

Questionnaire EUFJE Conference 2010 – Enforcement of European Biodiversity Law at national level

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I. Natural habitats and their fauna and flora

A. Habitat protection

Introduction

Habitat-directive (92/43/EEC) - Special areas of conservation. According to art. 4 of the directive, a list of sites selected as sites of Community importance was adopted by the European Commission¹. Once a site of community importance has been adopted, the Member State concerned designates that site as a special area of conservation, as soon as possible and within six years of designation by the Commission at the latest.

According art. 6.2. of the directive Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the directive. Moreover, according to art. 6.3. of the directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

Birds-directive (79/409/EEC) – Special protection areas. According to art. 4.1 of the directive, the Member States shall classify as special protection areas the most suitable territories for the conservation of *Annex I – bird species*, in order to ensure their survival and reproduction². According to art. 4.2 of the directive, Member

¹ See for the actual lists of SACs:

http://ec.europa.eu/environment/nature/natura2000/sites_hab/index_en.htm

See also: http://ec.europa.eu/environment/nature/natura2000/db_gis/index_en.htm

² See for the actual list of SPAs:

http://ec.europa.eu/environment/nature/natura2000/sites_birds/sites_spa.htm

States shall take similar measures for regularly occurring *migratory species not listed in Annex A*. To this end, they shall pay particular attention to the protection of wetlands, particularly wetlands of international importance.

Ecocrime-directive (2008/99/EC). Art. 3 (h) of the Ecocrime-directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence (...) “*h) any conduct which causes the significant deterioration of a habitat within a protected site ; (...)*”. A ‘habitat within a protected site’ is any natural habitat or habitat of species for which a site is designated as a special area of conservation under the Habitat-directive or any habitat of species for which an area is classified as a special protection area under the Birds-directive.

Questions

I.A.1. Are there general habitat protection measures, applicable to all special areas of conservation and special protection areas in your country, or are they site specific, or is there a combination of general and site specific measures?

Government Decree No. 274/2005., transposing the Habitat Directive, provides general protection to all special areas of conservation and special protection areas. In addition, numerous SPAs and SACs also enjoy site specific protection. According to Act 53 of 1995 on Nature Protection, the minister responsible for environmental protection may designate protected areas with national significance. Moreover, municipal assemblies may also place areas with local significance under protection. The minister and municipal assemblies lay down the area specific rules and restrictions applying to protected areas.

In the light of the above, it can be stated that some SPAs and SACs enjoy both general and specific protection, and only general protection applies to some SPAs and SACs.

I.A.2. Who supervises habitat protection measures in your country? Are there (also) specialized inspectorates supervising them?

Habitat protection measures are supervised by regional environment, nature and water protection inspectorates. Nature protection guards of national parks monitor enforcement of habitat protection measures on site.

I.A.3. If habitat protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and considered to be effective? Can those sanctions be applied on legal persons?

Inspectorates may impose nature protection fines when nature protection laws are infringed; these are administrative sanctions that do not replace criminal and civil law sanctions. The Civil

Code also applies, the Act on Nature Protection lays down that anyone causing damages by the infringement of nature protection laws and authorizations must be liable under the Civil Code. Finally, according to the Criminal Code, any person who unlawfully and significantly alters any special protection areas or special areas of conservation designated as such by the European Community, or proposed for such designation, or any conservation areas of special importance, or proposed for such designation is guilty of a felony punishable by imprisonment for up to three years. The punishment is imprisonment for up to five years in case of irreversible damages or destruction of the above mentioned areas. Sanctions can be imposed on legal persons as well.

I.A.4. What type of sanctions can be applied if a plan or project as referred to in art. 6.3. of the Habitat-directive is carried out without an appropriate assessment? Makes it a difference if not only an appropriate assessment is lacking, but also a permit for the project or an approval of the plan?

A. No assessment:

If the decision of the inspectorate on the necessity of the assessment is questioned, a review procedure can be initiated with the national chief Inspectorate. The chief Inspectorate may approve or annul the decision of the first instance Inspectorate. The Administrative Court reviews the chief Inspectorate's decision.

B. No permit:

Inspectorates shall stop the activity subject to an authorisation if it is carried out without one or compliance with the authorisation. If restrictions of the activity are sufficient to ensure protection of the Natura 2000 area, then Inspectorates may apply restrictions instead of prohibiting the activity. The inspectorate shall order the person carrying out the above mentioned illegal activity to restore the original state of the environment. If it is not possible in the Natura 2000 area where the illegal activity occurred, then restoration activities in proportion to the prospected environmental damage must be ordered in a different Natura 2000 area. Moreover, the inspectorate has the power to restrict, suspend or prohibit activities which are not subject to authorization but are likely to cause serious or irreparable damage to Natura 2000 species and habitats.

I.A.5. Conduct falling under article 3(h) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

Please see the answer to I.A.3. If such an infringement is reported, it must be prosecuted, only the general exceptions apply, such as acting under threat etc. It is not possible to apply other sanctions or simply drop the case.

Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.

In a cases granted the ministry of defense a construction-permit for a radar installation on the top of a hill in South-Hungary. The narrower place of the construction was a separate building site. But the next plot was a special areas of conservation because of some animal species (insects and butterflies). The Supreme Court annulled the construction-permit with the following reason: An authority have to exam whether there are significant influence of the construction on the provided species in the neighborhood or not. It can not be spared the examination only therefore, because the species live not on the narrowed place of the construction.

B. Species protection

Introduction

Habitat-directive (92/43/EEC) – Animal and plant species. According to art. 12 of the directive Member States shall take the requisite measures to establish a system of strict protection for the **animal species listed in Annex IV (a)** in their natural range, prohibiting: (a) all forms of deliberate capture or killing of specimens of these species in the wild; (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration; (c) deliberate destruction or taking of eggs from the wild; (d) deterioration or destruction of breeding sites or resting places. Member States shall also prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before the directive is implemented. The protection shall apply to all stages of life of the animals. According art. 13 of the directive, Member States shall take the requisite measures to establish a system of strict protection for the **plant species listed in Annex IV (b)**, prohibiting: (a) the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild; (b) the keeping, transport and sale or exchange and offering for sale or exchange of specimens of such species taken in the wild, except for those taken legally before the directive is implemented. The prohibitions shall apply to all stages of the biological cycle of the plants.

Birds-directive (79/409/EEC). Similar provisions apply to birds. Pursuant to art. 5 of the directive, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in art. 1 of the directive, being “*all species of naturally occurring birds in the wild state in the European territory of the Member States*”, Greenland excepted. They will be prohibiting in particular: (a) deliberate killing or capture by any method; (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests; (c) taking their eggs in the wild and keeping these eggs even if empty; (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of the directive; (e) keeping birds of species the hunting and capture of which is prohibited.

Without prejudice to the provisions of art. 6.2 and art. 6.3 of the directive, which allow for some exceptions, Member States shall also prohibit for all those bird species the sale, transport for sale, keeping for sale and the offering for sale of live or dead birds and of any readily recognizable parts or derivatives of such birds (art. 6.1 directive). Regarding the hunting, capture or killing of the birds, Member States shall prohibit the use of all

means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, and in particular the use of those listed in Annex IV (a). Moreover, Member States shall prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV (b) (art. 8 directive).

Ecocrime-directive (2008/99/EC). Art. 3 (f) of the directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence: *“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”*. For the purpose of this article, ‘protected wild fauna and flora’ are, under the Habitat-directive, the Annex IV animals and plants, and under the Birds-directive, the Annex I bird species and regularly occurring migratory bird species not listed in Annex I.

Questions

I.B.1. Are the fauna (including birds) and flora protection measures organized within one coherent legislative framework, or through a patchwork of legislations, or is there a combination of general and specific measures?

General protection measures concerning the flora and fauna are enacted mainly in two major Acts: Act 53 of 1996 on Nature Protection and Act 53 of 1995 on the General Rules of Environmental Protection. These Acts provide a general framework of the protection measures. Specific protection measures are laid down in specialized sources of law. Government Decree No. 275/2004 (X. 8.) on the Natural Sites of European Community Importance must also be mentioned. This Government Decree has been enacted in order to comply with the provisions of two EU directives: Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. In the Government Decree we can find the measures for the conservation of species and sites of community importance.

I.B.2. Who supervises fauna and flora protection measures in your country? Are there (also) specialized inspectorates supervising them?

The general supervision is pursued by the National Chief Inspectorate for Environment, Nature and Water and by its territorial bodies, the Inspectorates for Environmental Protection, Nature Conservation and Water Management. National Park Directorates also handle nature protection as well as operational tasks. Rangers³ employed by the National Park Directorates protect the local species and sites.

I.B.3. Do the enforcement efforts concentrate on a few types of fauna, birds or flora? Are there some topics that gather all attention, all enforcement efforts? Is there an evolution through time in the focus of enforcement efforts?

In Act 53 of 1996 on Nature Protection and Act 53 of 1995 on the General Rules of Environmental Protection the enforcement efforts concerning fauna, birds and flora are general. In the Annexes of some Government Decrees species and sites are divided into groups, depending on their types, specialities. We can observe an evolution in the point of view of the environmental approach from the sectorial attitude the legislation headed towards the integrated aspect.

I.B.4. If fauna and flora protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and considered to be effective? Can those sanctions be applied on legal persons?

³ Government Decree No. 4/2000. (I. 21.) on the Rules about the Rangers.

The sanctions can be divided into the following typical **categories**: imprisonment and fines. The nature of sanctions might be administrative, criminal and civil also. **Administrative sanctions** are applied by the Inspectorates for Environmental Protection, Nature Conservation and Water Management. The Inspectorate can suspend or prohibit the harmful activity and it may impose a fine. **Criminal sanctions** are applied by the Police upon the authorization of the court's decision. Imprisonment is applied for the major crimes, while fines are applied in case of minor offences. In the Act 4 of 1978 on the Criminal Code three sections deal with environmental crimes. These are the following: Section 280. on Damaging the Environment, Section 281. on Damaging the Natural Environment and Section 281/A. on Violation of Waste Management Regulations. The typical sanctions are imprisonment for up to three-five years. If the crime was committed through negligence, in some cases, the person shall be punishable by community service work or a fine. In case of damaging the (natural) environment the civil court may impose indemnification as **civil sanction** or in *integrum restitutio*.

Generally the imposed fines are not proportionate to the committed crime. The fines do not always have retentive effect, so the effectiveness of the sanction is questionable.

Sanctions can be applied both on natural and **legal persons**. In case of legal persons the sanction is applied on the director of the organization. Act CIV of 2001 on sanctions in connection with the criminal liability of legal persons deals in particular with this question. In this case the court shall apply the sanctions which can be: closing-down, restriction of activity and fines.

I.B.5. Conduct falling under article 3(f) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

Act 4 of 1978 on the Criminal Code, in Section 281. on Damaging the Natural Environment enumerates the conducts cited in the abovementioned article of the Ecocrime-directive. This provision has already been implemented. The description of conducts is wider⁴ than the Ecocrime-directive. In the Hungarian Act we can find amongst the conducts: acquirement, keeping, issuing, importation, exportation, transition, trading, damaging, destruction of species/sites. The imprisonment is from three years up to five years.

The prosecution depends on the significance of the crime in question. There are minor offences which are prosecuted by administrative bodies. Mainly it is the police who prosecute these crimes, the courts deal with major offences. In case of negligence the sanctions may be community service work or a fine.

⁴ The Ecocrime-directive mentions these conducts also in Article 3 (g).

There are two Government Decrees⁵ in connection with the damages caused in the environment, describing the procedural rules of the prevention of the damages and the estimation of the degree of the damages.

Government Decree No. 33/1997 (II. 20.) on the Imposition of Nature Conservation Fine describes in detail the specific amount of the fines related to the protected values, species and sites. The smallest amount of the basic fine is 35€⁶ and it may be raised up to 2700€. In special cases multiplier is applied (1.5x, 1.8x, 5x, 10x) according to the damage of the environment.

Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.

II. International trade

Introduction

CITES-regulation (336/97/EC). The CITES-regulation⁷ aims to protect species of wild fauna and flora which are threatened by trade, or likely to be so threatened, by regulating trade therein. 'Trade' encompasses "the introduction into the Community, including introduction from the sea, and the export and re-export therefrom, as well as the use, movement and transfer of possession within the Community, including within a Member State, of specimens subject to the provisions of the regulation". The protected species are subdivided into 4 categories of conservation status, listed in the annexes A to D. Annex A lists in essence species threatened with extinction or so rare that any level of trade would imperil the survival of the species. Annex D contains the species which are not listed in the Annexes A to C and are imported into the Community in such numbers as to warrant monitoring. The *introduction into the Community* of specimens of the species listed in the Annexes A and B is subject to the completion of checks at the border customs office of the point of introduction and of an import permit issued by a management authority of the Member State of destination. The introduction into the Community of specimens of the species in the annexes C and D is also subject to the completion of checks at the border customs office of the point of introduction and also requires an import notification. The *export or re-export from the Community* of specimens of the species listed in the Annexes A, B and C is subject to the completion of checks at the customs office at which the export formalities are completed and requires an export permit or re-export certificate issued by the management authority of the Member States in which the specimens are located. Member States had to designate customs offices for the introduction and export and re-export of the protected species. In principle, *within the Community* all *commercial activities* concerning specimens of species listed in the annexes A and B are prohibited. Any *movement within the Community of a life specimen* of a species listed in Annex A requires a prior authorization of the Member State in which the specimen is located.

The CITES-regulation also contains *enforcement provisions*. The competent authorities of the Member States shall *monitor compliance* with the provisions of the regulation. If, at any time, the competent authorities have reason to believe that these provisions are being infringed, they shall *take the appropriate steps to ensure compliance or to instigate legal action*. Member States shall inform the Commission and, in the case of species

⁵ Government Decree No. 90/2007 (IV. 26.) on the Prevention of Damaging the Environment; Government Decree No. 91/2007 (IV. 26.) on the Estimation of the Damage Caused in the Natural Environment.

⁶ At exchange rate 1€=280 HUF.

⁷ See also: http://ec.europa.eu/environment/cites/legis_wildlife_en.htm

listed in the Appendices to the CITES-Convention, the Convention Secretariat, of any steps taken by the competent authorities in relation to significant infringements of the regulation, including seizures and confiscations. (art. 14.1 regulation) Art. 16 of the regulation, titled 'sanctions', states:

*"1. Member States shall take appropriate **measures to ensure the imposition of sanctions for at least the following infringements** of this Regulation:*

- (a) introduction into, or export or re-export from, the Community of specimens without the appropriate permit or certificate or with a false, falsified or invalid permit or certificate or one altered without authorization by the issuing authority;*
- (b) failure to comply with the stipulations specified on a permit or certificate issued in accordance with this Regulation;*
- (c) making a false declaration or knowingly providing false information in order to obtain a permit or certificate;*
- (d) using a false, falsified or invalid permit or certificate or one altered without authorization as a basis for obtaining a Community permit or certificate or for any other official purpose in connection with this Regulation;*
- (e) making no import notification or a false import notification;*
- (f) shipment of live specimens not properly prepared so as to minimize the risk of injury, damage to health or cruel treatment;*
- (g) use of specimens of species listed in Annex A other than in accordance with the authorization given at the time of issuance of the import permit or subsequently;*
- (h) trade in artificially propagated plants contrary to the provisions laid down in accordance with Article 7(1)(b);*
- (i) shipment of specimens into or out of or in transit through the territory of the Community without the appropriate permit or certificate issued in accordance with this Regulation and, in the case of export or re-export from a third country party to the Convention, in accordance therewith, or without satisfactory proof of the existence of such permit or certificate;*
- (j) purchase, offer to purchase, acquisition for commercial purposes, use for commercial gain, display to the public for commercial purposes, sale, keeping for sale, offering for sale or transporting for sale of specimens in contravention of Article 8;*
- (k) use of a permit or certificate for any specimen other than one for which it was issued;*
- (l) falsification or alteration of any permit or certificate issued in accordance with this Regulation;*
- (m) failure to disclose rejection of an application for a Community import, export or re-export permit or certificate, in accordance with Article 6 (3).*

2. The measures referred to in paragraph 1 shall be appropriate to the nature and gravity of the infringement and shall include provisions relating to the seizure and, where appropriate, confiscation of specimens.

3. Where a specimen is confiscated, it shall be entrusted to a competent authority of the Member State of confiscation which:

- (a) following consultation with a scientific authority of that Member State, shall place or otherwise dispose of the specimen under conditions which it deems to be appropriate and consistent with the purposes and provisions of the Convention and this Regulation; and*
- (b) in the case of a live specimen which has been introduced into the Community, may, after consultation with the State of export, return the specimen to that State at the expense of the convicted person.*

4. Where a live specimen of a species listed in Annex B or C arrives at a point of introduction into the Community without the appropriate valid permit or certificate, the specimen must be seized and may be confiscated or, if the consignee refuses to acknowledge the specimen, the competent authorities of the Member State responsible for the point of introduction may, if appropriate, refuse to accept the shipment and require the carrier to return the specimen to its place of departure."

Ecocrime-directive (2008/99/EC). Art. 3 (g) of the directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence: *"(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"*. For the purpose of this article, 'protected wild fauna and flora' are those listed in Annex A or B of the CITES-regulation.

Questions

II.1. Who supervises compliance with the CITES-regulation in your country? Do the monitoring efforts concern as well the import into and export and re-export from the Community as the commercial activities and movements of life specimens within the Community, your country ⁸?

⁸ See point II.(g) of the Commission Recommendation C(2007)2551 of 13 June 2007 identifying a set of actions for the enforcement of Council Regulation (EC) n° 338/97 on the protection of species of wild fauna and flora by regulating trade therein (Pb. L. 2007/159).

In 2002 Hungary's CITES' enforcement had been administratively decentralized. Hungary's CITES Management Authority is in the Ministry of Rural Development.⁹ Beside this central MA the 10 inspectorates for environment, nature and water as regional enforcement authorities are responsible for regional inspections and registration (see: <http://www.cites.hu>) The Scientific Authority is as well in the Ministry of Rural Development.

According to the Hungarian legislation the monitoring efforts concern as well the import into and export and re-export from the Community as the commercial activities and movements of life specimens within the Community.

Act No. 32 of 2003 repromulgated the Convention in Hungary. (The appendices of the act were amended by Act No. 53 of 2008). Government Decree No. 292/2008. (XII.10.) lays down the provisions concerning the implementation, gives jurisdiction for seizure and confiscation, and provides for sanctions – inter alia. (Act No. 32 of 2003 and Act No. 53 of 2008; Act NO 4 of 1978 on the Criminal Code; 292/2008. (XII.10.) Governmental decree; 19/1997. (VII. 4.) KTM Decree)

II.2. If protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? Do they include the possibility of seizure and confiscation of specimens? What is the level of fines and prison sentences? Are the sanctions often applied and considered to be effective? Can the sanctions be applied on legal persons?

Sanctions

- i. According to the Criminal Code, the illegal purchase, possession, sale, import, (re-)export and transport through the territory of Hungary, trade in or killing of specimens of species listed on Annex A and B of the Council Regulation no. 338/97 is a **criminal offence** and is punishable by up to 3 years imprisonment.*
- ii. According to the national CITES regulation, the inspectorate shall impose a **nature protection fine** amounting to minimum 10.000 and maximum 100.000 HUF depending on the severity and repetition of the offence on anyone not meeting or not properly meeting his/her obligations covered by the Convention, the Council Regulation, the Commission Regulation and the national CITES regulation in respect of a specimen of a species not nationally protected. The fine may be imposed repeatedly in case of non-payment. This fine shall be imposed by specimen in the case of specimens that are subject to the duty of registration, and by each 250 grams started in the case of caviar, caviar containing*

⁹ The new Hungarian Government merged the Ministry of Environment and Water and the Ministry of Agriculture and Rural Development in May 2010. On the official website of CITES agreement still the former structure is available. The new structure is under construction.

<http://www.cites.org/cms/index.php/lang-en/component/ncd/?country=HU>

<http://www.cites.org/eng/resources/reports/biennial.shtml>

products, ivory or rhinoceros horn, and by each cubic metre started in the case of timber. If the species is nationally protected, the amount of the fine is based on the "conservation value" of the species - which is determined by a ministerial decree - and must be imposed per specimen.

Anyone not meeting or not properly meeting his/her obligations covered by the Convention, the Council Regulation, the Commission Regulation or the national CITES regulation may be obliged by the management authority to pay the costs of confiscation and seizure, including also the costs of keeping (storing) and transport.

Confiscated live specimens are usually placed at rescue centres. There are two main rescue centres in Hungary, in the Budapest Zoo and Botanical Garden and in the Szeged Zoo, very close to the Hungarian - Serbian border. Both centres are approved quarantine stations, separated from the zoos. Other municipal zoos can also function as rescue centres if necessary. In case the origin of the specimens is known, the animals are reintroduced to their native habitat. There have been four cases when the CITES MA, in cooperation with the responsible national MAs, reintroduced tortoises in Turkey, Greece, Romania and Serbia.

- iii. (Re-)export, and import **may not be permitted** and EU internal trade certificate may not be issued if the applicant:
 - a) has been condemned in a final judgement due to committing criminal act of nature damaging or cruelty to animals, until he/she is exempted from disadvantageous consequences resulting from the criminal record, but at least for five years from the final judgement,
 - b) has been found responsible for an offence in connection with nature protection in a final judgement, for three years from the final judgement, or
 - c) has been fined in connection with nature protection or animal protection, for three years from the final judgement.

The above penalties are applied regularly by the competent authorities and generally considered as a deterrent against wildlife crime.

Authorised officers

- i. Regional environment, nature and water **Inspectorates** have been designated as authorities responsible for administrative inspections conducted in the course of enforcement of CITES and EU regulations, registration of CITES specimens and issuance of internal certificates.
- ii. **Customs** officers as authorized officers for checking import and export shipments and documents thereof, and to retain or seize illegal CITES specimens.
- iii. As it was mentioned above, according to the Criminal Code (art. 281), the illegal acquisition, possession, keeping for sale trade or killing of specimens, which are protected

and fall under the force of Annex A or Annex B of EC decree no. 338/97, is a criminal offence. Accordingly, the **Police** are involved in all criminal investigations related to CITES.

- iv. Hungary is a member of the International Association of Prosecutors. There are no formalized channels of communication between the national CITES authorities and the State Prosecutors Office regarding convictions for wildlife trade infractions, although there is some informal communication between these authorities. All wildlife crime cases (criminal offence only) are dealt with by the State Prosecutions Office, Department of Special and Economical Cases. However, the Management Authority is usually not informed of the criminal procedure and the sanction when the criminal procedure is concluded as there is no such obligation according to the Hungarian legislation. Moreover, steps have been taken to clarify the relation between the criminal and administrative procedures in order to achieve better practice in conducting cases when both legal procedures are involved.
- v. **Nature Protection Guards** (rangers) of the National Parks: In Hungary rangers have strong powers and are entitled and obliged to take action in case of petty offences or crime concerning species protected by the Nature Protection Act or International Conventions. In such cases rangers have the power to stop persons or vehicles, to carry out identity checks, to retain illegally acquired natural values and tools, to initiate prosecution, to penalize by fine on the spot, and even to detain a person in case of wildlife crime. They can seize and are responsible for the safe placement of seized (non-live) CITES specimens until the court decision.
- vi. There is a **Government Veterinary Service** which is also involved in the enforcement of the Convention and the EC Wildlife Trade Regulations. There is an especially good cooperation between the CITES Management Authority and the border veterinary office at Ferihegy International Airport. The veterinary office regularly sends the data of shipments that have been checked by them to the CITES MA to ensure that CITES provisions are fulfilled and all specimens are covered by the necessary documents.

II.3. Conduct falling under article 3(g) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

As it was mentioned under point II.1. and II.2. according to the Criminal Code (art. 281), the illegal acquisition, possession, keeping for sale trade or killing of specimens, which are protected and fall under the scope of Annex A or Annex B of of EC decree no. 338/97, is a criminal offence. However, to be in full compliance with the Ecocrime-directive's text, the Hungarian government is going to amend the legislation in the autumn of 2010.

The minimum penalty is not determined; the maximum penalty is up to 5 years imprisonment or more depending on the rules of principles of infliction of punishment.

For legal persons a specific legislation with specific sanctions (annulment, restriction of its activity, fine) is applicable, Act No.104 of 2001 on sanctions in connection with the criminal liability of legal persons.

Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.