

THE EUROPEAN UNION FORUM OF JUDGES FOR THE ENVIRONMENT

QUESTIONNAIRE RELATING TO THE TRAINING AND THE SPECIALISATION OF MAGISTRATES IN ENVIRONMENTAL LAW

(Germany, Austria, Belgium, Denmark, Spain, Finland, France, Greece, Ireland, Italy, Lithuania, Luxembourg, Norway, Netherlands, Poland, Portugal, United Kingdom, Slovenia, Sweden)

Part II: Training and Information

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A - Training

1 - General organisation of the training

(a) Initial training

Three models can be differentiated.

Certain countries do not organise any initial training for judges (or even a short training period, as is done in Norway and the Netherlands) because the judges are recruited from among practitioners (legal practitioners but sometimes from among other disciplines: engineers and biologists in the case of the Finnish Vassa Administrative Court) under the condition that they have exercised their profession for a minimum amount of time. This is the case in Ireland, as well as for professional judges in the United Kingdom, and for administrative judges in Finland. In Belgium, Denmark, Finland (for judicial magistrates), Norway and the Netherlands, the direct recruitment of judges and/or the members of the *Parquet* (Prosecutor's Office) from among jurists who have practised professionally for the requisite amount of time coexists with the recruitment of young graduates who have completed a training course.

Under the second model, the training is decentralised and takes place essentially by shadowing judges and/or the members of the Prosecutor's Office, and if need be, includes theoretical courses. This is the case in Germany, Austria, Belgium, Poland (where the creation of a centralised training program is being studied), United Kingdom for magistrates (where there are also plans to centralise the training), Luxembourg (for judicial judges), Slovenia, Sweden, Denmark, and Finland (only for assistant-judges who are recruited without any professional experience).

The third model consists of countries endowed with a National Training Centre for Judges (Spain, Greece, Lithuania, Portugal, Netherlands), or possibly, countries like France which have two establishments, one for judicial judges and the other for administrators, including administrative judges (Luxembourg has a National Institute of Administrative Training). The theoretical courses are given in this establishment and are completed with training sessions which are supervised by the Centre (Spain, France, Portugal) or which are organised under the authority of the head of the jurisdiction (Lithuania). In some cases, there are additional external training sessions (in the Netherlands for recent graduates who, based on a contest, are interns for two years generally in a law firm).

(b) Continuous training

Certain countries do not offer continuous training for magistrates (Finland, Greece, Luxembourg, Sweden).

In the countries which offer continuous training, the models can be differentiated based on two parameters - a centralised or decentralised system on the one hand, and a mandatory or optional system on the other hand - without there necessarily being any connection between the categories.

Continuous centralised training or continuous decentralised training

Only Poland currently offers a training model which is totally decentralised (the programmes are developed and the courses given within the courts) and which, at the same time, is systematic for all judges. In the United Kingdom, the training is only decentralised for “magistrates” (the responsibility rests with the Magistrates Courts Committees, within the jurisdiction of a Regional Court).

Mixed systems exist in Sweden and Finland (for administrative judges in the latter country) where there lacks a systematic programme of continuous training. Conferences on current issues are proposed either by the jurisdictions, the central administration, or universities (Helsinki). In France, the continuous training is primarily run by the National School of Magistrates and consists of training sessions or seminars lasting 2 to 5 days which are listed in an annual catalogue given to the magistrates. In France, there are also day-long conferences organised by the Court of Appeals based on the needs expressed by the magistrates.

In the countries where the continuous training is centralised, the training is organised or co-ordinated either by (1) a public establishment called the Judicial School, the Magistrates School, or Centre or Institute of Judicial Studies (Germany, Spain, France, Ireland, Lithuania, Netherlands, Portugal; Slovenia); (2) a Council of Judicial Studies (United Kingdom for professional judges); (3) a Superior Council of Magistrates (Italy, Belgium, for the latter country, for the development of the programme whereas its implementation is the responsibility of the Minister of Justice); (4) the administration of the courts after consulting the professional associations (Denmark, Norway, Sweden); or (5) by the Minister of Justice (Austria). Finland envisages conferring the responsibility, for the judicial magistrates, to a Training Council for Judges, and Belgium projects creating a School of Continuous Training for Judges.

Mandatory continuous legal training or optional continuous training

Spain, Ireland, Lithuania, Poland, the UK, and Slovenia have mandatory continuous training. In Spain, one must be trained when changing courts. In Ireland, judges appointed after a 1995 law, commit to following courses considered necessary by the head of the jurisdiction. In Lithuania, continuous training is mandatory at least once every 5 years, as well as in specific instances: changing courts, promotion, substantial legislative changes. In Poland, internal training within jurisdictions is mandatory for all judges or for some of them, depending on the topics. This compulsory training is always financed by the state but does not always lead to a reduced workload (in Ireland, aside from the annual court conference, the training takes place after hours or on Sundays).

In the other countries, training is optional for magistrates that are permanently appointed. This training is generally not taken into account or plays a small role for promotions or appointments to positions, except in Germany and in Spain (in France, a proposal designed to make the training mandatory and to allow training to be taken into account for promotions is being studied). If the judges have the right to take a leave of absence (assuming the appropriate authority approves their request for training), their workload is not necessarily alleviated. As to expenses covered by the state, transportation and accommodation costs are not always included (Portugal).

In the countries that offer group training, the time that judges can devote to it per year is around 5-15 days. Certain countries have found unusual solutions: Greece allows judges to take a year-long leave during their careers in order to take courses or allows them to do an internship in a national or foreign institution. In Norway, the judges that have 10 years of seniority can request a paid leave of absence for 6 months, in order to attend a study program. Each year, one of 19 members of Norway's Supreme Court is allowed to devote 3 months to update his/her legal knowledge. In Slovenia, the Ministry of Justice offers educational scholarships to attend courses at a national or foreign university, with the possibility of taking a one-month leave per year, with compensation for the loss of salary.

2 - Training in Environmental Law

At the recruiting stage, no country expressly requires specific knowledge in environmental law. Nevertheless, we note that, in Finland, the master of law required to become a judge includes at least one exam in environmental law and that certain judges of the Vaasa Administrative Court have degrees in biology or engineering. In Austria, non-judicial members of the Environmental Senate are recruited from among civil servants of federal ministries or the environmental administration of Länder.

At the initial training stage, only Germany and Spain offer systematic teaching of environmental law for all judges (in Spain, this mainly involves criminal aspects at this stage). In Belgium, the three-month externship can be completed at the environmental inspection office. In France, the training that is provided by the *Ecole nationale d'administration* involves a 6 month internship at the *préfet* (departmental state authority that grants the majority of authorisations in the environmental law area and that also has inherent powers to order and execute sanctions at its own initiative) or with a municipal entity (having jurisdiction over planning and/or the management of services such as water processing, supplying drinking water and waste processing).

In the case of continuous training, environmental law gains importance :

- conferences and/or internships in the area of environmental law appear in the annual training catalogue offered to all magistrates (Belgium, France, Italy, Netherlands, Portugal).
- training in environmental law is provided only to those magistrates specialised in that area (Germany, Austria, Slovenia for the administrative division of the Supreme Court, and in Sweden environmental courts hold, in addition, an annual national conference where topics that are relevant to them are discussed) and, if applicable, to those who are about to become specialised in the area (Spain).
- conferences are spontaneously organised in accordance with the needs expressed and with recent legislative developments (Finland, Lithuania, Poland).
- no training is provided by the judicial authorities in environmental law however judges that

are interested can choose to participate on their own in international conferences or colloquiums organised by universities, the bar, etc. (Ireland, Greece, Luxembourg, United Kingdom).

B - Information

(a) Existence of environmental case law periodicals

None of the countries have public databases, specifically created for environmental case law (except in Germany for certain Länder, in Austria for the Environmental Senate's case law and in Belgium). Some specialised paper periodicals exist in Denmark (however it seems that they are not exhaustive nor are they regularly updated), in Sweden (case law of the Court of Appeals concerning environmental litigation), in Germany and in the Netherlands (in the latter country, this refers to periodicals published by private companies).

In all cases, general public databases (case law, laws and regulations, official reports, parliamentary debates, etc) allow one to identify environmental issues by key words.

Finally, there are specialised (private) law reviews in the area of environmental law, which publish the documents with comments and which are available in paper format, on-line or on CD-ROM.

(b) Magistrates' Computer Equipment

As regards the grant of equipment, three situations exist : (1) the individual grant for all magistrates or at least for those who so wish (Austria, Belgium only for members of the Public Ministry, Denmark, Finland, France, Ireland, Lithuania, Netherlands, Sweden); (2) a general grant for all courts (Portugal, Slovenia, Greece, in the latter country, only for the *Conseil d'Etat* as the other courts are not equipped); and (3) a mixed system that involves equipment for all courts and individual equipment for certain magistrates (Germany and Poland)

As regards the magistrates' access to the data, it is always free and unlimited for national public data (laws, regulations, administrative documentation, case law of superior courts) and European public data (except Poland where the access is through the intermediary of specialised court services or the Ministry of Justice. Access to international data does not appear to be systematic. As regards access to private databases (specialised online law reviews), the questionnaire was not sufficiently precise to obtain relevant answers. In Belgium, judges sign up on the internet for personal subscriptions and are reimbursed by the Ministry of Justice.

C - Training Proposals

Even though the responses are very scattered, it seems that the following themes gathered the most support :

- the general principles of European environmental law

- the Convention of Aarhus and studies which analyse the impact on the environment (impact studies)
- civil liability in environment law
- the evaluation of ecological harm and measures for restoration or rehabilitation.

Among specific topics, the management and transportation of waste seemed to have evoked the most interest.

Responses

Germany: all of the proposed topics

Austria: European environmental law, impact studies, Aarhus, civil liability, role of NGOs, nature protection, air pollution, international transfers of waste, dangerous activities or pollutants, road and railroad infrastructures, industrial breeding, urban development projects

Belgium: role of courts in the implementation of environmental law, sanctions for environmental violations, environment and health

Denmark: general principles of international, European and comparative law

Spain: Demarcation of the concept of environmental law, impact studies (practical aspects), noise, river waste deposits, hydro-electric energy, waste

Finland: Natura 2000, emission norms in the Baltic Sea, access to environmental databases, Aarhus Convention, application of the directive on water

France: role of NGOs, criminal liability of legal entities, evaluation of the ecological harm, protection of seas, international commerce of protected species

Greece: application of international and European law by national judges; impact studies, long-lasting development

Ireland: no response

Italy: no response

Lithuania: evaluation of ecological harm, restoration measures, Convention d'Aarhus, liability for international transportation of dangerous materials, landscapes, monuments, nature sites

Luxembourg: European environmental law

Norway: general and specific aspects of the proposed list

Poland: general principles of European environmental law, everything under the headings "specific aspects" and "technical questions", interlocutory questions in environmental EU law, liability of the state where there are violations of environmental EU law

Netherlands: international and EU law, air quality, transportation of waste, Habitat directive, directive on water

Portugal: all the topics except general principles of international and comparative law, criminal liability of legal entities, role of NGOs

United Kingdom: impact studies, Aarhus, criminal liability of legal entities, evaluation of the ecological harm, repair the harm to the environment, planning of the usage of the ground and the management of waste, noise

Slovenia: access to information and participation of the public in the decision-making, rights of the polluter, civil liability, environmental authorisations, environmental inspections

Sweden: general principles of law and specific aspects of environmental law