

PROCEEDINGS OF THE

**INTERNATIONAL EXPERT WORKSHOP ON THE
ENFORCEMENT OF WILDLIFE TRADE CONTROLS IN
CENTRAL EASTERN EUROPE**

**Bulgaria, Czech Republic, Estonia, Hungary, Latvia,
Lithuania, Poland, Romania, Slovakia, Slovenia**

3 – 4 JUNE 2004, BUDAPEST, HUNGARY

by Katalin Kecse-Nagy, Dorottya Papp, Caroline Raymakers,
Attila Steiner and Stephanie Theile (Eds)



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The editors

1. Introduction

The European Union (EU) is one of the largest consumers of wild animals and plants, including fisheries and timber products. The international trade in many of these species is regulated and monitored by CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora). In terms of CITES species, the EU imported approximately six million live birds, 1.6 million live reptiles, around 10 million reptile skins, 21 million orchids and 579 t of sturgeon caviar between 1996 and 2002. Most of this trade is legal, but a significant, though unknown portion of it is not. Illegal wildlife trade can seriously impact the conservation of species and can be ecologically and economically highly damaging. This is especially the case as there are links between illegal wildlife trade and organised crime, as is increasingly recognised.

The EU implements CITES since 1984. In 1997, *Council Regulation (EC) No 338/97 of 9 December 1996 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein* and *Commission Regulation (EC) No 939/97 of May 1997* laying down detailed rules concerning the implementation of *Council Regulation (EC) No 339/97* were adopted. The latter was replaced in 2001 by *Commission Regulation (EC) No 1808/2001*. These two Regulations fully implement the State Parties' obligations under CITES, and address most of the currently applicable Resolutions and Decisions of the Conference of the Parties to the Convention. Although the Regulations are directly applicable in all 25 EU Member States, the necessary enforcement provisions, including penalties and sanctions, must be transferred into national laws, as these are matters that remain under the sovereignty of each Member State which must ensure that infractions are punished in an appropriate manner.

In 2001, TRAFFIC Europe and the IUCN-Environmental Law Centre undertook a joint initiative: “*Enforcement of international wildlife trade control in the EU – Regulation (EC) No. 338/97*”. The project consisted of a comparative analysis of EU Member States' national legislation on sanctions applied in case of violation of wildlife trade law, an analytical compilation of case studies on major wildlife trade crimes, the organization of a workshop and the preparation of the proceedings of the workshop. During the two-day “International Expert workshop on the Enforcement of Wildlife Trade Controls in the EU” that was held in November 2001 in Frankfurt, Germany, a total of 75 representatives of wildlife trade regulatory agencies and public prosecutors (from 14 EU Member States and three Candidate Countries), the European Commission, the CITES Secretariat and intergovernmental and non-governmental organisations raised and discussed legal and other obstacles to effective enforcement and implementation related to illegal trade in wildlife in the EU. (*The proceedings of the workshop can be downloaded at <http://www.traffic.org/proceedings.pdf>*).

Since May 2004, ten countries have joined the EU and more countries will join in the coming years. The expansion of the EU to 25 countries has undoubtedly increased the Union's role as a major wildlife consumer. Moreover, EU enlargement also shifted the Union's external borders further east, placing the new Member States on the frontline for controlling imports of regulated wildlife to the EU. The EU eastern land borders have increased in size by one-third (from 2400 km to 3300 km) and are controlled by eight countries instead of just three. Inside the EU, border controls operating between old and new EU Member States have disappeared and the movement of CITES-listed species and their products inside the EU has become easier.

With the aim to assist the new EU Member States and Candidate Countries in the effective enforcement of wildlife trade controls and the adequate prosecution of wildlife trade crimes, TRAFFIC Europe, with the financial support of the Phare programme, organised a second ‘Expert Workshop’, this time to take place in Budapest, Hungary, in June 2004. The workshop aimed at bringing together enforcement and judiciary experts from the Central Eastern European countries* to discuss challenges and problems with regard to illegal wildlife trade, the adequate sanctioning and prosecution of wildlife trade infractions and related crimes in the region and to identify solutions and recommendations for remedial actions. During the two-day workshop, more than 50 public prosecutors, judges and representatives of wildlife trade regulatory agencies met to develop recommendations for

improving the control and prosecution of wildlife trade related crimes in the new EU Member States. Participants came from seven new EU Member States (Czech Republic, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) as well as from Italy, the UK, two Candidate Countries (Bulgaria and Romania), the European Commission and the CITES Secretariat. The presentations identified and analysed gaps and challenges in national legislation dealing with sanctions and prosecution for wildlife trade, or gaps in the implementation and enforcement of existing legislation. The participants also discussed the need for improved national and international co-operation and increased awareness among the judiciary, especially with regard to the seriousness of wildlife trade crimes. The following discussions suggested options for addressing and reducing such needs and gaps. The Workshop participants – working first in smaller, more focused working groups and then in a plenary format – developed recommendations by which Central Eastern European countries can move forward and tackle problems as well as challenges that lie before them. Enhanced co-ordination and information exchange among agencies at national level, among EU Member States, and also between the EU and other countries, was one of the meeting's main recommendations. Participants also called for means of raising awareness of the importance of wildlife trade controls, and their value in achieving environmental goals.

** As the Phare programme currently covers 10 countries (eight new Member States: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, as well as Bulgaria and Romania) the workshop focussed on these 10 countries.*

2. Overview and examples of wildlife trade judiciary matters at national and Community level in the EU

This section includes summaries of six introductory presentations that provide an overview as well as examples of judiciary issues related to the sanctioning and prosecution of wildlife trade related crimes in the EU.

Wildlife Trade Judiciary Issues in the EU in 2001: Status and recommendations of the ‘TRAFFIC / IUCN-ELC Workshop’

Caroline Raymakers, TRAFFIC Europe

Beyond Seizure: Prosecuting CITES Offenders

Marceil Yeater, CITES Secretariat

More than CITES: The EU Wildlife Trade Regulations

Nicole Magel, European Commission

Overview of national legislation in the EU

Francoise Comte, European Commission

Case Studies from Italy

Marco Fiori, Forest Corps

International Wildlife Crime Prosecutions

Nicholas Crampton, Crown Prosecution Service of England and Wales, UK

Wildlife trade judiciary issues in the EU in 2001: Status and recommendations of the TRAFFIC / IUCN-ELC workshop

Caroline Raymakers, TRAFFIC Europe

The following presentation summarises the outcome of a project undertaken by TRAFFIC Europe and IUCN-ELC in 2001. This initiative focused on the enforcement and prosecution of wildlife trade infractions and related crimes in the EU and resulted in the *'International Expert Workshop on the Enforcement of Wildlife Trade Controls in the European Union'* held in November 2001 in Frankfurt, Germany, where judicial cases, the study's main findings and conclusions were presented and discussed and recommendations were formulated.

Judicial and penal approaches concerning wildlife trade infractions in the EU

Findings of TRAFFIC Europe and IUCN-ELC (Environment Law Centre) study (2001)

- Two main options: Addressing wildlife trade infractions as administrative offences or rather as criminal/penal offences
- Discrepancies between EU Member States with regard to the maximum available penalties: a wide range of fines and penalties e.g. five years imprisonment in the UK and three months in Belgium
- Emerging criteria for more standardised sentencing e.g. POLARIS in the Netherlands
- Role of NGOs in raising awareness, but difficulty to share confidential information

Recommendations of the TRAFFIC / IUCN-ELC workshop

The workshop identified five main areas of recommendations. These were

1. Developing a more systematic approach to types of offenders and the nature of offences

Ranks of offenders:

- Tourists
- Collectors
- Organised network/smugglers

Categories of offences:

The highest impact/threat on biodiversity is caused by: Organised networks/smugglers. Such practices/offences, i.e. organized commercial smuggling should be the primary target of wildlife trade controls and receive the highest penalties/fines when proved to be guilty.

2. Improving enforcement-related co-operation and information exchange

At International level:

- Creation of an informal network of prosecutors of different EU Member States

National level (inter-agencies):

- Establishment of a national wildlife crime units or committees such as the 'Partnership for Action against Wildlife Crime (PAW)' in the UK
- Where possible, establish specialised environmental crime units within the prosecution service of Member States

Scientific and technical information:

- Enhance co-operation and information exchange with fora/experts that have access to scientific & technical information, which is accepted as evidence in court
- Assess feasibility of establishing a jurisprudence database for wildlife trade infractions and related crimes
- Valuation of species, including ecological and biodiversity values

Consider the assistance of the European Judicial Network

3. Legislative and Institutional Development

- Level of penalties related to profit for smugglers i.e. disincentive
- Mechanisms to improve the rate of apprehension
 - Applying principles of “strict liability” to possession of illegally imported wildlife
 - Development and use of sentencing guidelines

4. Training and Awareness-raising

- Training on specificities of wildlife trade sanctions targeting the judiciary sector
- Awareness raising about the value of wildlife trade amongst prosecutors, judges etc.

5. The Role of NGOs

- raising of awareness, knowledge and understanding
- facilitate and information exchange and training for public prosecutors, judges and other judicial experts

A Chain Reaction in Wildlife Trade Control

Dissuasive, adequate and concerted sanctions are keys to all other efforts: enforcement, science and management

More about CITES and wildlife trade issues

1. The TRAFFIC Network – the wildlife trade monitoring network of WWF and IUCN

- 80 Staff members
- 23 National offices
- 7 Regional offices
- 1 World co-ordination office (Cambridge, UK)
- Contact: www.traffic.org and traffic@traffic-europe.com

2. EC Regulations

- www.europa.eu.int/eur-lex/en/oj
- www.eu-wildlifetrade.org
- www.unep-wcmc.org/species/trade/eu

3. Inter-governmental organisations

- www.cites.org
- <http://iucn.org/themes/ssc/index.htm>

Beyond Seizure: Prosecuting CITES Offenders

Marceil Yeater, CITES Secretariat

CITES - overview

- CITES has been in operation since 1975 and is now used by 166 countries to regulate and monitor international trade in wildlife resources
- CITES regulates the export, re-export and import of live and dead animals and plants and their parts and derivatives (for listed species only)
- This regulation is based on a system of permits and certificates that may only be issued if certain conditions are met and which must be presented when leaving or entering a country
- Key conditions are: legal acquisition of specimens and finding that trade is not detrimental to the survival of the species in the wild

Appendix I

- International trade prohibited, except if the purpose of import is non-commercial
- Import permit, export permit or re-export certificate

Appendix II

- Trade allowed but regulated
- Export permit or re-export certificate

Appendix III

- Trade allowed but regulated
- Export permit (if the specimen originates from the country that listed it) or certificate of origin

Article VIII, Resolution Conf. 8.4

Parties shall take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof. These shall include measures:

- to penalize trade in or possession of, such specimens or both; and
- to provide for the confiscation or return to the State of export of such specimens

Treaty incorporation

- CITES is an international treaty which is not self-executing upon a country's adherence (i.e. agreement to be legally bound by its provisions)
- The implementation of CITES obligations requires that policy, powers, rights, duties and procedures be set forth in national legislation
- Effective CITES implementation is impossible without an adequate legal basis at national level
- Trade should not be allowed unless adequate legislation is in force
- Species lists in national legislation must be amended whenever amendments to Appendix I or II are adopted by the Conference of the Parties (CoP) or a Party submits a species for inclusion in Appendix III
- Such amendments, usually prepared after each CoP, should be published in the Official Journal

Main CITES implementation problems

- Insufficient national legislation (particularly regarding penalties)
- Issuance of irregular documents

- Insufficient border control (smuggling)
- Fraud
- Insufficient co-ordination and communication between the Management Authority, the Scientific Authority and enforcement agencies (customs and police)
- Insufficient communication with the Secretariat
- Insufficient control of internal harvest and trade

Problem – perception of enforcement

Illegal wildlife trade has

- High profits
- Low risk of detection
- Low level of punishment

Problem – approach to enforcement

- Enforcement often stops at seizure, with possible confiscation and fine
- May work for tourists but not for criminals:
 - can often escape detection
 - can absorb cost of doing business
- Little or no deterrence value
- But seizure and compounding may be useful alternative for foreign violators

Problem - enforcement economics

Enforcement disincentive is derived from:

- Probability of detection
- Probability of arrest given detection
- Probability of prosecution given arrest
- Probability of conviction given prosecution
- Discount factor of illegal actor
- Time between initial detection and payment of penalty

If any element is zero, entire chain is reduced to zero
(from draft discussion paper by Conservation International)

Solution – proposed approach

The seizure is only the start

- Investigation
- Prosecution
- Reporting/publicity
- Intelligence/targeting

Investigation

- Thorough analysis of shipment and crime scene
- Contact with importing, exporting or re-exporting country as well as World Customs Organization (WCO), Interpol

- Identification of events leading up to seizure and those which might have followed if no seizure had been made
- Interviews and interrogations
- Search of premises, vehicles, etc.
- Surveillance or undercover operation

Investigation - international co-operation

- Identification, location or criminal records of an individual
- Joint investigations
- Details about a suspected illegal shipment in progress
- Controlled buys
- Forensic analysis
- Documentary evidence, affidavits, sentencing input and other support to investigation or prosecution

From investigation to prosecution

- Case reports, chronology
- Tapes/transcripts/translations (if any)
- Witness interviews and rough notes
- Documentary and digital records
- Physical evidence
- Scientific and forensic reports
- Criminal histories
- Proposed charges possible defences

Challenges

- Identification of specimens
- Storage for and care of seized specimens
- Organized crime

Prosecution – a crime has occurred?

Applicable national/supranational laws

- CITES-related legislation
- Forestry, fisheries or wildlife legislation
- Customs code (smuggling)
- Penal code (false statement, conspiracy, mail fraud, money laundering, racketeering, tax violations, etc.)
- Attempts; aiding/abetting

Prosecution - can the crime be proved?

Elements

- Natural/legal person
- [strict liability or mental element]
- Introduced into, exported or re-exported
- Specimen(s) of CITES-listed species
- Without an appropriate and valid permit

Other types of offences

- Failure to comply with permit conditions
- Possession or sale of specimen illegally imported or acquired
- Shipment of live specimens in violation of IATA regulations
- Obstruction of justice
- False declaration or information (to obtain permit)
- Falsification or alteration of permit
- Use of false, altered or invalid permit
- Alteration of identification mark

General rule of prosecution

- Always charge the most serious, readily provable offence or offences consistent with the defendant's conduct
- Charge additional crimes to show nature and extent of criminal conduct, to achieve appropriate sentence; or to help the prosecution's case by allowing certain evidence to be admitted

Plea agreement?

- Benefit of/need for prompt disposition
- Likelihood of conviction and probable sentence
- Expense of trial and likely appeal
- Effect on witnesses
- Trial rather than plea in public interest
- "The best victory is when the opponent's army surrenders of its own accord before there are any actual hostilities." (Sun Tzu)

Trial preparation

- Ensure all reports/documents are organized and ready
- Collect evidence and chain of custody
- Prepare witness and exhibit lists
- Develop graphic tools (diagrams, charts)
- Anticipate possible defence witnesses
- Locate witnesses
- Prepare witnesses for trial
- Trial memoranda on possible evidentiary and other issues

Sentencing

- Minimum/maximum fines and imprisonment within applicable law
- Increased penalties for aggravated offence, subsequent offence, corporate entity, etc.
- Confiscation of equipment, vehicles, etc.; territory bans; bans on continuing trade or occupation; license or permit revocation; business closure
- Relevant precedent
- Sentencing guidelines
- Aggravating/mitigating factors
- Sentencing memorandum

Factors for prosecution/sentencing

- Conservation status of species involved
- Loss of potential value
- Damage to ecosystem
- Harm to trafficked species
- Previous offences
- Degree of intent
- Whether organized activity and role within it
- Level of economic gain
- Ability to pay
- Other illegal activity
- Abuse of power
- Extent of co-operation with authorities
- Timely plea of guilt
- Personal circumstances
- Attempt to mitigate offence
- Special disability
- Reduced penalty for informant
- Deterrent effect

Reporting/publicity

- Have the incident and investigation been publicized to raise awareness of CITES and to act as a deterrent to others?
- Has the incident been reported to a central point in the Management Authority or enforcement agency for intelligence purposes and to allow the preparation of risk assessment and targeting profiles?
- Has the incident been reported to the CITES Secretariat, Interpol and WCO (as appropriate) for intelligence purposes and to allow the preparation of risk assessment and targeting profiles?
- Government press release or press conference
- Inclusion in national and international reports (e.g. CITES biennial report)
- Presentations at national or international meetings
- Inclusion in professional or other journals

Intelligence – analysis and use

- Operational and strategic
- Deployment and re-deployment of resources
- Identify priorities
- Assess performance
- Risk assessment
- Targeting
- Need for additional human/technical resources
- Legislative weaknesses
- Weak border points
- Design of awareness campaigns

Suggestions – teamwork

- Police and Customs
- Scientific Authorities

- Management Authorities
- CITES Secretariat
- Courts
- Public

Suggestions - means

- Specialized individuals or units for investigation and prosecution
- Regular, specialized training
- Mechanism for quick communication
- Memoranda of Understanding (MoUs) between or among authorities
- Ready scientific/technical support
- Priorities for investigation and prosecution
- Early co-operation between investigator, prosecutor and technical experts
- Clear role for public and NGOs
- Media strategy
- Regular communication, meetings, network

Suggestions - tools

- List of wildlife forensic labs
- Standard profiles (age, gender, occupation, etc.)
- Measures to improve flow of enforcement-related data, assist coordination of investigations and ensure appropriate handling of confidential information
- List of wildlife specialists and contact information
- Checklists, sample pleadings, manual, valuation methods
- Sentencing guidelines (www.magistrates-association.org.uk & www.ussc.gov)
- 'Intro to CITES' self-teaching CD-ROM

15%-70%-15% Ratio

- 15%: always follow the law
- 70%: could go either way depending on extent of regulation, opportunity and greed
- 15%: always break the law

More than CITES: The EU Wildlife Trade Regulations

Nicole Magel, DG Environment, European Commission

The EU Wildlife Trade Regulations

- All EU Member States are Parties to CITES
- The Community itself is not yet a Party to CITES
- The Community implements CITES since 1984
- New and improved Regulations adopted in 1997
- One law for all Member States

Introduction

- The EU Regulations are comprehensive and ensure common implementation
- They ensure co-ordinated enforcement
- They ensure better scientific co-ordination
- They are flexible and can be quickly adapted to conservation needs
- They are not limited to CITES

Changes nothing but changes...

- Update of the Annexes: new Commission Regulation published (most recent: Regulation (EC) 1497/2003)
- Update of Commission Regulation, usually in the form of an amendment. Regulation (EC) 1808/2001 replaces 939/97
- Suspensions Regulation: Commission Regulation suspending the introduction into the Community of certain species of wild fauna and flora (most recent: Regulation (EC) 349/2004)

Common implementation

- Detailed provisions cover all aspects of implementation including CITES Conference Resolutions
- Detailed provisions on communication and exchange of information between authorities
- Committee on Trade in Wild Fauna and Flora

Common enforcement

- Controls at outside border of the Community (free circulation of CITES goods within)
- Designated CITES border posts, properly staffed and equipped
- Monitoring of compliance, investigation of infringements
- Imposition of sanctions, seizure/confiscation
- Enforcement Group

Scientific co-ordination

- Scientific Authority to be appropriately qualified and separate from the Management Authority
- Clearly described tasks and responsibilities for Scientific Authorities
- Scientific Review Group

Import suspensions

- *Article 4(6)*: General restrictions or restrictions relating to certain countries of origin on the introduction into the Community of specimens of Annex A or B species if
 - harmful effect on conservation status or on the extent of the territory occupied
 - species with high mortality rate
 - species present an ecological threat

“More than CITES”

Apart from import suspensions

- Annexes contain non-CITES species, monitoring Annex D
- Stricter import conditions
- Provisions regarding intra-Community trade with Annex A specimens
- Transport conditions for all live specimens in the Annexes
- Housing conditions for Annex A and B live specimens

Enforcement

- Monitoring of compliance and investigation of infringements
- *Article 14*:
 - Member States (MS) monitor compliance with provisions
 - MS ensure compliance or instigate legal action in case of infringements
 - MS inform the Commission (and the Secretariat) of steps taken in relation to significant infringements
 - The Commission draws MS’ attention to matters whose investigation it considers necessary
 - MS inform the Commission (and the Secretariat) of the outcome of subsequent investigations

Enforcement Group

- Usually meets once a year to examine any technical question related to the enforcement of the Regulation
- Commission conveys opinion of the Enforcement Group to the Committee

Enforcement: the key issue

- Effective controls are economically important
 - supports sustainable and legal wildlife use
 - ensures income for exporting and importing countries
- Poorly regulated or uncontrolled trade can have negative impact on conservation status of species
- Organized illegal wildlife trade exists
 - undermines good management and conservation
 - may be economically and ecologically highly damaging
- Enforcement is an ongoing activity
 - new species, new markets and new regulations

The enlarged EU

- 10 more MS ⇒ increasing importance of the EU as one of the largest and most diverse market for CITES species
- Focus administrative and enforcement efforts to where they are most needed

More information

- http://www.europa.eu.int/comm/environment/cites/home_en.htm
- <http://www.unep-wcmc.org/species/trade/eu>

Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora – National legislation in the EU and sanctions: an overview

Françoise Comte, DG Environment, European Commission

Provisions of the Regulation (EC) No. 338/97 about compliance and sanctions

- The Regulation contains provisions about compliance (*Art. 14, “Monitoring of compliance and investigation of infringements”*) and sanctions (*Art. 16, “Sanctions”*)
- *Article 16* - “Member States shall take appropriate measures to ensure the imposition of sanctions for at least the following infringements of this Regulation”

Elements of Article 16

- Obligation on Member States to provide for sanctions
- Content of infringements defined by the Regulation itself
- Member States are obliged by the Regulation to provide sanctions for 13 different kinds of infringements, as listed in *Article 16*
- Member States can provide for more infringements if their legislator feels there is need for it
- This Regulation is the most detailed one about sanctions in Community environmental law

Content of Article 16

- *Art. 16-1*: Definition of 13 infringements of the Regulation
- Mainly infringements linked to permits or certificates, for example introduction into, or export or re-export from the Community of specimens without the appropriate permit or certificate (...); failure to comply with the stipulations specified on a permit or certificate issued in accordance with the Regulation; making a false declaration or knowingly providing false information in order to obtain a permit or certificate; making no import notification or a false import notification (...)
- Provision about shipment of live specimens not properly prepared so as to minimize the risk of injury, damage to health or cruel treatment
- Provision about trade in artificially propagated plants
- Provision about 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
- “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”
- “Appropriate measures”: very often of criminal or quasi-criminal nature
- The Regulation gives detailed rules about the procedures of seizure and confiscation
- These procedures are very important because the national authorities in charge of CITES enforcement use them very regularly

A few characteristic elements about Article 16

- Very often criminal character of the national provisions taken in order to put *Article 16* into force
- three main kinds of sanctions adopted in national legislations in order to put into force *Article 16*: (criminal) fines, imprisonment and measures of seizure and/or confiscation

- Difficulty to compare different legislations as material legal concepts may not be the same in all countries

Table: Examples of criminal penalties in selected Member States provided for the sanctioning of offences of the EU Wildlife Trade Regulations

Country	Fine	Imprisonment	Comments
Belgium	- 5 000 to 500 000 €	From 15 days to three months	- Regions of Wallony and Brussels: National law 1981 – Revision in progress - Region of Flanders: National law 1981
Denmark	- No limitation stated by law, amount determined in Court by the judge.	Up to one year	- Ministerial Regulation 2002
Finland	- Natural person: daily fines 5-120 € - (for minor offences 5-20 €) - Legal persons: corporation fine 850-85 000 €	Up to six years	- Nature conservation Act 1996 - Penal Code
France	- Two different legal bases for sanctions, which can possibly be cumulated - Environmental Code: up to 9 000 € - Customs Code: one to twice the value of the good	- Environmental Code: Up to six months - Customs Code: Up to three years	- Numerous instruments law 1977, decree 1978, bye-law 1998, Environmental Code, Customs Code) - Seizure and confiscation provided for by Environmental Code
Germany	- Up to 50 000 € - Misdemeanour: 1€ to 5 000 € daily rate/5 to 360 daily rates	Deliberately committed: Up to five years Negligence: Up to six months	- Federal Natural Protection Law 1998, Animal Protection Law 1998 and Plant Protection law 1998 and specific law in each Land
Greece	- No criminal fine	From one month to one year	- Ministerial decision 1999 and law 1998
Ireland	- Summary conviction: up to around 1 905 € - Indictment: up to about 63 500 €	- Summary conviction: up to one year - Indictment: up to two years	- Wildlife Act 1976 as amended by Wildlife Act 2000 - Confiscation provided for by Wildlife Act 2000
Italy	- From 7 750 € to 103 290 €	Up to one year	- Law 1992 and legislative decree 2001 - Confiscation provided for by law
Luxemburg	- From 62.5 € to 25 000 €	From eight days to six months	- Laws 1975 and 1989; Regulations 1989 - Confiscation and seizure provided for by law
Netherlands	- Natural person: up to 45 000 € - Legal person: up to 450 000 €	Up to six years	- Endangered Exotic Animal and Plant Species Act 1995 - Confiscation and seizure provided for by law
Sweden	- Imported goods detected by Customs: Code of smuggling applicable - Misdemeanour: 10-200 €; others 30-150 daily fines (3-100 €)	Summary conviction: up to six months Indictment: six months to six years	- Environmental Code Ordinance on the protection of Species 1998 - Smuggling Act 2000

Source: Study conducted for the European Commission by Huglo-Lepage & Associés Conseil, 15/09/2003, Criminal penalties in EU Member States' environmental law"; http://europa.eu.int/comm/environment/crime/criminal_penalties2.pdf. The information may have been updated by the Commission.

A few comments

- Some countries put the focus on high fines and not on the prison sentences. That is the case for Belgium where the fines are very high while the level of the imprisonment sanction can be considered to be low, compared to other countries
- Some countries appear as being more severe than others: that is the case for the Netherlands and the Federal Republic of Germany where the fines are high and where the judge can sentence up to between five and seven years of imprisonment
- Specific case of Greece: no fine provided for by law
- Data about the actual sentences as pronounced by the national judges do not exist

International Wildlife Crime Prosecutions

Nicholas Crampton, Crown Prosecution Service of England and Wales

The Crown Prosecution Service is the public prosecutor for England and Wales, there being separate criminal jurisdictions in Scotland and Northern Ireland. It is responsible for deciding whether a prosecution should follow an investigation done by the police. Crown Prosecutors do not have the power to impose penalties as an alternative to prosecution, nor do they recommend sentencing levels to Judges, as is the case in some other countries. However, the Prosecution in a criminal case is obliged to assist the court by providing material which indicates how serious an offence of its type the case before the court is.

This presentation looks specifically at *how the separate parts of the Criminal Justice System can work together* to provide effective enforcement for wildlife offences, and *how the Convention on the International Trade in Endangered Species fits with other wildlife crime*, drawing on the experiences of cases and developments in the UK.

It may help to provide a pictorial model for this. A classical temple had columns, which, while an obvious part of the structure, were there to support the pediment, which had sculpture figures relevant to the purpose of the building. A bridge has several piers, which may create a beautiful structure, but which support a road, necessary to the economic life of the community. If the temple columns or the bridge piers fail, the structure will fail in the purpose for which it was made.

CITES can be seen as supported by a similar structure, for while it is implemented in the EU by Regs. 338/97 and 1801/2001, these require national legislation to provide penalties and enforcement action to make it effective. These 'Pillars' can be summarised as: **Legislation; Police powers and Abilities; Presentation of the case in court; Judiciary's use of the sentences; Other domestic wildlife crime legislation; International co-operation.** All of these must work together to make for effective enforcement.

Legislation

In simple terms the purpose of the law is to identify and then describe clearly the prohibited acts, to detail police powers of investigation, and to provide for penalties substantial enough to be a deterrent.

Police powers and abilities

There must be clear powers of entry, search, seizure and arrest. There must be sufficient knowledge of the legislation by a sufficient number of officers. Senior officers must be willing to allocate some resources to allow investigation of these offences, even if wildlife crime is not among police priorities. This has proved to be difficult to achieve in the UK, where much good police work has been done by officers in their own time. Scientific and ecological expertise needs to be readily available locally. There needs to be good relations and contacts with Customs. In the UK the Customs deal with points of entry into the UK, the police with matters within the boundaries. Whatever the political and financial difficulties in setting police priorities, the enforcement of wildlife crime should be influenced in a democracy by two matters, first the public perception of the seriousness of the offence and secondly by science, an objective yardstick for all nations, which will describe the 'Conservation status' of the species or habitat involved.

Presentation in Court

A sufficient number of prosecutors must understand the legislation, and the science, the 'conservation status', involved. This will allow them to assess the seriousness of the offence, and to identify any aggravating features, which they must ensure are understood by the court, recognising that it is the court which will decide if it accepts the prosecution's arguments. In particular, it is helpful to show how the various powers that the court possesses

would, if used, help to prevent offences. This might include forfeiture of equipment and vehicles and disqualifying defendants from driving. In the UK's experience, well presented arguments of this sort are not challenged by the defence, who instead seek to suggest that their client's circumstances should mitigate the penalty which might otherwise be appropriate.

Judiciary

Courts must be willing to impose the most serious penalties for the most serious offences. Whilst heavy fines can be effective against companies, people find prison more unpleasant, while the imposition of fines or prison is limited under the Human Rights Convention. Where courts impose severe sentences for any type of offence, this indicates society's displeasure, and thus suggests that the enforcement agencies should not neglect that type of offence. In this context, *Wildlife Crime should be seen as a separate branch of the Criminal Law, possessing 'Seriousness' factors which are specific to it*, though some can apply in other branches of the Criminal Law. These factors as established in cases in the UK can be identified as the following:

- The **conservation status** of the species or habitat – how rare is it, how fragile is the habitat, are there special measures being taken to protect it?
- Is there an **international obligation** requiring the country to protect the species or habitat?
- Was there a **commercial motive** behind the offence?
- Was there a **professional duty** on the defendant to avoid committing the offence?
- Is the offence **prevalent**?
- Was it **planned**?
- Was there a **group involved**?

The monetary value of specimens has not been given particular prominence, but clearly has relevance in indicating the commercial motive for the crime, and the size of the operation. By identifying these features, and presenting them to the court, both Judges in the Crown Court (the senior court) and Magistrates in the lower tier of criminal court in England and Wales have been persuaded to impose high tariff sentences in wildlife crime cases, including wildlife trade crime.

Other Wildlife Crimes

Legislation in each country includes three elements, Nature Protection laws, the enforcement of the EU Birds and Habitats Directives, and the enforcement of CITES. These should be seen as three parts of a whole, so that there is compatibility in the content of the laws enforcing each, and consistency in the penalties provided, and that police powers of investigation are broadly similar. If wildlife trade crimes are seen only in isolation they will not benefit from being in their proper context, even if they also have similarity with general smuggling offences and sometimes animal cruelty cases. They are but one way of damaging ecosystems. CITES prosecutions have tended to be done on an 'ad hoc' and disjointed basis, being seen as essentially 'smuggling' cases, but ones with no real damage to society and thus not as serious offences. They have not been dealt with consistently. By locating them firmly in the wildlife crime context, common principles can be developed and used by prosecutors and judges in future cases. The pollution and other cases of environmental damage have some relevance, but these frequently have a finite financial cost in terms of putting right the damage, which can assist in determining the penalty, whilst the offences themselves may not have prison as a penalty. Equally, they are often committed by companies/legal persons in respect of whom sentences of imprisonment are not possible. The sentencing regime here may not be entirely helpful in assessing the seriousness of wildlife crimes.

International Obligations

Having entered into any international agreement, participating states have an obligation to enforce them. In the case of CITES, as there is a clear intention to enforce through the use of the Parties' criminal law, this should be with laws of a broadly similar nature, both in terms of the protection given and the penalties provided, and actually imposed. The fact of this international obligation as an aggravating factor to an offence has been successfully argued in cases in the UK. It follows that 'derogations' allowing a state to exempt from full

protection any species or habitat are not based on objective science and are not compatible with a species 'conservation status'.

An analysis of the previous legislation in the eight Phare Accession States (1999 – 2000) based on TRAFFIC reports and sources suggests that only four countries, Czech Republic, Hungary, Slovenia and Slovakia provided for prison to be a penalty, while only two, Hungary and Slovakia, had one case each where a prison sentence of some sort had actually been imposed. It was noted that there had been substantial amendments to the legislation in all of these eight states as at 1.5.2004. However, it was also noted from the same sources that five of the states appeared to have had no convictions in the same period, though there may have been administrative penalties of a financial nature. In the same period in the UK there appeared to have been 33 convictions, with six prison sentences, and one 'community penalty', (which means a sentence more severe than a fine in the UK). A report from Wolverhampton University in the UK in 2002 was critical of the UK's efforts and suggested that more should and could be done. It suggested that the laws enforcing CITES should have a power of arrest (as has been the case with many of the offences in England under the nature protection legislation since 2002), and that the penalty be increased to five years. It noted a heavy reliance on the use of fines. Both these have now been enacted, and will come into force shortly.

With the enlargement of the EU a number of enforcement issues can be identified as needing attention by all member states and not just the Accession States. These include the fact that the eastern border is now 50% bigger and has eight countries not three, with issues for collaboration and information exchange. With the EU Wildlife Trade Regulations being stricter than CITES, there is a potential stockpile of 'laundered' specimens in Accession states which would have been illegal imports into the EU. Other issues include, specimen marking and forensic techniques (availability and use), difficulties of specimen identification (availability of experts), variations in penalties provided and sentences imposed. There would appear to be a need for an EU-wide review of the enforcement of both EU protected species and habitats and trade laws.

Can the experiences of the UK be of help?

A number of matters from the UK's experience may be of some interest and perhaps assistance in developing ideas for effective enforcement. The first is *the practice of seeing the three parts of wildlife crime, as identified above, as a whole and presenting arguments from across the spectrum*. This has assisted in establishing the principles described above, especially under the heading 'Judiciary'. This can be illustrated by two sets of cases, one involving plants and one involving hare poaching, neither of which have international trade issues. In the plants cases, the digging up of snowdrop and blue bell bulbs in the Norfolk area of the east of England has been an issue for some years. Men are paid to dig up wild stock and remove it without permission, at the instigation of unscrupulous traders. By happy co-incidence in 2003, two such cases involving bluebells came to the knowledge of prosecutors in Norfolk, who by putting both together established that two woods had been attacked five times in a fortnight. Substantial areas of the woodland floor had been dug over, doing significant damage to an internationally rare habitat. The offences were known from police records to be prevalent, and the prosecutor had done such cases before. There was a clear commercial motive and a group of people was involved. four men were prosecuted, one being found in two of the known incidents, and all received sentences substantially heavier than would have been possible before, because the English Wildlife and Countryside Act had just been amended to provide for six months prison for each offence. The availability of prison for an offence in England opens the door to a full range of community-based sentences, deemed more severe than a fine, so that a court has a wide range of sentences and can select the severe end of the range for the worst offences. In this case, two of the men received prison sentences and the other two substantial community based sentences. These were publicised to police officers to show that the courts could be persuaded to impose substantial sentences, together with the arguments employed. That the two men who received jail terms appealed to the Crown Court, and the Crown Court upheld jail terms made the case particularly useful. Exactly the same arguments could be applicable in a wildlife trade case.

The second set of cases involved hare poaching, which has not been seen by the Courts as a serious matter, with fines of a relatively low amount being imposed. It has been seen as a type of property crime, since the law allows only landowners or those with their permission to kill hares. The prosecutor in these cases obtained evidence from the Government's scientific advisers (English Nature) that the hare is the subject of a Biodiversity Action Plan (BAP), aiming to double the numbers by 2010, that East Anglia is the most important area in the country for hares and that poaching is having a significant impact on preventing the BAP from being achieved. The BAP results from an international agreement. By presenting the cases not as property crime but as conservation offences, and ones imperilling the success of an international agreement, the courts were persuaded to impose very heavy fines, and forfeiture of one of the vehicles and disqualifying one of the drivers from driving for eight weeks. Again, following publicity of the case, another police force in East Anglia provided evidence for other cases which have also resulted in similarly heavy sentences. Again, the use of conservation based arguments by prosecutors was accepted by the courts and resulted in very substantially increased penalties.

The approach in these cases can be traced also in two recent CITES cases in the UK, the cases of Henry Sissen and Ray Humphrey. Both concerned illegal import of wild birds on Annex A and Annex B. The *Sissen* case involved nine macaws and resulted in an 18 months prison sentence (after appeal) in 2000, at that time a substantial sentence for such offences. The *Humphrey* case in 2002 involved many more (approx. 40) species and there was clear evidence of several occasions of illegal importation from Thailand. Another man involved pleaded guilty and received 22 months prison. Humphrey denied involvement and was convicted and received five and a half years prison (after appeal). The courts in both cases identified the wildlife aspects as important, and because of the seriousness of Humphrey's behaviour and his lack of remorse imposed an 'exemplary' sentence. This case also demonstrates the importance of good working relations between the police and Customs. Whilst Customs seized one importation at Heathrow, it was the search of his premises by Norfolk police officers which revealed the full extent of his activities and provided crucial evidence to link the two men who were convicted. Without the police input, the case would not have resulted in the sentence ultimately imposed.

Another development has been the '*Partnership for Action Against Wildlife Crime*' or '*PAW*'. This was a Government initiative begun in 1995 providing a meeting place for NGOs with an interest in wildlife, eg. shooting, conservation, trade etc., to discuss with the police and Government the enforcement and amendment of UK wildlife laws. It is co-chaired by a police Chief Constable and the head of the CITES Management Authority, a senior civil servant at the Environment ministry. It has had a number of achievements. These include overseeing the *development of forensic techniques* for wildlife investigations, providing *training for specialist police and Customs officers through national and regional conferences* (at which the Crown Prosecution Service has had an input), developing *training manuals, informing the public about the law* (there is a travelling 'Road Show' that can be taken to public events). Crucially it was instrumental in persuading Government that there should be *legislative change* to the domestic nature protection laws, the Wildlife and Countryside Act 1981, by making many of the offences both arrestable and imprisonable (six months for each offence) when they had previously carried only a fine. This radically raised the seriousness of the offences in the eyes of the courts and since then seven 'egg thieves' have been sent to jail and a gamekeeper subjected to a suspended jail term. There is anecdotal evidence that egg 'thefts' have declined as a result. It has also overseen the increase in sentences for CITES offences, and making these arrestable as described above. Once an offence is 'arrestable' it becomes much easier for the police to conduct a speedy investigation, and there is some control over where the suspect is in the meantime. There has also been set up a *National Wildlife Crime Intelligence Unit*, two years ago, and having established itself some police officers report it has 'been useful'. The latest matter is a *targeted police operation* called 'Operation Artemis' (Artemis being the Greek goddess of wild creatures), which is designed to prevent the persecution of hen harriers. The conservation evidence suggests that the population in the UK, especially in England, is being suppressed by illegal persecution and killing. The idea is to use education, to explain and 'win hearts' for the grouse moors to be 'policed' by landowners willing to co-operate, but if this fails, to prosecute effectively, and in the inevitable glare of publicity, for this police operation was launched very publicly in March 2004 with the Environment Minister present. The aim has been to identify a wildlife problem where policing

could have a major impact, i.e. where crime is thought to be the problem. This focuses scarce resources and maximises their effectiveness, and can be applied by any police force to a range of wildlife issues, and several police forces are looking at this idea. As with the cases mentioned above, the concept of a Review Committee can apply to wildlife trade crimes too. It is something which can be adapted to the needs of other countries, and it appears that Slovenia has done something similar.

Whilst not part of the PAW initiative, the support that *NGOs* can provide has been of great importance in the UK. The RSPB has provided expert information, investigatory assistance, funded forensic work and training conferences. Much of this has now been taken over by PAW. One of its most useful contributions at present is producing a *journal of reported wildlife crime cases*, issued four – five times a year and which is circulated to police officers and prosecutors. Reports are provided by the officer in the case or the prosecutor. It performs a valuable service by informing others of successful outcomes, raising possible difficulties and it is an inexpensive training tool. Another idea, now used by virtually every police force in the UK, is to have a small number of officers designated as wildlife crime specialists, to whom the training can be given, and who are points of contact when cases are reported. Their understanding of the links between domestic wildlife crime and trade crime has proved invaluable, eg. the *Humphrey* case and a report to CPS in Norfolk at the end of May 2004 of sales of CITES listed animal parts using the internet and postal services between the UK and the USA. *Internet sales* have become a very recent area for monitoring by the UK authorities. A case was reported to the CPS by the police in May 2004.

But *is this worth doing*, for if it is not, perhaps there are better uses for the Criminal Justice systems in our countries? A number of justifications may appeal, but the following are offered. 1. International agreements of any sort if not enforced by those participating are useless. 2. An ecological balance is essential for any wildlife to survive. It is a delicate, interconnected web spanning the globe, and is important as a whole. It has its own intrinsic value, beyond what use parts of it may be to humankind. 3. Criminals from other areas of illegal activity are involved across the range of wildlife offences, inc. trade offences, and they can be put out of business by using these offences too. 4. It can be an effective deterrent. Egg ‘thieves’ have reported to the RSPB that they do not like prison! 5. A survey in the UK reported that over 70% involved wanted wildlife crime prosecuted ‘as a priority’, so it would appear to have public support, particularly when issues and cases are publicised.

It would seem that criminal lawyers must learn some new words and phrases, like ‘eco-system’, ‘biodiversity’, ‘ecological balance’, ‘sustainable approach to wildlife’, and be able to develop arguments around these concepts. We have been effective in the enforcement of other areas of the criminal law, and we have learnt new concepts as society has developed. So road traffic law developed with the motor car in the 20th century, Human Rights are developing in the present one. Wildlife crime demands that as lawyers we must be no less innovative and successful.

Wildlife Law Enforcement in Italy – Case Studies

Marco Fiori, Corpo Forestale dello Stato (CFS)

Relevant Authorities in Italy

CITES Management and Scientific Authorities

Ministry of Environment:	CITES Management and Scientific Authority
Ministry of Agriculture and Forests:	CITES Management Authority protected areas surveillance and environmental law enforcement through the Corpo Forestale dello Stato (CFS)

CITES Enforcement Authorities

Ministry of Agriculture and Forests:	CFS
Ministry of Finance:	CITES Custom Controls
Ministry of Defence:	Police - Ecological Operative Group

The CITES Service of the CFS

The CITES Co-ordination Centre, Rome:

- A judiciary storage of seized and confiscated specimens of parts and derivatives
- An investigative section for CITES crimes
- On the national territory: 26 CITES Certification Services
- At the main ports and airports: 19 CITES Operative Units

Legislation

The Italian Constitutional Court highlighted in 1987 that defence of the environment is a constitutional precept (*Art. 9-32*) and the Supreme Court confirmed in 1993 that the environment (natural resources, including wildlife) must be protected by the national law.

Penal Code

Art. 727: prohibits ill-treatment of animals

L. 157/92. Regulation for hunting and protection for strictly protected native species - penal and administrative violation.

Customs/Smuggling legislation

Illegal import and export of flora and fauna can be severely punished by law. If the smuggling is made using false documentation it is considered a crime. So it is punished with reclusion and a large fine. This kind of serious crime allows investigators to use incisive investigation means (telephone tapping, housing interception, etc.).

Law No. 150/92: Enforcement

Detection of species of fauna ad flora without the appropriate CITES documentation as required by the EU Regulations is a crime punished by the law and belongs to the competence of the Tribunal (Public Prosecutor for investigative co-ordinating, ordinary Judge for the sentence). The **CITES law** is an administrative law thus for an effective investigation it is necessary to combine it with other laws.

Penal Code is often used and applied in wildlife crime investigation, in particular when:

- it is proven that specimens concerned are of illegal origin (crime ratified by *Art. 648*)
- the involvement of a criminal association of persons (three or more) in the use/trade of the illegal wildlife is proven (crime ratified by *Art. 416*)
- material falsification of official documentation is proved (crime ratified by *Art. 476*)
- the use of false official certificates or documentation (crime ratified by *Art. 489*)
- ideological falsification on official documentation directed to the official authorities (crime ratified by *Art. 479*)

Importance of international relations in wildlife crime investigation

- Wildlife crime used to be a field limited to the local or national context with few opportunities to investigate the illegal international connection
- The international context in which wildlife crime takes place needs an appropriate and efficient use of all available international investigative and informative channels
- Investigations of certain cases have been initiated directly by Interpol, the CITES Secretariat or the World Customs Organization (WCO)

Examples of channels of international co-operation that has been successfully used in wildlife crime

Interpol

- In 1994 a Working Sub-Group on Wildlife Crime was founded as part of the Working Group on Environmental Crime due to the efforts of some countries and the support of the Interpol and CITES Secretariats
- Meetings took place in Lyon with different countries from European, African, Asian, South and North American regions sharing information, knowledge and modern investigative techniques
- Officers met in order to start concrete co-operation in combating wildlife crime

EU Enforcement Group, established in 1994

Europol 1993-1995

Significant cases in Italy

Chimpanzee case: 1991-1995

- Seizure of 30 living specimens (40 % juveniles)
- Illegal import from Africa (Sierra Leone, Guinea, Congo, etc.)
- Main uses: pets, circuses, photographer and biomedical research
- Smugglers and illegal traders used false certificates (wrongly declared bred in captivity)
- Forensic techniques (DNA tests) were used to prove the forgery of the certificates

- Crimes: **CITES National Law (L.150/92)**, (**Penal Code**) smuggling, falsifications, ill-treatment, (**Financial legislation**) tax and customs avoidance, customs legislation
- Penalty in the first case: 30 000 EUR in 1993
- Smugglers prosecuted: seven people (1993-1997)

Tulip case: 1994 – 2000

- Specimen seized: 2 150 living *Psittacides*
- Countries involved beside Italy: The Netherlands, Uruguay, Paraguay, Argentina, Brazil, Hungary, Czech Republic, Austria, Switzerland, Belgium
- Police measures taken (search warrants, interrogations, etc.): 30
- Investigation means used: phone tapping, searches warrants, seizures - Forensic laboratory (genetic identification) - Marking techniques
- Investigation carried out by the CFS CITES Service of Rome and Naples and co-ordinated by the Magistrate of Salerno town
- Crimes: **CITES National Law (L.150/92)**, (**Penal Code**) smuggling, falsifications, conspiracy, ill-treatment, (**Financial legislation**) tax and customs avoidance
- Crucial: connection with crimes of high seriousness and thus enlargement of investigation context
- Smugglers prosecuted: 27 persons
- Arrests: seven persons (one Dutch citizen after international warrant, arrested in Belgium)
- Routes used:
 - o Countries of origin: Central-South America (Argentina, Uruguay, Brazil, Paraguay, etc.), Oceania, Southeast Asia (Indonesia, Philippines, etc.), Africa (Tanzania)
 - o Transit countries: Eastern European countries (Russia, Poland, Romania, Ex-Yugoslavia, Slovenia, the Czech Republic, Slovakia, etc.)
 - o Destination: Western European countries (Italy, the Netherlands, France, Switzerland, Germany, etc.) using land borders (mainly by vehicles) through Poland-Germany, Slovenia-Italy borders, and Malta-Italy, Greece-Italy, Albania-Italy sea borders

Gaur Case: 1996 – 2000

- Specimen seized: 150 stuffed animals and trophies
- Examples: 3 *Bos gaurus*, 4 Tigers *Panthera tigris*, 7 *Ovis vignei*, 13 *Ovis ammon* subspecies, 6 *Capra falconeri*, 2 *Helarctos malayanus*, 20 Brown Bears *Ursus arctos*, 2 Clouded leopards *Neofelis nebulosa*. All listed in CITES Appendix I and II
- Value: approx. 440 000 EUR
- Persons prosecuted: 2 Italian citizens
- Persons involved: 10 Italian citizens and others in Russia, India, Germany, France, Myanmar
- Problems: the official transmission and use of information needed, available in France (Customs), for the start of the investigation in Italy
- In the Interpol Wildlife Trade Sub-Group in 1997, unofficial information was provided to Italy by French representatives
- Fortunately in this case there was a good collaboration with the French Embassy (Custom attaché) in Rome that transmitted officially some information and documents to the CFS investigators

Shahtoosh case: 1997 – 2000

- Seizure: 65 shahtoosh shawls
- Shahtoosh is the wool made from an Appendix I Antelope *Pantholops hodgsonii* living on Tibet Plateau of China and North India at 4 000 m. Wool of this animal is used for making famous shawls of high economic value (960- 6 400 EUR)

- Italian wool companies are among the most famous in the world for spinning and trading (illegally) in this rare and precious raw wool
- Frauds were based on the false declaration of the offenders that shawls, sold in the most famous boutiques in the world, were made using cachmere (from the Himalayan or Kashmir goat *Capra hircus*) or using the soft wool left by the antelopes on the bushes
- The collaboration with a forensic laboratory was crucial for the investigation as they identified the wool as shahtoosh
- Offences: **CITES Law** (L.150/92 modified), smuggling and custom legislation (with aggravating circumstance), commercial fraud (**Penal Code**)
- Total of illegal trade evidenced: a total of 300 shawls. Illegal importation and trade in Italy to Europe and the USA of around 200 shawls sold in luxury hotel show rooms, boutiques, VIP parties, etc.
- Use of international channels: French customs provided copies of invoices that proved the involvement of the most famous Italian wool company where more than 100 shawls were seized. Following that several other shawls were seized in the most famous fashion markets in Florence, Milan, and Rome etc.

Practical steps to be followed:

- Informal information and documentation sharing with Interpol, CITES, Customs contact persons
- Routine investigative checking (criminal files, informants, local law enforcement officer reports, etc.)
- Official exchange of information using Interpol channels (official information request, ECO message, etc.), CITES channel (using co-operative enforcement contact persons), Customs network contact persons, etc.
- Starting of investigation with the magistrate intervention and investigation
- Collecting evidence (including forensics as well)

3. Country Reports - Enforcement of International Wildlife Trade Controls in Central Eastern Europe

This section contains national country reports that summarise information on the national legislation used in wildlife trade prosecutions and sanctioning, contains information on the relevant authorities and competencies within the country with regard to wildlife trade controls and provide examples of illegal wildlife trade cases and prosecutions in the relevant countries. The country reports have been compiled partly based on the presentations at the workshop (see agenda, Annex A) and partly based on the reports written by the participating experts.

Bulgaria

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Legislation

The Republic of Bulgaria ratified the Convention in 1990 and it entered into force in 1991. In 2002 the **Biodiversity Act** was adopted for the implementation of CITES in Bulgaria.

The **Biodiversity Act** is the substantive law, defining the specific administrative violations and the sanctions provided – *Art. 125, Art. 127, Art. 128*. One of the chapters of the **Biodiversity Act** is dedicated to trade in endangered species of wild flora and fauna. The provisions of this chapter apply to specimens of any species included in the Appendices of CITES. This chapter introduces the Convention in practice and sets down strict procedures for its implementation.

The **Biodiversity Act** designates the CITES authorities in Bulgaria:

The Ministry of Environment and Water is the Management Authority in charge of the implementation of the requirements of the Convention.

The Bulgarian Academy of Sciences, with the specialized institutes, full-time research personnel and associate experts thereof, is the Scientific Authority for the purposes of implementing the Convention.

The provisions of the **Biodiversity Act** state that specimens of any species listed in the CITES Appendices shall be imported and exported according to the requirements of the Convention, this Act, the **Customs Act** and other special laws. According to the provisions of the Biodiversity Act live animals of any species listed in the CITES Appendices shall be transported according to the guidelines for transportation of live animals, published by the CITES Secretariat, and in case of air transport, also according to the Regulations established by **Resolution 620** Appendix A of the International Air Transport Association (IATA).

All specimens of species listed in Appendix I and II of CITES, with the exception of food products derived therefrom and of the species constituting a subject matter of the **Hunting and Game Keeping Act**, shall be subject to registration.

Legislation relevant for sanctions

The **Administrative Violations and Sanctions Act** is the procedural law, containing the manner and rules of the punishment.

The **Penal Code** and the **Code of Criminal Procedure** have a subsidiary action concerning the matter of the guilt, the conditions excluding the administrative-penalty liability, the sanity, the preparation or the attempt to commit a violation, the implication in a violation and some elements of the penalty procedure, which are not dealt with the **Administrative Violations and Sanctions Act**. The **Penal Code** contains general crimes against protected areas, protected species of wild flora and fauna, the environment, the customs regime, the international trade regulation etc.

Competent Administrative-Penalty Body

The holder of the administrative-penalty competence is the Management Authority - the Minister of Environment and Water or persons authorized thereby, such as the Directors of the Regional Inspectorates of Environment and Water, the Directors of the three national parks, designated officers by the Ministry's staff.

Administrative Sanctions and Concomitant Coercive Measures

The Bulgarian **Administrative-Penalty Law** implements the principle of the personal liability. According to the administrative-penalty provisions of the **Biodiversity Act**, the legislation makes a difference between natural and legal persons (including the entrepreneurs) regarding the imposed sanctions. The administrative sanction provided for a natural person is a fine and for a legal person – a pecuniary penalty. The difference between the above-specified sanctions is their extent, which is much higher for the pecuniary penalty. The amount of the administrative sanctions is not fixed: there is a minimum and a maximum provided for every kind of infraction.

Under the administrative sanction the administrative-penalty body shall order the seizure of the corporeal movables subject to a violation or the corporeal movables, which have served for commission of a violation. The disposal of specimens of any species, included in the Appendices, which have been confiscated, shall be the duty of the Minister of Environment and Water. In case of infliction of damages by the penal action the administrative-penalty body has the power to state the compensation for damage along with the sanction.

Administrative Penalty Provisions

Performing any activity for import and export of CITES specimens without a permit shall be punishable by a fine of 500 BGN (256 EUR) or exceeding this amount but not exceeding 10 000 BGN (5 128 EUR), in case of natural persons, or by a pecuniary penalty of 1 000 BGN (512 EUR) or exceeding this amount but not exceeding 30 000 BGN (15 384 EUR), in case of legal persons and entrepreneurs.

Article 100 of Biodiversity Act

It is prohibited to offer for sale, acquire or publicly display for commercial purposes, use for commercial gain and sale, keep for sale specimens of any species referred to in CITES Appendix I.

Article 102 of Biodiversity Act

Trade in any unregistered specimens in cases under *Article 101* herein, as well as trade in unregistered specimens of any species referred to in Item 2 of *Article 70* herein, shall be prohibited.

Any violation of *Article 100*, *Article 102* (1) shall be punishable by a fine of 100 BGN (51 EUR) or exceeding this amount but not exceeding 5 000 BGN (2 564 EUR), in case of natural persons, or by a pecuniary penalty of 500 BGN (256 EUR) or exceeding this amount but not exceeding 10 000 BGN (5 128 EUR), in case of legal persons and entrepreneurs.

Case study

- Duration of the administrative-penalty procedure: 29/03/2004 – 11/05/2004; entry into force of the Penalty decree – 21/05/2004
- Administrative-penalty body: the Director of the Regional Inspectorate of Environment and Water (regional division of the Ministry)
- Offender: a natural person acting as an authorized representative of an entrepreneur
- Number of specimens: eight specimens of live birds (parrots), as follows - *Platycercus eximius* (1), *Psittacus erithacus* (2), *Agapornis roseicollis* (2), *Myiopsitta monachus* (1), *Gracula religiosa* (1), *Polytelis anthopeplus* (1)
- Violation: offering for sale and public display for commercial purposes; the species were not registered as required by the **Biodiversity Act**; the offender could not present a document of origin
- Place of the violation: a pet-shop rented by the offender
- Sanctions: a fine - 250 EUR; (the amount of the fine for this infringement varies from 50 to 2 500 EUR); confiscation of the eight parrots – subject of the violation. The disposal of the seized species will follow

Confiscations between 1993 and 2004

Species	Amount	Live	Dead	Date of Violation	Country of Export	Destination
<i>Psittacus erithacus</i>	26	15	11	09/06/1993	Nigeria	
<i>Psittacus erithacus</i>	32	26	7	14/06/1993	Nigeria	
<i>Macaca rhesus</i>	1			21/03/1996		
<i>Macaca sp.</i>	1			21/03/1996		
<i>Psittacus erithacus</i>	40			23/09/1997	Nigeria	Turkey
<i>Psittacus erithacus</i>	157			08/12/1997	Nigeria	Turkey
<i>Poicephalus senegalus</i>	1			23/09/1997	Nigeria	Turkey
<i>Cercopithecus aetiops</i>	2			23/09/1997	Nigeria	Turkey
<i>Cercopithecus mona</i>	1			26/05/1997	Nigeria	
<i>Cercopithecus mona</i>	1			23/09/1997	Nigeria	Turkey
<i>Cercopithecus mona</i>	2			08/12/1997		
<i>Viverra civetta</i>	1			08/12/1997		
Elephant Ivory (<i>Loxodonta africana</i>)	128,5 kg			12/11/1998		Turkey
<i>Psittacus erithacus</i>	10			14/12/1999		
<i>Poicephalus senegalus</i>	40			14/12/1999		
<i>Cercopithecus aetiops</i>	3			13/12/1999		
<i>Cercopithecus mona</i>	10			13/12/1999		
<i>Cercopithecus ascanius</i>	1			13/12/1999		
<i>Testudo graeca</i>	169	169		05/07/2000		
<i>Chersina angulata</i>	66	65	1	31/10/2000		
<i>Psammobates tentorius trimeni</i>	2	2		31/10/2000		
<i>Testudo graeca</i>	6	6		06/2001	Bulgaria	Western Europe
<i>Testudo graeca</i>	31	31		18/05/2001		
<i>Testudo hermanni</i>	12	12		18/05/2001		
<i>Python molurus bivittatus</i>	3	3		22/01/2004		
<i>Testudo graeca</i>	1	1		15/03/2004		
<i>Testudo hermanni</i>	1	1		15/03/2004		

Foreigners performed most of the violations. Unfortunately, there are no adequate provisions for them and therefore the cases usually ended with the confiscation of the specimens.

Czech Republic

Zuzana Hroudova, Ministry of the Environment
Renata Martincova, Czech Environmental Inspectorate

Legislation

The former Czechoslovakia became a contracting party to the Washington Convention in 1992. The Czech Republic, as the successor state, became a contracting party on the first day of its existence, 1 January 1993.

The CITES Convention was implemented by **Act No 16/1997 Coll., on conditions of import and export of endangered species of wild fauna and flora**. This Act fully complied with the Convention, but it was not sufficient for the implementation of the relevant EC legislation. The act implementing EU Wildlife Trade Regulations was passed by the Parliament and published on 5th March 2004, as **the Act No 100/2004 Coll., on the protection of wild fauna and flora by regulating trade therein**. It came into effect on 1 May 2004 and at the same time it replaced the **Act No 16/1997 Coll.**

The act implements among others Council Regulation (EC) No 338/97 of December 9, 1996 on the protection of species of wild fauna and flora by regulating trade therein, and further regulations of the European Community issued on the basis thereof, especially Commission Regulation (EC) No 1808/2001. The act also provides for some further measures, such as the registration of certain specimens. These provisions go beyond the EC legislation. Nevertheless, they contribute to the proper implementation of relevant EC regulations.

Along with the new Act, an implementing decree was also published (**No 227/2004 Coll., on some details of application forms, registration of certain specimens etc**). It contains application forms, CITES documents, forms and details of the registration of specimens.

Main powers of the administrative authorities (Section 25)

The Management Authority is The Ministry of the Environment, its main responsibility is the implementation of the regulations.

The Enforcement Agencies are the following

Customs offices: customs controls at the international airports, collaboration with the Czech Environmental Inspectorate, seizure of specimens

The **Czech Environmental Inspectorate:** surveillance, confiscation of specimens, sanctions

Veterinary administration authorities: collaboration with the customs offices, checks of transport conditions, assistance concerning handling of specimens during seizure and confiscation

Phytosanitary care authorities: collaboration with the customs offices, assistance concerning handling of specimens during seizure and confiscation, checks of transport conditions

Regional authorities, administrations of national parks and administrations of protected landscape areas: on the territory of national parks and protected landscape areas - granting of exemptions from the prohibition of commercial activities, registering the specimens

The Agency for Nature Conservation and Nature Protection: performs the role of the Scientific Authority.

Sanctions (Sections 31 – 33)

The authority responsible for imposing penalties is the Czech Environmental Inspectorate. Section 31 of the Act stipulates fines for offences of natural persons (up to 200 000 CZK, 6250 EUR), Section 32 stipulates fines for administrative torts of legal persons and natural persons during the performance of business activities (up to 1 500 000 CZK, 46 875 EUR).

CITES is also included in the Czech **Criminal Code**. In 2002, an amendment to the Criminal Code dealing with CITES was passed (No. 134/2002 Coll.). A new criminal offence was created concerning endangered species.

Criminal Code

§ 181 f

1. Person who illegally kills, destroys, manufactures, imports, exports, transfers, keeps, offers, transmits, gets for its own or others use an animal or plant that is protected or specimen of endangered species and

- a) commits such activity on more than 50 animals or plants or specimens or
- b) commits such activity though he was affected for similar offence within last two years or was found guilty or was punished within last three years will be punished by imprisonment for up to three years or by activity prohibition or by fine.

2. Person, who illegally kills, destroys, manufactures, imports, exports, transfers, keeps, offers, transmits, gets for own or others use a specimen of species critically endangered or directly endangered by extinction will be punished in the same way.

3. Criminal offender will be punished by imprisonment for from six months up to five years
- a) if he commits the crime listed in *Article 1 or 2* in order to get considerable benefit or
 - b) commits the crime as a member of organised group

4. Criminal offender will be punished by imprisonment for from two up to eight years
- a) if he commits the crime listed in *Article 1 or 2* in order to get extensive benefit or
 - b) commits the crime in connection with organised group operating in more countries.

Case studies

31/8/1999

- 40 specimens of *Geochelone radiata* taken in hand luggage without CITES or veterinary permits
- three years of suspended imprisonment and fine 100 000 CZK, 3 140 EUR

20/8/2002

- Illegal import from Indonesia committed by a Slovak citizen
- In total 68 reptile specimens (two dead) including the following species: *Morelia viridis*, *Varanus prasinus*, *Varanus salvadorii*
- The case went to court in the Slovak Republic

Cases under Investigation

- three attempts to illegally import reptiles from Indonesia
- Specimens brought on order and were not destined solely for the Czech Republic but also further to the EU

21/3/2003

- Illegal imports of 94 specimens (four dead) both CITES and non-CITES species from Indonesia in hand luggage, in plastic boxes. Including *Morelia viridis*, *Varanus prasinus*, *Varanus spp.*

21/1/2004

- Attempt to illegally import 112 specimens of reptiles (CITES App. I, II) including *Varanus prasinus* (*V.p. macraei*, *V.p. kordensis*, *V.p. boehmei*), *V. salvadorii*, *Geochelone radiata*, *Pyxis planicauda*, *P. arachnoides*, *Callagur borneoensis*

18/3/2004

- In total 69 reptiles (CITES App. II and non -CITES) packed in socks and plastic boxes including *Morelia viridis*, *Varanus rudicollis*, *Liasis fuscus*

Estonia

Kadri Alasi, Ministry of Environment

Legislation

Estonia ratified CITES in July 1992 and it entered into force in October 1992. Because of the EU accession a new harmonised regulation was needed in accordance with the EC Regulation No. 338/97. Therefore a new **Nature Conservation Law** was accepted, which entered into force on 10 May 2004. It provides the following:

- Definition of the protected species (protected objects) including the species listed in Annexes A-D of the EC Regulation No 338/97
- The Ministry of Environment is the Management Authority
- Minister of Environment will designate the Scientific Authority
- Facultative delegation has been given to the Minister of the Environment to enact (in case of necessity) measures stricter than those under EC Regulation No 338/97
- Government will designate custom offices for carrying out the custom procedure for export and import of specimens of the species listed in the Annexes of the EC Regulation No 338/97 and will state which offices are specifically intended to deal with live specimens
- In case of infringement of rules established under EC Regulation No. 338/97 for transactions and operations with specimens of species listed in Annexes A-D of the same Regulation, compensation for environmental damages shall be 200 - 2 000 000 EEK (12 - 130 000 EUR), depending on the level of threat and on the market value of the specimen concerned
- Violation of the requirements for use or protection of protected objects: fine up to 18 000 EEK (1 150 EUR) or arrest; the same violation if committed by legal person - fine up to 50 000 EEK (3 200 EUR)

Regulation of the Minister of the Environment 28.05.2004 No 57 “Designation of the Scientific Authority” establishes the Estonian Scientific Committee of CITES as Scientific Authority. It consists of five members with different taxonomic expertise.

Customs Act (01/05/2004)

- General rules on customs control
- Custom procedures
- Customs clearance
- Violation of customs rules
- Punishment for violation of customs rules
- In case of unlawfully carried goods across the customs frontier the customs authorities may confiscate the goods which are presumed to be direct object of the violation of the customs rules (including vehicle)
- The customs authorities are pre-trial investigation authorities in matters concerning violation of the customs rules
- A person who, while carrying goods to be declared from non-EU country to Estonia or from Estonia to non-EU country, conceals the goods from the customs control or evades customs control, fails to declare the goods, declares the goods under an incorrect Harmonized System Code (HS Code) or description, or uses any other fraud shall be punished by a fine of up to 300 fine units (1 150 EUR)

Environmental Supervision Act (07/07/2001) establishes the rights and obligations of persons who exercise and manage state environmental supervision and the procedure for supervisory operations. The Environmental Inspectorate has the right and the obligation:

- to monitor adherence to the requirements in the fields of environmental protection and use (including EU regulations on the protection of species of wild fauna and flora) and to suspend or terminate activities which are contrary to the specified requirements;
- in the cases pursuant to the procedure established by law, to seize illegally procured natural products and, in the cases specified by international agreements, the return of such natural products to their state of export.

According to the **Code of administrative infringements** representatives of the Environmental Inspectorate are not entitled to act as pre-trial investigation authorities in matters concerning violation of the customs rules.

Penal Code

Violation of the requirements for hunting, catching or other utilisation of wild game, fish or other wild fauna, if significant damage is thereby caused to the environment, or unlawfully organising the hunting or catching of wild game, fish or other wild fauna, is punishable by a pecuniary punishment or up to three years' imprisonment.

A person who, while carrying goods to be declared across the customs frontier, conceals the goods from the customs control or evades customs control, fails to declare the goods, declares the goods under an incorrect commodity code or using a false description, submits falsified documents, or uses any other fraud, if the object of the act is a large quantity of goods or a punishment for a misdemeanour has been imposed on the offender for the same act, shall be punished by a pecuniary punishment or up to three years' imprisonment.

The same act, if committed:

- by an official taking advantage of his or her official position, or
- by a group,

is punishable by one to five years' imprisonment.

A court may, pursuant to the provisions of this code, apply confiscation of a substance or object which was the direct object of the commission of an offence provided for in this section.

Confiscations (2002-2003)

Confiscation made in August 2002 by customs in Muuga Harbour:

- purse, made from *Osteolaemus tetraspis*;
- briefcase, made from *Python sebae*;
- purse, made from *Python sebae*;
- two pairs of shoes, made from *Python sebae*;
- two wallets, made from *Varanus sp.*

Confiscation made in March 2003 by customs in Muuga Harbour:

- Stuffed hawksbill sea turtle - *Eretmochelys imbricata*

Confiscation made in August 2003 by customs in Luhamaa border point:

- Coral from genus *Pocillopora*

Hungary

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Legislation

Hungary has been a contracting party to CITES since 29 May 1985. The provisions of the Convention were first implemented on 27 August 1985 when the Convention entered into force.

The national CITES Management Authority is the Ministry of Environment and Water, Department of International Treaties on Nature Conservation. From 28 December 2002, when the new national legislation for the implementation of the Convention entered into force, the National Park Directorates have had the authority to make regional checks and investigations. There are 10 National Park Directorates, which are the local authorities of nature conservation within the territory of their competence, completely covering the territory of Hungary.

The Management Authority is responsible for the enforcement of the Convention in co-operation with the Hungarian Customs and Finance Guard and the Hungarian Police. The Ministry of Environment and Water signed a contract of co-operation with the above-mentioned authorities and a close collaboration has been developed between the Management Authority and these organisations.

The national legislation for the implementation of CITES is the **Government decree No. 271/2002 (XII. 20.)** that contains stricter domestic measures than CITES and adopted most of the stricter measures of the European Community's wildlife trade regulations. The decree modifies the duty of declaration and registration: acquisition, alienation, death, annihilation and the progeny of all animal species listed in Annex A and live specimens of mammal, bird and tortoise (*Testudinidae* spp.) species listed in Annex B (with exceptions) must be declared to the Management Authority within 15 days and requires compulsory individual marking of the registered specimens.

Export and import may not be permitted if the applicant

- is currently under sentence for the commission of a criminal act in relation with environment protection or nature conservation, and until being exempted from prejudicial consequences related to the previous conviction, or at least up to five years following the validity date,
- is currently held responsible for breaching the rule of environment protection or nature conservation, up to two years following the validity of the decision,
- is fined by nature conservation penalty, up to three years following the validity date of the decision.

These provisions shall apply even if the judgement or decision is made respectively by a foreign court or other foreign authority.

The decree orders that in case of breaking the rules of the regulation, a nature conservation penalty must be paid.

Other regulations

Strictly protected species – according to **Government Decree No. 8/1998 (I.23.) about the Detailed Rules on Protection, Keeping, Display and Utilisation of Protected Species** – are not allowed to be kept, displayed or utilized, except for nature conservation or other public interest purposes. Exemptions are set for a few species of birds of prey for falconing purposes. These birds have to be captive bred and marked by microchip transponders. The hybridisation of these species is prohibited.

Sanctions

According to *Article 281* of the **Criminal Code**, the illegal acquisition, possession, keeping for sale, trade or killing of specimens, which are strictly protected or falling under the force of international treaties on nature conservation, is a criminal offence. The maximum possible sentence for violation of the provisions of the Convention is one to three years in prison (maximum five years imprisonment if the activity causes mass destruction).

According to **Government Decree No. 283/2004**, any person not meeting, or not adequately meeting his/her obligation according to this present decree, is liable according to the provisions of separate pieces of legislation (**Law No. 69/1999 on Administrative Offences, Articles 147-149; Government Decree No. 33/1997 on Nature conservation fines, and Criminal Code**), and shall pay a nature conservation penalty specified in the provisions of that separate law. Moreover, the Management Authority shall oblige him/her to compensate for the costs incurred with the seizure and confiscation of the goods by including the cost of storage and transportation respectively. The amount of the fine ranges from 50 000 to 100 000 HUF (200-400 EUR).

Live animals and plants and their parts and/or derivatives which enter Hungary through the violation of the provisions of CITES will be seized by the Management Authority in co-operation with the Hungarian Customs and Finance Guard and its regional offices. If the importer cannot provide the required documents within 15 days after the seizure, the Management Authority will confiscate the shipment.

Significant cases 2003-2004

Confiscation of two live specimens of *Cacatua alba*, two specimens of *Cacatua sulphurea* and 50 specimens of *Geochelone elegans* (10/02/2003)

The animals were found in a car boot by a regular police check near the Austrian border. The offenders were a Serbian and a Croatian citizen, who presumably intended to smuggle the shipment into the EU. The shipment was confiscated by the CITES Management Authority and the offenders were prosecuted for the crime of nature damaging and fined 62 000 HUF and 87 000 HUF (250 and 350 EUR) respectively by the court.

Confiscation of 27 live specimens of *Testudo hermanni* (27/06/2003)

The shipment was smuggled by a Romanian citizen from South-western Romania. The offender planned to sell the tortoises to pet shops in Hungary. The shipment was confiscated and the smuggler was fined with a 100 000 HUF (400 EUR) nature conservation penalty, in addition a criminal procedure was started against him. The CITES Management Authority contacted the Romanian colleagues concerning the reintroduction of the animals. A positive answer was received and the tortoises are supposed to be transported back to their natural habitat as soon as possible.

Confiscation of 58 live specimens of *Testudo hermanni* (31/07/2003)

The shipment was seized from a Moldavian and two German citizens by the Border Customs Office of Hegyeshalom (Austrian border). They travelled from Moldova to Germany and were trying to smuggle the animals into Austria when they were stopped. The shipment was placed in a rescue centre. All three offenders were prosecuted for the crime of nature damaging and were found guilty and fined 350, 250 and 250 EUR respectively by the court.

Seizure of 92 packages of tiger plasters (Traditional Chinese Medicine, TCM) containing *Moschus spp.* from OTTO Catalogue (05/08/2003)

Members of the CITES Management Authority found TCM products in the 2003/2004 Autumn/Winter OTTO Catalogue. A sample was ordered and it was found that it contains *Moschus spp.*, which was indicated on the package both in English and Chinese. During a check of the company's warehouse 92 packages were seized. The criminal procedure is in progress. The lawyers are trying to defend the company by providing a statement from the Chinese producer which states that the product does not contain real musk, only synthetic, and *Moschus*, as an ingredient, was misprinted on the package.

Seizure of three live specimens of *Ara maracana* (11/11/2003)

The birds were smuggled from Austria by a Hungarian breeder who tried to legalize them as previously (in 1991) registered specimens. Following a consultation with the Austrian CITES Management Authorities, it turned out that the birds were bred in Austria in 2000 and 2001. In this case the ring numbers were used as evidence. The criminal procedure is still in progress.

Seizure of 54 live specimens of *Testudo hermanni* (21/11/2003)

The animals were found in sport bags in a McDonald's restaurant in Budapest. The employees of the restaurant called the Police because they found some suspicious bags, which were moving. The animals were seized by the Police in co-operation with the Hungarian CITES Management Authority and transported to a rescue centre. The smuggler (a Serbian citizen) was caught when he returned for the tortoises. He had smuggled the shipment by train, probably from Serbia and Montenegro. The criminal procedure against him is still in progress.

Seizure of two live *Ara macao* (04/2004)

The breeder declared two young Aras as bred by himself in 2002. CITES Management Authority investigated his premises and took blood samples from the parents and the offspring's for DNA testing. The result of the test demonstrated that there was no parent-offspring connection between the specimens. A criminal procedure was started and the birds were seized by the Police as a result of the criminal investigation. The procedure is still in progress.

Trends

Traditional Chinese Medicines

There were 12 cases in 2003 when the Ferihegy (Budapest) Airport Customs Office seized different kinds of TCM products contained in Chinese postal consignments. All cases were followed by a Police criminal investigation and the confiscation of the goods by the CITES Management Authority. Unfortunately, in most of the cases the offenders were unknown, therefore the procedures had to be abandoned. The number of TCM seizures has increased significantly in the past two years.

Tortoises

Smuggling of live tortoises (*Testudo hermanni*, *T. graeca*, *T. marginata* and *T. horsfieldii*) is the most significant issue in Hungary. The countries of origin are mostly Macedonia, Turkey and Romania, and the intended destination is often one of the EU Member States. Huge shipments have been confiscated in the past 10 years. 1 250 live *T. horsfieldii* in 1993, 1 010 live *T. graeca* and *T. hermanni* in 1996, 181 live *T. graeca* in 1997, 805 live *T. hermanni* in 2001 and many smaller shipments. Of the confiscated specimens 180 specimens were reintroduced in Turkey in 1998, and 330 tortoises in Greece in 2002 in co-operation with the CITES Management Authorities. In addition, there are 24 confiscated tortoises, which are currently being returned to Romania.

Latvia

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Legislation

Latvia joined CITES in January 1997. The legal requirements of the Convention in Latvia are implemented by the **Cabinet of Ministers Regulation No. 133 "An order by which the international trade of endangered species of wild fauna and flora is secured"** (adopted on 6 April 1999 and in force from 9 April 1999). This regulation determines the order by which the international trade of endangered species of wild fauna and flora included in the Appendices of CITES is enforced.

The Ministry of Environment (CITES Management Authority) carries out state supervision of the international trade in endangered species and issues permits for the import, export and introduction from the sea of species as well as certificates for re-export. The Latvian University Institute of Biology and Latvian University Faculty of Biology as the CITES Scientific Authority carry out scientific consultation functions.

Any confiscated live specimens of animals or plants included in the CITES Appendices, until the decision of competent institutions is made, are kept at Riga Zoo and at the Latvian National Botanical Garden respectively. The person from whom the confiscation was made will pay for all expenditures incurred during the transport of the specimen from the place of confiscation to the rescue centres.

On 1 April 2004 **Amendment no. 234 of the Cabinet of Ministers Regulation No. 133 "An order by which the international trade of endangered species of wild fauna and flora is secured"** was adopted and entered into force from 7 April 2004. In this amendment one more Scientific Authority was added - the Natural History Museum of Latvia, and it was clarified that the Management Authority was the Nature Protection Board at the Ministry of Environmental Protection and Regional Development.

CITES implementation through legislation in other sectors

The **Species and biotope protection law** determines the national level of protection of biotopes and endangered species (several species native to Latvia are included in the CITES Appendices, especially birds of prey).

The **Animal protection law** determines general procedures of animal welfare and protection. Based on the **Animal protection law** there are several Cabinet of Ministers Regulations.

Amendment No. 445 of the Cabinet of Ministers Regulation No. 246 "Regulations for border-crossing point establishments, border-control points and border ports of entry, placement on the border of the Republic of Latvia" was adopted on 27 April 2004, and entered into force from 1 May 2004. Inland control is carried out by the Environmental State Inspectorate, while border control is done by the Customs and Sanitary Border Inspectorate.

Penalties are set in the **Administrative Violations Code**.

Article 77 - A violation of the **Animal protection law** will result in a fine of 20 – 503 LVL (30 – 750 EUR) to natural persons, and to legal persons 100 – 804 LVL (150 – 1 200 EUR).

Article 78 - A violation of the **Species and biotops protection law**, will result in a fine of 10 – 504 LVL (15 – 750 EUR) to natural persons, and to legal persons 50 – 1 078 LVL (75 – 1 500 EUR), with the confiscation of goods.

Article 79 - A violation of the rules of international trade on protected species of wild fauna and flora, will result in a fine of 10 – 504 LVL (15 – 750 EUR) to natural persons, and to legal persons 100 – 1 078 LVL (150 – 1 500 EUR), with the confiscation of goods.

Article 201.10 - The violation of **customs regulations**

- For a violation of customs procedure regulation, except in cases when such a violation is a technical mistake or accidental and the result cannot be customs debt – a fine up to 100 LVL (150 EUR) will be applicable for natural persons, for legal persons it is increased to 504 LVL (750 EUR) with the possible confiscation of the goods.
- For a similar violation, which occurs one year after the administrative penalty, a fine of 202 (300 EUR) will be applicable for natural persons, for legal persons it is increased to 1 078 LVL (1 500 EUR), with the possible confiscation of the goods.

Article 201.12 - For movement of goods across the customs border of the Latvian Republic, where they are hidden from customs control, using hiding-places and other methods or imparting them the appearance of other goods, a fine of 252 LVL (375 EUR) will be applicable for natural persons, and for legal persons it is increased to 5040 LVL (7 500 EUR) with the confiscation of goods.

Article 201.13 - For presenting customs with a false or illegally obtained document or documentation with false information, a fine of 252 LVL (375 EUR) will be applicable for natural persons, and for legal persons up to 6 048 LVL (9 000 EUR), with the possible confiscation of the goods.

Article 201.15 - For storage, movement, sending or realisation of goods that are imported into Latvia without any documentation, which certifies the legal movement of goods across the customs border a fine of 100 LVL (150 EUR) will be applicable for natural persons, and for legal persons up to 1 078 LVL (1 500 EUR), with possible confiscation of the goods.

Criminal Law

Article 190 - Smuggling

For movement of goods and other valuables across the customs border of the Republic of Latvia avoiding customs control or hidden goods or valuables from such control or use of false customs or others false documents or smuggling with other methods in large amount, an imprisonment up to five years will be applicable or a fine of up to 120 times the minimum salary (minimum salary in January 2004: 80 LVL, 120 EUR) with the possible confiscation of the property.

Lithuania

Skaiste Pikauskiene, Customs Department, Ministry of Finance

Legislation

As the **Act of the Republic of Lithuania (No. IX-337; 22. 05. 2001) on the Ratification of the Convention on International Trade in Endangered Species of Wild Fauna and Flora** came into force in March 2002, Lithuania became a Party to CITES.

According to the **Law on Wildlife of the Republic of Lithuania (No. VIII-498; 6. 11. 1997)** the rules for trade in wild animals are established by the Ministry of Environment together with the Customs Department under the Ministry of Finance and the State Food and Veterinary Service.

According to the **Resolution of the Government of Republic of Lithuania (No. 261; 20. 02. 2002) on the Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.**

- The Ministry of Environment is designated as Management Authority and is responsible for issuing any permits and certificates according to CITES, for communicating with the Convention Secretariat and other CITES Parties, and for preparing and transferring reports concerning the implementation of the provisions of the Convention.
- The Botanical Institute and the Institute of Ecology are designated as Scientific Authority in accordance with the Convention.

Order of the Ministry of Environment, Customs Department and the State Food and Veterinary Service (No. D1-274/1B-532/B1-507; 18.05.2004) on amendment of Order No. 658/831/743; 21/12/2002)

The rules for trade in wild animals have been prepared according to the requirements of the Convention and the EU Wildlife Trade Regulations. The requirements of these rules are obligatory for all natural and legal persons within the territory of Lithuania. According to paragraph 40 of this order, wild animals, whether alive or dead, any part or derivative thereof may be seized and returned back to the county from where the goods have been imported, or confiscated in any case of import, export or trade in contravention of the Convention, EU Wildlife Trade Regulations or the rules for trade in wild animals.

Customs Law (No. IX-2183; 27.07.2004)

One of the purposes of this law is to set the order of customs supervisions for import of goods from third countries and export of goods to third countries.

According to *Article 67 "Actions taken in respect of goods which cannot be released"*, Customs must take all necessary measures, including seizure and confiscation, in case the goods cannot be released or in case the released goods failed to be removed during the set term due to the reasons laid down in *Article 75 of Community Customs Code*. Any necessary measures, including confiscation and sale, shall be taken to deal with goods which cannot be released because:

- the documents which must be produced before the goods can be placed under customs procedure have not been produced; or
- they are subject to bans or restrictions.

There are no special legal provisions in Lithuania where penalties are provided solely for illegal import, export of or trade in species covered by CITES and Council Regulation (EC) No. 338/97.

In all cases of violation of the requirements of CITES and EU Regulations the state officials could observe the Articles of **Administrative Law Violations Code (No. X-4449, 13.12.1984)** which provides for the punishment of violations for the use and protection of wild fauna and flora, violation of goods (items) shipment order and violation of goods (items) declaration and smuggling.

Article 66 - "The violation of rules on usage of wild flora"

Trade in wild flora or parts thereof in breach of the determined order will incur a fine of 25 to 100 LTL (7 to 29 EUR) for natural persons and from 250 to 500 LTL (72 to 144 EUR) for legal persons. Bringing any new species of wild flora or fungi into Lithuania in breach of the relevant order will incur a fine of 100 to 200 LTL (29 to 58 EUR) for natural persons and from 250 to 500 LTL (72 to 145 EUR) for legal persons.

Article 88 - "The violation of rules on usage and protection of wild animals"

Irresponsible transfer and breeding in that context of animals, the violation of rules on the creation, complementing, keeping, usage and recording of zoological collections, rules on trade in zoological collections, or the rules on shipment of animals and zoological collections abroad will incur a fine of 100 to 200 LTL (29 to 58 EUR) for natural persons and from 250 to 500 LTL (72 to 145 EUR) for legal persons.

The following special amendments to the Article related to the protection of wild fauna and flora have been prepared and submitted to the Parliament by the Ministry of Environment

Illegal import of wild animals and (or) plants, any parts or derivatives thereof into Lithuania or export of these objects from Lithuania will incur a fine of 500 to 1 000 LTL (145 to 290 EUR) for natural persons and from 1 500 to 3 000 LTL (434 to 869 EUR) for legal persons with the possibility for confiscation of the above mentioned objects.

Illegal trade in wild animals, any parts or derivatives thereof, the violation of the rules for trade in wild animals, any parts or derivatives thereof will incur a fine of 500 to 1 000 LTL (145 to 290 EUR) for natural persons and from 1 500 to 3 000 LTL (434 to 869 EUR) for legal persons along with the confiscation of these trade objects.

Article 209.3 - "The violation of order of shipment of the goods (items)"

The shipment of goods (other Articles, postal items, etc.), to which import, export or transit restrictions, prohibitions or special treatment are applied will incur a fine of 5 000 to 10 000 LTL (1 448-2 500 EUR) with the possibility of confiscation of the goods.

For a person, who has already been subject to administrative punishment for the above-mentioned violations, the fine will increase to 10 000 to 20 000 LTL (2 895 to 5 790 EUR) with the possibility for confiscation of the goods.

Article 209.2 - "The violation of declaration of goods (items)"

Presentation of false or illegal information in a customs declaration or other attempt to mislead custom officials will result in a fine of 5 000 to 10 000 LTL (1 448 to 2 895 EUR) with the possibility for confiscation of the goods.

For a person, who has already been subject to administrative punishment for the above-mentioned violations, the fine will increase to 5 000 to 15 000 LTL (1 448 to 4 343 EUR) with the possibility for confiscation of the goods.

Article 210 - "Smuggling"

Transportation of goods, cultural valuables or other items, whose presentation to customs is obligatory, across the border of Lithuania without presentation to customs control or evading such control in other ways will result in a fine of minimum 300 to 3 000 LTL (87 to 870 EUR) or from maximum 10 000 to 20 000 LTL (2 895 to 5 790 EUR) with the possibility for confiscation of the smuggled goods and any means of transport used for smuggling or hiding goods from customs control. The fine will depend on the value of smuggled goods.

Penal Code (No. VIII-1968, 26.09.2000)

It sets the punishments for smuggling and illegal business activity.

Article 199 - "Smuggling"

Transportation across the border of Lithuania of goods, whose value is more than 250 times the minimum subsistence level (about 32 000 LTL – 9 263 EUR, as defined by law) and whose presentation to customs control is obligatory without their presentation to customs control or evasion of such control in other way incur a fine or imprisonment up to eight years.

Article 270 - "The violation of rules on environmental protection and use of natural resources"

Any person who violates the rules on environmental protection or use of natural resources and serious damage has been made to fauna and flora or other serious consequences to nature have occurred, shall be punished by a fine or arrest and imprisonment for up to six years.

Any person who violates the rules on environmental protection or use of natural resources and inconsiderable damage has been made to fauna and flora or other non-serious consequences to nature has occurred, has made a criminal violation and shall be punished by public works with a fine, restriction of freedom, or arrest.

Legal persons shall be liable for the violations described in this Article as well.

Violations described in this Article shall be criminal acts even if made by negligence.

Resolution of Government on the Restriction of Import of Certain Goods into the Republic of Lithuania, their Export from and Transit to the Republic of Lithuania (No. 718; 19.05.1995)

Paragraph 10. - Wild animals (including stuffed animals, eggs, skins), their parts or derivatives thereof, hunting and fishing trophies could be imported into Lithuania only with the permit of the Ministry of Environment.

Cases

25/03/2004

The Customs seized at Vilnius airport a specimen of *Psittacus erithacus* (CITES App. II) brought from the Ukraine by a Lithuanian citizen. The green channel was chosen for customs control and the necessary export and import permits were not presented. The woman explained that she bought the parrot in the market.

17/03/2004

During customs control of personal luggage, the Customs seized three kg of seashells (*Tridacna spp.*; CITES App. II) and four kg of corals (*Scleractinia spp.*; CITES App. II) at Kaunas airport. The required CITES permits were not presented. The goods were brought to Lithuania from Saudi Arabia via Germany. All the above mentioned goods were confiscated on 29 April 2004 and a penalty of 500 LTL (145 EUR) was imposed on the Lithuanian citizen.

16/05/2004

Customs officers checked a luggage of a Lithuanian citizen who returned from Miami (USA), and found seven seashells (*Strombus gigas*; CITES App. II). The seashells were confiscated on 21 May 2004. The Lithuanian citizen has been warned.

Poland

Marcin Pchalek, Kwasik & Glowacka Law Advisers

Legislation

Nature Conservation Act (2004)

Art. 128 Those who:

Section 1:

Without an appropriate permit or in contradiction with the stipulations specified on a permit, or without a phytosanitary certificate carry abroad plants or animals, which are subject to restrictions as defined under EU law, as well as parts and derivatives thereof;

Section 2:

Infringing provisions of the EU law on the protection of species of wild fauna and flora by regulating trade therein through:

- making no import notification;
- using of specimens other than in accordance with the aim specified on an import permit;
- unlawful exercising the exemptions from interdictions regarding trade in artificially propagated plants;
- offering to purchase or for sale, purchasing, acquiring, acquisition or displaying to the public for commercial purposes, selling, keeping or transporting for sale of the determined species of plants or animals;
- using of a permit or certificates for any specimen other than one for which it was issued;
- failure to disclose rejection of an application for import, export, re-export permit or certificate;

is subject to penalty of deprivation of liberty from three months up to five years.

First of all, the above mentioned conduct does not provide for negligent offences. Some of the infractions listed in *Art. 16* of the Regulation (EC) No. 338/97 are penalized in other statutes:

- making false import notification – **Penal Code**
- shipment of live specimens not properly prepared as to minimize the risk of injury , damage to health or cruel treatment – **Animal Protection Act**
- falsification or alteration of any permit or certificate issued in accordance with the Regulation – **Penal Code**
- introduction into, or export or re-export from the Community with a false or falsified permit or certificate or one altered without authorization by the issuing authority – **Penal Code**
- making a false declaration or knowingly providing false information in order to obtain a permit or certificate – **Penal Code**

There is also a need for analysis and introduction of the appropriate provisions into the **Act on penal liability of the collective persons, 28. X. 2002**.

Act on penal liability of the collective persons (2002)

Art. 16 holds that a collective person is liable on the ground of the statute, if a person referred to in *Art. 3* (definition of a natural person acting in the name of a collective person), has committed the offence:

(...)

Section 1, p.(8) against the environment specified in:

- *Art. 181 – 184 and Art. 186-188 of the Penal Code*

Section 1, p.(5) against the credibility of documents specified in:

Art. 270-273 of the Penal Code; these provisions are penalizing some of the infractions referred to in *Art. 16 of Council Regulation 338/97* (falsification or alteration of any permit or certificate issued in accordance with the Regulation; making a false declaration or knowingly providing false information in order to obtain a permit or certificate; making false import notification)

Section 1, p.(9) against the public order specified in:

(...) *Art. 258 of the Penal Code*; participating in an organized group or association having for its purpose the commission of offences

In light of the above mentioned provisions there is a need to extend the range of offences listed in Section 1 p.(8) (offences against the environment). The legislator shall supplement the list with the offences (some of them) specified in *Art. 128 of the Nature Conservation Act*.

A collective person may be subject to a fine for the amount of 5% (offences against the environment) or for the amount of 8% (offences against the credibility of documents) of the annual incomes or the expenses as defined in *Art. 7 section 1 or 2* (the fine can not be lower than 1 000 EUR).

Petty offences – Nature conservation Act (2004)

Those who:

- run a business in the field of trade in animals, which are subject to restrictions under the EU law without possessing and passing on the appropriate documentary evidence proving the legality of the specimens (*Art. 131*)
- intentionally fail to register the animals (the register concerns breeders and holders of mammals, birds, reptiles, and amphibians) (*Art. 127*)

is subject to a fine (20 – 5 000 PLN; 4 – 1 000 EUR) or imprisonment (max. 30 days).

The reservation arises in connection with a fact that the offence referred to in the second paragraph may be committed only intentionally.

Art. 129

In case of punishment the petty offence specified in *Art. 127* (failure to register) or the offence specified in *Art. 128*, court may decide on:

- Section 1 the forfeiture of tools or objects that served the commitment of the offence and of plants or animals deriving from the offence, even if the plants or animals would not be the property (ownership) of the perpetrator.
- Section 2 the obligation of restoration of the original state, and if the obligation is unfeasible, supplementary penal measure for an amount of 10 000 PLN (2 000 EUR), for the benefit of NGOs acting in the field of nature protection or for the proper regional environmental fund.

The amount of this supplementary penal measure (the original version was 30 000 PLN; 6 000 EUR) was introduced in the limits determined (defined) in the **Penal Code** (as regards supplementary penal measures in case of environmental offences).

However in April 2004 the parliament received the project of novel of the **Penal Code** which holds that this supplementary penal measure may be decided to the amount of 100 000 PLN (20 000 EUR). Such change will provide the basis for the introduction of analogical provisions into the **Nature Conservation Act**.

Romania

Adriana Baz, Roxana Cazacu, Alexandra Nedelcu and Monica Otel,
Ministry of Environment and Water Management

Legislation

Romania ratified CITES by introducing **Law No.69/1994 on adhering Romania to the Convention on International Trade in Endangered Species of Wild Fauna and Flora**. In order to implement the provisions of this law, the **Order of the Minister of Water and Environmental Protection No.647/2001 on authorizing Procedure for harvesting, capture and/or acquisition and trading on the internal market or the export of plants and animals of wild fauna and flora, as well as their import** was issued and modified by **Order No.117/2003**, which approves the authorizing procedure for harvesting, capture and/or acquisition and trading on the internal market or the export/import of plants and animals of wild fauna and flora. This order applies to the harvesting, capture and/or acquisition and trading of wild, terrestrial and aquatic flora and fauna, alive, fresh or partly processed, or parts or products of these specimens, on the internal market or for export.

Order No. 647/2001 lays down in *Article 11* the authorizing procedure for harvesting, capture and/or acquisition and trading on the internal market or the export of plants and animals of wild fauna and flora, as well as their import, that are listed in Appendix I-III of the Convention. The natural or legal persons involved in the export, re-export or import of these specimens must request a CITES permit from the Ministry of Environment and Water Management. These permits are issued for export, transit or import.

The above-mentioned Ministerial Order bans the harvesting, capture, purchase and trading of wild plants and animals that have a special protection regime according to international conventions, regardless of the area or land where they are found. Nevertheless, these plants and animals can be gathered or captured, under certain circumstances, with the special authorization of the central authority for environmental protection and with the scientific approval, previously issued, of the Commission for Protection of the Natural Monuments within the Romanian Academy.

In order to control the export, import and transit operations, according to the international instruments to which Romania is a party and to the European Union's procedures, the Ministry of Environment and Water Management and the National Customs Authority will establish the customs points through which these operations are made, taking into consideration the proposals of the concerned economic operators.

Romania exports CITES species, such as bears *Ursus arctos*, wolves *Canis lupus*, wild cats *Felis silvestris*, lynxes *Lynx lynx* (hunting trophies) and sturgeons (Acipenseriformes). Regarding the bear, wolf, wild cat and lynx, these species are protected by **Law No.103/1996, on hunting territory and protection of the game**, republished. According to this law, the protection of the game belongs to the administrators of the hunting territories based on specialized studies. Hunting is allowed only for certain game specimens within certain conditions, places, and periods and with the means established by the law.

The hunting of bear, wolf, and wild cat is banned. Nevertheless, these species can be hunted with the approval and within the conditions established by the central authority for forestry, in compliance with the international convention to which Romania is a state-party. According to *Article 36* of **Law No.103/1996**, republished, hunting of the strictly protected game species (such as bear, wolf and wild cat) without the approval of the central authority for forestry is an offence and is punishable with imprisonment of one to two years or with a fine between 50 mil ROL (1 250 EUR) and 150 mil ROL (3 750 EUR). Even the attempt to hunt these species is also

punishable, but in this case, the punishment is reduced by 50%. Besides that, *Article 45* of the law provides for compensation for the damage caused by the offence: for a bear – 200 million ROL (5 000 EUR), a wolf – five million ROL (125 EUR), a wild cat -1.5 million ROL (37 EUR) and a lynx- 10 million ROL (250 EUR). The lynx can be hunted between September 15 and March 31, but the law requires hunters to pay a fee of five million ROL (125 EUR).

According to *Article 35* of **Law No.103/1996**, republished, the poaching of the species for which hunting is banned or during the period when hunting is banned according to the law is an offence and is punishable with imprisonment of one to three years or with a fine between 50 million ROL (1 250 EUR) and 250 million ROL (6 250 EUR). The offence is punishable with imprisonment of two to five years if it was done in the following conditions:

- during the night, except for game species for which the hunt is allowed according to the regulations;
- by two or more persons together;
- by a person having public or job responsibilities in the hunting field, as well as by the representatives of the legal persons that have as scope of activity game protection or hunting;
- inside the hunting reservations.

The law also requires that the means (including the means of transport), which have served to carry out the offences provided for in the above-mentioned *Articles 35 and 36*, be confiscated and the offender's hunting permit be withdrawn and cancelled.

Law No.192/2001 on ichthyologic patrimony, fishing and aquaculture regulates fishing, fishery activity and inspection and the protection of the ichthyologic patrimony. With regard to sturgeons, *Article 40 part 2* of the law on ichthyologic patrimony, fishing and aquaculture stipulates that in order to protect the ichthyologic patrimony, fishing of certain species (among which are the sturgeons) is forbidden in the periods and areas laid down in Annex 2 of the law. Fishing of sturgeons under the legal dimensions, for other purposes than repopulation, the illegal procurement, transport, and trading of fish, spawns and fish products represent offences and they are punishable with imprisonment from six months to four years or with a fine between 25 million ROL (625 EUR) and 50 million ROL (1 250 EUR) (*Art. 61* of **Law No.192/2001**). According to *Art. 62*, if the offences are carried out during the prohibition period, during the night or by two or more persons together or by a person having a gun or dangerous chemical substances they are punishable with imprisonment from two to six years. Also, the procurement, transport and trading of the sturgeons and caviar, without legal documents is an aggravated offence and is punishable with imprisonment from five to seven years.

If the offences provided for in the above-mentioned *Art. 61 and 62* are carried out by persons who have responsibilities to ascertain the offences and minor offences, the punishment is increased by two years. The tools and means of fishing, animals, means of transport, guns, and any other things that have been used in carrying out the offence are confiscated. Any goods gained as a result of the offence, such as fish, spawn, other aquatic products and specimens may also be confiscated.

Also, in **Law No.137/1995 on environmental protection**, the procedure for environmental impact assessment is established and sanctions are stipulated regarding activities that affect the environment and the biodiversity. *Article 53 (h²)* of this law, as amended by the **Emergency Governmental Ordinance GO 91/2002**, approved by **Law No. 294/2003**, lays down that holders with any title and the administrators of forests, of the vegetation of forests, outside the forestry territory and meadows have the responsibility to protect the forestry, hunting, ichthyologic patrimony and the meadows within the natural protected areas, in the terms established through the management plans and specific regulations.

Article 85(2)(g) lays down that non-compliance with the restrictions and with the interdictions regarding hunting and fishing of certain protected species, or stopped temporarily through law, or in the areas with integrated

protection regime according to the provisions of *Article 53(h)(h¹)(h²)*, if this non-compliance jeopardised human, animal or vegetal life and health, it constitutes an offence.

Article 85(3)(b) lays down that the offences mentioned in paragraph 2 are punishable with imprisonment from six months to three years or with a fine between 50 million ROL (1 250 EUR) and 75 million ROL (1 830 EUR) for the offences laid – down in e)- j).

Slovak Republic

Silvia Fajtakova, Ministry of the Environment;
Sylvia Hutkova, Slovak Environmental Inspection;
Mario Kern, Ministry of Interior, Police

Legislation

The Slovak Republic became a party to CITES in May 1992 as a part of the former Czechoslovakia. The Slovak Republic confirmed its membership in January 1993.

In the Slovak legislation protection of endangered species of wild fauna and flora is regulated by the **Act on trade in endangered species of wild fauna and flora No. 237/2002**, which amends and complements certain other acts, as well as by the Ministerial Decree on the implementation of some provisions of the Act, namely the **Regulation on implementation of some provisions of the act on trade in endangered species of wild fauna and flora No. 346/2002**. Both regulations came into force in July 2002. In order to improve the protection of species of wild fauna and flora, which are or are likely to be threatened by international trade, the Act regulates:

- conditions for their import, export, re-export or transit,
- further measures for ensuring their protection and registration in the territory of the Slovak Republic,
- competencies of the state administration authorities in dealing with them,
- responsibilities for violations of obligations laid down in this Act.

This Act literally “transposes” EU Wildlife Trade Regulations and also provides some stricter measures such as:

- restriction of export on native species
- marking of specimens - unambiguous marking of live vertebrates listed under Annex A and B is obligatory
- registration of CITES specimens is obligatory

Responsibility for violation of obligations and sanctions

Under the Act, state administration authorities (district offices or the inspection authority - the Slovak Environmental Inspection) can impose a sanction for violation of obligations. The type and the amount of the sanction will depend on the type of violator; it is different for entrepreneurs and legal entities compared to natural persons. The type and amount of the sanction also depends on the seriousness of the violation. Under the Slovak legislation, violations committed by entrepreneurs and legal entities are called “other administrative offences” and violations committed by natural persons are called “transgressions”.

Other administrative offences

A fine up to 500 000 SKK (12 500 EUR) and forfeiture of the goods may be imposed by the district office or the inspection authority on the entrepreneur and legal entity, which committed an illicit act by e.g.:

- presenting incorrect data on the application for issuing the permit, decision or on an import notification,
- using a falsified or invalid permit or decision as the basis for issuing other permits, decisions or for any other official use concerning the act,
- using the permit or the decision for another specimen or for another purpose, than the one, for which it was issued,
- not returning to the Ministry the original and all copies of the invalid or not used import permit, export permit, or re-export certificate,

- not informing the Ministry about a previous rejection of application for issuing import permit, export permit, or re-export permit,
- not marking unambiguously selected specimens.

A fine up to 1 000 000 SKK (25 000 EUR) and forfeiture of the goods may be imposed by the district office or the Inspection authority to an entrepreneur and legal entity, which committed an illicit act by, e.g.

- not proving the origin of the specimen,
- transferring, acquiring or keeping a specimen without the certificate of origin,
- not co-operating with the execution of state supervision,
- keeping a specimen which is prohibited or restricted according to the Act.

If a person (entrepreneur/legal entity) commits another administrative offence within two years following a fine being imposed for a similar administrative offence, a fine may be imposed to it to double the upper limit of the fine.

Forfeiture of the goods may be imposed independently or together with a fine and may be imposed, if the goods are owned by the person who committed the illicit act, and the goods were used or intended for another administrative offence, or it was acquired for something obtained by another administrative offence. Forfeiture of the goods cannot be imposed if their value is in apparent disproportion with the character of the other administrative offence. The owner of the forfeited goods then becomes the state.

If the sanction of forfeiting the goods was not imposed for the other administrative offence, the district office or the inspection authority may decide to confiscate the goods, if it is not the property of the perpetrator of the illicit act, and if the safety of a person, property or other public interest requires it. The decision on confiscation of the goods cannot be made if three years have passed since committing the other administrative offence.

Sanctions may be imposed within one year of the day when the district office or the inspection authority learned about breaching or not fulfilling the obligations according to the Act, however no later than three years since the day when breaching or not fulfilling the obligations took place.

Transgressions

Fines imposed to natural persons for transgressions are lower than fines imposed for other administrative offences, fine up to 150 000 SKK (3750 EUR) and fine up to 300 000 SKK (7500 EUR). These fines also depend on the importance and the kind of the illicit act. Fines up to 5 000 SKK (125 EUR) may be imposed for violations of less important obligations, e.g. for not informing on a previous rejection of an application for issuing import permit, export permit, or re-export permit. The sanction imposed for a transgression can vary from the forfeiture of the goods to a reprimand.

A draft of a new act is currently in preparation. In the new act, provisions identical with the provisions of the EC regulation will be deleted and the act will implement the EC regulation. As stated above, only the maximum amount of the sanction is fixed in the Act. Under the new act, the minimal amount of sanction will be fixed as well.

Powers

- Administrative penalties (Slovak Environmental Inspectorate)
- Confiscations (Slovak Environmental Inspectorate)
- Crimes, imprisonment from six months up to eight years (Police corps, Prosecution, Judges)

Measures taken (2000-2003)

- Before 2000, the Slovak Police did not spend any time with CITES crime. Only the organs of the Ministry of Environment were dealing with this issue. Thanks to the initiative of the Ministry of Environment and NGOs in 2000 the co-operation with the Police began
- The effectiveness of Slovak Environmental Inspection and CITES MA has increased and trainings for specialists working for the Ministry of Environment, Customs and Police staff in co-operation with NGOs have been organized

Cases

4/5/2001

- a Czech citizen was caught robbing a nest
- he took one juvenile Golden Eagle *Aquila chrysaetos*
- sentence: one year in prison

8/5/2001

- attempt to import 18 specimens of CITES species (*Varanus prasinus*) in a bus from Austria (flight came from Indonesia)
- total value 500 000 SKK (12 000 EUR)

22/8/2001

- when searching the building 30 CITES species kept illegally were found
- total value 1 000 000 SKK (24 000 EUR)

27/3/2002

- when searching the house of a Slovak citizen, 277 parrots kept illegally were found
- total value 13 000 000 SKK (310 000 EUR)

14/11/2002

- when searching a house of a keeper, 31 parrots kept illegally were found
- total value 2 000 000 SKK (48 000 EUR)

Slovenia

*Robert Boljesic and Urska Mavri, Ministry of the Environment, Spatial Planning and Energy,
Environmental Agency of the Republic of Slovenia;
Robert Renier and Bogdan Matjasic, Office of the District State Prosecutor of Krsko*

Legislation

In 1997 the European Union (EU) and the Republic of Slovenia concluded the Association Agreement, by which Slovenia undertook the obligation to transpose into its legal order the entire legislation of the EU. Slovenia fulfilled that obligation six months before its membership and also adopted some additional measures for the implementation of EU regulations. Under *Article 86* of the **Constitution of the Republic of Slovenia** all ratified international treaties are directly applicable. CITES entered into force in Slovenia on 23 April 2000. The Environmental Agency of the Republic of Slovenia devotes special attention to the training of enforcement authorities, which has resulted in a considerable increase in the number of detected cases of illegal wildlife trade in recent years. Since 2002, a special inter-sectoral working group for the prevention of illegal wildlife trade has been operating in Slovenia.

Existing legislation for CITES implementation in Slovenia

In addition to nature protection legislation, regulations governing veterinary medicine, customs and criminal law partly apply to international trade in endangered animal and plant species. Here follows the summary of nature protection regulations in force:

The **Act ratifying CITES** (Official Gazette of the Republic of Slovenia, 31/99) stipulates that the implementation of the Convention is the responsibility of the Ministry of the Environment and Spatial Planning, which performs the duties of the Management Authority.

The **Nature Conservation Act** (Official Gazette of the Republic of Slovenia, 119/02, 22/03, 41/04, 96/04) is the framework act regulating nature protection in Slovenia. According to this Act it is mandatory to notify the captive keeping of large mammals, birds and reptiles of all species listed in the ratified international treaties. An authorisation is required for keeping non-indigenous or indigenous species in captivity for the purposes of public exhibition or breeding. The import, export and transit of species to which ratified international treaties or EU regulations apply are also subject to the authorisation of the Ministry.

The **Decree on the course of conduct and protection measures in the trade in animal and plant species – Trade Decree** (Official Gazette of the Republic of Slovenia, 52/04) lays down a detailed course of conduct and protection measures in the trade in specimens of animal and plant species for the purpose of implementing among others *Council Regulation (EC) No 338/97* and *Commission Regulation (EC) No 1808/2001*. This Decree also lays down the course of conduct and protection measures in the trade in specimens of animal and plant species protected under regulations governing the protection of wild animal and plant species, and the conditions for breeding specimens of wild animal species and artificially propagating specimens of wild plant species. Furthermore, the Decree governs the registration of scientists and scientific institutions (transposition of Res. Conf. 11.15), the disposal of seized and confiscated specimens (transposition of Res. Conf. 9.10), the competencies of authorities (Management, Scientific and Enforcement Authorities), and lays down penalties.

The **Order on the living conditions for and care of animals of wild species kept in captivity** (Official Gazette of the Republic of Slovenia, 90/01) lays down technical conditions and requirements for the care of captive animals of wild species and prescribes mandatory notification of the acquisition of animals.

The two **decrees on the protection of wild animal and plant species** (Official Gazette of the Republic of Slovenia, 46/04) are basic regulations for the implementation of Birds and Habitat Directives in Slovenia. Among other things, they prohibit the keeping of birds belonging to the orders of Falconiformes and Strigiformes in captivity.

The **Decree on zoos and similar facilities** (Official Gazette of the Republic of Slovenia, 37/03) lays down protection rules for the keeping of animals of wild native and non-native species in captivity for exhibition to the public.

The **Rules on the assessment of risk to nature and on the authorisation** (Official Gazette of the Republic of Slovenia, 43/02) lay down the conditions and methods for the assessment of risk to nature prior to the introduction or repopulation of non-native wild plant and animal species in the wild or the breeding of non-native wild animal species, and the conditions a person has to meet to obtain an authorisation for carrying out risk assessments.

The **Rules on the marking of animals of wild species kept in captivity** (Official Gazette of the Republic of Slovenia, 58/04) lay down which captive animals of wild species have to be marked, the methods of their marking, the record of markings, the types of marks, the manner of supplying marks, and the control of animal marking.

Enforcement of the Convention

A great increase in the number of detected cases of illegal trade in endangered animal and plant species has been noted in Slovenia (from two cases in 2000 to over 90 cases in 2004), which is a result of the systematic training of enforcement authorities, particularly customs and police.

The implementation of the **Nature Conservation Act** and regulations issued pursuant to it is supervised by inspectors responsible for nature conservation, and in the case of provisions concerning other sectors also by the inspectors responsible for these sectors. Customs and inspection authorities may order a seizure or confiscation of animals, plants and other goods when they are handled contrary to the provisions of the Act.

The **Nature Conservation Act** and the **Trade Decree** lay down fines for offences amounting to 8 000 000 SIT (33 333 EUR) for a legal person, 4 000 000 SIT (16 666 EUR) for an entrepreneur and 140 000 SIT (583 EUR) for a natural person. A nature protection inspector, warden, police officer or customs officer may impose on the site a fine amounting to 30 000 SIT (125 EUR) and seize any objects used for, intended for or originating from an offence.

The **Penal Code** (Official Gazette of the Republic of Slovenia, 63/94, 70/94, 23/99, 60/99) stipulates an imprisonment of up to three years for an import or export of endangered plant or animal species contrary to international law. In exceptional cases the perpetrator may be sentenced to imprisonment of up to five years. A fine and an imprisonment of up to five years are stipulated for a person or criminal organization avoiding customs control while moving goods across the customs line. The goods involved in the offence are seized.

Since 2002, a special inter-sectoral working group for the prevention of illegal wildlife trade has been operating in Slovenia. It was established by a decision of the ministers for the environment and spatial planning, for internal

affairs and for finance, pursuant to *Article 49* of the **Public Administration Act** (Official Gazette of the Republic of Slovenia, 67/94, 20/95, 29/95, 80/99, 52/02, 56/02). The working group consists of permanent members from the Criminal Police Directorate (Interpol), the General Customs Directorate (Investigation) and the Environmental Agency. The objective of the working group is concerted action in the prevention and control of illegal trade in endangered animal and plant species. The duties of the working group are to collect data and exchange information on illegal activities related to trade in endangered species, to prepare administrative and other measures, to organise joint actions aimed at the detection of illegal activities and to offer technical assistance in investigations. The chair of the working group is responsible for co-ordinating the work of the group. For the realization of certain tasks other officials from relevant ministries may be appointed. The inter-sectoral group may ask relevant divisions of ministries for assistance in particular task. Inter-sectoral working group is obliged to report to the relevant ministers on its activities every six months.

Cases

The majority of cases of illegal trade in endangered animal species in Slovenia was detected at the biggest international border crossing with Croatia – Obrežje. This border crossing falls under the jurisdiction of the Office of the District State Prosecutor of Krsko.

The cases processed in that region involved songbirds protected under the Bern Convention and listed in Appendix II of that Convention.

The co-operation and information exchange between the Police, Customs and the Environmental Agency of the Republic of Slovenia is essential for a successful detection of perpetrators, the collection and preservation of evidence and effective court processing. Until recently, customs and police officials have been focused more on the classic cases of smuggling (narcotics, weapons, stolen cars, etc.). Only in the last few years, following the ratification of the Bern and CITES Conventions, the smuggling of endangered animal species has received greater attention. This is largely owing to the Environmental Agency of the Republic of Slovenia which organised training for customs officers and greatly contributed to the better qualification of customs and police in this field.

The legal basis for dealing with illegal trade in endangered animal and plant species is laid down in *Article 222* of the **Penal Code** of the Republic of Slovenia.

The title of the said Article is: Illegal Export and Import of Goods of Special Cultural or Historical Significance or Natural Curiosities.

The content:

- (1) Whoever, without the permission of the competent authority, moves goods of special cultural or historical importance, natural curiosities or endangered animal or plant species to or from a foreign country contrary to international law shall be sentenced to imprisonment of up to three years.
- (2) If the goods referred to in the preceding paragraph are of great or extreme cultural, historical or environmental importance, the perpetrator shall be sentenced to imprisonment of up to five years.

According to the provision of the second paragraph of *Article 38* of the **Penal Code**, the perpetrator who committed the crime out of self-interest, may also be sentenced to a fine (no more than 9 000 000 SIT –37 500 EUR).

As an international law basis the Bern Convention has been used in most cases (bird smuggling) and CITES in two cases.

The Office of the District State Prosecutor of Krško handled six cases involving 11 perpetrators in 2002, one case involving three perpetrators in 2003, while in 2004 no case was handled until June. All the cases were of the illegal movement through the territory of Slovenia of a large number of songbirds (more than 7000 in total) of species listed in Appendix II of the Bern Convention, such as: *Carduelis carduelis*, *Carduelis chloris*, *Carduelis cannabina*, *Motacilla alba*, *Motacilla flava*, *Lanius collurio*, *Anthus cervinus*, *Crex crex*, *Pernis apivorus*, etc.

The two cases handled by the Office of the District State Prosecutor of Kranj involved the import into Slovenia of parts of animals protected under CITES. In the first case the smuggled items were the preserved skins of Leopard *Panthera pardus* and the Nile crocodile *Crocodylus niloticus* and in the second one stuffed turtle, and two pieces of carapace and two pieces of plastron of sea turtles of the family Cheloniidae, all listed in Appendix I of CITES.

It is characteristic of all the cases that they were detected by customs officers (a special unit of customs trained and equipped to combat smuggling). In all cases the perpetrators were foreign nationals transporting birds (shot and mostly frozen) from Croatia into Slovenia. The final destination was Italy, where these birds reach a very high price on illegal market as a gastronomic delicacy. The investigation showed that the birds were caught in Croatia, Bosnia and Herzegovina, Bulgaria, Serbia and Montenegro, and Hungary.

In total 17 perpetrators (in nine cases) have been reported. Against 11 of those perpetrators proceedings have been instituted. Trials against three perpetrators are pending and eight perpetrators have been convicted. Judgments against three of the convicted perpetrators are final and for two perpetrators the deferred prosecution proceeding has been carried out (the fines of 100 000 and 300 000 SIT – 417 and 1250 EUR – to be allocated for humanitarian purposes have been imposed).

All of the eight convicted (three final judgments) perpetrators had first been taken into custody and later released on bail in the amount of 20 000 to 50 000 EUR per person. The high bails have guaranteed unhindered trials.

The following case from 2003, which is very similar to previous ones, shows the methods and speed of action of state authorities, from the detection all to the trial.

On 16 September 2003 three foreign nationals arrived in a camper at Obrezje border crossing with the intent to enter Slovenia. During the inspection of the van customs officers found in a hidden compartment 775 birds (769 birds belonged to species listed in Appendix II of the Bern Convention), 20 devices for attracting songbirds, 31 audio cassettes with recordings of different bird songs, 7.5 kg of empty cartridges and one undeclared fowling piece.

All three foreign nationals were arrested on the grounds of suspicion of committing a criminal offence under *Article 222* of the **Penal Code**. On 18 September 2003 the suspects were brought before the investigative judge for a hearing and one was taken into custody while the other two were released. Within 48 hours the prosecutor filed a charge against the suspect in custody for a criminal offence under *Article 222* of the **Penal Code**. Denunciation against the other two was rejected due to the lack of evidence. The same day the accused was released on bail in the amount of 50 000 EUR. The trial was conducted on 17 November 2003 and the accused was convicted by the court and sentenced conditionally to one year imprisonment with a three year probationary period and unconditionally to a fine in the amount of 4 500 000 SIT (20 000 EUR). The court also imposed the payment of the cost of the proceedings and prohibited him from entering Slovenia for three years. The judgment is final, the cost of the proceedings and the fine were paid out of the bail and the remainder of the bail was returned to the convicted offender.

Procedure in the other two cases that were concluded with a final judgment was very similar. Both perpetrators were sentenced to conditional imprisonment, and to the payment of fines of 1 500 000 SIT (6 250 EUR) and 3 500 000 SIT (14 580 EUR) respectively and of the cost of the proceedings.

Severe measures (custody and high bails), quick processing in court, relatively high fines in addition to conditional sentences of imprisonment resulted in a significant decrease in criminal offences of that kind. The media (TV and press), which reported on these cases, and the Environmental Agency of the Republic of Slovenia, which supplied all border crossings with leaflets and other promotional material about CITES, contributed a great deal to the prevention and public awareness. The co-operation with neighbouring countries (particularly Croatia) was crucial for the solving of these cases. Another result of such co-operation has been the detection of organisers of hunting for protected birds in Croatia.

4. Recommendations

At the “*International Expert Workshop on the Enforcement of Wildlife Trade Controls in Central Eastern Europe*” four topics were discussed by each of the three working groups created on the last day of the event.

These topics were the following:

- I. Co-operation, co-ordination and exchange of information at national and international level**
- II. Availability and accessibility of technical, economical and scientific information needed for prosecution, convictions and sanctioning**
- III. Legislative and institutional issues**
- IV. Training and awareness-raising among the judiciary sector**

The working groups identified and prioritised common challenges and problems that might hinder the prosecution and sanctioning of wildlife trade crimes. Based on the problems the working groups had identified, participants explored possible solutions and formulated recommendations that were reported and discussed at the last plenary session. These recommendations are summarised below.

I. Co-operation, co-ordination and exchange of information at national and international level

The working groups noted that no formal agreements had been established to facilitate collaboration, exchange of information and any other necessary contacts between the different agencies involved in the enforcement of wildlife trade regulation in most countries, although good examples of collaboration exist for instance in the UK and Slovenia. It was also discussed that the Management Authorities were buried in administrative work and often do not have enough capacity to deal with strategic issues, such as national and international co-operation.

Co-operation between Customs, Police and the judiciary sector is weak in many countries and depends mostly on personal contacts. The competence of the different authorities is not clarified in many cases hence sometimes competition exists instead of co-operation.

With regard to co-operation at international level, participants stressed that there is an urgent need for improvements, especially in strengthening the collaboration and information exchange among the different wildlife trade enforcement agencies in the EU Member States as well as enhancing the role of inter-government bodies, such as the EU Wildlife Trade Enforcement Group (EG) and the Interpol Wildlife Crime Working Group, in co-ordinating regional and international interagency collaboration.

Suggestions and recommendations

- Through a CITES Resolution or an Article in the EU Regulation a special provision should be adopted, which requires that CITES Management Authorities deal with strategic issues, including the development of processes to ensure regular interagency co-operation at national and international level;
- Formal agreements should be signed between national CITES authorities and agencies in each country on the establishment of an interagency wildlife crime unit/committee for stronger national co-operation;
- National co-operation should be initiated from the highest level, i.e. by the Minister for Environment;

- Specialised units should be created within Enforcement Agencies and focal points appointed to be in charge of wildlife trade issues and to represent the country at meetings of EU Enforcement Group;
- Better use should be made of existing tools, mechanisms, particularly Interpol Eco-messages, the WCO database, CITES Biennial Reports and the CITES Secretariat's TIGERS database;
- Partners should explore the feasibility of new tools, mechanisms, such as "EU-TWIX" (EU-Trade in Wildlife Information Exchange, a project developed by the Belgian CITES authorities and TRAFFIC Europe, and co-funded by the European Commission);
- Necessary measures should be taken to increase links between the EU Enforcement Group and Interpol, Europol or any other relevant inter-governmental agency;
- More frequent and /or regular meetings of the EU Enforcement Group and the Interpol Group on Wildlife Crimes should be held; and
- Joint training sessions should be organised for Police and Customs (bringing representatives of both agencies together) to share strategic visions, identify common objectives (e.g. fill administrative and/or legal loopholes) and catalyse formal as well as informal exchange of information.

II. Availability and accessibility of technical, economical and scientific information needed for convictions, sanctioning and prosecution

The working groups agreed that there is very little information available for the judiciary on wildlife trade crime prosecutions in their own countries or in other countries. Sanctioning is often based on the personal perception of judges, who consider violations against CITES and the EU Wildlife Trade Regulations as less important and significant than other infractions, such as dealing with drugs or weapons, therefore the appropriate application of the law, i.e. relevant level of penalty, is only rarely applied by judges. There are only a handful of cases in the EU that have ended with significant fines or penalties.

The "value" of the species involved in wildlife trade crime needs to be better determined for appropriate sanctioning. The estimation used as basis to determine the type and level of sanctioning should take into account both the economic and ecological value of a species. However, until now in most of the cases the estimation of the "value" is simply based on black market prices. There are no sentencing guidelines available in the Central Eastern European countries and the judiciary is not aware of existing sources of information, such as sentencing guidelines used elsewhere (e.g. in England and Wales).

Suggestions and recommendations

- CITES Management authorities of EU Member States should improve the implementation of Article 14 of Council Regulation (EC) No 338/97 with regard to the monitoring of compliance and investigation of infringements. The European Commission should insist that Member States submit a comprehensive and electronic report as part of their CITES Biennial reporting on illegal trade and seizures that occurred in their territory. This subject should be put on the agenda of a meeting of the Committee on Trade in Wild Fauna and Flora that meets three to four times a year;
- A list of case studies on successful cases of prosecutions of wildlife trade related crimes should be compiled and made available at EU level for prosecutors and judges, which would help to improve their understanding of wildlife trade crime prosecutions. Such case studies could be presented in the form of
 - Hypothetical cases,
 - Abstracts of cases, and

- Opinions of the judge
- For the same purpose, a list of significant court cases in the EU Member States (and Candidate Countries) should be gathered and distributed (not necessarily the whole file, but the summary of the procedure followed, the conviction/ruling, etc.);
- Sentencing guidelines for wildlife trade crimes (such as the guidelines developed by the Magistrates Association of England and Wales with the assistance of TRAFFIC in 2001; see www.magistrates-association.org.uk) along with information for the determination of values of specimens based on an ecological approach (e.g. market value + conservation status of the species or habitat involved + pecuniary gain + acceptance of responsibility + criminal history category) should be prepared and made available for the judiciary;
- A list of key publications, websites e.g. books on valuation of species, IUCN Red List, CITES website, JNCC (Joint Nature Conservation Committee) Checklist of species, etc. should be available to the judiciary; and
- A mechanism should be set up to encourage and help building personal contacts regionally or nationally among representatives of different enforcement agencies involved in the prosecution of wildlife trade crimes.

III. Legislative and institutional issues

The participants agreed that there was a lack of clarity about the links between national legal texts on penalties and the relevant Articles of EU Wildlife Trade Regulations. There are differences between prosecution procedures, and penalties vary considerably among EU Member States. This lack of coherence within the EU makes wildlife smuggling a measurable risk for potential offenders who can select the country with lowest risk of conviction to illegally introduce wildlife specimens. In some countries imprisonment is not included among the sanctions of wildlife trade crime and often there is no distinction between administrative and penal offences in the legislation.

Suggestions and recommendations

Relevant authorities in Central Eastern Europe should join efforts to

- Increase knowledge on the work of the “Legal Service” of the European Commission;
- Explore the possibility and usefulness of creating a Sentencing Committee, which would among others look at the links between national penal legislation and the EU Wildlife Trade Regulations and assess the feasibility of developing guidelines, first at a national level and eventually at international level;
- Modify their national legislation to include imprisonment in the sanctioning of infringement of wildlife trade legislation where not already provided for; and
- Modify their national legislation to include a clear distinction between administrative and penal offences, and to provide adequate sanctions for both.

IV. Training and awareness-raising among the judiciary sector

It was recognised that the judiciary in Central Eastern Europe is not sufficiently aware of wildlife trade legislation and the damage that wildlife trade crime can cause to biodiversity. Up to now there has not been any regularly organised training for the judiciary in the Central Eastern European Countries.

Raising the awareness of the public was also identified as a useful tool to help change the attitude of the public and the judiciary, and ensure that the seriousness and significance of wildlife trade crime is perceived appropriately.

Suggestions and recommendations

- An EU Workshop on the EU Wildlife Trade Regulations addressed to prosecutors and judges of all EU Member States (and Candidate Countries) should be organised and national workshops linking the EU Regulations with all relevant national penal texts could be part of its follow-up;
- Awareness of prosecutors, judges and lawyers should be raised through incorporating wildlife trade regulation lessons into the curriculum of law schools, publishing Articles in judicial magazines and newsletters and giving presentations at judicial meetings involving judges and prosecutors with experience in wildlife trade crime;
- Existing Sentencing Guidelines can be used as potential training materials for prosecutors and judges;
- Simple national journals and /or newsletters could be developed to describe national cases and prosecutions on wildlife trade crime; this could be linked to existing NGOs initiatives (e.g. TRAFFIC Bulletin section on ‘Seizures and Confiscations’; RSPB newsletter, etc. that report on closed, non-confidential cases);
- Existing Sentencing Guidelines can be used as potential training materials for prosecutors and judges;
- The website www.eu-wildlifetrade.org can be a useful tool in awareness raising in Central Eastern Europe if translated into the languages of relevant countries (new EU Member States and Candidate Countries); and
- General awareness raising of the public can be a helpful tool as well by indirectly influencing the judiciary. NGOs can be involved in awareness raising campaigns.

Annex

Annex A: Workshop Agenda

Annex B: List of Participants

Annex C: CITES Related Sanctions in Central Eastern Europe

Annex D: Results and Recommendations of the Working Groups A, B and C

Annex A

Workshop Agenda

International Expert Workshop on the Enforcement of Wildlife Trade Controls in Phare Countries

3rd-4th June 2004, Hotel Normafa, Budapest, Hungary

Thursday 3rd June

- 9.00 – 9.30 **Registration**
- 9.30 – 9.50 **Welcome and opening remarks**
(Levente GULYÁS, WWF Hungary; Attila STEINER, TRAFFIC Europe – Candidate Countries Programme; Katalin RODICS, Hungarian CITES Management Authority; Thomas WILEY, Representative of the Phare Programme in Hungary)

Introductory session

- 9.50 – 10.10 **Wildlife Trade Judiciary Issues in the EU in 2001: Status and Recommendations**
(Caroline RAYMAKERS, TRAFFIC Europe)
- 10.10 – 10.40 **Beyond Seizure: Prosecuting CITES Offenders**
(Marceil YEATER, CITES Secretariat)
- 10.40 – 11.10 **More than CITES: The EU Wildlife Trade Regulations**
(Nicole MAGEL, European Commission)
- 11.10 – 11.30 Coffee/Tea

Overview and analysis of national legislation and sanctions enforcing wildlife trade controls in the EU and Phare Countries

- 11.30 – 11.50 **Overview of national legislation in the EU**
(Francoise COMTE, European Commission)
- 11.50 – 12.05 **Czech Republic**
(Zuzana HROUDOVA and Veronika VILIMKOVA, Ministry of the Environment, Legislative Department)
- 12.05 – 12.20 **Slovakia**
(Silvia FAJTAKOVA, Ministry of the Environment)
- 12.20 – 14.00 Lunch

Case Studies – The practical experience: prosecution and sanctions of wildlife trade

14.00 – 14.30	Case Studies from Italy (Marco Fiori, Forest Corps)
14.30 – 15.00	Poland (Marcin PCHALEK, lawyer)
15.00 – 15.15	Czech Republic (Renata MARTINCOVA, Czech Environmental Inspectorate)
15.15 – 15.30	Slovakia (Mario KERN, Presidium of the Police Force and Sylvia HUTKOVA, Slovak Environmental Inspection)
15.30 – 16.00	<u>Coffee/Tea</u>
16.00 – 16.30	Slovenia (Robert RENIER and Bogdan MATJASIC, State Prosecution of the Republic of Slovenia)
16.30 -16.45	Bulgaria (Valeri GEORGIEV, CITES Management Authority, Ministry of Environment and Water)
16.45 – 17.00	Lithuania (Skaiste PIKAUSKIENE, Customs)
17.00 – 17.20	Summing up day 1 – prospects of day 2 (Workshop Facilitator)
18.30	<u>Dinner</u>

Friday, 4th June

Towards solutions:

Effective enforcement, tools to establish sanctions and provide sanctioning guidance

9.00 – 9.30	International Wildlife Crime Prosecutions (Nicholas CRAMPTON, Crown Prosecution Service of England and Wales, UK)
9.30 – 10.00	Wildlife Trade Legislation and its Enforcement in Slovenia (Robert BOLJESIC, CITES Management Authority, Slovenia)
10.00 – 10.20	<u>Coffee/Tea</u>

10.20 – 12.00	Working groups – I <ul style="list-style-type: none">- Sanctions, sanctioning guidance- Institutionalizing training and awareness raising among the judiciary sector- International and national cooperation
12.00 – 13.30	<u>Lunch – International Press Conference</u>
13.30 – 14.30	Working groups – II
14.30 – 15.00	Reports of working groups
15.00 – 16.00	Discussion and development of recommendations and action points
16. 00	Summing up workshop results, close

Annex B

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International Expert Workshop on the Enforcement of Wildlife Trade Controls in Central Eastern Europe

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International Expert Workshop on the Enforcement of Wildlife Trade Controls in Central Eastern Europe

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Annex C

CITES Related Sanctions in Central Eastern Europe

(based on Berkhoudt, 2002 and information received for Phare workshop)

Country	Type of legislation	The theory: Legislation provides for the following sanctions				The practice: Sanctions that have been applied			
		Fines in EUR		Imprisonment		Fines in EUR		Imprisonment	
		Private persons	Corporations	Private persons	Private persons	Corporations	Private persons		
	Min.	Max.	Min.	Max.	If yes, how many years?	Max.	Max.	If yes, how many years? Suspended?	
Bulgaria	CITES	256	5 128	512	15 348	No			
	Other								
Czech Republic	CITES		6 250		46 875				
	Other				156 250	up to eight years			
Estonia	CITES		6 392			No			
	Other								
Hungary	CITES					Yes, up to five years			
	Other	20 *	4000 *	20 *	4000 *	up to five years		82 353	four months - 1.5 years suspended imprisonment
Latvia	CITES		441		8 824	No			
	Other	15	750	75	9 000	No	111	No	No
Lithuania	CITES		55		137	No			
	Other		2 900				29	145	
Poland	old CITES (before 1st may 2004)					No		217	
	new CITES (since 1st May 2004)					From three months to five years			
	Other						Penal and Fiscal Act: 652, Animal Welfare Act: 174		
Romania	CITES								
	Other	625	6 250	625	6 250	six months to nine years	0	0	No
Slovakia	CITES		7 500		25 000	up to eight years			
	Other								
Slovenia	CITES (Nature Conservation Act)	85	590	2 500	33 600	No		No	
	Other	Customs Act: 126	Customs Act: 1890			Penal Code: up to three years, in exceptional cases up to five5 years	Penal Code: 4200	No	Penal Code: 6-12 months (conditional imprisonment) and expulsion four-five years

* per specimen

Annex D

Results and recommendations of the Working Groups A, B and C

Working Group A

I. Co-operation, co-ordination and exchange of information at the national and international level

Weaknesses

- No formal agreement between national agencies,
- Only case by case exchange of information / co-operation,
- Historically, little contact between police and customs,
- Administrative burden when contact is needed between agencies, obligation to follow the hierarchy, “no fast way”,
- “Who do I need to contact at the other agency?” – lack of knowledge about who is who at other national agencies that are competent or in charge of wildlife trade enforcement,
- Confusion when/where there are several agencies in the same country that are in charge of wildlife trade investigation and those agencies do not have the same competence in the other EU Member States (e.g. police exclusive investigating agency in one country, while customs is the most competent authority in another),
- Personalised or case specific information is not shared, even when a case is closed.

Recommendations

- Better use/implementation of existing tools/mechanisms, particularly CITES: Biennial Report (source = CITES Parties) + TIGERS (sources = CITES Parties and international bodies such as Interpol, World Customs Organization, etc.),
- Establish national focal points within the relevant authorities for CITES and wildlife trade crime issues,
- Explore the feasibility of new tools/mechanisms, e.g. “EU-TWIX” (EU-Trade in Wildlife Information Exchange, a project developed by the Belgian CITES authorities and TRAFFIC Europe, and co-funded by the European Commission): a two-field database for enforcement agencies in the EU: i) references for wildlife trade enforcers (lists of species in the Annexes of Reg. (EC) 338/97, EU experts, rescue centres in the EU, forensic laboratories in the EU, value of wildlife trade (legal and “black market”), and ii) records of detected illegal wildlife trade: cases of seizures, confiscations, criminal offences, etc. (including information on EU Member States and the relevant national services to contact, reference of the case, species, volumes, country of origin, modus operandi, etc.),
- Increase links between the EU Wildlife Trade Enforcement Group, Interpol, Europol, etc.,
- Organise joint training sessions for both police and customs (bringing representatives of different agencies together in the same place) to create personal contacts.

II. Availability and accessibility of technical, economical and scientific information needed for convictions, sanctioning and prosecution

Recommendations

- List of case studies for prosecutors and judges, to help their understanding of wildlife trade rulings. Such case studies could be presented in the form of a) Hypothetical cases b) Abstracts of cases, and c) Opinions of the judge.

- EU Jurisprudence database: list of significant court cases involving wildlife trade crime in EU Member States (not necessarily the whole file, but the summary of the procedure followed, the conviction/ruling, etc.),
- Reference information on market value, “environmental/ecological” value, etc.
- Methods for calculating fines: conservation status + market value + pecuniary gain + acceptance of responsibility + criminal history category + etc.,
- Bibliography = list of key publications and/or websites e.g. books on valuation of species, IUCN Red List, CITES website, JNCC Checklist of species, etc.

III. Legislative and institutional issues

Weaknesses

- No formal procedures in place to link with international institutions.
- Differences between prosecution procedures from one Member State to another, that may lead to misunderstandings,
- Competition between ministries that are given competence on wildlife trade enforcement (e.g. environment vs. agriculture),
- No sentencing guidelines available in many countries, however sentencing guidelines might not be acceptable in some countries because they are considered a tool that would jeopardise the independence of the judge’s ruling,
- Lack of clarity about the links between national legal text on penalties and the relevant Articles of EU Wildlife Trade Regulations, both the Council and the Commission regulations,

Recommendations

- “Decree” (or other legal text) to establish a formal co-operation between agencies,
- Increase knowledge on the work of the “Legal Service” of the European Commission,
- Creation of an “inter-sectoral committee” (formal national wildlife trade crime unit) (e.g. such as PAW, the Partnership against Wildlife Trade Crime in the UK)
- Improved implementation of Art. 14 and European Commission to insist that Member States submit a comprehensive and electronic report (part of the CITES Biennial reporting) on illegal trade (seizures, confiscations, significant criminal cases, etc.),
- Sentencing guidelines (Ref. website of the UK Magistrate Court Association; those already exist for homicides e.g. Hungary) – in some Member States (e.g. Hungary) those might be of use to prosecutors/judges only if they are formally recognised/adopted by the Constitutional or Supreme Court of the country,
- Creation of a Sentencing Commission (first at a national level and eventually at an international level)

IV. Training and awareness-raising in the judiciary sector

Recommendations

- Creation of a simple “Journal” on national cases (e.g. RSPB journal in the UK reporting on closed/non-confidential cases, such as seizures of eggs of protected birds, TRAFFIC Bulletin, section on ‘Seizures and Confiscations’) – linked to role of NGOs
- An EU Workshop on the EU Wildlife Trade Regulations addressed to prosecutors and judges of all EU Member States + follow-up with national workshop linking the EU Regulations with all relevant national penal texts,
- Lobby government in order to obtain a special budget from the EU funds disbursed through the European Commission to improve the compliance of “new” EU Member States with international conventions (e.g.

Lithuania allocated EUR 1.5 million to improve the country's implementation of CITES as well as the Bonn and Bern Conventions – budget to be contracted to the winner of a call for tender published through the European Commission),

- Existing Sentencing Guidelines (including Draft versions) are potential training materials for prosecutors and judges.

Note: One of the best ways to raise the awareness, understanding and interest of judges and prosecutors for wildlife trade crime cases and the need to apply adequate ruling, is to present them with convincing, well prepared and strong cases, which are clearly dependent on the level of training of enforcement staff/investigators. Therefore the primary need remains to raise awareness and give training to enforcement officers.

Working Group B

I. Co-operation, co-ordination and exchange of information at national and international level

Weaknesses

- Management Authority staff is overburdened with administrative work, leaving no time for a more strategic approach,
- No formal agreement exists between national CITES authorities,
- Information exchange – especially between Customs and other authorities – often depends on personal relationship,
- Low awareness of the Police towards wildlife trade issues, difficult to find the right contacts,
- Competence of different authorities is not clear, often leading to competition between them,
- The EU Wildlife Trade Enforcement Group meets only once a year and the participants are not always the right representatives,
- The Interpol Wildlife Trade Working Group stopped its meetings in September 2001
- International co-operation often depends on personal relationships,
- Ministry superior staff is not acknowledging efforts for international co-operation.

Recommendations

The CITES Management Authority should deal with strategic issues, often requiring national and international co-operation,

- There should be a formal agreement between national CITES authorities and agencies in each country for the establishment of an inter-sectoral committee for national co-operation,
- National co-operation should be initiated and fostered from the Ministries superior staff, i.e. by the Minister of Environment,
- A focal point should be identified within the enforcement agencies to represent each country at EU Wildlife Trade Enforcement Group meetings,
- Lobby at Interpol to restart regular meetings of the Interpol Wildlife Trade Working Group.

II. Availability and accessibility of technical, economical and scientific information needed for convictions, sanctioning and prosecution

Weaknesses

- There is hardly any information available for the judiciary on similar cases within their own country or from other countries,
- Value of the species involved in wildlife trade crime is sometimes needed for sanctioning; often the value is based on (black market) price.

Recommendations

- List of case studies on a European level should be available for prosecutors and judges to aid their understanding of wildlife trade crime sanctioning,
- Sentencing guidelines along with assistance for the determination of value based on ecological approach should be prepared and made available for the judiciary.

III. Legislative and institutional issues

Weaknesses

- In some countries imprisonment is not included among the sanctions of wildlife trade crimes,

- Some countries do not even distinguish between administrative offences and crimes in the legislation.

Recommendations

- Modification of national legislation to include imprisonment in the sanctioning of infringements against wildlife trade legislation,
- Modification of national legislation to make a distinction between administrative offences and crime as well as to provide adequate sanctions for both.

IV. Training and awareness-raising among the judiciary sector

Weaknesses

- The awareness of the judiciary is low towards wildlife trade legislation and the damage that wildlife trade crime can cause to biodiversity.

Recommendations

- Ways of disseminating information on wildlife trade to the judiciary should be explored in each country and could include the following
 - i. Articles in special judiciary publications or magazines
 - ii. Lessons for law school students preferably as part of their curriculum
 - iii. Participation in judiciary training courses with presentations
 - iv. Involvement of judges and prosecutors who already have experiences with wildlife trade crime
- General awareness raising for the public can be a helpful tool as well by indirectly influencing the judiciary
- NGOs can be involved in the awareness raising campaigns
- The website www.eu-wildlifetrade.org can be a useful tool in awareness raising if translated into the languages of new EU Member States (and Candidate Countries)

Working Group C

I. Co-operation, co-ordination and exchange of information at national and international level

Weaknesses

- Lack of co-operation between different agencies, especially with Police and the judiciary,
- The agencies are within different ministries making communication and co-operation difficult and slow,
- Competencies vary within the different authorities. Inspection has expertise in identification but Customs, having the right to confiscate, do not always co-operate with them in doubtful cases,
- There are no specialists and contact persons identified for wildlife trade crime at the Police and the judiciary, making the CITES authorities unaware of whom to contact in certain situations.

Recommendations

- Formal agreements, Memoranda of Understanding (MoUs) should be signed between the different national authorities,
- Specialized units should be formed within Enforcement Agencies and focal points appointed for wildlife trade issues,
- An inter-sectoral working group should be established in each country.

II. Availability and accessibility of technical, economical and scientific information needed for convictions, sanctioning and prosecution

Weaknesses

- Low availability of scientific information for customs and the judiciary.

Recommendations

- A hotline for information exchange should be established in the countries where it is not already in use, e.g. Customs are sending digital photographs to experts (Management Authorities, Scientific Authority, Inspection) for identification,
- Personal contacts should be built regionally or nationally among representatives of the different agencies.

III. Legislative and institutional issues

Weaknesses

- In some countries there are gaps in the legislation regarding sanctioning of wildlife trade crime

Recommendations

- Modification of national legislation to provide adequate sanctions for infringements

IV. Training and awareness-raising among the judiciary sector

Weaknesses

- Crimes against nature are not considered serious, and the sanctioning is not an adequate deterrent.

Recommendations

- Awareness of prosecutors, judges, lawyers should be raised through publishing Articles in judicial magazines and newsletters, giving presentations at judicial meetings, and incorporating wildlife trade regulation lessons/courses into the curriculum of law schools,
- NGOs should be involved in awareness raising.

TRAFFIC, the wildlife trade monitoring network, works to ensure that trade in wild plants and animals is not a threat to the conservation of nature. It has offices covering most parts of the world and works in close co-operation with the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

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