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## REFLECTIONS ON THE ROLE OF JUDGES IN ENFORCING ENVIRONMENTAL LAW

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### SUMMARY

Judges play a critical role in compliance and enforcement of environmental laws. This paper discusses the obstacles to environmental enforcement that Judges must overcome.

### 1 INTRODUCTION

The role of Judges is necessary for enforcing the law, because it is Judges who must interpret the law and find the right solutions in actual cases. For substantive environmental law, which is relatively recent in the various national legal systems and possesses a strong technical content, the role of Judges has recently appeared to be decisive, but this is slowly changing. The lack of the specific training of Judges with regard to the environment, except for some praise-worthy exceptions, is not compatible with current environmental laws, which embraces almost all legal sectors and often appears in cases before the courts. The focus of this brief paper will be on some of the progress that has been made in training Judges and, most importantly, on identifying the politico-institutional role of the judiciary in guaranteeing the greater effectiveness of environmental law. The paper will also stress that the ineffectiveness of environmental law has deep roots, which must be faced pragmatically and removed.

### 2 OBSTACLES TO THE ENFORCEMENT OF ENVIRONMENTAL LAW

Environmental law encounters many difficulties in its actual enforcement. There are many complex explanations for such obstacles, including cultural, political, economic, technical, and scientific causes. Despite the enactment of numerous environmental laws and regulations, the environmental crisis continues to worsen because the issues triggering the problem have not been removed. The need to improve environmental enforcement and compliance is apparent in national, regional, and international law. In other words, this is a “common challenge” for which a “common response” has not yet been found.

Certainly, there are practical, and even legal obstacles, in the process of concrete enforcement of environmental law at the various levels (local, national, regional,

and international), but the removal and attenuation of these obstacles (even though proper and useful) must not make us forget the more general implications of the problem. The role of the Judge is an important component of the legal system because – thanks to his/her professional activities – the law is verified through his/her ability to solve actual cases, in accordance with the principles of consistency and equity. An evaluation of obstacles to improving environmental compliance and enforcement follows, below.

### **2.1 Cultural Obstacles**

The role of the “environment” is still dynamic in modern society. The conceptual importance of the environment has matured, and it is no longer considered important by only a marginal segment of society. However, cultural maturity towards the environment has not as yet been translated into coherent social behaviour as society, and individuals, are still bombarded by contrary input. The removal of cultural obstacles is a priority in order to promote environmental “truth” and “justice” in the interest of sustainable development for all.

Regardless of the progression of society, it must be questioned whether there are existing “cultural obstacles” among Judges if they still considered environmental protection to be a marginal problem.

### **2.2 Political Obstacles**

The existence of approximately 190 sovereign States does not facilitate the adoption of effective measures at international level. The lack of effective supranational executive and adjudicating bodies for the global environment is justified by valid political obstacles, and it is the duty of the political world to remove these difficulties. Clearly, there are few other viable alternatives to protection of the global environment. Even within many individual countries, the environment does not as yet have an “integrated” place within the overall policies of the national government.

It must be acknowledged that progress has been made within the system of the European Union, the United Nations, the International Network for Environmental Compliance & Enforcement, various regional organizations, and through constitutional amendments. The question remains of whether there is awareness amongst judges of the positive role of “dialogue” with political institutions on the environment.

### **2.3 Economic Obstacles**

The lack of sustainable consumption and production results in a negative impact on the environment. In order to achieving economic growth while respecting environmental limits, regulations must favour methods of production and consumption that are less polluting. Some issues remain, such as absorbing

potential cost increases and promoting the adoption in practice of best available technologies. The involvement of parties with economic interests is fundamental for obtaining positive environmental results. Regardless, does the so-called “incapacity of the economy to recover” justify breaking the law?

#### **2.4 Technical & Scientific Obstacles**

Regulations on the environment are often very “technical” in their content (emission levels, dumping rates, electromagnetic pollution levels , etc.). Often, Judges do not have the interdisciplinary competence to understand the practical implications of his or her choices, but are still obligated to decide and enforce the law. Further, some environmental problems have a high level of scientific uncertainty, such as the precautionary principle, which may create uneasiness for some Judges.

#### **2.5 Legal Obstacles**

Legal obstacles arise due to the interdisciplinary nature of the environment and the relatively recent development of environmental law. Further, the sectorial nature of environmental regulation, coupled with the lack of co-ordination between institutions, has resulted in many issues pertaining to environmental compliance and enforcement. Last, obstacles emerge from the often imprecise language of environmental regulations.

#### **2.6 Practical obstacles**

Many important obstacles will only be overcome by adjusting the priorities of judges and other institutions pertaining to environmental issues. Currently, there is a lack of official case law reports, official statistics, and law journals on the environment. Further, there has also been a deficiency of policy assisting non-governmental organizations in regard to the legal aspects of their activities, such as providing exemption from the costs of bringing civil proceedings. Throughout time, such obstacles will hopefully be overcome as the environmental law and regulation increases in popularity.

### **3 TRAINING**

It is necessary that Judges become more competent in environmental matters. For example, the inclusion of environmental law in one’s legal education must become more widespread. The “value” of the environment in the evaluation of judges when they are undergoing their competitive examinations must be recognized. Further, local courses and initiatives promoting compliance and enforcement with environmental laws should be provided.

#### **4 IMPROVING THE LEGISLATIVE FRAMEWORK FOR THE PURPOSE OF ENFORCEMENT**

In order to promote compliance and enforcement with environmental law, the role of the Judge must be linked with that of the other institutions involved. In other words, Judges must participate in a cross-sector approach to environmental protection. This includes the use of plain and easily understandable language, without confusion between technical aspects and legal rules. Judges should work to integrate the objective profiles of environmental law with the subjective profiles, in the sense of defending the procedural role of the human right to the environment (information, participation and access) and beginning to better define the “substantive” content of the human right to the environment (right to water, to food, etc.).

Judge can also increase compliance with environmental regulations by strengthening criminal penalties in some sectors, and introducing mandatory civil action for environmental damage. This can include working with the international community to encourage “economic” penalties whenever there is a failure to comply with the obligations of a multilateral environmental agreement.

#### **5 CONCLUSION**

Judges from countries around the world realize that there is a great sensitivity surrounding the need for environmental protection. Judges have the ability to provide justice to individuals experiencing degradation of their environment. However, access to such justice remains problematic in international law. Judges must continue to actively work to create a system of environmental governance to prevent increasing occurrence of environmental harm.

#### **6 BIBLIOGRAPHY**

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