

ENFORCEMENT OF EC ENVIRONMENTAL LAW

Report: Italy

Massimiliano Montini (University of Siena)

Questionnaire on National Laws, Practices and Experiences on Enforcement

- 1. Please describe generally the most important tools for the enforcement of environmental law in your country. Also describe the relative "weight" of private law, administrative law and criminal law for the enforcement.*

Under the applicable Italian Law, with reference in particular to the so-called Framework Law on Environmental Protection (namely, Legislative Decree No.152/2006), the primary responsibility to both prevent environmental damage and act for its reparation against any wrongdoer lies with the State and is exercised by the Italian Ministry for Environment, Land and Sea. Initially, under Italian Law the competences to protect the environment and act for the prevention and restoration of any environmental damage was shared between the State and the decentralised administrative authorities, such as the Regions, the Provinces and the Municipalities, but the matter was "centralised" in the hands of the Italian Ministry for the Environment, by means of the Constitutional Law 3/2001, which amended Title V of the Italian Constitution on the demarcation of the competences between the central State and the local administrative authorities.

On the basis of the existing demarcation of competence in this field, the implementation of the EC legislation in the environmental sector is now normally dealt with at State level. The enforcement lies primarily in the hands of the Ministry for the Environment. However, the local authorities (Regions, Provinces, Municipalities, etc.) often participate in a collective effort for the effective enforcement of EC environmental law.

To this effect, although most types of sanctions are normally taken at a national level, some specific provisions may occasionally create a sort of concurrent sanctioning power upon the local authorities for specific cases of violations somehow related to the environmental protection.

As to the concurrence of various types of sanction, both private, administrative and criminal law ones, their relative weight and importance varies greatly, depending on the specific subject matter. In the past, criminal sanctions were often preferred by the Italian legislator to afford an adequate protection to the environment through an higher deterrent effect, whereas in more recent times administrative sanctions seems generally to be preferred, insofar they seem easier to be effectively enforced in courts (in fact, generally speaking, administrative courts proceedings are generally faster and more efficient than the lengthy criminal ones). However, very seldom administrative sanctions may fully regulate a certain matter. The two types of sanctions, administrative and criminal ones, in fact, normally co-exist, whereas the evidence shows the role of private law in the environmental field is not so relevant in the Italian environmental law praxis.

- 1. Please answer sub-questions I-IV for each situation listed as a-i below. Also indicate whether you know of national cases where these issues have been dealt with:*

I: Which sanctions are provided under national law (criminal, administrative etc.)?

II: Can NGOs and/or citizens challenge the enforcement – or lack of enforcement – by the competent authority, or is it within the full discretion of the competent authority to decide whether and how offences should be sanctioned? (If NGOs and citizens can challenge such decisions and omissions, including failures of a procedural character, please describe how.)

III: In light of European Community law, including the possible direct or indirect effect of directives, does national law grant NGOs and/or affected citizens the right to take direct enforcement measures against the polluter?

IV: Could the competent authority under national law be held liable for erroneous acts and for omissions (non-enforcement) in the cases listed below? If so, how?

- a. When an EIA project is established without an EIA permit.
- b. When conditions attached to the EIA decision, granting a development consent, are disregarded.
- c. When an IPPC facility is established without an IPPC permit.
- d. When an IPPC facility is permitted without prior assessment in accordance with article 6(3) of the Habitat Directive.
- e. When an IPPC facility is operated in violation of conditions of an IPPC permit.
- f. When an IPPC facility releases greenhouse gases beyond what is provided for by allowances under the ET Directive.
- g. When an IPPC facility has negative impact on Natura 2000 sites beyond the threshold in article 6(2) of the Habitat Directive.
- h. When water plans adopted under the Water Framework Directive – or for the moment existing water quality standards laid down in the “old” water directives – are not complied with.
- i. When air plans under the Air Framework Directive are not complied with.

Please, comment on whether you find the national means of enforcement adequate, and if, based on the national experiences, you have any general suggestions for improving the enforcement.

I. Generally speaking both administrative and criminal sanctions normally co-exist, under the Italian law, for the effective enforcement of environmental law provisions. Some details on the specific types of sanctions detected with reference to the cases listed above under a-i are provided below.

- (a) Administrative sanction: suspension of the works; duty to carry out the EIA; in extreme cases demolition of the works and restoration of the environment upon discretion of the public authority (Art. 29(4) of Decree 152/2006). According to some legal authors, in case an environmental damage occurs, the pertinent provisions may apply against the wrongdoer.
- (b) Administrative sanction: suspension of the works; order to modify the works unlawfully done (Art. 29(3) of Decree 152/2006). According to some legal authors, in case an environmental damage occurs, the pertinent provisions may apply against the wrongdoer.
- (c) Criminal sanction: detention up 1 year or pecuniary sanction (2.500 to 26.000 euros) (Art. 16 of Decree 59/2005)
- (d) The Habitats assessment is regulated by Decree (DPR) 357/1997. No reference to specific sanctions can be found thereto. In case of projects subject to EIA, the Habitats assessment is conducted in the framework of the EIA and the related sanctions may apply

- (e) Criminal sanction: pecuniary sanction (5.000 to 26.000 euros) (Art. 16 of Decree 59/2005)
- (f) Administrative sanction: pecuniary sanction of 100euro for each CO2 ton exceeding the allowance (Art. 20 of Decree 216/2006)
- (g) No specific sanction has been detected for such a case.
- (h) Plans drafting, approval and enforcement lies with the competent public authorities. No sanction for failure to enforce such plans has been detected.
- (i) Plans drafting, approval and enforcement lies with the competent public authorities. No sanction for failure to enforce such plans has been detected.

II. It is normally within the discretion of the competent public authority to decide whether and how offences should be sanctioned. However, under article 18 of Law 349/1986, the NGOs which have been “recognised” by the Ministry of the Environment (recognition is based on certain criteria, listed in article 13 of Law 349/1986, including *inter alia* their broad coverage of the Italian territory, the environmental relevance of their activities, their democratic status) may challenge unlawful administrative acts before administrative courts. This broad challenging power include all unlawful acts and omissions, including procedural failures, which may have negative consequences for the environment.

Moreover, article 18 of Law 349/1986 foresees that NGOs may intervene in all already commenced proceedings on environmental damage. However, this provision must be read in conjunction with the norms contained in the Title VI of the Framework Law for the Protection of the Environment, namely Decree 152/2006, which now fully regulates the environmental damage matter and is largely based on the provisions of the EC Directive 2004/35.

According to the norms contained in the Decree 152/2006, the general competence to deal with the prevention and the restoration of the environmental damage lies with the State and is exercised by the Italian Ministry for Environment, Land and Sea. However, art. 309 of Decree 152/2006 foresees the possibility of the Regions and the other local public authorities, as well as of environmental NGO and citizens which may have a specific interest in the case, to ask the Ministry to intervene in case of an already occurred or imminent environmental damage. Following the specific request to act, if the Ministry fails to act or does not act in accordance with the Law, the same subjects listed above are empowered to challenge the Ministerial acts taken or the failure to act before the administrative court, pursuant to article 310 of Decree 152/2006.

III. Normally, under Italian Law, NGOs or citizens do not have the right to take direct enforcement measures against the polluter. An exception to this, may be the case when they are victims of a personal damage, directly or indirectly linked to an environmental damage, to be compensated under the traditional tort law rules (e.g in case they own a land polluted by a wrongdoer)

IV. As already mentioned above, under article 18 of Law 349/1986, the NGOs which have been “recognised” by the Ministry of the Environment may challenge unlawful administrative acts before administrative courts. This broad challenging power include all unlawful acts and omissions, including procedural failures, which may have negative consequences for the environment and theoretically may cover all situations listed as a-i above.

2. *How is article 9(3) of the Aarhus Convention, regarding access to administrative or judicial procedures for members of the public to challenge violations of environmental law, complied with? In which situations is it NOT complied with?*
 - As already mentioned above sub I, despite the broad access to administrative courts foreseen in general terms for NGOs by Law 349/1986, access to justice for members for the public (citizens) to challenge violations of environmental law is limited to environmental damage situations, when the citizens who may prove a specific interest in the case are allowed to ask the Ministry to intervene in case of an already occurred or imminent environmental damage. Following the specific request to act, if the Ministry fails to act or does not act in accordance with the Law, the same subjects are empowered to challenge the Ministerial acts taken or the failure to act before the administrative court, pursuant to article 310 of Decree 152/2006.

3. *Please identify possible factors, such as costs, length of procedures or other practical matters, that may prevent effective access to justice for members of the public.*
 - The major problem in Italy is the length of procedures in criminal and civil courts. In administrative courts situation is much better.

4. *Do NGOs and/or citizens have access to injunctive relief and interim legal remedies? Do you know any national cases which have dealt with this?*
 - Before administrative courts, NGOs and citizens may ask for the “suspension” of the application of a challenged administrative act, pending the final decision of the court on the merits of the case. Interim legal remedies are also available under general private law, but they rarely used in the environmental field.

5. *Are there any examples where a final administrative decision has been reopened because of a complaint based on later case law from the ECJ?*
 - Not to my knowledge

6. *Has there been any national case in which the State or the local authority have been held liable for not remedying environmental damage or other damage in violation of EC environmental law?*
 - Not to my knowledge

7. *Do you now of any significant developments, good practices or failures (e.g. cases, new laws, new institutional arrangements, or new policies) with regard to the enforcement of EC environmental law, not covered by the previous questions, that you would like to highlight?*
 - Nothing to be mentioned.