

TRAINING AND SPECIALISATION IN ENVIRONMENTAL LAW IN EU SITUATION IN 2018

Farah Bouquelle, Sofia, 16 November, 2018



- Progress since 2004?
- 17 EUFJE members (new MS) updated report July – September 2018
- 3 parts:
 - I. Outline legal system and environmental laws
 - II. Training in environmental law and availability of information
 - III. Specialisation of the courts in environmental law

I. OUTLINE LEGAL SYSTEM

- Most member states: civil law system -> environmental law is statutory law
- Many member states: constitutional provisions protecting the environment, mostly without direct effect but important as guidelines
- Not many codes -> environmental law scattered over many sectoral laws and different authorities involved

I. OUTLINE LEGAL SYSTEM

- Environmental law = highly regulated, technical, constantly changing
- Training and specialisation of judges is crucial for quick, correct and effective trial of environmental cases

II. TRAINING IN ENVIRONMENTAL LAW

- INFORMATION ON ENVIRONMENTAL LAW

- More than 1 training method: no initial training before taking office (experienced lawyers); decentralised training (shadowing judges); centralised training (national training institute)
- Trend towards creating national training institutes and centralising initial and continuing training: e.g. Belgium and Poland

II. TRAINING IN ENVIRONMENTAL LAW - INFORMATION ON ENVIRONMENTAL LAW

- No environmental law specialisation requirement for judges at recruiting stage
- Training in environmental law rarely part of initial training, exceptions: Belgium (1 day of the 24 months), Bulgaria, Italy

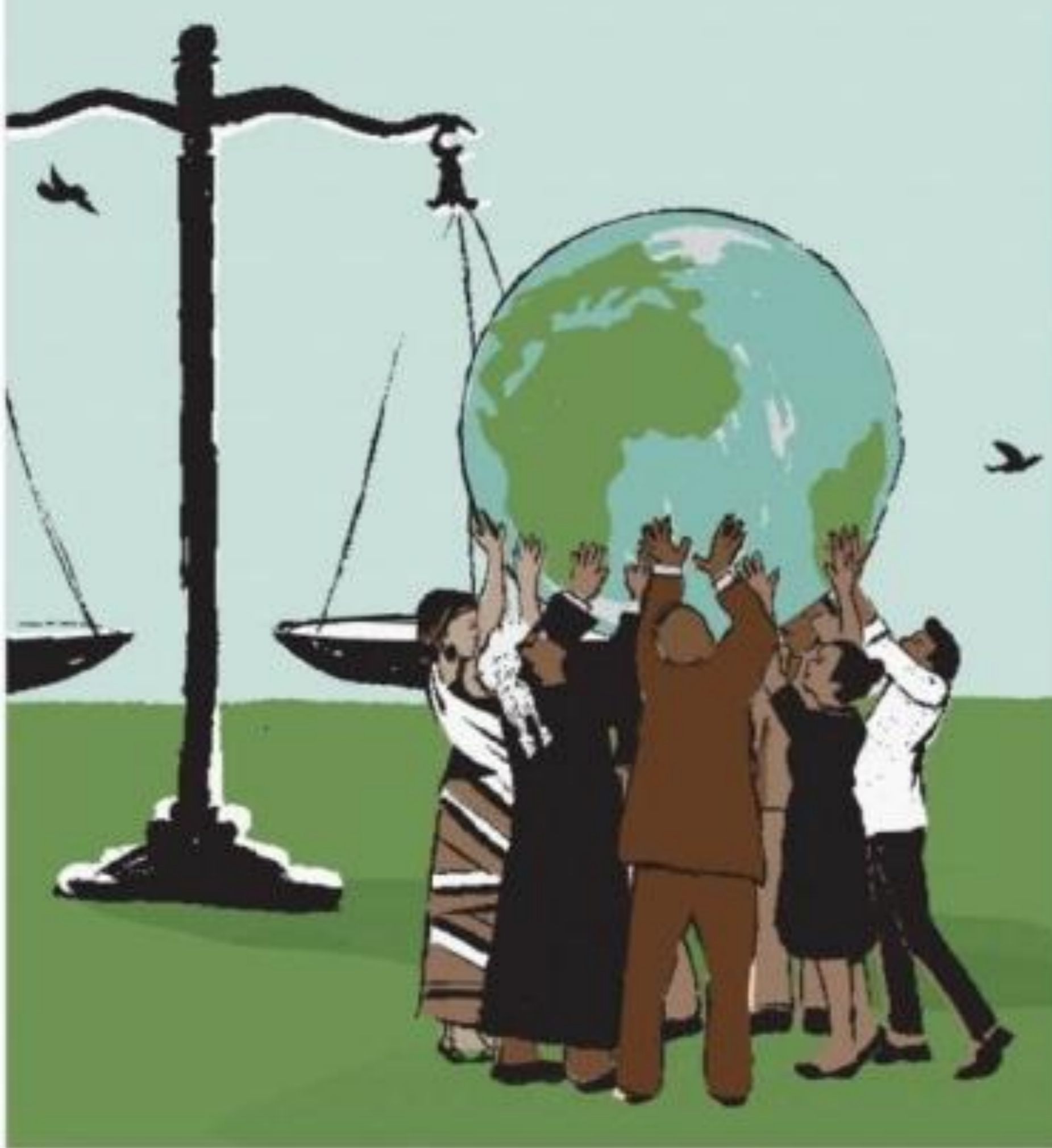
II. TRAINING IN ENVIRONMENTAL LAW

- INFORMATION ON ENVIRONMENTAL LAW

- Since 2004 environmental law part of continuing training in most jurisdictions (exc. Romania)
- BUT optional and work load remains -> voluntary participation?
- Computer but national environmental case law and specialised journals not always available

II. TRAINING IN ENVIRONMENTAL LAW - INFORMATION ON ENVIRONMENTAL LAW

- Need for training in various branches of (European) environmental law (EIA, criminal liability of corporations, standing, waste, evaluation of ecological damages and reparative measures, CITES, GMOs, Habitat directive)
- Need for regular updates



III. SPECIALISATION IN ENVIRONMENTAL LAW

- Not many independent specialised environmental courts, EU drops behind (see Pring & Pring, UNEP report on Environmental courts & Tribunals)
- Environmental cases assigned to general judges ordinary courts without mandatory training; sometimes specialisation on a voluntary basis

III. SPECIALISATION IN ENVIRONMENTAL LAW

Exceptions / good practices:

- Swedish Land and Environment courts:
multidisciplinary approach; no jurisdiction in relation to environmental crime
- Austria: benches specialising in environmental and planning law within the administrative courts;

III. SPECIALISATION IN ENVIRONMENTAL LAW

Exceptions / good practices:

- Finland: Vasaa Court: a specialised administrative court – multidisciplinary approach
- Belgium: 2 specialised administrative courts in Flemish Region: Raad voor Vergunningsbetwistingen and Handhavingscollege

III. SPECIALISATION IN ENVIRONMENTAL LAW

Exceptions / good practices:

- Belgium: judicial reform allowing the creation of specialised environmental first instance courts (not mandatory); not implemented in every district:
opposition /lack of interest?
- England and Wales: Planning Courts, part of administrative courts – appeal in planning cases
- Denmark: specialised administrative appeal body:
Nature and Environmental Appeals Board

III. SPECIALISATION IN ENVIRONMENTAL LAW

- Countries where environmental cases are assigned to general courts, exclusive jurisdiction for a broader territory: allows for specialisation BUT pitfall when training is not compulsory and judges have to combine with non-environmental cases
- Law firms, prosecutors, inspectorates and police forces are specialising

III. SPECIALISATION IN ENVIRONMENTAL LAW

- Specialisation of the courts is crucial = tail of the enforcement chain
- NGOs standing: case by case, linked to objective of environmental protection, not too strict (Treaty of Aarhus)



fa9486430 freeart.com ©

Farah BOUQUELLE

Former environmental judge, Court of First Instance of East-Flanders, Belgium

Researcher Centre for Environmental & Energy Law, Ghent University

Assistant to EUFJE

E: farah.bouquelle@ugent.be