

# TRAINING AND SPECIALISATION OF MEMBERS OF THE JUDICIARY IN ENVIRONMENTAL LAW

## INTRODUCTION

The purpose of the *European Union Forum of Judges for the Environment* 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 on judicial training in environmental law;
- foster the knowledge of environmental law among judges;
- share experience on environmental case law;
- contribute to a better implementation and enforcement of International, European, and national environmental law” (art. 3 of the Constitution) .

This questionnaire is designed to obtain information about environmental law training facilities which are offered to members of the judiciary in each of the Member States of the European Union, and also information about the particular courts or tribunals which have jurisdiction in respect of environmental cases.

The questionnaire should be taken as a guideline for use in preparing a national report, of preferably less than 10 pages, describing the characteristics of environmental law training given to judges,<sup>1</sup> as well as of procedures applicable in environmental litigation. It is recognised that some of the questions may need to be adapted to the legal structures of your national legal system and that some of the questions may not be relevant at all to your legal system.

By way of introduction, it would be helpful if you could describe briefly what is understood in your country by the term “environmental law”, explaining the different subjects which are regarded as included. For example, does it include issues relating to town and country planning, security of food supplies, hunting, fishing, advertisement control, marine pollution, radioactive waste, rational use of energy, noise pollution, etc?

Statistical information would be very useful. In particular, information about the number of judges specialised in environmental law, and the number of cases initiated and determined in each year, would help to give a more detailed and reliable picture of the comparative position. This information can also be included in annexes to the national report.

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<sup>1</sup> Throughout this paper, references to judges should be taken as including references to members of judicial or quasi-judicial bodies of all kinds (including magistrates and tribunals), and to public prosecutors (in systems where they are linked to the judiciary).

## **I. INTRODUCTION**

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

Does it include -

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

## **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? Not in deep
- for continuing training? Some courses

(b) How is *initial training* arranged?

Where and by whom is it conducted, for example –

- x- universities,
- x- 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? NO

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

Where and by whom is it conducted? By Judicial Council

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

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 is not a regular programme. There are some courses, maybe two each

year, for 20/30 judges of all the 5.500 judges of Spain. It means that few judges can be trained.

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

There is a preliminary selection of the director of the course depending on his/her proposal of the course. Afterwards, the director determinate the content of the course.

Are the training fees paid for? Are judges entitled to leave from work for the training? The training fees are paid, but not always the judges are entitled to leave from work for the training. The can leave only if the work load of their court is low or, even if it is high, they can deal with it.

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

No

## *2 Training in environmental law*

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

- for initial training NO
- for continuing training?NO

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 each year?
- what form does it take and for what periods?

## **B – Availability of Information on environmental law**

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

- in paper form Yes
- on the Internet? I suppose there are

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

- national databases YES
- community databases NO
- international databases? Not always

## **C – Proposals for training or improving availability of information**

(a) In what areas would it be helpful for the Forum (assuming availability of funding) to organise training sessions, for example -

General principles of law, e.g. –

- International environmental law
- X European environmental law
- X Comparative environmental law

Particular aspects of environmental law, e.g –

- Environmental Impact Assessment
- Sustainable Development
- Access to Justice and Standing (Aarhus Convention)
- X Civil liability in environmental law
- X Criminal Liability of Corporations
- The role of NGOs

Technical issues, e.g. -

- X Evaluation of ecological damage
- X Measures to restore the environment

Specific topics, e.g. -

- x Freshwater Pollution,
- x Protection of the Seas
- x Nature Protection
- X Landscape and Monuments – Natural Sites
- X Air pollution
- International trade in protected species
- International transfer of waste
- X Genetically modified organisms
- Polluting or Dangerous Industries

Other topics?

## **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 and civil. In particular -

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

NO

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

NO

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

NO

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

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

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

- (i) By civil courts or tribunals;  
Compensation because of noise damages
- (ii) By criminal courts or tribunals;  
Prosecution because of air pollution by an enterprise
- (iii) By administrative courts or tribunals;
- (iv) By specialist environmental tribunals.

(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.

**I do not know**

## **B – Specialised jurisdictions**

### **No specialised jurisdiction**

(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 from 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?

## **B - Criminal violations**

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

- x- 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): civil guard (particular branch)

(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?

They have specialised units

(c) If a specialised environmental agency is responsible for prosecutions –

- how is it organised, and under what authority: depending on the procedural law, under the prosecutor or under the investigating judge.

- 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?

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

Penal Courts

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

Court statistics are made each three months. They can be checked at the webpage [www.poderjudicial.es](http://www.poderjudicial.es)

<http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial>

2017 can be checked here:

[http://www.poderjudicial.es/stfls/ESTADISTICA/FICHEROS/JusticiaDatoaDato/Datos%20Anteriores/Justicia%20Dato%20a%20Dato%202017%20\(v3\).pdf](http://www.poderjudicial.es/stfls/ESTADISTICA/FICHEROS/JusticiaDatoaDato/Datos%20Anteriores/Justicia%20Dato%20a%20Dato%202017%20(v3).pdf)

As you can see, there are no specific report about environmental cases, except in administrative cases. You cannot check civil cases anywhere. You can only check criminal cases in the statistic report of the State Prosecutor Office.

#### c - The role of the public prosecutor's office

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

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

Is its jurisdiction national or local? NATIONAL

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

Is it exclusive or concurrent with the office's general jurisdiction? Not applicable

How are conflicts over jurisdiction resolved? Not applicable. These questions are related to an accusatorial criminal system carried out by the Prosecutor Office. In Spain the instruction of the cases is made by the examining judge.

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? Not applicable

### C. Civil cases

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

Can they award remedies other than orders for damages ? yes

Are there civil courts specialised in environmental law ? no

Do environmental NGOs have standing in the civil courts? In rare cases

-What requirements apply for the grant of standing? Only if they are entitled because they have been harmed

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

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Verzonden: Donderdag 6 december 2018 20:26:03

Onderwerp: Re: National and General Reports 2018/ Rapports nationaux et rapport général 2018

Dear Mr. Luc:

First of all, I beg your pardon for replying you so late, but actually, I am working as Magistrate and University Professor and also I am the father of a large family so you can imagine my demanding style of life. Secondly, I agree with you in it is a good point to ask countries in order to collect the opportune remarks and improvement suggestions to achieve a practical and useful tool for having a general picture of the situation in Europe. Furthermore, it could serve as a basis for a continually updated general overview of the achievements and shortcomings in the environmental arena.

I read the comments relatives regarding with the situation in Spain and, up o point , I do not agree with them. I must o say that from my point of view, nevertheless also suggest that there is scope for improvement the situation in Spain is not so appalling, as I read in the commentaries. Of course there pros and cons, but maybe it would be useful I send you some legal infromation.

The good points

#### **Section 45 of Spanish Constitution.**

1. Everyone has the right to enjoy an environment suitable for the development of the person, as well as the duty to preserve it.

2.-The public authorities shall watch over a rational use of all natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on an indispensable collective solidarity.

3. For those who break the provisions contained in the foregoing paragraph, criminal or, where applicable, administrative sanctions shall be imposed, under the terms established by the law, and they shall be obliged to repair the damage caused.

According to the art.149.1 of Spanish Constitution the Spanish State shall have exclusive competence over the following matters:

23. The Basic legislation on environmental protection, without prejudice to powers of the Self-governing Communities to take additional protective measures; basic legislation on woodlands, forestry and cattle trails.

In line with this we have these laws which developed the Constitutional article:

On the 12th of December 2013 a new law on Environmental Assessment comes into force (Law 21/2013 of 9th of December, on Environmental Assessment). With the formulation of this new law, two provisions are merged into one unified regulation: Law 9/2006 of 28th of April on evaluation of the effects of certain plans and programs on the environment, and the Royal Decree 1/2008, of January the 11th, approving the revised text of the Law on environmental Impact Assessment of projects and later modifications to the text.

This law establishes rules governing the environmental assessment of projects, plans and programs that may have significant effects on the environment. The environmental assessment of plans and programs (Strategic Environmental Assessment) does not exclude the environmental impact assessment of the projects derived from them.

Law 27/2006 Of 18 July, Which Regulates The Rights Of Access To Information, Public Participation And Access To Justice In Environmental Matters (Incorporates Directives 2003/4/ec And 2003/35/ec).

Environmental Liability Law 26/2007, of 23 October Includes administrative regime on environmental liability based on prevention and polluter-pays principles. In addition, it is worthy to mention the Royal Decree 2090/2008, of 22 of December which enacts the partial implementation regulations of Environmental Liability Law 26/2007 which imposes the obligation to foresee, prevent and restore environmental damage in accordance with the precautionary and the polluter pays principles. As well this regulation Ensure the environmental damage remediation from economic activities even when they are in full compliance with the law and have taken all the available preventive measures and guarantee that prevention and remediation of environmental damage are faced by the responsible operator.

Law 22/2011 of the 28th of July, on Waste and Soil Contamination which implement Directive 2008/98/EC on waste (Waste Framework Directive).

Royal Decree 1367 / 2007, Of October 19, Whereby Law 37/2003 Of 17 November, Noise, Develops In Relation To Acoustic Zoning, Quality Objectives And Noise Emissions.

Law 42/2007 of 13 December on Natural Heritage and Biodiversity.

Law 34/2007 on Air Quality and Atmospheric Environment Protection, which aims to establish the basic rules to prevent, monitor and reduce air pollution to minimize the damage to people and the environment.

Law 1/2005, 9 March, Which Regulates The Trading Of Greenhouse Gas Emission Rights Scheme.

Law 22/1988 on Coasts, which aims to protect the maritime-terrestrial public domain (e.g., by submitting to prior concession or authorization certain activities and by establishing easements and limitations to the ownership of lands near to the public domain).



Royal Legislative Decree 1/2016 on Integrated Pollution Prevention and Control, which applies to certain industries as listed in Annex I such as certain combustion and chemical or waste management industries. It provides for a proceeding incorporating the most relevant environmental permits and other administrative steps in a single authorization: the integrated environmental authorization. The main aspects covered by this authorization are air and water emissions, production and management of waste and environmental impact assessments.

In addition to the above, several modifications of the regulations governing the hydraulic public domain were approved by Royal Decree 638/2016.

Law 21/2013 on Environmental Assessment, which unifies under a single act the provisions related both to the environmental assessment of projects and of plans and programmes. Environmental assessments are not authorizations but a prior and binding requirement to obtain a certain authorization or to issue a certain resolution. Authorizations or resolutions are null and void if the required environmental assessment was not conducted at all or was conducted in a defective manner.

Alternatively, autonomous regions may enact laws and regulations of their own on environmental matters provided that they do not reduce the level of environmental protection established by the national rules. Also, municipalities may issue environmental regulations, which must always respect national and regional laws.

On the whole, as I see it, even though the Spanish situation has a lot of dark points, it could improve a lot. The main point is, even though we have in our Penal Code, Title XVI concerning environmental issues, as a matter of fact, the level of environmental criminal persecution is very low. On the one hand, we have some specialized administrative judges in some Chambers and Prosecutors specialized in environmental issues, but, on the other hand, we have any specialization among criminal judges.

Right now, I am finishing my book about the Circular economy, when I have finished I try to send you. If you have any questions or concerns about environmental Spanish situation; please do not hesitate to contact me for more information. In the end, I hope I have been able to help you with this basic information, we keep in touch, best regards:

Faustino Gudín.