



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

TRAINING AND SPECIALISATION OF MEMBERS OF THE JUDICIARY IN ENVIRONMENTAL LAW

In preparation of our first Annual Conference in The Hague, in December 2004, a questionnaire on these issues has been developed and our members have been invited to send in national reports. 19 such reports were received and the results were used to produce a general report, consisting of three parts, that you can find on our website:

<http://www.eufje.org/index.php/en/conferences/the-hague-2004>

Since 2004 much has happened and new member states have joined the EU. The time has come to take stock again and to assess the progress that has been made. The questionnaire has been modified only slightly in comparison with the 2004 questionnaire. Feel free to take the 2004 national report, if available, as a starting point and update it as appropriate. The candidate member states are also invited to submit a report.

You are invited to send in the national reports at the latest on **September 15th** to **eufje.bogos@gmail.com** so that we can prepare the general report that will be presented at the Sofia Conference.

I. INTRODUCTION

What is the general nature of the system of law in your country (e.g. civil, common law, codified etc.)?

Does it include -

- constitutional protection of the environment
- a general law protecting the environment
- a code or compilation encompassing all or a substantial part of the laws relating to provisions on environmental protection?

Answer:

Norway has a mixed legal system with features from both civil and common law.

In 1992 the Norwegian Parliament adopted a new provision in the Norwegian Constitution regarding protection of the environment. This provision was later amended in connection with

a considerable modernization and expansion of the Norwegian Constitution as to the protection of fundamental rights, carried out as part of the Constitution's bicentennial anniversary in May 2014. Article 112 now has the following wording:

"Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.

In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out.

The authorities of the state shall take measures for the implementation of these principles."

The purpose of this article is first and foremost to function as a guideline for drafting legislation and as a principle of interpretation of legislation. It is an ongoing discussion whether, or to what extent, the article's first paragraph provides citizens with specific rights that can serve as basis for remedy against the government.

At the ordinary legislative level Norway's two key instruments in Norwegian climate policy are carbon dioxide taxes (introduced in 1991) and a greenhouse gas emissions trading system. The latter is regulated by the Greenhouse Gas Emission Trading Act incorporating the EU Directive 2003/87/EC– scheme for greenhouse gas emission allowance trading within the Community. The policy is that these two instruments incentivize reduction of emissions. Other measures are regulation, standards, agreements and subsidies for emission-reducing measures. For example are there subsidies on electric cars whereas users of regular cars must inter alia pay fuel tax.

We also have public law acts under which sources of emissions are regulated. The Pollution Control Act is an act with the objective to restrict pollution, and requires inter alia permission to carry out pollutive activities. This act can in certain circumstances serve as basis for private law claims (typically for damages), for example against the polluter. There are also other environmental law acts, and under sector-specific public law legislation the authorities are normally required to take environmental interests into consideration in their decision-making processes.

Just recently the Parliament adopted a bill named the Climate Act, effective from 1 January 2018. Norway has an objective to adjust the country to a low-emission society in 2050, and the act sets out certain means that will contribute to the development towards 2050. An objective of the act is to promote transparency and public debate about the status, direction and progress of this work.

The act applies to the Nationally Determined Contribution ("NDC") as registered in the NDC register under the Paris Agreement in accordance with article 4.12. Under the act the Government is empowered to broaden the scope of the act to encompass emissions beyond the NDC.

In section 3 the objective to reduce gas emissions by 40% from the year of reference (1990) is set out. Further, section 4 sets out the target to become a low-emission society in 2050. The wording of these two provisions is non-binding, meaning that the provisions at the outset cannot serve as basis for claims against the government.

The Government shall in accordance with section 5 present an updated climate target to the Parliament every fifth year. Under section 6 the Government has an obligation to address climate change issues to the Parliament in connection with the presentation of the yearly government budget. The statement must inter alia include a report on how Norway can reach its climate targets, the budget's effect on climate and development of emissions.

II. TRAINING AND INFORMATION

A - Training

1. General training arrangements

(a) Please describe the arrangements which exist in your country for training judges –

- for initial training before taking office?

- for continued training?

Answer:

The Norwegian Courts Administration, an independent government body, offers initial training for newly appointed judges lasting a year after commencement of service, which includes a structured local introduction to the relevant court and a national introduction program with 5 sessions each lasting three days. An annual conference is held for all judges, in addition to different national, regional and local initiatives.

(b) How is *initial training* arranged?

Where and by whom is it conducted, for example –

- universities,
- other specialised training establishments
- organised by government or by judicial bodies?

Does it include *stages* or similar arrangements (e.g. internships, pupillages, apprenticeships) -

- with courts
- with lawyers
- with government departments
- with other agencies?

Answer:

The initial training is organized by the Norwegian Courts Administration, an independent government body that administers the courts.

The training does not include arrangements as mentioned in the question.

For the sake of completeness, we must stress that judges are normally not appointed before the age of 40. Before being appointed they will therefore have many years of experience from law firms, government departments, the prosecutors' office, universities and the likes. Their background is also rather diverse.

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

Where and by whom is it conducted?

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

Is there a regular programme of continuing training? If so, how often? What is the average period in a year? Are there special requirements, for example on a change of office?

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

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

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

Answer:

The continued training is voluntary, but in practice most judges go to the annual conference which is held yearly for all judges. The fees are paid for by the courts, and judges are entitled to leave from work for the training.

Other courses are held by the Norwegian Courts Administration, the lawyers' association and other organizations. The judges are free to choose what course fits them the best. Some courses are more relevant – or intended for – judges. Courses in environmental law are offered. The fees are normally paid for by the courts.

Such training may be given weight in appointments etc.

2 Training in environmental law

Do the training arrangements for judges include special arrangements for training in environmental law –

- for initial training
- for continuing training?

If so, please describe the arrangements, covering the same points as for general training.

In particular –

- is such training in environmental law given to all judges or only those with specific functions in that field?
- on average, how many judges receive such training in every year?
- what form does it take and for what periods?

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

Have you already made use of training material prepared at EU level (e.g. within the framework of DG ENV programme for cooperation with national judges and

prosecutors: <http://ec.europa.eu/environment/legal/law/judges.htm>). Do you have any suggestions for improvements?

Answer:

Please see answers above. The initial judicial training offered by the Norwegian Courts Administration does not include special arrangements for environmental law. Such training may be offered by other institutions, inter alia the lawyers organization.

In addition I want to mention the Norwegian Association for Environmental Law, of which I am one of the founders. The association organizes meetings, discussions and presentations on a regular basis.

The training material prepared at EU level have, as far as I know, not been made use of.

B – Availability of Information on environmental law

(a) Are there any specialised collections of national or EU case law relating to environmental law -

- in paper form
- on the Internet?

Answer:

Yes. The website www.europalov.no offers a specialised collection of EU sources online, including a collection of environmental law. We have no relevant equivalents for national case law or in paper form.

(b) Are judges equipped with computers giving them free access to databases (with case law and literature) on environmental law, including

- national databases
- European databases
- international databases?

Answer:

Yes, they have access to national, European and international databases on environmental law. If access requires payment, such payment is normally covered by the courts.

C – Proposals for training or improving availability of information

(a) In what areas would it be helpful to develop training materials and organise training sessions, for example -

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

Particular aspects of environmental law, e.g –
Environmental Impact Assessment
Sustainable Development
Access to Justice and Standing (Aarhus Convention)
Administrative and civil liability in environmental law
Criminal Liability of Corporations
The role of NGOs

Role of environmental inspectors, police officers and others on evidence collection
Language training (e.g. judicial terminology)?

Technical issues, e.g. -
Evaluation of ecological damage, including use of forensic methods
Measures to restore the environment

Specific topics, e.g. -
Freshwater Pollution,
Protection of the Seas
Nature Protection
Landscape and Monuments – Natural Sites
Air pollution
International trade in protected species
International transfer of waste
Genetically modified organisms
Polluting or Dangerous Industries
Environmental procedural requirements, in particular impact assessments relevant for spatial planning, energy and transport

Other topics?

Answer:

As mentioned elsewhere, Norwegian courts do not have many environmental law cases. Most decisions are taken administratively, and only very few are brought before the courts. There are also only a limited number of criminal cases involving environmental law, and many of these cases are solved administratively and results in fines etc. There is therefore limited need for training material. I think though that for example general principles of environmental law would be among topics that would be interesting for Norwegian judges.

III. ORGANISATION OF COURTS AND ENFORCEMENT AGENCIES

A – Courts or tribunals responsible for environmental law

(a) Please describe the arrangements in your country for determining environmental law disputes, criminal, administrative and civil. In particular -

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

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

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

What powers are available to the different types of court, for example -

- criminal penalties
- orders or injunctions to remedy environmental damage
- awards of financial compensation or compensation in kind?

Others?

Answer:

At the outset, the ordinary Norwegian courts have general competence, meaning that they can rule in almost all areas of law, including environmental law. The courts have the power to impose all the sanctions mentioned in the last part of the question.

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

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

Answer:

As mentioned, the courts in Norway have general competence which encompasses both civil, criminal, administrative and constitutional matters. It is thus not possible to separate these matters as asked for. The lower courts do also not provide any statistics in which area of law is specified. Instead I will mention recent cases with public interest.

Nature & Youth and Greenpeace Nordic has filed a suit against the Norwegian Government. The factual background for the suit was that the Government of Norway on 18 May 2016 decided to offer 13 companies ten production licenses for oil and gas in the 23rd licensing round. The production licenses were awarded 10 June 2016. For the first time in more than 20 years, Norway opened new acreage to the oil and gas industry in the Arctic Barents Sea. The organizations argue that by issuing new production licenses in previously untouched areas, Norway will continue to contribute major greenhouse gas emissions and thus exacerbate global warming.

On this basis the plaintiffs argue that the effects of the licensing decision are sufficiently serious to render their content incompatible with the safeguards against environmental encroachments mandated by Article 112 in the Norwegian Constitution. The claim is that the licensing decision must be rendered invalid.

The Ministry of Petroleum and Energy has denied that the decision is unconstitutional, and stated in its response *inter alia* that Article 112 does not give rights to private persons or organizations which can be decided by the courts, and that the licensing anyhow is within the discretion given to the Government in the article.

Earlier this year the government was acquitted by Oslo City Court, but the plaintiffs have appealed. Time will show whether the case will be brought before the Supreme Court for an authoritative clarification on the scope of the environmental protection laid down in Article 112.

Last year the Supreme Court ruled in only one case that can be regarded as an environmental law case. This case concerned whom of two private parties had the responsibility for future costs relating to the removal of electric waste from a property.

For a long time the regulation of wolf stock has been a sensitive subject, and illegal hunting has been a problem. In a Supreme Court case of September 2016, four men had been convicted by the court of appeal for unlawful culling of three wolves. The judgment of the Supreme Court concerned the understanding of fauna crime provisions in the Nature Diversity Act and the Criminal Act. In addition, the Supreme Court set out guidelines for the level of sentencing for this type of criminal acts. The four indicted persons were penalised in a range of 120 days to one year of imprisonment, depending on the extent of each defendant's participation in the actions.

A more peculiar case was plead before the Supreme Court in 2017, in which the convicted person over a period of six years had found and kept a number of loose cultural objects from ancient and medieval times using a metal detector. The Supreme Court pointed out that the general trend in the sanctions for environmental crime also had to be of importance for determining an appropriate sentence for cultural heritage crime. The failure to report was considered the key aspect of the sentencing. It was considered a particularly aggravating feature that the convicted party had deliberately set aside his duty to report his findings. The convicted man's long and firm modus to set aside the provisions of the Cultural Heritage Act relating to protection of the collective cultural history had to result in a sentence of imprisonment, and in this specific case the term was set to 14 days.

(c) Are there available statistics on environmental cases handled by the different categories of court and tribunal? If so, please summarise the figures for the most recent year available.

Answer:

No.

B – Specialised jurisdictions

(a) If your system has specialised courts relevant to environmental law, please describe the nature of their jurisdiction (so far as not covered under A above), for example –

- how is the extent of the jurisdiction defined?
- is it exclusive, or concurrent with that of the ordinary courts?
- how, and by whom, are conflicts of jurisdiction resolved?
- are they independent of the executive?

Answer:

N/A, please see above.

(b) How, and by whom, are members of such courts recruited? Is knowledge or experience in environment law a specific requirement?

Answer:

N/A, please see above.

(c) What powers do the specialised courts have, for example -

- annulment of regulations or individual acts
- orders to enforce environmental laws
- power to substitute a decision for that of the government agency
- orders for financial compensation or compensation in kind
- other (e.g. granting environmental licences or consents)

Answer:

N/A, please see above.

(d) How and by whom are conflicts of jurisdiction with other courts resolved?

Answer:

N/A, please see above.

C - Criminal violations

(a) In your country which agency or agencies have responsibilities for investigating and prosecuting criminal violations of environmental law –

- the police, or a particular branch of the police (national or local)
- customs authorities
- local authorities
- one or more specialised environmental agencies
- other bodies (public or private)

Answer:

The National Authority for Investigation and Prosecution of Economic and Environmental Crime (Norwegian: Økokrim) is Norway's central unit for fighting economic and environmental crimes. It is an independent national body that conducts both investigation and prosecution. The objective is that this unit shall handle the most complex cases within its scope. The unit has similar powers to those of the ordinary police for investigating and prosecuting.

This unit cooperates with the national and regional prosecution and police authorities. These conduct investigation and prosecution in addition to this national unit, and the unit decides whether it shall take over the responsibility of the case. A case may also be initiated in the unit. The local authorities may request such transfer.

All of these cooperate with the Ministry of Climate and Environment and underlying government bodies, such as:

- The Norwegian Environment Agency's primary tasks are to reduce greenhouse gas emissions, manage Norwegian nature, and prevent pollution
- The Directorate of Fisheries administers marine life, and its tasks are inter alia monitoring and control of compliance with marine resources legislation and regulation
- The Norwegian Customs also plays an important role in this respect, although it is not subordinate to the Ministry of Climate and Environment.

These administrative units have the authority to investigate and react to less serious breaches, for example by giving fines or by withdrawing licences etc. They are independent with respect to investigation and imposing sanctions in specific cases.

(b) What special arrangements do the police or customs have for ensuring that those involved have expertise in environmental law? Do they have specialised units, organised locally or nationally?

Answer:

Please see above. Ensuring that the personnel responsible for such cases has the necessary expertise is first and foremost secured in the hiring process, and thereafter by internal training.

(c) If a specialised environmental agency is responsible for prosecutions –

- how is it organised, and under what authority
- is it independent of government
- how are its officers recruited and trained
- does it have similar powers to those of the police for investigating and prosecuting?

Answer:

Please see answer to (a) above.

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

Answer:

All.

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

Answer:

Yes, 2,150 criminal sanctions were imposed for environmental crime in 2015. However, only 92 of these sanctions were imposed by the courts. The rest of the cases were fines imposed by the police.

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

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

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

Is its jurisdiction national or local?

Does it relate to all environmental law violations or particular violations only?

Is it exclusive or concurrent with the office's general jurisdiction?

How are conflicts over jurisdiction resolved?

Do members of the public prosecutor's office who specialise in environmental law have assistance from civil servants or experts appointed on a permanent basis to provide them with technical assistance?

How are these assistants recruited?

Answer:

The national unit is created by a regulation, subject to amendments by the government. The unit has competence in all cases relating to environmental crime, provided however that the objective is that this office handles the most complex cases.

The Director of Public Prosecution have authority over the unit and will resolve any disagreements of jurisdiction between the underlying bodies.

The national unit has officers with expertise in their field, and may request assistance from government bodies.

D. Administrative violations/cases

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

Answer:

The prosecution authority cannot intervene in the administrative case, and the administrative body cannot intervene in the criminal case. However, the principle ne bis in idem is a constitutional principle and must be observed. Following an amendment of the Public Administration Act effective last year the relevant government body and the prosecution authority have a statutory duty to coordinate their proceedings when parallel treatment may be appropriate.

E. Civil cases

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

Answer: For the most part, the courts are involved in breaches of administrative regulations and environmental crime.

Can they award remedies other than orders for damages?

Answer: Yes, the courts may inter alia require a business to stop pollutive activities.

Are there civil courts specialised in environmental law?

Answer: No.

F. Standing

Do environmental NGOs have standing in the different courts?

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

Answer:

To have standing the plaintiff must normally establish that he/she/it is materially affected of the alleged factual basis for the claim.

Because of special rules for organizations' standing under the Civil Procedure Act section 1-4, NGOs can bring such cases before the courts if the interest(s) on which the claim is made lie(s) within the organization's objective and the scope of the organization's normal activities. As a consequence, only NGOs are at the outset in a position to bring cases in which there are no specific persons or entities materially affected before the courts, as is normally the case in climate change actions.

The right to standing is assessed on a case by case basis.