

Second Study Commission

Civil Law and Procedure

2014 QUESTIONNAIRE

57th Annual meeting of IAJ – Foz do Iguacu (Brazil)

Challenges for civil environmental law:

In Yalta we decided that in 2014 our second study commission will focus on challenges for environmental law. This questionnaire does not only approach the subject from the angle of civil or private law but also takes into account that in many jurisdictions enforcement of environmental law is part of the administrative law. Nevertheless in many jurisdictions administrative enforcement cases are brought before the civil courts. From that perspective it is appropriate to tackle in this questionnaire the challenges for environmental law both from the civil as well as from the administrative law angle.

General questions

1. Briefly set out the key environmental legislation and regulatory authorities in your jurisdiction both in the field of civil law as well as administrative law. Are there specialized courts (civil and/or administrative) that exclusively handle cases of environmental law?
2. a. To what extent are environmental requirements enforced by regulators in your jurisdiction.
b. What enforcement powers do environmental regulators have in connection with the violation of environmental regulation?
3. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

4. What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?
5. a. What types of liabilities can arise where there is a breach of environmental laws and/or permits?
b. Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?
6. Are groups or class actions available for pursuing environmental claims, and are penal or exemplary damages available?
7. Do regulators keep public registers of environmental information? What is the procedure for a third party to search those registers?
8. Briefly describe any proposals of new policy/national plans/regulation/ or reform?
9. a. Are there any national targets or legal requirements for reducing greenhouse gas emissions, increasing the use of renewable energy and/or increasing energy efficiency? Is there a national strategy on climate change, renewable energy and/or energy efficiency?
b. Is your jurisdiction party to the United Nations Framework Convention on Climate Change (UNFCCC) and/or the Kyoto Protocol? How have the requirements under those international agreements been implemented?
10. Do the usual rules of causation and statute of limitation apply in toxic tort cases?
11. Can an individual bring legal action against a polluter, owner or occupier?
12. a. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale or sale of a company (share sale)?
b. In what circumstances can a seller retain environmental liability after an asset sale or a share sale?
c. Does a seller have to disclose environmental information to the buyer in an asset sale/a share sale?
13. What is the environmental liability of a company after it dissolved?

Case law

14. Could you please briefly indicate whether in your jurisdiction landmark judgments have been rendered by the (supreme or highest) courts (please just one example per issue) in which -

a. the principle known as “the polluter pays” is accepted

b. class actions have been successful in cases of infringement of environmental law and in which compensations has been awarded to the persons who sustained the damage

c. in cross border cases problems of identification of the applicable law have been solved.