

CHALLENGES FOR CIVIL ENVIRONMENTAL LAW:

Conclusions:

This year study commission two focused on civil environmental law. As environmental law is part of the administrative law in many civil law jurisdictions environmental law the scope of the study extended beyond the strictly civil aspects, which made for an interesting comparison between the different approaches. We acknowledge the assistance that many of the administrative courts gave to members of this commission in completing the questionnaire.

Interesting and in depth answers to the 2014 questionnaire were sent. The answers raised six key points for discussion:

1. Is there a need for specialist courts to handle environmental cases?
2. The processes for enabling multiple parties to bring their claims for compensation against the polluter
3. The difficulties in proving causation
4. Limitation periods
5. Consumer protection
6. The polluter pays principle.

In many countries specific laws are made to protect the environment: in the areas of water (pollution), mining, forest and fauna protection, waste management, air pollution, soil contamination and radioactive waste. In many countries also, regulatory authorities are invested with the power to oversee environmental protection and enforcement.

In most countries regulatory powers are given to the relevant ministries of government. Nevertheless in some others we see that specific public authorities are created by primary law. Some of these regulators have the power to bring cases before the courts. It is important for the effective enforcement of environmental laws that regulatory authorities can operate and act independently from government.

In most jurisdictions it seems that environmental cases are not treated as some special category requiring specialist courts or specialist training of judges but rather are dealt with under the usual court processes that apply to cases in the civil or administrative field. There was a lot of discussion about class/collective actions and representative proceedings where those procedures are available which is in some common law jurisdictions. In those jurisdictions where these actions are not available other instruments have been developed.

A common theme whatever the jurisdiction is proving causation. The normal rules generally apply which means that the burden falls upon the claimant and requires expert evidence which makes the litigation very costly and very complex. In some jurisdictions they have reversed the onus to assist to overcome these kinds of difficulties.

Recognizing that environmental damage is often not discovered until after limitation periods have expired many jurisdictions have specific legislation that commences the limitation period from the time that the damage is discovered not from when it occurred.

Time did not permit discussion about the various consumer protection laws in place in many jurisdictions. Again general principles by and large apply.

The polluter pays principle is generally recognized in the jurisdictions which responded. Landmark cases are cited in many responses. Most of them underline that the polluter pays principle is recognized as a general principal of law. In some answers there is also mentioned that critics have asserted that the application of the principle may be too far reaching.

Next year the second study commission will examine expert evidence.

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