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Editorial

The main topics of this issue are the *enforcement of EU law*, and *criminal law and the environment*. Enforcement of EU law is often prescribed by the national legal framework and therefore depends strongly on national definitions of the findings of the facts. When focusing on criminal environmental law one of the main hurdles to the effectiveness results from the different national implementation practices of European Directives. In this respect, the problems also differ between the different EU Member States.

This issue of elni Review provides valuable insights into selected national law frameworks:

"Environmental penalties in Italy" by Paola Brambilla focuses on the history and actual issues of criminal environmental law in Italy.

"Enforcing EU environmental law outside Europe? The case of ship dismantling" by Thomas Ormond provides a special view on EU law enforcement from an international perspective.

Armelle Gouritin and Paul De Hert critically discuss the recent developments of European environmental criminal law in their article "Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law: A new start for criminal law in the European Community?"

Topics which focus on actual EU-law issues:

The viewpoint of environmental organisations towards the setting of standards of emissions is provided in "Development of harmonised European standards for measuring emissions from construction products in CEN from the perspective of environmental organisations – Part 1" by Michael Riess and Ralf Lottes.

The article "Regulation of nanomaterials under present and future Chemicals legislation - Analysis and regulative options" by Stefanie Merenyi, Martin Führ and Kathleen Ordnung critically reviews REACH under the perspectives of nanomaterials. It also contains information on recent developments on EU level.

Other topics focus on national laws of non-EU countries:

In his article Eugene A. Wystorobets focuses on the "Principle of public participation in environmental law of the Russian Federation" and provides general insights into Russian law.

"A survey of the Vietnamese environmental legislation on water" by Michael Zschiesche and Duong Thanh An focuses on Vietnamese water law and the organisational background of administrative institutions in this context.

The next issue of the *elni review* will focus on the Industrial Emissions Directive (IED). Please send contributions on this topic as well as other interesting articles to the editors by the end of June 2009.

Nicolas Below/Gerhard Roller

March 2009

elni Forum 2009

on 14th May 2009

at FUSL, Facultés universitaires Saint-Louis in Brussels, Belgium.

"The Directive on Industrial Emissions and its implementation in national law - key issues and practical experiences"

The elni Forum 2009 will offer the opportunity to discuss implementation issues of the upcoming European Directive on Industrial Emissions (IED). European and national environmental law experts will comment on this issue.

The **Annual Meeting of the elni Association** 2009 will take place before the elni Forum.

More information is available at:
www.elni.org

Special Announcement

The representative for interested parties of the ECHA Management Board and co-founder of the *Environmental Law Network International* – Marc Pallemaerts – is now member of the ECHA Board of Appeal.

The editors wish him all the best and every success in the future!

In his place Martin Führ, also co-founder of *elni* and editor of the *elni Review* was nominated at 18 December 2008 by the Commission as a new member of the Management Board of the ECHA (European Chemicals Agency) to represent interested parties.

Environmental penalties in Italy

Paola Brambilla

In this article, environmental penalties in Italy will be discussed with a particular focus on the:

- *history of environmental penalties in Italy*
- *non-cohesion of penalties*
- *Italian law on environmental crimes*
- *administrative penalties in Italy*
- *assignment of jurisdiction to Italian courts*
- *statute of limitation in Italy*
- *jurisdiction profiles in Italy*
- *compensation for environmental damage.*

1 History of environmental penalties in Italy

The Italian law on environmental protection still lacks proper substantive and legal cohesion. This is due to the stratification of those laws set down to protect single environmental assets not only within a primarily criminal and administrative context, but also a civil context, and which have been gradually integrated by domestic and EC legislation to protect the environment and tackle the problem of environmental damage.

Over time the law has sought to attenuate this lack of cohesion by means of asset protection institutes – some of which have an environmental standing – but for reasons other than those of environmental protection (institutes intended to protect landlords' rights, state and public property, and so forth).

The main reason for this curiously slow yet constant evolution in Italian environmental law is chiefly attributable to the fact that the Italian Constitution in 1948 did not implement specific environmental regulations.[1] There was a single rule, Art. 9, on landscape protection, and another, Art. 32, on health protection; Art. 9, in particular, purely concerned aesthetics while Art. 32 was clearly anthropocentric.

It was not implemented until the constitutional reform in Italy in 2001 when the protection of the environment and ecosystems was to become a matter of state legislation. Although not listed under the key principles, it was then at least covered in section V in the context of relations between the government and local authorities (Art. 117(2), letter s).

This historical-legal development demonstrates how conceptual autonomy of environmental protection was originally lacking under the Constitution in the *grundnorme* – at least in positive terms – but was then reinterpreted by the Constitutional Court, developing a concept of environmental value that innovated and was adapted from constitutional laws. The concept of landscape in Art. 9 was thereby given a broader meaning closer to that of the environment.

Art. 9 was attributed the function of "protecting the aesthetic-cultural value of landscape according to the Constitution's concept of the landscape. This means that in Art. 9(2) protection of the environment is combined with that of historical and artistic heritage and, according to the precept of law and as already indicated by some authorities, is laid down in the interest of protecting and improving the aforementioned (cultural) assets, thereby helping to raise the general public's intellectual standards," as stated in Constitutional Court, 29 December 1982, No. 239.

The same was applied to the concept of health as stated in Art. 32 of the Constitution, with regard to which the Council affirmed that "health protection requires the promotion and protection of the health and safety of the natural environment at home and at the workplace" Constitutional Court, 21 July 1983, No. 226.

Regarding the constitutional law on landscape as referred to in Art. 9 of the Constitution, the Court then went on to state that "this means the aesthetic-cultural value (also) of the territory is now of primary importance to the law and requires the involvement of all public institutions and, particularly, the Government and the Regions, to protect and promote its value" (the Constitutional Court, 21 December 1985, No. 359), reinforcing the shift from the non-cohesive approach to landscape, "aiming principally to protect individually considered natural beauties and to protect the landscape in a cohesive and global manner," (sent. No. 151 of 1986) and thereby making it synonymous with environmental protection (cf. Decrees 359 of 1985, 67 of 1992, 269 of 1993). Protection of the landscape is added to that of the environment (Constitutional Court, 20 February 1995, No. 46) insofar that this protection, guaranteed to be one of the Constitution's top priorities and fully entrusted to the Republic, is meant as the "environmental values of natural beauties" (the Constitutional Court, 24 July 1998, No. 334).

1 B. CARAVITA DI TORITTO, *Il diritto costituzionale dell'ambiente,* in *Codice dell'Ambiente*, ed. S. NESPOR and A.L. DE CESARIS, Giuffrè, 2003, p. 90 ff.

Only after the 2001 reform was the protection of the environment and ecosystem properly covered by the constitution. Exclusive state legislative power was assigned to this under the terms of Art. 117(2), letter s) and various regional attributions (Decrees No. 536 and 407 of 2002). However, it did not go so far as to confer all decisions on the matter to the regions rather than to the state (*inter alias*, Constitutional Court, 1 October 2003, No. 303). This situation is comparatively recent and occurred at the time when domestic legislation was evolving. Progress was made in the legislation of environmental protection and its individual components: examples include Law 319/1976 on water pollution prevention, Law 431/1985 on the protection of areas of particular environmental interest, and Law 349/1986 that established the Ministry of the Environment and above all set down the initial regulations on environmental damage.

The legislation in case – sporadic as it was – led to the creation within the Italian legal system of both administrative and criminal penalties which, with regard to criminal offences, overlap with a whole set of pre-constitutional legal provisions dating back to 1930 that only protected environmental assets directly. The criminal code, in fact, provided for a whole range of criminal cases and fines aimed at punishing damage to various goods and assets which, indirectly, may be fairly interpreted as able to provide criminal protection against action damaging the environment.

We are referring to those crimes that compromise public safety (Art. 423 and following articles of criminal code: fire, forest fires, fire damage, fire caused by negligence, flooding, landslides or avalanches; Art. 674: dangerous disposal of objects), pose a risk to public health (Art. 439 and following articles of criminal code, pollution of waters or foodstuffs, diffusion of a plant or animal disease), affect property and possessions (Art. 632 and following articles of criminal code, diversion of water and changing the aspect of lakes, damaging, spoiling and soiling of that which belongs to others; Art. 733 of criminal code, damage to domestic archaeological, historical or artistic assets; Art. 734 of criminal code, destruction or spoiling of natural beauties), disrupt public order (Art. 650 of criminal code, non-compliance with authorities' provisions) or disturb the peace (Art. 659 of criminal code, causing distraction to those working or resting). All of these are crimes that cause polluting emissions or affect specific aspects or the structure of the ecosystem.

The above information on these offences – whether misdemeanour or transgression (a distinction the origin and legal terms will be covered later) – is meant to encourage the protection of those single assets and interests that are not directly associated with the protection of the actual environment. The information applies to landlord's rights, or an abstract concept of preserving public order and public health, in that anthropocentric and authoritative manner of a police state. The legislation in question, however, clearly can be used and interpreted as a promising means of protecting attributable environmental values.[2]

As is well known, ordinary legislation on construction and urban design and therefore on the use and defence of the land, protected areas, woodland, and fauna, has explicitly introduced a whole range of criminal and administrative penalties to protect the aforementioned standard environmental values.

Lastly, the implementation of community environmental directives has paved the way for other domestic environmental laws in all sectors – water, air, waste, industrial plants posing serious risk, valuation of environmental impact, to mention just a few – together with a whole package of administrative and criminal penalties as decided by the individual member states.

We have therefore seen how the extreme lack of cohesion in the system of environmental penalties is due to the particular historical evolution of the associated legislation, only partly remedied by Italian Legislative Decree 152/2006 – the so-called Environment Code – that brings together in a single *corpus* some of the provisions on water pollution prevention, air and waste in the terms of Environmental Impact Assessment and Environmental Strategic Assessment.

2 Non-cohesion of penalties in Italy

The previous chapter offered a brief and simplified overview of the fragmentary and non-cohesive nature of environmental penalties that could, at a pinch, be called a "penalty system".

This was confirmed by the same judge who recently stated that, on the one hand, "the environment is not a subject in the technical sense, but a constitutional value" (Decree 62/2005), and on the other hand, that this value is "an intangible asset with legal importance only in terms of Law 349 of 1986 and among the *"res communia omnium"*… in various coherent parts each of which can in turn constitute a need for care and protection; but which, all combined, are referable to units."

Appropriate, systematic action is therefore required to methodically form each aspect of the law into a whole.

According to the Constitutional Court, "the fact the environment can be exploited in a whole manner of ways and therefore require many different regulations to ensure protection in every regard should not undermine it as the universal asset considered by law. The environment is protected as an element that de-

2 For more information, M. DI LECCE, *Diritto penale dell'ambiente*, in *Codice dell'ambiente*, ed. S. NESPORT and A.L. DE CESARIS, Giuffrè, 2003, p. 284 ff.

termines quality of life. It is not protected as an abstract natural or aesthetic matter but as the natural habitat in which man lives and works, essential to society and therefore to citizens. It is protected according to values close to our heart and, above all, according to constitutional rules (constitutional Art. 9 and 32) that assign it primary importance."

The Court is aware of the system's lack of cohesion: in addition to the constitutional rules it states that "there are also the ordinary provisions that implement the aforementioned rules and that regulate and ensure everyone's public and individual appreciation of the asset. They ensure protection by setting down specific obligations for vigilance and action. Criminal, civil, and administrative penalties ensure real and effective protection. The environment is therefore a legal asset insofar that it is recognised and protected by law."

Not only therefore is there a lack of cohesion in substantive terms (controls and prohibitions) and with regard to the imposed penalties (civil, criminal, and administrative), but the processing system is also confused as each penalty involves different impugning systems and often different jurisdictions, paradoxically resulting in an administrative penalty far more serious than the criminal one, to be discussed later on.

3 Italian law on environmental crimes

An important attempt at systematisation – still in progress – was recently approved by the Council of Ministers, on 24 April 2007, setting down a law on environmental crimes with section VI-bis, entitled *"Crimes against the environment"* and added to the criminal code (book II).

The report, drawn up in accordance with the law, emphasises how the environment, as a juridical asset of constitutional importance, can be legitimately given criminal protection against conduct that can compromise its existence and equilibrium. This is due to the insufficiency of the environmental penalties involving administrative penalties or fines both in Italy and the rest of Europe. The issue was also raised, for example, by the Strasbourg Convention – drawn up as part of the European Council on 4 November 1998 – with regard to protecting the environment by means of criminal law (undersigned by Italy on 6 November 2000, but not ratified), on the basis of which the Decision of the European Council 2003/80/GAI of 27 January 2003 was adopted.

This framework decision, as resorted to by the European Commission, was rejected by the EU Court of Justice on 13 September 2005 (Case C-176/03) not due to reasons of merit but because the subject of environmental protection was considered the competence of the Community and not that of the "Third Pillar".

The recent proposal for a directive on criminal legislation in connection with environmental protection, of 9 February 2007,[3] followed by Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, is therefore based on and improves upon the text of the framework decision, adding the crime of causing deterioration of a protected *habitat*.

The European directive demands that the Member States take a tougher stance on all conduct posing serious damage to the environment, ensuring effective penalties by setting down minimum penalties for crimes against the environment; while in serious cases, applying criminal penalties such as imprisonment that acts as a better deterrent than administrative penalties.

More specifically, the European directive obliges Member States to provide for criminal penalties in their national legislation in respect of serious infringements of provisions of Community law on the protection of the environment, creating however no obligations regarding the application of such penalties or any other available system of law enforcement in individual cases.

The directive, of course, does not apply to other systems of liability for environmental damage under Community law or national law. It provides for minimum rules only, so that Member States are free to adopt or maintain more stringent measures, compatible with the Treaty, regarding the effective criminal law protection of the environment.

Directive 2008/99 provides that all Member States shall ensure that a list of conducts constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence. Such conduct is:

a. the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
b. the collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
c. the shipment of waste, where this activity falls within the scope of Art. 2(35) of Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is undertaken in a non-negligible quantity,

3 COM (2007) 51.

whether executed in a single shipment or in several shipments which appear to be linked;

d. the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
e. the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
f. the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
g. trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
h. any conduct which causes the significant deterioration of a habitat within a protected site;
i. the production, importation, exportation, placing on the market or use of ozone-depleting substances.

A strong protection needs to be extended to the "prolegomena" of the crime, so that Art. 4 of the Directive provides that all Member States shall ensure that inciting, aiding and abetting the intentional conduct referred to in Art. 3 is punishable as a criminal offence.

All criminal penalties, according to the text, must be effective, proportionate and dissuasive; even legal persons can be held liable for the said offences where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 26 December 2010.

The final version of the Directive is less detailed then the original Commission's proposal that aimed to penalise action whether deliberate or caused by serious negligence, resulting in the death or mortal wounding of people or significant damage to the quality of air, land, water, flora or fauna, or that has been committed by a criminal organisation, with a prison sentence of no less than 5 years and a fine of no less than 750,000 Euros in the case of companies. After that, the first proposal also provided for additional or alternative penalties such as recovery and the repairing of environmental damage, and inhibitory provisions to prevent businesses responsible for the crime to continue operation.

Continuing this objective of imposing penalties for the most serious crimes against the environment, the Italian government has implemented the action required to determine an overall penalty system able to ensure specific criminal measures for the protection of the environment, by amending the criminal code.

The amendment to the criminal code does not, however, take into account illegal activity that can cause real damage or danger to the landscape or to cultural assets. The law considers this activity as requiring systematic autonomy, even though it falls within the definition of an "environmental asset", and that any unification of the applicable penalties would have to be done at a later stage. Similarly, the amending law does not change the purely "formal" infringements (non-authorisation or violation of the provisions for authorisation), or offences posing "abstract danger" (exceeding the pollution thresholds as previously set down by law) associated with single technical regulations imposed by non-standard environmental legislation, such as Legislative Decree No. 152 of 3 April 2006.

However, the continuing presence of various criminal regulations, some which are standard and others set down by special laws, would aggravate the problem that there is no efficient management of new crimes and the pre-existing regulatory framework; the resolution of this problem has been procrastinated and would require the issuing of a legislative decree able to coordinate new penalties with previous ones.

The only coordination measures stated by the bill are based on the hypothesis that the same offence is prosecuted either as a crime posing abstract danger or as a criminal action (as for a crime posing real danger or damage); in this case only the second provision is provided for as per the so-called principle of enforcement. A principle is also established for distinguishing between new administrative and criminal penalties, insofar that offences punished according to the terms of VI-*bis* of the second book of the criminal code require application of only the criminal provisions, even when the offences themselves are punished with administrative penalties set down by special environmental provisions.

The bill also offers the option of payment of a reduced monetary fine with extinguishment of the criminal offence, in the case of lesser infringements of the environmental code, but which is covered by another legislative decree.

As for the provisions of the bill, the amended law assigns to the criminal code the matter of wilful misconduct and negligence, of real danger or damage, on the provision of a claimed compliance of the principle

of the offensive nature of the crime and community provisions, for which all the crimes considered present an increasing degree of offence to the protected juridical asset, from real danger to damage and 'environmental disaster'. The same underlying principles have led to the consideration of mainly wilful offences, and only when necessary to offences caused by negligence, discarding the case of gross negligence as considered by the directive, which is not covered by the Italian law outside of the provision of Art. 133 of the criminal code that considers negligence only for the purposes of assessing the degree of the offence.

Lastly, the amended law also covers the responsibility of legal persons, as considered by Legislative Decree 231/2001, extending it also to the specific cases of environmental offences.

The new cases of penalties involve offences of "environmental pollution", "environmental disaster", "alteration of natural heritage, flora and fauna", and "illegal trafficking of waste". Also considered are new aspects such as "organised environmental crimes" aimed at punishing instances of "ecomafia", "environmental fraud" and "obstruction to control", with negligence involved in some of the aforementioned offences.

The bill also establishes that in the event of conviction that is application of the punishment according to Art. 444 of the Code of Criminal Procedure the judge orders the reclamation, recovery and, when technically possible, the rehabilitation of the areas, with the expenses to be paid by the offender and the persons responsible and enforcement suspended on probation if these obligations are met. A specific criminal penalty is given by the judge or on the order of the Authority to anyone who fails to comply with the provisions of the law, requiring the rehabilitation, recovery or reclamation of the air, water, soil, subsoil or other environmental resources that were polluted.

As an incentive to rehabilitate natural resources, however, there is the possibility of active repentance. In this case, punishments can be decreased from half to two-thirds for those who seek to minimise the effects of the offence, or even offer real help to the police authority or judicial authority to gather decisive proof for the reconstruction of the facts, determine or capture one or more perpetrators of the crime, avoid the committing of further offences and confiscate the resources required to commit offences. There is also exemption from punishment for the perpetrator of one of the afore-mentioned crimes should he voluntarily eliminate the danger or damage he had caused prior to the criminal action.

The bill has still not been implemented, even though the Italian Ministry of the Environment formally pushed for the amended law to be passed in 2008.

As for the criminal penalty system, there are still not only legal institutions inside the criminal code – on offences and technical offences – that only indirectly protect the environment, but also other legal institutions contained in special criminal bills, on offences and technical offences;[4] this way we face with the incrimination, in the case of offences, just for wilful deceit, while in the case of technical offences for both wilful deceit and negligence; with the paradoxical extension – because of the mental ingredient of crime – of incrimination to facts of minor criminal disvalue.

In the event of both cases occurring, different statutes of limitation are applied. A fine is then settled – with few exceptions – to technical offences, so that the deterrent effects associated with the specific criminal instrument are clearly lost.

Lastly, it should be mentioned how the institution of continuity, as referred to in Art. 81 of criminal code offers a more lenient punishment differing from the one that would be applied with the so-called material accumulation, not only in the hypothesis of so-called formal concurrence, in the case of someone who violates several regulations with one action or omission, but also in the event of continuance, when someone violates the same regulation more than once. In all these cases, in fact, no sentences are inflicted that are equal to the number of the committed violations. Rather, the inflicted punishment is for the most serious violation and can be multiplied up to three times.

Administrative penalties, instead, are less serious than the criminal ones but continuance is not covered – hence the paradoxical results to be discussed below.

4 Administrative penalties in Italy

In Italy, administrative penalties are set down according to Law 689/1981, formally relating to de-penalised crime, but introducing uniform regulations for all cases of administrative offence. The criteria so determined for assigning responsibility, the causes of exclusion, the terms for contention, and the statute of limitation are sometimes the same established for crimes, and some other times completely autonomous. The result of this regulatory framework is a penalty system with a broad scope of application. This is because incrimination includes both wilful misconduct and negligence, and therefore also instances of negligence that are sufficiently transient and formal as to be almost real forms of objective responsibility.

Likewise, the Italian legislator has until recently gone against the Community directives and, as implemented by other European States, has for some time favoured administrative penalties over criminal ones with regard to the environment.

However, the results of this legislative choice are not quite as one would imagine. The specific configuration of the administrative offence and particular pro-

4 M. DONINI, *Delitto contravvenzionale. "Colpa iuris"e oggetto del dolo nei reati a condotta neutra*, Giuffrè, 1993.

cedural laws has often ensured a more definitive and strict administrative rather than criminal penalty.

As an example, transport of waste without appropriate documentation is punished according to Art. 258 of Legislative Decree 152/2006 with an administrative penalty of between 1,600 and 9,300 Euros. Without an institution of continuity of the administrative offence, each infringement of the law which prescribes proper transfer note in the transport of waste requires the imposition of a single penalty, with application of the accumulation of penalties (tot poena, tot sententia) and therefore imposition of high penalties in the case of more than one transport.

Art. 8(1) of Law 24 of 24 November 1981, No. 689, determines that "unless otherwise established by law, whoever by action or omission violates several regulations that provide for administrative penalties, or violates the same regulation several times, will receive a penalty for the most serious violation, increased by up to three times."

The above provision considers the "formal concurrence" of administrative offences, regulating the hypothesis in which with a single action or omission, someone violates several legal provisions that provide for administrative penalties (so-called homogenous formal concurrence): in both cases the transgressor is given the penalty for the most serious violation increased by up to three times (so-called juridical accumulation of penalties).

Having said that, for those hypotheses of multiple violations committed with a single action or omission, the criteria of juridical accumulation as stated in Art. 81(1) of the criminal code – should be configured[5] as a forecast of clear criminal derivation. In fact, Art. 81(1) of the criminal code determines that a person who with a single action or omission violates several legal provisions or commits multiple violations of the same legal provision "should be given the punishment required for the most serious violation increased by up to three times".

Although it might seem difficult to assert that, in the case of several transport of the original amount of waste with incorrect transfer note, there can be a single action and omission leading to the application of the most lenient formal concurrence compared to the stricter material accumulation.

Recent confirmation of the above is, for example, the recent verdicts on the point by the Court of Venice, 8 June 2006 No. 558 and 3 November 2006 No. 254. These expressly affirm that there is a material concurrence of administrative offences pertaining to a multiplicity of transports with transfer notes featuring incomplete or missing information, resulting in the exclusion of multiple transports from the channel of the formal concurrence of administrative violations as per Art. 8 of Law 689/1981 and reiterated in Art. 8-*bis* of the same law.

Moreover, the administrative offence is handled not by the procedural law that determines the punishment, as is the case with criminal offences, but by administrative procedure[6]. The latter is much more concise in spite of the specific guarantees for the relative procedure of Law 689/1981 (which are special ones compared to those for the general administrative procedure established by Law 241/1990; the inapplicability of the provisions of the latter, also with regard to terms, has been recently stated by Civ. Cass. SS.UU., 27 April 2006, No. 9591).

There is more besides: the funds of the Public Authorities, and particularly of local authorities restrained by stability pacts and the rules for invariance of expenditure, force these authorities – which are required, among other things, to impose environmental administrative penalties – to handle said procedures quickly and efficiently as the proceeds of the penalties are an important means of funding the activity. This is also the case when the proceeds of penalties must be used to execute specific environmental improvement work, as is the case for example with the water sector.

The monitoring of the Italian Court of Auditors, which often and always successfully repairs fiscal damage caused by officials who fail to properly verify and collect administrative penalties (cf. lastly, for acknowledging the principles involved, Court of Auditors, Appeal section II, 21 November 2006 No. 378), is a reason for the particular efficiency of the administrative punitive procedures.

Administrative penalties are also made particularly effective by the fact that the relative procedure is carried out by qualified technical personnel that are able to make out extremely precise contentions and counter transgressors' observations in a suitable and in-depth manner. Criminal action, instead, is especially awkward within the Italian judicial system, as the work involved is poorly suited to the personnel and there are insufficient funds for acquiring (directly or indirectly) the special skills required to tackle the technical nature of environmental inquiries and procedures.

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5 Cf. Cass, section I, 2 December 2003, No. 13389; in conformity: FIANDACA-MUSCO, *Diritto penale,* Zanichelli, 1995, p. 658-659; CERBO, *Le sanzioni ammiinistrative*, Giuffrè, 1999, p. 101.

6 Confirmation of the provisions of the administrative penalty is given by the same Court of Cassation, 1 April 2004, No. 6362, for which "the competence to issue administrative penalties, which are typical administrative provisions, dealing with authoritative acts put into effect by a P.A. in the explication of an administrative power and having outside relevance, is assigned to the directors of local authorities as per Art. 107, which states that only the political-administrative address and control powers are the concern of the government authorities, attributing to the directors the tasks not expressly covered by the law or statute of the functions of the government authorities or not listed as those of the secretary or Director General."

Lastly, it should be added that the great effectiveness of administrative penalties within Italian law is also attributable to the specific procedural system set down for impugning the relative penalties: short terms of just thirty days, competence of just the Court for environmental matters regardless of the amount of the penalty[7], concision of the procedure based on the work procedure, an almost complete absence of oral tests, as the declaratory judgment can be trusted unless legally proven to be false, so no testimony can be permitted that disproves the facts ascertained and received by the public officer.

Until recently, another factor helped to stabilise the verdicts made at the end of first trials: no judicial review was permitted; an appeal as of right to the Supreme Court could be filed in very limited situations, as stated in the final paragraph of Art. 23 of Law 689/1981.

However, Art. 26 of Legislative Decree No. 40, 2 February 2006, rescinded this paragraph and implemented a judicial review; that goes against the accuracy and swiftness of this specific procedure.

Moreover, this new trial is of little importance when one considers that the factual finding reported by the public agent is considered as incontrovertible evidence; so that the convicted cannot ask for parol evidence: the judicial review of the fact is rarely practised.

In this regard, the Court of Reggio Emilia, with Decree No. 748, 16 November 2006,[8] raised the question of the constitutional legitimacy of the abrogative forecast. With the recent judgment No. 98, 11 April 2008, the Constitutional Court dismissed the application, stating that the new judicial review has been settled in order to reduce the number of the proceedings of the Supreme Court.

5 Assignment of jurisdiction to Italian courts

The Italian system is complicated further by the fact that not all of the administrative penalties are subject to appeal at the ordinary court.

The administrative court (or administrative tribunal: T.A.R.) has exclusive jurisdiction with regard to many uses of the land. As a result, most administrative penalties for offences regarding urban design and construction and abuse of the landscape are handled by the administrative court rather than by the ordinary court.

Recently, therefore, the Administrative Council of Justice for the Region of Sicily No. 1026, 24 October 2007, decreed that the appeal against the injunction order for payment of fines for abusive site development falls under the exclusive jurisdiction of the Administrative Court. This is because the legislation assigns to the administrative jurisdiction not only the legal appeal against the provision with which the building permit is granted or denied, but also the appeals against the determination and liquidation of penalties.

The sentence draws on an important precedent of the Civil Cassation, SS.UU. No. 3661, 8 August 1989, for which the jurisdiction of the administrative court involved, which cannot be derogated by regional rules, and also operational after the coming into effect of Law No. 689, 24 November 1981 (on administrative penalties) and No. 47, 28 February 1985 (Planning Act) also handles litigations relating to fines for unauthorised use of land; it doesn't matter if the fines can be replaced by alternative punishment or rehabilitation measures, or if they are mere corporal sanctions or fines.

The difference between corporal and restoration penalties and, above all, between accessory restoration penalties and autonomous restoration orders (*restitutio in integrum*) will be covered later.

When applying penalties, it can often be difficult to trace back to the notion of land use; moreover, the jurisprudence can play a key role in properly tracing the allocation of the pertinent jurisdiction.

As an example, the jurisdiction of the administrative court has often been extended to pits and quarries, ‚as according to Art. 7 of Law No. 205 of 2000) the quarrying activity affects the core land, as it can be said to transform the geo-morphological land asset; so that it constitutes, in effect, a "use of the land" that falls within the broad meaning of land transformation (which comprises all aspects of land use, without exception). The consequence is that, when proper authorisation is granted for quarrying, the penalty provisions adopted by the administrative authority in the event the quarrying does not comply with the conditions for the authorisation are subject to the jurisdiction of the administrative courts. This is accord-

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7 As per Art. 22-*bis*(2), letter *d* of Law No. 689, 24 November 1981, integrated in Art. 98 Legislative Decree No. 507 of 30 December 1999, opposition to the injunction order imposing the penalty should be made at the Court when the penalty has been applied to a violation concerning, among other things, provisions on "protecting the environment against pollution, the flora, fauna and protected areas." For extensive application of the regulation, Cassation Court, section II, 14 June 2007 No. 13976, on fauna; Cassation Court, Decree No. 8620 of 26 April 2005 on administrative penalties for acoustic pollution; the administrative court instead is responsible for requesting cancellation of the extraordinary emergency order for reducing the level of emissions, in accordance with Art. 33 of Legislative Decree 80/1998, without appealing to the provisions of Art. 22 of Law 689/1981, which states the competence of the Ordinary court with regard to the opposition proceedings against the act with which the administrative penalty was imposed – insofar that it involves distinct acts pertaining to different proceedings that, although related, are all separate. The decree therefore constitutes an act of regulating sub-primary standardisation of the single case involving an extraordinary emergency to protect public health, while the injunction order is an administrative provision for imposing an administrative fine. As per Cassation Court, section II, 11 January 2006, No. 218.

8 Official Journal No. 44 of 14 November 2007.

ing to Civil Cassation, SS. UU., 19 April 2004, No. 7374.

However, subsequent to the intervention of the Constitutional Court, which via sentence No. 204, 6 July 2004 declared unconstitutional Legislative Decree No. 205, 21 July 2000, Art. 7, repealing the exclusive jurisdiction of the administrative court those litigations regarding "the acts, provisions and conduct" in the matter of the use of land, rather than "the acts and provisions" of the public authorities, the Supreme Court of Cassation has changed opinion.

It decided, with unified Decree No. 15222 of 4 July 2006 on violations committed during quarrying work, to phase out its previous jurisprudence, claiming instead the annulment of its previous attribution to the administrative court of exclusive jurisdiction in the field, except in the extension of general jurisdiction of legitimacy in the fields in which it already existed.

As these fields didn't include that of administrative violations, as the subjective liability of the person who believes he has not been penalised according to the law still has "*perfect*" rights, the Court (Cass., SS.UU. of 4 February 2005, No. 2205) excluded the administrative jurisdiction of a cause for opposition with injunction order regarding violations relating to the matter of use of the land, in light of the declaration of constitutional illegitimacy).

The procedure has also been followed, without uncertainty, by the subsequent declarations on the subject, including T.A.R. Basilicata, Potenza, Section I of 12 July 2007, No. 506. This states a long line of conforming precedents,[9] decreeing the jurisdiction of the administrative court for litigations involving rehabilitation or restitution penalties, whereby the legal position of the private citizen is that of expectation. The ordinary court, instead, is responsible for the punitive administrative penalties that guarantee only compliance with the violated regulation set down in the public interest, such as those involving fines regulated by Law 689/1981 (this Law, however, does not regulate interdictory penalties) where the legal status of the private citizen is a legitimate right.

The Constitutional Court, in the above case, expressly secures the competence of the ordinary civil court for litigations based upon Art. 22 of Law 689/1981, when appealing penalties that involve payment of a fine. It ascertained that the jurisdiction of the ordinary civil court is required for litigations when the public authority does not exercise, even indirectly, any public power, but resorts only to intrinsically civil laws; this happens in the case of an injunction order for an administrative fine, as the relationship between public authority and private person is equal and the authority acts *iure gestionis* and not *iure imperii*. As a result the T.A.R. Basilicata draws the conclusion that, also in the case of quarrying, the new assignment stated in the verdict must be complied with.

In this way, it becomes clear that the assignment of jurisdiction determines frequent errors – not only in the competent court's indication that the authority is required to operate, but also in the real determination of the court by the transgressor wishing to appeal the penalty, which is clearly to the detriment of legal certainty as well as of the right to a fair hearing.

The situation was, until very recently, made even more disheartening by the impossibility of a claimant who appeals against a penalty at a court without jurisdiction to then re-propose appeal at a competent court.

Recently, however, the Constitutional Court sought to fill this gap. Decree No. 77 of 12 March 2007, states the constitutional illegitimacy of that part of Art. 30 of Law No. 1034 of 6 December 1971 (law of regional administrative courts) that didn't foresee the substantive and procedural effects of the plea addressed to the court without jurisdiction to be retained due to the lack of jurisdiction, for the proceedings at the court that does have jurisdiction.

The Constitutional Court expressly declared its awareness that the above problem is magnified due to the afore-mentioned declaration of the constitutional illegitimacy of certain rules that, according to the criteria of "restricted subjects", split the jurisdiction between the ordinary and administrative courts. The non-applicability, according to the commanding jurisprudence, of the hypothesis of the declaration of constitutional illegitimacy of the principle of "*perpetuatio iurisdictionis*" as stated in Art. 5 of the Law of civil procedure (codice di procedura civile: c.p.c.), certainly brought home the sheer injustice of the legislation in force. Even if the plea is made to the court with jurisdiction at the time of its proposal, the lack of jurisdiction can prevent or compromise jurisdictional protection.[10]

This solution was reached considering that "the prin-

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[9] T.A.R. Veneto, section II, Decree No. 2860 of 14 June 2002; T.A.R. Napoli, section III, Decree No. 1868 of 4 April 2002; Civil Cassation SS.UU. Decree No. 134 of 27 March 2001; *contra* Civil Cassation, Decree No. 7374 of 19 April 2004; before the coming into effect of Art. 34, Legislative Decree 80/1998 cf. Civil Cassation SS.UU. Decree No. 12310 of 18 November 1992; Civil Cassation SS.UU., decree No. 718 of 2 February 1990; T.A.R. Milano, Decree No. 185 of 2 May 1989; T.A.R. Veneto, section II, Decree No. 435 of 28 May 1987; C.d.S. section VI, Decree No. 649 of 9 August 1986; C.d.S. section VI, Decree No. 642 of 9 August 1986; Civil Cassation SS.UU. Decree No. 1881 of 7 March 1985.

[10] Recently, in the attempt to resolve the hoary problem by hermeneutic means, the Cassation Court (Unified Sections, 22 February 2007, No. 4109), changing procedure, also attempted to resolve the problem interpretatively by affirming that, according to a constitutional reading of related legislation, by taking into account the arguments arising from the legislative changes and some new points recently introduced by pertinent law, it could be possible to transfer within the procedural system the principle of *translatio iudicii* from the ordinary court to the special court, and vice versa, in the event of a verdict on the jurisdiction. This decision however was not shared by the Constitutional Court in the above verdict, which retained necessary the intervention of the law court, as an interpretative solution not conforming to the standards, requiring express abrogation, was not deemed sufficient.

ciple of incommunicability of courts belonging to different orders – formerly accepted as the legacy of the so-called patrimonial concept of jurisdictional power and as the result of the progressive thwarting of the aspiration for the newly-formed unified state (law on abolition of administrative disputes) to the unit of jurisdiction, determined by emerging bodies acquiring jurisdictional competences – is certainly incompatible now with key constitutional values."

The judgement adds that if "the Constitution considered the current situation with regard to the multiplicity of the courts, it is also true that the same Constitution has, from the start, assigned with Art. 24 (confirmed with Art. 111) to the entire jurisdictional system the function of ensuring protection by means of judgment, subjective rights, and legitimate interests. This being the essential *raison d'être* for the ordinary and special courts, their multiplicity cannot be resolved by reducing their effectiveness or rejecting jurisdictional protection. Yet that is what undoubtedly happens when management of their relations – further strengthened with a complex and well-constructed assignment of their competences – is such that erroneous selection of the court with jurisdiction (or the court's jurisdictional error) can irreversibly jeopardise the possibility of examining the merit of a plea for jurisdictional protection. Such legislation, which can potentially compromise the right to and effectiveness of jurisdictional protection, is incompatible with a key principle of the system that recognises the existence of a multiplicity of courts on the condition that a more suitable response to the plea for justice is ensured on the basis of distinct competences, and without compromising the possibility for a response to the plea.

The principle that the procedural law is not a means to an end but serves instead to ensure a better decision on the merits is nearly always the inspiration – when regulating questions of law – for the current code of civil procedure and, in particular, for the legislation that, when the competent court is ascertained (to ensure, on the one hand, compliance with the constitutional guarantee of the natural court and, on the other hand, the suitability – in the legislator's valuation – to make the best decision on the merits), the right is not sacrificed for the parties to acquire a response – whether positive or negative – with regard to the asset subject to contention. Constitutional Art. 24 and 111 also require that this principle be part of the basis of the regulation of relations between courts belonging to different causes when a cause, lodged at a court, must be decided following an objection to the jurisdiction by another court."

The assignment of jurisdiction, even when changeable, must not therefore compromise the private citizen's right to impugn the penalty proceedings directed at him.

A final point: with regard to procedural agility, the attribution of jurisdiction to Administrative Tribunal inevitably draws out the penalty impugning proceedings and forming a verdict on the merits. It should not be forgotten, however, that the substance of the protection requested by the private citizen can be obtained either in the civil court, as according to Art. 23 or Law 689/1981, or in the administrative court, by preliminarily granting suspension of the penalty impugnment proceedings.

Art. 22 of Law 689/1981 correlates this suspension with the "presence of serious motives", while Art. 21 of the 'T.A.R. bill', in the event of "serious and irreversible prejudice caused by execution of the impugned act, or the inert conduct of the authority during the time required to reach a decision on the claim", allows the claimant entitled to precautionary protection to be exempt of the prejudice deriving from the duration of the proceedings, insofar that he is protected against the negative consequences of the penalty until a decision is made on the merits.

From a different perspective, taking into account the interests of the authority and not those of the claimant, there is no doubt that the duration of the suspension of the effect of the penalty, usually longer in administrative proceedings, is at the disadvantage of the authority and associated economic and rehabilitative needs. This is case even though, according to Art. 27 of Law 689/1981, the penalties are increased in the event of late payment by one tenth every six-month period from the one the penalty is due and to the one the role is given to the collector (increase that absorbs the legal interest).

Lastly, on the relation between administrative and criminal penalties, the assignment of jurisdiction is facilitated by a specific standard of Law 689/1981 that regulates the case of an objective connection between the administrative offence and a crime.

This connection, however, determines the transfer of competence for application of the penalty from the administrative body to the criminal court (in the case when ascertainment of the administrative offence constitutes the logic premise of the crime). When in want of the said preliminary relation, the pending of the criminal proceedings does not prevent said competence from imposing the penalty; in this regard, there is a strong legal procedure as per Civil Cassation, Section I, 19 October 2006, No. 22362.

6 Italian statute of limitation

The statute of limitation of administrative and criminal penalties in the field of the environment, very similar because the administrative fines were modelled on the criminal ones, depends on the particular rules involved. Both these penalties must be prosecuted within a certain time limit, but this time-limit generally doesn't start from the day of the offence.

Perhaps, the expiration term to exercise the prosecution is expanded on compensating for the long duration of the proceedings.

As an example, it has now been determined that the power of prosecuting the administrative offence caused to landscape is not subject to statute of limitation, so that the associated penalty can be imposed even a decade after the offence. The offence is deemed permanent until attainment of authorisation, only the release of which determines annulment of the violation and the start of the statute of limitation for collection of the fine, as per Art. 28, Law No. 689, 24 November 1981. Recently, State Council, Section IV, 11 April 2007, No. 1585, also definitely introduces permanence, or the interruption of the running of the statute of limitation, in the field of the depenalised offence.

7 Jurisdiction profiles in Italy

The complex system of environmental penalties is further complicated by the fact that, as well as punitive penalties (involving fines), there are also recovery penalties intended for the recovery of land and to eliminate the harm done to the environmental resources protected by the regulation.

In the case of criminal measures, these are executed by the same judge.

In the case of an additional administrative penalty, the authority allowed to impose the penalty must issue, during the injunction order or associated order, the provisions for rehabilitation. These provisions, being to do with the additional penalty, are subject to the same procedural system as the main penalty, and can therefore be impugned at the ordinary or administrative court, depending on the matter at hand.

The problem is that the rules on issuing a rehabilitation order do not always clearly state whether they deal with additional penalties or autonomous provisions subjected to respective authoritative administration procedures and whether therefore they can impugned at just the administrative court.

In this regard, it has for instance been decided that the provisions for removing abusive road publicity setups requires an additional penalty falling under the jurisdiction of the ordinary court, either when the opposition puts in an injunction order applying both a fine and additional penalty, or when the order involves only an additional penalty (Decree; as before, T.A.R. Lazio Roma, Section III, Decree 14046/2006).

Also under the jurisdiction of the ordinary court is opposition to the trade union order which decrees, in the case of abusive disposal of materials, and under the terms of Art. 14 of Legislative Decree 22/1997, the removal of abandoned material with rehabilitation of the land area concerned and disposal of the material in conformity to the regulations in force, providing that the proposed action properly complies with the provisions set down specifically on the removal of material and recovery of the area concerned, and the private citizen still has the subjective right to not be subordinated to a claim of the public authority that is deemed undue; as per Civil Cassation, SS.UU. of 10 June 2004, No. 11022.

This in itself does not determine the competence of the administrative court or the simple imposition of an additional penalty, following as it does the fate of the main penalty even when the competent court has been determined; T.A.R. Sicilia Catania, Section II of 11 July 2007, No. 1222 and also Civil Cassation, SS.UU. of 25 May 2001, No. 223, in a case when the injunction order applied just to the additional penalty because the spot fine (payment in a short term of a part of the amount of the fine) extinguished the principle penalty.

If instead the recovery or restitution penalty has conceptual autonomy, and is not an additional fine imposed for purposes of punishment, its impugnment falls under the cognisance of the administrative court. This measure must be implemented in the interest of the same public interest as the administrative function of the rehabilitation or restitution administrative penalty, and where the juridical position of the private citizen is one of legitimate interest. Under the competence of the ordinary court, instead, are the litigations relating to punitive administrative penalties intended solely to guarantee compliance with the violated regulation set down in the interest of the public – such as those requiring payment of a fine, regulated by Law No. 689 of 24 November 1981 (which does not however regulate propitiatory penalties) – in relation to which the private citizen is in a subjective juridical position; as according to T.A.R. Basilicata Potenza of 12 July 2007, No. 506.

The framework of the jurisdiction is complicated in the event of recovery measures as, in addition to the administrative and ordinary jurisdiction, there is the competence of the superior court of public waters that acts as the special court, when the provision relates to the use or regulation of water.

In the case of a trade union order that arranges characterisation, reclamation and rehabilitation of public waters, it has recently been decided that the jurisdiction should be that of the superior court of public waters. This court should also be assigned the administrative provisions that, although concerning more general and varied interests than the specific ones on the state ownership of waters or relations with water providers, still pertain to the use of the same public waters, acting immediately and directly on water works and, definitively, to management of public waters (in case law, there was abusive dumping of waste near the river Adige, on government-owned public land, requiring emergency safety measures,

reclamation and environmental rehabilitation of the area as per M.D. No. 471 of 1999. T.A.R. Veneto Venezia, section III of 6 June 2006, No. 1677).

8 Compensation for environmental damage in Italy

The recent amendment decreed by Legislative Decree 152/2006, a single environmental text, to the institute of environmental responsibility, stated there should be a single power appointed by the Ministry for the Environment and Protection of the Land to issue an injunction order for rehabilitation or an order for obtaining monetary compensation, if the offender does not provide, in full or in part, the *restitutio in integrum* or if this cannot be done in full or in part due to the amount being especially onerous.

The order was determined as immediately enforceable and is exclusive (Art. 314(6) and Art. 316(1), of the administrative court).[11]

Since this instrument is combined with the traditional and un-amended civil proceedings for the recovery of damages, exercisable also with a part civil constitution in the criminal court (Art. 311(1)), there is therefore competition for jurisdiction between the ordinary and administrative courts, which has not happened before in case law as compensation for damage to the environment was the traditional and undisputed realm of the ordinary court.

Moreover, the meticulous doctrine[12] adds that the Court of Auditors has also been revived in spite of it having been excluded by both Law 349/1986 and the Decree of the Constitutional Court 641/1986: Art. 313(6) states in fact that when environmental damage is caused by parties under the jurisdiction of the Court of Auditors, the Ministry for the Environment and Protection of the Land should not order payment for the damage caused, but send a report to the regional Public Prosecutor's Office for the Court of Advisors.

Art. 18(2), Law 349/1986, appointing the Ministry for the Environment and determining the action for seeking compensation for environmental damage, states in this regard the sole jurisdiction of the ordinary court, "without compromising the Court of Auditors, as per Art. 22 of Presidential Decree of 10 January 1957, No. 3". It confirms that the court of account is responsible exclusively for recourse to the authority supposed to offer compensation to third parties for damage to the environment caused by a civil servant.

This legislative decision, backed by the verdict of the law court mentioned above, has now been debated with excessive delegation by the consolidation act, difficult to understand in view of the peculiarity of the accounting process.

The coder's new solution does not therefore seem to encourage standardisation or unification of the environmental penalty system that places a strong emphasis on compensation for damage to the environment, involving as it did a real and punitive civil penalty to ensure, together with indemnity, effective protection of the asset. A new administrative measure and two new jurisdictions – administrative and accounting – were introduced in the attempt to systematise the matter and thereby ensure general and special prevention methods of particular importance to the protection of the environment. The principal aim is to prevent the motto "who pollutes pays" from becoming "who pays, pollutes".

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[11] The doctrine also contested the need for an exclusive jurisdiction in the field, arguing the traditional nature of legitimate jurisdiction on administrative acts and not of a jurisdiction without exercising of proper discretionary, and therefore authoritative, power; as according to F. GIAMPIETRO, *La responsabilità per danno all'ambiente: la concorrenza delle giurisdizioni*, in *Danno e responsabilità 7/2007*, p. 725. The same author contests the exclusivity of this jurisdiction for injunction orders for rehabilitation, noting the prevalence of the *ascertainment of technical order* over offences posing a danger or compromising human health or certain aspects of the environment. The doctrine also notes how not even during the subsequent economic valuation of the damage is there a configurable existence of a discretionary administrative power.
The author goes on to criticise this choice in light of the constitutional court's recent approach to allotment of the ordinary and administrative courts, recalling how the Decree of the Constitutional Court of 5 July 2004, No. 204, stated that Art. 103(1) of the Constitution "did not confer to the ordinary legislator an absolute and unconditional discretion in attributing to the administrative court the matters transferred to administrative jurisdiction" and positively associated the legislator's power to the "nature of the legal situations involved".

[12] The expression of L. PRATI, *Il danno ambientale nel D. Lgs. 152/2006*, in *Ambiente & Sviluppo*, 2006, p. 908.

Öko-Institut e.V.
Institut für angewandte Ökologie
Institute for Applied Ecology

The Öko-Institut (Institut für angewandte Ökologie - Institute for Applied Ecology, a registered non-profit-association) was founded in 1977. Its founding was closely connected to the conflict over the building of the nuclear power plant in Wyhl (on the Rhine near the city of Freiburg, the seat of the Institute). The objective of the Institute was and is environmental research independent of government and industry, for the benefit of society. The results of our research are made available of the public.

The institute's mission is to analyse and evaluate current and future environmental problems, to point out risks, and to develop and implement problem-solving strategies and measures. In doing so, the Öko-Institut follows the guiding principle of sustainable development.

The institute's activities are organized in Divisions - Chemistry, Energy & Climate Protection, Genetic Engineering, Sustainable Products & Material Flows, Nuclear Engineering & Plant Safety, and Environmental Law.

The Environmental Law Division of the Öko-Institut:

The Environmental Law Division covers a broad spectrum of environmental law elaborating scientific studies for public and private clients, consulting governments and public authorities, participating in law drafting processes and mediating stakeholder dialogues. Lawyers of the Division work on international, EU and national environmental law, concentrating on waste management, emission control, energy and climate protection, nuclear, aviation and planning law.

Contact

Freiburg Head Office:

P.O. Box 50 02 40
D-79028 Freiburg
Phone +49 (0)761-4 52 95-0
Fax +49 (0)761-4 52 95 88

Darmstadt Office:

Rheinstrasse 95
D-64295 Darmstadt
Phone +49 (0)6151-81 91-0
Fax +49 (0)6151-81 91 33

Berlin Office:

Novalisstrasse 10
D-10115 Berlin
Phone +49(0)30-280 486 80
Fax +49(0)30-280 486 88
www.oeko.de

I·E·S·A·R
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The University of Applied Sciences in Bingen was founded in 1897. It is a practiceorientated academic institution and runs courses in electrical engineering, computer science for engineering, mechanical engineering, business management for engineering, process engineering, biotechnology, agriculture, international agricultural trade and in environmental engineering.

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Contact

Prof. Dr. jur. Gerhard Roller
University of Applied Sciences
Berlinstrasse 109
D-55411 Bingen/Germany
Phone +49(0)6721-409-363
Fax +49(0)6721-409-110
roller@fh-bingen.de

www.fh-bingen.de

sofia

The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.

The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.

The sofia team is multidisciplinary: Lawyers and economists are collaborating with engineers as well as social and natural scientists. The theoretical basis is the interdisciplinary behaviour model of *homo oeconomicus institutionalis*, considering the formal (e.g. laws and contracts) and informal (e.g. rules of fairness) institutional context of individual behaviour.

The areas of research cover

- Product policy/REACh
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- Role of standardization bodies
- Biodiversity and nature conversation
- Water and energy management
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- Federal Ministry of Consumer Protection, Food and Agriculture

Contact

Darmstadt Office

Prof. Dr. Martin Führ – sofia
University of Applied Sciences
Haardtring 100
D-64295 Darmstadt/Germany
Phone +49(0)6151-16-8734/35/31
Fax +49(0)6151-16-8925
fuehr@sofia-darmstadt.de
www.h-da.de

Göttingen Office

Prof. Dr. Kilian Bizer – sofia
University of Göttingen
Platz der Göttinger Sieben 3
D-37073 Göttingen/Germany
Phone +49(0)551-39-4602
Fax +49(0)551-39-19558
bizer@sofia-darmstadt.de

www.sofia-research.com

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elni

In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. Since then, elni has grown to a network of about 350 individuals and organisations from all over the world.

Since 2005 elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

Coordinating Bureau

The Coordinating Bureau was originally set up at and financed by Öko-Institut in Darmstadt, Germany, a non-governmental, non-profit research institute.

Three organisations currently share the organisational work of the network: Öko-Institut, IESAR at the University of Applied Sciences in Bingen and sofia, the Society for Institutional Analysis, located at the University of Darmstadt. The person of contact is Prof. Dr. Roller at IESAR, Bingen.

elni Review

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. It is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt). The Coordinating Bureau is currently hosted by the University of Bingen. elni encourages its members to submit articles to the Review in order to support and further the exchange and sharing of experiences with other members.

elni Conferences and Fora

elni conferences and fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to gather together scientists, policy makers and young researches, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brussels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

- Access to justice in Environmental Matters and the Role of NGOs, de Sadeleer/Roller/Dross, Europa Law Publishing, 2005.
- Environmental Law Principles in Practice, Sheridan/Lavrysen (eds.), Bruylant, 2002.
- Voluntary Agreements – The Role of Environmental Agreements, elni (ed.), Cameron May Ltd., London, 1998.
- Environmental Impact Assessment – European and Comparative; Law and Practical Experience, elni (ed.), Cameron May Ltd., London, 1997.
- Environmental Rights: Law, Litigation and Access to Justice, Deimann/Dyssli (eds.), Cameron May Ltd., London, 1995.
- Environmental Control of Products and Substances: Legal Concepts in Europe and the United States, Gebers/Jendroska (eds.), Peter Lang, 1994.
- Dynamic International Regimes: Institutions of International Environmental Governance, Thomas Gehring; Peter Lang, 1994.
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- Licensing Procedures for Industria Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wilmowsky/Roller, P. Lang, 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/Roller (eds.), P. Lang, 1991.

Elni Website: elni.org

On the elni website www.elni.org one finds news of the network and an index of articles. It also indicates elni activities and informs about new publications. Internship possibilities are also published online.

elni, c/o Institute for Environmental Studies and Applied Research
FH Bingen, Berliner Straße 109, 55411 Bingen/Germany

www.elni.org