TRAINING AND SPECIALISATION OF MEMBERS OF THE JUDICIARY IN ENVIRONMENTAL LAW

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I. INTRODUCTION

Finland has a civil law system. 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”. “The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.”

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. There are separate Acts for nature protection, water management, planning and building, mining etc. Technical norms e.g. emission limit values, are implemented normally by decrees of Council of State. Most of the environmental cases fall within the domain of administrative law.

II. TRAINING AND INFORMATION

A. TRAINING

1. General training arrangements

After having taken their LLM degree at a law faculty lawyers have several options. Traditionally, there are several parallel avenues to become a judge. Typically, young lawyers have been trained at the bench at (general) district courts for one year, but nowadays it is also possible to perform half of this court practice at an administrative court.

From 2017, an independent Judicial Training Board plans and coordinates, jointly with the Ministry of Justice and the courts, the training of the staff involved in applying the law at the courts of law, from court traineeships to supplementary training. The Board implements the application procedure for the posts of Junior Judges candidates under the Courts Act, and carries out the pre-selection. As part of the pre-selection process, the Board confirms and arranges the pre-selection exam. The Board grants the candidates who complete training programme the title of Junior Judge. The candidate works e.g. in an administrative court for three years at a position of an assistant judge. The Board also carries out the centralised application procedure for court traineeships and selects and appoints Trainees to District Courts, Administrative Courts and Courts of Appeal.

However, it has been and still is possible to become a judge even without this kind of training. For instance, at the Supreme Administrative Court (SAC), some justices have a long career in administrative courts (e.g. starting as an assistant judge at a regional administrative court, promoting to judge, referendary (presenting legal officer) at the Supreme Administrative Court, judge of a higher rank at an administrative court and finally judge at the SAC). Some of us, in turn, have a career in administration, universities, law firms etc.

The continuing training is, at the moment coordinated by the Ministry of Justice, but a draft proposal to found a Court Administration is proceeding. Also the Courts themselves have responsibility for continuing training of their staff. E.g. there is a common board of administrative courts for planning and arranging training in topical substantive and procedural issues in different fields of law. Many administrative courts also organize training for their own need and jointly with administrative agencies (e.g. annual environmental and water permit assembly).

There are no formal, statutory requirements concerning continuing training. However, the Courts Act provides that judges are responsible for maintaining and developing their knowledge of law,

legal skills and professional ability. Judges shall be offered sufficient training and they shall have the opportunity to participate in this. Obviously, the courses attended at the attachment of one´s CV play some role when applying for promotion, but in the end of the day own motivation to keep up with the ever changing legislative development is decisive.

The problem tends to be that most judges are very busy with their normal work. As judges do not have a fixed working time, participation in training often means extra work. To some extent, e.g. in SAC it has been possible to take training into account when planning the session timetables. The courses are free for the judges. If there is a course fee and the training takes place abroad or somewhere else than where the court is situated, the court stands for the cost. Naturally, the budgetary restraint may in some case be an obstacle for participation in training.

2. Training in environmental law

In every LLM degree there is a mandatory course in environmental law and it is possible to choose a wide selection of additional courses and have environmental law as a major, too. For judges in different administrative courts, training in the field of environmental law is arranged on a regular basis (see also above in 1). In Junior Judge training, also issues linked to environmental law have been tackled.

I am not familiar with the training material prepared by the EU/DE ENV, and do not know if it has been used in Finland. However, our judges have participated in many EU Environmental training courses organized e.g. by the ERA and partly funded by the Commission.

B. Availability of information on environmental law

Judges are equipped with computers allowing free access to all kinds of databases on environmental law. In Finland, there are not as such specialized collections of national or EU case law related to environmental law, but e.g. precedents and some other interesting cases are freely accessible on

SAC:s website. It goes without saying that judges are familiar with seeking cases in the databases of the EU Court of Justice and the ECHR. In SAC, we also receive (in electronic form) a weekly report on cases of Finnish administrative courts and EUCJ, new and proposed legislation etc. In addition, access to administrative decisions and administrative guidelines is easy, because normally authorities report their decisions on their websites.

C. Proposals for training or improving availability of information

In general, I feel that materials concerning all kinds of issues in environmental law are rather well accessible. I cannot propose any quite specific topic which would have been left without due attention. However, it is always useful to meet colleagues from EU-states to discuss commonly interesting, actual topics. Especially, reports and analyses new case law of the EUCJ and ECHR, have always proven useful.

III. ORGANISATION OF COURTS AND ENFORCEMENT AGENCIES

A. Courts and tribunals responsible for environmental law

In Finland, there is a dual structure of courts with, on the one hand ordinary courts, which have jurisdiction in civil cases and criminal cases, and, on the other hand, the administrative courts (here: regional administrative courts and SAC). This means that the ordinary courts are empowered to settle civil and criminal disputes, whereas the administrative courts are empowered to settle administrative disputes.

It should be emphasized that environmental law relevant decisions of administrative authorities are appealed directly to courts. Only in exceptional cases an administrative procedure of rectification takes place (especially when a single civil servant has taken the decision). There are no administrative tribunals, not to speak about appeals to superior administrative authorities.

The powers of the administrative courts are wide. They do not only have the power to suspend and/or annul administrative decisions, but also the capacity to amend and even change the decisions. However, the courts cannot take the place of the administrative authorities (i.e. cannot grant a permit where the competent administrative permit authority has neglected to approve the application). They may also impose provisional protective and compulsory measures.

Typically administrative courts hear appeals against different decisions concerning approval of land use plans, various environmental permits, and cases concerning enforcement on permits or legislation by using administrative coercive measures, including imposition of conditional fines.

In Finland, there is a no formal distinction between civil courts and criminal courts. Civil and criminal cases are tried in all district courts, but to some extent by different divisions or chambers of the ordinary courts. E.g. in the Supreme Court there are no separate chambers.

The district (criminal) courts can pass sentences ranging from fines to imprisonment, where appropriate concomitant with compensation and/or safety measures and remediation measures; same courts acting as civil courts, on the other hand, focus primarily on compensation, either in kind or equivalent. In addition, the police and prosecutors have power to sentence fines if an offence is a pure misdemeanor/delict (e.g. littering). It should be mentioned that also administrative courts can, according to the Environmental Protection Act, judge on compensation for environmental damage caused by water pollution. One other remark is that ordinary courts are competent to decide claims for compensation directed at public authorities or their civil servants.

We do not have a Constitutional Court. The Finnish Constitution 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. A peculiar feature in the Finnish constitutional regime is the emphasized role of the parliamentary Constitutional Commission. Acting like a quasi-judicial organ (even though consisting of MPs!), it decides in practice in advance whether a proposed Act is in conformity with the Constitution.

B. Specialized jurisdictions

There are no specialized environmental courts in Finland. However, some of the administrative courts are developing a certain degree of specialization in environmental law. In SAC, all types of environmental cases widely understood are consistently referred to the same court chamber. This implies that when recruiting and assigning judges and referendaries to the chamber, special knowledge on environmental law plays a significant role. Two latest presidents of the chamber have been professors of environmental law, and several judges and referendaries have wide experience on environmental law (e.g. from permit authorities, as legislative counsellors in relevant ministries, the Parliament, etc.).

The Vaasa Administrative Court has, due to historical reasons, exclusive jurisdiction to hear all appeals that are based on the Environmental Protection Act and the Water Act; the former Water Courts have been transformed into administrative Environmental Permit Authorities, while the former Water Court of Appeal has been incorporated in the Vaasa Administrative Court.

Consequently, environmental cases account for a big share of the overall caseload of the Court. Two divisions of the Court deal virtually exclusively with environmental cases. In the Court there are, besides judges having degree in law, also judges with technical or scientific training. When such an appeal is heard by the Supreme Administrative Court, two expert counsellors for the environment (acting side by side with lawyer judges) who are qualified engineers or have a degree in natural sciences are assigned to the five judges. The former special Land Courts which hear appeals from different cadastral surveys have been merged with certain District Courts. The specific panel is these cases still called the Land Court and consists of a judge, a surveying engineer and two lay judges. A leave to appeal is necessary to contest the decision of the Land Court in the Supreme Court.

As to the statistics, in the SAC the number of pending environmental cases has decreased during last few years. At the moment, there are about 350 cases in the court registry. At the Supreme Court the number of precedents in environmental crime and damages cases has been low, typically not more than 5-10 judgments.

C-E. Criminal and administrative violations, civil cases

As 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 Customs services. However, as a rule the police do not have units that specialize in environmental law.

Prosecution policy is in the hands of independent public prosecutors who are part of the judicial organization, but are administratively under the authority of the Minister of Justice (not under the Ministry of the Interior, like the police). There is therefore a clear division between the investigation of an environmental crime and its prosecution. 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.

The administrative and criminal enforcement are parallel. There are generally no administrative sanctions, where the ban on *ne bis in idem* would actualize. Administrative coercive measures can be inflicted on those who fail to abide by the law, regulations or the permit, in order to restore the lawful state of affairs. Appeals to administrative courts, of course, are possible. But at the same time violations can be prosecuted and the violators punished by ordinary courts. In civil cases compensation for damage can include also compensation for measures necessary to restore the damaged environment.

F. Standing

In Finland, according to the Administrative Judicial Procedure Act, NGOs in principle have no right of action. However, the reality today is completely different. Almost all environmental acts nowadays allow environmental NGOs to appeal to administrative courts against administrative decisions. Specific provisions have been included i.a. in the Environmental Protection Act, the Water Act, the Land Use and Building Act, the Nature Conservation Act, the Mining Act, the Public Roads Act, the Hunting Act, etc. It is easier to name those acts which do not have this kind of provision (e.g. the Expropriation Act, the Aviation Act, and the Fishing Act), but in settled case law, based on the Aarhus Convention and case law of the CJEU and the constitutional environmental clause, the SAC has often accepted the *locus standi* on NGOs.

Typically, the special requirements for NGOs to qualify for access to justice are not too demanding. The organization shall be registered, its area of operation (locally or regionally) according to its

statutes shall be in the area where the project affects, and the purpose of the NGO shall be based on protection of the environment or nature, the amenity of living environment etc.