



EU FORUM OF JUDGES FOR THE ENVIRONMENT UE FORUM DES JUGES POUR L'ENVIRONNEMENT

Member responses to Part I of the EUFJE Judicial Questionnaire

The European Union Forum of Judges for the Environment (EUFJE) held its inaugural meeting at the European Court of Justice in Luxembourg on 26 April 2004. The purpose of EUFJE is to promote, in the perspective of sustainable development, the implementation of national, European and international environmental law. The Association seeks more particularly to:

- share experience in judicial training in environmental law;
- foster the knowledge of environmental law among judges;
- share experience in environmental case law; and
- contribute to a better implementation and enforcement of international, European, and national environmental law.

It was agreed at the inaugural meeting that the early work of EUFJE was to obtain information about environmental law training facilities offered to members of the judiciary in each of the Member States of the European Union, as well as particular courts or tribunals which have jurisdiction in respect of environmental cases. By 31 October 2004, there had been 19 responses to the questionnaire. A list of respondents is provided at the end of the report.

The questionnaire was in three parts:

- Part I. An outline of the legal system and environmental protection
Part II. Training and information
Part III. Organisation of courts and enforcement agencies

This report considers the responses to Part I of the Questionnaire which asked:

- A. What is the general nature of the system of law in your country (e.g. Civil or Common law)?
- B. Does it include constitutional protection of the environment?
- C. Does it include a general law protecting the environment?
- D. Does it include a code or compilation encompassing all or substantial part of the laws relating to provisions on environmental protection?

The responses were generally detailed and helpful. Below is a summary of the responses by each Member States to the key questions posed in the Part I of the questionnaire.

Secrétariat – Secretariat :
<http://www.eufje.org>

Member responses to Part I of the EUFJE Judicial Questionnaire

Austria

Austria has a civil law system. There are several constitutional provisions for the protection of the environment, e.g. Constitutional Act on Comprehensive Environmental Protection. The Austrian constitution does not contain a fundamental right provision for the environment. Austrian environmental law is not codified into a single statute but contained in several federal statutes e.g. Trade Act, Clean Air Act for Boiler Plants, Air Pollution Impact Act etc. Austrian environmental law is mainly administrative (public) law.

Belgium

Belgium has a civil law system. The Constitution of Belgium includes an explicit provision on right to enjoy the protection of a healthy environment (Article 23). This includes three procedural rights: the right to access environmental information, the right to participate in decision making in environmental matters, and the right to access courts in environmental matters. Environmental law is also codified and taken to mean all regulation in connection with town and country planning, environmental hygiene, architectural and natural heritage, and conservation. There is no Belgian code of environmental law, since this is not possible given the aforementioned division of powers between the federal state and the constituent states. Belgian environmental law is a mixture of administrative, penal and private law.

Denmark

Denmark has a civil law system. The Danish Constitution does not guarantee a right to safe and healthy environment. Danish environmental law consists of a comprehensive system of rules including comprising different sorts of regulations and various competent authorities. Danish environmental law is strongly rooted in administrative law.

Finland

Finland has a civil law system. The Constitution of Finland includes an explicit, though somewhat declaratory provision on the environment: “the nature, biodiversity, the environment and the cultural heritage shall be a responsibility of everyone”. Environmental law in Finland is not codified in one single Act, but rather contained in several acts. For instance, the Environmental Protection Act covers the general field of pollution control, and the Waste Act covers relevant parts of waste management. Most of the environmental cases fall within the domain of administrative law.

France

France operates under written law, and therefore may be regarded as having a civil law system. The French Constitution does not provide protection for the environment, although it is about to adopt an environmental charter with constitutional value. While there is no general law protecting the environment, France does use an environmental code, which covers public inquiries, the protection of natural species, protection of natural sites, protection of animal and plant life, fishing and hunting, regional industrial activities, waste, GMO's, control of chemical products, radio active substances, and pollution.

Germany

Germany has a civil law system. German law includes constitutional protection of natural foundations of life and animals, but there is no general law protecting the environment, because legislative competence in this field of law is shared between the federal government and the Lander. Any federal legislation is aimed at polluting or dangerous industries and includes aspects of air and soil pollution, the treatment of waste and GMOs. While the water protection and nature have framework laws, their details are regulated by the Lander. There is no consolidated system of environmental law as such.

Greece

Greece has a civil law system, which has provided constitutional protection of the environment since 1975. Greek law addresses the environment quite extensively, including the protection of nature (General fauna and flora, forests, protection of habitats, wetlands, mountains, coastal regions etc) and a general law protecting the environment (la loi; 1650/1986). There is no environmental code or consolidated body of environmental law, but there is a special commission considering the codification and improvement of environmental law.

Ireland

Ireland has a common law system. There is no specific constitutional protection for the environment in Ireland. Environmental law is not codified in one single Act, but rather is contained in Acts of the Oireachtas, European Legislation, and Case Law. Environmental law is highly regulated in Ireland.

Italy

Italy has a civil law system. The environment is mentioned under constitutional law (3/2001). Environmental law in Italy is not codified in one single Act. Law 349/86 established the Italian Environment Ministry and rules concerning environmental damage.

Lithuania

Lithuania has a civil law system. Environmental protection is entrenched in Part 3 of Article 53 of the Constitution, which states that “the state and each person must protect the environment from harmful influences and article 54 thereof.” There is no single code designed for environmental protection. Lithuanian environmental law is highly regulated, addressing Environmental Protection, Protected Territories, Land and Forestry. The Code of Administrative Violations of Law, the Civil Code and the Criminal Code provide for liability for violations committed against nature.

Luxemburg

Luxemburg has a civil law system. While there is no specific constitutional protection of the environment, there is a general law protecting the environment and there is a consolidated system of environmental law.

Norway

Norway has a civil law system. The Norwegian Constitution has a separate provision for the protection of the environment, Article 110b, which incorporates the principle of sustainable development. Norway has no general comprehensive code that applies to the mainland. However, in the island group of Svalbard in the Arctic Sea, the Svalbard Environment Act 2001 applies. There are several acts protecting the environment, including the Pollution Act 1981, the Product Control Act 1997, the Nature Conservation Act 1970, and the Wildlife Act 1981.

Poland

Poland has a civil law system with positive laws and legal codes, including administrative, civil and penal codes. There is a high level of constitutional protection for the environment, a general law of environmental protection, and a consolidated system of environmental law in Poland.

Portugal

Portugal has a civil law system. There is constitutional protection of the environment, a general law of environmental protection (la loi. 11/87 - 7 April), and a consolidated system of environmental law.

Slovenia

Slovenia has a civil law system. The Slovenian Constitution contains a general provision for the protection of the environment. Article 5 provides for the preservation of natural wealth and creates opportunities for the harmonious development of society

and culture in Slovenia. Article 72 of the Constitution guarantees a healthy living environment. There is no single code designed for the protection of the environment but there is a general law protecting the environment. The Environmental Protection Act 2004 guarantees the constitutional provision right to a healthy environment.

Spain

Spain operates under civil law. There is constitutional protection of the environment, but no general law of environmental protection of the environment and no consolidated system of environmental law.

Sweden

Sweden has a civil law system. The instrument of Government, which is the Swedish constitution, contains some provisions in environmental matters. Article 2 of Chapter 1 states that the public institution shall promote sustainable development leading to a good environment for present and future generations. There is no single code protecting of the environment, but there is a general law that does so. The Environmental Code 1999 encompasses a substantial part of laws relating to provisions on environmental protection. It contains rules from 15 previous acts addressing the management of land and water, nature conservation, the protection of plant and animal species, and environmentally hazardous products and waste. There are other important laws within the environmental field, including the Forestry Act, the Mineral Act, and the Animal Welfare Act.

The Netherlands

The Netherlands has a civil law system. Environmental protection is mentioned in Article 21 of the Netherlands Constitution, although this is limited to stating that the government must take care to protect the environment rather than providing a substantive guarantee to a clean and healthy environment. There is no single code protecting the environment, but the general Environmental Management Act has been enacted to harmonize environmental legislation, although it is still being developed. There other acts, such as Town and Country Planning, Nature Protection, Food Security, Hunting and Fishing, which provide environmental protection.

United Kingdom

The United Kingdom has a common law system. In the UK, there is no constitutional protection of the environment, no general environmental protection, and no code of law relating to environmental protection. The UK has a highly regulated system of environmental protection, based on a large number of statutory provisions, such as the Environmental Protection Act 1990, the Town and Country Planning Act 1990, and the Water Resources Act 1993.

Conclusion

All the respondents to the questionnaire have a system of civil law except for Ireland and the United Kingdom, which operate under common law. The majority of respondents stated that they have some general law protecting the environment, rather than a single code. Indeed there few countries with a substantive constitutional right a healthy environment. Most countries rely upon a number of quite specific environmental law statutes, that either regulate or prohibit certain activities relating to the environment.

List of members responding to the Judicial Questionnaire

1. Austria
2. Belgium
3. Denmark
4. Finland
5. France
6. Germany
7. Greece
8. Ireland
9. Italy
10. Lithuania
11. Luxembourg
12. Norway
13. Poland
14. Portugal
15. Slovenia
16. Spain
17. Sweden
18. The Netherlands
19. United Kingdom