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**COMPLAINTS AND APPEALS IN THE AREA OF ENVIRONMENT
IN THE MEMBER STATES OF THE EUROPEAN UNION**

GENERAL REPORT

by

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I

SYNTHESIS OF THE NATIONAL REPORTS

Preliminary questions:

Before submitting the results of our study in comparative law regarding the laws on judicial and other forms of appeal in Member States, there are two preliminary questions that should be examined:

- 1) how can we distinguish appeals to a court of law from appeals to an administrative authority?
- 2) how can we distinguish judicial appeals from claims or complaints?

1 - Judicial appeals and non-judicial or administrative appeals

It became apparent from our comparative law study that in some countries the distinction between a contentious appeal (to a court) and a non-contentious appeal (to a non-judicial authority) is not always very clear, and that this resulted in some difficulties in dealing with a questionnaire divided into two parts: judicial appeals and non-judicial proceedings.

This difficulty may arise from differences in terminology. Thus, in Austria, "Zugang zu den Gerichten" (access to justice) really means access to legal protection in administrative proceedings and simultaneously covers both appeals to administrative authorities and appeals to public law courts.

This difficulty may also arise from differences in the way appeals are dealt with by certain administrative bodies which may or may not be considered as courts of law, according to the particular case (Sweden, Finland). In certain circumstances the judicial or non-judicial status of a body known as an "administrative tribunal or Court" may be unconfirmed.

At the European level, however, the concept of a "court of law" or "tribunal" has now been clearly identified both by the Court of Justice of the European Communities and by the European Court of Human Rights.

We would first remind the reader that "the right of effective judicial appeal" in cases of breach of Community law has become a general principle of Community law (ECJ, 15.5.1986, Johnston, 22-84, ECR 1651).

In Community law the admissibility of a preliminary question under art. 177 of the Treaty instituting the European Community depends on the "jurisdictional" status attributed to the authority referring the matter to the Court of Justice. For the purposes of the Community, authorities are regarded as courts of law if they fulfil certain criteria: they must be created by statute, they must be permanent, they must hear and settle legal disputes, they must rule according to the law, and they must be subject to rules of adversarial procedure. The Court of Justice will assess the question of jurisdiction under art. 177 regardless of the description given to the authority in question under its own national law. Furthermore, it will refuse to treat an authority as a court of law where a body so described makes a legal ruling without having to decide a dispute. This would

apply to a Commission set up to express opinions¹; and likewise to a judge who exercises authority under administrative law by deciding, in so-called "non-contentious" proceedings, an application for ratification of a company's Articles of Association to enable the company to be registered in the Companies Registry: this is not a "jurisdiction", since the Court is not acting in connection with any dispute². On the other hand, a Dutch Social Security authority may be considered a "jurisdiction" for the purposes of art. 177, because it applies legal rules, has responsibility for settling disputes and is subject to rules of adversarial procedure similar to those of the general law courts³. It is also necessary, of course, that the judges of the "court" must be independent of the parties and appointed by a Public Authority. Thus an Inland Revenue official responsible for deciding a tax claim is not a "jurisdiction", because his authority is not independent of the authority which took the decision giving rise to the appeal; he is merely a means of appeal to a higher level of the same authority. The Court of Justice refuses to view this as equivalent to a "jurisdiction", even though in the case in question the national laws of Luxembourg had attributed such a status to him⁴.

In the European Court of Human Rights the interpretation of the term "tribunal" in art. 6-1 of the Convention for the Protection of Human Rights and Fundamental Liberties depends on the purposes of the Convention, and not on its definition under internal law. By "tribunal" art. 6 does not necessarily mean a court of the classic type, a part of the country's judicial structures⁵, but an authority with multiple powers (administrative, regulatory, consultative) may be treated as a tribunal as regards certain of its powers⁶. The following criteria are applied: it must be an independent and impartial authority, established by statute, able to make legal decisions (that is to say, the tribunal is defined by its judicial role: namely to settle disputes according to legal rules⁷ and an organised procedure). Thus administrative bodies with merely advisory functions⁸ are also excluded here, since they cannot make binding decisions in the relevant field. Although the Austrian regional authority for real estate transactions is not a court created by the State, it is nevertheless defined as a "Tribunal" in the material

¹ ECJ, 5 March 1986, criminal proceedings against Regina Greis, 318/85, ECR 955.

² ECJ, 19 October 1995, Job centre coop. ARL, C-111-94, ECR I - 3361.

³ ECJ, 30 July 1966, Mrs G. Vaassen-Gobbels, 61/65, ECR 377.

⁴ ECJ, 30 March 1993, P. Corbiau, C-24/92, ECR I p. 1277.

⁵ Campbell and Fell decision, 28 June 1984, Decision n° 80, para 76.

⁶ Case of H. v. Belgium, 30 November 1987, Decision n° 127-B, para 5.

⁷ Thus the Swedish Supreme Administrative Court was not considered a tribunal within the meaning of the Convention so far as the question of compulsory purchase of land was concerned, because it did not have power to "decide" a dispute (Sporrong and Lonroth v. Sweden, 23 September 1982, Decision n° 52, para 86).

⁸ Benthem, 23 October 1985, Decision n° 97, para. 39. In this case the section of the Council of State of the Netherlands merely expressed an opinion and thus did not legally decide the dispute.

sense of the term because it is called to settle all disputes within its competence according to legal rules and on completion of an organised procedure⁹.

At the European level, therefore, there are certain common factors which make it possible to distinguish a judicial from a non-judicial authority. There are a number of indices which determine whether or not an authority is a court of law:

. a permanent authority established by statute, composed of independent judges, operating according to organised rules of adversarial procedure, but, first and foremost, making binding decisions in settlement of disputes according to the law.

In addition to this definition of a tribunal according to art. 6.1 of the Convention, the Strasbourg Court has clearly stated that the requirements for defining an authority as a "tribunal" should not have the effect of forcing States to convert all their appeal bodies into "tribunals" in order to respect human rights. Art. 6.1 does not, of course, oblige States to submit all disputes over rights and obligations to proceedings to be conducted in accordance with formalities laid down by the Convention. "Requirements of flexibility and efficiency, fully compatible with the protection of human rights, may justify preliminary action by administrative authorities or sectional or professional bodies and a fortiori by judicial authorities which may not satisfy all the said formalities in all their aspects; such a system could draw on the legal traditions of many Member States of the Council of Europe" (Le Compte Van Leuven and de Meyere case, 1-1980-32-47-48 of 23 June 1981, para 51).

2 - Complaints, appeals, claims and objections

The rights of individuals to contest a decision or proposed decision will be organised according to procedures which vary depending on both the time of the appeal and the powers of the authority to which the appeal is made.

Thus the procedure used will be judicial if the appeal against a decision lies to a court of law, or non-judicial if it lies to an authority which is not in the nature of a court of law.

There are, however, areas of confusion caused by the diversity of terms used, whether in common parlance or in a strictly legal sense. The word "appeal" is thus ambiguous, since it can be used to set in motion either an action before a tribunal or a procedure laid down by an administrative authority.

An "appeal" is therefore a legal means of seeking the protection or restitution of a right. A "complaint" is synonymous, although it is generally used in criminal proceedings with the object of setting a prosecution in motion. So far as proceedings to secure participation in an administrative decision are concerned, these include representations, comments or claims. The third of these terms, "claim", however, is also ambiguous, since it can mean either a form of participation or an action brought before

⁹ Sramek case, 22 October 1984, series A, n° 84, p. 17, para. 36; Belilos case, 29 April 1988, series A, n° 132, para. 64.

an administrative authority and subject to a right of "appeal" in the legal sense of the term. We should not, therefore, attach too much importance to the vocabulary used in the various countries, but on the other hand we should be attentive to the judicial framework of the proceedings commenced by an individual. Can a claim or a judicial appeal be introduced into an existing procedure or are they merely informal steps? Can they legally result in the re-examination, amendment or withdrawal of a decision? Is this a form of action which constitutes a compulsory preliminary stage before a subsequent appeal to a court of law?

Art. 13 of the European Convention on Human Rights establishes the "right of effective remedy".

For the Strasbourg Court, a remedy is a procedural right to contest administrative acts before a competent national authority in order to arrive at an obligatory decision. Such an authority may be judicial, quasi-judicial (e.g. the ombudsman in the case of *Leander v. Sweden*, 26 March 1987), administrative (the Minister or a prison governor in the case of *Bayle and Rice v. U.K.*, 27 April 1988) or even political (a parliamentary committee in the case of *Klass v. FRG*, 6 September 1978). Where, however, the appeal lies to a non-judicial authority, the powers and guarantees attributed to it will be an essential factor in assessing whether the appeal will be effective. It is at that point that the guarantees of organic independence and the impartiality of the members of the body hearing the appeal will be assessed. Thus an appeal to a higher level of the same authority may be an effective legal appeal for the purposes of art. 13, but not a non-contentious appeal, since the ruling authority is the one that made the contested decision. Procedural guarantees will also be required, but they will not be as important as those demanded in a court of law.

We must thus conclude that it is highly important to determine the procedural conditions for an appeal or a claim, but so far as its objective is concerned, the essential question to be examined is the powers of the authority to which the appeal is referred: whether it can merely record a claim, make recommendations or impose a binding decision, amending, adding to or setting aside the contested decision.

The examination of these preliminary questions has afforded us a glimpse of the complexity and diversity of the legal instruments which make it possible to contest a decision by a public authority.

In the wider discussion which follows we shall begin by defining the various forms of judicial and non-judicial appeals. We shall then attempt to classify the procedures that exist within the countries of the European Union, and finally we shall suggest one or two original procedures.

1 - THE DIVERSITY OF FORMS OF JUDICIAL AND NON-JUDICIAL APPEAL

To contest a decision of a public authority on environmental matters means to be able to appeal for its amendment or annulment, or for a declaration that it is unlawful or has resulted in loss or damage. There are numerous legal instruments for a challenge of this type. We have to distinguish between interlocutory actions and those which can be brought only after the decision. In both cases, side by side with the formal and institutionalised procedures, every country has means of exerting pressure and bringing informal actions which can often be every bit as effective so far as the observance of environmental law is concerned. Among these informal actions we might include letters of protest or claim addressed to elected representatives and the Government, meetings with the competent authorities, press campaigns, televised broadcasts, petitions, public demonstrations, site occupations, etc.

A - Interlocutory and pre-decision appeals

The legal means by which the public may take action before a decision is given depend directly on the procedures for public information and participation in decision-making on environmental matters provided by Principle 10 of the Rio Declaration and the draft Convention of the United Nations Economic Committee for Europe.

We have to consider three types of proposal.

a) Drafts of general texts and draft regulations:

The right of citizens to obtain drafts of general texts and make critical observations, suggestions or comments varies according to national tradition. There are often informal means of disclosing these texts and official consultation procedures within consultative bodies. But EEC Directive 90/313 of 7 June 1990 on freedom of access to information on the environment does not make it compulsory for such drafts to be published and leaves it to States to decide whether or not to make such drafts disclosable, depending on whether art. 3.3 is used (non-disclosure of uncompleted documents). If draft objections are not disclosed, the public cannot officially discuss or contest them, and this necessarily makes a rule less socially acceptable where there has been no previous opportunity to debate it. Only 6 States provide for the possibility of objecting to or appealing against the draft wording of a regulation, by procedures some of which are more official than others (Denmark, Spain, Finland, Greece, Portugal, United Kingdom). This poor level of recognition of the right to participate in the decision-making process is all the more to be criticised inasmuch as the Community institutions publish their draft directives and regulations in the OJEC, thus making it possible for both private individuals and NGOs to submit criticisms or objections.

b) Draft plans and programmes:

Public access and the right to object or criticise are more generally open here. Draft programmes, depending on their degree of formality, will be the subject of genuine public consultation and debate before they are adopted.

It is mainly plans for the occupation and use of land, and by recent extension environmental plans (waste, water, air) which have seen the highest degree of public participation and debate and submission of objections in practically all countries. It is sometimes even because of the very extensive public right of access to these non-judicial procedures that the right of appeal to the courts is more limited (Finland, Denmark, Sweden).

c) Draft licences and individual permissions

These are sometimes the subject of public announcements (the display of applications for planning consents in the United Kingdom) and more often of a public enquiry associated with a public assessment of an impact study. Thus the public can submit criticisms or objections, sometimes subject to restrictions on public rights where it is not directly affected (Finland) or where it is represented by an NGO. All States except Greece provide for public enquiries relating to both public and private works. The procedure followed and the duration of these enquiries vary quite considerably from one State to another, and such enquiries are limited to impact studies in Austria and Portugal. In Germany, Finland and Italy such public enquiries are organised only in very special cases.

At this pre-decision stage, the existing procedures are rather in the category of claims or objections. Thus it is possible to call for additional information, or the disclosure of certain documents, or meetings of certain committees (for example, in France, a meeting of the Departmental Sites Committee if 4 of its members so request). There are few genuine opportunities for organised appeals available before the decision is taken. We may cite by way of example requests for preparatory administrative documents or, in France, the referral of the matter to the Minister for the Environment as opposed to an impact study before the final decision is taken.

B - Judicial and non-judicial appeals once the decision has been taken

There are three possible types of procedure here:

- appeals to an administrative authority
- judicial appeals or appeals to a tribunal
- claims and other forms of non-judicial appeal.

a) appeals to an administrative authority

Where an enforceable decision is to be challenged, appeals under administrative law are generally subject to administrative practices or a minimum of procedural rules determining which acts may be contested, the time-limits within which appeals may be brought, the admissibility of appeals and the question of costs.

It should first of all be noted that in no country (except, partially, in Austria) are there any appeal procedures specifically relating to the environment. The usual means of appeal to administrative authorities are therefore employed, subject to the comment that in some countries an appeal under administrative law is the normal and indeed the preferred method of contesting decisions by public authorities (Denmark, Ireland, Finland, Netherlands, Sweden). In certain areas of the environment (water, protection of

nature, planning) there are specific administrative appeal procedures, usually to ad hoc bodies (Germany, Belgium, Denmark, Finland, France, Ireland, United Kingdom).

There is an important difference between States as regards which acts may be subject to an appeal under administrative law. While individual planning consents are universally subject to appeal to an administrative authority or body, this does not apply to general plans or those laid down by regulation. Individual administrative acts are generally subject first of all to a non-contentious appeal to the authority which made the decision, and thereafter to a higher level of the same authority (or an administrative-law appeal) to the Minister or an ad hoc administrative body. For plans and programmes it is possible to appeal in only 10 States, but this often depends on the legislative content of the plan. So far as appeals against acts prescribed by regulation are concerned, these are impossible in 10 States. In Denmark, however, while there is no provision for an appeal under administrative law, it is still possible to appeal to a Judge as an exceptional measure. Time-limits are generally modelled on those provided for contentious appeals or shorter (Denmark and Austria). Persons directly concerned are, of course, entitled to appeal, with the notable exception of Denmark, where the right to contest a decision on the basis of the law on the protection of nature is available only to representatives of collective interests, but not to owners of adjoining or neighbouring land. In Great Britain appeals to the Minister against the grant of an individual planning consent may be made only by the applicant and not by a third party. Appeals by associations are always admissible in 9 States and only sometimes in Sweden and Finland. They remain inadmissible in Germany, Austria and the United Kingdom. An important issue, related to that of admissibility, is whether the applicant's appeal can be admitted only if he has participated in the consultation or claim procedures organised before the decision was taken. This applies to Austria, Italy, the Netherlands and sometimes in Sweden with regard to plans, Germany and Denmark. In 8 states, however, it is possible to contest a decision after it is taken even if the objector has not taken part in the consultation procedure. Where an administrative-law appeal is possible it is nevertheless limited to arguments already raised during the consultation procedure in Germany, Austria and the Netherlands. It will thus be seen that in these countries claims submitted before the decision is taken will have a decisive influence both on the legal issue (admissibility of grounds) and on the procedural aspects.

In compensation for the strictness of these rules of access to the right of appeal under administrative law in a minority of countries, this type of appeal then has the effect of suspending the proceedings (Germany, Austria, Finland, Ireland, Netherlands).

Finally, with regard to costs, payment for an appeal to an administrative authority is demanded only in Germany, Belgium, Ireland, Portugal and the United Kingdom. In Denmark the Minister for the Environment may decide that the costs of an appeal should be paid, if it relates to water, for example, but the appellant's costs are refunded if the appeal is successful.

b) Appeals to a court or tribunal

With regard to administrative acts

- acts against which appeals can be brought in the courts:

Whereas individual licences and planning permissions are everywhere subject to a right of contentious appeal (i.e. to a judge), the same does not apply to plans and programmes. In general there is no right of appeal against the latter unless they are equivalent to administrative acts or amount to decisions having the force of law or involving specific obligations. The strangest situation, however, is that of four States (Germany, Denmark, Finland, Netherlands) which recognise no right of direct appeal against regulations. In the Netherlands, however, it is expected that such a right of appeal will be created after 1 January 1999. An appeal against a regulation is often possible, however, by means of a complaint that the regulation in question is unlawful or unconstitutional (Germany, Denmark).

- admissibility

This question generally depends on the appellant's subjective interest. Such an interest may be interpreted by the national judge with varying degrees of liberality according to the geographical closeness of the appellant to the works objected to and also, in some countries, according to the scope of the access to justice provided by the relevant environmental law. In Ireland, Greece and Portugal locus standi is very broadly recognised. In Portugal, indeed, there is a genuinely popular right of action since the introduction of the Law of 31 August 1995. On the other hand, strict rules requiring the violation of a direct subjective interest continue to exist in Germany, Finland and the United Kingdom.

In Austria and Denmark there is no provision for local authorities to appeal against environmental decisions by the State. The right of local authorities to appeal is recognised in only 6 States: Belgium, Spain, France, Ireland, Netherlands and Sweden subject to certain reservations.

However, the aspect which has been changing with remarkable rapidity under the pressure of environmental law is the question of admissibility of appeals by associations against administrative decisions (works, planning permissions, licences). Only 4 States continue to make it impossible or quite exceptional for national or foreign associations to appeal: Germany, Austria, Denmark and Sweden. Actions by foreign associations alone are also inadmissible in Finland, Italy and Portugal. Very often the right of action granted to consumer associations is far more developed than that available to environmental associations. This is particularly true of France, Greece and Spain.

In States where environmental associations have a right of appeal - a majority of 11 out of 15 - there are still many differences between them. Thus the Luxembourg Law of 7 November 1996 admits appeals by approved associations only against regulations and not against individual decisions. The Spanish Supreme Court allows associations to represent "wider interests". Italy makes provision for actions by approved associations only as regards the environment in the strict sense, excluding protection for its historic and artistic heritage. United Kingdom jurisprudence on environmental law has come to admit appeals by associations only since 1994-1995, and then to a very limited extent, although there is a draft bill to acknowledge a right of action on the part of organisations defending a public interest.

Germany, however, does not refuse such a right absolutely, since 12 of the 16 Länder have already introduced to varying degrees a right of action by associations for the protection of nature, subject to the formal approval of the associations in question and provided they have participated in the preliminary administrative consultation procedures. In Denmark there is a single precedent in which an action by an association has been declared admissible (relating to an impact study on the Sweden-Denmark link).

- procedural rules

It is essential to enquire, when examining appeal procedures, whether or not there is a link between the administrative appeal and the legal appeal. Three systems are shared among the Member countries: 6 States where the right of appeal to the courts can always be exercised directly (Denmark, France, Greece, Italy, Luxembourg, Portugal (since 1997)), 6 States where the judge always requires evidence that all possible remedies under administrative law have been exhausted (Germany, Austria, Belgium, Spain, Ireland, Netherlands) and 3 States which sometimes require a preliminary administrative appeal (United Kingdom, Finland, Sweden).

In 10 countries legal representation is not compulsory, at least at first instance.

Time-limits for lodging an appeal are extremely variable. They range from one month (in Germany and Finland) to six months (in Denmark). The limit is two months in Belgium, Spain, France, Greece, Ireland, Italy and Portugal and six weeks in Austria.

In one or two cases only a contentious appeal automatically has the effect of suspending the proceedings (in Germany and Finland). In all the other States the judge hearing the case may order a stay of execution of the contested decision. Depending on the laws of the State in question, the judge's power to order a stay may be discretionary, or he may do so automatically (in France, in cases where an impact study is required by law and not produced).

The duration of appeals relating to administrative acts varies widely. It appears that the shortest time for such an appeal to be dealt with at first instance is 6 weeks (Netherlands) and the longest 2 to 3 years (Denmark, Italy and Portugal). The total duration, with appeal, can be as long as 5 years (Germany, France, Denmark) or as little as 4 or 5 months in the Netherlands.

With regard to the powers of judges and the nature of the control they exercise, no statistical comparisons can be made. A judge can always set aside the contested decision and, more rarely, substitute himself for the administrative authority and make a different decision, for example by requiring new technical regulations (as in the case of a French administrative-law judge dealing with classified installations in order to protect the environment). Most frequently he has power to grant an injunction against the administrative authority, except in France, Greece, Italy and Portugal.

In cases involving liability for damage to the environment

A number of specific differences between Member States may be noted here.

Special laws on liability for environmental damage exist in the majority of States (8). In 9 States, however, negligence remains the basis of liability. An objective or no-fault liability appeal is admissible in Spain, Finland, Greece, the Netherlands and Sweden and will soon be admissible in Portugal. Other States however have a mixed system which depends on the concept of disturbance of the surrounding area and the presumption of negligence (Germany, Denmark, France, United Kingdom). In 6 States a preliminary administrative-law appeal is compulsory for damage caused by a public corporation.

Legal representation is obligatory in 9 States when claiming damages. The time-limit for an appeal against an act by a private individual ranges from 4 weeks (Austria) to 30 years (France, Belgium).

Criminal proceedings

Whereas it is sometimes environmental laws which make provision for complaints relating to infringements (e.g. art. 18 (4) of Law 349/86 in Italy) and sometimes the penal code, it appears that there is fairly wide provision for associations to bring private prosecutions, although it is not certain that this will always result in effective action by the Public Prosecutor. In Greece, art. 28 (7) of Law 1650/86 on the protection of the environment allows local authorities and the Greek Technical Chamber to bring a civil action, even if they themselves have suffered no loss or damage.

It is interesting to note that in 7 States the offender is exonerated from criminal liability if he has complied with the terms of a licence or permission issued by the administrative authority.

Environmental offences appear to be punishable by actual prison sentences in 8 States.

The criminal liability of corporations remains limited but is tending to become more widely recognised, since it exists in 7 States.

With regard to access to justice by means of the various types of legal appeal examined above, the essential differences between the States are, as we have just observed:

- the nature of contestable acts (4 States prohibit direct appeals against regulations)
- the admissibility of actions by associations (4 States still refuse to acknowledge this, two of them being Germany and Denmark, the same as above)
- the obligation to exhaust all remedies available under administrative law before appealing to the courts (in 6 States)
- the duration of the process (from 5 months to 5 years).

It should be added that there can be a considerable financial difference. While the process necessarily has its cost in every State, even if legal representation can be dispensed with at first instance in 10 States, the cost can be a real obstacle to access to justice where the rules of contentious procedure allow the judge to order the losing party

to pay not only the costs of the case but also the successful party's legal fees. This rule, which can be a powerful disincentive to bringing a legal action, exists in 7 States.

C - Claims and other forms of non-judicial appeal

Claims and other forms of non-judicial appeal are notable for their wide variety and rare use in environmental cases. Legally speaking, such proceedings generally provide no opportunity to challenge the decision directly, because the authority approached rarely has any powers of restriction, annulment or amendment. The power of appeal, thus restricted in scope, merely has the effect of drawing attention or suggesting a political or administrative reaction. In certain cases it will nevertheless provide a genuine substitute for legal proceedings with the object of achieving a negotiated settlement of a dispute rather than an authoritarian settlement by the court.

We may distinguish the various types of claim from methods of reaching out-of-court settlements.

Various types of claim:

In every country there is a national right of petition, which appears to be enjoying something of a new lease of life in relation to environmental matters. Such petitions are addressed to Government authorities and Parliament (Germany, France, Spain, Belgium, Greece).

The mediator or ombudsman, an office which exists in most countries to suggest means of improving relations between Governments and citizens, deals with environmental matters where appropriate in 9 States. In some cases it is necessary to have exhausted all remedies under administrative law before recourse can be had to the ombudsman (Netherlands, Denmark). There are however no mediators specialising in environmental law except at local level (Portugal, Italy, Austria). There are plans to introduce an ombudsman for the environment in Italy.

Popular initiatives fall into a different category, since their purpose is to suggest reforms, but they often arise as a reaction to a disputed existing system (Austria, Spain, Italy). In 1997 such a popular initiative was launched against genetic engineering in Austria.

- methods of reaching out-of-court settlements

Conciliation, mediation, compromise settlements and arbitration are very rarely used in environmental cases, even though in certain countries the possibility is being more and more widely discussed (Netherlands, France). Even in the United Kingdom the Chief Planning Inspector mentioned the possibility of introducing mediation in 1996. Sometimes there is legal provision for procedures of this type, but they are not implemented (Spain).

It may generally be said that mediation and conciliation consist of conferring on a third party the responsibility for settling a difficulty or a dispute, more often than not informally, without any obligation on the parties to accept the proposed solution.

Arbitration, on the other hand, is an institutional means of settling disputes elsewhere than in the courts, by agreement between the parties, who are bound by the arbitrator's decision.

A compromise settlement is a direct agreement the object of which is to put an end to a dispute. Its effect in criminal proceedings is to extinguish a public prosecution for petty infringements.

With regard to arbitration, a major legal difficulty arises from the general rule that in most countries public-law corporations cannot resort to arbitration, the exceptions being Belgium, Denmark and Sweden.

Compromise settlements appear to be possible in 6 States, and occur particularly in the field of criminal proceedings relating to the environment (in Germany, Belgium, Denmark, France and the Netherlands).

II - CLASSIFICATION OF EXISTING PROCEDURES

The diversity of appeal procedures in environmental cases is not surprising, because the peculiar nature and complexity of the subject-matter result in frequent overlapping of procedures used in common law with those derived from numerous special statutes covering various aspects of the environment (as in Denmark, Finland and Sweden, among others).

It is true that some of these differences have previously been noted, and some of them are the natural consequences of others. Thus it is because it is difficult to exercise rights of appeal, and such exercise is therefore rare, that in some countries an appeal has suspensive effect, whereas this is not (or seldom) the case in countries where rights of appeal are more easily exercised.

It seemed to us, however, that the most significant difference is that concerning the links, whether existent or not, between judicial and non-judicial appeals (see European Court of Human Rights, n° 42.1990.233.299 of 27 November 1991, case of *Oerlemans v. the Netherlands*). By using this criterion, in fact, it is possible to gain a more consistent overall view of means of appeal and to respond more appropriately to the peculiar characteristics of certain Northern European States, which have very highly-developed administrative appeal procedures.

Our proposed classification is based both on national written reports and on successive discussions between experts within both AEDE and CEDE. It also reflects current tendencies in appeal theory and procedure.

On this basis, it is possible to identify four different appeal systems.

1) Systems where judicial appeals are predominant.

In this type of system only an appeal to a tribunal is considered to be a true appeal and, even where administrative appeals exist, they are not systematically used as

a compulsory preliminary to a contentious appeal and are relatively limited in scope. It is of course the case that an increasing number of related criminal procedures, particularly where planning law is concerned, does nevertheless result in an increased number of administrative appeals. In this system the judge holds a position of great prestige and has significant powers in relation to the administrative authority. Decisions, however, are taking longer and longer. Access to such a judge is generally open, but is still limited both by the costs of the case (with the risk for the loser of having to pay the other party's legal fees) and by the conditions of admissibility for representatives of collective interests, such as associations. The United Kingdom is a reasonably good example of this system.

2) Systems where non-judicial appeals are predominant

On the other hand, some countries (such as Sweden or Finland and to a lesser extent Denmark) give pride of place to non-judicial bodies. This is explained by the fact that such bodies are highly independent and often have significant powers to reinforce their initial decision. This applies to administrative appeals against decisions by local authorities in Finland, or the three Danish administrative appeal authorities (or environmental appeal boards) for the protection of nature, energy and the environment in general. Since the rules of judicial procedure are stricter (as regards evidence, for example), and the classic principles are strictly applied (respect for the rights of ownership), it often occurs that the protection of the environment is better secured by these appeal boards than it would be in a tribunal. Thus in Denmark administrative appeals to the ombudsman are more likely to identify a maximum of factual evidence which will subsequently be usable in contentious proceedings.

In such a system an administrative appeal is a compulsory preliminary to a contentious appeal only for certain types of decision, depending on their purpose (Sweden, Finland), but it is not a compulsory preliminary in Denmark.

It is interesting to note that, despite the efficiency of this highly organised system of administrative appeals, which seems real enough, the present tendency in Sweden and Finland is for non-judicial appeals to be replaced by appeals to the courts. This change is partly due to the influence of the jurisprudence of the European Court of Human Rights.

3) Balanced systems founded on widely accessible rights of appeal both judicial and non-judicial

In this case appellants have the widest freedom to choose a form of appeal. They can in fact opt for either a judicial or a non-judicial appeal, or one followed by the other. Legally speaking, judicial and non-judicial appeals are independent of each other, access to the courts not being conditional upon a preliminary administrative appeal. This balanced system is found in France, Greece, Italy, Luxembourg and Portugal. At the same time, the admissibility of both judicial and non-judicial appeals is interpreted on a wide basis, appeals by associations included.

Often in these countries, however, an administrative appeal offers little guarantee of independence owing to a shortage of specific appeal bodies, and the court, when called on to hear a matter, is relatively slow-moving. The complexity of the

problems brought before it on appeal, and a relative lack of confidence in judicial appeals, is tending to produce a movement towards new means of settling conflicts, arising from a desire to develop mediation and conciliation. This tendency, however, does not appear to have been particularly successful so far.

4) Mixed systems where appeals to the courts must be preceded by a non-judicial appeal.

In this type of system, there is an essential link between the two types of appeal. There is a certain logic in this interdependence: its purpose is to limit appeals to the courts, which hear the matter only after what may be analysed as a compulsory preliminary attempt at conciliation or a pre-contentious stage has failed.

This system, however, does not form a unit as regards its effective use. The order of appeals will of course depend on conditions of admissibility and the closeness of the links between the grounds of fact or law that can be used in the two series of appeals. Nor must we overlook the internal levels at which each appeal can be made: these may or may not be numerous, and may produce a spate of successive appeals in a single case. Going through all the successive stages of an appeal may become a positive marathon for the litigant.

It seems appropriate, without being able to include all the nuances and exceptions one would like to bring into a classification of this kind, to distinguish three types within this 4th system: those countries where admissibility is generally somewhat restrictive, especially for associations (Germany, Austria); those countries where, on the contrary, admissibility is liberally interpreted (Spain, Netherlands, Ireland, Belgium); and the countries in between (Sweden).

III - SOME ORIGINAL PROCEDURES

We thought it would be helpful to mention a few original or rare existing procedures. We shall do no more than mention them in passing here, although each of them deserves a more detailed legal definition and an evaluation of its effectiveness. A more detailed study of these procedures and their use should be made later on.

1 – Germany

The right of appeal by associations is developing at varying speeds in the Länder, but there is definite progress. It would be worth making a comparative study of the most liberal systems.

2 – Austria

One of the rare environmental mediators, the *Umweltanwalt*, has been established at Länder level (in 7 Länder out of 9). Usually appointed for 5 years by the provincial government after consultation with the provincial parliament, he is a kind of independent administrative authority. He has power to hear claims, make recommendations and give his opinion on draft laws. He can participate in his official capacity in certain administrative procedures relating to the environment and even bring

proceedings in the highest administrative-law court. He can also intervene in impact study proceedings.

Collective actions by citizens are also permitted as Bürgerinitiativen under impact study law. In fact a group of 200 citizens in the area affected by the project is sufficient to contest a decision in the Administrative Court or the Constitutional Court.

3 – Belgium

There are several original features worthy of note: the special committee that deals with appeals relating to waste water; the right in certain circumstances for 25 appellants to demand a meeting for dialogue on proposed works or structures; the fairly active role of the ombudsman in the Walloon provinces, who is empowered to deal with environmental matters (30 complaints in 1995); but the most particularly interesting and innovative aspect would seem to be the special procedure under a 1993 law which makes it possible to apply to a Judge for an immediate emergency injunction in case of damage or a threat to the environment. Such an application is accompanied by compulsory conciliation provisions.

4 – Denmark

There are three specialised administrative authorities to which administrative appeals are submitted. These are independent of the Minister and consist of a judge and professional members or sometimes an elected panel. They have a decisive role in the application of environmental law and simultaneously perform the functions of an arbitration tribunal and a quasi-court.

5 – Finland

The fact that there is a specific appeal procedure for matters relating to water, with a special Court composed of judges and experts, is a good example of a specialised environmental authority, and is expected to lead to the creation of a judge of environmental law, as is also proposed in Sweden.

6 – France

The device of the compromise settlement in criminal proceedings for certain pollution offences (water, fisheries, forests) is a rarely-used institution which leads to the "negotiation and reparation" procedure. This seems a more efficient means of providing effective protection for the environment than the traditional sentence under the penal code, which is often considered too lenient and too slow.

7 – Italy

A regional ombudsman with special competence in environmental matters has been set up in the Autonomous Province of Trento. It would be interesting to make a detailed comparison between his position and that of the Austrian regional ombudsman. With regard to appeals in case of damage to the environment, the 1986 law institutes a

unique procedure by giving the State the right to bring proceedings in liability for damages to unappropriated environmental property.

8 – Portugal

The famous 1987 law institutes a popular right of quasi-action concerning environmental matters, but its effectiveness really depends largely on other legal issues relating to the judge's powers, the legal procedures, the duration of the process and the cost of appeals to the courts.

CONCLUSION

This synthesis of 15 national reports will make it possible to formulate a number of proposals for guidelines which might serve as a basis for a minimum number of general requirements for appeals by private individuals and associations.

We should nevertheless first emphasise, using broad strokes, the salient differences between national procedures, the most frequent obstacles to a genuine right of appeal and the most notable current developments.

1 - The salient differences between national procedures.

Without wishing to rank these differences in order of importance, it is possible to identify the following contrasts which often divide Member States into 2 or 3 groups:

- countries where an administrative appeal is or is not a compulsory preliminary step before an appeal can be made to a judge
- countries where appeals are submitted to a body with specialist knowledge of the relevant environmental field, whether an administrative authority (Sweden, Denmark, Finland) or a judge (Chamber of the Greek Council of State)
- countries where no direct appeal against a general regulation relating to environmental matters can be submitted to an administrative authority or a judge
- countries where appeals do or do not have the effect of suspending the proceedings, either automatically or on the decision of the presiding authority, whether the appeal is administrative or contentious
- admissibility or otherwise of actions by associations before an administrative authority or a judge
- countries where appeals can be brought at one or two instances only, or four (Germany) or five (France)

2 - Obstacles to a true right of appeal

Five of these will be identified:

- conditions of admissibility:

The assessment of locus standi is often highly subtle and subject to variation according to different courts in the same State. Conditions of admissibility are therefore a permanent hazard, particularly for associations.

- the legal powers of the authority to which the appeal is submitted:

The effectiveness of an appeal must be capable of being assessed according to the legal power of the authority to which it is submitted, whether judicial or not. Does that authority have the power to set aside, amend or suspend the contested decision, and can it grant an injunction to prevent damage to the environment?

- the time required for a decision:

A right of appeal can be effective only if the authority to which it is submitted makes a ruling within a reasonable period of time. Since certain types of damage to the environment are irreversible, if the result of an appeal takes too long, especially where the appeal does not have suspensive effect, there is a risk that the appeal will be futile because the contested decision will already have been executed by the time the result is known

- the cost of appeals:

A complainant, whether a private individual or an association, will always think twice before submitting an appeal if the costs are too high. Such costs are sometimes inevitable (counsel's fees, court fees, expert evidence) but they should nevertheless be known in advance and should not cause excessive discrimination. There is usually an appropriate legal aid system.

It should, however, be possible for non-judicial appeals to be available at a lower cost.

- The power to demand a second opinion:

A question which is often overlooked is the possibility for an appellant to demand a second opinion when dealing with an administrative authority. In the courts the rules of expert evidence are so framed as to ensure its impartiality. This does not always apply in the case of appeals to administrative authorities regarding plans or the conditions under which an activity may be carried on. While the parties may a priori spontaneously produce the result of an independent survey at any time, at their own cost, it is rarer for procedural rules to allow such independent evidence to be demanded of a public authority. It appears that such a possibility might exist in respect of proposed structural works in 5 States and during the exercise of an activity or works in 3 States. It will be seen here that the right to demand independent expert evidence by no means always accompanies the right of appeal.

3 - Current developments

In 1996-1997, in order to implement Principle 10 of the 1992 Rio Declaration and render the 1995 Sofia guidelines compulsory, the States of the United Nations Economic Commission for Europe drew up a draft convention on access to information and public participation in the taking of decisions on environmental matters. This includes publicising draft environmental regulations and the right to comment on them directly or through representative consultative bodies, together with a right of access to the courts or an independent impartial body. It is clear that this draft international convention on such a subject can deal only with minimum requirements. The European Union should be able to draft its own common principles of access to means of appeal on environmental matters, which can be more fully integrated into national procedures.

To do so we can easily draw our inspiration from national and Community consumer law. The draft directive on actions for injunctions relating to the protection of consumers' interests is of such a nature that it could directly inspire a similar draft directive on the protection of the environment (see EC Common Position n° 48-97, drawn up by the Council on 30 October 1997, OJEC, C 389-51 of 22/12/1997). So far as means of appeal are concerned, this draft provides States with options enabling "qualified" public or private organisations to bring an action in the courts or before the competent administrative authorities for an injunction or a permanent order prohibiting any breach of the directives listed in the annex thereto.

The same idea, where environmental matters are concerned, appears in art. 20 of the Lugano Convention of 23 June 1993 on civil liability for damage resulting from the exercise of activities endangering the environment. That article provides that environmental associations may, on certain conditions, bring actions in a court or before a competent administrative authority for a prohibition order against dangerous activities or for the grant of an injunction.

II

PROPOSED GUIDELINES

INTRODUCTION

General developments in relations between Governments and citizens, growing democratisation and increased social demand for more information and participation concerning environmental matters are common to all Member States. These developments are enshrined in Principle 10 of the 1992 Rio Declaration, the draft Convention of the United Nations Economic Commission for Europe on access to information on the environment and public participation in the taking of decisions on environmental matters, which should be adopted in 1998, and the draft recommendation on environmental information which was submitted at the meeting of the OECD Environment Ministers in April 1998. Better access to means of appeal and to justice form part of these developments.

If Community environmental law is to be applied effectively, the complaint or appeal procedures and rights to access in justice of Member States must not be too disparate, so that Community law will be implemented equally in all States and will not indirectly cause distortion of competition, which would be all the more real inasmuch as the number of complaints and appeals on environmental matters is particularly high at both national and Community level. Even if the number of complaints to the Commission in 1996 is down by nearly 15%, notices of breach and formal warnings are increasing sharply and there are 85 cases pending in the Court of Justice.

The harmonisation of substantive environmental laws cannot by itself secure better protection for the environment. A certain harmonisation of procedures is a *sine qua non* for the observance of Community law. National legal traditions, however, are firmly rooted in the law of judicial and non-judicial procedures. While some procedures are appropriate enough, and there are sometimes specific procedures for environmental matters, the means of appeal are most often those provided by common law. Thus the harmonisation of procedural law can be achieved only gradually.

Environmental law is a complex law, the breach of which can have irreversible effects on the environment. Its effectiveness inevitably depends on the existence of easily accessible means of complaint and appeal, which may need procedures of their own.

The variety of existing procedures under the various national legal systems can be discerned from reading the foregoing study. The brief summary set out in table form below underlines the points on which there are significant differences.

In accordance with the wishes expressed in the communication sent to the Council by the Commission on 23 October 1996, relating to the implementation of Community environmental law, there is a legitimate and urgent need to draw up guidelines on national complaint procedures and access to justice regarding environmental matters.

These guidelines should form a minimum common basis for procedural rules and administrative practices for all Member States of the EU and thus contribute to the strengthening of a citizens' Europe.

GENERAL CONSIDERATIONS

1 - Although the Commission is undoubtedly the guardian of the Treaty and the guarantor of the observance of Community law under art. 155 of the Treaty, it should not be required to deal with complaints which should normally have been dealt with at national level, using national claim and appeal procedures.

The principle of subsidiarity, furthermore, justifies giving priority to the hearing of complaints at national level and to the settlement of disputes relating to the observance of Community environmental law by national courts, provided nevertheless that the national means of appeal are genuinely effective.

For this reason there appears to be an urgent need to formulate common guidelines for Member States, to prevent the already excessive disparities between national claim procedures and means of access to justice from widening still further.

2 - It seems inappropriate to compare and rank judicial and non-judicial appeal systems, in view of certain national traditions which sometimes attribute greater importance and efficacy to one system and sometimes to the other. Thus we cannot a priori consider that Court actions have more advantages or disadvantages for complainants than non-judicial appeals. For that reason we think it preferable to suggest some general recommendations that can be applied to both forms of procedure before making specific recommendations for each of them.

3 - There should be certain minimum principles, common to all Member States of the EU, governing access to claim and appeal procedures and the various means of appeal, in the interests of efficient administration and effective justice. These principles should relate to:

a) flexibility

. conditions and procedures for the admissibility of the claim or appeal should be as simple as possible, irrespective of nationality, for both private individuals and corporations, particularly NGOs.

b) duration

. in view of the irreversible nature of certain kinds of environmental damage and the economic interests involved, the duration of procedures should be kept to a minimum.

. it should be possible to take emergency measures, such as a stay of execution or the grant of an injunction, while the claim or appeal is being examined.

c) impartiality

. a special body or department, separate from the authority or department normally responsible for issuing licences and permissions for pollutant activities and monitoring them, should be appointed to examine the claim or appeal.

. claimants or appellants should be able to call independent experts to give evidence

d) costs

. procedural costs should be kept to a minimum where the purpose of the action is to protect the public interest and safeguard the environment, rather than to protect a private interest. Legal aid should also be available to associations submitting appeals. Where the matter involves the protection of the public

interest (in relation to the environment), appellants should be exempted from payment of court fees.

Guidelines designed to render Community environmental law more accessible and comprehensible in order to make access to means of appeals and claims available to those who need them.

4 - Community environmental law should be codified at Community level. Where a national code of environmental law already exists or is proposed, both national and Community rules should be incorporated into it. Forms and procedures should be left to the discretion of each Member State.

5 - There should be specific national procedures to implement directives that have already been adopted into legislation in principle but not sufficiently implemented by specific bye-laws, in order to oblige Member States to comply in full with their obligation to adopt and implement the said directives. It should be possible for these procedures to be set in motion at the petition of any person or group with an interest in protecting the environment.

6 - When notifying the Commission of national laws adopting Community directives, a specific table should be supplied indicating how the provisions of the directive are translated into the national transposition measures.

7 - In application of the principle of free access to information, the public should be able to inspect the tables in question at the appropriate offices either of the Commission or in the Member States. The contents of national instruments adopting Community directives should also be systematically publicised within the competent authorities and departments at national, regional and local level.

8 - Whenever periodic reports on the enforcement of obligations arising from directives and regulations are sent to the Commission by Member States, there should be an official announcement which would enable everyone to inspect the reports at the appropriate offices, either of the Commission or in the Member States, so as to provide more effective free access to environmental information.

9 - As guardian of the Treaty constituting the EC (art. 169), the Commission should as far as possible publicise information or communications concerning its own interpretation of its current laws and the general principles laid down by the various constituent Treaties of the EU. Such interpretations, which would be for information only and not legally binding, should be sent to national administrative authorities and courts of law to assist them in the application of Community environmental law.

10 - For its better application, Community environmental law should be made the subject of specialised seminars for MPs, government officials, judges, solicitors and barristers, associations and legal experts with private companies in each Member State.

11 - Specialist courses in Community environmental law should be created and included in the teaching of Community law at universities. There should be intensive courses in comparative law for environmental law students from the various Member States.

12 - Legal departments of national and local government authorities and private companies should so far as possible be strengthened by the appointment of a specialist environmental lawyer with training in Community law.

13 - The general principles of environmental law, as laid down in the decisions of national Courts and derived from the jurisprudence of the Court of Justice of the European Communities (ECJ), should be subject to continuous appraisal. They should therefore be studied in seminars and published, with dissemination of summaries via the Internet at regular intervals.

Common guidelines for claims and judicial and non-judicial appeals

14 - Any decision affecting the environment should be potentially subject to an appeal or claim procedure available to any interested individual or corporation. The claimant or appellant should be allowed to choose between judicial and non-judicial procedures. The appeal should make provision for the submission of scientific and technical arguments as well as grounds of law. Where the appellant has a choice of more than one means of appeal, there should be provision for the time-limit for entering one appeal to be extended until after the result of another appeal, already submitted, is known.

15 - Means of claim and appeal should be accessible in respect of both individual decisions and general regulations. Plans, programmes, technical regulations and also public or private works and construction should be subject to appropriate claim or appeal procedures where they do not come within the foregoing categories.

16 - In view of the technical nature and the complexity of environmental issues, authorities with power to hear claims or appeals on environmental matters should be constituted on an ad hoc basis from environmental lawyers and experts. Where appropriate, a specialist judge or court might be provided for certain judicial appeals.

17 - The effectiveness of appeals, whether judicial or non-judicial, should be measurable according to four essential criteria:

- . conditions of admissibility
- . actual duration of the claim or appeal, including that of judicial appeal procedures
- . specific powers of the authority hearing the matter to amend decisions, to substitute itself for the authority making the contested decision, to set aside decisions, to grant injunctions and to make discretionary or legal rulings.
- . the cost of the appeal.

18 - In environmental matters a claim or appeal by a private individual should always be admissible where it is submitted in defence of a legally protected personal interest. Provision should be made for claims or appeals by corporate entities with a responsibility to protect the environment. The question of admissibility should be examined without regard for the nationality of the claimant or appellant within the EU.

19 - In order to assess locus standi in environmental matters, it should not be necessary in every case to show that there has been an infringement of an individual right. States

should decide conditions of access to appeals and claims on a liberal basis with flexibility, taking into consideration the fact that environmental protection is in the general public interest.

20 - Access to means of claim or appeal should be provided and made easy for associations formed to protect the environment and therefore acting in the public interest. Special provisions might be laid down by States provided these are reasonable.

21 - Since costs can be a real obstacle to the use of a number of means of claim or appeal, actions to protect the environment by NGOs acting in the public interest should be eligible for special financial assistance to cover the fees of lawyers, expert witnesses or independent experts in particular.

22 - The State should arrange for informative notices to be displayed explaining to the public the various types of claim and means of appeal at both national and Community level, and stating inter alia the average time required for the process to be completed and the costs of the claim or appeal, and also the addresses of the relevant authorities.

Access to national means of judicial appeal

23 - Appellants should be able to obtain access to the Courts freely without first having to exhaust all non-judicial means of appeal, and without necessarily having participated in the various administrative enquiry or consultation procedures.

24 - Nevertheless, where, in certain cases, an administrative appeal is required to precede a contentious appeal, compulsory time-limits must be imposed within which a decision must be given not only in the administrative appeal but also in the contentious appeal, so that the whole appeal process does not take an excessively long time to complete.

25 - The courts should be able to order a stay of execution of the contested decision where there are risks to the environment. A stay of execution could be made automatic in certain cases.

26 - Courts should have power to order temporary measures under an emergency or interim interlocutory procedure designed to grant injunctions or orders against both private individuals and corporate entities.

27 - Costs relating to the suspension of a decision or the grant of an injunction should be borne by the party alleged to be causing damage to the environment. The party in question could have its costs refunded out of a special public fund if it finally won its case.

28 - The Judge should not be limited (or limit himself) to investigating whether there has been a breach of the rules of administrative procedure, but also whether there has been a breach of the substantive rules and general principles of international and Community environmental law.

29 - On an application by an appellant, the judge should be able to hold the State and its agents liable for breach of Community environmental law. The same should apply in cases of dereliction of duty and failure to comply with the obligation to enforce the observance of Community environmental law.

There should also be provision for agents of public authorities to be held criminally liable for breach of Community environmental law.

30 - Where a judge has found that there has been a breach of Community environmental law, he should be empowered to enforce his decision by ordering the losing party (whether a Government authority or a private individual) to pay a daily fine for each day's delay in complying with his decision.

Community Courts and national courts

31 - In view of the specific nature and the complexity of environmental issues, national courts should be encouraged to use art. 177 of the Treaty establishing the EC more frequently.

An application to the ECJ for a preliminary ruling on a point of law should be dispensed with only where its interpretation can already be found in the jurisprudence of the ECJ.

32 - Where an individual decision of the Commission is likely to have the effect of damaging the environment in a Member State, it should be possible for appellants, whether private individuals or NGOs, to appeal direct to the ECJ.

33 - The admissibility of appeals by private individuals or NGOs should be assessed by the ECJ by reference to conditions as wide as those provided for national courts in paragraphs 19 and 20 above.

34 - Where a defendant State so requests, and with the consent of the Commission, the commencement of the judicial proceedings defined in art. 169 might possibly be preceded by non-judicial mediation by an expert or group of experts who would announce their decision as quickly as possible. The parties would be free to accept or reject the solution proposed on completion of the mediation process. If the Commission agreed to mediation it could decide not to take the matter to the Court.

Provision for such preliminary mediation might particularly be made where a breach of Community environmental law extends to both sides of a national boundary.

Claims and non-judicial means of appeal within States

35 - Claims and appeals to administrative authorities concerning environmental matters should be governed by a minimum of rules and should be dealt with by special bodies set up for that purpose.

36 - Failure to respond or give a decision on the part of the administrative authority within a specified time should be subject to non-judicial and/or judicial appeal.

37 - The settlement of certain conflicts by mediation should be encouraged, owing to the flexibility of such a process.

38 - Intervention by an ombudsman with general competence or specialised environmental knowledge in the early stages of a dispute could reduce the number of claims and appeals, provided that his intervention had the effect of suspending the running of time in non-judicial and judicial appeal procedures.

39 - The ombudsman should be empowered to take all grounds of fact and law, and particularly Community environmental law, into consideration.

40 - By making consultation and participation a general principle when preparing general administrative regulations on the environment, it should be possible to make the public aware of proposed regulations and give them the opportunity to comment on them at any public enquiries or hearings, if appropriate. This could be a way of reducing the number of claims and appeals.

41 - In environmental cases, proceedings aimed at achieving out-of-court settlements, conciliation and mediation should always be publicised, giving sufficient information, where possible, to enable third parties, whether individuals or NGOs, to intervene.

42 - Compromise settlements in criminal proceedings relating to environmental matters should be permitted only where the restoration of the environment is demanded in return. This should be enforceable, subject to a daily penalty for failure, imposed by the Government authority. In addition, the decision to allow a compromise settlement should be sufficiently publicised.

III

SUMMARY OF NATIONAL REPORTS

GERMANY

I - JUDICIAL PROCEDURES

Standing before administrative courts requires that the plaintiff asserts that his legally protected interests have been infringed upon. Apart from actions instituted by the addressee of an administrative act, the violation of environmental law is subject to judicial review only if the legal provision in question is designed to protect individual interests, which is recognised regarding protection of human health against unacceptable risk. Subject to some exceptions in protection of nature law, associations do not have standing. Judicial review is limited to administrative acts (including their refusal or omission) and local plans; other generic decisions such as environmental standards, are not reviewable. An action normally has an automatic suspensive effect. However, there is a more recent statutory tendency (regarding infrastructure projects and construction permits) to limit the suspensive effect and require the plaintiff to apply to the administrative court for an interim injunction. The losing party has to bear all the costs of the litigation, including the court fees, the fees of both parties' lawyers and the fees for witnesses and experts; expert fees may be quite onerous. Administrative court proceedings are rather lengthy; there is a high degree of court congestion.

In civil and criminal proceedings, only persons directly affected in their rights have rights of action or remedies. The system of judicial review is relatively static, although the interpretation of what constitutes a protective norm has undergone some liberalisation and may further develop under the influence of broader protection concepts of EU law and in the ongoing process of codifying German environmental law. However, a full-fledged association suit covering the whole body of environmental law is not in sight. The narrow standing criteria as well as the limitation of judicial review to individual decisions and local plans are the most important insufficiencies of German law.

II - NON-JUDICIAL PROCEDURES

The right to raise objections is regulated in different ways for different types of administrative decisions, and even for the same type of decision under different statutes. Another relevant distinction is that between objections raised before and those raised after a decision is taken. In the case of regulations, i.e. administrative decisions having a general or normative character, certain statutes provide for a participation of "interested circles", which includes certain environmental associations. Under the Federal Nature Protection Act, participation by "registered" associations is mandatory for certain regulations concerning protected species. On the other hand, there is no administrative appeal or objection procedure after the regulation is adopted. Planning decisions are subject to various specific legal regimes. In the case of general land use planning, the decision which directly affects the use of a particular piece of land is the zoning plan (Bebauungsplan). This requires a public participation process where associations of any type may participate including local citizens' groups. There is no formal administrative appeal after the decision is taken. In the case of individual administrative decisions, the possibility to raise objections before a decision is taken depends on the statutory regimes of the respective procedure. There are procedures open to anybody (Federal Anti-pollution Act, Atomic Energy Act), and those where participation must be legitimised by some kind of interest, and finally those where a close legal link to the subject-matter

of the decision must exist. Participation by recognised nature protection associations is mandatory for certain decisions taken under the Federal Nature Protection Act. After a decision is taken, an administrative appeal can be made, in general, by a person claiming to be violated in his or her rights. This administrative appeal is a prerequisite for an action before the administrative court. This possibility/requirement, however, does not exist in a number of cases provided by law. The procedures mentioned are, as a rule, conducted by the general administrative authorities. The length of those procedures has been criticised as being an obstacle to investments, but steps have been taken at various levels to streamline them. The administrative appeal against an individual administrative decision, as a general rule, has a suspensive effect, which can be set aside both by the public authority and, at the request of an aggrieved party, by the court. From the point of view of environmental protection the major deficiency of the system consists in the fact that, except for decisions under the Nature Protection Act, no specific provision is made for participation and/or objection by associations. In addition, the formal administrative appeal is subject to the same restrictive standing requirements as is the judicial remedy. Recent trends go towards a streamlining of the administrative decision-making process. This includes some cuts in participation rights.

AUSTRIA

I - JUDICIAL PROCEDURES

1. Right to object

The Austrian legal system comprises the typical range of legal remedies against decisions in a concrete case such as appeal and recourse to the court of next instance. The right to remedy depends on the party capacity of the respective person in the procedure of lower instance; as a rule only parties to the respective procedure may file remedies

Parties to an administrative procedure may bring an administrative decision of last instance before the Administrative or Constitutional Court.

In general a right for NGOs to object does not exist under Austrian law. There are, however, exceptions: first, in case a NGO has legal personality and its rights are affected it will generally have party capacity and will hence have the right to object; second, according to § 19 of the Austrian Environmental Impact Assessment Act (UVP-G), citizen's initiatives, i.e. groups of at least 200 persons eligible to vote in municipal elections in the municipality of the project site or in municipalities in the vicinity of the project site, do have party capacity in the EIA-procedure and may file complaint to either the Administrative or the Constitutional Court.

2. Objection to plans, rules/laws

In general no right of objection against draft laws exists under the Austrian legal system. More often than not affected municipalities, certain bodies or - sometimes - affected persons may express their views as regards certain draft laws, draft ordinances, plans, etc.

Upon application of a court of law, an Independent Administrative Tribunal, the federal government, a government of a Land, or directly affected individuals, the Constitutional Court is competent to determine whether a certain ordinance is against a law or has no basis in the law (Art. 139 of the Austrian Federal Constitution) or whether a certain law infringes the constitution (An. 140 of the Austrian Federal Constitution). In this regard the Constitutional Court has the capacity to nullify the respective norm (or parts thereof).

3. Suspensive effect of objections

As the case may be objections may have suspensive effect only upon application of one of the parties and subsequent decision, automatic suspensive effect, or no suspensive effect.

4. Costs and delays

The costs and delays of the respective proceedings vary according to their complexity, the expert opinions necessary, etc. The delays may range from some months up to 2 years and sometimes more.

5. Gaps or Insufficiencies

The Austrian legal system does not provide for proper internal remedies in case of missing, incorrect or untimely transposition of community directives.

II - NON JUDICIAL PROCEDURES

1. Right to object

Only parties to an administrative procedure have the right to object. In this regard § 8 of the Administrative Procedure Code distinguishes between persons merely affected by a procedure and such affected persons which are parties to the proceedings since they have a legal interest or a subjective right which is dealt with by the procedure. The Austrian legal system does not provide for a specific right for NGOs to object. Nonetheless it is possible that such organisations have a right to object if they have legal personality and fulfil the conditions for party capacity. Moreover, § 19 of the EIA-Act provides for party capacity for citizens' initiatives (cf supra).

2 - Who presides over these procedures

The answer to this question largely depends on the subject matter to be dealt with

3 - Suspensive effect of objection

According to § 64 of the Administrative Procedure Code appeals do have suspensive effects. Under specified conditions the administrative authority can, however, decide otherwise (e.g. in cases the execution of the administrative decision lies in the *bonum commune*).

4 - Costs and delays

According to Art. 73 of the Administrative Procedure Code administrative authorities are obliged to render their decisions without undue delay, at the latest within 6 months. If the authority does not comply with this obligation the competence to decide the issue upon application of one of the parties devolves to the superior authority. Moreover, according to Art. 132 of the Austrian Federal Constitution the matter may finally be brought to the Administrative Court.

In administrative procedures as a general rule each party has to pay its own costs; the costs of the authority are borne by the State. Certain exceptions to this rule may apply to costs for e.g. expert opinions or on-sight inspections.

BELGIUM

I - Judicial Appeals

These appeals include actions in the Administrative Courts of Law, that is to say the Council of State, and the civil courts.

Locus standi is acknowledged provided that the applicant's legitimate personal interests are directly affected and he can show that the contested decision will result or has resulted in material or non-material damage. Within these limits, environmental defence associations have a right to act provided that they have legal personality and a specific collective interest (territorial and material) as distinct from that of their members. For the first time, a specific law on the right of action to protect the environment (Law of 12 January 1993, Moniteur Belge of 19.01.93) includes in a statute the criteria of admissibility for associations for the protection of nature, which jurisprudence has patiently elaborated over many years.

Appeals against regulations may be brought in the Administrative Court of Law (the Council of State). General legislative acts (laws and decrees) can be contested only as to their legality, and only in the Jurisdiction and Procedure Court. Plans, which do not have the force of regulations, cannot be submitted to judicial censure.

An appeal to have an individual administrative decision or a regulation set aside does not in principle have suspensive effect. Provision is nevertheless made whereby an appellant who brings an appeal for annulment before the Council of State can simultaneously bring an appeal for the suspension of the act in question, in case of real emergency, in order to "freeze" a situation which might otherwise cause serious damage that could not be easily rectified.

In the civil courts, an application for suspension can be brought only by way of emergency interim proceedings, in which the Judge makes an interlocutory order to suspend the execution of the decision without looking into the legal aspects of the dispute. Nevertheless, the aforementioned law of 12 January 1993 makes available to associations for the defence of the environment the possibility of appealing to the President of the Court of first instance *"to make an order for the cessation of acts representing the commencement of the execution of a decision or to impose measures to prevent the execution of decisions or the occurrence of damage to the environment"*. It has to be stated that these provisions make it possible to place the execution of the decision in abeyance, to order a preliminary expert assessment in order to examine the legal aspects of the dispute, or to take safety measures.

Judicial procedures are generally not unduly expensive apart from lawyers' fees. The latter may, however, be paid by the State where the appellant is without means.

The disadvantages of the judicial procedures are essentially their slowness and, so far as the civil courts are concerned, their lack of scientific knowledge.

There are three clear tendencies suggesting major developments in the future: the attribution of greater liability to corporate entities, an increase in the number of

contentious cases and a more detailed examination of all the interests involved in a dispute, beginning with the environmental aspect, on which legal rules are indeed proposed, but almost on a par with natural justice. This will make it necessary to analyse the reasons for the decision in detail and balance the respective interests involved.

II - Non-judicial appeals

These administrative appeals fall into two distinct categories: organised appeals and non-organised appeals.

In environmental matters appeals must be organised. They are normally open to anyone in order to enable a citizen or an applicant for a planning consent or licence to operate a classified installation to contest a decision by the competent authority.

Conditions of admissibility of appeals against such decisions are extremely ill-defined and, in summary, interpreted in a wide sense, so that in practice no restrictions are placed on admissibility.

Thus administrative appeals by associations for the protection of the environment are always admitted where there are clear grounds for them.

The bodies empowered to rule on appeals are the administrative authorities ranking above those which have issued the planning consent or licence (the Permanent Deputation, the Minister, etc.), whereas it is the environmental authority which is responsible for examining them.

In certain specific areas, e.g. water, appeals are simply mechanisms for the review of the decision by the same authority.

Appeals never have suspensive effect, and only a court action can suspend the execution of a decision before an administrative decision on an appeal is announced.

Costs of appeals vary, but are generally low (100 to 200 euro). Such appeals can be lengthy unless the applicant pushes them: seven months to two years.

The most obvious disadvantages in this respect are associated with the lack of harmonisation at procedural level, time-limits, their legal effects, and the lack of guarantee of a right of defence for appellants.

The most noticeable development is the tendency for regional legislators to standardise appeals on environmental matters. A draft decree under examination in the Walloon Region is designed to create a single appeal authority, a single time-limit and a single method of calculating the running of time. Conditions of admissibility will be clearly defined (the form and content of the appeal will be specifically defined) and appellants will be formally heard. Rules of procedure will also be specifically defined.

DENMARK

I - Judicial procedures

1. The Danish Constitution authorises the courts to examine administration activities. It is a general rule that administrative appeal possibilities and other objection procedures do not have to be exhausted before bringing a case to the courts. Neither does administrative appeal exclude examination by courts. In principle, all actions can be challenged before the courts, including concrete actions, general rules, plans, administrative agreements and concrete administrative decisions. While the courts are competent to review the legality of an act or a statutory order such review can take place *only* as part of a case regarding a concrete decision made under the statutory rules. Laid down in the acts there is a time limit of six months for bringing an administrative decision before the courts.

The question of the circle of persons or organisations with a right of action in the court system is *not* included in the acts. The right of action has traditionally been confined to the basic locus standi requirements. This means that the person in question must be protected by the rules according to which the matter has been settled, and that he must have been affected by the decision in a significant manner compared to other citizens. Only in one case has the right of action of an environmental organisation been accepted before the Danish courts. This right of action, however, was confined to very specific questions and not to general questions of interpretation and implementation.

As a rule, the presentation of a case to the courts does not imply that the duty to comply with a decision is suspended. A suspensive effect may, however, have been determined by law or by the courts in the case concerned.

Legal aid may be obtained only on non-business matters. It is possible to get a "free process". It is, however, a requirement that the applicant be of modest means and that the chances of winning the case in court must seem reasonably good.

2. Only very few environmental cases are brought before the courts - and such cases are mostly presented as criminal cases or as civil liability suits. In criminal cases it is not the environmental authorities but the prosecutor that has the duty to ensure a correct presentation and disclosure of the case. In cases concerning environmental liability the culpa doctrine is still very strong. In practice, the overall considerations of environmental law as holistic are especially limited by the public law principles. The courts are also very hesitant in their review - only when incorrect use of procedural or substantive rules are found the courts are more thorough in their review. Moreover, the courts do not expect that the administration is more active in disclosing the facts and the legal basis in the concrete case than the private opposing party. It should briefly be mentioned that there is no legal basis for using administrative fines as a means for enforcement of environmental legislation. This is possibly one of the most important weaknesses of administrative enforcement.

3. The introduction of the environmental principles has been expected to imply a reversal of the burden of proof in some court cases. This has, however, not yet been shown in court cases. The only trend seems to be a tendency for the courts to require

some caution in matters relating to the pollution from dangerous activities causing damage to the environment. The reasons why the environmental qualities are so high is first and foremost the tradition for regulation based on compromises, several people employed by the supervision authorities and the resources used to inform about rules and their background.

II- Non Judicial procedures

1. The administrative appeal system in Denmark constitutes a central means of appeal for citizens and organisations. The establishment of independent administrative appeal boards - the Environmental Appeal Board and the Nature Protection Board of Appeal - with a quasi judicial element is very important in this respect. Another important non judicial remedy is the Ombudsman institution, while arbitration procedures, etc. play a very limited role. Not only the appeal boards but also the national agencies may function as appeal authorities. This is particularly the case in relation to the Environmental Protection Agency, which is the most important appeal body in relation to environmental protection, while the role of the National Forest and Nature Agency as appeal authority in relation to nature protection has been reduced recently.

The rules of administrative appeal are laid down in the different pieces of legislation. Generally, the administrative appeal system provides a fairly broad right of appeal to citizens, including environmental organisations listed in the acts and in some cases local associations. But, there is - contrary to the Ombudsman system - no general right of appeal within the administrative appeal system. Normally, a certain *legal or significant interest* in the case is required. In some respects this requirement is subject to a narrow interpretation.

Suspensive effect of appeal is in several cases prescribed in the different pieces of legislation. Otherwise, the general rule is that appeal does not have suspensive effect.

There are generally no charges for bringing a case before the administrative appeal authorities or the Ombudsman. Only within one act the possibility of laying down a fee has been used. Time limits for administrative appeal is normally four weeks as laid down in most environmental acts. As regards the Ombudsman there is a time limit of one year.

2. As a main advantage the administrative appeal system usually implies a full review of administrative decisions. In relation to physical planning administrative review is, however, restricted to legal issues. The appeal authorities have the duty to procure the necessary information for reaching a correct decision. A certain reluctance in relation to questions of EU environmental law has, however, been experienced. Furthermore, the relatively strict sectoral separation of powers may restrict the possibilities of applying a holistic approach.

3. The administrative appeal systems may, compared to the possibility to bring the cases to the courts, be considered a cheap, relatively quick and fairly easily accessible appeal possibility, and these strengths are likely to remain. In recent years, however, there has been a tendency of reducing the role of the Environmental Board of Appeal, while the role of the Nature Protection Board of Appeal has increased. At the same time, the

political element of the Nature Protection Board of Appeal has received more attention and criticism has been put forward. Different trends, thus, appear to characterise the administrative appeal system within environmental protection and within the area of nature protection, planning and land use.

SPAIN

I - Judicial appeals

1. There is no special form of judicial appeal in Spanish law relating to the protection of the environment.

2. "Contentious-administrative" jurisdiction consists of three courts: the Contentious-Administrative Divisions of the High Courts of Justice, the Contentious-Administrative Division of the Audiencia Nacional and the Contentious-Administrative Division of the Supreme Court.

There is a High Court of Justice in each of the Autonomous Communities (Regions). This is the ordinary or general law court and sits at sole instance. It is competent to hear matters relating to decisions and provisions made by National Government bodies, legislative assemblies and local government authorities.

The Contentious-Administrative Division of the Audiencia Nacional "shall be competent to hear at sole instance appeals against decisions by Ministers, except those confirming administrative decisions which have already been the subject of ordinary appeals". The Contentious-Administrative Division of the Supreme Court is competent to hear, at sole instance, appeals against decisions of the Council of Ministers. As a Court of Cassation it can also hear appeals for the annulment of judgments of the High Courts of Justice and the Audiencia Nacional.

3. Both private individuals and corporate entities, national or foreign, have a right of appeal. They must, however, prove that they have a "legitimate interest". Jurisprudence on this concept has changed considerably and now gives it an open and generous interpretation.

4. The submission of an appeal prevents the contested decision from becoming absolute, but a separate writ is required to apply for suspension of execution.

5. The overall duration of the appeal process can be as much as five years or more, but the average can be said to be three years.

6. Finally, it is true to say that both the learned authorities and practitioners take a positive view of the Spanish contentious-administrative system. There is, however, one very serious problem: the sluggishness of the general system for the dispensation of justice.

II - Non-judicial appeals

1. With certain exceptions, there are no special procedures relating to the protection of the environment.

2. Spanish law provides for a number of non-judicial appeal procedures:

- The general right of petition provided in art. 29 of the Constitution. Every Spanish citizen is entitled to bring an individual or collective petition.
- The right of petition to the legislative authority, provided in art. 77 of the Constitution.

The appeal to the "Defensor del Pueblo" (ombudsman). This institution is governed by the Official Law of 6 April 1981. Any private individual or corporate entity may appeal to the Defensor del Pueblo. The appeal may be dismissed, although the ombudsman is required to give a written reply. The decision is final.

- The popular initiative for the introduction of a bill in Parliament (art. 87.3 of the Constitution, as enlarged by the Official Law of 26 March 1984). Such an initiative requires 500,000 signatures and is subject to too many restrictions. So far only one petition has been successful.

- Public participation, where provision is made for it in administrative procedures (town planning, Land Registry plans, dangerous industries, public water licences, etc.), is available to any private individual or corporate entity for a period of not less than 20 days. The Government must reply, stating the reasons for its decision. A judicial appeal may be lodged against a decision which puts an end to the administrative procedure. Participation in an enquiry does not confer the status of an "interested party".

- The ordinary administrative appeal. This is a general guarantee which makes it possible to appeal against any Government decision which does not exhaust the administrative-law procedure. It is a compulsory pre-requisite for any judicial appeal. The submission of an appeal has the effect of suspending the administrative process. Any person with locus standi may appeal. There is no longer any distinction between private individuals and corporate entities, national or foreign, since art. 24 of the Constitution says that "any person has the right to defend his interests". The problem is proving locus standi. Jurisprudence on this point has, however, developed considerably and is fairly generous. The decision on an appeal will be taken by the immediately superior authority or, in some cases, by a body specially created for that purpose. This is a simple, efficient and inexpensive means of appeal, which can be submitted in the form of a written application to the competent authority, giving the name and address of the appellant, the decision appealed and the relevant arguments. Defects of form can always be remedied. Legal representation is not necessary. Average duration: between six months and a year.

FINLAND

The Constitution includes a "task" for the Government to develop environmental legislation and citizens' participation. For this reason, it can be said to encourage solutions where access to justice is extended to, for example, environmental NGOs.

There are two different systems of appeal. Administrative appeal is used for decisions of a state authority and, usually, for decisions of a municipal authority when granting permits. Municipal appeal is used when a municipal authority adopts plans (including planning permissions) and programmes.

In municipal appeal, all members of the municipality (residents and landowners) have the right to appeal. In administrative appeal, standing was originally restricted to those whose rights and interests were directly affected, such as landowners and neighbours. In recent legislation, such as the Nature Conservation Act, access to Justice has also been opened for registered local and regional environmental NGOs and, when a decision concerns the whole country, national NGOs as well. The right to appeal does not, however, apply to decisions which grant a derogation from a protection regime. A similar solution has been proposed for the Planning and Building Act and the Environmental Permit Procedures Act by committees preparing reforms of the said Acts.

In addition, an authority which has a duty to supervise a given public interest has the right to appeal against decisions violating or endangering that interest.

Usually, there is a right of appeal against decisions of an authority to adopt a plan or a program. In the case of municipal land use plans, the present administrative appeal will probably be replaced by an appeal to the court. The environmental NGOs regard this change with great suspicion fearing that, as the courts tend to emphasise landowners' rights, it will result in a disregard of environmental values in urban land use planning.

Normative decisions by the state, such as acts, decrees and decisions of the Council of State or a ministry setting up general requirements, rules or standards are not subject to any right of appeal. Nor are circulars, administrative rules or practices. However, before the decision is made, there is usually an opportunity to object to the proposal.

Decisions which directly affect a person's rights, obligations or interests are, as a rule, subject to a right of appeal. Thus, environmental permits, licences, derogations etc. can always be appealed against.

As a rule, an appeal has a suspensive effect. The court can, however, on request, give a person the right to the immediate execution of a decision.

The costs in administrative matters are not especially high. The decision of a County Administrative Court costs 500 FIM and that of the Supreme Administrative Court 1000 FIM. The procedures are almost entirely written, hearings are seldom used and they do not include significant costs for the parties. The use of a lawyer is not

obligatory. However, if a case is to be carried out successfully, it may require the use of a lawyer and/or other experts, whose fees are fairly high. These have to be paid by the party himself.

The approximate time for deciding an appeal in the Supreme Administrative Court in environmental (including planning and building) cases is 9 months. In the Supreme Water Court the approximate time is 6 months. In the County Administrative Courts the time varies but tends to be longer than 6 months.

There is no mediation, conciliation or arbitration procedure in Finnish environmental law or-legislation related to it. Instead, there are two institutions, the Chancellor of Justice and the Parliamentary Ombudsman, with a general, parallel jurisdiction to supervise the legality of actions taken by the public administration. Anyone who feels that his rights have been violated can complain to either institution. Their services are available free of charge.

The said institutions do not normally take up matters that are still under consideration by an authority or for which a regular channel of appeal exists. They can only intervene in unlawful action or maladministration. Discretionary powers of an authority are not questioned unless the discretion is abused. The institutions cannot set aside decisions of a public authority or a civil servant, nor can they order payment of compensation. They may issue a reprimand or just instruct an authority or a person on the proper procedure for similar cases in the future. Often they also recommend amendments to the legislation. The authorities are not formally bound to follow the decisions of these institutions but, in practice, they do.

Two clear trends can be seen in the development of legislation on objection and appeal in environmental matters. First, appeals to an administrative body, such as the Ministry of the Environment or the 13 Regional Environment Centres, are being replaced by judicial appeal to the County Administrative Courts (in the future, there will be 5 such courts). This is of great importance in decisions on land use planning. Because planning options, which in other countries are usually non-legal questions, in Finland often are regarded as legal matters, there is a risk that the courts, instead of democratically elected bodies, will become planners. The appeal will also cost the complainant considerably more than before.

Another trend, apparently with a view to counterbalancing the shift: in decision-making power from administrative authorities to the courts, is to extend locus standi to authorities supervising the public interest in environmental matters and to registered NGOs. Concerning the latter, several gaps still remain. In legislation such as the Road Acts and the Mining Act, by which environmental values can be seriously destroyed, the NGOs still have no right of appeal. The same applies to decisions where authorities grant derogations from a protection regime or a planning requirement.

FRANCE

I - Judicial appeals

1 - Effectiveness of appeals to the courts on environmental matters

Availability of access to the courts in France has traditionally been extremely liberal for both individuals and associations. Specific rules for environmental and planning associations were, furthermore, created in 1976, and in 1995 the Barnier Law simplified and standardised appeals by environmental associations. If officially approved, such associations are presumed to have locus standi.

With regard to contestable decisions, both statute law and jurisprudence favour the appellant or complainant. He may appeal against any individual regulation, or against plans and programmes approved by a public authority. The only requirement is that the contested decision must actually have an adverse effect on his interests, that is to say it must be enforceable.

On the other hand, it has to be said that judicial appeals could be more effective if they were more systematically given suspensive effect. The fact is that, although a stay of execution is extremely helpful in environmental cases, there is little provision for such a measure in France. In certain specific cases, however, statute-law appears to be moving in that direction (legislation relating to impact studies and public enquiries, for example).

The duration of proceedings, whether in civil, administrative or criminal cases, is still too long for an appeal to be guaranteed effective. This slowness is all the more regrettable inasmuch as in environmental matters - given that preventive measures are few and far between - the result is that aggravation of ecological damage may continue. Finally, so far as costs are concerned, appeals to an administrative-law judge, which are free of charge, must be distinguished from other forms of appeal. We do not think, however, that cost is a disincentive to seeking access to justice. Provisions do exist for persons lacking sufficient financial resources (legal aid). Furthermore, associations which succeed in an appeal to have a decision set aside may now receive an indemnity for costs.

2 - Gaps or inadequacies in the present system

The effectiveness of a judicial appeal largely depends on the citizen's familiarity with the various means of judicial remedy available to him. There is room for progress in the area of public information on access to justice. The rules of contentious procedure are generally far too complex for an "uninformed" citizen (time-limits, varying interpretations of silence on the part of the administrative authority, whether a preliminary appeal is compulsory or not, etc.).

With regard to criminal proceedings, breaches of the law still essentially consist of summary and indictable offences, punishable by fines and prison sentences respectively; but the latter are too rarely imposed to have a dissuasive effect. The time-limits laid

down for the formalities are not appropriate to the effective protection of the environment.

Finally, actions for damages in environmental cases come up against the difficulty of proving a causal link between the damaging act and the ecological damage. In addition, judges of the ordinary courts appear somewhat reluctant to grant injunctions where classified installations are involved.

3 - Foreseeable developments and trends

The growing influence of Community environmental law, which is increasingly pleaded by appellants, should lead judges to create a jurisprudence more favourable to the environment. The criminal law on the environment may move towards heavier penalties. For the last few years, heavier penalties have been provided for in special statutes (classified installations, protection of nature, waste). Finally, there are grounds for developing indemnity funds to make compensation or the restoration of the environment more easily available. We can also envisage actions for damages increasing in number, in view of the fact that such actions are rarely brought at present.

II - Non-judicial appeals

I - Effectiveness of administrative or other non-judicial appeals

Admissibility is very broadly interpreted. This applies both to appeals to the Republic's Ombudsman (enlarged in 1989 to include corporate entities) and to claim procedures (public enquiries, display of notices, protection of sites, waste, etc.) and other means of non-judicial appeal (impact studies, Installations Classified for the Protection of the Environment (ICPEs)), whereby any individual or corporation may in general take action (particularly environmental associations).

The specific nature of the bodies empowered to examine non-judicial appeals varies according to the type of appeal. We might mention in particular the existence of a parliamentary "filter" consisting of claims submitted to the Ombudsman. Claim procedures relating to the environment sometimes provide that the members of the board responsible for examining claims should include representatives of environmental associations (National Committee for Public Debate, Council for the Rights of Future Generations, Departmental Sites Committee). Other claims are examined by the administrative authority (in the case of a non-contentious appeal or one to a higher authority this will be the authority which issued the contested decision, for impact studies it will be the Minister for the Environment, and for Installations Classified for the Protection of the Environment it will be a decentralised Government delegation). In some cases it will be a specially appointed body ("noise" mediators, mediation by the prosecuting authority in criminal proceedings, etc.). Administrative appeals are rarely a preliminary to a judicial appeal.

Claim procedures (appeals to the ombudsman, claim files submitted in the course of a public enquiry) do not have suspensive effect; they are most frequently equivalent to a simple public consultation. Preliminary administrative appeals are quite different, procedurally speaking, because they interrupt the running of time in a contentious appeal

(except in the case of Installations Classified for the Protection of the Environment). In general, non-judicial appeal procedures do not have suspensive effect. A number of exceptions should, however, be noted: the referral of an impact study to the Minister of the Environment will suspend the opening of a public enquiry and the power of the competent authority to take a decision. Similarly, in the case of the construction of an underground radioactive waste laboratory, the National Agency for the management of radioactive waste cannot commence its research activities until the ombudsman has submitted his report. We should also mention that certain non-judicial procedures have the effect of extinguishing a public action (a compromise settlement in civil or criminal proceedings).

There are no fees for non-judicial appeals. In addition, provision for financial aid exists to assist citizens in their actions (aid for access to justice). The advantage of such means of appeal also lies in the fact that they are dealt with quickly. Even though periods of time vary from one procedure to another, they are much shorter than in contentious proceedings. By way of illustration we might give the following examples: the Minister of the Environment has 30 days to give his opinion on an impact study; in compromise settlement proceedings under criminal law, the offender has one month to accept the proposed settlement.

2 - Gaps or inadequacies in the present system

The public is still relatively uninformed on the existence (or form) of non-judicial means of appeal (claim procedures, mediators, compulsory preliminary administrative appeals, conciliation proceedings arranged by administrative-law courts, etc.). Legally speaking, the distinction between claim and public consultation procedures is not always clear, and the same applies to that between conciliation and mediation. Non-judicial appeals do not generally have the effect of suspending execution; this is prejudicial where environmental damage is concerned. Finally, mediation and compromise settlements in criminal proceedings may have the unfortunate effect of freeing persons causing damage from liability by shielding them from a Court judgment and the publicity of a trial.

3 - Foreseeable developments and tendencies

It appears that certain types of appeal action are on the increase, such as compromise settlements in criminal proceedings. There is currently a tendency to give preference to this type of appeal, to prevent the courts from being swamped. Thus Government offices frequently receive circulars instructing them to pay closer attention to claims addressed to them and to give priority to this means of preventing conflicts. The State appears to be encouraging the development of mediation and conciliation procedures, which help to create better social relationships and also ensure promptness and efficiency.

GREECE

I - Judicial appeals

Since 1977 the Council of State has assumed the real responsibility for protecting the environment. In cases of ultra vires appeals (REPs) individuals and associations have the benefit of genuinely unrestrictive rules of admissibility. Any person holding the status of a resident of a commune or municipal district, or any neighbouring resident or landowner, is recognised as having locus standi. Locus standi is even more widely interpreted in the case of associations. Any association whose formal objects include the protection of the environment is acknowledged to have locus standi in order to bring an REP before the Council of State.

REPs are admissible when brought against any individual or general administrative decision or regulation. Appeals do not automatically have suspensive effect, but once an appeal is lodged the minister or competent organism acting on behalf of the public corporation responsible for the contested decision may order a stay of execution. Alternatively, the appellant may make a specific application to the Council of State for a stay of execution of the contested administrative decision, once the REP has been deposited. Such an application is in principle aimed at an express individual decision which has not been executed. Stays of execution are frequently granted in environmental matters, ecological damage being considered difficult or impossible to rectify.

Costs of REPs are not high so far as court fees are concerned, but lawyers' fees are high. The overall process takes between one and three years.

The system generally works satisfactorily and access tends to be easy for individuals and associations. The process sometimes takes too long.

Most problems arise from delay on the part of the Government in referring the case-file to the Court or providing information, which causes the appeal judgment in turn to be delayed.

II - Non-judicial appeals

Any person or association having a legal interest may submit a non-judicial appeal to the administrative authority which issued the contested decision, or to a body specially created for that purpose. There are no specific "administrative authorities" created to hear non-judicial appeals on environmental matters.

Such appeals do not have suspensive effect, but a stay of execution may be granted on an application by the interested party, the decision being made by the administrative authority empowered to hear the appeal. The administrative authorities rarely grant a stay of execution and the general tendency is an implicit refusal. Non-judicial procedures of this type are free of charge and their overall duration is relatively short (from 15 days to 3 months).

Non-judicial appeals on environmental matters are not particularly effective and appellants have very little faith in them. In general, the preferred method is to bring an REP before the Council of State.

IRELAND

Individuals and associations have rights to be informed of proposed applications for various environmental authorisations, to participate in the decision-making procedure and even to appeal the decision to a higher authority or in the case of IPC, to the same authority. This has been the case for some time and modern legislation is increasingly generous in the manner in which it expands the rights which it confers on members of the public to participate in administrative decision making and to appeal and object to decisions taken by administrators and administrative bodies.

However, while rights to object and appeal decisions on environmental authorisations are widespread, they are much more extensive where decisions affecting the private sector, particularly industry, are concerned. Many decisions made by public authorities can only be challenged on legal matters. However there is increasing provision for public participation in such decisions even if there is no objection/appeal provision.

There is little provision for public participation in environmental decision making at *central government level*. So, for example, there is no formal provision for public participation in decisions to designate areas as urban renewal areas, or in the making of legislation, codes of practice or guidelines relating to environmental standards or environmental policies. However, even central government is beginning to acknowledge that the public might have an interest in the manner in which it carries out its functions and the last three Ministers for the Environment have instituted informal fora for canvassing the opinions of members of the public and special interest groups. Currently a Consultative Environment Forum, representing all relevant sectors, is being established by the Minister for the Environment and should be operational in the latter half of 1998.

There has been a huge increase in the number of people challenging environmental decision in administrative proceedings and in the courts. In 1996, 36% of all appeals against planning decisions were made to the Planning Appeals Board by third parties i.e. persons other than the applicant for the planning permission. There were 3,323 appeals in all. Lawyers advise clients that most major industrial projects will be appealed by third parties. Third party appeals stand a high chance of influencing the decision made. So, for example in 1996, the Planning Appeal Board granted permissions appealed by third parties with the same conditions in 6% of appeals, revised conditions in 65% of cases and refused permissions in 29% of cases. The increase in the number of administrative appeals is a clear indication of public concern about the environment but it is also a poor reflection of public confidence in local democratic decisions. Because of the openness of the planning system there is a danger of abuse by a minority of objectors and appellants of rights which were intended to be used to promote the interests of the common good rather than sectional or private interests.

Many public sector infrastructure projects are not required to be authorised in the same manner as private sector developments. So for example, planning permission is not normally required for roads, waste water treatment plants, reservoirs, landfills etc. Increasing provision has been made for some degree of public participation in

decision making on these projects but it is not as developed as the procedure which applies in respect of private sector developments or activities. Appeals against these decisions have to be taken by way of judicial proceedings, and not administrative appeals.

The sole restriction is on persons who bring challenges for frivolous, vexatious or base reasons. Individuals and associations increasingly incorporate for the purpose of bringing judicial proceedings so as to insulate themselves from liability to pay the costs of unsuccessful actions (Costs are usually awarded against the losing party, but it is difficult, and normally impossible, to recover such costs from individuals).

There is generally no requirement for individuals to pay security for costs although companies can be required to provide security in appropriate situations. Courts will not easily overturn administrative decisions unless they are ultra vires. See UK contribution. The position is almost identical in Ireland.

It is not necessary to appeal to an administrative tribunal before seeking judicial review, although it is advisable to do so.

2. Judicial Review

Locus Standi

Order 84, rule 20(4) of the Rules of the Superior Courts 1986 provides that " The Court shall not grant leave to apply for judicial review unless it considers that the applicant has a sufficient interest in the matter to which the application relates."

However, locus standi to participate in environmental decision making and to seek judicial reviews on such decisions in Ireland appears to be virtually unrestricted.

Trends

Much wider recognition of standing to challenge decisions in the courts. Almost anybody can challenge.

ITALY

I Judicial appeals

The Italian legal system offers quite a number of different means of reaction against acts or omissions capable of prejudicing the environment, depending on the nature of the requested jurisdictional protection.

Generally speaking, only who has a qualified legal position -i.e. a subjective right or an interest protected by law- has an action. This rule applies obviously also to environmental law, and this leads to significant limitations with reference to the subjects who are granted a legal action. A relevant exception to this is the right granted *ex lege* to recognized environmental associations (28 at the date of 31.12.1996) both to appeal against unlawful measures before the administrative courts and to participate in proceedings for liability for environmental damages before the ordinary courts, which results in a right for the protection of collective interests (Law No. 349/1986, instituting the Environment Ministry).

This provision, nonetheless, is not enough to meet the request of justice by the so called "civil society", especially in the field of environmental law and consumer protection. Private associations and bodies -often having a restricted scope of action and time- claim the right to act (especially before the administrative court) against acts or omissions felt to be prejudicial to environment. Although one may register some openings on the part of courts on this issue, there still are significant obstacles to its full recognition and, failing a positive rule, it is certainly not possible to rely on a positive trend by the courts.

From restricting the right to take part in proceedings follows that a number of complaints, which are often quite relevant for the environment, cannot be brought before the courts only because they are not related to a qualified legal position in the above mentioned sense. We should point out another issue: Italian proceedings (with the exception of criminal proceedings) pursue the goal of recovering the original juridical position that was prejudiced and the judge's knowledge and decision-power is constrained to the request forwarded by the claimant. Therefore the judge's decision cannot regard the existence of an unlawful measure or of an illegal behaviour or omission but only the issues the claimant has complained of.

The Italian legal system makes no restriction in the right to appeal against a measure depending on the administrative or normative nature. Problems and restrictions that may arise, in fact, relate once again to the restricted number of subjects having a right of action, because only subjects who suffered a personal prejudice of their own legal position have a right to challenge these acts (and must do so within a short term).

Normally the beginning of a proceeding does not have the effect of stopping the execution of the measure or of the act against which action is brought. The adoption of precautionary measures falls nonetheless within the powers of the judge who may take them either *ex officio* (in a criminal proceeding) or *ex parte* (e.g. in an administrative proceeding).

The unbearable length of proceedings, together with the effects of provisional measures, have the consequence of paralysing the Public Administration's action -prejudicing the principle of a good functioning of the Public Administration- or to cause an unreasonable lengthening of the time necessary to accomplish the public action, thus eventually increasing its costs.

In conclusion it seems necessary to find a balance between the need for recognizing a right of action to the widest possible number of subjects and the need for not creating obstacles to the decision-making process and the accomplishment of administrative measures which are taken in the light of a general interest and which need to be realised in short and certain time limits.

Another question, to which presently we do not see a solution, is the one related to the costs involved in actions before the courts. It cannot be said that they are always and objectively unbearable: but it is certain that they are neither insignificant nor easily foreseeable by the subjects who decide to bring an action, with the consequence of often dissuading them from taking up legal proceedings.

LUXEMBOURG

I - Judicial appeals

A. Effectiveness of appeals to the courts:

The admissibility of legal actions by associations has long been a thorny problem in Luxembourg law. With very few exceptions, the courts have in fact taken a restrictive view. This unsatisfactory state of affairs has been partially remedied by legislation. Nevertheless, in order to prevent the courts from being swamped with legal actions, the legislator has imposed certain limits. Only approved associations whose *locus standi* is specially established in a specific law can bring a legal action. This provision may appear too restrictive, but it is important to make it clear that the most representative associations for the protection of the environment do have the benefit of the relevant approval.

The new law of 7 November 1996, organising courts dealing with administrative matters, has now made it possible for approved associations to bring an appeal for the annulment of administrative decisions of a regulatory nature in the Administrative Court.

In principle such appeals do not have suspensive effect.

Proceedings in the courts of law of Luxembourg are currently getting lengthier. The reform of civil-law procedure by the law of 11 August 1996, including the introduction of a procedure for the service of notice from September 1998, may possibly result in a reduction in time-limits.

The administrative courts, which have been operating on a new basis since 1 January 1997, have had no problems with increasingly lengthy procedures.

B. Gaps and inadequacies

The problem to which appellants find it hardest to reconcile themselves is undeniably the increase in the duration of procedures. Since, furthermore, appeals do not have suspensive effect, this seriously reduces an appellant's chances of preventing damage to the environment.

C. Foreseeable gaps and tendencies

Luxembourg's legislators are endeavouring to draw inspiration from the severest laws of environmental protection in neighbouring countries. Such an approach does of course cause problems of transposition and keeping up with amendments to the laws in question in their countries of origin. It would seem that efforts are needed to improve the harmonisation of laws drawn from different sources.

2 - Non-judicial appeals:

A Effectiveness of administrative and non-judicial appeals:

There are no organised mediation and conciliation procedures in the Grand Duchy of Luxembourg. This summary must therefore be limited to non-contentious administrative appeals.

It should immediately be noted that it has not hitherto been felt necessary to amend the existing non-contentious administrative procedure since the introduction of the law of 1 December 1978 and its implementing bye-laws of 8 June 1979.

Administrative appeals are heard either by the same administrative authority or by a higher authority. There is therefore no specific body appointed to hear administrative appeals.

There are no formal regulations governing this area of the law. The Government thus has extremely wide powers of assessment as regards (for example) the admissibility of appeals by associations. A priori, there seems to be no objection to this. Similarly, whether or not the appeal has suspensive effect will depend on the type of decision in question and the chances of having the original decision amended.

Since legal representation is not compulsory, the costs of such appeals are minimal.

B. Gaps and inadequacies:

The absence of any conciliation procedure does not appear to worry politicians unduly, even those with an ecological bent. There has always been a tradition of negotiation and amicable settlement in Luxembourg, and this is reflected in the non-contentious administrative procedure and the ease and informality of contacts with the authorities.

C. Foreseeable developments and tendencies:

cf. supra, 1.C.

NETHERLANDS

I - Judicial appeals

All administrative decisions on environmental matters, including refusals whether express or implied, and plans and programmes, are subject to a right of appeal to the Council of State.

Exceptions:

(1) *regulations*;

(2) *physical acts* (not constituting legal decisions)

(3) certain acts of minor importance.

All administrative decisions for which no right of appeal to the Council of State is provided (such as regulations and physical acts), and all acts by private individuals, may be challenged in the civil courts.

Access to the Council of State is open to any individual or organisation who (which) has informed the competent authority of his (its) objections to the proposed action within the allotted time-limit.

Any individual having a *specific interest*, and any organisation whose object -according to its articles of association and in practice - is the *protection of the environment* may appeal to the Council of State or a civil-law judge.

If the Council of State considers that the contested decision is defective or unreasonable, it may (1) set the decision aside, (2) impose a *judicial order* on the administrative authority, with (3) a *penalty* for each day or each occasion on which the competent authority remains in default, and if appropriate (4) order the administrative authority to pay damages.

Pending a final decision, the President of the division of the Council hearing the case may make an interlocutory order (e.g. to suspend the execution of the contested decision).

Apart from the power to set the decision aside - which is the prerogative of the administrative court - a civil court judge may make the same decisions (including interlocutory measures).

The Dutch Code of Criminal Investigation makes no provision for private prosecutions. If, however, the Public Prosecutor refuses to act, any person or organisation with an interest in pursuing criminal proceedings may make a complaint to the competent Court of Appeal.

In principle, the referral of the matter to a judge does not have suspensive effect. Such referral must take place within a period of six weeks from the date of service of notice of the contested decision.

Costs are fixed at 300 (Dutch florins) for private individuals and 600 for corporate entities.

There are gaps in the system:

- a) there is no right of appeal to the court as regards regulations.
- b) public corporations have no criminal liability.

II - Non-judicial appeals

In the Netherlands interested parties can express their views at an early stage of decision making. In environmental matters the extensive public preparation procedure is applicable, allowing everyone who has an interest to raise objections to an application or draft order.

Admissibility of organisations is possible if their statutes indicate that the protection of the interest involved is (part of) their interest. The administrative authority must publish and forward a draft-decision to the applicant and administrative bodies concerned. Within four weeks after the publication of the draft-decision every party which has an interest can bring forward written objections. In general the *final* environmental decision must be taken within six months and announced to the public.

After the decision has been taken one has the right to appeal to the authority that has taken the decision. An appeal against the decision on the objection must be addressed to the administrative Court. One is only admitted to the administrative court if one participated in the objection procedure. There are no costs involved to start an objection procedure. An appeal will cost an individual 200 guilders for a court fee and organisations 400 guilders. Judicial assistance is not compulsory but highly recommended. These costs don't seem too high but in practice it can be an impediment for certain individuals or organisations.

Apart from the administrative procedures that handle a great deal of environmental matters *penal law* can be used to deal with environmental criminal offences without interference of a judge. A distinction can be made between a transaction, settlement and dismissal as non-judicial methods of settlement. A lot of smaller environmental criminal cases are being dismissed. The greatest disadvantage of these forms of settlements is the lack of publicity and clarity on the conditions being met. This disadvantage could be taken away if the offender should have to publish the offence. The decision on whether there will be a prosecution is decided by the prosecutor. However, interested parties, explicitly including environmental organisations, have the right to complain at court if the public prosecutor decides to renounce from prosecution.

One could also issue a petition to the Ombudsman if one wants to complain about the factual procedural behaviour of an administrative body. If recourse to an administrative body is still open, the Ombudsman will not deal with the petition but forward it to the appropriate administrative body. The Ombudsman can make recommendations in his written report that have to be taken into account when interpreting legislation. Case law shows that the Ombudsman plays an important complementary role.

At this moment a legal right to complain is in preparation . Every administrative body will be obliged to deal internally with complaints of citizens. This complaint must be dealt with within six weeks. The administrative body will have to take the decision, but it could invite an independent body to give advice. There are just a few initiatives to investigate the possibilities to settle environmental matters by Alternative Dispute Resolution. Alternative Dispute Resolution could be used in disputes between companies and administrative bodies. The disadvantage of this way of settlement is the lack of public participation that exists in the objection and appeal procedures. Alternative Dispute Resolution will therefore not lead to great enthusiasm. In practice environmental organisations and interested parties have ample recourse possibilities in environmental matters.

PORTUGAL

1 - Judicial appeals:

There are no specific rules relating to means of judicial appeal on environmental matters; the applicable procedure is that prescribed for the general administrative law. There is a great volume of statute-law acknowledging every citizen's rights relating to environmental matters, including a right of participation in environmental and town and country planning policies.

Under the 1991 Code of Administrative Procedure every citizen for whom an action by the Government causes or is likely to cause significant damage to the environment, has the right to participate in the administrative procedure. This is the actual concept of "wider interests" as provided in article 53 of the 1991 Code of Administrative Procedure, which concerns not only the protection of the environment but also public health and consumer protection.

Article 4 (1) of Law n° 83/95, of 31 August, which lays down regulations governing the Popular Right of Action provided in article 52 of the Constitution, provides that there must be a genuine right of participation in the procedure. So far as associations for the protection of the environment and local communities are concerned, these also have the benefit of the procedural right of participation pursuant to the Code of Administrative Procedure and law n° 83/95.

The majority of actions in the courts spring from an administrative decision imposing fines on polluters for infringements under the summary offences system. Where an offender does not accept an administrative decision imposing a fine on him, he may take legal proceedings to have it set aside by an administrative court. If necessary, judicial appeal proceedings may also be commenced.

With regard to access to justice,

a) under the Popular Action law every citizen may, whether or not his interests have been damaged by an administrative decision: 1 - bring a contentious appeal against any decision of the Government which is damaging to the environment (article 12 of Law 83/95); 2 - initiate action in the civil courts in respect of any behaviour that has effects on the environment generally (article 12 of Law 83/95 and article 26-A of the Code of Civil Procedure);

b) since Law 10/87, of 4 April (the law of associations for the protection of the environment), and under the terms of article 7.1 thereof, any association may: 1 - exercise a right of action against any decision which is damaging to the environment (sub-section a); 2 - bring a contentious appeal against administrative decisions (sub-section b); 3 - join as plaintiff in criminal proceedings (sub-section c)).

c) any local authority has a right of contentious appeal, pursuant to the Law of Popular Action, against any administrative decision which may cause damage to the environment and affects its geographical area.

Since Law n° 10/87, the jurisprudence of the Portuguese courts, and particularly of the higher administrative courts, has recognised and accepted that associations for the protection of the environment may bring cases before the courts, especially to obtain injunctions against individual or collective acts which cause serious damage to the environment.

So far as citizens are concerned, even before Law 83/95 the higher administrative and civil courts had already recognised the right to act of owners of "wider interests" who can prove a specifically defined interest in the proceedings.

Any final decision of the Government may be appealed. In general, up to now, a preliminary non-contentious administrative appeal has been necessary before any contentious appeal can be commenced. The constitutional revision of 1997 abolished that obligation (article 168 (')). An appeal does not have suspensive effect and thus does not prevent the execution of the decision. A stay of execution may be applied for where certain fairly strict and cumulative conditions are fulfilled.

Article 18 of Law n° 83/95 provides that, even where a certain appeal does not have suspensive effect, the judge in a popular action case can give it that effect, in order to prevent damage which might be irreparable or difficult to rectify. It is interesting to note that the procedure for a stay of execution can also be used in environmental cases.

Associations for the protection of the environment are exempted from payment of court fees under Law n° 10/87, of 4 April. Under article 20 of Law n° 83/95, the plaintiff in a popular action is exempted from payment of the costs of interlocutory legal proceedings. The plaintiff is also exempted from payment of any costs if his action is partially upheld. If it is not, the costs of the case will be fixed by the judge at percentages below the norm.

In civil and criminal proceedings it is possible for those suffering loss or damage as a result of acts prejudicial to environmental interests, whether individual or collective, to bring actions in the courts according to the appropriate rules of procedure. Such victims often bring the injurious acts to the attention of the Public Prosecutor, who will then set the appropriate form of investigation in motion with a view to referring the case to the criminal courts.

Costs are fixed on a case-by-case basis, and the average total duration of the process can be from 1 to 2 years, depending on the circumstances.

Since all the rights and guarantees provided by the Constitution and statute law already provide reasonably ample access to justice in environmental matters, it would be a good idea for greater efforts to be made in the area of information and education firstly of the public at large, and secondly of those primarily involved in the environmental field.

2 - Non-judicial appeals:

There are no specific and/or institutionalised arbitration or mediation bodies or institutions for environmental matters.

Non-judicial means of appeal are increasingly becoming a preferred method of preventing breaches of the environmental laws. There is a clear tendency towards the more detailed development of these remedies.

UNITED KINGDOM

I - Judicial Procedures

There are two judicial procedures of relevance to the matter of "objecting" and "appealing" in an environmental context.

1. Statutory Applications and Appeals. The first area of judicial procedure is that provided under the Town and Country Planning Act 1990. Section 288 of the Act lays down procedures for an 'application' to the High Court to quash a minister's decision. These proceedings are open to 'persons aggrieved', as given a broad definition in the relevant case law. Section 289 lays down procedures for an 'appeal' against a minister's decision on the subject of an "enforcement notice", open only to a limited range of parties. Each are suspensory of the decision of the minister on appeal. There are no firm plans to extend these procedures beyond the field of town planning and into a more specialised areas of environmental law.

2 Judicial Review. An application for judicial review provides the second of the two areas of judicial procedure of relevance, and is of considerably broader application than the first. This procedure is open to any person or group with 'sufficient interest' in the decision under review - a precondition which is receiving an increasingly liberal definition in the relevant case law. An applicant must also seek leave to bring proceedings 'promptly', and normally satisfy the court that they have exhausted alternative remedies. Fundamentally, an applicant must establish one of the three broad grounds for review: i.e. that the decision was ultra vires, irrational or subject to procedural impropriety. The remedies which an applicant will apply for include one or all of the following: (i) "certiorari" - the quashing of a decision (remitting it for re-determination); (ii) "prohibition" - the prohibition of a decision from being executed, (iii) "mandamus" - the requiring of a specified course of action on the part of the decision-maker. An applicant may also merely seek a declaration as to the position in law.

The overriding shortcoming of judicial review from an environmental standpoint is its lack of a suspensory effect. If the execution of a decision is to be halted pending the outcome of proceedings for judicial review the applicant will have to obtain interim relief in the way of an injunction. The main obstacle to so doing is the common law requirement that the applicant indemnify the respondent in respect of any loss they may suffer as a result of delay. Clearly, the sums involved will often be prohibitive. Not surprisingly then, there is presently substantial pressure on the courts to relax the requirement of indemnity in cases where there is a strong public interest in an interim injunction being granted.

As to trends of a more general character, the procedures for civil justice in the UK are undergoing a wide-ranging official review. What is most significant from an environmental standpoint is that the climate today is one conducive to further liberalisation in judicial procedures. It should also be stressed that much progress has been made in speeding up the throughput of proceedings. Indeed, it must be questioned whether the widely held assumption that judicial procedures are more

cumbersome than procedures of a non-judicial character continues to reflect accurately the reality.

II - Non-judicial Procedures

The UK Report identifies three non-judicial procedures for participation in environmental decision-making, each of which provide an avenue for one or other of an "objection" or an "appeal".

1. **Administrative Decision-making.** The first of these procedures concerns participation in "first instance" administrative decision-making, and is generally open to a wide range of participants. Decision-making in this context relates, on the one hand, to decisions of a 'tactical' character (e.g. the processing of individual permit applications); and, on the other, those of a 'strategic' character (e.g. the formulation of the norms which govern the determination of individual permit applications). These arrangements have shortcomings from an environmental standpoint in that the weight to be given to the various participants' views is a largely political matter, to be determined at the discretion of the competent authority having regard to not only environmental, but social and economic considerations. There are few if any signs that this discretionary trading-off of environmental and other considerations is likely to diminish in future, although the fact that the recently-formed Environment Agency has as one of its statutory objectives the pursuit of sustainable development may suggest a more "progressive" political framework within which to balance the considerations at issue.

2. **Ministerial Appeals.** The second area of non-judicial procedure discussed in the Report concerns appeals from decisions arrived at in accordance with the procedures outlined above. Appeals in this context will cover issues of both policy and law, and will typically be determined by ministers of the Government. Their main shortcoming from an environmental standpoint is that they are normally confined to the tactical domain and, more specifically still, to the applicant for whom a permit to develop/operate has been refused. Whilst there is some degree of pressure for the introduction of third party appeals in this context, greater emphasis by way of reform is being placed on liberalising procedures of a judicial character.

3. **Ombudsman.** Complaint to an ombudsman provides the third and final of the non-judicial procedures considered in the UK report. Ombudsman procedure differ according to whether the complaint is directed to a local or central governmental body. In each case however the procedure is only open to an individual suffering an injustice in consequence of maladministration and, as such, suffers from weaknesses when viewed from an environmental standpoint.

Of particular relevance in this respect is the fact that not only is the standing of an interest group highly uncertain, but the exclusivity of the concern there with "maladministration" will invariably rule out an ombudsman's jurisdiction in respect of issues of 'law'. The system has recently been subject to a comprehensive review culminating in an affirmation of the status quo. There is today little pressure for reform, the main attention being focused rather on the liberalisation of judicial procedures for articulating environmental objections.

SWEDEN

I - Judicial procedures

1. Evaluation of objection on environmental protection matters

Many environmental cases do only come under legal scrutiny through a formal legal review whereby the court may not change the decision on the merits. Instead, it may only approve or annul the decision altogether.

To be competent to object legally to matters of environmental protection matters the subject must be considered likely to be affected by the nuisance in question. Whereas in some environmental acts (e.g. the Environment Protection Act) this provides a fairly wide scope of persons, in other acts (such as the Planning and Construction Act) the scope is far more limited. Moreover, associations have no competence to act on behalf of interests other than those related to it in the capacity of land-owner. Thus, associations have no competence to act on behalf of environmental interest of a more public character.

As regards plans, this is an area where "being affected" is interpreted more narrowly and, hence, where the scope of persons competent to bring the case to court is limited.

Legal reviews of administrative decisions are free of charge. Usually it would take about a year for the Supreme Administrative Court to conclude the case, but this differs from one case to the other.

2 Gaps and insufficiencies of the system

An important shortcoming is that only governmental or administrative institutions may act on behalf of environmental interests of a public character. This implies a risk that the legality of certain controversial projects, where public institutions are sometimes involved, is not being subject to such scrutiny at all. Secondly, the incoherence as such between the different laws provides problems.

3 Foreseeable changes

The Swedish parliament is expected to pass a new Environmental Code in 1998. The changes will provide competence for certain, albeit only quite large, organizations to institute legal action also on behalf of public environmental interests. Yet, it is not fully clear whether the overall access to justice increases by the entry into force of this new Code.

II - Non judicial procedures

1 Evaluation of administrative objection on environmental protection matters

To be competent to object administratively on environmental matters the subject must be considered likely to be affected by the nuisance in question. Whereas in some environmental acts (e.g. the Environment Protection Act) this provides a fairly wide

scope of persons, in other acts (such as the Planning and Construction Act) the scope is far more limited. Moreover, associations have no competence to act on behalf of interests other than those related to it in the capacity of landowner. Thus, associations have no competence to act on behalf of environmental interests of a more public character. Nonetheless, under most laws related to environmental protection *anyone* may participate in the administrative procedure of the first instance and present his or her views on the matter. The rationale is not that they act as parties, but that the decision-making institution has to investigate the case *ex officio*. However, persons who are not considered affected by the decision -and, hence, are not seen as parties, may not appeal against the decision.

There are several issue-specific institutions designed for various environmental concerns; the most important being the Licensing Board on Environmental Protection, the Chemicals Inspectorate, the regional County Boards and the local Environmental Authorities of the Municipality.

An objection may have suspensive effects, but it does not take place automatically.

Administrative objections are free of charge.

2 Gaps and insufficiencies of the system

An important shortcoming is that only governmental or administrative institutions may act on behalf of environmental interests of a public character. This implies a risk that certain controversial projects, where public institutions are sometimes involved, can not be subject to further examination. Secondly, the incoherence as such between the different laws provides problems.

3 Foreseeable changes

The Swedish parliament is expected to pass a new Environmental Code in 1998. The changes will make it possible for certain, albeit only quite large, organizations to object to administrative decisions also on behalf of public environmental interests. Yet, it is far from clear whether the overall access to the administrative system increases by the entry into force of this new Code.

IV

COMPARATIVE SUMMARY IN TABLE FORM OF THE SITUATION IN MEMBER STATES

Judicial procedures

Appeals against measures by an administration

1. By national associations
 - which are approved
 - which are not approved
2. By foreign associations
3. By national local authorities
4. By foreign local authorities
5. Against general regulations
6. Against individual permits
7. Against decisions concerning public works
8. Is legal representation mandatory?
9. Is preliminary administrative appeal obligatory ?
10. Is a direct appeal to the judge always possible ?
11. Is an appeal automatically suspensive?
12. Is it possible to suspend the execution of the contested decision following a decision from the judge to whom it has been referred?
13. What is the period for appeal?
14. What is the average duration of the lawsuit
 - at first instance
 - at second instance
15. Can the judge order the administration to act or to abstain from acting (injunction)?

JUDICIAL PROCEDURES

APPEALS AGAINST THE MEASURES OF THE ADMINISTRATION

QUESTIONS N°	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		
Germany	No UEP	No	No	Yes, Limited access	No	Not except urban plans.	Yes	Yes	Yes, except in 1 st instance	Yes, UEP	No	Yes UEP	Yes	1 month	→2 years	3 years	Yes
Austria	No UEP	No	No	No except if impact study	No,	Yes	Yes	Yes	No, UEP	Yes/No	No	No except on request	Yes	6 weeks	several months to 2/3 years		Yes
Belgium	Yes if law of t12/1/1993	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	60 days to the Council of State	3 months (suspension) to 3 years (cancellation)		Yes via obligation
Denmark	No	No	No	No	No	No	Yes	Yes	No	No	Yes	No	Yes	6 months	2/3 years	2/3 years	Yes
Spain	Yes	Yes	Yes	Yes	Yes	Safe yes laws	Yes	Yes	Yes	Yes, except fundamental rights	No	No	Yes	2 months after notification	/		Yes
Finland	Sometimes	Sometimes	No	Yes, in general	No	No	Yes	Yes	No	Sometimes	No	Yes	Yes, the judge ordering immediate execution	14-30 days	→1 year	9 months	Yes, in general
France	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No if AEP and ICPE Yes if appeal and cassation	No, except appeal on reparation	Yes, except appeal on reparation	No	Yes	2 months UEP	1 year and 11 months (CAA)/ 16 months (MT)	2 years and 11 months (CAA)/ 16 months (EC)	No except to carry out a decision of the administrative judge
Greece	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No UEP	Yes	No	Yes	60 days	½ year to the Council of State		No
Ireland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes, normally	Yes	No	Yes	2 months	1 year and 9 months		Yes
Italy	Yes	Sometimes	No	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	60 days	24 months	16 months	No, UEP
Luxembourg	Yes	De-pends	Depends	Depends	Depends	Yes, if approved association	Yes	Yes	Yes, in principle	No	Yes	No	Yes	90 days from the notification			
The Netherlands	Yes	Yes	Yes	Yes	Yes	No	Yes	Depends	No	Yes	No	No	Yes	6 weeks	6 weeks	6/12 weeks	Yes
Portugal	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No since 1997	Yes	No	Yes	2 months	2 years		No
The United Kingdom	Yes	No, in general	Yes/No	Yes	No, in general	Yes but limited	Yes	Yes	No	Yes normally	Yes with exceptions	No	Yes	3 months	From 5 months to....		Yes
Sweden	No, in general	No, in general	Yes, under conditions	Yes, under conditions	Yes, under conditions	Yes, sometimes	Yes, under conditions	Yes, under conditions	No	Sometimes	No	No	Yes	3 weeks to 3 months	/	/	Sometimes

UEP : unless exceptions provided

AEP: appeal for excess of power (actions for annulment)

ICPE: Installations classified for Environmental Protection

Appeal with a view to rectifying damage caused by a public person

1. Can an association appeal?
2. Does an appeal require negligence or is it an objective appeal?
3. Is appeal possible in the event of inaction?
4. Is legal representation mandatory?
5. Is preliminary administrative appeal mandatory?
6. Does an appeal automatically suspend the detrimental activity?
7. What is the period for appeal?
8. What is the average duration of the lawsuit
 - at first instance
 - at second instance
9. Can the judge order interim relief?
10. Does the installation of the victim after the detrimental activity have an effect on the liability action?

JUDICIAL PROCEDURES

QUESTIONS N°	APPEAL WITH A VIEW TO RECTIFYING DAMAGE CAUSED BY A PUBLIC PERSON										
	1	2	3	4	5	6	7	8		9	10
Germany	No	Yes, except for troubles in the vicinity	Yes	Yes	Yes, except troubles in the vicinity	No	3 years (no period for vicinity disorders)	1-2 years	From 2 years	No	Yes
Austria	No, UEP	AHG: negligence UVS: objective	AHG: Yes UVS : No	AHG: Yes if damages > 100 000 UVS : No	AHG: Yes UVS : No	AHG: No UVS : No	AHG: 3 years UVS: 6 weeks	/		Yes	Could be
Belgium	Yes	Negligence	Yes	No	Yes	No	30 years	2 years	1 year	Yes	Yes, on the base of the dispute
Denmark	No	Negligence	Yes	No	No	No	/	2/3 years	1-2 years	Yes	Yes
Spain	Yes	Objective appeal	Yes	Yes	Yes	Not except on request	2 months	3 years	3 years	Yes	/
Finland	Sometimes	Objective	Yes	No	No	No	/	Without statistics		/	?
France	Yes	Negligence (Objective if public work damage)	Yes	Yes	Yes	No	4 years	without statistics		Yes but intangibility of public works)	Yes
Greece	Yes	Objective	Yes	Yes	No	No	±5 years	±1 year	±1 year	/	No
Ireland	Yes	Negligence	Yes but limited	No, but advised	Not always	No	1-2 years and +	1-2 years	1-2 years	Yes	
Italy	Yes, if its own right were injured	Negligence	Yes	Yes	No	No	5 years	Long		Yes	Yes
Luxembourg	Yes	Negligence	Yes	Yes, in principle	Depends	No	30 years			No	
The Netherlands	Yes	Objective appeal	Yes	Yes	Yes, if possible	No	5 years (law of 1924)	1 year	1 year	Yes	/
Portugal	Yes	Objective, soon	Yes	Yes	No	No	3 years	2 years	2 years	Yes, sometimes	/
The United Kingdom	Yes	Negligence	Yes, with limits								
Sweden	Sometimes	Depends	Sometimes	No	Sometimes	No	Depends on the case	/	/	Sometimes	Sometimes

For Austria:

UVS: Unabhängiger Verwaltungssenat (Independent Administrative Tribunal)

AHG: Amtshaftungsgesetz (Act on the responsibility of the Administration)

Appeal with a view to rectifying damage caused by a private individual

1. Is appeal possible for an association ?
2. Is there a specific legislation on damage to the environment
3. Does appeal require negligence or is it an objective appeal?
4. Is legal representation mandatory?
5. Does appeal automatically suspend the detrimental activity?
6. What is the period for appeal?
7. What is the average duration of the lawsuit
 - at first instance
 - at second instance
8. Can the judge order the suspension of the damage?
9. Does the installation of the victim after the detrimental activity have an effect on the liability action?

JUDICIAL PROCEDURES

QUESTIONS N°	APPEAL WITH A VIEW TO RECTIFYING DAMAGE CAUSED BY A PRIVATE INDIVIDUAL									
	1	2	3	4	5	6	7		8	9
Germany	No	Yes, but limited scope	Negligence/ Objective	Damage < 100 000: No > 100 000 : Yes	No	3 years, except vicinity disorders	1-2 years	From 2 years	Yes	Yes (offences) No (vicinity disorders)
Austria	No, UEP	No	Negligence	Damage < 100 000: No > 100 000 : Yes	No	4 weeks	Several months to 2/3 years		Yes	Perhaps
Belgium	Yes	No	Negligence, UEP	No	No	30 years	2 years	1 year	Yes	Yes, on the base of the dispute
Denmark	No	Yes	Negligence/ Objective	No	No	20 years	2/3 years	1-2 years	Yes	Yes
Spain	Yes	No	Objective	Yes	No, except request to the judge	1 year	8 month s	8 months	Yes	No, if legal installation
Finland	Sometimes	Yes	Objective	No	No	/	Without statistics		/	?
France	Yes	No	Negligence/ Objective	Yes	No	30 years	TI: 5 months TGI: 8.8 months Court of Appeal: 15.6 months		Yes	Yes
Greece	Yes	Yes	Objective	Yes	No	5 years	±1 year	±1 year	/	No
Ireland	Yes	Yes	Negligence	No, but advised	No	1-2 years and +	±1 year	2/3 years	Yes	?
Italy	Yes, if its own right were injured	Yes	Negligence	Yes	No	5 years	Long		Yes	Yes
Luxembourg	Yes	Yes	Negligence	Yes, in theory	No	30 years			Yes	
The Netherlands	Yes	No	Objective appeal	Yes	No	20 years	/	/	Yes	No
Portugal	Yes	No	/	Yes	No	3 years	1 year	1 year	Yes	/
The United Kingdom	Yes	Yes	Negligence/ Objective	No	No	depends	depends		Yes	No
Sweden	Yes, under certain conditions	Yes	Objective	No	No	10 years	/	/	Yes, sometimes	No

Criminal appeal

1. Can the proceedings be started by
 - a normal association
 - an approved association
 - a competent agency in the area of environment
2. Does permission from the administrative authorities (or permit) exonerate a person from criminal liability ?
3. Average duration of the criminal lawsuit ?
4. Are prison sentences effectively delivered
 - with suspension
 - without suspension
5. Can legal persons be criminally responsible?
6. Could the criminal sanction order
 - repair to the old state
 - prohibition of the activity
 - realisation of the work
7. What is the period for the appeal (prescription)?

JUDICIAL PROCEDURES

QUESTIONS N°	CRIMINAL APPEALS												
	1			2	3	4		5	6			7	
Germany	No, but denunciation possible			Yes, H.E. UEP	Not calculable	Seldom	Depend	No	No, UEP	No, UEP	No, UEP	3/10 years	
Austria	No, but denunciation possible			Yes, UEP.	/	Depends		No	No, UEP	Yes	No	4 weeks	
Belgium	Yes	Yes	Yes	No	3 years	Mostly with suspension of proceedings		No	Yes	Yes	Yes	5 years	
Denmark	Yes	Yes	Yes	Yes, sometimes	¾ month	No	No	Yes	Yes	No	No	5 years	
Spain	Yes	Yes	Yes	No	2 years	No	No	No	No	No	No	Depends on each offence	
Finland	Yes	Yes	Yes		Without statistics	Yes	Seldom	Yes	Yes	Yes	Yes	2 years (infringement) 5 years (offence)	
France	No	Yes	Yes, if specific text	No, except offence concerning water pollution and building permit	7.5 months (infringement, 5 th class) 10.3 months (offence) 43.3 months (crime)	Yes	Seldom	Yes	Yes	Yes	Yes	1 year (infringement) 3 years (offence)	
Greece	No	No	Yes	Yes, in general	2/3 years	Yes	Yes	No	No	No	No	5 years (for prison < 5 years) 15 years (for prison > 5 years)	
Ireland	Yes	Yes	Yes	Yes, sometimes	1 year and +	Yes	Yes	Yes	Yes	Yes	Yes	1 year and +	
Italy	No, but possible declaration			No	Not calculable	Yes	Yes	No	Yes	Yes	Yes	2/15 years	
Luxembourg	depends	Yes	Yes	Contradictory case law				No	Depends on special laws			1 year (infringements) 3 years (offences) 10 years (crimes)	
The Netherlands	No, but possible declaration			No	1 year	Yes	Yes	Yes	Yes		Yes	Yes	Depends
Portugal	Yes	Yes	Yes	No	1 year	No	No	No	Yes		Yes	Yes	5 years
The United Kingdom	Yes	Yes	Yes	Yes	1 year	Yes	Yes	Yes	Yes		Yes	Yes	No individual limits
Sweden	No, except exceptional circumstances			Yes	/	Yes	Yes	Yes	Yes		Yes	Yes	1-10 years

Costs of judicial appeals

1. Is legal aid open to the associations?
2. What is the maximum monthly income of a natural person in order to be entitled to benefit from legal aid?
3. Does the losing party have to pay the expenses of the lawsuit?
4. Does the losing party have to pay the expenses of the legal representative of the other party?

JUDICIAL PROCEDURES

QUESTIONS N°	COSTS OF JUDICIAL APPEAL			
	1	2	3	4
Germany	Yes, very limited	DM 900	Yes	Yes
Austria	No	≅between 10 000 and 100 000 ATS	Yes	Yes
Belgium	Yes	± FF 4 000 per month. If between 4/6.000 FF, a guarantee of FF 1 000 is required	Yes	No
Denmark	No, except in the event of characterised public interest	15 500 DKK per month	Yes	Yes, UEP
Spain	No, UEP	Less than double the SMIG	No, except in the case of temerity	No, except in the case of temerity
Finland	No		Yes	No, UEP
France	Yes, exceptionally	< 4 400 FF for total aid < 6 600 FF for partial aid	Yes	No
Greece	Yes	After the competent judge's decision (Art.196 civil Code)	Yes	No
Ireland	No	Not calculable	Yes, in theory	Yes, in theory
Italy	No	830 000 Lire	Yes, UEP	Yes, UEP.
Luxembourg	No	32 000 (guaranteed minimum income)	Yes, in theory	Yes, in theory
The Netherlands	Yes, in theory	Partial national minimum income	Yes	Yes
Portugal	Yes, in general	National minimum income	Yes	No
The United Kingdom	No	Not calculable	Yes	Yes
Sweden	No	/	Yes, UEP No, within the administrative courts	Yes, UEP No, within the administrative courts

Non judicial procedures

1. Is there a mediator specialised in the environment?
2. If there is a mediator with general competence, does he deal effectively with the questions concerning the environment ?
3. Are there specific complaint procedures
 - for the whole environment ?
 - for certain sectors of the environment ?
4. Is direct administrative appeal to the administration possible?
 - against general regulatory measures
 - against individual authorisations
 - against plans and programmes
5. Is administrative appeal possible only if the complainant took part in the consultation procedures ?
6. Is administrative appeal possible only by using arguments already raised in the consultation procedures ?
7. Is this administrative appeal open
 - to the ordinary associations
 - to the approved associations
8. Does administrative appeal have a suspensive effect ?
9. Can one issue complaints or objections against a general draft legal text
 - in an informal way
 - in an institutionalised way
10. Are there public surveys for projected work affecting the environment
 - if these are public works
 - if these are private works
11. Are there organised procedures for requiring expertise or contra expertise
 - before the decision
 - during an activity or work
 - can this request come from associations
12. Does a criminal settlement as regards environment exist?
 - in which areas
13. Can the legal entities of public law resort to arbitration ?
14. Is mediation or conciliation a mandatory prerequisite for a contentious appeal?
 - in general
 - as regards environment
15. Do administrative appeals or conciliation procedures have any effect on the prescription period of the contentious appeals?
16. Who takes responsibility for the conciliation or mediation expenses?
17. Can the persons governed by public law go for legal proceedings?
18. Is there a choice possible between administrative appeal, contentious appeal and an appeal to the mediator?
19. Can one resort at the same time to two of these procedures?
20. Does one have to pay for administrative appeal?

NON-JUDICIAL PROCEDURES

QUESTIONS N°	1	2	3		4			5	6	7		8	9		10	
Germany	No	?	No	Yes	No	Yes	No	No, in general	Yes, in general	No	No, UEP	Yes, in general	Yes	No	/	/
Austria	Yes (in the Länder)	Perhaps	Yes, UEP		No	Yes	Depends	Yes	Yes	No, UEP		Yes, in general	No, in general		Yes, for EIA and participation of the public	
Belgium	No	Yes	No	Yes	No	Yes	No	No	No	Yes	Yes	Sometimes	Yes	Sometimes	Yes	Yes
Denmark	No	/	Yes	Yes	No	Yes	Yes	No, in general	No	Yes	Yes	Sometimes	Yes	Yes	Yes	Yes
Spain	No	Yes	No	No	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	No	Yes	Yes
Finland	No	?	No	Yes	No	Yes	Yes	No	No	Sometimes		Yes, UEP.	Yes	Yes	Sometimes	
France	No	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	No	Yes	Yes
Greece	No	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	No	No
Ireland	No	Yes	No	Yes	No	Yes	Sometimes	No	Possible Appeal in	Yes	Yes	Yes	Yes	No	Yes	Yes
Italy	No	Yes	No	No	No	Yes	No	Yes	No	Yes	Yes	Sometimes	No	No	Sometimes	
Luxembourg	No	No	No	Yes	No	Yes	depends	No	No	Yes	Yes	No	Yes	Yes	Depends on special laws	
The Netherlands	No	No	No	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Portugal	No, except for Lisbon	Yes	No	No	No	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes, within the framework of the impact study	
The United Kingdom	No	Yes	/	/	No	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes	Yes
Sweden	No	Yes	No	No	Sometimes	Yes	Yes/No	Sometimes	Sometimes	Sometimes	Sometimes	Sometimes	No	No	Yes	Yes

NON-JUDICIAL PROCEDURES

QUESTIONS N°	11			12	13	14		15	16	17	18	19	20
Germany	/	/	/	Yes	No, in theory	No	No	?	?	Yes	No	No, in general	Yes
Austria	Yes	Yes	Yes	/	No	No	No	Yes	/	No	No	No	
Belgium	Sometimes	Sometimes	Sometimes	Yes, in all areas	Yes	No	No	Yes, if organised appeal	The state	Yes	Yes	No	±FF 500
Denmark	No	No	No	Yes, for small disputes	Yes	No	No	Yes	Parties	Yes	Yes	No	No, UEP.
Spain	No	No	No	No	No	No	No	No	Neither conciliation, nor mediation	No	No	No	No
Finland	No	No	No	No	No	There is no mediation		Yes	There is no mediation	No	No	No	Sometimes, but very few
France	No, except by the EC at the time of the public survey	No	No	Yes, - water (fishing), - forest	No	No	No	Yes, appeal stops the contentious appeal period (exception the ICPE)	?	Yes, if individual text	Yes	Yes	No
Greece	No	No	No	No	No	No	No	Yes, they can start the period without conditions	/	No	Yes	Yes	No
Ireland	Yes	No	Yes		No	No	No	No	Not applicable	/	No, in general	No, in general	Yes
Italy	No	No	No	No	No	No	No	No	/	Sometimes	Yes	Yes	/
Luxembourg	Yes	Yes	Yes	No	Yes	No	No	Yes, interruption of the period	/	Yes	Different purposes	/	No
The Netherlands	Yes	No	Yes	Yes, in all areas	No	No	No	/	There is no mediation	Yes, some	No	No	/
Portugal	No	No	No	No	No	No	No	No	/	No	Yes, sometimes	Yes	Yes
The United Kingdom	Yes	Yes	Yes	No	No	No	No	No	/	/	/	/	Yes
Sweden	Yes	Yes	No	No	Yes, under certain conditions	No	No	Yes	/	Yes, under certain conditions	Yes	Yes	No

IV
ANNEXES

EUROPEAN COUNCIL ON ENVIRONMENTAL LAW

CLAIMS AND REMEDIES RELATED TO THE IMPLEMENTATION OF COMMUNITY ENVIRONMENTAL LAW

The European Council for Environmental Law at its meeting of experts in Funchal on January 9-11 1997, noted the Communications of the European Commission to the European Council and Parliament concerning the implementation of Community Environmental Law and addressed certain parts of the said document. It made the following comments:

1. It is necessary to improve the possibilities for individuals and groups at national level for objecting and appealing whether in a litigious or other manner¹⁰ when

- a) Community environmental rules on environmental protection are not transposed or are not properly or fully transposed into national law;
- b) such rules transposed into national laws are not properly applied and enforced or are not applied and enforced correctly or in their entirety.

2. Such improvement requires the acknowledgment of the Community origin of these laws. It is therefore desirable that national measures transposing or applying Community rules refer to their Community origin. Moreover, judges, lawyers and other national authorities concerned with applying and enforcing Community laws ought to have ready access to them¹¹ and be informed of their origin.

3. Member states ought to make European community environmental legislation available and accessible to administrative and judicial bodies at national, regional and local levels. They should also facilitate the acquisition of knowledge of these rules.

4. National, regional and local authorities ought to inform the public on the possibilities of objecting and of using appeal procedures for enforcing environmental laws either in the courts or in any other manner. They ought to particularly indicate the quickest and least costly procedures.

5. For the purposes of clarification, a complaint is a written communication addressed to a public authority concerning a violation or a failure to apply community rules properly.

6. An appeal is any procedure provided by law, whether before an administrative tribunal or body or a court of law which is charged with ensuring compliance with Community environmental law.

7. Before introducing a claim or an appeal, information should be available to everybody in conformity with community legislation.

A. Access to justice

8. It ought to be taken into account that most judicial cases concerning the non application of Community environmental law concern acts or omissions of public authorities. However, it is important also to note other cases of a civil and criminal nature involving environmental damage and offences of an environmental nature.

¹⁰ Here we mean that the objections or appeals made be made to a judicial or administrative person or: body or to some public official whose function it is to deal with environmental complaints and disputes. It does not necessarily have to be made to a judge.

¹¹ The French text says access to them but this does not mean easy access. In theory everybody has access to Community environmental laws if they contact the Commission but everybody does not have easy access to them

9. Because of this, the establishment of specialised environmental bodies or of specialised environmental chambers (of courts or administrative tribunals) has been envisaged. Experience in certain countries shows that the establishment of specialised chambers can improve the application of Community environmental law. Moreover, it will be important to ensure the education and training of judges and environmental decision-makers in environmental law and their specialisation in this subject, whatever the jurisdiction to which they are assigned.

10. The locus standi¹² of individuals, legal or moral persons and neighbourhood organisations to initiate actions ought to be widely defined¹³

11. Charitable or non profit organisations the objects of which include, according to their statute, directly or indirectly environmental protection or the improvement of the quality of life ought to have locus standi to challenge acts subject to satisfying criteria prescribed by Member States such as their commitment for public interest, adequate representation of their constituency and transparency in their financial administration. If a procedure has been established, it should be based on such criteria.

12. Associations which satisfy the conditions abovementioned¹⁴ ought to be exempted from fees and charges. However, decisions on this subject ought to be determined by the subject matter of their action and in other words by the interest of the environment.

13. Complainants having locus standi should be entitled to ask provisional measures such as injunctions

B. Non contentious appeals¹⁵

14. The CEDE agrees with the Commission that contentious appeals ought to be a matter of last resort . At national level, several alternative methods of resolving disputes can be developed, be they administrative or civil so as to facilitate the hearing of claims (objections) and to deal with them quickly and economically. These procedures could take the form of direct appeals to the public authorities, conciliation or mediation procedures, recourse to an ombudsman or some other non contentious procedure available in the administrative structure of a Member State.

15. The object of these institutions ought to be to receive complaints, to contact those about whom they are made requiring them to respond, to require them to comply with Community environmental law, to advise the complainant of the different judicial and other remedies¹⁶ available to him or her and to publish periodic reports on complaints and the outcome of same.

16. Use of non contentious "soft" procedures should not preclude access to contentious judicial or other administrative¹⁷ remedies.

17. Access to non contentious procedures should be easier than the use of contentious procedures.

IS. In the long-term, it is desirable that there should be, at a Community level, a commission to mediate, conciliate and arbitrate disputes concerning the application of community environmental law.

¹² This means the right to challenge an act or decision or law or draft law or administrative action before a court or administrative body. By this we mean that sometimes courts or tribunals deny access to their procedures to individuals or groups which do not fulfill certain criteria. For example, individuals who are not personally and directly affected by the action or individuals that the court considers are acting frivolously or vexatiously.

¹³ This means that it ought to be easy for individuals, companies and NGOs to challenge acts in the sense that the procedural rules and the interest which they are required to show should not be too difficult to satisfy.

¹⁴ This means the conditions in 11.

¹⁵ In the UK and Ireland, we might consider that this refers to non judicial appeals but for the purpose of this study it means appeals dealt with by mediators, or conciliators or ombudsmen, not appeals dealt with by the Environmental Protection Agency, or the Minister or the administrative law tribunals.

¹⁶ It should be judicial or other in the common law system because we have appeals to administrative Tribunals presided over by administrators, not judges. I think those presiding would be judges in France.

¹⁷ This means that soft procedures like mediation were tried should not prevent the complainant from using other procedures if the soft procedures fail.

19. In order to complete this advice, the CEDE will prepare a comparative study of the position on this topic. As a first step, members ought to respond to the questionnaire enclosed. Each member shall prepare a study of 15-20 pages expanding on the answers to the questionnaire. These studies will be published.

EUROPEAN COUNCIL OF ENVIRONMENTAL LAW
Annex to the opinion adopted in Funchal the 11 January 1997

QUESTIONNAIRE

COMPLAINTS AND APPEALS IN THE AREA OF ENVIRONMENT

I. Non judicial procedures

1. Nature of acts to be submitted to this procedures

- plans and programs
- regulatory administrative
- individual administrative acts

2. Are there non-judicial appeals ?

- a) Who can use them ?
- b) Before which public authority (national, local) ?
- c) Before which ad-hoc organ (mediator, ombudsman, independent authority) ?
- d) Before parliament (petitions) ?
- e) Can expert opinion be asked ? _
- f) What are the effects of the non-judicial appeal ?

3. Are there non-judicial procedures ?

- a) Who can use them ?
- b) Before which administration or authority ?
- c) According to which procedure (form, delay, legal assistance, costs) ?
- d) Which are the legal effects (suspensive effect, injunctive relief, extent of control, precondition for instituting judicial proceedings) ?

4. Are there mediation procedures, conciliation or arbitration processes?

- a) Before whom?
- b) According to which procedure ?
- c) Which are the legal effects?

5. Effectiveness of these procedures?

- a) For the protection of the environment
- b) Quantitative details for each of the procedures

II. Judicial procedures in administrative matters

1. Who could institute an action?

- a) Legal capacity : natural persons, legal persons (national, foreign or international NGO), public legal persons
- b) Legal standing (or equivalent) for these persons.

2. Which acts could be attacked ? : plans, programs, regulatory administrative acts, individual administrative acts, refusals to act, failure to act or others.

3. Procedures

-

- a) Is an advocate needed ?
 - b) Are there time limits for instituting an action ?
 - c) Is there a need of prior administrative appeal before an judicial action can be instituted ?
4. Does the judicial procedure have a suspensive effect? (interim mesures, injunction) ?
5. Evidence (especially expert opinion) ?
6. Extent of the judge's control ?
7. Legal effects of the judicial procedure (anullment, substitution, injunction, restoration, demolition ...)
8. Costs : legal fees; lawyers' fees; costs for expert opinion; others
- III. Exceptional features for legal redress in civil and penal matters (if necessary refer to questions under point II)

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