

BELGIAN REPORT TO THE EU FORUM OF JUDGES FOR THE ENVIRONMENT ON TRAINING AND SPECIALISATION OF BELGIAN JUDGES AND PUBLIC PROSECUTORS IN ENVIRONMENTAL LAW

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1 The Belgian institutional and legal system in a nutshell and the constitutional protection of the environment

The Belgian legal system

Belgium has a civil law system, environmental law can be found in statutory law.

Belgium evolved from a unitary state to a federal state consisting of 3 communities (the Flemish Community, the French-speaking Community and the German-speaking Community), 3 regions (the Flemish Region, the Walloon Region and the Brussels-Capital Region), 10 provinces and 589 municipalities¹.

Both the federal state and the constituent states have their own parliamentary assembly and their own government. The federal parliament passes "laws", the regional parliaments pass "decrees" or "ordinances" (Brussels-Capital Region).

The communities were set up in order to protect the cultural identity of the Dutch-speaking, French-speaking and German-speaking populations of Belgium.

The regions were set up mainly to regulate economic and local matters. Therefore, the regions have important powers in environmental matters.

The division of powers between the federal state and the regions is very important, since it determines who can take which measures in the area of environmental law.

The regions have competencies in town and country planning, environmental protection with respect to soil, water, air and noise, environmental permits, waste management, water management, land use, nature conservation, agriculture, scientific research and European and international environmental policy with respect to their competencies.

The federal government remains responsible for protection against ionising radiation and radioactive waste, the establishment of product standards, the protection of the North Sea, input to European environmental policy and the conclusion of treaties with respect to its competencies.

Like defence and commercial matters, the justice department is a federal competence.

There is no Belgian code of environmental law, given the aforementioned division of competencies between the federal state and the constituent states. Environmental law is spread over different laws, decrees and ordinances with respect to e.g. waste, nature conservation, soil contamination, environmental permits. However, there is a tendency towards compilation. The Walloon region has an Environmental Code and a Water Code. The Flemish "Decree of 5 April 1995 including General Provisions regarding Environmental Policy" contains the enforcement provisions for different "sectoral" decrees.

¹ Belgium has a surface area of 30,528 km² and a population of 11,358,357. Of this number, 6,516,011 live in the Flemish Region within an area of 13,522 km². 3,585,214 people live in the Walloon Region within an area of 16,844 km² and 1,198,726 people in the Brussels-Capital Region within an area of 161 km².

The protection of the environment in the Belgian Constitution

The fundamental rights are established in Title II of the Belgian Constitution.

Article 23 of the Constitution provides:

"Everyone has the right to lead a life in conformity with human dignity. To this end, the laws, decrees [...] guarantee, taking into account corresponding obligations, economic, social and cultural rights, and determine the conditions for exercising these.

These rights include among others:

(...)

4° the right to enjoy the protection of a healthy environment; (...)".

Article 23 of the Constitution has no direct effect. It cannot be invoked by private persons in regard of authorities or third parties. Art. 23 offers a framework for the legislators within which these can establish more specific rights for individuals.

Article 23 of the Constitution includes a *standstill* obligation. The authorities may not cut down on the level of environmental protection guaranteed by the applicable environmental laws. The *standstill* obligation does not prohibit any relaxation of the environmental laws, but opposes to important reductions of the level of protection, unless these can be justified by reasons of public interest.

When interpreting legal norms, judges should choose the interpretation which is most in accordance with the right to enjoy the protection of a healthy environment (principles of "constitutional interpretation" and "*in dubio pro natura*"). In case of conflicting interests, judges must take into account the constitutional status of the right to the protection of a healthy environment.

The Constitutional Court can directly examine laws for compatibility with article 23 of the Constitution. The Council of State can test government decisions against article 23 of the Constitution.

In accordance with the Treaty of Aarhus, article 23 of the Constitution contains not only substantive rights, but also the procedural rights on access to information, on public participation in decision-making and access to justice in environmental matters.

2 The Belgian courts, specialisation of magistrates and access to the courts in environmental cases

2.1 The Constitutional Court

(www.const-court.be)

The Constitutional Court is composed of 12 judges (6 Dutch-speaking and 6 French-speaking), who are assisted by legal secretaries.

Article 142 of the Constitution gives the Constitutional Court the exclusive power to review laws, decrees or ordinances for compliance with the rules that determine the respective

powers of the State, the communities and the regions. These power-defining rules are set forth in the Constitution as well as in laws (usually passed by a special majority) that are enacted with a view to institutional reform in federal Belgium.

The Constitutional Court is also competent to decide on any violation by a law, decree or ordinance of the fundamental rights and freedoms guaranteed in Title II of the Constitution (Articles 8 to 32), of Article 170 (legality principle in tax-related matters), Article 172 (equality in tax-related matters), Article 191 (protection of foreigners) and Article 143, §1 (principle of "federal loyalty"). The Constitutional Court combines its constitutional review with the review of compliance with international and European Law, including environmental law.

The Constitutional Court can annul or suspend laws, decrees or ordinances (or part thereof). In case the lower courts have doubts about the conformity of laws, decrees or ordinances with the above mentioned articles of the Constitution, they must refer the case for preliminary ruling to the Constitutional Court.

Some of the judges of the Constitutional Court are specialised in environmental law.

Between 1 January 2000 and 31 July 2004, the Court pronounced 816 judgments. 61 judgments concerned environmental law: 30 regarding town and country planning, 24 regarding environmental issues and 7 cases regarding nature conservation. This accounts for 7.5% of the cases.

Between 1 August 2004 and 31 July 2018, the Constitutional Court passed 2,442 judgments. 126 judgments concerned environmental issues including natural resources and renewable energy, while 82 dealt with town and country planning. This accounts for 8.5% of the cases, a slight increase compared to the previous period.

2.2 General courts

(www.rechtbanken-tribunaux.be)

Organisation

Belgium is judicially organised on the basis of a territorial subdivision with 1 Court of Cassation (Supreme Court) for the whole country, 5 major judicial areas, each within the jurisdiction of a Court of Appeal and an Labour Appeal Court (Antwerp, Brussels, Ghent, Liège and Mons),

12 districts ("gerechtelijk arrondissement", largely coinciding with the province borders) and 162 cantons (in each canton there is a Justice of the Peace Court).

There are 9 Labour Tribunals and 9 Commercial Courts, each with local departments.

There are 13 Courts of First Instance, each with local departments. There are 15 Magistrates' Courts.

The public prosecution is largely organised on the basis of the same subdivision.



- The Court of Cassation is composed of 30 judges. It is the highest court of law and oversees the correct enforcement of the laws by the courts and tribunals. The Court of Cassation does not examine the facts of the case referred to it, but rather whether the judgment complies with the law. Appeal to the Court of Cassation does not constitute a third instance. A lawsuit can only be brought before the Court of Cassation after it has already been adjudicated by the court hearing the main action and by the appeal court.

When the Court of Cassation finds that a court has infringed the law, it will quash the verdict and refer the case to a court of law of the same level as the court that passed the unlawful verdict. That court will have to hear the case all over again.

The Court of Cassation has a public prosecutors department composed of 13 public prosecutors (cf. advocate generals), who advise the Court of Cassation. This department is headed by the Attorney-General with the Court of Cassation.

- The 5 Belgian Courts of Appeal and Labour Appeal Courts are the appeal bodies for the courts in the districts of their jurisdiction.

A Court of Appeal has 3 divisions. There are the divisions for civil cases, which hear appeals against judgments delivered in the first instance by the civil divisions of the courts of first instance and the commercial courts. These divisions are composed of one or three justices. Then there are the criminal law divisions, which decide in criminal cases on the appeal against sentences passed by the corresponding divisions of the courts of first instance. Finally, there are the family and juvenile divisions, which handle appeals against judgments of the family and juvenile judges at the court of first instance.

The Labour Appeal courts have jurisdiction in matters of social and labour law.

Each Court of Appeal and Labour Appeal Court has a prosecution department headed by an Attorney-General.

- A Court of First Instance has three divisions:

Civil divisions, which have jurisdiction in all cases that have not been exclusively assigned to other courts of law. These divisions also rule on the appeal against judgments delivered by the Justices of the Peace and the Magistrates' Courts in civil matters.

Divisions for criminal law (also called penal courts or *tribunaux correctionnels*). They decide on offences that have not been assigned to the Magistrates' Court or the Assize Court (criminal court)². They also rule on appeals against sentences passed by the Magistrates' Courts in criminal cases.

The juvenile divisions (or juvenile court). They rule on protective measures towards minors or take repressive measures against juvenile offenders.

The divisions may be composed of three judges or one judge.

The Court of First Instance has general and full jurisdiction. This means that it has power to rule on all matters that are not reserved for another court of law.

So the Court of First Instance tries most environmental cases, in criminal matters as well as in civil matters.

The president of the Court of First Instance has special powers in urgent cases. He may decide in interim injunction proceedings on urgent matters.

Judgments delivered by the Court of First Instance (except for cases that are already an appeal against a decision of a Justice of the Peace or a Magistrates' Court) are open to appeal before a Court of Appeal.

The Industrial Tribunals and Commercial Courts have jurisdiction in cases of social and labour law and in commercial cases respectively.

- Each canton has one Justice of the Peace Court (162 in total). This court stands closest to the citizens.

A Justice of the Peace hears all cases where the value of the petition does not exceed 5,000.00 euro. In addition, the Justice of the Peace has extensive powers in rent disputes, expropriations, easements, agricultural affairs and the mentally ill.

Judgments delivered by a Justice of the Peace are open to appeal before the Court of First Instance or the Commercial Court (in commercial cases), depending on the type of case.

Magistrates' Courts decide on claims for compensation for damage suffered in road accidents. Magistrates' Courts also punish traffic offences and some offences against the Forest Code, the Rural Code, the River Fishery Code and the Railway Code. Judgments are open to appeal before the Court of First Instance.

² The Assize Court is not a permanent court. It is convened when a person is accused of very serious crimes such as murder or homicide.

Steps towards specialisation within the Courts of First Instance, the Courts of Appeal and the Prosecutor's Offices

As stated before, an important number of environmental cases are heard before the Court of First Instance. It is not mandatory to install specialised environmental chambers, as is the case for juvenile cases or tax-related matters.

The large majority of environmental cases brought before the Court of First Instance concern penal cases.

Only a minority are civil cases and these mainly concern liability actions for environmental damage and interim injunction proceedings or environmental actions for cessation. Judges in civil cases are rarely specialised or trained in environmental law.

Since 2008 there has been a voluntary collaboration between two smaller prosecutor's offices, in the Province of West-Flanders, Kortrijk and Ieper. Kortrijk specialised in all the environmental and town planning cases for the two districts (while Ieper took up other specialisations). This enabled the prosecutors in Kortrijk to specialise in environmental cases. In 2010 and 2011 this example was followed by other prosecutor's offices.

In April 2014 a general reform of the Belgian judicial landscape was carried out. The 27 judicial districts were merged into 12 larger districts. The local departments remained, so in practice no courts were abolished.

The judicial districts can (there is no obligation) appoint one local department of the Court of First Instance which shall exclusively handle all the environmental and town planning cases for all the departments of the district, allowing judges and prosecutors in these departments to specialise.

Most of the Belgian public prosecutor's offices in Flanders started (or continued) collaborating in e.g. environmental matters. In Antwerp for example, there is a specialised section for "Bijzondere Leefmilieu Wetgeving". Three prosecutors are working fulltime on environmental, town planning, food safety and pharma-crime and handling all the cases for the district of Antwerp (departments of Antwerp, Turnhout, Mechelen).

At the court-level, only the Courts of First Instance of Antwerp (Antwerp department), West-Flanders (Kortrijk department³), Liège (Huy department), Luxemburg (Arlon department) and Namur (Namur department) have formally installed a department specialised in and handling all the environmental cases of the district.

Unfortunately, no specialised departments have been appointed in the other 7 Courts of First Instance of Belgium.

In Antwerp, there are 2 examining judges specialising in environmental crime.

³ In 2017, 42 new environmental law cases were introduced before the Court of First Instance of West-Flanders, Kortrijk department. These cases concerned a.o. environmental permit, waste, town planning, protection of heritage, CITES and nature conservation, food safety and animal wellbeing.

The Court of East-Flandres, Ghent department, has 2 judges specialising in environmental law and handling all the cases for the Ghent and Oudenaarde departments, but this is an *ad hoc* - and not yet a formal - arrangement.

The Courts of Appeal of Antwerp and Ghent have chambers specialising in environmental and town planning law and a specialised Attorney-General.

It should be pointed out that the judges and prosecutors who work in the specialised departments are not allowed to devote themselves exclusively to environmental cases. They have to combine environmental matters with other types of cases.

The stakeholders (mainly inspectorates and police officers) do welcome the specialisation of public prosecutors for the following reasons:

- one specialised prosecutor is the contact point for all the environmental cases;
- better management of environmental cases and a clear prosecution policy;
- more accurate investigation instructions for the inspectorates and the (specialised) police forces;
- better quality of the prosecution and trial.

In the past decades, law firms begun to specialise in environmental law. For a swift and qualitative handling of environmental cases, the prosecutors and judges working on the case should also be specialised. This is also in the best interest of the parties.

2.3 Administrative Courts

Council of State
(www.raadvanstate.be)

The Council of State is no part of the ordinary judiciary.

The Council of State comprises two sections: the Legislation Section, which advises the legislative on new legislation, and the Administrative Jurisprudence Section, which rules as an administrative court.

The Administrative Jurisprudence Section protects the citizen against unlawful administrative acts (individual legal acts and regulations).

The Section is composed of 36 judges, called State Councillors. There are 64 auditors who advise the Council.

Any natural or legal person can bring a request for annulment before the Administrative Jurisprudence Section of the Council of State against irregular administrative acts that have caused him or her detriment.

As the highest administrative court, the Council of State acts as an appeal body against judgments of lower administrative courts. The rulings of the Council of State are not open to appeal.

A request for suspension may be brought along with a request for annulment. The Council of State may suspend the challenged decision, provided that the grounds for annulment seem valid and there is urgency.

Within the Administrative Jurisprudence Section of the Council of State there are 2 Dutch-speaking chambers and 2 French-speaking chambers specialising in environmental and town planning cases. Specialisation is taken into account when recruiting the State Councillors. Once appointed, the State Councillors are expected to keep their knowledge up-to-date and follow regular trainings.

Between 1 January 2005 and 1 January 2018, 64,778 cases were brought before the Council of State: 37,420 general cases and 27,358 foreigners cases.

Of the general cases, 6,961 cases concerned town planning (of which 3,722 from the French-speaking part and 3,239 from the Dutch-speaking part). 3,392 cases concerned environmental law (of which 1,098 from the French-speaking part and 2,294 from the Dutch-speaking part).

The environmental cases and town and country planning cases account for about 27.66% of the general cases. Between 1997 and 2004 this was about 22%.

Lower administrative courts handling environmental cases in the Flemish Region (www.dbrc.be)

The Flemish Region has 2 specialised environmental administrative courts: The Council for Permit Disputes ("Raad voor Vergunningsbetwistingen") and the Enforcement College ("Handhavingscollege").

There are 9 judges working for the Council for Permit Disputes and the Enforcement College.

The Council for Permit Disputes was established by the Flemish parliament in September 2009 as an administrative court for permits in the area of town and country planning and, recently, for the "integrated environmental permits" (former town planning permit and environmental permit combined).

The Council for Permit Disputes has taken over the competences of the Council of State with regard to permits in the Flemish Region, because the Council of State had a backlog of several years. The Council of State now acts as an appeal (cassation) body against judgments of the Council for Permit Disputes.

The Council for Permit Disputes has competence for annulment and suspension of permits. The 'public concerned' can bring a request for annulment before the Council against irregular permits. The 'public concerned' is defined as all the natural and legal persons that can undergo consequences from the permit or have an interest regarding the permit, including NGO's. Some administrations can act before the Council too.

A request for suspension may be brought along with the action for annulment. The Council can suspend the challenged decision if the grounds for annulment are found to be valid and if there is an urgency.

The Council for Permit Disputes has the power to decide on the suspension and annulment of permits. The Council also has the competence to impose an injunction on administrative authorities. In rare cases and only if the administrative authority has circumscribed powers, the Council can make a decision instead of the administrative authority. The Council can also decide on mediation on demand of the parties.

According to the Annual Report 2016-2017, in that year there were 1007 final rulings and 880 new cases.

The Environmental Enforcement College was established in 2009 and was renamed Enforcement College since the "integrated environmental permit" came into force.

Infringements of environmental law are often sanctioned through administrative fines. These administrative fines can be challenged before the Enforcement College. The appeal has a suspensive effect.

The Enforcement College can annul and substitute a decision of the government agency. The Council of State acts as an appeal (cassation) body against judgments of the Enforcement College.

According to the Annual Report 2016-2017, 132 final rulings and 80 new cases were introduced before the Enforcement College.

The 9 judges of the Council for Permit Disputes and the Enforcement College are specialised in (administrative) environmental law and town planning law. At least 10 years of experience in Flemish environmental law and town planning law is required to apply as a candidate for the selection.

5 of the 9 judges were selected in 2015 on the base of examinations mainly focusing on knowledge of specific (environmental) law and case law.

There is no training for the judges before taking office.

There are no specific arrangements for continuing training for the judges and the staff. This is occasionally organised, especially in the case of new legislation. The content of the courses is decided on by the judges themselves and organised by the 'coordination bureau', this is an internal service for support and knowledge management.

The judges (and staff) can attend seminars organised by universities or specialised training organisations. The training fees are paid for. The judges (and staff) are entitled to leave from work for the training.

Continuing training is not compulsory but voluntary and depends mainly on personal interest and commitment of the judges.

2.4 Access to the courts in environmental cases

General access to the courts

In order to have standing, a personal and direct interest must be proven. This interest should be different from the public interest.

Liability actions can be brought before the civil court, where remediation and compensation can be claimed.

In interim injunction proceedings, the president of the Court of First Instance can order measures in urgent cases before ruling on the merits of the case.

The petitioning party must demonstrate its interest and prove the validity of its action.

The victim of an (environmental) crime can bring an action for damages before the criminal court. Besides imposing a penalty, the criminal court will also have to decide on the compensation and remediation.

The right of standing of environmental NGOs is assessed on a case by case basis. Until 2013, the Belgian Court of Cassation interpreted the concept of "interest" in a narrow way. The protection of the environment as such did not suffice as "interest", and actions brought by environmental groups were often declared inadmissible.

Since a judgment of 11 June 2013, the Court of Cassation interprets the admissibility requirements more in accordance with article 9 of the Treaty of Aarhus. Associations who, according to their bylaws, devote themselves to environmental protection, show a sufficient interest to launch an action against violations of environmental law by private persons or authorities.

In a judgment of 21 January 2016, the Constitutional Court decided that associations who work for a collective interest such as the protection of the environment can be awarded a compensation for moral damages higher than a symbolic compensation of 1 euro, in case that collective interest has been violated. To decide otherwise, would be discriminatory and would harm the interests of environmental protection groups "who play an important role safeguarding the constitutional right to protection of a healthy environment".

Action for cessation

An Act of 12 January 1993 established a special procedure for NGOs to claim the cessation in case of obvious infringements of environmental regulations.

The president of the Court of First Instance can order the cessation of acts constituting obvious infringements of environmental law or order preventive measures in case of a serious threat of such infringements.

The president acts at the request of the prosecutor, an administrative authority or of an environmental NGO.

This law, however, includes restrictive standing conditions for environmental groups. The action for cessation is not frequently used (there are no official figures available but estimated at a few dozen per year for the whole of Belgium).

3 Recruitment, training of magistrates and access to environmental information

Since 2000, the High Council of Justice (www.csj.be) organises the exams for prosecutors and judges at the general courts and proposes candidate judges and prosecutors for appointment to the Minister of Justice (with the exception of the judges of the Constitutional Court and the State Councillors and auditors of the Council of State).

The High Council of Justice is an autonomous constitutional body, independent from the legislative, the executive and from the judiciary. The High Council is also in charge of

external control of the judiciary through audits and complaints handling. The High Council advises the parliament on how to improve the functioning of the judiciary.

3.1 Recruitment of judges and prosecutors

There are three ways to gain access to the Belgian judiciary:

Judicial traineeship

This is an “indirect” way for young lawyers to gain access to the judiciary in that it involves the completion of a traineeship. In order to be admitted to the traineeship, candidates must pass the open admission exam for the judicial traineeship, which is organised by the High Council of Justice.

The conditions for admission to the exam are as follows:

- holding a degree of master of law,
- having at least for two years completed a traineeship at the Bar or worked in other legal professions in the four years prior to registration for the exam.

The exams assess the maturity and professional competences of the candidates, as well as soft skills such as the immunity to stress and the ability to listen.

Candidates who pass the judicial training admission exam can start working as a judicial trainee at the latest four years after the exam.

The traineeship consists of a series of mandatory courses organised by the Institute for Judicial Training (see below) and a practical training:

- a training of 11 months at the Prosecutor's Office at the Court of First Instance or Labour Tribunal;
- an "external" training of 3 months at a penitentiary establishment, a police department or the legal department of a public economic or social institution in Belgium or the EU;

Environmental inspectorates also qualify as external training. The judicial trainees are first given an introduction at the central office, with an explanation of the duties and powers of the inspectors. They also have the codes of good practice explained to them, as well as a discussion of the priorities of the prosecution policy. The trainees then take part in inspections of establishments. In this way, a greater familiarity with daily practice and a closer future cooperation between the judiciary and the environmental inspectorate is brought about;

- a 10 months training at a Court of First Instance, Labour Tribunal or Commercial Court.

During their training period at the prosecutor's office and at the court, the trainees are supervised by a senior judge or prosecutor, who in turns receives a trainer's training.

One of the mandatory courses at the Institute for Judicial Training is (only) a one day course on environmental law.

After successful completion of the judicial training, the trainee receives a certificate and can stand for prosecutor or judge.

Professional capacity exam

This is a direct way of access to the judiciary for lawyers with experience.

Candidates wishing to take part in this exam must hold a degree of master in law and have worked for minimum four years in a legal profession in the period of five years prior to registration for the exam.

To stand for prosecutor, candidates should have worked in a legal profession for at least five years. To stand for judge, the candidate should have worked in a legal profession for at least ten years.

Oral exam

Lawyers with at least 20 years of experience can take an oral exam.

The exams assess the legal knowledge, the motivation, the integrity and soft skills of the candidate. Candidates must also undergo psychological tests.

3.2 Training of judges and public prosecutors

The High Council of Justice establishes and ratifies the general guidelines and the programmes for the judicial traineeships and the continuing training.

The Institute for Judicial Training, an independent federal body, takes care of the practical organisation of initial and continuing training of judges, prosecutors and court staff. This is not a school for magistrates but a training institute.

(www.igo-ifj.be)

The Institute for Judicial Training offers dozens of training courses in every field of law for judicial trainees, judges and prosecutors.

Courses for proficiency in certain skills such as languages, the hearing and questioning of parties and witnesses, stress and time management, victim support, talking to the press, psychosocial skills, dealing with aggression etc., are also part of the programme.

For judges and prosecutors participation to the courses is optional, but appraisals take into account the efforts of the members of the judiciary as regards continuing training. This is also a criterion for the High Council when selecting candidates.

Some judges, such as the examining judge, juvenile and family judges, must have obtained a certificate by attending a specific training. These trainings are being organised yearly by the Institute for Judicial Training.

The training fees are paid for by the Ministry of Justice.

Unfortunately, judges and prosecutors are seldom entitled to leave work for training. The case load is high, so unless they are motivated by career objectives, judges and prosecutors are not inclined to leave work for training.

There is no mandatory training for environmental judges. As stated before, judicial trainees must attend only a one day training in environmental law.

Judicial training in environmental law started back in 1995 by the Environmental Law Centre of the University of Ghent, at the request of the Ministry of Justice.

Since 2000, the High Council of Justice has periodically organised courses in environmental law.

Since 2009, the courses are being organised by the Institute for Judicial Training.

There are separate courses for Dutch-speaking and French-speaking members of the judiciary in view of the language and the regional character of legislation.

Every 2 to 3 years, an environmental law training course of several days is organised for new judges and prosecutors, judicial trainees and for specialised judges and prosecutors who want to freshen up their knowledge. The training is also open to court clerks, assistants at the prosecutor's offices, administrative judges, police officers and environmental inspectors.

The training focuses on the practical knowledge needed for the prosecution and trial of environmental cases. In 2015, lectures were delivered e.g. on criminal liability of corporations, seizure and forfeiture, execution of judgments, reparation of ecological damage.

In other years, specialised courses are being organised, e.g. when a new environmental or town planning code has been adopted. In 2018 a one-day training on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was organised.

3.3 Access to environmental information

Every prosecutor and judge receives a laptop and access to the internet and general legal databases such as "Jura", "Strada" and "Jurisquare". Environmental information is available on several websites such as www.emis.vito.be and the websites of the inspectorates. The judgments of the Constitutional Court, the administrative courts and the Court of Cassation can be consulted at their respective websites.

Unfortunately, there is no central database of the environmental case law of the general courts. Unless a decision gets published in a paper journal, it remains in the computer of the court clerk or judge. In Ghent, the environmental judges started to share the case law in a central database.

The courts have libraries of varying quality. The bigger courts such as Ghent have a solid library including agreements with the university libraries.

The presidents of the courts receive an annual budget for 'small purchases'. The amount does not always allow to pay for an updated statute book for each judge every year.

A number of specialised journals on environmental law exist. The *Tijdschrift voor Milieurecht* (Environmental Law Journal), which appears 6 times a year, is regarded as the standard for the Dutch-speaking part of Belgium.

It contains articles on legal doctrine and case law in the area of environmental law in the broadest sense.

The *Tijdschrift voor Ruimtelijke Ordening en Stedebouw* (Journal for Town and Country Planning) focuses on town planning law.

On the French-speaking side, the journal *Aménagement – Environnement* (Town Planning – Environment) contains articles on legal doctrine and case law.

Further there is the *Tijdschrift voor Omgevingsrecht* and *Milieu-en Energierecht*.

4 Investigation and prosecution of environmental crime

In both Regions of Belgium, the majority of (smaller) environmental offences follow an administrative sanctioning track.

In general, only the severe "environmental crimes" (as defined in the regional decrees, often entailing a danger to human health or the environment) follow the criminal sanctioning track.

Police and environmental agencies

Investigation of (environmental) crimes is the task of the police and of specialised environmental agencies. They are overseen by the Public Prosecutor, who is a member of the Judiciary and who decides whether or not to prosecute the perpetrators in court or to forward the case to the administration for imposing an administrative fine.

Since the police reform of 1998, Belgium has 2 police services: the Federal Police and the Local Police.

The Local Police is divided into 187 police zones (some zones contain 1 city or municipality, other zones cover several municipalities). The local police acts under the authority of the mayor or of the police board (composed of several mayors) in the zones covering more than 1 municipality.

Many environmental cases are of a local nature and primarily fall within the scope of the local police. We observe that, partly as a result of the police reform, environmental crimes are not a priority for the police. The strengthened hold of the mayor on the local police certainly has something to do with it. Enforcement, and particularly environmental law enforcement, is not always popular at the municipal level. Environmental crimes are not readily perceived as a form of crime, but rather as an incidental circumstance of economic activity. There is little willingness to invest in environmental law enforcement, to conduct an environmental law enforcement policy and to take effective action. Few local police forces have environmental specialists among their number.

Moreover, the mayors have supervisory authority over establishments that require an environmental permit or notification. In practice, action is hardly ever taken – and if action is taken, then usually only after complaints of the neighbourhood.

One of the general directions of the federal police is the General Direction of Judicial Police, which has a division in each judicial district, where investigators carry out investigations under the authority of the prosecutor.

The Central Department for Combating Capital and Organised Crime in Brussels has an Environment Unit. This unit supports the police officers in combating environmental crime through advice, training, centralising information, representation at Interpol and Europol and strategic analyse. This unit has however been downsized in recent years and has for the moment only *5 staff members left*.

The supply of environmental crime cases to the courts and administration depends to a large extent on the capacity and commitment of the federal investigators in the judicial districts and of the local police.

The Flemish Region, the Walloon Region and the Brussels-Capital Region each have their own environmental agency.

The Walloon and Flemish environmental agencies each have a central direction and a regional unit in each province.

In 2017, the environmental agency of the Flemish Region (Afdeling Handhaving, department Omgeving, *omgevingvlaanderen.be*) carried out 10,738 inspections at 4,119 companies. 504 new reports were drawn up, of which 271 reports for absence of environmental licence or partial environmental licence, 371 for non-compliance with the conditions, and 113 for infringements of other legislation such as the Waste Decree, Soil Decree, etc. 911 warnings were given without a report being drawn up. This can happen if there was no infringement yet, but only a threat of infringement.

In 2017 the Flemish environmental agency made 1 recommendation to the government for the suspension or cancellation of an environmental licence. In 6 cases, the environmental agency ordered the cessation of activities.

For information on the environmental agencies of the Brussels Capital Region and the Walloon Region, please see *leefmilieu.brussels* or *environnement.wallonie.be*.

Besides these regional environmental agencies, the regions also have **other special supervisory officials**. There are the officials of the manure bank, foresters and rangers of the departments of Nature and Forests, building inspectors and inspectors of the department of Architectural and Natural Heritage. Most of these services, however, are too understaffed to allow effective supervision. Here, too, action is most of the time only taken after a complaint or notification.

The Prosecutor's Offices

An aggrieved party can institute investigation proceedings by bringing an action for damages before the examining magistrate. An aggrieved party can also directly take a suspect to the

criminal court. Both these procedures are exceptional in environmental cases. In most environmental crime cases, the investigation is conducted by the prosecutor, who summons the suspects to appear before the court.

It's the prosecutor who decides whether or not to prosecute suspects. Neither the police nor the administrative authorities have the power to do so.

As stated before, most prosecutor's offices now have prosecutors specialised in environmental law.

In the Flemish Region, in March 2013 a 5-year Protocol has been signed by the Flemish Minister of Environment and Nature, the federal Minister of Justice and the Attorney-General, regarding Priorities in the Prosecution of Environmental crime ("Prioriteitennota vervolgingsbeleid milieurecht in het Vlaams Gewest"). The protocol is currently under revision and the next one will also comprise town planning crime.

In the Flemish Region, the penalties for environmental offences have been centralised in one decree ("Milieuhandhavingsdecreet"). The most common penalty for environmental offences is imprisonment of 1 month to 2 years and / or a fine of 100 to 250.000 euro (article 16.6.1 of Title XVI of the Decree of 5 April 1995 including General Provisions regarding Environmental Policy). The amount of the fines are adapted from time to time to inflation. For the moment one shall multiply them with 8.

The court can impose safety and / or remediation measures such as the removal of illegally dumped waste or the closure of a factory operating without a permit, demolition of illegal buildings, reforestation...

Belgian penal law also provides for special penalties such as the confiscation of unlawful financial benefits.

5 Suggestions for EUFJE

Possible programme items for EUFJE may include studies of:

- the importance of the courts in environmental law enforcement as tail of the enforcement chain;
- the importance of specialisation at each level of the enforcement chain; insist with the presidents of the general courts to formally appoint judicial departments specialising in environmental and town planning cases, in accordance with article 186 of the Belgian Judicial Code;
- the use of geospatial intelligence in the investigation of environmental crime;
- methods for estimating environmental damage and comparison of the existing methods in the EU Member States;
- good Member State practices regarding uniform prosecution policy of environmental crime and uniform and effective penalisation of environmental crime.

Ghent, 15 September 2018

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