of the Baltic Sea and the North Sea were also taken into consideration). The attempt to involve also a certain number of Judges from non-European countries lead to the collaboration with the Arab Forum of Judges for the Environment and a bid to collaborate with the specific UNEP bodies that work in Athens and Istanbul. Despite these difficulties, EUFJE is committed to the success of the Venice Conference, out of which, it is hoped, that important indicators will arise for stronger protection of the sea as part of common human heritage. The possibility of setting up a Working Group ad hoc under the sponsorship of UNEP in the future could be evaluated. The position of the French government for the creation of a Mediterranean Union for the reciprocal co-operation of all the interested States is to be applauded. The Supreme Courts of the respective

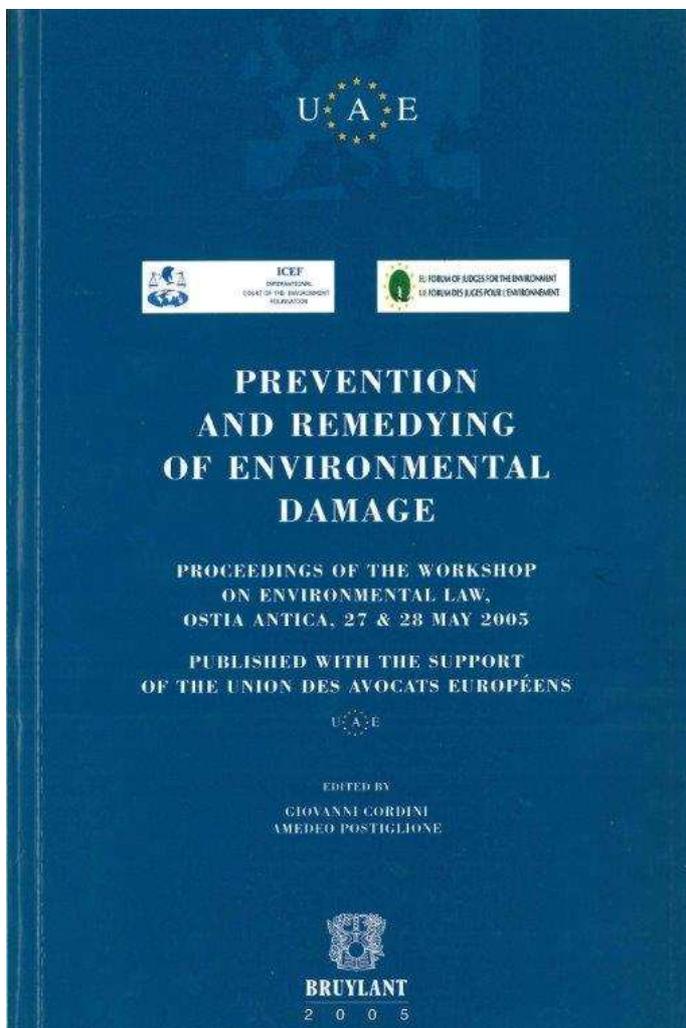
countries (including those on the Black Sea rim) can once again make a valid contribution through their independence and experience;

- EUFJE's Annual Conference in Paris at the Court of Cassation on 7 and 8 October 2008 on Soil Pollution;
- Another important Conference in Paris, on 9-10 October 2008 with the support of the European Commission (DGENV) on the Judge in Europe and the EU Environmental Law focusing on a programme of cooperation between the national Judges of Member States for the implementation of the European environmental law.

Another extremely important sector for the future is access to justice, on which there is already jurisprudence in the Member States while the EU is currently drafting a special Directive (Com /2003/0624).

The EU Forum of Judges for the Environment is very attentive to this issue and has participated in a Working Group in Geneva promoted by UNEP on access to justice, also in the light of the Aarhus Convention of 25 June 1998 as well as in several seminars in Central Asia and Eastern Europe. On this issue, ICEF, due to its specific objects, aimed at securing effective global governance for new emerging problems (climate change, desertification, loss of biodiversity), has acquired much and valuable experience through a series of international conferences held over a 15 year period and it is available to offer its collaboration in the future.

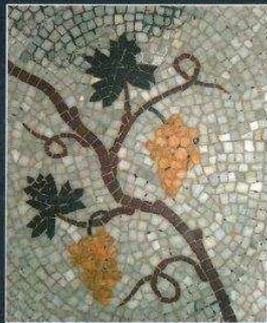
Covers of Proceedings publications of ICEF conferences with the participation of judges from EUFJE



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The role of the judiciary in the implementation and enforcement of environment law

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The Protection and Sustainable Development of the Mediterranean-Black Sea Ecosystem

Proceedings of the ICEF International Conference
Venice, 24-26 May 2007

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Rome - Ministry of Foreign Affairs
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