



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 15<sup>th</sup>** to **eufje.bogos@gmail.com** so that we can prepare the general report that will be presented at the Sofia Conference.

### 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 -

- 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 system of law in the UK is made up of primary legislation – Acts of Parliament (statutes or enactments); secondary legislation – regulations, rules and orders (statutory instruments); and case law – made by the judiciary.
  - Acts of Parliament include the Environmental Protection Act 1990, the Clean Neighbourhood and Environment Act 2005 and the Climate Change Act 2008
  - Regulations include the Air Quality Standards Regulations 2010, The Environmental Permitting (England and Wales) Regulations 2010 and the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

## 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?

(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?

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

Where and by whom is it conducted?

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

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

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

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

#### 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?

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?

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

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?

## **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

- The Journal of Planning and Environmental Law is a monthly publication, containing articles on environmental issues and recent planning and environmental law judgments.
- The Environmental Law Bulletin is another monthly publication, with articles on environmental law, including forthcoming legislation, and commentary on current environmental case law.
- The Encyclopaedia of Environmental Law is a loose-leaf publication that is updated periodically. The publication includes EU and national legislation, with commentary, including relevant case law.
- Environmental Law and Management is a journal which contains articles, reports and commentary on current environmental regulation, government proposals and case law from the UK courts and the CJEU.
- The Royal Courts of Justice has an extensive library, containing information on all areas of law, including environmental law. All judges have full access to the library.

- on the Internet?

- Westlaw, Bailii, ICLR and Lexis Nexis offer the ability to search their databases for all international, EU and UK legislation and case law.
- The website [www.legislation.gov.uk](http://www.legislation.gov.uk) contains all current and previous UK statutes and statutory instruments.

(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?
- All judges are provided with a computer which has access to the internet and to specialist legal databases.
  - eLIS is an electronic search tool which allows judges to access national and international journals, books and legislation. It also allows access to websites such as Westlaw, Lexis Nexis, Lawtel, ICLR and Bailii all of which contain environmental legislation, journal articles and case 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 –

- It would be helpful to develop training in all of these areas.

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

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

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

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, administrative and civil. In particular -

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

- In the UK there are separate courts in the criminal and civil jurisdictions and a structure of tribunals.

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

- A claim for judicial review may be brought by an individual or an organisation if they believe that a government agency or public body have acted unlawfully or irrationally. The claim may concern the outcome of a decision or may question the way in which the process has been conducted. A claim for judicial review may be heard by the Administrative Court of the High Court or by an appropriate chamber of the Upper Tribunal.

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

- The Planning Court of the High Court

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?

- The powers are provided by the appropriate statutory scheme.
- The Sentencing Council issued a guideline entitled “Environmental Offences Definitive Guideline”, effective from 1 July 2014. It sets out the steps to determine how the offence should be categorized and the gives appropriate range of sentences.
- Sanctions include fines as well as imprisonment. The maximum levels vary depending on the type of offence.
- The criminal courts can order an offender to take steps to remedy the cause of the offence in certain cases under Regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010.

- Civil courts have the power to grant an injunction or mandatory order for the removal of waste or closure of illegal facilities.
- Under the Environmental Protection Act 1990 the court has the power to order an offender to be deprived of property used to commit a crime.

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

- (i) By civil courts or tribunals;
- (ii) By criminal courts or tribunals;
- (iii) By administrative courts or tribunals;
- (iv) By the constitutional court
- (v) By specialist environmental tribunals.

- The Planning Court hears claims for judicial review of, and statutory challenges to, decisions made by planning authorities and other public bodies. Its very wide jurisdiction embraces:
  - grants of planning permission
  - development consent
  - compulsory purchase orders
  - highways and other rights of way
  - decisions under EU environmental legislation

(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.

## **B – Specialised jurisdictions**

- The Planning Court has jurisdiction on environmental matters.

(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?

- There is no clash of jurisdiction.
- The Planning Court's jurisdiction is defined in Part 54 of the Civil Procedure Rules 2014.

(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)
- The investigation and prosecution of environmental crime is brought by the relevant regulators: for example, the Environment Agency bring prosecutions for issues including water pollution and waste management infringements; Natural England bring prosecutions for harm to protected habitats and species; and the Health and Safety Executive bring prosecutions for incidents relating to hazardous substances and the misuse of pesticides.
  - Each agency has experts with relevant scientific knowledge and the expertise to undertake independent investigations and they employ trained in-house lawyers who lead the prosecutions.
  - The agencies also employ enforcement officers to ensure that members of the public adhere with environmental regulations.
  - Each local authority maintains its own website which shows what they are doing to tackle environmental issues.

(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?

- The National Wildlife Crime Unit is a UK police force unit that assists in the detection and prevention of wildlife crime. Wildlife Crime Officers are stationed within many police stations throughout the UK.
- Within Her Majesty's Revenue and Customs is a unit which is responsible for prosecution the non-payment of environmental taxes, including landfill tax and the Climate Change Levy.
- Local authorities employ Environmental Protection Officers specialise in the enforcement of environmental legislation.

(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?

- The Environment Agency is a non-departmental public body, sponsored by the Department for Environment, Food and Rural Affairs. It advises the Government about environmental issues.
- Its officers are recruited and trained directly by the Environment Agency.
- It has the power, under section 108 of the Environment Act 1995 to investigate and prosecute environmental crime in England. Under the Police and Criminal Evidence Act 1984, it also has powers of entry, interviews under caution, compulsory interviews, power to obtain samples and documents as well as considering the offence of obstructing an officer.

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

- Crown Courts and the High Court may impose criminal sanctions in environmental cases.

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

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

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

- The Government Legal Department does not have a specialist environmental law unit.

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

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?

How are conflicts over jurisdiction resolved?

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?

- All employees of the Government Legal Department are recruited through the Government's civil service website.

#### **D. Administrative violations/cases**

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

- The regulator bringing the prosecution decides on which type of enforcement is required in each case.

## **E. Civil cases**

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

- The Regulatory Enforcement and Sanctions Act 2008 introduced civil sanctions in environmental law cases.
- Civil sanctions are an alternative to criminal penalties and may be imposed if they are regarded as a suitable action by the regulator.

Can they award remedies other than orders for damages?

- There are four kinds of civil sanction: fixed monetary penalties; discretionary requirements; stop notices and enforcement undertakings.

Are there civil courts specialised in environmental law?

- As stated above, specialist tribunals, the High Court, Court of Appeal and the Supreme Court all deal with environmental cases, using specialist judges to determine the case.

## **F. Standing**

Do environmental NGOs have standing in the different courts?

- What requirements apply for the grant of standing?
- Must they have obtained formal recognition or accreditation by the authorities, or is the right to standing assessed on a case by case basis?

- Bodies such as the National Trust, the Royal Society for the Protection of Birds, the Campaign to Protect Rural England and Friends of the Earth have standing.
- The Environment Agency and Natural England, as Government advisers also have standing.