



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

TRAINING AND SPECIALISATION OF MEMBERS OF THE JUDICIARY IN ENVIRONMENTAL LAW

In preparation of our first Annual Conference in The Hague, in December 2004, a questionnaire on these issues has been developed and our members have been invited to send in national reports. 19 such reports were received and the results were used to produce a general report, consisting of three parts, that you can find on our website:

<http://www.eufje.org/index.php/en/conferences/the-hague-2004>

Since 2004 much has happened and new member states have joined the EU. The time has come to take stock again and to assess the progress that has been made. The questionnaire has been modified only slightly in comparison with the 2004 questionnaire. Feel free to take the 2004 national report, if available, as a starting point and update it as appropriate. The candidate member states are also invited to submit a report.

You are invited to send in the national reports at the latest on **September 15th** to **eufje.bogos@gmail.com** so that we can prepare the general report that will be presented at the Sofia Conference.

https://www.eufje.org/images/docConf/hag2004/Part_1_summary_EN.pdf

I. INTRODUCTION

What is the general nature of the system of law in your country (e.g. civil, common law, codified etc.)?

[Italy has a civil law system.](#)

Does it include -

- constitutional protection of the environment
- a general law protecting the environment
- a code or compilation encompassing all or a substantial part of the laws relating to provisions on environmental protection?

The environment is mentioned under constitutional law only from 2001 (3/2001). However, environmental protection was indirectly protected before by articles 9 and 32 Cost. which protect the landscape (art. 9) and human health (art. 32)

Environmental law in Italy is not codified in one single Act, even though in 2006 there was a big reform, trying to codify in a single act (dlv 152\2006) the most important environmental laws (concerning general principles, air and water pollution, waste management etc.). Nevertheless, many legal matters are still disciplined by single acts. Law 349/86 established the Italian Ministry for the Environment and rules concerning environmental damage are now disciplined by dlv 152\2006.

II. TRAINING AND INFORMATION

A - Training

1. General training arrangements

(a) Please describe the arrangements which exist in your country for training judges –

- for initial training before taking office?
- for continued training?

Both initial training and continued training are arranged in Italy.

(b) How is *initial training* arranged?

Where and by whom is it conducted, for example –

- universities,
- other specialised training establishments
- organised by government or by judicial bodies?

Does it include *stages* or similar arrangements (e.g. internships, pupillages, apprenticeships) -

- with courts
- with lawyers
- with government departments
- with other agencies?

Initial training is centralised.

It includes internships with courts and courses.

Until 2012 courses were conducted by the Superior Council of Magistrates. Later, succeeded by the School for the Judiciary.

More information about the School for the Judiciary (source: <http://www.ejtn.eu/About/EJTN-Affiliates/Members/Italy/>):

“In accordance with the principles of judicial independence, freedom of research and teaching, and good administration of justice – as set out in the Constitution of the Republic of Italy – the School for the Judiciary, established by Legislative Decree 30 January 2006, n. 26, ensures the implementation of the right to, and duty of, professional training of members of the judiciary. The School also performs other tasks in the areas of training and research, as provided for by the law and the School’s own charter.

The School is an independent entity with legal personality under public and private law, as well as full capacity vis-à-vis organisational, functioning, management, contractual and accounting aspects of its activity. The charter of the School – which represents the expression of its autonomy – was adopted on February 6, 2012.

The School is the sole agency competent with regard to professional training of the judiciary. It is responsible, in particular, for:

- Organisation of training initiatives for judges and prosecutors and, when required, for other legal practitioners;*
- Initial and in-service training of honorary judges and prosecutors;*
- Organisation of training courses for judges and prosecutors who apply for the conferral of chief positions in first and second instance courts and prosecution offices;*
- Training of judges and prosecutors holding positions as chairs in courts and chambers as well as similar positions in prosecution offices;*
- Training of judges and prosecutors serving as trainers;*
- Decentralized training activities;*
- Cooperating in activities connected with initial training of judges and prosecutors, within the guidelines formulated by the High Council for the Judiciary and taking into account proposals by the local judicial councils;*
- Training in Italy, at the request of competent self-government bodies, of foreign judges and prosecutors participating in training initiatives taking place within the European Judicial Training Network, as well as projects of the European Union and other States' or international institutions, and implementation of programmes of the Ministry of Foreign Affairs as well as coordination of training activities aimed at Italian judges and prosecutors organised by other States or international institutions, targeting the organisation and functioning of the judicial system;*
- Partnerships, at the request of competent self-government bodies, in activities relating to the organization and functioning of the judicial system in other countries;*
- Conducting training programmes in collaboration with similar structures of foreign States or professional associations;*
- Publication of research and studies in the areas relating to training;*
- Organisation of activities and cultural exchanges, meetings and research, in relation to training;*
- Organisation, on the basis of specific agreements or conventions, of seminars for legal practitioners or young lawyers enrolled in lawyers' specialisation courses.*

In adopting or amending its annual training programme, the School takes account of the guidelines regarding judicial training it receives from the High Council for the Judiciary (CSM) and the Minister of Justice, as well as the proposals it receives from the National Bar Council and the National University Council. To achieve the above goals, the School may conclude agreements or memoranda of understanding with other public or private entities.

The organisation of the School is governed by its charter as well as regulations that the School itself may adopt.

The organs of the School are the Board of Directors, the President and the Secretary General.

The Board of Directors is composed of twelve members: seven of these members are chosen from among judges and prosecutors, both in service and retired; three from among university

professors, both in service and retired, and two among lawyers who have practiced for at least ten years. The High Council for the Judiciary appoints six judges and prosecutors and one university professor, the Minister of Justice appoints one judge or prosecutor, two lawyers and two university professors. The members of the Board shall hold office for four years and may not be immediately renewed.

The Secretary General is either a judge or prosecutor or a chief executive within State Ministries.”

(c) How is *continuing training* organised? For example –

Where and by whom is it conducted?

Continuing training is conducted by the School for the Judiciary in Firenze (Villa Castelpulci, head office). There are also decentralized training activities organised within the guidelines formulated by the High Council for the Judiciary and taking into account proposals by the local judicial councils

Is it compulsory (for all or some categories of judges), or voluntary?

It is substantially voluntary, but the attendance can be evaluated for career development. Judges and prosecutors who apply for the conferral of chief positions in first and second instance courts and prosecution offices must participate in specific training courses

Is there a regular programme of continuing training? If so, how often? What is the average period in a year? Are there special requirements, for example on a change of office?

There are regular programmes, every year, for centralized and decentralized training activities. Every judge or public prosecutor can request for one or more courses.

Is it supervised? If so, by whom? Who determines the content of the courses (e.g. government, judicial bodies, individual judges)?

The courses are supervised by the School, which determines the content of the courses.

Are the training fees paid for? Are judges entitled to leave from work for the training?

Judges and public prosecutors who attend the courses are allowed to leave work for the training. The School, if necessary, provides tickets and accommodation.

Is such training given weight in decisions on career choices or appointments to particular responsibilities?

Yes, as mentioned above

2 Training in environmental law

Do the training arrangements for judges include special arrangements for training in environmental law –

- for initial training
- for continuing training?

Yes, specific courses are organised for initial and continuing training

If so, please describe the arrangements, covering the same points as for general training.

In particular –

- is such training in environmental law given to all judges or only those with specific functions in that field?
- on average, how many judges receive such training in every year?
- what form does it take and for what periods?

For initial training all judges and public prosecutors attend seminars on environmental law, as for any other matters.

For continuing training there are specific courses (one or more) in every annual programme

Is there a mechanism for assessing the training needs of judges and periodically reviewing this?

No, every judge or public prosecutor is responsible for his own retraining. He could ask for one or more courses or not.

Have you already made use of training material prepared at EU level (e.g. within the framework of DG ENV programme for cooperation with national judges and prosecutors: <http://ec.europa.eu/environment/legal/law/judges.htm>). Do you have any suggestions for improvements?

Yes, sometimes. I don't have any specific suggestion

B – Availability of Information on environmental law

(a) Are there any specialised collections of national or EU case law relating to environmental law -

- in paper form
- on the Internet?

No, there aren't

However, Italgire-web (<http://www.italgiure.giustizia.it/>) provides access to a database containing details of numerous sentences, in particular those of the Supreme Court. Cases are also classified by subject, so you can search all decisions on a specific theme. Cases can also be found by using text searches.

The same situation could be found about case law given by the Council of State and by the Regional Administrative Tribunals, which are published on the official website (<https://www.giustizia-amministrativa.it/>) and the Constitutional Court that publishes its decisions on its own web site (<http://www.cortecostituzionale.it/>).

On the internet there also are web magazines that post decisions, information, and documents about environmental law

(b) Are judges equipped with computers giving them free access to databases (with case law and literature) on environmental law, including

- national databases
- European databases
- international databases?

Yes, they are.

The administration equips every judge and public prosecutor with a laptop.

They also have free access to Italgire-Web database.

The School for the Judiciary also offers to every judge and public prosecutor, for free, a subscription to the most important databases and magazines including laws, articles and decisions, including those on environmental law

C – Proposals for training or improving availability of information

(a) In what areas would it be helpful to develop training materials and organise training sessions, for example -

- General principles of law, e.g. –
 - International environmental law
 - European environmental law
 - Comparative environmental law

In my opinion could be mostly helpful develop training material and organise training sessions on European environmental law and comparative environmental law, additionally International environmental law could be interesting

- Particular aspects of environmental law, e.g. –
 - Environmental Impact Assessment
 - Sustainable Development
 - Access to Justice and Standing (Aarhus Convention)
 - Administrative and civil liability in environmental law
 - Criminal Liability of Corporations
 - The role of NGOs

I think in Italy, actually, it could be interesting to increase the knowledge of Criminal Liability of Corporations in Europe. However, the other topics above are also worthwhile aspects to analyse.

Role of environmental inspectors, police officers and others on evidence collection
Language training (e.g. judicial terminology)?

Technical issues, e.g. -

Evaluation of ecological damage, including use of forensic methods
Measures to restore the environment

Specific topics, e.g. -

Freshwater Pollution,
Protection of the Seas
Nature Protection
Landscape and Monuments – Natural Sites
Air pollution
International trade in protected species
International transfer of waste
Genetically modified organisms
Polluting or Dangerous Industries
Environmental procedural requirements, in particular impact assessments relevant for spatial planning, energy and transport

All of the proposed topics

Other topics?

No

III. ORGANISATION OF COURTS AND ENFORCEMENT AGENCIES

A – Courts or tribunals responsible for environmental law

(a) Please describe the arrangements in your country for determining environmental law disputes, criminal, administrative and civil. In particular -

Are there separate courts or tribunals for civil and criminal matters?

Yes, ordinary courts and tribunals have jurisdiction in civil cases and criminal cases. Civil and criminal cases are tried by different divisions or chambers of the ordinary courts, and this in the first instance as well as in appeal or in cassation

Are there special constitutional or administrative courts or tribunals (for litigation involving government agencies or public bodies)?

The administrative courts and tribunals are empowered to settle administrative disputes but they only have the power to suspend and/or annul administrative decisions. Constitutional Court is the highest court of Italy in matters of constitutional law

Are there specialised courts or tribunals for environmental law (or particular aspects of environmental law, including town and country planning, energy, or transportation)?

No there aren't.

However, in the Supreme Court of Cassation cases on environmental crimes are assigned to the Third Chamber of criminal section which has a specific area of competence.

Some public prosecutor offices also organise groups of magistrates in order to investigate on cases involving specific crimes, including environmental crimes

What powers are available to the different types of court, for example -

- criminal penalties
- orders or injunctions to remedy environmental damage
- awards of financial compensation or compensation in kind?

Criminal courts can pass sentences ranging from fines to imprisonment, civil courts and tribunals focus primarily on compensation, the administrative courts are chiefly empowered to rule on the suspension and annulment of administrative legal acts.

Others?

The Supreme Court of Cassation ensures "*the exact observance and uniform interpretation of the law, the unity of the national objective law, compliance with the limits of the various jurisdictions.*"

(b) Please give examples of typical environmental law cases handled –

(i) By civil courts or tribunals;

Compensation for environmental damage

Issues on environmental taxes

Opposition to the imposition of administrative sanctions prescribed by environmental laws

(ii) By criminal courts or tribunals;

Environmental crimes

Criminal Liability of Corporations

(iii) By administrative courts or tribunals;

Suspension and annulment of administrative legal acts, such authorisations, ordinances etc.

(iv) By the constitutional court

Controversies on the constitutional legitimacy of laws issued by the State and Regions (when the Court declares a law unconstitutional, the law ceases to have effect the day after the publication of the ruling)

Conflicts arising from allocation of powers of the State and those powers allocated to State and Regions, and between Regions;

- (v) By specialist environmental tribunals.

There are no specialist environmental tribunals in Italy

(c) Are there available statistics on environmental cases handled by the different categories of court and tribunal? If so, please summarise the figures for the most recent year available.

It is possible – approximately - only for criminal cases handled by the Supreme Court of Cassation searching on the Italgiure-web database only for specific law

For example, for year 2017 can be found:

- 558 cases concerning the dlv 152\06 (the most important environmental law)
- 904 cases concerning illegal building
- 192 cases concerning cultural assets and landscape protection

For year 2018 (Jan – Aug.) can be found:

- 340 cases concerning the dlv 152\06
- 496 cases concerning illegal building
- 96 cases concerning cultural assets and landscape protection

B – Specialised jurisdictions

There are no specialised courts relevant to environmental law in Italy

(a) If your system has specialised courts relevant to environmental law, please describe the nature of their jurisdiction (so far as not covered under A above), for example –

- how is the extent of the jurisdiction defined?
- is it exclusive, or concurrent with that of the ordinary courts?
- how, and by whom, are conflicts of jurisdiction resolved?
- are they independent of the executive?

(b) How, and by whom, are members of such courts recruited? Is knowledge or experience in environment law a specific requirement?

(c) What powers do the specialised courts have, for example -

- annulment of regulations or individual acts
- orders to enforce environmental laws
- power to substitute a decision for that of the government agency
- orders for financial compensation or compensation in kind
- other (e.g. granting environmental licences or consents)

(d) How and by whom are conflicts of jurisdiction with other courts resolved?

C - Criminal violations

(a) In your country which agency or agencies have responsibilities for investigating and prosecuting criminal violations of environmental law –

- the police, or a particular branch of the police (national or local)
- customs authorities
- local authorities
- one or more specialised environmental agencies
- other bodies (public or private)

In Italy, theoretically, all police services have general authority to investigate and detect crimes, including environmental crimes.

However, some particular branches of the police, national and local are involved in investigation on criminal violations of environmental law.

For example - until 2016 - **State Forestry Corp (Corpo forestale dello Stato or CFS)**.

The CFS had police powers and acted as a park ranger force responsible for protecting Italy's natural resources, the environment, countryside and ecosystems, especially national parks and national forests. It also acted as a criminal investigative department and as a typical police force. Its specialist duties included arresting poachers, investigating environmental violations, illegal building, counterfeit foods, safeguarding protected animal species, enforcing endangered species laws, and preventing and fighting wildfires through 15 regional commands and its fleet of 22 fire-fighting aircraft. It had responsibility for managing activities related to the Convention on International Trade in Endangered Species in Italy.

CFS was dissolved on December 31, 2016 and all personnel become militarized and absorbed by the **Comando unità per la tutela forestale, ambientale e agroalimentare Carabinieri**.

This is a special branch of Carabinieri, originally named **Comando Carabinieri per la Tutela dell'Ambiente** that operated through 3 Gruppi (Rome, Naples and Treviso) and 29 Nuclei Operativi Ecologici. These used advanced satellite land-monitoring technology to contrast pollution, illicit buildings in protected areas and illegal toxic waste disposal. Supervising the waste cycle was also one of the unit's priorities, as the battle against environmental degradation directly contributes to public well-being.

All the activities of Corpo Forestale and Comando Carabinieri per la tutela dell'ambiente are now conducted by the **Comando unità per la tutela forestale, ambientale e agroalimentare Carabinieri**, named above.

The department is organized in 14 regional commands, three agencies (environmental protection, agri-food protection, protection of biodiversity and parks) and approximately 700 Station Commands on the entire national territory. It counts circa 8500 military personnel involved in contrast of illicit agri-foodstuffs, environmental and biodiversity protection, contrast to poaching, contrast to all criminal organizations that, with their activity, affect the environment. In the Unit there are also 29 NOE (Nucleo Operativo Ecologico), nucleus highly specialized in complex investigations in environmental matters against organized crime.

The Guardia di Finanza (GdF), essentially responsible for dealing with financial crime and smuggling, is also involved on

Local police as **municipal police (polizia municipale)** also has police duties regarding environmental crimes (and administrative offenses), especially illegal building and illegal waste management.

There also is the **ISPRA**, which is part of a network known as National System for Environmental Protection, which is made up of 21 Territorial Environmental Protection Agencies (ARPA / APPA), established by Regional Laws. It's an example of consolidated federal system, which combines the direct knowledge of the territory and its issues with the

national policies for environmental protection. In some cases ARPA/APPA personnel has police powers.

Finally, it should be specified that in Italy the police and other authorities don't have responsibilities for prosecuting criminal violations for proceedings are, as a rule, instituted by the **public prosecution**.

Public prosecutors are part of the judicial organization, they are NOT under the hierarchical authority of the Minister of Justice and are judicial officers just like judges (prosecutors are allowed during their career to act in the other's stead, but a ruling by the Italian Constitutional Court stated that prosecutors, who wish to become judges, must relocate to another region and are prohibited to sit or hear trials that they themselves initiated).

Prosecutors are obligated under the Constitution to initiate preliminary investigations once they are informed or take personal notice of a criminal act or receive a bill of complaint. They can direct investigations or conduct them through orders and directives given to judicial police detectives, who can make their own parallel investigations in coordination with the Prosecutor.

(b) What special arrangements do the police or customs have for ensuring that those involved have expertise in environmental law? Do they have specialised units, organised locally or nationally?

Normally, particular branch of the police named above organises specific training

- (c) If a specialised environmental agency is responsible for prosecutions –
- how is it organised, and under what authority
 - is it independent of government
 - how are its officers recruited and trained
 - does it have similar powers to those of the police for investigating and prosecuting?

In Italy only the public prosecutor has empowered to prosecute crimes

(d) Which courts have power to impose criminal sanctions in environmental cases?

Ordinary Tribunal, in monocratic or collegiate composition, depending on the kind of cases

(e) Are there available reports or statistics of criminal sanctions imposed in environmental cases? If so, please give examples from recent cases.

No, there are not. However, every year Legambiente (League for the Environment, the most widespread environmental organization in Italy, with 20 Regional branches and more than 115,000 members) publishes the “Rapporto Ecomafia” where its National Observatory on Environment and Legality collects data and information on the connections between illegality and environment degradation, including some statistics.

(f) The role of the public prosecutor's office

Does the public prosecutor's office have services specialising in environmental area ?

In any cases, public prosecutor offices organise working groups composed of magistrates who have knowledge in specific issues, including environmental crimes.

However, for some specific environmental crimes involving, for example, organised crime, the law attributes the case to the DDA – Direzione distrettuale Antimafia (District Antimafia Directorate)

Is this specialisation created by law or by internal organisational rules?

Specialisation is created by internal organisational rules. Cases are assigned by law to the DDA – Direzione distrettuale Antimafia

Is its jurisdiction national or local?

Does it relate to all environmental law violations or particular violations only?

Is it exclusive or concurrent with the office's general jurisdiction?

Jurisdiction of public prosecutor's office is local. It corresponds to the jurisdiction of the Tribunal. It relates to all environmental law violations

How are conflicts over jurisdiction resolved?

Conflicts over jurisdiction between public prosecutor's offices are solved by the Chief prosecutors of second instance (procuratore generale presso la Corte d'appello) or, in some cases, the Attorney general for the Supreme Court (procuratore generale presso la Corte di cassazione).

Do members of the public prosecutor's office who specialise in environmental law have assistance from civil servants or experts appointed on a permanent basis to provide them with technical assistance?

How are these assistants recruited?

They can ask the Territorial Environmental Protection Agencies (ARPA / APPA) or other authorities, otherwise they can appoint a person as technical advisor.

D. Administrative violations/cases

See the questions in the previous section. Who and how decides on the choice of administrative vs criminal enforcement ?

Police and other authorities (national and local) can investigate and prosecute administrative violations.

Public Prosecutor prosecutes criminal offences.

The law establishes when a specific behaviour must be prosecuted as administrative violation or crime.

E. Civil cases

In what circumstances are civil courts involved in environmental law cases?

Mostly for compensation for environmental damage, issues on environmental taxes and opposition to the imposition of administrative sanctions prescribed by environmental laws

Can they award remedies other than orders for damages ?

Yes, they can according to the Civil Code

Are there civil courts specialised in environmental law ?

No, there are not

F. Standing

Do environmental NGOs have standing in the different courts?

Yes, they can take legal action as legal person in civil and administrative courts.

In criminal courts they can file complaints and join criminal proceedings as a civil party seeking damages

-What requirements apply for the grant of standing?

They have same rights as every legal person

- Must they have obtained formal recognition or accreditation by the authorities, or is the right to standing assessed on a case by case basis ?

They can take legal action in civil and administrative courts as every person, legal or natural. The right to standing assessed is on a case by case basis in criminal Court. The judge takes a decision in the judgement.

The law (art. 13 l. 349\86) lays a recognition by the government for some associations which have as purpose environmental protection and are country-based or operate at least on five regions, even though the law establishes that the Italian Environment Ministry has the right to take action concerning environmental damage.

However, every environmental association is allowed to take action in order to obtain compensation for detriment to its action on environmental protection.

Rome, 1/9/2018

Luca RAMACCI

Judge Supreme Court of Cassation - Italy