

Questionnaire 2018

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As starting point I took the national report of 2004 and updated it, if necessary.

I. Introduction

What is the general nature of the system of law in your country (e.g. Civil or Common law)?

Does it include:

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

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 (wet milieubeheer) 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.

This law determines which legal tools can be used to protect the environment. The most important instruments are environmental plans and environmental programs, environmental quality requirements, permits, general rules and enforcement. The law also contains the rules for financial instruments, such as levies, contributions and damages.

The Wm is the legal toolbox to protect the environment. The Environmental Management Act provides general rules for various topics, from substances and waste to enforcement, publicity of environmental data and legal remedies. The Wm entered into force on 1 March 1993. It is a framework or framework law: it contains the general rules for environmental management. More specific rules are elaborated in decisions (general administrative measures or administrative orders) and ministerial regulations.

This law establishes in general terms which legal instruments there are to protect the environment and which principles apply. For example, the Wm requires companies to have an environmental permit. This must contain regulations that provide the environment with the greatest possible protection. The Wm also determines which government issues which permits and which plans the various authorities must draw up. The law is constantly being amended, partly due to changes that follow from European regulations. The Environmental

Management Act will be merged into the Environmental Act (Omgevingswet) in a number of years. The Environment Act integrates more than 20 laws, 120 AMvBs, hundreds of regulations and 40 plans in the areas of space, living, infrastructure, environment, nature and water.

II. TRAINING AND INFORMATION

A – Training

1. General arrangements

In the Netherlands the judges are recruited from among practitioners (legal practitioners under the condition that they have exercised their profession for a minimum amount of time. The direct recruitment of judges and/or the members of the Prosecutor's Office is from among jurists who have practised professionally for the requisite amount of time coexists with the recruitment of young graduates (only from universities) who have completed a training course. Also we have a National Training Centre for Judges and Prosecutors (SSR) for continuous training.

Continuous training

The continuous training by SSR is centralised. It is an Institute of Judicial Studies. This training is generally not taken into account or plays a small role for promotions or appointments to positions.

2 - Training in Environmental Law

At the recruiting stage, there is no one who expressly requires specific knowledge in environmental law.

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

B - Availability of Information on environmental law

(a) Yes; in paper form and on Internet you can find/buy specialised collections. Also the library (public or universities)

(b) Yes; national and European and international. Free by Google; sometimes you have to pay for sites with literature or case law

C – proposal for Training or improving availability of information

(a)

- 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.

Always: international and EU law, air quality, transportation of waste, Habitat directive, directive on water (international law at sea)

III. Organisation of courts and enforcement agencies

A-. Courts or tribunals responsible for enforcing environmental law

(a) It is still as the report in 2004 mentioned:

“ Distinction between ordinary courts and administrative courts: a dual structure has been put in place, with on the one hand ordinary courts and tribunals, which have jurisdiction in civil cases and criminal cases, and on the other hand the administrative courts and tribunals.

This means that the ordinary courts and tribunals are empowered to settle civil and criminal disputes, whereas the administrative courts and tribunals are empowered to settle administrative disputes. Since 2004 the administrative courts are entitled to give penalties (administratieve boetes)

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.

(In the Netherlands it is accepted that constitutionality review is prohibited by the Constitution. According to the Constitution, the Dutch Parliament is responsible for legislation in conformity with the Constitution).

The criminal courts can pass sentences ranging from fines to imprisonment, where appropriate concomitant with compensation and/or safety measures and remediation measures; civil courts focus primarily on compensation.

C. Criminal violations

(a-e) the police services have general authority to investigate and detect environmental crimes, while in addition there are often public authorities with special investigative powers, such as environmental inspectorates and Customs services.

NGOs and private individuals can institute private actions.

However, as a rule the police do not have units that specialize in environmental law; most of the regional police divisions have officers or units specializing in environmental law.

Environmental crimes are also investigated by specialized environmental inspection services from the government.

(f) prosecution policy is in the hands of public prosecutors who are part of the judicial organization, but are often under the hierarchical authority of the Minister of Justice.

There is at least one prosecutor in each district who specializes in environmental law. Although it has been centralised and specialised (Functioneel Parket – financial, economic and environmental cases) as a result of a recent reorganization of the public prosecution, a division has been set up, alongside the ordinary prosecutors, to deal with environmental and economic crimes. The jurisdiction of this division covers the whole country.

D. There are regulations stating the minor offences are administrative, the more severe are going to be prosecuted.

E. Civil cases

the civil courts are charged with two types of environmental cases: in private law (e.g. nuisance) and in public law (e.g. assessment of unlawful acts, omissions and decisions).

F. Standing

It is generally acknowledged that NGOs have a right of action in specific environmental cases, with a distinction being made according to the type of dispute. This right is usually subject to certain additional conditions.

Article 305a of the Civil Code grants right of action to NGOs, insofar as those NGOs have legal personality. This means that they must have been incorporated by notarial deed and that the corporate purpose must be in keeping with their actions. Furthermore, the right of action is limited to actions for injunction and must not involve claims for damages. It is not conditional upon any recognition or authorization by the government