

*Les colloques du Conseil d'Etat (2008)*

**Note related to the conference**

***The judge in Europe and the European community  
environment law***

***(Thursday 9 and Friday 10 October 2008 – Centre de  
conférences internationales de l'avenue Kléber)***

*Working document*

*Updated: 5 March 2008*

## **1/ Objectives of the conference**

**1-Context: a training initiative launched under French Presidency of the EU requested by the European Commission.**

### **The request from the Commission**

(1) The European Commission has adopted a Communication in September 2007 (COM(2007)502 final) which stressed in particular the role of national judge in the implementation of EC law and the specific Communication dealing with environmental law, in preparation, will raise similar issues.

(2) The Directorate General Environment (DGENV) is confronted with the problem of enforcement of community law in Member States, specifically for new Member States, as the number of infringement cases shows: it is in the environmental domain that the Commission – guardian of the Treaties – has opened the highest number of cases.

(3) The Commission wants to develop a co-operation program with national judges from 2008 onwards: this will be done through implementation of training seminar for national judges (seminars in several Member States from 2009) and workshops between judges of different nationalities and the Commission in order to improve mutual knowledge of working methods.

(4) In order to launch this co-operation program which will start in 2008, the Commission would like to be associated with a conference with all stakeholders. This conference will be organised during the French Presidency of the EU in Paris, with the scientific and financial support from the Commission. This event has been announced on 28 January 2008 by DGENV and by the Vice-President of Conseil d'Etat during the seminar organised in Brussels by the « Association of Councils of State and Supreme Administrative Courts of the EU » which theme was « The judge and the community environmental law ».

### **The answer to this request**

The Conseil d'Etat and the Association of Supreme Administrative Courts have immediately reacted positively for this project which will feed the dialog between judges but also allow developing closer relationships between judges and European institutions in charge of preparing and following application of European community law.

## **2- Objectives of the conference.**

-This conference provides the opportunity to invite judges from 27 Member States allowing them to share their experiences and how the community environmental law is applied in the various Member States.

-The conference will also allowed to stress the role of the national administrative judge as an important stakeholder in environmental law. This is in particular the case for the French Conseil d'Etat through its different activities (judge, legal adviser, studies, enforcement of Court decisions).

-The conference will also show the willingness expressed by judges to dialog with other stakeholders in environmental law (Parliament for what concerns the adoption of laws; local authorities and environmental and real-estate specialists; companies, lawyers).

-The conference will allow identifying the priorities for training actions in environmental law to be done in 2009. The content of the conference could also be used as a basis for development of trainings from 2009.

### **3- The conference's themes.**

- The role of the national judge in the implementation of the environmental community law. It is not needed to insist on national differences, it is better to identify common issues posed by implementation of community law.

- Public policy at stake is environmental policy, which involves various stakeholders (State, local authorities, industries, specialists of environmental law, environmental NGOs ...)

- Is it possible to identify possibilities for improvement in implementation of environmental community law by judges?

## **3/ DATE, PLACE AND ORGANISATION OF THE CONFERENCE**

**1-Date:** Thursday 9 and Friday 10 October 2008.

**2-Place:** *avenue Kléber, Paris XVIème (Centre de conférences internationales).*

### **3-Organisation**

The logistic will be provided by the French Conseil d'Etat with the support of the European Commission (DGENV) and Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union.

The French Conseil d'Etat will pilot the scientific steering of the conference, with the support of the Association, the Forum of EU judges for the environment and the Association of European Administrative Judges. A steering committee including these partners will define the content of the conference.

### **4-Working languages**

Translation English/French will be provided.

## **3/ PARTNERSHIPS AND PARTICIPANTS (250 PERSONS MAXIMUM)**

### **1- Partnerships.**

#### ***1.1- Definition of partnerships.***

1. ***For working on content of conference***, partnerships are sought with :

- ✓ Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union and Forum of EU judges for the environment, Association of European Administrative Judges ; these associations could find trainers and use their forums for allowing direct exchange of ideas ;
- ✓ The European Court of Justice ;

- ✓ European barristers.
- 2. *For participation in panels and in the perspective of publication of conclusions of the conference :*
- 3. *For targeting participants and communicating on the topic :*
- ✓ The Associations of elected people (AMF (Association of French Mayors) ; Associations of Mayors of large cities in France and Federation of Mayors of medium size cities);

### **1.2- Sponsoring**

A financial partnership may be sought with:

### **2-Participants**

The target of the conference could be:

- ✓ A hundred of participants are environment judges from Member States (travel and accommodation costs financed by the European Commission under conditions to be defined).

The other half of participants (100 to 150 persons) will consist of:

- ✓ Civil servants in charge of environmental matters (Ministry of Environment, large local authorities, environmental inspectorates) ;
- ✓ Members of European Courts ;
- ✓ Specialized lawyers ;
- ✓ Environmental NGOs ;
- ✓ Academics specialized in environmental law ;
- ✓ Journalists specialized in environmental questions ;
- ✓ Environment professionals and real-estate professionals.
- ✓ Members of NEEL (Network of European Environmental Lawyers, i.e. environmental lawyers in national administrations).

Being a conference oriented towards exchanges of courts practices and training of judges, it will be a closed conference, requiring registration. The legal representatives are also the main target as regard the target of the conference.

Concerning the diffusion of invitations, it is recommended to:

- ✓ Use electronic invitations to mailing lists

## **4/ DEFINITION OF TOPICS FOR THE CONFERENCE**

Many themes could be developed: implementation of the Directive on public participation, access to justice, air quality, waste management, nature protection ...

It is proposed to select four of potential topics: Access to justice with a specific focus on environmental liability Directive; level of control of judges in environmental issues with focus on Natura 2000 Habitat Directive.

## **5/ FORM, PROGRAM AND AGENDA OF THE CONFERENCE**

### **1-Form**

The planned duration is one and a half day, with starting of Conference at 10:30 am and ending on Friday at 4:00 pm.

Discussions will be organized with panels.

Panels will have a limited number of speakers (maximum of four), speaking time will be strictly limited (one hour for speeches which means 10 to 15 minutes per speaker which will leave 30 minutes for discussion with the audience).

## **2- Program and planned agenda**

*1/ Opening of the Conference* by Commissioner in charge of environment and by Vice-President of Conseil d'Etat.

*2/ Introduction to panels:* A judge and a representative of the Commission (or with a barrister, or with a lecturer in environmental law), will propose an overview of the difficulties posed by implementation of environmental community law. They will define the approach of the themes of the panels : it is proposed for each half-day a first panel dealing with a theme related to a « judge » problem (access to justice/level of control of judges on environmental decisions) which will be illustrated by a second panel focusing on a theme related to environmental law (Liability Directive/Nature protection law).

### *3/ Content and composition of panel – Thursday afternoon*

#### **• 1st panel : Access to justice**

**Overview:** The Århus Convention has highlighted Access to Justice in environmental matters as a main feature of good environmental governance. Access to justice is however very different from one Member State to another for citizens or for NGOs depending on whether they are considered to have an interest in bringing an action. In addition, issues related to costs of proceedings may, in practise, limit the access to justice.

**Potential issues to deal with:** Is access to justice guaranteed, despite the differences observed between Member States? What is foreseen for the proposal of Directive done by the Commission? How far are proceedings costs obstacles for access to justice? Does the attitude of jurisdictions change in this domain? Is there a need of exchanges between Courts on this issue, specifically for confronting practices?

**Panel moderator:**

**Potential speakers:**

#### **2<sup>nd</sup> panel: Access to justice in practise: the Directive on environmental liability**

**Overview:** The Directive 2004/35/EC environmental liability with regard to the prevention and remedying of environmental damage is a very novel element in the environmental law. This Directive, which transposition should have been done by the end of April 2007, requests that Member States put in place specific procedures in case of environmental damages. These procedures are based on the Polluter Pays Principle. A specific regime for challenging decisions taken by authorities in this domain is foreseen by the Directive.

**Potential issues to deal with:** What are the powers of judges for modifying a decision or imposing compensations in case of environmental damage? Are the review procedures foreseen by the Directive to be based on standard review procedures or is it needed to develop a specific regime for environmental liability? What are the links between civil law and public law in the regime of the Directive? Are legal proceedings durations well adapted for cases related to environmental liability? Is there a need of exchanges between Courts on this issue, specifically for confronting practices?

**Panel moderator:**

**Potential speakers:**

### *4/ Content and composition of panel – Friday morning*

#### **3rd panel: Level of control of judges**

**Overview:** Environmental law needs often to refer to very complex technical issues and requested from the judge to be confronted with expertises. It is true for instance in case of environmental impact

assessments. The control done by the jurisdictions could be only a procedural control or, on the contrary, could analyse in details arguments in favour or against a project.

**Potential issues to deal with:** Which level of control (for instance Environmental Impact Assessments Directive, impact studies for Natura2000 sites)? Is it a procedural control or a more thorough control? What are the needs of training in this domain?

**Panel moderator:**

**Potential speakers:**

#### **4<sup>th</sup> panel: The control operated by judges in action: the Habitat- Natura 2000 Directive**

**Overview:** The Directive 92/43/EEC Habitats is the main text protecting nature in Europe. This Directive put in place a European network of protected areas. The protection regime of these areas does not exclude human activities but aims on the contrary to conciliate economic development with nature protection. In this context, analysis of impacts of projects on Natura 2000 sites plays a crucial role for authorisation of these projects. Taking into account that nearly 14% of the European territory has been designated for Natura2000, it is clear that the national judge is and will be more and more frequently confronted with citizens or NGOs challenging the authorisations.

**Potential issues to deal with:** What is the degree of control of judges on impact studies? What are the approaches used for comparing potential damages to nature and socio-economic interests? What are the relationships of judges with technical expertise? What are the powers of judges for preventing damages to sites? What are the needs of training in this domain?

**Panel moderator:**

**Potential speakers:**

*5/ Conclusion :*

### **3- Speakers and moderators**

The moderator will contact the speakers in order to confirm the succession of speeches (in principle, as planned in the program) and will define with them the content of their speeches. The moderator organizes the debates in order to make speeches complementary.

The moderator is in charge of:

- ✓ Briefly introduce the speakers of the panel and give the floor ;
- ✓ In the second half, select questions (grouping them by groups of 2 or 3) and attributing the answer to a panellist (if the attribution has not been made in the question).
- ✓ He/she checks that the time foreseen for the panel is kept.

He/she concludes the panel in the light of speeches and questions.

## **6/ DOCUMENTS FOR PARTICIPANTS**

**Documents for participants:**

- ✓ List of participants
- ✓ Presentation of speakers
- ✓ Short bibliography on environmental law. Possibility to select some papers related to the issues dealt with the panels.

## **7/ PUBLICATIONS AND FOLLOW-UP OF CONFERENCE**

The Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union will publish a report on the Conference on its web-site and in its information letters.

It is envisaged to contact European reviews specialized in the environmental law for publication of summary reports.

## **8/ ELEMENTS FOR NEXT STEPS**

1-Setting-up of a Steering Committee for the theme and development of the Conference (initiative of Conseil d'Etat - SRE) with following participants:

- Julio Garcia Burgues (Head of Unit « Infringements » DG Environment European Commission)
- Luc Lavrysen (Belgium Constitutional Court, Forum of EU judges for the environment) ;
- Werner Heermann (Würzburg Administrative Court, vice-president of Association of European Administrative Judges);
- Jan Passer (Czech Supreme Administrative Court, member of Association of the Councils of State and member of Forum of EU judges for the environment) ;
- Yves Kreins (Belgium Conseil d'Etat belge and General Secretary Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union).

If the Steering Committee takes place in Paris, it is proposed to add:

- Y Aguila, Member of French Conseil d'Etat specialist of environmental law;
- D Guihal, former General Secretary of the Forum of EU judges for the environment (currently working for Conseil d'Etat), or a judge of administrative court or administrative appeal court. ;
- X Delcros, barrister and professor of public law, in charge of professional training of barristers of Paris bar ;
- a representative of the French Ministry of environment (Xavier-Thierry Girardot, Director of Legal Affairs)
- a representative of the association representing European lawyers in Brussels?
- the chief-editor of a European review dealing with environmental law ;
- a lecturer specialized in environmental law.

2-The objective is to have the organisation ready for 30 June 2008 before the summer break.

It is needed to define the date for sending the invitations (for booking dates).