

# The role of national judges in environmental law

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## I. Introduction

On 28 February 2004, the *EU Forum of Judges for the Environment (EUFJE)* was established<sup>1</sup>. It is an international non-profit association according to Belgian law. The objective of the Forum is to promote the enforcement of national, European and international environmental law in a perspective of sustainable development. The aim of the Forum is in particular to exchange experiences in the area of training of the judiciary in environmental law, contribute to a better knowledge of environmental law, share experiences with environmental case law and contribute to a more effective enforcement of environmental law. Every judge in the European Union and the European Free Trade Association with a special interest in environmental law can become a member of the Forum. Judges from countries that have applied for membership of the European Union may be admitted as observers. Representatives of the United Nations Environment Programme (UNEP), the European Commission and the Council of Europe may attend the meetings as observers. The initiative is in keeping with a worldwide initiative that was taken by the United Nations Environmental Programme (UNEP)<sup>2</sup>.

It was agreed at the inaugural meeting in the European Court of Justice in Luxembourg on 26 April 2004 that the early work of EUFJE was to obtain information about environmental law training facilities offered to members of the judiciary in each of the participating states, as well as particular courts or tribunals which have jurisdiction in respect of environmental cases. In view of the preparation of the first EUFJE annual conference a questionnaire was sent to EUFJE members in the different member states. With this questionnaire information was sought on: a) the legal system and environmental protection; b) training and information and c) organisation of courts and enforcement agencies. There had been 19 responses to the questionnaire<sup>3</sup>. On 3 December 2004, EUFJE held its first Annual Conference in the Council of State of the Netherlands, in The Hague. At the conference, summary reports on the country questionnaires were presented<sup>4</sup>. As the main findings of these reports maybe of interest for environmental lawyers through out Europe, we will present them in a concise way in this contribution.

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<sup>1</sup> [www.eufje.org](http://www.eufje.org)

<sup>2</sup> UNEP, *UNEP Global Judges Programme*, Nairobi, 2005, 73 p.

<sup>3</sup> The national reports can be found on EUFJE's website.

<sup>4</sup> Also these reports can be found on EUFJE's website.

## II. Brief outline of the legal system and the system of environmental protection in the different participating state

Except the United Kingdom and Ireland, all of the member states that have send in a national report for the first EUFJE annual conference in The Hague, have a civil law system.

In *Austria*, there are several constitutional provisions for the protection of the environment, e.g. Constitutional Act on Comprehensive Environmental Protection. The Austrian constitution does not contain a fundamental right provision for the environment. Austrian environmental law is not codified into a single statute but contained in several federal statutes e.g. Trade Act, Clean Air Act for Boiler Plants, Air Pollution Impact Act etc. Austrian environmental law is mainly administrative (public) law. The Constitution of *Belgium* includes an explicit provision on right to enjoy the protection of a healthy environment (Article 23). This includes three procedural rights: the right to access environmental information, the right to participate in decision making in environmental matters, and the right to access courts in environmental matters. Environmental law is also codified and taken to mean all regulation in connection with town and country planning, environmental hygiene, architectural and natural heritage, and conservation. There is no Belgian code of environmental law, since this is not possible given the division of powers between the federal state and the constituent states (regions). Belgian environmental law is a mixture of administrative, penal and private law.

The *Danish* Constitution does not guarantee a right to safe and healthy environment. Danish environmental law consists of a comprehensive system of rules comprising different sorts of regulations and various competent authorities. Danish environmental law is strongly rooted in administrative law. The Constitution of *Finland* includes an explicit, though somewhat declaratory provision on the environment: “the nature, biodiversity, the environment and the cultural heritage shall be a responsibility of everyone”. Environmental law in Finland is not codified in one single Act, but rather contained in several acts. For instance, the Environmental Protection Act covers the general field of pollution control, and the Waste Act covers relevant parts of waste management. Most of the environmental cases fall within the domain of administrative law. The *French* Constitution does not provide protection for the environment, although it is about to adopt an environmental charter with constitutional value. While there is no general law protecting the environment, France does use an environmental code, which covers public inquiries, the protection of natural species, protection of natural sites, protection of animal and plant life, fishing and hunting, regional industrial activities, waste, GMO’s, control of chemical products, radio active substances, and pollution.

*German* law includes constitutional protection of natural foundations of life and animals, but there is no general law protecting the environment, because legislative competence in this field of law is shared between the federal government and the Länder. Any federal legislation is aimed at polluting or dangerous industries and includes aspects of air and soil pollution, the treatment of waste and GMOs. While the water protection and nature have framework laws, their details are regulated by the Länder. There is no consolidated system of environmental law as such. *Greece* has a civil law system, which has provided constitutional protection of the environment since 1975. Greek law addresses the environment quite extensively, including the protection of nature (General fauna and flora, forests, protection of habitats, wetlands, mountains, coastal regions etc) and a general law protecting the

environment. There is no environmental code or consolidated body of environmental law, but there is a special commission considering the codification and improvement of environmental law.

*Ireland* has a common law system. There is no specific constitutional protection for the environment in Ireland. Environmental law is not codified in one single Act, but rather is contained in Acts of the Oireachtas, European Legislation, and Case Law. Environmental law is highly regulated in Ireland. In *Italy* the environment is mentioned under constitutional law (3/2001). Environmental law in Italy is not codified in one single Act. Law 349/86 established the Italian Environment Ministry and rules concerning environmental damage. Environmental protection in *Lithuania* is entrenched in Part 3 of Article 53 of the Constitution, which states: “the state and each person must protect the environment from harmful influences” and article 54 thereof. There is no single code designed for environmental protection. Lithuanian environmental law is highly regulated, addressing Environmental Protection, Protected Territories, Land and Forestry. The Code of Administrative Violations of Law, the Civil Code and the Criminal Code provide for liability for violations committed against nature. While there is in *Luxemburg* no specific constitutional protection of the environment, there is a general law protecting the environment and there is a consolidated system of environmental law.

The *Norwegian* Constitution has a separate provision for the protection of the environment, Article 110b, which incorporates the principle of sustainable development. Norway has no general comprehensive code that applies to the mainland. However, in the island group of Svalbard in the Arctic Sea, the Svalbard Environment Act 2001 applies. There are several acts protecting the environment, including the Pollution Act 1981, the Product Control Act 1997, the Nature Conservation Act 1970, and the Wildlife Act 1981. *Poland* has a civil law system with positive laws and legal codes, including administrative, civil and penal codes. There is a high level of constitutional protection for the environment, a general law of environmental protection, and a consolidated system of environmental law in Poland. In *Portugal*, there is constitutional protection of the environment, a general law of environmental protection and a consolidated system of environmental law. The *Slovenian* Constitution contains a general provision for the protection of the environment. Article 5 provides for the preservation of natural wealth and creates opportunities for the harmonious development of society and culture in Slovenia. Article 72 of the Constitution guarantees a healthy living environment. There is no single code designed for the protection of the environment but there is a general law protecting the environment. The Environmental Protection Act 2004 guarantees the constitutional provision right to a healthy environment.

In *Spain*, there is constitutional protection of the environment, but no general law of environmental protection of the environment and no consolidated system of environmental law. The instrument of Government, which is the *Swedish* constitution, contains some provisions in environmental matters. Article 2 of Chapter 1 states that the public institution shall promote sustainable development leading to a good environment for present and future generations. There is no single code protecting of the environment, but there is a general law that does so. The Environmental Code 1999 encompasses a substantial part of laws relating to provisions on environmental protection. It contains rules from 15 previous acts addressing the management of land and water, nature conservation, the protection of plant and animal species, and environmentally hazardous products and waste. There are other important laws within the environmental field, including the Forestry Act, the Mineral Act, and the Animal Welfare Act. 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 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.

The *United Kingdom* has a common law system. In the UK, there is no constitutional protection of the environment, no general environmental protection, and no code of law relating to environmental protection. The UK has a highly regulated system of environmental protection, based on a large number of statutory provisions, such as the Environmental Protection Act 1990, the Town and Country Planning Act 1990, and the Water Resources Act 1993.

### **III. The organisation of the national judiciaries with regard to environmental law**

#### **3.1. Generalities**

We may ask ourselves which courts and tribunals in the different member states are responsible for settling environmental disputes. The reports that were sent in show that in the majority of the countries, namely *Belgium, Finland, The Netherlands, France, Germany, Lithuania, Poland, Portugal, Sweden, Italy, Spain, Slovenia, Luxembourg, Greece* and the *United Kingdom*, 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. It should be pointed out, however, that the powers of the administrative courts might differ.

While in most European countries those courts only have the power to suspend and/or annul administrative decisions, in certain other countries such as *France, Germany* and *Spain* they have powers that are more extensive. The administrative courts in *Spain*, for instance, may impose provisional protective and compulsory measures. However, they cannot take the place of the administrative authorities. In *Germany*, they are empowered to annul administrative decisions as well as to oblige the authorities to take a decision, and they can substitute their decision for that of the authorities. For *France* it should be pointed out that the administrative courts have distinct powers in cases of extreme urgency and in case of judgment on the merits. In cases of extreme urgency, they can suspend the decision, take any measure necessary to protect the fundamental rights of the petitioners and impose orders, where appropriate with periodic penalty payment. In cases where a judgment is given on the merits, they can annul the challenged decision and order the authorities to pay compensation; in special cases, they can substitute their decision for the challenged decision, and they can impose fines and damages. In *Portugal*, they are empowered to annul administrative acts and to decide on claims for compensation against the authorities.

In *Denmark*, however, all sorts of cases are settled by one court system. Furthermore, there are a number of administrative tribunals and boards. There are no courts that specifically have jurisdiction in public law. This statement, however, should be qualified. In practice, a number of administrative courts have been set up for certain specific matters which are empowered to take a final decision in disputes between the State and private individuals. After that, the dispute can be brought before the ordinary courts. *Ireland* and *Norway*, too, do not have specific administrative courts and tribunals.

*Sweden* has a dual system with ordinary civil/criminal courts and administrative courts. However, this system is not used in environmental cases. According to the Environmental Code, there is instead a special system with regional Environmental Courts and an Environmental Court of Appeal, all of which are connected to some of the ordinary civil/criminal courts. The administrative courts do not have any jurisdiction in environmental matters.

### **3.2. Distinction between civil cases and criminal cases**

Whether this means that the same courts and tribunals have jurisdiction in both criminal and civil cases is not a foregone conclusion. In the *United Kingdom*, *Germany* and *Spain*, for instance, there is a distinction between civil courts and criminal courts. In most countries (*Belgium*, *Luxembourg*, *Lithuania*, *France*, *Italy*, *Sweden*, *Poland*), 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 some countries, such as *Portugal*, this specialization has only been implemented at the appeal level. Finally, there are the countries where this distinction is less strictly emphasized, as is the case in *Ireland*, *Finland* and *Denmark*.

### **3.3. Existence of a constitutional court**

Most European countries have a Constitutional Court. The constitutional court is usually a *sui generis* court of law that is positioned within the state organization opposite the other, more “conventional” state powers and is therefore not covered by the constitutional title that deals with the conventional state powers. Only in certain exceptional cases is the constitutional court part of the judiciary because the constitutional court is mentioned directly, in the wording of the Constitution, under the courts of law that form part of the judiciary (for example the Federal Republic of *Germany* and *Poland*). Access to the constitutional court, however, is not always regulated in the same way. The right to lodge an appeal directly with the Constitutional Court is usually only open to political authorities, sometimes with diversification according to the nature of the regulation against which the appeal is lodged (e.g. Poland: the president; Germany: the government; France: the Prime Minister; Portugal: the House of Representatives, etc). Express direct access for natural and legal persons to the constitutional court exists only in the minority of European countries (e.g. Belgium: insofar as these persons have an interest).

In the countries that have no constitutional court, a distinction can be made between countries where the ordinary courts and tribunals have power of constitutionality review. *Denmark*, *Finland*, *Greece*, *Sweden* and the *United Kingdom* fall into this category. The Finnish Constitution, for instance, stipulates that when the application of a law could manifestly come into conflict with the Constitution, and the statute was not adopted in the manner provided for constitutional amendments, the court must give priority to the provision of the Constitution. Moreover, if a provision of a decree or any other legislative rule ranking lower than a statute comes into conflict with the Constitution or another law, it shall not be applied by a court or any other authority.

On the other hand, there are also countries where this power is not given to the ordinary courts and tribunals. In *The Netherlands*, for instance, 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.

### 3.4. Powers

It should be pointed out that the powers of the different courts are somewhat similar. 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 and tribunals, on the other hand, focus primarily on compensation, either in kind or equivalent; the administrative courts are chiefly empowered to rule on the suspension and annulment of administrative legal acts. In exceptional cases, injunctions may be imposed on the administrative authorities. In *Austria*, *Greece* and *Lithuania*, infringements of environmental law will usually give rise to administrative fines that can then be challenged before the administrative courts.

### 3.5. Specialized courts

As a rule, there are no specialized environmental courts to be found in Europe. As the Belgian report indicates, there is no legal basis for a specialization in environmental law, unlike for instance the industrial tribunals and commercial courts. In countries, however, that have a dual structure in terms of jurisdiction in disputes, the administrative courts are developing a certain degree of specialization in environmental law, since the settlement of virtually all disputes between citizens and public authorities in environmental matters fall within their remit. We can see in those countries that environmental disputes account for a substantial portion of the administrative disputes (e.g. in *Finland* one third of the cases of the Supreme Administrative Court; in *Belgium* nearly a quarter of the ordinary cases before the Council of State) and that this leads to a certain kind of specialization as those cases are consistently referred, whether or not on the basis of a legal rule, to the same court division or divisions. This is the case in *Belgium*, *Germany*, *The Netherlands*, *Greece* and *Finland*.

In the area of environmental criminal law, too, there is no such specialization, although the Belgian report indicates that, in practice, certain larger courts have developed a limited form of specialization because of environmental cases being consistently referred to the same division based on an internal division of tasks. Those divisions are usually also entrusted with other forms of crime, so that this de facto specialization does not go to such an extent that the criminal judges can concentrate exclusively on environmental criminal law.

In this connection, it is worth focusing on the situation in Sweden and Austria on the one hand and in Finland and France on the other.

In *Sweden* there exists, since the Environmental Code became effective in 1999, a special system of environmental courts that are attached to five civil districts and one Court attached to a civil court of appeal; these are the environmental courts. Those courts have been given exclusive powers. They have jurisdiction in all environmental disputes, including applications for environmental licences, environmental damage, and various civil cases and challenged administrative acts of local and national authorities. However, they have no

jurisdiction in criminal cases, disputes in the area of town and country planning (this could change in the future) and energy-related disputes. The administrative courts in Sweden, on the other hand, have very little to do with environmental law; the only cases they deal with are cases connected with town and country planning. The composition of the environmental courts is special in that, besides judges with a legal training, they also have judges with a scientific or technical background.

*Austria*, too, has a specialized environmental court, the Independent Environmental Senate (*Umweltsenat*). The Environmental Senate is composed of 10 judges and 32 legal specialists. The members of the Environmental Senate are independent; they receive no orders from the federal ministries, the governments of the constituent states (*Länder*) or any other authority. Their jurisdiction can be illustrated as follows. In Austria, factories and projects that have an impact on the environment require various licences according to different environmental legislations. Licences for factories and projects with a major impact on the environment are granted in one single procedure, including the assessment of the environmental impact, by one single authority (the government of the constituent state – *Landesregierung*). This constituent state government grants the licences in accordance with the applicable environmental legislations, as laid down in the Environmental Impact Assessment Act. The Environmental Senate is the body with which an appeal can be lodged against decisions of the constituent state governments in accordance with the Environmental Impact Assessment Act. The Environmental Senate can decide whether a licence is necessary in accordance with the Environmental Assessment Act and, insofar as such a licence is necessary and can be granted, on what conditions that licence should be issued.

Those decisions are open to appeal before the federal Administrative Court.

Although Sweden and Austria are the only countries that have special courts dealing exclusively with environmental cases, it is useful to mention other, less far-reaching forms of specialization.

In *Finland*, the Vaasa Administrative Court has jurisdiction to hear all appeals that are based on the Environmental Protection Act and the Water Act, and that concern the Finnish mainland. Consequently, environmental cases account for around 40% of the overall caseload of the Court. Two divisions of the Court deal virtually exclusively with environmental cases. When such an appeal is heard by the Supreme Administrative Court, two expert advisers who are qualified engineers or have a degree in natural sciences are assigned to the five judges. The former special Land Courts have been abolished and their duties have been entrusted to the District Courts. The former Water Courts have now been transformed into Environmental Permit Authorities, while the former Water Court of Appeal has been incorporated in the Vaasa Administrative Court.

In *France*, a new trend can be seen in the area of criminal law, whereby the number of courts with jurisdiction to investigate and judge certain crimes is being reduced. The court of Paris, for instance, has been given exclusive jurisdiction to try violations of the law to prevent sea pollution where such violations have taken place in the exclusive economic zone, in the ecological protection zone or on the high seas. For other violations of that legislation, the jurisdiction of a limited number of courts in the coastal area has been extended in order to deal with highly complex cases. This jurisdiction is in competition with that of the normally competent courts. In connection with products and substances that are dangerous to human health, the courts of Paris and Marseilles have been given the same jurisdiction to try highly complex cases. The judicial officers of those two courts can enlist the support of assistants specializing in sanitary issues. An arrangement exists for conflicts of jurisdiction, which differs according to whether the case is still under preliminary investigation or under investigation, or whether a court judgment has been given in the case.

Some reports point out that although the country in question has no specialized environmental courts, some specialized public administrations apply administrative appeal procedures that bear quite a few resemblances to proceedings before the courts. The *United Kingdom*, for instance, has the Planning Inspectorate; this is an executive body of the government that operates independently. It conducts local investigations in connection with appeals relating to town and country planning, licences for industrial gaseous emissions, licences for the construction of transport infrastructure, etc. The Nature Protection Board of Appeal in *Denmark* has jurisdiction to hear appeals against decisions taken by the local authorities based on the Planning Act.

## IV. The investigation of environmental crime

### 4.1. The role of the police

In virtually all countries, 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. However, there are also exceptions to the rule that the police have general authority to investigate environmental crimes. In the *United Kingdom*, for instance, the powers of the police are limited to infringements of the protection of wild animal species and certain local environmental offences. The local authorities are empowered to investigate infringements of town and country planning law and minor environmental offences. Larger-scale infringements of environmental law are the responsibility of specialized agencies. The Environment Agency (EA) (England and Wales), the Scottish Department of Environmental Protection Agency (SEPA) and the Department of Environment Northern Ireland (DoE NI) are responsible for waste, water, integrated prevention and control of pollution, fisheries and infringements of the legislation on radioactivity. Government agencies such as English Nature are empowered to prosecute violations of conservation law, while NGOs and private individuals can institute private actions.

However, as a rule the police do not have units that specialize in environmental law. Yet to this rule, too, there are several exceptions: in *Germany*, the police and Customs have specialized environmental units. The public prosecution, on the other hand, has no such specialized services on a permanent basis. In *Portugal*, the judicial police and the National Republican Guard have specialized units at the national level. Since 1998, *Lithuania* has a Division of Violations of Ecology and Law with the Police Chief Commissioner's Offices of Vilnius City, and the idea is to set up a similar department in Klaipeda and Panevezys. In *Spain* there is some specialization within the *Corps Superieur de Police* (which controls the Customs) and the Guardia Civil (Seprona). *Austria* has consciously opted for specialization in environmental crimes, both locally and nationally. Some officers are specifically in charge of environmental cases, while several hundred police officers (UKO – *Umweltkundige Organe*) have received basic and supplementary training. The Federal Office of Criminal Investigation has a special department in charge of environmental crime. The *Belgian* report points out that the investigation of environmental crimes is the task of the police and the specialized inspection services. They are led by the public prosecution officers. Since the police reform of 1998, Belgium has two general police services: the Federal Police and the Local Police. There is no certainty as to whether certain officers of the local police specialize in environmental crimes. The Federal Police, however, does have a small Environmental Unit. In *Denmark*, the

police work together with the specialized environmental authorities, and in a number of cases, the local police have set up units specializing in environmental law. In the Netherlands, most of the regional police divisions have officers or units specializing in environmental law.

#### **4.2. Environmental inspectorates**

In quite a few countries, environmental crimes are also investigated by specialized environmental inspection services. In *France*, a large number of public officials and specialized officers are authorized to investigate certain violations of environmental law. The same applies in *Luxembourg*, *Portugal* and *Spain*. In *Belgium*, the three regions have specialized environmental inspectorates that are empowered to draw up reports if they detect infringements of environmental law. In *The Netherlands*, there is the National Environmental Inspectorate, the Road Traffic Inspectorate, and the Conservation Inspectorate. An environmental inspectorate also exists in *Poland*.

An interesting example is *Norway*. The National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM), set up in 1989, is a central and national police department to combat economic, environmental and data crime. ØKOKRIM is the institution that both investigates and prosecutes those crimes. It decides whether and how anyone will be prosecuted. Most environmental crimes, however, are investigated by the local police and by the specialized environmental inspectorates. All police districts have a coordinator for the combat against environmental crime, and all police units have an environmental officer. The National Police Academy organizes special training courses in combating environmental crime. ØKOKRIM, for its part, only investigates and prosecutes the bigger and more complex cases and cases that involve the public interest, and also gives support in this area to the local police. The composition of ØKOKRIM is also significant. The environmental team is composed of people who have had police training, people qualified in natural sciences and people qualified in financial matters.

#### **4.3. Prosecution policy**

In most countries of the European Union, 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 therefore a division between the investigation of an environmental crime and its prosecution. There are exceptions to this rule. In some countries, the public prosecutors are part of the police force (e.g. *Norway*, *Denmark*), while in other countries this function is shared between the police and specialized government agencies (e.g. *United Kingdom*). In *Denmark*, the police are under the authority of the Central Commissioner of Police and the Ministry of Justice. A police district is headed by a Chief Constable, who is also the public prosecutor in the district in question. Consequently, the police are both investigator and public prosecutor. In practice, the police carry out their duties in cooperation with the authorities in charge of the environment.

In many Member States (*France*, *Belgium*, *Luxembourg*, *The Netherlands*, *Poland*, *Portugal*, *Spain*, *Lithuania* and *Italy*), proceedings are, as a rule, instituted by the public prosecution. In a number of these legal systems, the aggrieved parties can institute proceedings by bringing an action for damages (e.g. *France*, *Belgium*) or directly summoning

the perpetrators to appear before the criminal court (*Belgium*). In some of those countries (*France, Poland, Belgium*), certain administrative authorities can commence criminal proceedings themselves for certain infringements (forestry legislation, hunting offences, fisheries legislation, Customs affairs).

For organizational reasons, *Finland* opted for a system of key prosecutors, where it is thus possible to refer environmental cases consistently to the same prosecutor, giving rise to a certain specialization. This kind of system exists in Spain, too. The environmental prosecutor is the prosecutor in charge of environmental crimes. Each province has such an environmental prosecutor. Conflicts of jurisdiction are resolved by the Chief Prosecutor. In *The Netherlands*, there is at least one prosecutor in each district who specializes in environmental law. Because 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. One special feature in *Sweden* is the fact that the police investigate the crimes, but that these investigative powers have also been given to the public prosecutors, together with the prosecution. No specific government agency exists for the prosecution of environmental crimes. There is, however, a certain kind of organization within the public prosecution, but this is organized according to internal rules.

In 1993, a Prosecution Policy Commission was set up in *Flanders (Belgium)* on which representatives of the relevant ministries and the relevant government departments (such as the Environmental Inspection Department, the Building Inspection Department, etc) periodically consult with representatives of the attorneys-general and the police. This consultation resulted in priority memos regarding the prosecution of town and country planning offences and environmental crimes. In these memos, criteria are established to decide for which crimes prosecution is a priority. However, there is no integrated prosecution policy yet. The large majority of criminal proceedings are instituted in response to complaints and notifications. An active detection of environmental crimes will depend on the (rare) commitment and enthusiasm of an individual investigator or judicial officer.

In *Austria*, environmental crimes are prosecuted by the public prosecution and by administrative authorities. A distinction is made between administrative penal law and ordinary penal law. Administrative penal law is enforced chiefly by administrative authorities and gives rise to the imposition of administrative penalties. More serious environmental crimes, defined in the Penal Code, are punished under ordinary environmental penal law. Such cases fall within the jurisdiction of the criminal courts. They are investigated and prosecuted by the police and the public prosecutor.

The *Greek* report, too, points out that many environmental laws provide for the imposition of administrative sanctions in case of infringements. This is also the case in *Lithuania*, where 11 different government agencies can impose administrative sanctions for infringements of environmental law. In *Poland*, the police or other competent authorities can impose fines for the least serious environmental offences. Such decisions are open to appeal before the court. Although *Austria* and *Portugal* opted for specialization within the police services, no such specialization exists for the public prosecutors.

The national reports that quote figures show that the number of cases that are prosecuted varies largely. In the *United Kingdom*, the number of prosecutions is said to be around 7,000 each year. In *France*, there were around 1,800 convictions in 2002 for violations of environmental law, of which around 1,150 convictions for violations of hunting and fishing regulations. In *Austria*, 133 criminal cases (violations of the environment section of the Penal Code) were successfully tried in 2001. In *Finland*, the annual number of criminal convictions varies between 25 and 40. *Denmark* quotes 250 to 350 convictions per year. For *Belgium*, no overall figures are available. In large districts, more than 1,500 new cases are brought before the Public Prosecution each year, of which around 5% are effectively prosecuted before the

court. In *Norway*, around 6,000 cases are reported to the police each year, but the number of actual prosecutions is considerably lower. In *Sweden*, some 3,624 reports were drawn up in 2003 for environmental crimes, of which 20 to 30% resulted in prosecution before the criminal court.

## V. Civil cases

### 5.1. Generalities

In most of the countries, the civil courts are empowered to award damages, either in kind or by way of equivalent. Consequently, the civil courts are only confronted with environmental cases where damages are claimed. In certain countries, the civil court is quite frequently referred to – in France, for instance, more than 3,300 actions for compensation for environmental damage have been reported in 2002 – whereas in other countries it seems that the civil court is called upon far less frequently. Here, too, it should be observed that no specialized civil environmental court exists. In *Sweden*, the ordinary courts and tribunals have little concern with environmental matters, since specialized environmental courts do exist there. In the *United Kingdom*, *Denmark* and *The Netherlands*, 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).

As we have said earlier, the civil courts are primarily empowered to award damages. In the *United Kingdom*, however, a judge who is confronted with a particular dispute may also take other decisions, such as injunction (in civil law disputes) or declaration on a point of law, quashing order, mandatory order or prohibition order (in public law disputes). In *Lithuania*, too, the civil court can settle a dispute in several ways, for instance by granting a particular right, restoration of the relationship, prohibition to perform certain acts, etc.

### 5.2. Right of action of NGOs

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.

A noteworthy arrangement is the *Belgian* Act of 12 January 1993 establishing a right of action for the protection of the environment. This Act empowers the president of the Court of First Instance to establish and, where appropriate, to order the cessation of “evident infringements” of environmental law or serious threats of such infringements, or to order measures to prevent damage to the environment. The president may act at the request of an NGO, which however must meet certain conditions. The NGO must comply with all the rules of the law on associations, its objective must be the protection of the environment and in its bylaws, and it must circumscribe the territory covered by its activity. The legal person must have been incorporated for at least three years on the day it institutes the action for cessation. By submitting its activity reports or other relevant documents, it must furnish proof of an effective activity that is in keeping with its corporate purpose and that is concerned with the collective environmental interest, which it seeks to protect.

In *France*, a right to intervene in the criminal proceedings is granted to public associations, on condition that they have been empowered to do so by the legislator. Private associations may, under certain conditions, exercise the rights granted to a party claiming damages. For private associations it is required that, they have been given permission by the public administration and that corporate purpose is compatible with such an intervention. A right of action is also granted without permission from the public administration, on condition that the associations have been in existence for five years already, and only for certain environmental crimes. In *Finland* and *Spain*, NGOs in principle have no right of action, save for certain specific exceptions. NGOs in Finland can, based on specific legal provisions, appeal to administrative courts against administrative decisions if they meet the special requirements that are imposed. In Spain, NGOs can institute public actions for specific environmental crimes based on certain legal provisions.

NGOs in *Poland* can take legal action on condition that they are allowed to carry out their activities based on legal provisions. In *Germany*, right of action for NGOs is limited to the administrative courts and is dependent on their prior recognition by the government. In *Lithuania*, the rule is that NGOs must be registered in the register of legal persons. In that case, they can take part in the legal proceedings as claimant, respondent or intervening party. Such a condition applies in *Luxembourg* too. In *Portugal*, NGOs have right of action in administrative cases. In *Austria*, they cannot take legal action before the civil courts.

In *Sweden*, NGOs have right of action before the environmental courts. This means that this right only applies for certain environmental cases, in particular in connection with licences and conservation. Criminal cases, civil cases and many administrative decisions of local and governmental authorities therefore fall outside this scope. Furthermore, this right of action is subject to certain additional conditions: the NGO in question must be a non-profit association, its corporate purpose must be in keeping with the action, the NGOs must be at least three years old and must number at least 2,000 members. In addition, the right of action is assessed case by case.

In the *United Kingdom*, NGOs have a right of action on condition that they have a sufficient interest. This interest is examined case by case. A comparable situation exists in *Denmark*, *Norway* and *Greece*. Here, too, all persons, including associations, have the right to bring an action before the Danish or Greek courts as claimant or respondent. The claimant, however, must prove a material and individual interest. In *Norway*, the right of action is based on a 25-year-old precedent. The only condition that is imposed there is that the action is in keeping with the purpose of the association. In *The Netherlands*, 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.

## **VI. Training of the Judiciary**

### **6.1. General organisation of initial en continuous training**

Three models of initial training can be differentiated. Certain countries do not organise any initial training for judges (or even a short training period, as is done in *Norway* and *The Netherlands*) because the judges are recruited from among practitioners (legal practitioners

but sometimes from among other disciplines: engineers and biologists in the case of the *Finnish Vaasa Administrative Court*) under the condition that they have exercised their profession for a minimum amount of time. This is the case in *Ireland*, as well as for professional judges in the *United Kingdom*, and for administrative judges in *Finland*. In *Belgium* (for judges), *Denmark*, *Finland*, *Norway* and *The Netherlands*, the direct recruitment of judges and/or the members of the Parquet (Prosecutor's Office) from among jurists who have practised professionally for the requisite amount of time coexist with the recruitment of young graduates who have completed a training course.

Under the second model, the training is decentralised and takes place essentially by shadowing judges and/or the members of the Prosecutor's Office, and if need be, includes theoretical courses. This is the case in *Germany*, *Austria*, *Belgium*, *Poland* (where the creation of a centralised training program is being studied), in the *United Kingdom* for magistrates (where there are also plans to centralise the training), in *Luxembourg* (for judicial judges) and in *Slovenia*, *Sweden*, *Denmark*, and *Finland* (only for assistant-judges who are recruited without any professional experience).

The third model consists of countries endowed with a National Training Centre for Judges (*Spain*, *Greece*, *Lithuania*, *Portugal*, *The Netherlands*), or possibly, countries like *France* which have two establishments, one for judicial judges and the other for administrators, including administrative judges (*Luxembourg* has a National Institute of Administrative Training). The theoretical courses are given in this establishment and are completed with training sessions which are supervised by the Centre (*Spain*, *France*, *Portugal*) or which are organised under the authority of the head of the jurisdiction (*Lithuania*). In some cases, there are additional external training sessions (in *The Netherlands* for recent graduates who, based on a contest, are interns for two years generally in a law firm).

Certain countries do not offer continuous training for magistrates (*Finland*, *Greece*, *Luxembourg*, *Sweden*). In the countries which offer continuous training, the models can be differentiated based on two parameters - a centralised or decentralised system on the one hand, and a mandatory or optional system on the other hand - without there necessarily being any connection between the categories. Only *Poland* currently offers a training model which is totally decentralised (the programmes are developed and the courses given within the courts) and which, at the same time, is systematic for all judges. In the *United Kingdom*, the training is only decentralised for "magistrates" (the responsibility rests with the Magistrates Courts Committees, within the jurisdiction of a Regional Court). Mixed systems exist in *Sweden* and *Finland* (for administrative judges in the latter country) where there lacks a systematic programme of continuous training. Conferences on current issues are proposed either by the jurisdictions, the central administration, or universities (Helsinki). In *France*, the continuous training is primarily run by the National School of Magistrates and consists of training sessions or seminars lasting 2 to 5 days, which are listed in an annual catalogue given to the magistrates. In *France*, there are also daylong conferences organised by the Court of Appeals based on the needs expressed by the magistrates.

In the countries where the continuous training is centralised, the training is organised or co-ordinated either by: (a) a public establishment called the Judicial School, the Magistrates School, or Centre or Institute of Judicial Studies (*Germany*, *Spain*, *France*, *Ireland*, *Lithuania*, *The Netherlands*, *Portugal*; *Slovenia*); (b) a Council of Judicial Studies (*United Kingdom* for professional judges); (c) a Superior Council of Magistrates (*Italy*, *Belgium*, for the latter country, for the development of the programme whereas its implementation is the responsibility of the Minister of Justice); (d) the administration of the courts after consulting the professional associations (*Denmark*, *Norway*, *Sweden*); or (e) by the Minister of Justice (*Austria*). *Finland* envisages conferring the responsibility, for the

judicial magistrates, to a Training Council for Judges, and *Belgium* projects creating a School of Continuous Training for Judges.

*Spain, Ireland, Lithuania, Poland, the UK, and Slovenia* have mandatory continuous training. In *Spain*, one must be trained when changing courts. In *Ireland*, judges appointed after a 1995 law, commit to following courses considered necessary by the head of the jurisdiction. In *Lithuania*, continuous training is mandatory at least once every 5 years, as well as in specific instances: changing courts, promotion, substantial legislative changes. In *Poland*, internal training within jurisdictions is mandatory for all judges or for some of them, depending on the topics. This compulsory training is always financed by the state but does not always lead to a reduced workload (in *Ireland*, aside from the annual court conference, the training takes place after hours or on Sundays).

In the other countries, training is optional for magistrates that are permanently appointed. This training is generally not taken into account or plays a small role for promotions or appointments to positions, except in *Germany* and in *Spain* (in *France*, a proposal designed to make the training mandatory and to allow training to be taken into account for promotions is being studied). If the judges have the right to take a leave of absence (assuming the appropriate authority approves their request for training), their workload is not necessarily alleviated. As to expenses covered by the state, transportation and accommodation costs are not always included (*Portugal*).

In the countries that offer group training, the time that judges can devote to it per year is around 5-15 days. Certain countries have found unusual solutions: *Greece* allows judges to take a year-long leave during their careers in order to take courses or allows them to do an internship in a national or foreign institution. In *Norway*, the judges that have 10 years of seniority can request a paid leave of absence for 6 months, in order to attend a study program. Each year, one of 19 members of Norway's Supreme Court is allowed to devote 3 months to update his/her legal knowledge. In *Slovenia*, the Ministry of Justice offers educational scholarships to attend courses at a national or foreign university, with the possibility of taking a one-month leave per year, with compensation for the loss of salary.

## 6.2. Training in Environmental Law

At the recruiting stage, no country expressly requires specific knowledge in environmental law. Nevertheless, we note that, in *Finland*, the master of law required to become a judge includes at least one exam in environmental law and that certain judges of the Vaasa Administrative Court have degrees in biology or engineering. In *Austria*, non-judicial members of the Environmental Senate are recruited from among civil servants of federal ministries or the environmental administration of *Länder*.

At the initial training stage, only *Germany* and *Spain* offer systematic teaching of environmental law for all judges (in *Spain*, this mainly involves criminal aspects at this stage). In *Belgium*, the three-month externship can be completed at the environmental inspection office. In *France*, the training that is provided by the *Ecole nationale d'administration* involves a 6 month internship at the *Préfet* (departmental state authority that grants the majority of authorisations in the environmental law area and that also has inherent powers to order and execute sanctions at its own initiative) or with a municipal entity (having jurisdiction over planning and/or the management of services such as water processing, supplying drinking water and waste processing).

In the case of continuous training, environmental law gains importance. In some countries, conferences and/or internships in the area of environmental law appear in the annual training catalogue offered to all magistrates (*Belgium, France, Italy, The Netherlands, Portugal*). In other states training in environmental law is provided only to those magistrates specialised in that area (*Germany, Austria, Slovenia* for the administrative division of the Supreme Court, and in *Sweden*, environmental courts hold, in addition, an annual national conference where topics that are relevant to them are discussed) and, if applicable, to those who are about to become specialised in the area (*Spain*). Conferences are spontaneously organised in accordance with the needs expressed and with recent legislative developments in the following countries: *Finland, Lithuania, and Poland*. No training is provided by the judicial authorities in environmental law however judges that are interested can choose to participate on their own in international conferences or colloquiums organised by universities, the bar, etc. (*Ireland, Greece, Luxembourg, United Kingdom*)

### 6.3. Information on environmental law

None of the countries has public databases, specifically created for environmental case law (except in *Germany* for certain *Länder*, in *Austria* for the Environmental Senate's case law and in *Belgium*). Some specialised paper periodicals exist in *Denmark* (however it seems that they are not exhaustive nor are they regularly updated), in *Sweden* (case law of the Court of Appeals concerning environmental litigation), in *Germany* and in *the Netherlands* (in the latter country, this refers to periodicals published by private companies). In all cases, general public databases (case law, laws and regulations, official reports, parliamentary debates, etc) allow one to identify environmental issues by key words. Finally, there are specialised (private) law reviews in the area of environmental law, which publish the documents with comments and which are available in paper format, on-line or on CD-ROM. In *Sweden*, a new public database is now available. It will hold much of the case law of the Environmental Court of Appeal, which has jurisdiction in most cases governed by the Environmental Code

As regards the grant of computer equipment, three situations exist: (1) the individual grant for all members of the judiciary or at least for those who so wish (*Austria, Belgium* only for members of the Public Ministry, *Denmark, Finland, France, Ireland, Lithuania, the Netherlands, Sweden*); (2) a general grant for all courts (*Portugal, Slovenia, Greece*, in the latter country, only for the *Conseil d'Etat* as the other courts are not equipped); and (3) a mixed system that involves equipment for all courts and individual equipment for certain judges (*Germany and Poland*).

As regards the judges' access to the data, it is always free and unlimited for national public data (laws, regulations, administrative documentation, case law of superior courts) and European public data (except *Poland* where the access is through the intermediary of specialised court services or the Ministry of Justice). Access to international data does not appear to be systematic. As regards access to private databases (specialised online law reviews), the questionnaire was not sufficiently precise to obtain relevant answers. In *Belgium*, judges sign up on the Internet for personal subscriptions and are reimbursed by the Ministry of Justice.