

Questionnaire

Please note that if similar provisions of your national Constitutions than the Treaty Provisions referred to are used, you may of course include those in your report

1/ The right to be tried within a reasonable time

1.1. What usually triggers, in your country, the opening of a file on an environmental offence at the public prosecutor's office? The reception of a notice of violation recording the offence? Other triggers?

According to The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM)¹, most files on environmental offences are opened due to police reports from the regulatory authorities or others, newspaper publicity and anonymous tips to the police.

1.2. What is on average the time required in your country in criminal proceedings to go from a citation to a first instance judgment and to an appeal judgment?

We are unfortunately not in possession of statistics regarding environmental cases in particular. The aim in criminal proceedings in general is that a case is tried by the district court (the first instance) within three months and in the Court of appeal (second instance) within six months. Unfortunately, the goal is not always reached.²

Regarding an example of the time required within the field of environmental law, it could be referred to HR-2016-1857³. The case concerns four men charged for intent of illegal hunting of wolfs. In this case, charges by ØKOKRIM were set forward on October 7th 2014. First instance judgment was delivered by the district court April 20th 2015, about six months and two weeks later. Judgment by the Court of Appeal was passed April 5th 2016, about one year later.

1.3. What procedural steps can take time?

Normally, the investigation of the case it what takes the most time. How time consuming the investigation is depends on the complexity of the case. Sometimes, investigation needs to be continued or to start up again while the case is handled by the courts. This may be the matter for instance when something new comes up.

1.4. Are you aware of difficulties with this guarantee?

When it comes to investigation, it is important that sufficient time for investigation is provided for also in the more complex cases. The opposite will in the end lead to a weakening of the protection of the accused.

At some occasions, the right to be tried within a reasonable time may lead the investigators to limit the investigation to only some parts of the case as the case would otherwise be too extensive. It is a subject for debate whether this is a favorable approach to the larger cases or not.

1.5. What are the legal consequences of undue delay in your legal system?

According to Norwegian law, undue delay should lead to a reduction in punishment. A recent judgment by the Supreme Court regarding undue delay, is HR-2016-225-S⁴ (grand chamber) where 7-8 months of undue delay led to a reduction of 4 months.

¹ <http://www.okokrim.no/>

² <https://www.domstol.no/statistikk>

³ <https://www.lovdato.no/pro/#document/HRSTR/avgjorelse/hr-2016-1857-a?searchResultContext=1127>

⁴ <https://www.lovdato.no/pro/#document/HRSTR/avgjorelse/hr-2016-225-s?searchResultContext=2740>

Another recent example from case law is HR-2016-1454⁵ where a reduction of one year was granted due to undue delay of 15 months.

2/ The right to a fair trial as including the right to respect of judgments / implementation of judgments

2.1. What do you know about the implementation of judgments in your country? Are punitive sanctions (prison sentences, fines, other) implemented? Are remedial sanctions (reinstatement of the environment, compensatory action, other) implemented? Who is in charge? What goes well, wrong?

Court decisions are implemented in Norway and the responsible authority is The Directorate of Norwegian Correctional Service.

The ordinary penalties in Norway are imprisonment, preventive detention, youth penalty, community sentences, fines and loss of the right to hold a position, an enterprise or to carry out an activity. Furthermore, sanctions such as confiscation of profits of criminal acts may be imposed. For environmental cases, damages as well as reinstatement of the environment may be particularly suitable sanctions.

As for what that goes well and wrong, we consider implementation of judgments to go fairly smooth in Norway in general. An independent study published in 2010⁶ showed that the number of people who were released from prison and reoffended within two years was at 20 % - a fairly low number on an international level. There are also almost no escapes from prison in Norway and over 99 % of all prisoners on temporary leaves return on time.

Norway is however also facing certain challenges regarding implementation of sanctions. In the prisons, there is for instance a one-man-one-cell policy based on the principle of a humane detention. This has created some problems in the sense that the capacity has not always been sufficient to receive the number of sentenced persons. A "waiting list" for sentenced prisoners occurred, implying that one was released after the passing of the sentence and received a letter saying when to report at which prison at some point afterwards. This could take up to a year. Since this was considered bad practice and an extra punishment for the offender, extensive measures has been taken to reduce the waiting list. At the moment it has been reduced to some 25 % of its length.⁷

2.2. Can criminal courts also impose remedial sanctions in your country? If so, can they do so ex officio or only on request by the prosecution or a civil party?

Sanctions such as damages and reinstatement may be imposed in criminal proceedings when the offended asks for it. It will then be the prosecution that formally pursues the claim but on behalf of the offended.

⁵ <https://www.lovddata.no/pro/#document/HRSTR/avgjorelse/hr-2016-1454-a?searchResultContext=1753>

⁶

<http://img3.custompublish.com/getfile.php/2819934.823.xpewptatwc/Nordic+relapse+study+abstract+.pdf?return=www.kriminalomsorgen.no>

⁷ <http://www.kriminalomsorgen.no/index.php?cat=265199>

2.3. Worldwide NGO's play a significant role in the prosecution of environmental offences. Can they be a civil party in criminal proceedings under the law of your country? Do they have an easy access to criminal proceedings or are there severe conditions to meet? Can they obtain damages? Can they request remedial action?

There are several examples where NGOs have reported environmental circumstances to the police; however they do not in these situations become a party in the criminal proceedings that are to follow. We are not familiar with examples where a NGO has had the role of the victim in a criminal proceeding. If a NGO claims to be entitled to damages, the NGO may in principle have its claim heard in the criminal proceeding, according to the general rules on criminal procedure.

3/ The right to be presumed innocent

3.5. What are the basic principles of evidence in the criminal law of your country? Are the means of proof free or restricted? What evidence is most often used in environmental cases? What type of evidence creates troubles (too costly, too difficult to obtain, too easily mismanaged by environmental inspectorates, ...)

The means of proof are free in Norway, and all kinds of evidence are used in environmental cases. Examples could be for instance witnesses, expert witnesses, documents, electronic documents/data, technical analysis (DNA, samples of water/soil, chemical analysis, analysis of weapons etc.). Depending on the circumstances, all kinds of evidence may be too difficult, time-consuming or costly to obtain. Cases that are closely connected to other countries, where important evidence and central witnesses are to be found abroad, may cause trouble. Examples of such cases are cases on illegal import of timber and cases concerning the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)⁸. Regarding illegal hunting on endangered species in Norway, the problem is often that the hunting is not discovered and that social control often leads witnesses to not daring to talk to the police.

3.6. How do you see the impact of the principle of innocence on the prosecution policy? Do you feel it has an overly restrictive impact, in general, for some type of cases?

The principle of innocence is a necessary legal safeguard.

3.7. How do you see the impact of the principle on the assessment of facts and guilt (intentional / negligence) in the conviction decision? Do you feel it has an overly restrictive impact, in general, for some type of cases?

In environmental cases in Norway, negligence is often the only requirement as far as the question of guilt is concerned. We are not aware of situations where the principle has had an overly restrictive impact.

3.8. How do you see the impact of the principle on the sanctioning decision? Do you feel it has an overly restrictive impact for some type of sanctions?

No, we do not feel it has an overly restrictive impact for some type of sanctions.

4/ The privilege against self-incrimination

4.1. Does the environmental law in your country make (an extensive) use of self-monitoring and -reporting obligations? Does it provide inspection rights to ask for information, sanctioned when not complied with?

Yes, the law makes use of self-monitoring and reporting obligations, as well as provide for inspection rights to ask for information, sanctioned when not complied with.

⁸ <https://cites.org/eng/disc/what.php>

4.2. If so, are you aware of prosecution difficulties caused by the privilege against self-incrimination? Is it easy to draw the boundaries between evidence that can be used and evidence that cannot be used because of this privilege? Please illustrate your answer by case-law.

Yes, at times the privilege against self-incrimination may be in the way for conviction. This may be the case for instance where the authorities have detected circumstances indicating violation of law, and where their request for further information or documents in order to pursue the matter, may lead to violation of the privilege against self-incrimination.

5/ The protection against double jeopardy

5.1. Are criminal courts in your country confronted with double jeopardy when dealing with environmental offences? If so, what is the typical case-set: a combination with administrative fines, with penalties from other policy areas such for instance as agricultural policies?

On certain areas of law within environmental law, administrative sanctions are an alternative to an ordinary penalty. This is only possible in the less severe cases. In these cases, a choice needs to be made between the administrative sanction and the penalty. Both may not be imposed as it would constitute a violation of the protection against double jeopardy.

5.2. Are there discussions with regard to the scope of the guarantee? Areas of doubt, vagueness? What, for instance, about EU-regulations regarding extensive farming and mandatory cuts in the income support to farmers when infringing the cross-compliance conditions?

There are discussions regarding the scope of the principle, however these are not particularly connected to environmental law.

6/ The right to proportional penalties

6.1. Have you noticed, in your practice, environmental cases where the penalties inflicted were too severe?

We are familiar with some cases where the penalties inflicted by the district court or the Court of Appeal have later been reduced by the Supreme Court. Case number HR-2016-1253⁹ is an example of this. In this case which regards illegal hunting of roe deer, the Supreme Court reduced a sentence of 21 days of imprisonment to 21 days suspended sentence and an unconditional fine.

6.2. If so, could you elaborate and tell why you felt the penalty was too severe?

N/A

6.3. At the level of the Council of Europe, Recommendation No. R (92) 17 of the Committee of Ministers to member states concerning consistency in sentencing states, in its point B.7.a: "As a matter of principle, every fine should be within the means of the offender on whom it is imposed." Do you consider that proportionality in punishment requires to have consideration for the extent to which the penalty hurts the offender, implying, for instance, that for identical offences a firm with healthy finances should be punished with quite higher fines than an individual with a low income? What is the punishing practice in this regard in your country?

In Norway, the means of the offender form part of the consideration which is done when imposing a fine. It does not seem to be any disagreement on this subject.

7/ The right to respect for private and family life

7.1. Have you noticed an impact of the right to respect for private of family life on the environmental adjudication in your country? If yes, could you please provide examples from the case-law illustrating this influence?

No, we are not familiar with such cases.

⁹ <https://www.lovdato.no/pro/#document/HRSTR/avgjorelse/hr-2016-1253-a?searchResultContext=2875>

7.2. Would you be willing to use this right in support of environmental adjudication and, if so, in which type of cases?

N/A

8/ The right to life

8.1. Have you noticed an impact of the right to life on the environmental adjudication in your country? If yes, could you please provide examples from the case-law illustrating this influence?

No, we are not familiar with such cases.

8.2. Would you be willing to use this right in support of environmental adjudication and, if so, in which type of cases?

N/A

9/ The right to environmental protection

9.1. Do you consider this right to have impact on environmental adjudication?

The right to environmental protection is now established by the Constitution. Our opinion is that throughout the years, the right to environmental protection has contributed to strengthening the work on enforcing investigation and prosecution of environmental crimes, hereunder the handling of the cases in the courts.

9.2. Do you agree with the proposition that, in environmental adjudication, it is only fit to impact on the sanctioning policy, meaning choice and level of sanctions inflicted?

As in other cases, the sanctioning in environmental cases must follow the rules of law approved by the Parliament. That being said, some discretion is often left to the courts and the sanctions may in general to some extent be reflected by the opinions in the society.